

132 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

ISO New England Inc. and
New England Power Pool Participants Committee

Docket No. ER10-1690-000

ORDER REJECTING
PROPOSED TARIFF REVISIONS

(Issued August 16, 2010)

1. On July 1, 2010, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (collectively, the Filing Parties) submitted for filing, pursuant to section 205 of the Federal Power Act,¹ proposed revisions to the formula used to calculate payments in the Forward Reserve Market (FRM). The Filing Parties request that the Commission waive its 60-day prior notice requirement² to permit an August 17, 2010 effective date, so that the changes would be in effect prior to the FRM auction for the 2010/2011 winter capability period, which is scheduled to begin the following day. For the reasons discussed below, we reject the Filing Parties' proposed tariff revisions.

Background

2. The ISO-NE locational FRM is designed to enable advance, market-based purchase of ten-minute non-spinning and thirty-minute operating reserves, thereby allowing suppliers to receive market-based compensation for the reliability services that they provide. By providing an incentive to ensure that these resources are available, the FRM helps maintain reliability in New England.³ The payment received by resources in

¹ 16 U.S.C. § 824d (2006).

² See 18 C.F.R. § 35.11 (2010).

³ The Commission approved the initial FRM in *New England Power Pool*, 105 FERC ¶ 61,204 (2003).

the FRM depends, in part, on the clearing price of capacity in a different market, the ISO-NE Forward Capacity Market (FCM).

3. Resources that have received a capacity supply obligation in a Forward Capacity Auction (FCA) may also, if they can provide ten-minute non-spinning or thirty-minute operating reserves, offer into the FRM. The FRM is designed to compensate resources for the incremental cost of maintaining fast-start generating resources. To ensure that resources do not receive compensation for the same capacity in both the FCM and in the FRM, the ISO-NE tariff provides that the clearing price from the relevant zone in the FCA is netted from the clearing price of the Forward Reserve Auction (FRA) to determine the payment rate for any capacity committed to forward reserves.⁴ The proposal before us would increase, under a narrow set of circumstances described below, the payment for forward reserves by decreasing the amount that is netted from the FRA clearing price.

4. To understand the issue here, a brief foray into the ISO-NE FCM rules is necessary. The FCM rules provide that, if the clearing price during a FCA falls below a pre-determined price floor, offers are automatically “prorated” so that ISO-NE does not procure more capacity than is necessary to satisfy the installed capacity requirement. In such a case, the rules provide that a resource has the option of prorating its bid MWs, in which case it receives the full FCA clearing price for a relatively smaller quantity of MWs. In instances in which ISO-NE determines that these MWs are needed for reliability, however, it can disallow MW proration.⁵

⁴ See ISO-NE and NEPOOL Revisions to the FRM Rules, Docket No. ER09-1766-000 (filed Sept. 29, 2009) (*accepted filing, ISO New England Inc.*, Docket No. ER09-1766-000 (Dec. 8, 2009) (unpublished letter order)). Because reserve zones and capacity zones are not coincident, the tariff provides that the FCA clearing price for the capacity zone in which a reserve zone is located is deducted from FRA clearing price for that reserve zone; for the “rest of system” reserve zone, which includes, in whole or part, several capacity zones, the highest FCA clearing price among the capacity zones is used to determine the “rest of system” forward reserve payment rate. ISO New England Inc., FERC Electric Tariff No. 3, section III, Market Rule 1, Standard Market Design, section III.9.8. While the FRM was substantially revised in December 2009, the market rule providing for the netting of forward capacity payments from payment received in the FRM predates those revisions.

⁵ ISO New England Inc., FERC Electric Tariff No. 3, section III, Market Rule 1, Standard Market Design, section III.13.2.7.3.

5. That is just what happened in Connecticut in the first FCA (FCA No. 1), which procured capacity for the 2010/2011 capability year:⁶ for reliability reasons, ISO-NE denied Connecticut resources the option of MW proration. Under the then-existing FCM rules, a resource denied MW proration receives a prorated *price* for its capacity rather than the full FCA clearing price. The FCA No. 1 clearing price was \$4.50/kW-month; because their price was prorated, Connecticut resources will instead receive the prorated price of \$4.26/kW-month for their capacity during the 2010/2011 capability year.

