

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc. and
New England Power Pool

Docket No. ER07-444-000

ORDER REJECTING TARIFF SHEET

(Issued March 19, 2007)

1. On January 18, 2007, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL), (collectively, the Applicants) filed a revised tariff sheet reflecting a proposed amendment to the ISO New England Information Policy (Information Policy). The purpose of the revision is to reduce the lag time at which the ISO-NE posts Demand Bid and Supply Offer data on its website. As discussed below, the Commission rejects the tariff sheet without prejudice to ISO-NE filing a fully supported proposal.

Background

2. On January 18, 2007, the Applicants filed a revised tariff sheet¹ to reduce the lag at which the ISO-NE posts Demand Bid and Supply Offer data on its website from 180 days after the day for which each Demand Bid and Supply Offer was in effect to the first day of the fourth calendar month following the month during which the applicable Demand Bids and Supply Offers were in effect.

3. The Applicants support this Information Policy revision based on the conclusions of the ISO-NE's Internal Market Monitoring Unit and Independent Market Monitoring Unit, which each determined that a three month period strikes a reasonable balance recognizing, among other factors, the value of enhanced market confidence and

¹ First Revised Sheet No. 9410 to ISO New England Inc. FERC Electric Tariff No. 3, Attachment D, ISO New England Information Policy.

transparency as well as the concerns of the potential for collusive behavior facilitated by disclosure. The Applicants also note that on May 24, 2006, the Joint Board on Economic Dispatch for the Northeast (the Joint Board) issued its Study and Recommendations Regarding Security Constrained Economic Dispatch in the Northeast. In its report, the Joint Board recommended that “ISO-NE...should pursue, with market participant input, making market bid data available to the market with a shorter lag time.”²

4. The Applicants propose that ISO-NE would continue to post this information in a manner that does not reveal the specific load or supply asset, its owners, or the name of the entity making the bid or offers, but would permit tracking of each individual entity’s bids and offers over time, as required by the Commission in *NSTAR Services Company*, 92 FERC ¶ 61,065 (2000).

Notices, Interventions, Protests, and Responsive Pleadings

5. Notice of the Applicants’ January 18, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 3831 (2007), with interventions or protests due on or before February 8, 2007. The Northeast Utilities Service Company filed a timely motion to intervene. New England Conference of Public Utility Commissioners and DC Energy, LLC filed timely motions to intervene and comments in support. The Mirant Parties,³ the NRG Parties,⁴ FPL Energy, LLC,⁵ Boston Generating, LLC and the FirstLight Parties⁶ (collectively, Generators) filed jointly, a timely motion to intervene and protest. On February 23, 2007, NEPOOL submitted an answer to the Generators’ protest.

² Study and Recommendations Regarding Security Constrained Economic Dispatch in the Northeast by The Joint Board, Docket No. AD5-13-000 (May 24, 2006) at p. 13.

³ The Mirant Parties comprises Mirant Energy Trading, LLC, Mirant Canal, LLC, and Mirant Kendall, LLC.

⁴ The NRG Parties comprises NRG Power Marketing Inc., Connecticut Jet Power LLC, Devon Power LLC, Middleton Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

⁵ FPL Energy, LLC operating subsidiaries in ISO-NE include: FPL Energy Cape, LLC, FPL Energy Maine Hydro LLC, FPL Energy Seabrook, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPLE Rhode Island State Energy L.P., and Northeast Energy Associates, a limited partnership.

⁶ FirstLight Parties comprises FirstLight Power Resources Management, LLC, FirstLight Hydro Generating Company, and Mt. Tom Generating Company LLC.

