

128 FERC ¶ 61,135
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER09-1282-000

ORDER ACCEPTING INFORMATIONAL FILING

(Issued August 5, 2009)

1. On June 5, 2009, ISO New England Inc. (ISO-NE) submitted an informational filing containing a report by its Internal Market Monitoring Unit (MMU) regarding the MMU's review of the Forward Capacity Market (FCM) auction results and design elements. In this order, we accept ISO-NE's informational filing and decline to (a) impose time limits on the stakeholder process that will address this report, and (b) expand the scope of issues to be addressed or take any other action that would preempt the outcome of the stakeholder process, because we find that the stakeholder process is the best method for resolving those issues. We will, however, require ISO-NE to submit a report detailing the outcome of the stakeholder process.

I. Background

2. As required by its tariff, ISO-NE posted on its website and submitted to the Commission, on June 5, 2009, its Internal Market Monitoring Unit's report on the operations and effectiveness of the FCM. The report states that the FCM has largely met its objective of attracting and retaining the capacity needed to meet the region's Installed Capacity Requirement (ICR) for the first two commitment periods, and that there was sufficient competition and robust supply. The report, however, recommends improvements in four areas: (1) the modeling of capacity zones; (2) modifications to pricing rules, including the Alternative Price Rule and the price collar; (3) the Cost of New Entry (CONE); and (4) the treatment of demand resources. ISO-NE states that the MMU "believes that the recommendations in its report, if adopted, will improve the Forward Capacity

Market,”¹ and requests that the Commission “allow the ISO and all stakeholders to use the stakeholder process to address collaboratively how best to prioritize further refinement of the Forward Capacity Market.”² Thus, ISO-NE states, that no Commission action is required at this time.

II. Interventions and Protests

3. Notice of ISO-NE's filing was published in the *Federal Register*, 74 FR 68284 (2009), with interventions and protests due on or before June 26, 2009.
4. BG Energy Merchants *et al.*, Mirant Parties, ANP Funding I, LLC, Exelon Corporation, the PSEG Companies, the New England Power Pool Participants Committee (NEPOOL), First Light Power Resources Management, LLC, First Light Hydro Generating Company and Mt. Tom Generating Company, LLC, and the Northeast Utilities Service Company all filed timely Motions to Intervene. Dominion Resources Services, Inc., and the Connecticut Office of Consumer Counsel both filed Out-of-Time Motions to Intervene on July 7, 2009 and July 10, 2009, respectively. The New England Power Generators Association, Inc. (NEPGA), the New England Conference of Public Utility Commissioners (NECPUC), Dynegy Power Marketing, Casco Bay Energy Co., and Bridgeport Energy (all three, collectively, Dynegy), and the Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative (collectively, the Public Systems), NSTAR Electric Company and National Grid USA (NSTAR & National Grid) filed timely Motions to Intervene and Comments. The Maine Public Utilities Commission, the Connecticut Department of Public Utility Control and the Massachusetts Department of Public Utilities (collectively, the State PUCs) filed Notices of Intervention and joined the NECPUC in its comments. Finally, on July 1, 2009, NEPGA filed a Motion for Leave to Answer and Answer and on July 8, 2009, ISO-NE filed an answer to the comments.
5. NEPGA is concerned about the possibility of a protracted stakeholder process and therefore urges the Commission to require ISO-NE to file a reform package by no later than February 20, 2010, so that changes can be implemented in time for the fourth Forward Capacity Auction (FCA#4), which will be held in August 2010. NEPGA states that only a Commission requirement will ensure that outcome. NEPGA also asserts that there are other substantive areas of FCM, in

¹ Transmittal Letter at 1.

² *Id.* at 2.

addition to those identified in the MMU's report, that are in need of reform, and that the February 2010 reform package should also address these deficiencies.³

6. NEPGA asserts that many parties would oppose the imposition of such timing requirements, and that it is critical for reforms to be in place by the fourth FCA because the price floor for the FCM will have expired by that time.⁴ NEPGA further contends that the currently flawed market design is producing prices at the floor that are not reflective of the value of the services purchased and, without reform, the capacity markets could return to clearing at zero, as they did prior to the FCM.⁵ Dynegy expresses support for NEPGA's position. NEPGA further requests, in its answer, that if reforms cannot be in place in time for FCA#4, then at the very least the Commission should retain the current administrative price floor through that auction.⁶

7. The State PUCs declare that the FCM has been a "resounding success by virtually every measure,"⁷ but acknowledge that some changes may be necessary. They state, however, that those changes should be made as a comprehensive package that will preserve the overall integrity of the FCM design. The State PUCs express concern that a traditional NEPOOL stakeholder process, followed by a joint ISO-NE/NEPOOL Section 205 filing, may not adequately preserve the FCM package that the Settling Parties agreed to in 2006, and that NEPOOL's committee structure, in which state regulators have no vote, is not conducive to development of a balanced resolution of the issues in question. They argue that the NEPOOL stakeholder process could produce final rules that are a "hodge-podge of discrete compromises on individual subjects that do not work together and may significantly change the Settling Parties' intent embodied in the original FCM Settlement agreement."⁸ The State PUCs state that they have proposed to ISO-NE

³ NEPGA Comments at 6-7. The additional issues are discussed in the response to the MMU's report by NEPGA's consultant, Robert Stoddard (NEPGA Comments, Attachment A).

⁴ NEPGA comments at 6. The rule expires after the third FCA in October 2009.

⁵ *Id.*

⁶ NEPGA Answer at 6.

⁷ State PUCs comments at 2, 4.

