

133 FERC ¶ 61,239  
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.  
New England Power Pool

Docket No. ER11-1829-000

**ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS**

(Issued December 17, 2010)

1. On October 19, 2010, ISO New England Inc. (ISO-NE) joined by the New England Power Pool (NEPOOL) Participants Committee (together, the Filing Parties), submitted revised tariff sections that modify Appendix H of Market Rule 1, which addresses operating procedures for cold weather conditions. The tariff revisions are meant to conform the Appendix H procedures to the design and operation of the forward capacity market (FCM). They also consolidate three provisions in Market Rule 1 that address recovery of extraordinary costs into a single provision in Appendix A of Market Rule 1. As discussed below, the Commission conditionally accepts the revised tariff sheets, effective December 19, 2010.

**I. Background and Proposed Revisions**

2. ISO-NE is preparing for the winter period of the first Capacity Commitment Period of the Forward Capacity Market. Appendix H to Market Rule 1 addresses the procedures that ISO-NE and market participants must follow to support the reliable operation of the New England electric system during periods of severe cold weather. The provisions in Appendix H address the scheduling of natural gas units to allow for commitment in sufficient time to purchase during times of limited gas supplies, define processes that facilitate higher resource availability during cold weather conditions, define the key responsibilities of market participants and ISO-NE during periods of cold weather, and address the recovery of extraordinary fuel costs that cannot otherwise be recovered through normal market mechanisms.

**A. Revisions to Conform to FCM Rules**

3. ISO-NE and NEPOOL implemented Appendix H before developing the market design for the FCM. The FCM rules modified the way resources are operated under

various conditions, including cold weather. The Filing Parties, therefore, contend that it is necessary to update Appendix H to reflect the FCM modifications.

4. To incorporate the design of the FCM into Appendix H, the Filing Parties propose to remove from Appendix H all references to Economic Outages and the treatment of requests for Economic Outages during cold weather conditions. The Filing Parties explain that, under the FCM design, requests for Economic Outages are no longer available, and market participants with resources that are subject to a Capacity Supply Obligation must offer that capacity into the day-ahead and real-time energy markets. The Filing Parties further explain that Economic Outages already have been removed from ISO-NE's tariff, manuals, and operating procedures but not from Appendix H.

5. The Filing Parties contend that, with the removal of references to Economic Outages, it also is appropriate to remove the definition of (and references to) "Short Term Operable Capacity Margin," which represents a calculation of the capacity that would be available for operation during a cold weather condition. The Filing Parties explain that this term was included in Appendix H to define the level of Economic Outages that could be approved. However, the Filing Parties state that, as of June 1, 2010, all outage requests are analyzed in accordance with Operating Procedure No. 5, "Generator and Dispatchable Asset Related Demand Maintenance and Outage Scheduling."

6. To further conform to FCM market design, the Filing Parties also propose to remove from Attachment 1 of Appendix H the procedures for scheduling Maintenance Outages during cold weather conditions. The Filing Parties explain that Operating Procedure No. 5 contains the standard procedures that market participants are to follow for requesting Planned Outages and short-term Maintenance Outages. Further, the Filing Parties contend that the underlying process for requesting a Maintenance Outage, and the procedures for evaluating such requests, are the same as those contained in Operating Procedure No. 5, which are now mandatory during both regular and cold weather operating conditions.

7. The Filing Parties also propose to remove from Section III.H.3.4 of Appendix H the requirement that ISO-NE must alert Load Response Program participants of the need to be prepared to activate under Operating Procedure No. 4. The Filing Parties state that, since the commencement of the FCM, ISO-NE has notified market participants with demand resources of the next operating day's demand resources dispatch schedule. The Filing Parties contend that this notification, issued every day at 10:00 p.m., replaces the need for ISO-NE to provide a separate notification for potential dispatches in the event of cold weather. Finally, the Filing Parties propose several ancillary changes to Appendix H to conform to the FCM rules.

## **B. Revisions to Cost Recovery Provisions**

8. The Filing Parties explain that there are currently three provisions, located in Appendix H, Section III.13.6.1.1.3, and Appendix A of Market Rule 1, that each address recovery of costs not otherwise reflected in a resource's Supply Offer. First, under Section III.3.6 of the currently-effective Appendix H, a market participant may recover extraordinary fuel costs when those costs cannot be recovered despite having offered the resource at the \$1,000/MWh offer cap on Supply Offers imposed under Section III.1.10.1A(d)(ix) of Market Rule 1. Second, under Section III.13.6.1.1.3 of Market Rule 1, a market participant may seek recovery of extraordinary fuel costs if, due to the Supply Offer cap, the market participant is unable to submit a Supply Offer for a capacity resource that would allow it to recover its full operational costs for the period covered by the offer. Third, Section III.A.10 of Appendix A to Market Rule 1 permits a market participant to make a filing under section 205 of the Federal Power Act (FPA)<sup>1</sup> to request recovery of fuel and variable operating and maintenance costs when the market participant believes that, as a result of mitigation under Appendix A, a Supply Offer for a resource has been reduced below the resource's fuel and variable operating and maintenance costs for the time period of its commitment.