6. The current FRM rules, also in existence at the time of FCA No. 1, are indifferent to the capacity price a particular resource receives; they mandate that the full FCA clearing price from the relevant zone be netted from the FRA clearing price to determine the forward reserve payment rate in that zone. Therefore, during the current year-long capacity commitment period for 2010-2011, Connecticut resources will receive \$4.26/kW-month for their capacity, while, during the simultaneous winter capability period, \$4.50/kW-month (the FCA No. 1 capacity clearing price for the zone) will be netted from their forward reserve payment. The tariff revision before us would instead net from the FRA clearing price the *prorated* FCA price, resulting in a higher FRM payment for Connecticut resources during the upcoming winter capability period.

7. The proposed tariff revision would have an effect only during the upcoming winter capability period. This is because ISO-NE did not deny MW proration in the second or third capacity commitment periods, and, effective from the fourth FCA onward, a recent FCM rule change dictates that resources that are denied the option to prorate MWs will nevertheless be paid the full capacity clearing price.⁷

Notices of Filings and Responsive Pleadings

8. Notice of the Filing Parties' proposal was published in the *Federal Register*, 75 Fed. Reg. 40807 (2010), with protests and interventions due on or before July 22, 2010. A timely filed motion to intervene and supporting comments were submitted by the CT Reserve Providers.⁸ Constellation Energy Commodities Group, Inc. and

⁶ The first FCA, held in February 2008, procured capacity for the year-long period that began June 1, 2010 and will conclude May 31, 2011. The upcoming FRA, the settlement rules of which are at issue in this proceeding, will procure reserves for the concomitant period beginning October 1, 2010 and ending May 31, 2011.

⁷ *ISO New England Inc.*, 131 FERC ¶ 61,065, at P 157-165 (2010) (accepting the FCM rule change).

⁸ The CT Reserve Providers are: PSEG Energy Resources & Trade LLC and PSEG Power Connecticut LLC; NRG Power Marketing LLC, Connecticut Jet Power
(continued...)

Constellation NewEnergy, Inc. jointly submitted a timely motion to intervene. The Retail Energy Supply Association (RESA)⁹ submitted a timely motion to intervene and protest. On August 6, 2010, NEPOOL filed a motion for leave to answer and answer to RESA's protest.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept NEPOOL's answer and will, therefore, reject it.

B. The Filing Parties' Proposal

10. The proposed tariff change would modify the capacity price that is netted from the FRA clearing price to determine how much a market participant will be paid for providing forward reserves.

11. In support, the Filing Parties explain that, as discussed above, in FCA No. 1, all resources in the Connecticut reserve zone were denied, for reliability reasons, the option to prorate the MWs associated with their capacity supply obligations. These resources instead received a prorated capacity clearing price as described in section III.13.2.7.3(b) of the FCM rules. Specifically, the Filing Parties state that Connecticut resources' effective per-kW-month compensation was \$4.26/kW-month, or \$0.24/kW-month less than the \$4.50/kW-month capacity clearing price resulting from FCA No. 1.¹⁰

LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC; and PPL EnergyPlus, LLC and PPL Wallingford Energy LLC.

⁹ RESA's members include: ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; PPL EnergyPlus; and Sempra Energy Solutions LLC.

¹⁰ ISO-NE and NEPOOL Transmittal Letter at 5.

12. To address the resulting \$0.24/kW-month differential between the capacity payment Connecticut resources receive and the capacity price that will be netted from their FRM payment, the Filing Parties propose to allow capacity resources that were denied the option to prorate MWs in the FCM to receive forward reserve payments that reflect the prorated FCA clearing price as provided in section III.13.2.7.3(b). The Filing Parties note that, although the proposed tariff change is worded such that it arguably could apply to all forward reserve credit calculations going forward, it has a practical impact only for the forward reserve credits calculated for the upcoming winter capability period, October 1, 2010 through May 31, 2011, for the reasons explained above.¹¹

