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March 29, 2010

VIA ELECTRONIC FILING

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

Re: Credit Reforms in Organized Wholesale Electric Markets; Docket No. RM10-13-000
Comments of the New England Power Pool Participants Committee

Dear Secretary Bose:

Attached for filing in the above-captioned proceeding are the comments of the New England Power Pool (“NEPOOL”) Participants Committee. Please contact me if you have any questions or need any further information regarding this filing.

Respectfully submitted,

/s/ Jennifer E. Galiette

Jennifer E. Galiette
Counsel to the NEPOOL Participants
Committee

cc: Official Service List

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

Credit Reforms in Organized)
Wholesale Electric Markets)

Docket No. RM10-13-000

**COMMENTS OF NEPOOL PARTICIPANTS COMMITTEE WITH RESPECT TO
CREDIT REFORMS IN ORGANIZED WHOLESALE ELECTRIC MARKETS**

(March 29, 2010)

The New England Power Pool (“NEPOOL”) Participants Committee¹ offers these comments for consideration by the Commission in response to the Notice of Proposed Rulemaking titled “Credit Reforms in Organized Wholesale Electric Markets,” which was issued by the Commission in the above-captioned docket on January 21, 2010 (the “NOPR”). For the past several years, NEPOOL has been exploring credit issues for the New England markets and has worked out arrangements that satisfy ISO New England (“ISO-NE”) and NEPOOL and are just and reasonable. Indeed, the latest set of changes to the ISO-NE credit policies, which have very recently been filed with the Commission and will be implemented late this year,² further decrease the possibility that payment defaults in the New England power markets would have a dramatic adverse effect on the region and its consumers. NEPOOL’s comments here describe those arrangements and urge the Commission not to adopt any rules in this NOPR that would force changes to them.

¹ Capitalized terms used but not defined in this filing are intended to have the meanings given to such terms in the Second Restated New England Power Pool Agreement (the “Second Restated NEPOOL Agreement”), the Participants Agreement, or the ISO New England Inc. Transmission, Markets and Services Tariff (“ISO-NE Tariff”). The ISO New England Billing Policy (“ISO-NE Billing Policy”) is Section I, Exhibit ID of the ISO-NE Tariff. The ISO New England Financial Assurance Policy (“ISO-NE Financial Assurance Policy”) is Section 1, Exhibit IA of the ISO-NE Tariff.

² *ISO New England, Inc.*, Docket No. ER10-942-000, filed March 26, 2010 (the “Unsecured Credit Filing”).

I. INTRODUCTION AND BACKGROUND

The NOPR proposes amendments to Commission regulations under the Federal Power Act to reform credit policies in organized wholesale electric markets in order to reasonably protect consumers against the adverse effects of default, particularly in light of the recent turmoil in the financial markets. In the NOPR, the Commission states that its proposals are designed to ensure that credit policies result in jurisdictional rates that are just and reasonable.³ These proposed reforms include shortening settlement periods, reducing the availability of unsecured credit, clarifying universal counterparty status of ISOs and RTOs, implementing minimum participation criteria, identifying material adverse changes to manage risk, and limiting grace periods to cure collateral deficiencies.

NEPOOL is the principal stakeholder organization for the New England RTO and provided the forum for regional discussions of these issues and for identifying and articulating the positions of the Market Participants. NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and has grown to include more than 410 members. The Participants include all of the electric utilities rendering or receiving service under the Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, end users, developers, demand resource providers, and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission,⁴ the Participants act through the NEPOOL Participants Committee. The Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. Pursuant to Section 2.2 of the Participants Agreement, “NEPOOL provides the sole Participant Process for advisory voting

³ NOPR at P 1.

on ISO matters and the selection of ISO Board members, except for input from state regulatory authorities and as otherwise may be provided in the Tariff, TOA and the Market Participant Services Agreement included in the Tariff.”

Due to the interest in the region on the NOPR and credit issues in general, the NEPOOL Budget and Finance Subcommittee (the “Subcommittee”) worked collectively in February and March to review proposed NEPOOL comments on the NOPR. The Subcommittee reported on the NOPR and received additional feedback at the Participants Committee meeting on March 5, 2010. Most NEPOOL Participants attending the March 22, 2010 Subcommittee teleconference indicated their support for these comments, however, several Participants, including those representing suppliers that were part of the Joint Participants (as that term is defined below), stated their opposition to some of the positions taken by NEPOOL here. NEPOOL is aware that such Participants may file additional comments with the Commission in this proceeding expressing their positions.

