119 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Maine Independent Service Administrator, Inc. Docket No. ER07-744-000

ORDER REJECTING PROPOSED TARIFF REVISIONS WITHOUT PREJUDICE

(Issued June 4, 2007)

1. On April 13, 2007, the Northern Maine Independent System Administrator, Inc. (NMISA) submitted for filing proposed revisions to its FERC Electric Tariff Original Volume No.1 (Tariff) and to the NMISA First Revised Rate Schedule No. 2 (Market Rules). In this order, we find that NMISA has failed to satisfy its burden under section 205 of the Federal Power Act (FPA)[1] of showing that these proposed revisions are just and reasonable, and therefore reject NMISA's filing, without prejudice.

I. Background

2. NMISA is a Commission-approved independent system administrator and regional transmission group that encompasses the transmission systems of all FERC-jurisdictional and non-jurisdictional utilities in northern Maine. The electric system in northern Maine is not directly interconnected with the rest of New England, any New England Power Pool (NEPOOL) participant, or any other domestic electric system. The region's only access to the electric system that serves the remainder of New England is through Canadian transmission facilities.

3. NMISA states that it submitted the instant revisions in order to provide more specificity with respect to its sanctioning authority and to implement additional revisions with respect to a range of issues. NMISA claims that its proposed revisions will not affect any rates.[2] NMISA requests that the Commission waive its 60-day prior notice

[1] 16 U.S.C. § 824d(a) (2000).

[2] NMISA's Filing at 1.

requirement[3] and make the proposed revisions effective April 13, 2007. NMISA argues that waiver is necessary to facilitate interaction between NMISA and the adjacent Canadian market in New Brunswick, the rules of which have changed materially since NMISA's inception in 2000. NMISA also wishes to have the revisions in effect "well in advance of the fall capability period."[4]

II. Procedural Matters

4. Notice of NMISA's filing was published in the *Federal Register*, with interventions and comments due on or before May 4, 2007.[5] The Maine Public Utilities Commission (Maine PUC) and Integrys Energy Services, Inc. (Integrys) filed timely interventions and comments opposing the proposed revisions. On May 16, 2007, NMISA filed an answer to the comments. On May 18, 2007, the Maine Public Service Company filed a motion to intervene out-of-time. On May 22, 2007, the Maine Public Advocate filed a motion to intervene out-of-time and comments supporting the Maine PUC's protest.

III. Comments

5. The Maine PUC argues that the Commission should reject NMISA's filing without prejudice. The Maine PUC claims that NMISA has failed to provide adequate information explaining the necessity and effects of the proposed revisions, and as a consequence, NMISA has failed to meet its burden of establishing that its proposed revisions are just and reasonable. Specifically, the Maine PUC argues that the proposed revisions give NMISA the authority to impose a capacity requirement on Competitive Electric Providers (CEPs),[6] but that NMISA has failed to specify the parameters of this

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[3] *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice*); *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

[4] NMISA's Filing at 4.

[5] *Federal Register*, 72 Fed. Reg. 20, 525 (2007).

[6] According to NMISA's market rules, a CEP is "any marketer, broker, aggregator or any other entity that is legally entitled in the State of Maine to sell, and that is selling or that will sell electric Energy, Capacity, or Ancillary Services to the public at retail in the Northern Maine Market." In its answer, NMISA refers to CEPs as load serving entities in Northern Maine.

new capacity requirement.[7] Moreover, the Maine PUC argues that NMISA's filing is "patently wrong" when it states that the proposed revisions will not affect rates.[8] The Maine PUC speculates that the proposed capacity obligation could result in an increase of 7.6 percent in standard offer prices.[9] In the Maine PUC's view, NMISA is asking the Commission to approve a capacity requirement without providing customers or the Commission with the necessary information to thoroughly evaluate its implications and ramifications.

6. The Maine PUC claims that the proposed revisions would require retail suppliers to meet load obligations with physical capacity in addition to Balanced Schedule Energy, and set the capacity obligation of each retail supplier by reference to the North American Electric Reliability Corporation (NERC) and Northeast Power Coordinating Council (NPCC) protocols. The Maine PUC argues that the NERC and NPCC protocols are inappropriate for this purpose, however, because they apply to broad control areas and not individual suppliers. The Maine PUC contends that relying on such protocols in northern Maine would create "an inefficient bulk power system with redundant and excessive capacity" and result in higher prices.[10] The Maine PUC further contends that the proposed capacity obligation is not required by NERC or NPCC.