13. The Filing Parties state that under the FRM design, and assuming competitive conditions, FRM offers normally would be the sum of the incremental cost to provide forward reserves and the (known) FCA rate that will be netted in the FRM settlement. This allows all FRM participants to compete based upon incremental forward reserve costs within a reserve zone. The Filing Parties argue that, under the current tariff language, all competitive offers in the FRM would reflect the full FCA capacity rate. Similarly, under the proposed tariff language, and again presuming that the offers in the FRM are submitted under competitive conditions, the FCA capacity rate would be the capacity clearing price adjusted as described in section III.13.2.7.3(b) of the FCM rules to account for prorationing and would be a constant within all offers. Thus, according to the Filing Parties, under both circumstances, there should be no change in the forward reserve payment rate due to the tariff change (assuming the price cap is not binding). The Filing Parties continue, stating that, for any particular reserve zone, the FCA capacity rate netted in the FRM settlement is the same for all market participants. The Filing Parties state that the netted capacity rate is not a resource-specific rate, is not linked to the recovery of actual costs, and may be different than the rate at which a resource is actually paid in the FCM settlement. According to the Filing Parties, the proposed tariff change does not modify these aspects of the FRM design.¹²

C. Responsive Pleadings

14. CT Reserve Providers support the proposed revisions, which they characterize as correcting an oversight in how resources providing forward reserve services in Connecticut will be compensated for the upcoming winter capability period. Specifically, CT Reserve Providers state that the actual FCM payment rate for all resources in the Connecticut zone that were denied the ability to prorate is lower than the capacity clearing price. According to CT Reserve Providers, the proposed revisions

¹¹ *Id.* at 5-6.

¹² *Id.* at 5.

modify the FRM settlement rule to deduct the capacity clearing price, as adjusted pursuant to section III.13.2.7.3(b), which is the prorated price. Thus, the amount subtracted from the reserve clearing price will match what the supplier is paid through the capacity market. CT Reserve Providers state that the proposed tariff language will align the actual FRM settlement rules with the objective of properly reflecting the locational aspects of the FCM by addressing the potential variation in the capacity prices, as articulated in a September 2009 ISO-NE filing, and is consistent with how the penalty rate in the FCM is determined.¹³

15. CT Reserve Providers also state that the revisions will align the treatment of reserve resources in Connecticut with the treatment in the rest of New England, i.e., to deduct the highest available capacity payment rate in that zone, ensuring a level competitive playing field among reserve suppliers. CT Reserve Providers argue that, as was recognized by the vast majority of market participants across all voting sectors of NEPOOL, the proposed revisions are correct from both a market efficiency and a market equity perspective.¹⁴

16. RESA, in contrast, opposes the proposed tariff changes, arguing that, if the proposal is permitted to go into effect, it will cause significant harm to load-serving entities (LSEs) such as RESA members. RESA states that market participants' nearly two-and-a-half year delay in bringing this matter before the Commission will have an unjust and unreasonable impact on LSEs that have entered into bilateral contracts in reliance on the current tariff and that the proposed change is unnecessary in a competitive market.¹⁵

17. According to RESA, LSEs have already entered into fixed-price contracts with end-use customers and participated in default service supplier auctions for the 2010/2011 operating year. RESA states that LSEs developed and priced these contracts in reliance on the tariff provisions in existence at the time of FCA No. 1, the FCA No. 1 results, and ISO-NE's 2008 filing notifying the Commission of its decision to deny proration in Connecticut for the 2010/2011 operating year.¹⁶ RESA argues that additional costs

¹³ CT Reserve Providers Comments at 5-6; *see also* ISO-NE and NEPOOL Revisions to the Forward Reserve Market Rules, Docket No. ER09-1766-000 (filed Sept. 29, 2009) (accepted by *ISO New England Inc.*, Docket No. ER09-1766-000 (Dec. 8, 2009) (unpublished letter order)).

¹⁴ CT Reserve Providers Comments at 6-7.

¹⁵ RESA Protest at 3-4.