NEPOOL appreciates the Commission’s efforts to reform credit practices in organized wholesale electric markets. NEPOOL’s comments reflect prior NEPOOL votes that achieved more than the 66.67% Vote required for NEPOOL approval. These comments do not reflect additional views voiced by some NEPOOL Participants that were not successful in persuading enough other members of NEPOOL to represent an organizational position, nor do they reflect the views voiced by some NEPOOL Participants, particularly those Joint Participants referenced above, that were not successful in persuading enough other members of NEPOOL to pass their alternative proposal regarding unsecured credit issues, as described below. NEPOOL anticipates that individual NEPOOL Participants may also submit comments on the NOPR to the Commission.

⁴ See *ISO New England Inc. et al.*, 109 FERC ¶ 61,147 (2004).

II. COMMENTS

A. Settlement Cycle

NEPOOL supports the Commission's efforts to reduce credit risk exposure. In the NOPR, the Commission stated that the size of credit risk exposure is, in large part, a function of settlement timelines, i.e., the periods of time that elapse among the provision of service, the billing for service, and the payment for service.⁵ The Commission stated its belief that ISOs and RTOs can minimize the exposure period and significantly reduce the credit risk to all Market Participants by reducing the time between when a cost is incurred and when payment is ultimately received by an ISO or RTO.⁶ The Commission proposed that each RTO and ISO implement a settlement cycle of no more than seven calendar days with no more than an additional seven calendar days for final payment.⁷ The Commission further requested comment on the practicality of daily settlement periods within one year of implementing weekly settlement periods.⁸ The Commission also requested comment on the impacts of shortened settlement cycles on net wholesale buyers, and in particular any cash management costs they may incur.⁹

NEPOOL agrees that risk is reduced by shortening the billing and payment cycle and already has in effect a settlement cycle for Hourly Charges that, overall, is generally shorter than that proposed by the Commission, with a recent filing to shorten it still further. Under the ISO New England Billing Policy ("ISO-NE Billing Policy"), the billing process is performed weekly by the ISO-NE for each complete-day settlement amount for all Hourly Charges, with statements issued

⁵ NOPR at P 13.

⁶ *Id.*

⁷ *Id.* at 15.

⁸ *Id.*

⁹ *Id.* at 16.

every Monday or the following Business Day.¹⁰ Weekly billings have been in place since July of 2004.¹¹ Hourly Charges are defined to include all hourly charges and payments for the Real-Time and Day-Ahead Energy Markets as well as for Real-Time Operating Reserve, Forward Reserves, Regulation Service, Emergency Sales, Emergency Purchases, and Net Commitment Period Compensation.¹² In general these statements include seven days of complete settled data, although occasionally some weekly statements will have less than seven days and some will have more depending on whether the data is complete. Once an invoice is received, all payments are due to the ISO-NE within two business days.¹³

The Unsecured Credit Filing amends, among other things, the settlement cycle for Hourly Charges to twice weekly, with statements to be issued on Mondays and Wednesdays of each week. Payment will continue to be due two Business Days after each Invoice is issued. The Commission acknowledged in its NOPR that “PJM and ISO-NE already use a seven-day settlement

¹⁰ ISO-NE Billing Policy at §§ 1.3, 2.1.

¹¹ See *New England Power Pool*, 107 FERC ¶ 61,201 (2004). In 2006: (i) the settlement cycle was shortened further; (ii) calculation timetables were improved through software upgrades; (iii) requirements of the ISO-NE Billing Policy and the ISO-NE Financial Assurance Policy (collectively, the “Policies”) were better aligned with actual risk exposure from virtual energy bidding and Financial Transmission Rights transactions; and (iv) a user interface was provided to allow customers to actively monitor their financial and collateral positions, and enhance their compliance with applicable requirements. See *ISO New England Inc.*, 115 FERC ¶ 61,054 (2006). In December of 2008, changes to the ISO-NE Billing Policy that allowed the ISO to accelerate the billing of Energy Charges were filed. These changes were accepted in a letter order issued on February 6, 2009 in *ISO New England Inc. and New England Power Pool Participants Committee*, Docket No. ER09-454-000. In addition, in April of 2009, ISO-NE and NEPOOL filed amendments to the Policies that shortened the billing cycle, accelerated payment to net sellers, and accelerated the time when a Market Participant’s suspension from the markets for a Payment Default is effected under the Policies. These changes were accepted in a letter order issued on April 29, 2009 in *ISO New England Inc. and New England Power Pool Participants Committee*, Docket No. ER09-932-000.

