

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket Nos. ER06-1434-000  
ER06-1434-001

ORDER ACCEPTING NON-CONFORMING MARKET PARTICIPANT SERVICE  
AGREEMENT

(Issued December 12, 2006)

1. In this order, the Commission accepts the non-conforming Market Participant Service Agreement (Service Agreement), as amended October 13, 2006, submitted by ISO New England Inc. (ISO New England) pursuant to section 205 of the Federal Power Act<sup>1</sup> and the ISO New England Inc. Transmission, Markets and Service Tariff, FERC Electric Tariff No. 3 (Tariff). The Service Agreement was executed with North America Power Partners, LLC (NAPP) to provide for its participation in the ISO New England Demand Response program. As discussed below, the Commission accepts the non-conforming Service Agreement effective September 1, 2006, as requested.

**Description of Filing**

2. ISO New England asks the Commission to accept the executed, non-conforming Service Agreement with NAPP. The Service Agreement creates the contractual obligation for ISO New England to provide service under its Tariff to market participants, as well as the contractual obligation for market participants to comply with the Tariff.

3. The Service Agreement at issue in this case is non-conforming by virtue of the elimination of section 3.6 of the pro forma service agreement. ISO New England explains that section 3.6 provides that the market participant agrees to be bound by the “Participants Agreement” and to pay the required fees and charges. Specifically, section 3.6 provides as follows:

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<sup>1</sup> 16 U.S.C. § 824d (2000).

Participants Agreement. By entering into this Agreement, the Market Participant agrees to be bound by the Participants Agreement, through [New England Power Pool (NEPOOL)] or individually, as the case may be, and to pay the fees and charges specified therein. The Participants Agreement provides processes for stakeholder input, individually and collectively, into revisions of certain provisions of ISO New England Operating Documents and the planning process for the New England Transmission System.

4. In February 2006, ISO New England filed materially identical service agreements to the one presented in this proceeding, whereby EnergyConnect, Inc. (EnergyConnect), WebGen Systems, Inc. (WebGen) sought to participate solely in the Demand Response programs, and not in other New England ISO markets, programs, or services.<sup>2</sup> With regard to those service agreements, ISO New England stated its belief that deleting section 3.6 (Participants Agreement) would be just and reasonable in the limited circumstances presented in those cases. In support of its position, ISO New England explained that Demand Response-only participants do not participate in the energy and ancillary services markets, so such participants have less need or inclination to participate in stakeholder discussions at the Participants Committee regarding the development of market designs and rules. As such, ISO New England stated, Demand Response-only participants more closely resemble transmission-only customers, who are not required to be bound by the Participants Agreement, than entities participating in the core energy and ancillary services market. ISO New England made the additional point that the obligation to pay fees and charges under the Participants Agreement could constitute a financial barrier that would discourage some entities from participating in Demand Response programs. The Commission accepted these non-conforming service agreements on April 11, 2006.<sup>3</sup>

5. NAPP also wishes to participate only in the Load Response Programs and not in other markets, programs, or services operated or provided by ISO New England.<sup>4</sup> Based

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<sup>2</sup> ISO New England filed the non-conforming service agreements with EnergyConnect and WebGen on February 10, 2006 in Docket No. ER06-620-000.

<sup>3</sup> See *ISO New England Inc.*, 115 FERC ¶ 61,035 (2006).

<sup>4</sup> Aspects of the Load Response Program are coordinated through the Day-Ahead or Real-Time Energy Markets, but demand response providers participate in them through the Load Response Program.

on the principles underlying the pro forma service agreement and the Commission's acceptance of other materially identical service agreements, ISO New England believes that the proposed Service Agreement is just and reasonable.

6. ISO New England first filed the proposed Service Agreement on August 31, 2006 in Docket No. ER06-1434-000. In its August filing, ISO New England deleted only the first sentence of section 3.6 from the Service Agreement. Then, on September 29, 2006, the Commission issued an order regarding a similar non-conforming service agreement (this one between ISO New England and Energy Spectrum, Inc.) with only the first sentence of section 3.6 deleted.<sup>5</sup> In that September 2006 Order, the Commission conditionally accepted the non-conforming service agreement and directed ISO New England to either 1) file a revised service agreement deleting section 3.6 entirely or 2) explain why it would be appropriate to include the second sentence of section 3.6.

7. ISO New England ISO addressed the Commission's concerns (voiced in the September 2006 Order) in the instant proceeding by filing a revised Service Agreement with section 3.6 deleted entirely. ISO New England submitted this revised Service Agreement on October 13, 2006. No other changes were made to the Service Agreement.

8. ISO New England requests waiver of the Commission's 60-day notice requirement to permit the non-conforming Service Agreement with NAPP to become effective September 1, 2006.<sup>6</sup> ISO New England states that good cause exists to grant this request as NAPP signed its non-conforming Service Agreement on August 24, 2006 and also requested the September 1, 2006 effective date in order to begin participating in ISO New England's Load Response Programs for the month of September. ISO New England states that it promptly executed and filed the agreement to satisfy NAPP's request to become a Demand Response-only participant starting in September.

### **Procedural Matters**

9. Notice of ISO New England's August 31, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 54,049 (2006), with interventions and protests due on or before September 21, 2006. Notice of ISO New England's October 13, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 62,256 (2006), with interventions and

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<sup>5</sup> *ISO New England Inc.*, 116 FERC ¶ 61,308 (2006) (September 2006 Order).

<sup>6</sup> *See* 16 U.S.C. § 824d(d) (2000) (requiring at least 60 days' notice for changes to, *inter alia*, contracts); *see also* 18 C.F.R. §35.3(a) (2006) (requiring not less than 60 days' nor more than 120 days' notice prior to date on which a change in a contract is effective).

protests due on or before November 3, 2006. New England Power Pool (NEPOOL) filed a motion to intervene on September 21, 2006. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. No protests were filed.

### **Discussion**

10. We find that the proposed Service Agreement reflects a material deviation from the pro forma service agreement currently on file with the Commission. However, since NAPP will require few, if any, of the available services offered by NEPOOL, the removal of section 3.6 of the pro forma service agreement from the Service Agreement at issue here is just and reasonable, and not unduly discriminatory or preferential. We agree with ISO New England that exempting NAPP from section 3.6 could encourage greater participation in the Demand Response programs. Therefore, we will accept the non-conforming Service Agreement for filing.

11. Furthermore, our decision to accept the non-conforming Service Agreement presented here complements our decision to accept the alternative pro forma service agreement ISO New England filed on November 7, 2006.<sup>7</sup> Under the alternative pro forma service agreement, certain customers -- FTR-only, DRP-only, and ODR-only customers -- who desire to participate in NEPOOL can do so without being subject to section 3.6 of the Participants Agreement.<sup>8</sup> We will also grant ISO New England's request for waiver of the 60-day notice requirement and make the Service Agreement effective September 1, 2006, as requested. ISO New England has shown good cause for waiver. Moreover, granting of waiver is supported by the fact that the filing in this case is uncontested and does not change rates.<sup>9</sup>

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<sup>7</sup> *ISO New England Inc.*, Docket No. ER07-187-000 (November 27, 2006) (unpublished letter order).

<sup>8</sup> The alternative pro forma service agreement and revised tariff sheets are effective December 1, 2006.

<sup>9</sup> *See Central Hudson Gas & Elec. Corp.*, 69 FERC ¶61,106 at 61,338, *reh'g denied*, 61 FERC ¶61,089 (1992) (waiving prior notice requirement when uncontested filing does not change rate).

The Commission orders:

The Commission accepts the non-conforming Service Agreement for filing, to be effective September 1, 2006 as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.