9. To consolidate its cost recovery provisions, the Filing Parties propose to remove the cost recovery provisions from Section III.13.6.1.1.3 and Appendix H and to broaden the provision in Section III.A.10 of Appendix A to address cost recovery under those retired provisions. The existing Section III.A.10 of Appendix A provides, in part, that a market participant may make a filing to the Commission under section 205 of the FPA if it believes that, as a result of mitigation applied for all or part of one or more operating days, it will not recover its fuel and variable operating and maintenance costs. The proposed tariff revisions would allow market participants to make a section 205 filing, even in the absence of mitigation, when a market participant believes that it will not recover its fuel and variable operating and maintenance costs for a resource despite having submitted a Supply Offer for the resource at the \$1,000/MWh offer cap.

10. The Filing Parties contend that the proposed consolidation of cost recovery provisions will remove several apparent discrepancies. As an example, the Filing Parties state that the existing Appendix A revisions permit a market participant to request recovery of any fuel and variable operating and maintenance cost, which reflect the full range of costs that are to be included in a Supply Offer for a resource. By contrast, the Filing Parties state that the existing Appendix H and Section III.13.6.1.1.3 provisions only permitted recovery of extraordinary fuel costs. In addition, the Filing Parties point

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<sup>1</sup> 16 U.S.C. § 824d (2006).

out that both the existing Appendix A and Appendix H provisions require market participants to file their cost requests with the Commission, whereas Section III.13.6.1.1.3 does not. Under the proposed language, any request for additional cost recovery must be filed with the Commission under section 205. Finally, the Filing Parties contend that consolidating the cost recovery provisions will eliminate confusion over which provision applies to which set of circumstances.

## **II. Notice of Filing and Responsive Pleadings**

11. Notice of the Filing Parties' filing was published in the *Federal Register*, 75 Fed. Reg. 65,623 (2010), with interventions or comments due on or before November 9, 2010. Dynegy Power Marketing Inc. (together with Casco Bay Energy Company, LLC), Exelon Corp., Northeast Utilities Service Co., and NRG Power Marketing LLC filed motions to intervene. Pittsfield Generating Company, L.P. (Pittsfield) filed a motion to intervene and protest.

12. On November 24, 2010, ISO-NE and NEPOOL separately filed answers to Pittsfield's protest. On December 1, 2010, Pittsfield filed an answer to the answers filed by ISO-NE and NEPOOL. On December 16, 2010, NEPOOL filed an answer to Pittsfield's answer.

13. Pittsfield argues that the proposed revision to variable cost recovery in Section III.A.10 of Appendix A is unjust, unreasonable, and unduly discriminatory.<sup>2</sup> Pittsfield points out that the proposed tariff revisions provide for full cost recovery only when a resource's offer is mitigated or is constrained by the \$1,000 MWh offer cap. Thus, Pittsfield states, the new provisions do not address full recovery for a resource whose offer was not subject to mitigation, was below the offer cap, but nevertheless did not recover its fuel and variable operating and maintenance costs (O&M). Pittsfield explains that a dual-fuel generator, such as Pittsfield's 160 MW Altresco facility, that has been required by the market monitor to either submit Supply Offers on the basis of lower-cost natural gas or face mitigation, but actually burns higher-cost fuel oil, will be forced to operate at a loss simply because its offers were not mitigated and were below the \$1,000 MWh offer cap. Pittsfield states that the New England market monitor requires that, in order to avoid mitigation, the owner of a dual-fuel unit must submit its day-ahead Supply Offer based on the lower cost fuel unless the owner informs the market monitor that the resource must burn the higher cost fuel. Pittsfield contends, however, that the owner of the resource may not receive the requested approval from the market monitor; it

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<sup>2</sup> Pittsfield Protest at 12.

may learn of the requirement to burn the higher-cost fuel too late to modify its Supply Offer.<sup>3</sup>