¹² ISO-NE Billing Policy at § 1.3. Please note that Emergency Sales and Emergency Purchases are also included in part on the monthly statements for Non-Hourly Charges. Emergency sales and purchase billings with other Control Areas are due on the 20th day of the subsequent month, as described in the Coordination Agreements with New York ISO and New Brunswick System Operator. Emergency purchase funds for other Control Areas are partially collected from Market Participants through the weekly billing process, with adders and ancillary services charges collected in the non-hourly service bill. Emergency sales funds from other Control Areas are allocated to Participants in the non-hourly services bill.

timeframe.”¹⁴ The recent changes contained in the Unsecured Credit Filing further reduce the total outstanding liability of participants in the New England energy markets and, therefore, the exposure for non-payment of Hourly Charges.

While the settlement time frames for Hourly Charges would fully satisfy a Commission rule consistent with the NOPR, other charges in the New England markets are invoiced and settled on a monthly basis as a function of the markets and services being billed. It does not appear that such charges are the focus of the Commission’s inquiry. These monthly, or Non-Hourly Charges, include without limitation the monthly markets, the Forward Capacity Market, other ancillary services, transmission services, Participant Expenses, charges under the ISO Funding Mechanisms, monthly meter adjustments, and FCM Qualification Process Cost Reimbursement Deposits.¹⁵ Similar to Hourly Charges and payments, all payments for Non-Hourly Charges are due within two Business Days after receipt of the applicable invoice.¹⁶

ISO-NE reports that Non-Hourly Charges represent on an annual basis approximately one-third of the total overall amount of payments collected by ISO-NE, with Hourly Charges making up the remaining two-thirds. Of the total Non-Hourly Charges billed, approximately 36% relate to transmission service charges and approximately 57% relate to ICAP Transition Period payments. Non-Hourly Charges are generally billed on a monthly basis either because the information on which those charges are based is not available on a weekly basis, or because such payments or charges are incurred only on a month-to-month basis. For almost all of these Non-Hourly Charges,

¹³ *Id.* at § 3.1(a).

¹⁴ NOPR at P 15, n 21.

¹⁵ ISO-NE Billing Policy at § 1.3.

¹⁶ *Id.* at § 3.1(a).

a move to a weekly settlement cycle would require the ISO-NE to bill based on estimates, subject to true-ups on a monthly basis.

To the extent not already contemplated by the Commission, NEPOOL requests that any final rule issued in this proceeding not be worded to require the region to bill on a weekly basis those charges, such as Non-Hourly Charges, that are routinely billed on a monthly basis and where a shorter settlement cycle would result in less precise billings and additional administrative burdens associated with a true-up process. Such an outcome could be achieved, for example, through the Commission adopting final rules clarifying that any requirement for at least weekly billing be limited to wholesale power market charges that ISOs and RTOs have established on a basis that is one week or shorter, or alternatively through acknowledgement that the Commission will allow for regional differences that substantially conform to the proposed settlement cycle for the majority of charges. NEPOOL has a far shorter settlement cycle than much of the industry, and its request here is that any final rule not require further changes in New England that would make for less precise and more burdensome billing processes.

NEPOOL and ISO-NE have had discussions in the past, albeit largely preliminary discussions, on the practicality of moving to daily settlement periods and, at this point, NEPOOL would not support such a change. ISO-NE has indicated to NEPOOL that if by referencing “daily settlements” the Commission is intending to require ISOs and RTOs to bill activity today associated with yesterday’s operating day, such change may involve considerable additional time and resources. Such a change to the billing and settlement systems also would divert attention from other business in the region that is considered more pressing. In addition, such a move would likely entail greater use of estimated data (subject to later true-ups), with which some Participants have expressed concerns, as described above. The Subcommittee works closely with ISO-NE in

considering credit risk as the markets continue to evolve, and as demonstrated by its ongoing amendments to both the ISO-NE Billing Policy and the ISO-NE Financial Assurance Policy (collectively, the “Policies”), will refine those arrangements when amendments are justified and supported.

