UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

ISO New England, Inc. Docket No. ER06-89-000
New England Power Pool

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING REVISIONS TO MARKET RULE 1

(Issued November 30, 2005)

1. On October 28, 2005, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL Participants Committee) (jointly, the Filing Parties) filed, pursuant to section 205 of the Federal Power Act,[1] interim revisions to Market Rule 1[2] (referred to as the Winter Package) to aid ISO-NE in implementing its Winter 2005/2006 Action Plan. In this order, the Commission conditionally accepts and suspends, for a nominal period, ISO-NE's proposed tariff revisions, to become effective December 1, 2005, subject to further Commission action as discussed below.

I. Background

2. To address the possibility that severe cold weather conditions this winter may exacerbate fuel supply and pricing issues for New England generating resources, ISO-NE developed a contingency plan (the Winter 2005/2006 Action Plan). The Winter 2005/2006 Action Plan includes objectives such as communicating the need to reduce consumption in all hours to conserve fuel, encouraging the utilization of dual-fuel generating capability, expanding demand-side management programs in New England to help maintain needed operating reserves, and developing emergency energy procedures and market rules to complement the cold weather procedures in Appendix H to Market Rule 1 to maintain reliability during cold weather conditions.

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[1] 16 U.S.C. § 824d (2000).

[2] Section III of the ISO-NE Tariff.

3. The Filing Parties state that the Winter Package, which will expire on March 31, 2006, is designed to enhance the reliability of New England's bulk power system operations during the coming winter, in which natural gas and other generating fuels may be in short supply due to hurricane damage in the Gulf of Mexico region. The Filing Parties state that implementation of the Winter Package will serve the public interest by providing several mechanisms to potentially increase the availability of generating capacity during periods in which generating fuel supplies may become scarce.

II. Description Of Filing

4. The Winter Package contains four primary elements, the first of which increases flexibility of generating resources to adjust start-up and no-load offer parameters. Section III.A of Market Rule 1 requires that supply offers that are based on energy from a specific generating resource that is internal to the New England Control Area must specify Start-Up[3] and No-Load Fees[4] equal to the amount of such fees that are on file with ISO-NE. Changes to Start-Up and No-Load Fees are only permitted during periodic, open bidding enrollment periods. Currently, under section III.1.10.1A(d)(iii) of Market Rule 1, such adjustments are permitted to be made only twice per month. Under the Filing Parties' proposed changes, such adjustments will be permitted daily to provide the opportunity to reflect current fuel pricing in those components of the market participant's three-part supply offers.[5]

5. Additionally, the proposal contains a revision to the market monitoring, reporting and market power mitigation provisions of Appendix A to Market Rule 1. Section III.A.5.3(a)(ii) of Appendix A currently provides that, for resources in constrained areas, ISO-NE must assess the market impact of supply offer-related increases that exceed certain thresholds, including Start-Up or No-Load Fees that represent increases of 50 percent above the Reference Level applicable to the generating resource in question. The

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[3] Start-Up Fee is the amount, in dollars, that ISO-NE must pay to market participants with ownership shares in a generating unit each time the unit is scheduled to start-up in the New England markets.

[4] No-Load Fee is the amount, in dollars per hour that ISO-NE must pay market Participants with ownership shares in a unit for each hour the generating unit is scheduled in the New England markets.

[5] Three-part supply offers consist of Start-Up Fee, No-Load Fee, and incremental energy price.

Filing Parties state that the Winter Package change to Appendix A lowers the threshold increase to 25 percent to ensure adequate oversight over daily generator adjustments to start-up and no-load bids.

6. The second element of the Winter Package deals with Emergency Energy Transactions (EETs), external transaction purchases that represent Real-Time energy imports by market participants during emergency conditions. The Filing Parties state that EETs are a valuable element of emergency response because they can help ISO-NE avoid having to make emergency energy purchases from other control areas. To encourage these voluntary import transactions, the Winter Package modifies section III.3.2.6(a) of Market Rule 1 so that market participants engaging in EETs are not allocated a portion of hourly net costs above Real-Time prices attributable to ISO-NE emergency energy purchases on account of deviations stemming from those EET import transactions. The Filing Parties have also included a corresponding modification to section III.F.3.2.15(f) of Market Rule 1 (Appendix F), so that these EET-based deviations are not counted in the allocation of operating reserve charges.