14. Pittsfield contends that this result is inconsistent with Commission precedent which has supported payments to make a generator whole when the generator is complying with manual redispatch instructions,<sup>4</sup> providing temporary reliability service,<sup>5</sup> or is frequently required to run for reliability reasons.<sup>6</sup> Pittsfield also contends that a principle common to all organized power markets is that a resource dispatched to meet its day-ahead supply commitments or dispatched out-of-merit by the system operator to relieve a constraint or to otherwise provide daily reliability service is entitled to recover its costs and to not run at a loss. Pittsfield states that this principle was incorporated in the *pro forma* tariff included with the Commission's Standard Market Design Notice of Proposed Rulemaking through the concept of "Bid Revenue Sufficiency Guarantee" payments. Pittsfield states that, in New England, the concept that a resource is entitled to

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<sup>3</sup> *Id.* at 11-12, 15. As an example, Pittsfield states that the owner may receive a notice of gas interruption and present it to the market monitor prior to submitting its day-ahead offer. Under this scenario, Pittsfield states that the market monitor may nevertheless determine that the notice does not demonstrate that the unit must burn the higher-cost fuel oil and, despite the notice, the owner must submit a Supply Offer based on lower-cost gas to avoid mitigation, but provide energy on the Operating Day using fuel oil. Alternatively, Pittsfield states that the owner may not receive a notice of gas interruption until after the close of the re-offer period in which it can change its Supply Offer (6:00 p.m. of the day before the operating day). In such a case, Pittsfield states that the owner may not have anticipated a gas interruption that occurs just prior to, or during the operating day. According to Pittsfield, that owner of a dual-fuel generator, upon learning that it has no gas, may inform ISO-NE that it cannot run based on its gas offer without operating at a financial loss, but may nevertheless be required to run because it was taken in the day-ahead market or for reliability reasons.

<sup>4</sup> *Id.* at 7 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,325, at P 53 (2006), *order on compliance filing*, 119 FERC ¶ 61,160, *reh'g denied*, 119 FERC ¶ 61,176 (2007)).

<sup>5</sup> *Id.* (citing *New England Power Pool*, 107 FERC ¶ 61,183, at P 26-27 (2004)).

<sup>6</sup> *Id.* (citing *PJM Interconnection LLC*, 107 FERC ¶ 61,112, at P 37-40 (2004), *order on reh'g and compliance*, 110 FERC ¶ 61,0532 (2005)).

recover its bid costs has been addressed through Uplift Payments and, subsequently, by Net Commitment Period Compensation payments.<sup>7</sup>

15. Pittsfield argues that all three of the existing market rule cold weather cost recovery provisions reflect a recognition that bid revenue sufficiency guarantees can be defeated in circumstances where the market rules bar a market participant from bidding its actual costs because of rules imposing offer caps, bid mitigation, and capacity supply obligations.<sup>8</sup> Pittsfield contends that, in order for the Commission to determine that a market rate is just and reasonable, it must allow a supply resource to recover its daily dispatch cost. With respect to dual-fuel resources, Pittsfield states that the Commission must find that the resource is able to recover its costs if the market monitor requires it to burn fuel oil, when Pittsfield bid in natural gas prices to the day-ahead market. Accordingly, Pittsfield asks the Commission to direct ISO-NE to amend the proposed cost recovery provisions to allow resources to submit a filing under section 205 of the FPA to recover costs associated with the fuel and variable costs when, in the absence of mitigation, despite having submitted a Supply Offer at *or below* the energy cap, a market participant believes that it will not recover the fuel and variable operating and maintenance costs of the resource for those operating days.

16. In their separate answers, ISO-NE and NEPOOL contend that Pittsfield's protest is beyond the scope of the proceeding, and that Pittsfield did not raise its concerns during the stakeholder process when the tariff revisions were being discussed. Specifically, they argue that the proposed tariff revisions at issue did not change any triggering conditions for cost recovery. Thus, ISO-NE and NEPOOL contend that dual fuel resources are not treated any differently in the existing tariff language as compared to the Filing Parties' proposed tariff revisions. ISO-NE and NEPOOL, therefore, argue that Pittsfield's requested relief is, in fact, an impermissible collateral attack on Commission orders approving the existing tariff language. Moreover, ISO-NE argues that Pittsfield's protest fails to demonstrate how the proposed tariff revisions are not just and reasonable, or that Pittsfield's proposed changes would remedy any supposed defect. ISO-NE and NEPOOL suggest that Pittsfield should either raise its concerns through the stakeholder process or file a complaint under section 206 of the FPA.<sup>9</sup>

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<sup>7</sup> Pittsfield Protest at 8 (citing ISO New England Inc. Transmission, Markets and Services Tariff, Market Rule 1 § III.3.2.3(b)(i)).