B. Unsecured Credit

In the NOPR, the Commission stated that RTOs and ISOs generally allow significant amounts of unsecured credit and that such levels of credit vary widely among the organized wholesale electric markets.¹⁷ The Commission properly recognized in the NOPR that, as the timeframe of settlement decreases, so does the required amount of unsecured credit.¹⁸ The Commission proposed for comment a requirement that RTOs and ISOs reduce the extension of unsecured credit to no more than \$50 million per market participant.¹⁹ The Commission also sought comment on whether there should be a further aggregate cap to cover an entire corporate family, e.g., holding companies, subsidiaries, associates, and affiliates, and whether that cap should be different for markets of different sizes.²⁰ Further, the Commission also proposed the elimination of unsecured credit in financial transmission rights markets.²¹

NEPOOL shares the Commission’s concern with risk and credit standards, particularly in light of the recent financial crisis that started in the fall of 2008, but has identified a different means of addressing those goals. NEPOOL and ISO-NE have long worked together to balance the financial assurance burdens imposed on Market Participants by requiring collateral against the risk of payment defaults in the New England electricity markets created by unsecured credit. Beginning

¹⁷ NOPR at P 18.

¹⁸ *Id.* at P 17.

¹⁹ *Id.* at P 19.

²⁰ *Id.*

in October of 2008, spurred by ISO-NE's concerns that its existing credit policies were not adequately addressing the risk of payment default in the markets, NEPOOL and ISO-NE undertook a comprehensive review of the existing ISO-NE Financial Assurance Policy to determine whether changes were necessary to manage credit risk, including any risks associated with unsecured credit. That process produced just and reasonable, broadly accepted changes to the Financial Assurance Policy (the "Rule Changes") that were supported by an 81.88% NEPOOL Vote. Those Rule Changes are included in the Unsecured Credit Filing. As explained fully in that filing, they are just and reasonable and directly respond to the concerns that appear to have motivated the Commission to propose changes to risk and credit standards.

The Rule Changes contained in the Unsecured Credit Filing eliminate unsecured credit for most Market Participants other than entities serving native load customers with governmentally established rates, effective on or after December 1, 2010.²² The Rule Changes also eliminate unsecured credit entirely in the Financial Transmission Rights ("FTRs") markets. For those entities that continue to be able to use unsecured credit, the Rule Changes set forth certain maximum amounts of unsecured credit for two types of charges, neither of which relate to each other: (i) market charges or ISO Charges, which are related to market activity (the "Market Credit Limit"), and (ii) Transmission Charges, which are essentially an administrative billing and collection function ISO-NE does on behalf of Transmission Owners in New England and are often charges paid among different parts of the same entities (the "Transmission Credit Limit").

²¹ *Id.* at P 23.

²² In the NOPR, the Commission proposes to require that tariff changes be submitted no later than June 30, 2011, to go into effect 60 days after filing. ISO-NE and NEPOOL have requested an effective date of not sooner than December 1, 2010 for the Rule Changes contained in the Unsecured Credit Filing. As a result of this timing, NEPOOL has not focused on the unsecured credit limits in the existing ISO-NE Financial Assurance Policy but rather on the limits that would go into effect when the Rule Changes are implemented.

Under the Rule Changes, the Market Credit Limit for a qualified Municipal Market Participant or an Unrated T&D Company or Unrated Non-Market Participant Transmission Company that satisfies the Credit Threshold (as those terms are defined in the Unsecured Credit Filing) is \$25 million. The Market Credit Limit for a T&D Company or Non-Market Participant Transmission Customer with an Investment Grade Rating that satisfies the Credit Threshold is \$50 million. The Transmission Credit Limit for a Municipal Market Participant or an Unrated T&D Company or Unrated Non-Market Participant Transmission Customer that satisfies the Credit Threshold is \$25 million. The Transmission Credit Limit for a T&D Company or Non-Market Participant Transmission Customer with an Investment Grade Rating is \$50 million.