7. The Maine PUC also argues that the proposed revisions do not clearly define the rights and obligations of those who purchase capacity, and that there is nothing to limit the price NMISA would pay to purchase capacity on behalf of a CEP. Similarly, the Maine PUC argues that buyers in northern Maine have limited options to acquire capacity and notes that the proposed rules do not contain market power mitigation provisions. Next, the Maine PUC argues that the FPA reserves resource adequacy decisions to the states, and that NMISA's proposed revisions are subject to the State of Maine's determination of how much generation capacity is needed to ensure reliability.[11] Finally,

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[7] The Maine PUC notes that it does not categorically oppose the development of a capacity requirement. The Maine PUC asserts that the proper approach is for the Commission to direct the NMISA to work with the Maine PUC as well as stakeholders to address resource adequacy concerns, with the understanding that any proposal must be fully developed and vetted to ensure that it is workable and does not impose excessive rates on customer. The MPUC reserves its jurisdictional arguments in suggesting this course of action.

[8] Maine PUC Protest at 10.

[9] *Id*. at 9.

[10] *Id*. at 12.

[11] *Id*. at 15.

the Maine PUC states if the Commission does not reject the filing, the Commission should suspend the proposed changes for the maximum period and set the matter for hearing, which would not harm reliability in Northern Maine.

8. As a CEP, Integrys is a wholesale provider of electric service to local utilities in Northern Maine. Integrys states that it generally supports NMISA's attempts to clarify its Tariff and Market Rules, but argues that NMISA has gone too far in certain respects. Specifically, Integrys asserts that the provisions governing sanctions are overbroad and give NMISA unfettered discretion to impose sanctions. NMISA proposes to delete existing section 7.1.3 of NMISA's Market Rules, which according to Integrys, is critical to ensuring that participants are treated in a non-discriminatory manner.[12] Integrys claims that the proposed revisions to section 7.1.3, together with other proposed revisions, will permit NMISA to sanction participants without notification.

9. Integrys further asserts that the proposed revisions to section 8.9.4 of the Market Rules could result in a retail supplier being required to hold capacity well in excess of its needs. Integrys suggests, moreover, that the proposed revisions to section 8.9.4 would assess an obligation to obtain this capacity on a forward basis. Integrys argues that NMISA's reliance on NPCC Operating Report C-13 is inconsistent with capacity programs in neighboring regions (i.e. the New Brunswick System Operator and ISO-New England), and would unduly raise the capacity costs in the region.

IV. NMISA Answer

10. NMISA states that, contrary to the Maine PUC's arguments, its filing merely clarifies the current capacity obligation.[13] NMISA asserts that its proposed revisions do not give it the authority to impose a capacity requirement on CEPs because it "has always

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[12] Section 7.1.3 currently states:

> When in the course of the course of system operations or its normal monitoring of the competitiveness and efficiency of the Northern Maine Markets, the ISA identifies potentially Sanctionable Behavior, the ISA will make inquiry of the Market Participant, express ISA's concerns and allow the Market Participant to explain its actions and the circumstances, all in accordance with NMMR #5. Monitoring and Auditing. If following its inquiry, the ISA reasonably concludes that the actions constitute Sanctionable Behavior, it may (but is not required to) impose sanctions pursuant to the NMMR.

[13] NMISA Answer at 13.

had that authority and has always enforced the capacity obligations"[14] under the Tariff and Market Rules that have been in effect since March 1, 2000. NMISA asserts that there is no capacity market in northern Maine. Rather, NMISA states that there are two inter-related capacity obligations: 1) the requirement that each CEP must meet hourly Balanced Schedule requirements on a day-ahead basis and 2) the Tariff and Market Rules obligate NMISA to ensure that Northern Maine complies with its own reliability standards, which must be consistent with the applicable NERC and NPCC standards.

11. NMISA asserts that the Balanced Schedule requirement has been in effect since its inception, and that each CEP in Northern Maine is required to schedule enough energy to meet its needs on an hourly basis. NMISA states section 2.1.1 of its existing Market Rules requires it to develop an operating plan that ensures that CEPs schedule sufficient resources (generating units and imports) to meet their forecast demand.[15] NMISA argues that it has enforced the capacity obligation as part of the Balanced Schedule requirement in the Market Rules, and that its authority to enforce the existing capacity obligation is reflected in the existing Tariff and Market Rules granting NMISA the authority to enforce Reliability Standards for the Northern Maine Transmission System. NMISA contends that these provisions are required to be consistent with standards set by NERC or the regional reliability council, the NPCC. As a result, NMISA argues that its filing does not propose a new capacity market because it has always had the authority to sanction suppliers for failing to comply with the existing capacity obligation.

12. With respect to the Maine PUC's speculation that the proposed revisions will result in increased rates, NMISA restates its position that its filing proposes no new rates nor changes to its current rates. NMISA asserts that any effect that its proposed revisions may have on retail rates would be "solely the result of [Maine] PUC decisions—not action taken by the NMISA."[16]

13. NMISA argues that the Maine PUC has no authority to dictate the terms of NMISA's FERC-filed rate schedules or to eliminate the existing capacity obligation in NMISA's filed rate schedules. NMISA states that its Board rejected the concept of a capacity market in favor of the existing Balanced Schedule and other capacity obligations in the Tariff and Market Rules and that the Maine PUC is powerless to compel a FERC-jurisdictional public utility to alter its FERC-jurisdictional rate schedules. NMISA contends that the Maine PUC confuses the basic obligation of a CEP in Northern Maine serving native load to do so on a firm basis (*i.e.*, with energy backed by capacity) with

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[14] *Id*. at 4.