<sup>8</sup> Pittsfield Protest at 9.

<sup>9</sup> NEPOOL November 24, 2010 Answer at 5-6. In its November 24, 2010 Answer at 5-7, ISO NE argues that protests that seek to add new costs recovery provisions

(continued...)

17. ISO-NE and NEPOOL contend that, although Pittsfield claims to address only circumstances involving dual fuel units, Pittsfield's proposed language would allow any resource to submit a section 205 filing seeking additional cost recovery for any Supply Offer "despite having submitted a Supply Offer at *or below* the energy offer cap."<sup>10</sup> ISO-NE and NEPOOL argue that Pittsfield's proposal, in the absence of further qualification, could have significant impacts on market incentives and market structure, permitting a market participant to knowingly submit offers that are below cost because the actual, higher costs could be recovered through a section 205 filing. ISO-NE argues that such below cost offers could inappropriately lower Locational Marginal Prices while increasing out-of-market costs, and that Pittsfield's proposal could effectively create a market structure that would provide for a potentially inappropriate combination of cost-of-service and market-based rate compensation.

18. ISO-NE and NEPOOL request that the Commission reject Pittsfield's protest to allow Pittsfield's proposal for out-of-market cost recovery to be fully vetted through the stakeholder process. ISO-NE explains that there may be provisions in the existing tariff that already address Pittsfield's discrete concerns applicable to dual fuel resources without the need to modify the tariff. Particularly, ISO-NE states that Section III.A.3.1.2 of Appendix A requires the Market Monitor to consider, in every case before mitigating a Supply Offer, "[a]ny relevant opportunity costs" and "any special price limitations applicable to dual fuel resources."<sup>11</sup> NEPOOL states that Pittsfield agreed to present its proposal to the NEPOOL Markets Committee as soon as it is ready, which may be at the December 7-8 meeting.<sup>12</sup> Accordingly, ISO-NE and NEPOOL request that the Commission deny Pittsfield's protest and direct Pittsfield to explore its concerns with ISO-NE and through the NEPOOL stakeholder process.

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affecting all market participants are more properly filed in a complaint proceeding under section 206 of the FPA (citing *S. Co. Svcs., Inc.*, 116 FERC ¶ 61,170, at P 26 (2006); *ISO New England Inc.*, 129 FERC ¶ 61,008, at P 30 (2009); *Cent. Me. Pwr. Co.* 129 FERC ¶ 61,302, at P 13 and n. 7 (2009); *ISO New England, Inc.*, 128 FERC ¶ 61,023, at P 31 (2009); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213, at P 90 (2007)).

<sup>10</sup> ISO-NE Answer at 8 and NEPOOL Answer at 6 (citing Pittsfield Protest at 16 (emphasis added)).

<sup>11</sup> ISO-NE Answer at 9-10 (internal citations omitted).

<sup>12</sup> NEPOOL Answer at 2.

19. In its answer to ISO-NE and NEPOOL's answers, Pittsfield largely repeats the arguments raised in its protest. In response to ISO-NE and NEPOOL's arguments that the revised cost recovery provisions are a consolidation of existing provisions, Pittsfield notes that the new tariff language is not as specific, and is, therefore, broader than the existing tariff provisions. Pittsfield reiterates that, regardless of the Commission's findings on the existing tariff provisions, the Commission must make a determination on the justness and reasonableness of the proposed tariff provisions. Pittsfield argues that the proposed tariff provisions are not just and reasonable because they do not allow market participants to recover their costs in a section 205 filing under every circumstance, such as when a market participant bids below the energy offer cap but does not recover its costs. Accordingly, Pittsfield urges the Commission to accept the proposed tariff revisions presented in Pittsfield's protest.

20. In its answer to Pittsfield's answer, NEPOOL asks the Commission to reject Pittsfield's answer. NEPOOL contends that Pittsfield's answer should be rejected because it does not clarify any issues. In addition, NEPOOL contends that Pittsfield's arguments conflate the rule changes addressed in this proceeding with existing provisions, thus violating the prohibition of combining a complaint with a protest.

### **III. Discussion**

#### **A. Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), answers to protests and answers are prohibited unless otherwise ordered by the decisional authority. We accept the answers filed by ISO-NE, NEPOOL and Pittsfield because they have provided information that assisted us in the decision-making process.

#### **B. Proposed Tariff Revisions**

22. The Commission finds that the Filing Parties' proposed tariff revisions are just and reasonable. Accordingly, the Commission accepts the Filing Parties' proposed tariff revisions, effective December 19, 2010, subject to a compliance filing to be submitted to the Commission within 120 days of this order, as discussed below.