Comparing the New England arrangements in the Rule Changes to those proposed for comment in the NOPR, the Market Credit Limit would fall within the \$50 million limit proposed for comment by the Commission. While the Transmission Credit Limit for a T&D Company or Non-Market Participant Transmission Customer with an Investment Grade Rating, when combined with the Market Credit Limit available to those entities, would exceed the \$50 million limit proposed for comment in the NOPR, as noted above, those Transmission Credit Limits are fundamentally different and do not relate to market activity. In New England, the billing for and collection of Transmission Charges are administrative functions that ISO-NE undertakes on behalf of the Transmission Owners in New England, pursuant to the Transmission Operating Agreement, and have no real relationship to market or ISO Charges for market activity. Such charges are simply passed through ISO-NE. To the extent desired, the Commission should clarify that its proposed unsecured credit limit would only apply to market-related charges and not to the types of Transmission Charges identified above. Importantly, the Market Credit Limit for a T&D Company

or Non-Market Participant Transmission Customer with an Investment Grade Rating would fall within the Commission's proposal at \$50 million.

A summary of how New England achieved the outcomes it now seeks to maintain may help the Commission better appreciate that challenges in addressing concerns over credit risk and standards. The Rule Changes reflect the end result of significant efforts by ISO-NE in laying out its credit concerns and exploring with market participants and state regulators over a year of discussions on how best to address those concerns for New England given the composition of the market players and its history and circumstances. As early as October 2008, ISO-NE began to explore the possible reduction in credit limits and elimination of guarantees from the Financial Assurance Policy, to establish a list of pre-determined qualified issuing banks for letters of credit provided under the Financial Assurance Policy, and to limit the amount of financial assurance requirements that could be met through a letter of credit (collectively, the "Unsecured Credit Issues"). At the direction of the NEPOOL Participants Committee, the Subcommittee held a series of well-attended meetings on the Unsecured Credit Issues beginning in October 2008, and the Unsecured Credit Issues were the subject of a panel discussion at the semi-annual joint meeting of the Participants Committee and ISO-NE Board of Directors in November 2008.

In January 2009, the Subcommittee and the ISO-NE presented to the NEPOOL Participants Committee a proposed term sheet of changes to the Policies to address the Unsecured Credit Issues. That term sheet effectively contained three different alternatives – one principally sponsored by the ISO-NE (with support from certain NEPOOL Participants), one sponsored by the Transmission Owners, and one sponsored by a group of suppliers and other NEPOOL Participants (who became known as the "Joint Participants") who wanted to retain unsecured credit across the pool. The Participants Committee reacted to the various proposals at that meeting and requested that the ISO-

NE continue to work with the Subcommittee to arrive at a consensus position. The discussions among the Subcommittee and the ISO-NE continued, and a revised term sheet reflecting the ISO-NE's proposal for the Unsecured Credit Issues, which ultimately became the Rule Changes, was adopted at the March 6, 2009 Participants Committee meeting with a Vote of 71.82% in favor.

The Joint Participants also presented a term sheet at that March 6 meeting. That term sheet included: (1) a reduction in the maximum credit limit for all Market Participants who otherwise qualify (rather than just for T&D Companies and Municipal Market Participants) of \$50 million, with an aggregate \$150 million credit limit for all affiliated Market Participants; (2) the separate billing and collateralization of Transmission Charges; (3) the allocation of cash shortfalls resulting from payment defaults on Transmission Charges first to affiliates of that defaulting Market Participant to the extent of the Transmission Charges due to those affiliates, then to other Market Participants due Transmission Charges, then to the pool as a whole using the current methodology; (4) the elimination of unsecured credit for FTR transactions and Virtual Obligations in excess of Real-Time Load Obligations or Real-Time Generation Obligations for the applicable Market Participant; (5) the elimination of the use of secured debt ratings from the Rating Agencies to establish an Investment Grade Rating; (6) the revision of the Market Rules to permit a Market Participant to submit bilateral energy contracts to the ISO-NE that do not alter the Marginal Loss Revenue allocation that would otherwise have accrued to each party if the bilateral contract had not been submitted to the ISO-NE; and (7) the continuation of corporate guarantees as an acceptable form of financial assurance, modifying the requirement for those guarantees to be consistent with the foregoing points.