¹⁶ *Id.*

associated with the proposed tariff changes would be passed on to LSEs, who will not have an opportunity to recover those costs.¹⁷

18. Additionally, RESA argues that, because the FRM auction will likely clear at or near the price cap of \$14/kW-month, it is unlikely that the proposed change will affect the Connecticut FRM clearing price. Rather, the only effect of the proposed change will be an unanticipated increase in the amount paid by LSEs to generators.¹⁸

19. RESA asserts that, had the requested tariff changes been made when the problem arose almost two and-a-half years ago, LSEs would have had the ability to account for the additional costs in their contracting. As it stands, LSEs had no notice, no indication from ISO-NE and no reason to believe that this change would occur for the 2010/2011 operating year; they consequently relied on the existing tariff provisions to develop pricing, lock-in contracts, and provide offers for default supply obligations. RESA asserts that the Filing Parties have been aware that Connecticut facilities providing capacity supply obligations would be denied the option to prorate MWs for the 2010/2011 operating year since March 2008, when, as noted above, ISO-NE notified the Commission and market participants of its decision to deny MW proration in Connecticut for reliability reasons. RESA notes that the Filing Parties nevertheless waited more than two years to propose this tariff change, and then requested an expedited comment period so that the tariff change would be effective for the August 18, 2010 FRM auction for the 2010/2011 winter capability period.¹⁹

20. Moreover, RESA argues that because the market will account properly for the pricing concern at issue, the proposed tariff changes are unnecessary. RESA agrees with the analysis provided in the Filing Parties' transmittal letter, which RESA characterizes as stating that the proposed tariff change is unnecessary in a competitive market because resources will account for the capacity price differential in their offers.²⁰

21. In support of its position, RESA provides a June 16, 2010 memorandum from ISO-NE's vice president of market development proffered by ISO-NE during the

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 7-8.

¹⁹ *Id.* at 4-5.

²⁰ *Id.* at 5-7, citing ISO-NE and NEPOOL Transmittal Letter at 5.

stakeholder process in which, according to RESA, ISO-NE agreed that the proposed change is unnecessary in a competitive market and opposed calls for a tariff change.²¹

D. Commission Determination

22. We reject the Filing Parties' proposed tariff revisions. The Filing Parties have failed to demonstrate that the proposed revisions are just and reasonable. The proposed tariff revisions appear unnecessary and, moreover, would upset at the "eleventh hour" the expectations LSEs have had over the past two and-a-half years based on the current tariff provisions, without any demonstrated benefit.

23. The Filing Parties and market participants were aware in March 2008 that ISO-NE had denied MW proration in Connecticut for the 2010/2011 capacity commitment period, when ISO-NE made a separate filing notifying the Commission of such. They also were aware at that time that the denial of proration would result in a capacity payment for the Connecticut resources in the 2010-2011 commitment period that was \$0.24/kW-month less than the \$4.50/kW-month FCA No. 1 clearing price. They were aware that the FRM settlement rules in existence then (and currently) require the deduction of the full FCA clearing price for the capacity zone in which the reserve zone is located from the applicable FRA clearing price. Now, six weeks prior to the relevant FRA, the Filing Parties submit proposed changes to the market rules.

24. In the intervening two and-a-half years, according to RESA, LSEs have relied on the existing market rules to develop pricing, lock-in contracts and provide offers for default supply obligations. RESA argues that LSEs had no notice of the change, no indication from ISO-NE that a change was forthcoming, no reason to believe that this change would occur for the 2010/2011 operating year, and, at this late date, have no opportunity to recoup additional costs to the extent that LSEs entered into fixed-price contracts. Such reliance would not, by itself, preclude the Commission from accepting proposed tariff revisions; however, by the Filing Parties' own admission, the change under consideration will have no impact beyond the upcoming winter capability period, and, as discussed below, we do not find the change necessary.²²

25. We find no evidence to support the claim that the current FRM settlement rules contain an "oversight" concerning how resources providing forward reserve services in Connecticut will be compensated for the upcoming winter capability period. On the contrary, the ISO-NE memo states that the "FRM conforming changes were developed

²¹ *Id.* at 6-7; *see also* Attachment A to RESA's protest (hereinafter "ISO-NE memo").