7. The third element of the Winter Package includes several changes relating to the "posturing" of generating resources. ISO-NE asserts that it has the authority to constrain or hold-off-line (posture) pool-scheduled resources in the Energy Market in order to maintain operating reserves during or in anticipation of shortage situations.[6] Generating resources that are postured for the purpose of maintaining sufficient operating reserves receive Real-Time Operating Reserve Credits calculated in accordance with section III.F.2.6.2. The Filing Parties state that because ISO-NE may need to increase its use of posturing of generating resources to manage day-to-day energy availability (due to fuel constraints) and maintain reliability this winter, ISO-NE sought to improve the market rules relating to posturing of generating resources by amending sections III.F.2.6.2(a) and (b).

8. The Filing Parties add that the Winter Package changes the allocation of costs of posturing of generating resources to ensure that such costs are allocated in a manner that is consistent with the Commission's cost-causation principles. Section III.F.3.1, which specifies the allocation of charges for operating reserves, has been amended to provide that Real-Time Operating Reserve Credits associated with the posturing of facilities will be allocated and charged to market participants in proportion to the daily sum of their

[6] Section III.1.11 of Market Rule 1 sets forth the procedures and principles that govern the dispatch of resources in the New England Control Area.

Real-Time Load Obligations.[7] The Filing Parties believe that it is appropriate to allocate the costs of posturing generating resources to those market participants that directly impact the amount of generation that is required to satisfy system reliability requirements. The Filing Parties believe that all entities that have a Real-Time Load Obligation benefit from posturing, and therefore, cost-causation principles support allocation of posturing charges to such entities.

9. To increase the availability of additional demand resources to respond in the event of an energy shortage condition this winter, the fourth element of the Winter Package is a supplemental demand response program (the Winter Supplemental Program). Under the proposed Winter Supplemental Program, participants that reduce or transfer load or provide incremental generation will be eligible to receive an incentive payment. To participate in the Winter Supplemental Program, a demand resource must: (1) enroll in the 30-Minute Real-Time Demand Response Program and be available to participate on or before January 16, 2006; (2) be available for activation from 7:00 a.m. through 8:00 p.m. on all non-holidays and weekends from the date on which it is ready to respond through March 31, 2006; and (3) agree to reduce its electricity consumption from the electricity grid (by reducing consumption, operating a generator, or both) during all Winter Supplemental Program events by an amount registered for such demand resource with ISO-NE's Customer Asset Management System (Maximum Interruptible Capacity). The Winter Supplemental Program is to be governed by the rules of the 30-Minute Real-Time Demand Response Program, and will be limited to a total of 450 MW of additional demand resources.

10. Further, the Filing Parties state that those generator assets registered as of October 1, 2005, and demand resources receiving supplemental payments from ISO-NE for the period December 1, 2005 through March 31, 2006 pursuant to agreements for Supplemental Installed Capacity for Southwest Connecticut, will not be eligible to participate in the Winter Supplemental Program. If a participant in the Winter Supplemental Program achieves an interruption of at least 70 percent of its Maximum Interruptible Capacity in every 5-minute interval during the Winter Supplemental Program event hours in a month, the participant will receive a payment of $14/kW-month for December 2005, $12/kW-month for January 2006, $10/kW-month for February 2006, and $8/kW-month for March 2006. If a demand resource fails to meet this threshold, the

[7] The proposal excludes Real-Time Load Obligation associated with postured dispatchable load pump operation that is not self-scheduled or in merit.

demand resource's payment associated with the Winter Supplemental Program for that month will be zero. The Filing Parties add that all monthly payments associated with the Winter Supplemental Program will be issued after March 31, 2006.