That alternative term sheet failed to gain the support of the Participants Committee with a 66.225% Vote in favor (a 66.667% favorable vote would have been required for the Participants

Committee to support the proposal). Based on that March 6 vote, the ISO-NE and the Subcommittee presented a draft of changes to the Financial Assurance Policy to the Participants Committee for a vote, which was approved at the May 3, 2009 Participants Committee meeting by a Vote of 81.88% in favor. The Joint Participants' alternative draft of the Rule Changes consistent with their term sheet was not supported by the Participants Committee at its May 3, 2009 meeting, with a Vote of 39.56% in favor.

Given the length of this process and the facts described above, NEPOOL urges the Commission to address any issues with the Rule Changes in that proceeding (i.e., the Unsecured Credit Filing), rather than issuing a blanket rule in *this* proceeding. Such an outcome could be achieved if the Commission confirms that it will not impose a “one-size-fits-all” approach to these issues. Alternatively, the Commission could clarify that the unsecured credit limit it adopts in any final rule would only apply to market-related charges and not to the types of Transmission Charges identified above.

C. Universal Counterparties

In the NOPR, the Commission reported that issues had arisen in a past bankruptcy regarding the fact that organized electric wholesale markets typically arrange for the settlement and netting of transactions entered into between market participants and the market administrator, but do not take title to the underlying contract position of a participant at the time of settlement.²³ The Commission stated that because the system operator affected by the resulting bankruptcy default had not “taken title” to the products involved in the transactions, it could not net payments owed to the bankrupt company against payments owed by it, which meant that creditors had a claim to its revenues but

²³ NOPR at P 24.

that market participants in the same system operator bore the loss of money owed.²⁴ The Commission proposed that each RTO and ISO clarify its status as a party to each transaction in its tariff provisions so as to eliminate any ambiguity or question as to its ability to manage defaults and to offset market obligations.²⁵

NEPOOL notes at the onset its understanding that while the Commission referenced the RTOs and ISOs taking title to the underlying contract positions of a participant at the time of settlement, the Commission does not intend by its proposal specifically to order such action. NEPOOL interprets the Commission's proposal to require each RTO and ISO to add greater clarity, to the extent necessary, in its tariff as to whether *or not* it is a "universal counterparty" in the settlement and netting of transactions and to ensure further that its ability to manage defaults and offset market obligations is clear in its tariff.

NEPOOL states that while the ISO-NE essentially coordinates the movement of wholesale electricity among its Market Participants, it does not at any point take title to or otherwise take ownership of the energy or other market products on the system. However, the ISO-NE Billing Policy contains a "set-off" provision that allows ISO-NE to apply any amount to which any defaulting party is or will be entitled toward the satisfaction of any of that defaulting entity's debts to ISO-NE, NEPOOL or other market participants.²⁶ NEPOOL notes as well that it has experienced the bankruptcies of nine Market Participants since 2000, and the fact that ISO-NE does not take title

²⁴ *Id.*

²⁵ *Id.* at P 25.

²⁶ ISO-NE Billing Policy at § 3.3(j). *See also* § 3.3(b) ("The ISO-NE shall use any and all rights of set-off it has under the Documents, the Financial Assurance Policy and this Policy against a defaulting Covered Entity to the extent necessary to pay the Default Amount, together with any interest accrued thereon and any late charges assessed under the Documents and the Financial Assurance Policy, due from such Covered Entity.").

to market products did not impair the recoveries of the ISO-NE or the other Market Participants in those bankruptcies.

Despite the fact that this issue has not impaired recoveries in any of the Market Participant bankruptcies in New England, NEPOOL agrees with the Commission that it is worth further evaluation. NEPOOL notes that it has not taken any formal positions on this issue in response to the NOPR. NEPOOL is aware that other RTOs and ISOs, including PJM and MISO, have recently commenced efforts on these issues and believes that it ought to be given the opportunity to complete its own review of this issue in New England prior to any final rule in this proceeding. If the Commission is intending by its proposals specifically to require ISO-NE to take title to the underlying contract positions of its Market Participants, which some entities appear to believe the Commission is doing based on comments filed already in this proceeding,²⁷ such action could have potentially profound impacts on the wholesale markets, including the long-term bilateral arrangements already in place, that need to be carefully considered prior to proceeding, as well as other potential issues associated with ISO-NE's status under federal and state regulations. In addition, while this action may reduce the risks (whether theoretical or not) outlined by the Commission, there may be other solutions as well, including legislative action or court opinion, that could accomplish the same result. The Commission may wish to separate this issue from the other issues in this proceeding to be considered on a separate track that would allow for such review.