23. The existing tariff provisions set procedures by which ISO-NE makes a determination on the appropriate cost-recovery mechanisms before the market participant

makes a section 205 filing. For example, under certain proposed deleted provisions of Market Rule 1,<sup>13</sup> a market participant that is precluded by the energy offer cap from recovering its fuel costs can provide ISO-NE with a statement of what its Supply Offer would have been but for the energy offer cap. If that unit is dispatched, ISO-NE will compensate the market participant for its fuel costs. In addition, during cold weather conditions, the existing tariff provisions require ISO-NE to process payments for extraordinary fuel expense costs before the market participant makes a filing with the Commission under section 205 of the FPA.<sup>14</sup> In either scenario, [ISO-NE played a key role as the system operator in the cost recovery process, and](#) the Commission remains the final arbiter of what is a just and reasonable rate.

24. By contrast, the proposed tariff provisions would permit a market participant to submit a filing under section 205 of the FPA to seek cost recovery without any prior input or review from ISO-NE or the market monitor. The proposed tariff provisions allow a market participant to proceed with its section 205 filing if it believes that, as a result of mitigation or the limitations of the energy offer cap, it will not recover the fuel and variable operating and maintenance costs of a resource. Although ISO-NE correctly asserts that the definition of a just and reasonable rate is a legal analysis to be performed by the Commission, the Commission believes that the market monitor and ISO-NE should provide input on the alleged revenue shortfall event before the market participant submits a filing to the Commission to seek cost recovery under section 205 of the FPA, particularly if the event was a result of mitigation. ISO-NE has not explained why it is eliminating its opportunity for prior review. Accordingly, the Commission directs ISO-NE to submit a compliance filing within 120 days of the issuance of this order that would revise Section III.A.10.1 of Appendix A to Market Rule 1 to require the appropriate entity (ISO-NE or the market monitor, or both) to review the alleged revenue shortfall event for the purpose of providing the Commission with an explanation of the reason for the event and mitigation. The revised tariff provisions should enable the ISO-NE, market monitor and the filing party to work together so that the review occurs before the market participant submits a cost recovery filing under section 205 of the FPA. The revised tariff provision should require the market participant to include the results of ISO-NE's and the market monitor's review and opinion in the market participant's section 205 filing.

25. We reject Pittsfield's protest, as it has not shown that the proposed tariff revisions are unjust, unreasonable, and unduly discriminatory. The Commission is not convinced

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<sup>13</sup> Section III.13.6.1.1.3.

<sup>14</sup> See Market Rule 1 at Appendix H III.H.3.7.

that there are any circumstances in which dual fuel resources will be treated differently than other resources under the proposed tariff revisions. As noted above, the proposed tariff provisions provide a remedy for all market participants, including dual fuel generators, who were unable to recover their fuel and variable operating and maintenance costs because their Supply Offers were either mitigated or subject to the energy offer cap. Pittsfield presents a scenario that is unique to dual fuel resources where, in order to avoid mitigation, it must submit its day-ahead supply offer based on the lower cost gas fuel unless it informs the market monitor that it must burn the higher cost oil fuel. Under a mitigation scenario based on more expensive oil fuel, the market monitor would compare the oil fuel-based offer with a reference price based on lower cost gas fuel and then would mitigate the offer if it exceeds this reference price level by more than 10 percent above the marginal cost for a reliability commitment.

26. Under the current and proposed tariff provisions for Cold Weather event conditions, ISO-NE will notify Market Participants of a Cold Weather Event two days before the Operating Day and request dual-fuel resources to switch from natural gas to the secondary fuel.<sup>15</sup> Therefore, Pittsfield is notified two days in advance by ISO-NE that it may experience gas fuel interruptions, and has the opportunity to bid into the day-ahead market and recover costs based on its secondary fuel. If a dual fuel resource makes an internal business decision to base its Supply Offer bid on lower cost gas fuel cap in order to be dispatched despite notification from ISO-NE of a possible gas interruption, or in order to avoid mitigation, or to bid below the Supply Offer cap, any losses resulting from that decision are not necessarily unjust or unreasonable. If Pittsfield seeks to propose changes to the language in the tariff, the Commission recommends that Pittsfield address its concerns through the NEPOOL stakeholder process.

The Commission orders:

(A) The Filing Parties' proposed tariff revisions are hereby conditionally accepted for filing, effective December 19, 2010

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<sup>15</sup> See Market Rule 1 at Appendix H III.H.3.4(c).

(B) The Filing Parties are hereby directed to submit a compliance filing within 120 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.