11. Finally, the Filing Parties propose that all of the Market Rule 1 revisions in the Winter Package expire after March 31, 2006. On or around April 1, 2006, ISO-NE has committed to file with the Commission tariff sheets that will undo the changes to Market Rule 1 associated with the Winter Package. The Filing Parties request expedited consideration and acceptance of the Winter Package, with an effective date of December 1, 2005, in order to address fuel supply issues during the rapidly approaching winter season.

III. Notice of Filing and Responsive Pleadings

12. Notice of the October 28, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 68,423 (2005), with interventions and protests due on or before November 14, 2005. Motions to intervene were filed by Select Energy, Inc. and the Northeast Utilities Service Company, on behalf of Northeast Utilities Companies; the New England Conference of Public Utilities Commissioners; ANP Funding I, LLC; Dominion Energy New England, Inc., Dominion Energy Marketing, Inc. and Dominion Nuclear Connecticut, Inc.; the Long Island Power Authority and its operating subsidiary, LIPA; NSTAR Electric & Gas Corporation; and Mirant Americas Energy Marketing, LP, Mirant New England, LLC, Mirant Canal, LLC, and Mirant Kendall, LLC. The Massachusetts Department of Telecommunications and Energy and the Maine Public Utilities Commission filed notices of intervention. On November 17, 2005, the Vermont Public Service Board and the Vermont Department of Public Service filed a joint motion to intervene out-of-time.

13. Calpine Corporation (Calpine) and Exelon Corporation (Exelon) filed motions to intervene and comments. National Grid USA (National Grid) submitted a motion to intervene and late-filed comments. Motions to intervene and protests were filed by the Attorney General for the State of Connecticut (CTAG); Massachusetts Municipal Wholesale Electric Company (MMWEC); Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., and PSEG Energy Resources & Trade LLC (collectively, Constellation and PSEG); and Mystic Development, LLC (Mystic). ISO-NE filed an answer to the protests and comments. NEPOOL filed an answer in response to CTAG's protest and in support of ISO-NE's answer.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[8] the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we will grant the late motion to intervene, given the parties' interest in this proceeding and the absence of any undue prejudice and delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[9] prohibits an answer to a protest unless otherwise permitted by the decisional authority. We will accept the answers of ISO-NE and NEPOOL because they have provided information that assisted us in our decision-making process.

B. Responsive Pleadings and Commission Determinations

16. Generally, the protests and comments filed in this proceeding express concern with three main aspects of the Winter Package: (1) posturing of resources, (2) the Winter Supplemental Program, and (3) the potential for generators to pursue profit maximization to such an extent that overall system reliability is threatened.

17. As discussed below, we will conditionally accept and suspend ISO-NE's proposed revisions, to be effective December 1, 2005, subject to further Commission order.

18. First, we note that the Filing Parties state that good cause exists for waiver of the Commission's 60-day prior notice requirement. They explain that several Markets, Reliability and Participants Committee meetings have been held to consider an appropriate response to the aftermath of Hurricanes Katrina and Rita and that ISO-NE has worked and continues to work closely with NEPOOL in the development of the Winter Package and the Winter 2005/2006 Action Plan. Therefore, the Filing Parties state that market participants are well aware of the nature of the energy shortage concerns of ISO-NE and of the elements of the Winter Package, and have had the opportunity to provide input on the winter package. We agree that good cause exists to grant the request for waiver of the prior notice requirement. Accordingly, we will grant the requested waiver so that the proposed tariff revisions may become effective December 1, 2005.

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[8] 18 C.F.R. § 385.214 (2005).

[9] 18 C.F.R. § 385.213(a)(2) (2005).