[15] *Id*. at 5.

[16] *Id*. at 11.

the development of a capacity market. In NMISA's view, the Maine PUC has no authority to change its existing Balanced Schedule requirement.

14. In response to Integrys' arguments, NMISA explains that it proposes to delete section 7.1.3 because that provision is redundant and overlaps with other, existing and unchanged, provisions of the Tariff.[17] With respect to section 8.9.4, NMISA asserts that that the only method of determining whether capacity will be sufficient for the relevant capability period is if the commitment is made in advance, though the capability periods are short (five and seven months) and thus the risk of loss of load is relatively small. NMISA speculates that Integrys' opposition to this proposed provision is based on Integrys' desire to meet its obligations on a week-to-week or month-to-month basis. NMISA believes that such an approach is inconsistent with prudent practice and is particularly inappropriate for a market the size of northern Maine's.

V. Commission Determination

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[18] the timely, unopposed motions to intervene serve to make Integrys and the Maine PUC parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[19] the Commission will grant the Maine Public Advocate's and the Maine Public Service Company's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice and delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[20] prohibits an answer to a protest unless otherwise ordered by a decisional authority. We will accept

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[17] NMISA expressly states that it will not impose sanctions without complying with section 7.6.1. This section remains unchanged by the filing and requires NMISA to:

> Contact the Market Participant whose behavior is in question, inform the Market Participant of the information leading to the ISA's belief that Sanctionable Behavior may have occurred, and provide the Market Participant the opportunity to discuss the behavior observed or documented by the ISA and to offer additional facts or explanation of circumstances...

[18] 18 C.F.R. § 385.214 (2006).

[19] *Id*. § 385.214(d).

[20] *Id*. § 385.213(a)(2).

NMISA's answer because it has provided information that assisted us in our decision-making process.

B. NMISA's Filing

17. We agree with the Maine PUC that NMISA has not provided the Commission with sufficient information to determine the effects of its proposed revisions. We find, therefore, that NMISA has failed to demonstrate that the proposed tariff revisions are just and reasonable, and, accordingly, has failed to satisfy its burden of proof under section 205 of the FPA. Consequently, we reject NMISA's proposed revisions without prejudice.

18. First, we note that while NMISA's filing included revisions covering 72 pages of Market Rules and 16 pages of Tariff sheets, NMISA devoted only 2 paragraphs of its transmittal letter to describing the proposed revisions. Neither of these paragraphs provides an explanation of the changes proposed by NMISA. The first paragraph describes provisions related to sanctions and states that NMISA has determined that additional specificity is necessary. NMISA, however, fails to articulate why these particular proposed changes are necessary.[21] Moreover, with respect to the need to specify the "maximum sanction for certain violations,"[22] NMISA has not provided any support for the levels of those sanctions or sought to demonstrate that such levels are just and reasonable. With regard to "other revisions," NMISA states that it is submitting revisions to the tariff and market rules because, "based on its experience over the last seven years, NMISA has determined that it would be beneficial to implement these changes."[23] NMISA has, again, failed to explain what changes it is seeking to make other than vague references to "capacity and related obligations" and administrative revisions related to "scheduling, settlement and billing."[24] Additionally, NMISA has not made an attempt to discuss "its experience" and what over the last seven years has necessitated these proposed changes. Finally, NMISA fails to provide any explanation as why it would be "beneficial" to have these changes approved and incorporated into the Tariff and Market Rules and the objectives they are intended to achieve. The Commission finds the proffered level of detail is insufficient to enable the Commission to fully evaluate the scope of the proposed revisions. Moreover, NMISA has made no effort to distinguish between changes required to modify the sanctions provisions and changes falling into the category of "other revisions."

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[21] NMISA's Filing at 3.

[22] *Id*. at 3.

[23] *Id*.

[24] *Id*.

19. In its answer, NMISA asserts that the proposed revisions do not impose a new capacity obligation, but merely "clarify" the existing Tariff. Given the lack of information NMISA has provided, the Commission is unable to discern whether or not NMISA is correct. Moreover, the Commission finds that even in its answer, NMISA has failed to distinguish between which of its proposed revisions are intended to address sanctions and which are intended to address other matters. In short, although NMISA's answer contains more information than its initial filing, the Commission finds that NMISA still has not provided the Commission with enough information to determine whether the proposed revisions are just and reasonable.

The Commission orders:

The Commission hereby rejects NMISA's proposed revisions, without prejudice, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.