D. Minimum Participation Criteria

NEPOOL generally supports the Commission's efforts to ensure that each RTO and ISO have in place minimum criteria for market participation such that each participant has at its disposal adequate risk management capability and adequate capital to engage in trading with minimal risk,

²⁷ See Joint Comments of the California Independent System Operator Corporation and Midwest Independent Transmission System Operator, Inc. (filed March 15, 2010), at 1.

and related costs, to the market as a whole. The ISO-NE Financial Assurance Policy requires each Market Participant submit proof of financial viability demonstrating its ability to meet its obligations.²⁸ Participants are generally required (exact requirements vary depending on the type of entity and its circumstances) to submit current rating agency reports, audited financial statements for the two most recent years (or the period of its existence), unaudited financial statements for its last concluded fiscal quarter, at least one bank reference, utility company credit references or major trade payable vendor references, relevant information regarding any known or anticipated material lawsuits, as well as any prior bankruptcy declarations, and complete a credit application and submit a fee.²⁹ In addition to the above requirements, each Market Participant must complete an ISO-NE prescribed training course prior to participating in the auctions for FTRs.³⁰ Moreover, all Market Participants are required to comply with the ISO-NE Financial Assurance Policy and post financial assurance (where ineligible to use unsecured credit) prior to participation in the region's wholesale markets. The posting of financial assurance also acts as participation criteria, since only those participants that qualify for unsecured credit or that have the means to post such assurance can participate in the region's wholesale markets.

Since the issuance of the NOPR, NEPOOL has discussed whether the current participation criteria require further refinement. The New England markets continue to evolve and more products are developed, and for that reason NEPOOL and ISO-NE may wish to explore together possible changes to strengthen current participation criteria. NEPOOL urges the Commission to provide it the opportunity to evaluate further this issue as it relates to the current and evolving New

²⁸ See ISO-NE Financial Assurance Policy § II.A (Non-Municipal Applicants), § III.A (Municipal Market Participants), and § V.A (Non-Market Participant Transmission Customers).

²⁹ *Id.*

³⁰ *Id.* at § VI.

England wholesale power arrangements. Any review of such an issue must delicately balance the interest in reducing risks to the markets as a whole with the interest in keeping the markets reasonably open and competitive. NEPOOL notes that ISO-NE has indicated its preliminary belief that, if the final rule is as proposed by the NOPR, the existing ISO-NE Tariff may need to be further revised in order to comply. NEPOOL requests that the Commission first allow the region an opportunity to review ISO-NE's recommendation on this issue and to discuss that recommendation within its stakeholder processes.

E. Use of “Material Adverse Changes” to Manage Risk

The Commission noted that many ISOs and RTOs have the right under their tariffs to require additional collateral if there is a “material adverse change” in the market participant’s credit status.³¹ The Commission stated that this phrase is ambiguous and could lead to uncertainty as to when a market administrator can require such additional posting, which could delay an administrator’s request for additional collateral until the last minute and make it very difficult for a market participant to obtain and provide such collateral.³² The Commission proposed to require each ISO and RTO add greater specificity in its tariff language identifying the circumstances where it may invoke a “material adverse change” as a justification for requiring additional collateral.³³ The Commission also requested comment as to specific language regarding the circumstances under which a market administrator may invoke the “material adverse change” provision.³⁴

NEPOOL submits that the existing ISO-NE Financial Assurance Policy would comply with the Commission’s proposals insofar as it enumerates such circumstances. The ISO-NE Financial

³¹ NOPR at P 28.

³² *Id.*

³³ *Id.* at P 29.