1. Posturing

a. Economic Harm

(1) Protests and Comments

19. Exelon, in its protest, states that it wishes to ensure that generators are not economically harmed as a result of implementing the posturing provisions of the proposal. Specifically, Exelon is concerned with the rule change that allows fuel-limited generators that are postured by ISO-NE for the purpose of maintaining sufficient operating reserves to receive Real-Time Operating Reserve Credits. The credits are intended to make the generator whole relative to its market bid, but Exelon is concerned that other costs that generators may incur would not be covered by the Real-Time Operating Reserve Credits payment. Exelon states that this concern was raised by Exelon and other generators during the stakeholder discussions of the Winter 2005/2006 Action Plan and has been acknowledged by NEPOOL participants and ISO-NE.[10]

20. Similarly, Mystic and Calpine state that acceptance of the proposed posturing rules must be explicitly conditioned upon the requirement that ISO-NE hold generators financially harmless from the effects of ISO-NE's decision to posture their units down.[11] Mystic explains that in the event that some of its units are postured under the proposed rule changes, Mystic could incur liquidated damages under its liquefied natural gas contract, for which there may be no way to obtain compensation under the current and proposed ISO-NE Tariff.

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[10] In their transmittal letter at p. 12, the Filing Parties state that the NEPOOL Participants Committee's support of the Winter Package was premised in part on understanding that a provision would be added that would prevent a generating resource that is postured as a result of the proposed rule changes from being economically harmed as a result of that posturing. The Filing Parties explain that ISO-NE has expressed its preliminary support for such a "no harm" result conceptually, subject to further detailed evaluation, and has committed to recommend to the Markets Committee additional tariff changes that would be necessary to reflect the requested conceptual change and to implement such change coincident with the change in the posturing rules this winter.

[11] Mystic protests ISO-NE's proposed revision to section III.F.2.6.2 of Market Rule 1.

(2) ISO-NE Answer

21. ISO-NE responds that it has developed a new section III.F.2.6.6 of Market Rule 1 to provide for the compensation of certain direct fuel costs incurred by postured resources, which costs would not have been incurred but for the posturing, and which costs are in excess of all revenues. ISO-NE states that it will file this provision on or before December 1, 2005, as part of its planned Supplemental Winter Package Filing.[12]

(3) Commission Determination

22. On November 29, 2005, ISO-NE filed its Supplemental Winter Package and requested a shortened 14-day comment period. The Supplemental Winter Package Filing addresses compensation for costs incurred by resources when postured. The Commission will notice the Supplemental Winter Package Filing for comments and issue an order that addresses the posturing compensation issue as soon as practicable.

b. ISO-NE's Posturing Authority

(1) Protests and Comments

23. Calpine states that although it does not object to permitting expanded posturing actions on an interim basis, it does not agree with ISO-NE's assertion that section III.1.11 of ISO-NE's tariff provides authority for the proposed posturing actions. Calpine states that section III.1.7.6, although not cited by ISO-NE, limits ISO-NE's energy scheduling and dispatch authority to actions occurring during Real-Time and Day-Ahead. Calpine states that posturing authority should be achieved through explicit additional tariff language and that it offered specific language that could be added to the end of section III.1.7.6. Calpine explains that the NEPOOL Participants Committee has supported the concept of additional tariff language providing ISO-NE with posturing authority (which would terminate on the same date as the other proposed changes). Calpine requests that the Commission confirm that language explicitly authorizing this expanded posturing action must be filed as a compliance fling and that any request to re-implement the same or similar posturing authority following the March 31, 2006 expiration date would require a section 205 filing to reinstate such authority.

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[12] We note that NEPOOL, in its answer, states that it has reviewed and is considering additional Market Rule 1 changes that will address some compensation concerns, and it will provide the Commission with the results once NEPOOL members vote on these changes.

(2) ISO-NE Answer

24. ISO-NE responds that although it does not agree with Calpine's position on this matter, in order to add clarity to Market Rule 1 with respect to any posturing ISO-NE may undertake to maintain reliability this winter, in consultation with Calpine and NEPOOL counsel, it has developed language for insertion into section III.1.7.6. The language is intended to clarify that without any limitation as to ISO-NE's general authority with respect to scheduling and dispatch, from December 1, 2005 to March 31, 2006, ISO-NE may take into account the availability of fuel resources beyond the current day and may posture resources and that postured resources will be compensated as indicated in section III.F.2.6. ISO-NE states that this language will be included in the Supplemental Winter Package Filing.