²² ISO-NE and NEPOOL Transmittal letter at 6.

recognizing that while different resources may receive different FCM payment rates . . . the Capacity Clearing Price from the FCA applicable to the reserve zone for the relevant time period is always netted from the FRM payment.”²³ The memo continues, stating that the “reason for this decision is because of the design of the FRM.”²⁴ Far from being an “oversight,” then, the fact that the FCA clearing price will be netted from the FRM payment for Connecticut resources despite those resources receiving a different FCM payment rate is a result of the FRM design. Moreover, since, under the FRM design, all resources in a reserve zone face the same FCM deduction, we do not find that the Connecticut resources face unduly discriminatory pricing as alleged.

26. We find compelling the submissions of RESA, and ISO-NE via the aforementioned memo, demonstrating that the revisions are unnecessary because a resource offering into the FRA will, under competitive conditions, offer at its incremental cost to provide forward reserves plus whatever capacity rate will be netted in the settlement process. As stated in the ISO-NE memo, “[w]hen constructing a FRM offer for a particular reserve zone, a participant would include the FCA capacity clearing price that is being deducted from the [forward reserve] clearing price in its offer, not the FCA capacity clearing price received for some particular resource from the Participant’s portfolio that might be used to meet the FRM obligation.” The ISO-NE memo notes that there may be cases where the \$14/kW-month price cap restricts a resource’s competitive offer, but this is true regardless of the capacity payment rate that is deducted from the FRM payment.²⁵

27. In other words, Connecticut resources have the option to increase their FRM offer price by \$0.24/kW-month in order to compensate themselves for the price proration from the FCA, and thus would receive full compensation, assuming the \$14/kW-month FRM price cap is not reached. Although it cannot be known in advance whether the price cap will bind, ISO-NE’s June 16, 2010 memo states that “the cap did not bind for the summer 2010 auction, and there is no evidence that it should bind for the winter 2010-2011 auction.” At any rate, ISO-NE’s memo emphasizes that the FRM design properly “does not depend on a net revenue calculation nor does it depend on the actual (and separate) FCM payment stream to a particular resource.”²⁶

²³ ISO-NE memo at 1.

²⁴ *Id.*

²⁵ *Id.* at 2.

²⁶ *Id.* at 1.

28. Further, we agree with the logic offered in the ISO-NE memo, which notes that under the FCM, a resource may have acquired a capacity supply obligation for a given commitment period at various prices.²⁷ As such, we find that the instant proposal appears to be discriminatory since it seeks to address perceived shortfalls for one select group while not addressing potential similarly-situated parties. Implicit in the argument supporting this proposal is a belief that the FCA price received by these Connecticut resources in FCA No. 1 was unjust and unreasonable and should be addressed in the FRM. While we have approved a revision to the relevant FCM market rules such that this issue will no longer exist going forward (that is, resources needed for reliability will receive the full capacity clearing price), our approval of that revision was not based on a finding that the rules allowing ISO-NE to deny MW proration were unjust and unreasonable.²⁸ We agree with the ISO-NE memo, which indicates that there “is no efficiency or competitive offer argument that supports” the proposed tariff revisions.²⁹

29. We acknowledge that ISO-NE subsequently joined NEPOOL in filing the proposed tariff changes, despite the views expressed in the ISO-NE memo, and that stakeholders voted in support of the tariff changes. Nonetheless, we find persuasive RESA’s arguments, supported by the ISO-NE memo, that there is no need to revise the tariff to address the supposed “oversight.” In addition, as RESA argues, LSEs had a reasonable expectation that the current FRM settlement rules would remain in effect for the upcoming FRM auction based on, among other things, ISO-NE’s opposition to the proposed tariff changes as late as June 16, 2010.

30. Therefore, based on a balancing of the equities, including our determination that the proposed revision is not necessary, we will reject the proposed tariff revisions. Since we have rejected the tariff revisions, we need not reach the Filing Parties’ request for waiver of the 60-day prior notice requirement.

²⁷ For example, a resource may receive a different capacity price due to a multi-year commitment election or by acquiring obligations through a bilateral transaction or reconfiguration auction.

²⁸ *ISO New England Inc.*, 131 FERC ¶ 61,065 at P 163.

²⁹ ISO-NE memo at 3.

The Commission orders:

The Filing Parties' proposed tariff revisions are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.