³⁴ *Id.*

Assurance Policy refers to such changes as “Material Changes” and specifies that such changes include, *but are not limited to*: a downgrade to below an Investment Grade Rating by any Rating Agency; being placed on credit watch with negative implication by any Rating Agency if the Market Participant or guarantor does not have an Investment Grade Rating; a bankruptcy filing or other insolvency; a report of a significant quarterly loss or decline of earnings; the resignation of key officer(s); or the filing of a material lawsuit that could materially adversely impact current or future financial results.³⁵ Failure to disclose a Material Change may result in ISO-NE initiating proceedings at the Commission to terminate the Market Participant’s rights to engage in market activities in the region.³⁶ The ISO-NE Financial Assurance Policy further states that in the event of a Material Change, the ISO-NE may require the posting of (additional) financial assurance, and if the Market Participant fails to do so, the ISO-NE may initiate termination proceedings.³⁷

NEPOOL believes that the ISO-NE Financial Assurance Policy provides clarity and certainty to Market Participants as to when requests for additional collateral will likely be made, while still providing the ISO-NE with the necessary latitude to address sudden changes in the credit profile of a Market Participant based on the language in the ISO-NE Financial Assurance Policy, which is not expressly limited just to those circumstances enumerated above. NEPOOL urges the Commission not to prescribe any particular circumstances or remedial actions as part of the instant proceeding, as such a ruling could reduce the latitude and flexibility of the ISO-NE at a time when it is most crucial that ISO-NE have such flexibility to protect the region quickly from imminently threatened credit defaults based on the specific facts and circumstances at that time. To the extent the Commission desires further changes to the ISO-NE Financial Assurance Policy, NEPOOL

³⁵ ISO-NE Financial Assurance Policy at § XI.A.

³⁶ *Id.*

³⁷ *Id.*

requests that the final rule provide general guidance that allows the region the opportunity to review and propose appropriate changes that have been considered fully within its stakeholder process, and not require specific changes in this proceeding that fail to account for all of New England’s facts and circumstances.

F. Grace Periods to Cure Collateral Deficiencies

The Commission noted that RTOs and ISOs have adopted timeframes in which a party may “cure” its changed credit position by posting additional collateral.³⁸ The Commission stated that while participants may need time to cure, the Commission is aware that the time period to cure the position of the participant must be short enough to minimize uncertainty for other market participants and to stem accumulation of debt and potentially erratic market behavior.³⁹ The Commission proposed to require each ISO and RTO to limit the time period allowed to post additional collateral when requested by the organized wholesale electric market.⁴⁰ The Commission requested further comment on the appropriate time period, such as the two-business day period adopted by PJM, and whether such time period should be standardized among all RTOs and ISOs.⁴¹

The ISO-NE Financial Assurance Policy currently provides that where the amount of cash deposited or the letter of credit amount is below the required level, a Market Participant must immediately replenish or increase the deposit to the required level (and in no event later than 10 a.m. on the day following such request).⁴² If the Market Participant fails to post such collateral, then it will be found in default of the ISO-NE Financial Assurance Policy and suspended from

³⁸ NOPR at P 30.

³⁹ *Id.*

⁴⁰ *Id.* at P 31.

⁴¹ *Id.* at P 31.

market participation. This notice and cure period was approved by the Commission in Docket No. ER99-2864-000.

NEPOOL submits that the just and reasonable ISO-NE Financial Assurance Policy currently provides a suitable level of protection for the region and its Market Participants and urges that the Commission not issue any final rule that would require changes to that policy. The current Financial Assurance Policy addresses all the concerns raised in the NOPR on this point and helps assure that uncertainty associated with credit defaults and cures is minimized for other Market Participants and that accumulation of debt and potentially erratic market behavior is limited. To the extent the Commission desires further changes to the ISO-NE Financial Assurance Policy, NEPOOL requests that the final rule provide general guidance that allows the region the opportunity to review and propose appropriate changes that have been considered fully within its stakeholder process, and not require specific changes in this proceeding that fail to account for all of New England's facts and circumstances.

⁴² ISO-NE Financial Assurance Policy at §§ X.A and X.B.

III. CONCLUSION

NEPOOL appreciates and supports the Commission's efforts to reform credit practices in organized wholesale electric markets. New England considered and addressed previously most of the issues sought to be addressed by the NOPR and urges that the Commission's final rule allow for the continuation of those provisions as just and reasonable, as discussed more fully herein.

Respectfully submitted,

NEPOOL Participants Committee

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Dated: March 29, 2010

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document to be served electronically upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission.

Dated at Hartford, Connecticut this 29th day of March, 2010.

/s/ Jennifer E. Galiette

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