(3) Commission Determination

25. Calpine and ISO-NE have differing interpretations of what the tariff provides with respect to ISO-NE's posturing authority, but it appears that they have reached agreement on a revised section III.1.7.6. Currently, section III.1.7.6 provides in part that

> the ISO shall schedule Day-Ahead and schedule and dispatch in Real-Time Resources economically on the basis of least-cost, security-constrained dispatch and the prices and operating characteristics offered by Market Participants. The ISO shall schedule and dispatch sufficient Resources of the Market Participants to serve the New England Markets energy purchase requirements under normal system conditions of the Market Participants and meet the requirements of the New England Control Area for ancillary services provided by such resources.

Because Calpine asserts that this section limits ISO-NE's posturing authority to Real-Time and Day-Ahead, it proposes the following additional language to this section:

> For the period November 4, 2005 through March 31, 2006, ISO may reduce the level of generation dispatch instructions it would otherwise request under normal dispatch procedures in the Day-Ahead or Real-Time in order to posture that generation to address forecasted reliability needs in the next seven days. Such postured generation is compensated pursuant to Section III.F.2.6.[13]

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[13] Calpine at 5.

26. In light of ISO-NE's intent to revise Market Rule 1 to explicitly state its authority for the proposed posturing, it is unnecessary for the Commission to make a determination on ISO-NE's ability to posture resources under its existing tariff. ISO-NE will clearly have such authority pursuant to Commission action on its Supplemental Winter Package Filing. Therefore we will accept ISO-NE's proposed posturing revisions subject to Commission action in a separate order that will address the Winter Supplemental Package Filing.

27. Additionally, we confirm Calpine's understanding that any request to re-implement posturing authority after March 31, 2006 would require another section 205 filing so that the Commission may make a determination as to whether such authority should be reinstated.

c. Cost Allocation

(1) Protests and Comments

28. Constellation and PSEG argue that ISO-NE's proposal to allocate the costs associated with posturing resources should be rejected and that ISO-NE should be required to allocate the cost of posturing units to network load. Constellation and PSEG state that ISO-NE's proposed revisions inappropriately shift the cost of posturing generation resources from market participants with Real-Time Load Deviations to market participants with Real-Time Load Obligations. Constellation and PSEG explain that there is an extensive wholesale power market in New England involving Load Serving Entities (LSEs) and Local Distribution Companies (LDCs) that have negotiated term contracts to service the retail load of the LDCs. Under these contractual relationships, the LSEs have assumed the obligations to serve the loads that the LDCs would be responsible to serve, absent the contractual arrangements. Constellation and PSEG state that LSEs that entered into term contracts did not and could not have reasonably anticipated that ISO-NE's Winter Package would require them to absorb the posturing costs. Constellation and PSEG state that retail load associated with these contracts, the entities and persons the program is designed to benefit, will escape payment due to the way that ISO-NE has chosen to change the cost allocation rules. Constellation and PSEG argue that in future LSE-LDC contracts, LSEs will insist on a risk premium for these unknown and unknowable events or abandon the market for term contracts altogether.

29. In addition, Constellation and PSEG state that the imposition of a charge unrelated to an LSE's energy requirements on an LSE's Real-Time Load Obligation is a cost that cannot be hedged day-ahead and is, in effect, a tax imposed on the LSE. They go on to state that LSEs, under persisting term contracts, cannot collect from the ultimate beneficiaries, *i.e.*, the load, that benefits from the reliability service provided by posturing units to meet a fuel crisis.

30. National Grid states that posturing uplift is properly allocable to Real-Time Load Obligation, and that ISO-NE's proposed allocation preserves for load the hedging function of the LSE supply contracts. National Grid adds that LSEs that entered into contracts with LDCs knew very well that they could be facing tight gas and electricity supplies during peak demands and extreme weather conditions (like those that may occur this winter) when they chose to take on load-serving obligations. National Grid states that the LSEs reflected these costs and risks in high contract prices such as those that have already been passed through to New England customers in the form of significant electric rate increases.