⁸ *Id.* at 8-9.

and NEPOOL an alternative regional mediation process which, they argue, would provide a more effective forum for consideration of a package of comprehensive FCM reforms.⁹

8. NEPGA responds that there is no reason to believe that using a mediator would be a more efficient and timely approach than the normal stakeholder process.¹⁰ NEPGA recommends consideration of the use of the Commission's Dispute Resolution Service or staff if there has to be mediation, but wants any mediation process to adhere to the same February 20, 2010 deadline as the ongoing stakeholder process.¹¹

9. NSTAR & National Grid state that a forum that accommodates all New England interests is necessary to consider those changes and other potential improvements to the FCM, since the FCM Tariff provisions and market rules are so interrelated that any modifications to discrete segments of those provisions must be considered in the context of the entirety of the FCM. NSTAR & National Grid therefore support an inclusive process that will allow the full consideration of any suggested modifications to the FCM, rather than a Commission proceeding on the informational filing.¹²

10. The Public Systems are concerned about the report's recommendation on modification of the Alternative Price Rule—they are opposed to efforts to revamp the agreed-upon market rules in a manner that would discourage potential self-supply.

11. In its answer to the various comments, ISO-NE agrees that a resolution of FCM-related issues with broad support of both market participants and regulators is an important goal, and ISO-NE is therefore not opposed to the State PUCs' proposal to use a mediator and a modified stakeholder process in which NECPUC, NEPOOL, and the ISO would each provide a co-chair for a special working

⁹ *Id.* at 18.

¹⁰ NEPGA Answer at 2.

¹¹ *Id.* NEPGA also notes that the technical committee process still has to take place, given the technical nature of the work involved, and that, contrary to the State PUCs' concerns, ISO-NE and NEPOOL have been very receptive to the states' involvement, and state representatives are routinely and actively involved in the stakeholder process. *Id.* at 3-4.

¹² NSTAR & National Grid at 5.

group.¹³ ISO-NE notes, however, that the reasonableness of a February 20, 2010 deadline depends on the scope of issues to be addressed. Therefore, given FCM's complexity, NEPGA's proposal to significantly expand the issues to be addressed, and the State PUCs' view that only a comprehensive package of FCM changes can be made in order to maintain the balance of the original FCM Settlement, ISO-NE states that the FCM issues must be appropriately prioritized and sequenced.¹⁴ ISO-NE also notes that a significant expansion of the scope of the issues that must be resolved simultaneously will all but ensure that the February 20, 2010 date cannot be met.¹⁵ ISO-NE therefore urges the Commission to decline NEPGA's request to impose a strict deadline on the stakeholder deliberations.

III. Discussion

A. Procedural Issues

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. Dominion Resources Services, Inc., and the Connecticut Office of Consumer Counsel's motions to intervene out-of-time are granted, given the early stage of the proceedings, the parties' interests and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers of ISO-NE and NEPGA, because they have provided information that assisted us in our decision-making process.

B. Commission Determination

14. The Commission accepts ISO-NE's informational filing. As requested by the parties, the Commission will not address at this time the substantive technical issues relating to the reform of the FCM raised in the ISO-NE report and by other parties. We find that the stakeholder process is the most appropriate forum for considering these issues at this time.

¹³ ISO-NE Answer at 2-3.

¹⁴ *Id.* at 5.

¹⁵ *Id.*

15. We also reject NEPGA's specific request to require ISO-NE to file proposals for reforms by February 20, 2010. We note that a Forward Capacity Market Working Group (Working Group) has now been established to develop consensus on proposed changes that need to be made to the FCM. The Working Group will determine the schedule for and scope of changes to the FCM, and also consider the proposal for the appointment of a neutral mediator or facilitator.¹⁶ We support this approach and strongly encourage ISO-NE and its stakeholders to seek consensus on the key reforms that need to be made to improve the performance of the FCM in time for FCA#4.

16. In a prior FCM order, we noted that ISO-NE and NEPOOL have committed to a Commission filing addressing issues related to Local Sourcing Requirements and the establishment of Capacity Zones no later than February 20, 2010, which would enable new rules to be in place before the Installed Capacity Requirement must be established and informational filings must be made for the 2013-2014 Power Year and the fourth Forward Capacity Auction. We therefore declined to expand the scope of the stakeholder process.¹⁷ The same reasoning applies to NEPGA and Dynegy's request that the Commission direct ISO-NE to expand the scope of the issues to be discussed in the stakeholder process. NEPGA, Dynegy, and other parties will have ample opportunity to present their proposals for consideration in the Working Group.

17. We will further deny NEPGA's request to extend the price floor. NEPGA has made no showing that the expiration of the administrative price floor prior to FCA#4, which was agreed upon in the FCM Settlement, is unjust and unreasonable. Moreover, the price floor is already an issue in the Working Group's discussions, and we are unwilling to preempt potential stakeholder resolution of this issue.

18. We will, however, require that at the time ISO-NE makes its February 20, 2010 filing to make changes to the FCM, together with that filing it must also report on the outcome of the stakeholder process. If, at the conclusion of the stakeholder process, changes proposed by stakeholders are not included in

¹⁶ See FCM Working Group materials at: http://www.iso-ne.com/committees/comm_wkgrps/othr/fcmwg/mtrls/2009/jul302009/index.html. The first meeting of the Working Group was held on July 30, 2009, and the next meeting will be held on August 7, 2009.

¹⁷ *ISO New England Inc. and New England Power Pool Participants Committee*, 128 FERC ¶ 61,023, fn 5.

the filing of changes for FCA#4, the report should explain either (a) why those changes were not made, or (b) if those changes should be made, why they cannot be made in time for FCA#4 and what ISO-NE's timeline is for making those changes.

The Commission orders:

(A) ISO-NE's informational filing is hereby accepted.

(B) At the time that ISO-NE makes its filing on or before February 20, 2010, it must also report on the outcome of the stakeholder process, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.