Protest

6. The Generators are opposed to ISO-NE's proposal to shorten the current lag time for release of generator, load, and financial bid and offer data. The Generators note that under the current six-month delay, no information is released until the relevant season has ended, which makes any bidding patterns that may have materialized irrelevant. The Generators argue that the type of aggregated information that ISO-NE already reports, in more or less real-time (*e.g.* zonal and nodal prices, zonal and system demands, etc.), along with the bid and offer data released after 180 days, provides the appropriate level of transparency to enable participants to evaluate overall market dynamics. Shortening the lag time for release of individual participant bid and offer information would expand the potential for an individual participant to attempt to react to the bidding behavior of other individual participants.

7. The Generators state that Applicants have not justified their proposal and raise two arguments why shortening the lag time could be harmful to the goal of achieving well-functioning competitive markets. First, a party may want to re-create ISO-NE's dispatch of the system and calculation of clearing prices using the individual load, generation, and incremental and decremental bids. The earlier release of bidding information could enable strategic behavior in the markets, which may be inappropriate or manipulative. Second, a participant may want to learn the structure and level of a competitor's bids and its incremental and decremental bid activity in order to strategically modify the participant's own bids and activities in the market. The Generators state that while it is widely accepted that such behavior is of minimal concern with the six month delay, ISO-NE has provided no evidence that the risk of such behavior would not be raised by shortening the delay. The Generators further note that the increased risk relating to transparency of data is being reviewed by the Commission in Docket No. AD06-11-000, where the Commission initiated a proceeding pursuant to section 220 of the Federal Power Act (FPA), enacted pursuant to section 1281 of the Energy Policy Act of 2005.⁷ In the AD06-11-000 proceeding, the Commission is considering, among other things, the needs of market participants regarding price transparency in wholesale natural gas and electricity markets.

Answer

8. NEPOOL reiterates that the change proposed in the filing follows ISO-NE and stakeholder consideration of a May 2006 recommendation made by the Joint Board on Economic Dispatch for the Northeast in its "Study and Recommendations Regarding Security Constrained Economic Dispatch in the Northeast." NEPOOL notes that while

⁷ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (to be codified at 16 U.S.C. § 824b(a)(4)).

the current bid release provisions may still be reasonable, so too are the proposed changes based on experience and study that are designed to increase transparency and the ability for public monitoring of market behavior. NEPOOL states that the arguments made in opposition to this change by the Generators fail to prove otherwise. NEPOOL adds that the claim by the Generators that ISO-NE arbitrarily picked the 90-day lag time as a midpoint between competing proposals is simply not accurate.

9. NEPOOL states that the Generators do not challenge the Joint Board's conclusion that a shorter lag time will strengthen the ability of the public to monitor and, therefore, gain confidence in the market. Instead, NEPOOL claims that Generators argue that recipients of this more timely data might collude in future bids or more timely data might increase the risk of strategic bidding behavior. NEPOOL notes that Generators cite as support Department of Justice (DOJ) Comments in Docket No. AD06-11-000 that focus on potential risks of "mandating rapid disclosure of highly-detailed, firm- or transaction-specific information," and suggest as a way to mitigate such risks "aggregation, masking, and lagging."⁸ NEPOOL argues against this assertion stating there is undoubtedly a point at which required or immediate release of details and unmasked transactions might produce unreasonable results, but the Bid Data Release Filing does not require rapid or immediate release of data, and reflects the DOJ's suggestion of masked, lagged data. First, NEPOOL notes, the lag reflected in the filing is three months. NEPOOL states that in New England, that means summer bids will be released during the fall shoulder months. NEPOOL adds that winter bids will be released in the spring shoulder months and bids in the spring or fall will be released during summer and winter peaks, respectively. NEPOOL argues that this lag is hardly rapid. Second, NEPOOL adds, the Bid Data Release Filing maintains the requirement, already approved by the Commission, that bid data be masked.

Discussion

10. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c)(2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NEPOOL's answer because it has provided information that assisted us in our decision-making process.

⁸ Generator's Pleading at pp 7-8.