31. Calpine states that it supports the market rule changes proposed in the instant filing provided that non-recallable external sales of energy are excluded from the allocation of posturing costs.

(2) ISO-NE and NEPOOL Answers

32. ISO-NE states that the decision to posture resources is a determination made to protect reliability by ensuring that sufficient energy will be available to satisfy the needs of entities that are obligated to serve load in New England. ISO-NE believes that LSEs are therefore the entities that directly cause the incurrence of these costs and it is reasonable in this instance to allocate posturing costs to LSEs. ISO-NE believes that posturing is a practice that is used to manage available generation and thus, is a reliability measure, not a transmission measure. ISO-NE states that allocation of posturing costs to network load would be inappropriate because it would unfairly assess these charges on transmission customers rather than on load, the primary beneficiary of this reliability service. ISO-NE adds that Real-Time Load Obligation is a measure of a market participant's hourly actual real-time load expressed in MWh, adjusted for any bilateral transactions, while network load measures its hourly load during the coincident monthly peak demand for transmission service in the New England Control Area. ISO-NE states that it is the hourly needs of actual real-time load that necessitate the decision to posture resources, so it is more appropriate for these costs to be allocated on the basis of Real-Time Load Obligation.

33. In regard to non-recallable external sales of energy, NEPOOL explains that the NEPOOL Participants Committee conditioned its support of the Winter Package on the understanding that "Real-Time Operating Reserve Credits associated with the posturing of facilities will not be allocated and charged to non-recallable exports."[14] ISO-NE, in its answer, explains that it believes that the exclusion of non-recallable exports might be

[14] NEPOOL Answer at 4.

appropriate under certain circumstances, but cannot be accomplished for this winter season without diverting scarce ISO resources from higher-priority projects. ISO-NE states that this exclusion would require the implementation of a new manual process that would be extremely difficult to accomplish given the limited number of remaining days until the start of the coming winter season and resource commitments to other ongoing market design initiatives. Further, due to the limited amount of these transactions that have occurred since the start of Standard Market Design (SMD) in New England (approximately 30 MW to date), ISO-NE submits that the time and resources necessary to implement this change for the limited period that it would be in effect are not warranted.

(3) <u>Commission Determination</u>

34. The Commission agrees with the Filing Parties that the posturing of generating resources to maintain operating reserves during periods of anticipated or actual fuel shortages is appropriately considered a reliability measure that is directly related to real-time load, the primary beneficiary of such posturing. This is consistent with the Commission's long-standing cost-causation and benefits/burdens principles, which allocate costs to those who benefit from the incurrence of the costs. In this case, because real-time load is both the primary driver (cause) of posturing and the primary beneficiary from posturing, it is appropriate to allocate the costs of posturing to real-time load. It would not be appropriate, on the other hand, to allocate the cost of posturing to network load, *i.e.*, transmission customers. Although increased operating reserves resulting from posturing enhance transmission system reliability, there is no direct benefit to network transmission customers (network load) that results. In contrast, the benefit of increased availability of generating capacity during shortage conditions will accrue to real-time load.

35. According to Constellation and PSEG, with regard to contracts between LSEs and LDCs being negotiated prior to the development of the proposed posturing rules, LSEs are unable to pass along the cost of posturing to LDCs. Thus, citing the same cost-causation principle as ISO-NE, Constellation and PSEG urge the Commission to allocate posturing costs to transmission customers so that LSEs do not have to absorb these costs and instead, transmission customers, and ultimately retail load, will bear the posturing costs. The Commission finds that Constellation's and PSEG's arguments are unpersuasive, and as discussed above, finds that ISO-NE's proposal to allocate the posturing costs described in the Winter Package to real-time load obligation is just and reasonable. The Commission agrees with National Grid that an important purpose of the LSE supply contracts is to shift supply cost risks from the LDCs to the LSEs. Such risks include those from unanticipated as well as anticipated events. Constellation's and PSEG's proposed allocation would unfairly burden LDCs and retail load with the risks

that the LSEs contracted to bear. The Commission also agrees that the risks associated with load-serving obligations should have been anticipated and reflected in the rates incorporated in the contracts with LDCs.

36. The Commission also agrees with ISO-NE that the creation of a new manual process to exclude non-recallable external sales of energy from allocation of posturing costs at this juncture would not be feasible given the imminence of the upcoming winter 2005/2006 season, and the limited number of such transactions since New England's SMD was implemented.

2. Winter Supplemental Program

a. Protests and Comments

37. MMWEC states that the Commission should reject as unjust and unreasonable the proposed prohibition of "settlement-only" generating units (SOGs) that have registered with ISO-NE as Option B facilities from participating in the proposed Winter Supplemental Program. SOGs are units that are not included in ISO-NE's Energy Management System because of their small size. SOGs cannot submit supply offers into the market, set market clearing prices, or receive dispatch instructions from ISO-NE. MMWEC characterizes SOGs as price takers that operate only when their owners deem it economic to turn on such units.

38. MMWEC states that ISO-NE's classification of SOGs as registered generator assets has made them ineligible to participate in the Winter Supplemental Program.[15] However, MMWEC states that unlike facilities that register under Option A to be ISO-NE dispatchable, facilities under Option B are self-scheduled. Thus, MMWEC states that while Option A facilities are already available to ISO-NE for dispatch in certain capacity-deficient situations, Option B facilities can provide the incremental energy sought by the Winter Supplemental Program and should therefore be eligible for participation. MMWEC adds that participation of Option B facilities can add 30-minute operating reserves to the region.

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[15] In their transmittal letter at p.14, the Filing Parties state that those generator assets registered as of October 1, 2005, and demand resources receiving supplemental payments from ISO-NE for the period December 1, 2005 through March 31, 2006, pursuant to agreements for Supplemental Installed Capacity for Southwest Connecticut, will not be eligible to participate in the Winter Supplemental Program.

39. MMWEC also states that the Commission should reject as unsupported the proposed 450 MW limitation on program participation because of a lack of support for such a threshold.

b. ISO-NE Answer

40. ISO-NE states that all generating assets that are currently registered with ISO-NE are prohibited from participating in the Winter Supplemental Program so that the special incentive compensation established in the program is used to encourage the participation of demand resources that may provide incremental generation, or load reduction, that is not currently available to ISO-NE. Thus, ISO-NE states, it would be inappropriate to include assets that are already registered with the ISO-NE in the Winter Supplemental Program because it would raise the cost of the program without achieving its intended goal. The ISO-NE adds that the proposed 450 MW limit on participation represents the amount of MW that ISO-NE has judged is necessary for the protection of reliability during the upcoming winter. The limit is intended to achieve targeted participation while minimizing costs. In the Winter 2005/2006 Action Plan, ISO-NE targeted between 100 MW to 600 MW of additional demand response. Payments were capped at 130 percent of a demand resource's interruptible capacity, so that 450 MW of demand resources could provide up to 600 MW of capacity, which is consistent with the upper range of the contribution sought from demand response.

c. Commission Determination

41. The Filing Parties state that permitting registered generating assets to participate in the Winter Supplemental Program would require further consideration, negotiation and (possibly) software development that ISO-NE does not believe it can accomplish in time to permit such resources to participate in the Winter Supplemental Program. In addition, with regard to SOGs that have registered with ISO-NE as Option B facilities, there has been no showing that these resources would require incentive payments to make it economically rational to produce under shortage conditions. It is important that the provisions of the Winter Package protecting the New England region for the Winter 2005/2006 go into effect in a timely manner. In light of this, the Commission finds that given the limited time frame involved for the implementation of the Winter Package, and the four-month duration of the provisions, it is not practical to embark upon negotiation and software development to accommodate a small component of the generator sector at this time. The Commission encourages MMWEC and the affected generators to negotiate with ISO-NE regarding the participation of Option B registered generation assets in demand response programs after the winter 2005/2006 season.