Under section 205 of the FPA, the Commission is obligated to review the Applicants' proposal to determine whether it is just and reasonable and not unduly discriminatory or preferential. Despite the Applicants' claims, both in its initial application and its answer, that this proposal is supported by the conclusions of the Joint Board and that the ISO-NE's Internal Market Monitoring Unit and Independent Market Monitoring Unit each determined a three month lag to be reasonable, we find that the Applicants have not provided the Commission with adequate information to determine that the proposed tariff revision is just and reasonable and not unduly discriminatory or preferential. Moreover, there is insufficient basis in the record to address the arguments raised by Generators that a shorter lag may increase opportunities for inappropriate strategic market behavior.

12. We note that we do not necessarily oppose in principle a shortened lag time for the release of generator, load, and financial bid and offer data. Indeed, we could construct a rationale in support of a shortened lag time; however, such a rationale would have to be based on unsupported assertions contained in the application. The burden to provide a rationale and support for a proposed tariff revision in the first instance is on the Applicants and not the Commission. Accordingly, we reject the tariff sheet without prejudice to the Applicants filing a proposal that fully supports and explains its proposed tariff sheet revisions.

The Commission orders:

Applicants' proposal is rejected without prejudice, as directed in the body of the order.

By the Commission. Commissioners Kelly and Wellinghoff dissenting with a separate statement attached.

(S E A L)

Philis J. Posey,
Acting Secretary.

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ISO New England Inc. and
New England Power Pool

Docket No. ER07-444-000

(Issued March 19, 2007)

KELLY and WELLINGHOFF, Commissioners, *dissenting*:

This order rejects a proposed tariff revision filed by ISO-New England and the New England Power Pool (NEPOOL) Participants Committee to reduce the lag time for posting demand bid and supply offer data on ISO-NE's website from 180 days to 90 days. The order rejects the proposed tariff sheet without prejudice, finding that the applicants did not provide adequate information to support their filing.

ISO-NE states that the proposed tariff revision stems from ISO and stakeholder consideration of a May 2006 recommendation made by the Joint Board on Economic Dispatch for the Northeast Region in its *Study and Recommendations Regarding Security Constrained Economic Dispatch in the Northeast* to improve market transparency. The Joint Board Report stated that "a shorter lag period would provide quicker public access to bid data, which would strengthen public monitoring of market behavior and help ensure confidence in the competitiveness of the markets; it would also enhance the ability of market participants to quickly identify inefficiencies."¹ ISO-NE's Internal Market Monitoring Unit and Independent Market Monitoring Unit support this proposal based on a determination that "a three-month period strikes a reasonable balance recognizing, among other factors, the value of enhanced market confidence and transparency as well as the concerns for the potential for collusive behavior facilitated by disclosure."² In addition, the proposal received overwhelming stakeholder support. Moreover, the New England Conference of Public Utilities Commissioners and DC Energy LLC filed comments in support of this filing.

In their joint protest, Generators posit that shortening the lag time would expand the potential for inappropriate bidding behavior. In response, NEPOOL Participants Committee states that the three-month lag in New England means that summer bids will be released during the fall shoulder months; winter bids will be released in the spring shoulder months; and bids in the spring or fall will be released during the summer and winter peaks,

¹ *Study and Recommendations Regarding Security Constrained Economic Dispatch in the Northeast by the Joint Board on Economic Dispatch for the Northeast Region*, Docket No. AD05-13-000 (May 24, 2006), at p. 13.

² ISO's Internal Market Monitoring Unit's August 25, 2006 memorandum, at pp. 2-3, Attachment 3 of Filing.

respectively.³ Thus, the data would not be released until the relevant season has nearly ended, thereby mitigating the concern posed by Generators.

Based on the evidentiary support for this filing in the record and the unsupported nature of Generators' argument that shortening the lag time might increase the risk of inappropriate bidding behavior, we would have accepted the proposed tariff filing. For these reasons, we respectfully dissent from this order.

Suedeem G. Kelly

Jon Wellinghoff

³ See NEPOOL Participants Committee's Answer at pp. 3-4.