42. The Commission will also accept the Filing Parties' proposed 450 MW limitation on participation in the Winter Supplemental Program. As noted above, ISO-NE has

explained the basis for this limitation. This limitation was also supported by the NEPOOL Participants Committee by an affirmative vote of 62.19 percent.[16] Further, a 450 MW limitation appears reasonable because it strikes a balance between system reliability and over-participation in the Winter Supplemental Program. While the Winter Supplemental Program is an integral part of the Winter Package for the purpose of maintaining system reliability, it is unreasonable to implement an unlimited amount of participation in the Winter Supplemental Program to address New England's reliability needs. Such unlimited participation would force ISO-NE to compensate participants in the Winter Supplemental Program whose participation may not have been necessary to maintain reliability. Limiting participation in the Winter Supplemental Program to 450 MW should assure reliability while protecting against over-participation and unnecessary costs.

3. Concerns Regarding Incentives

a. Protests and Comments

43. CTAG is concerned that several of the items in the Winter Package may exacerbate the adverse consequences on electric system reliability that can result from the high-powered incentives that currently exist for generators to move back and forth between the natural gas and electric markets to maximize their profits. CTAG suggests that the proposals to increase generator flexibility to alter their no-load and start-up bidding parameters and new methods for allocating real-time operating reserve credits should be reviewed to ensure that they do not create enhanced incentives for generators to abandon their responsibility to generate electricity when it is most needed. CTAG states that the rule changes that ISO-NE has proposed in this proceeding fall short of those that are required to assure that the pursuit of profits by individual electric generators will not again threaten overall system reliability as it did during the 2004 cold snap, and recommends that ISO-NE consider the recommendations from CTAG's cold snap report.[17]

[16] ISO-NE Answer at 16

[17] *See Report of the Office of the Attorney General for the State of Connecticut-Investigation of Electricity Supply conditions in New England During the January 14-16, 2004 Cold Snap* (January 18, 2005) (cold snap report) (attached to CTAG's protest in this proceeding).

b. ISO-NE and NEPOOL Answers

44. With respect to the CTAG's concerns over increased generator flexibility to alter no-load and start-up bidding parameters, ISO-NE explains that such flexibility will enhance the ability of generators to cope with fuel price volatility by providing them with the opportunity to reflect current fuel costs in their supply offers. Additionally, ISO-NE states that its revision to section III.A.5.3(a)(ii) of Appendix A (described here in P.5) specifically ensures that ISO-NE will be able to adequately monitor the market impacts stemming from adjustments to generator bidding parameters. Further, ISO-NE argues that the CTAG's other concerns go beyond the matters at issue in this proceeding as they would require significant overhaul of ISO-NE's market framework. ISO-NE states that while the CTAG's broader suggestions may warrant consideration, this proceeding is not the proper forum for that consideration, and such suggestions are not necessary to address the issues in this filing. NEPOOL shares ISO-NE's belief that issues raised in the CTAG's protest are outside the scope of this proceeding and instead should be addressed in the stakeholder process.

c. Commission Determination

45. The Commission recognizes the concerns of the CTAG. However, the Commission notes that ISO-NE's Winter Package was designed in response to the anticipated shortages resulting from a possible short supply of natural gas and other generating fuels due to hurricane damage in the Gulf of Mexico region and is only a short-term, temporary action to address an immediate concern. It is not intended to address the concerns of the CTAG. We agree with ISO-NE and NEPOOL that the CTAG's broader concerns are more appropriate for consideration through ISO-NE's stakeholder process and in other proceedings that address market redesign. The Winter Package reasonably addresses potential fuel shortages in the coming winter and does so in a timely manner.

46. Finally, because the Filing Parties' proposal requires that all of the Market Rule 1 revisions in the Winter Package expire after March 31, 2006, they have committed to file with the Commission tariff sheets that will undo the changes to Market Rule 1 associated with the Winter Package. We remind the Filing Parties that such filing should be made no later than 60 days prior to the date on which they are to be effective.

The Commission orders:

The revisions to Market Rule 1 of ISO-NE's tariff are hereby conditionally accepted for filing and suspended for a nominal period, effective December 1, 2005, subject to further Commission action as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.