

132 FERC ¶ 61,172  
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. and  
New England Power Pool

Docket No. ER10-1653-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued August 26, 2010)

1. On June 30, 2010, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (collectively, Filing Parties) submitted revised tariff sheets pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> implementing changes to section III.13.7.3.1 of Market Rule 1 to allow the Filing Parties to extend the practice of not reconstituting the load reductions for Demand Resources<sup>2</sup> participating in ISO-NE's Forward Capacity Market (FCM).<sup>3</sup> As discussed below, the Commission conditionally accepts the revised tariff sheets, effective August 30, 2010.

**I. Background**

2. Load reconstitution involves increasing the loads of a particular end-use customer or group of end-use customers, by the amount of load reduction for which they are receiving compensation through the wholesale electricity market. Load reconstitution is a mechanism employed to determine proportionate capacity cost allocations for customers that sell load reductions in the wholesale markets. With load reconstitution in place, retail customers selling load reductions would pay for the capacity required to

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> Demand Resource is defined as "On-Peak Demand Resources, Seasonal Peak Demand Resources, Critical Peak Demand Resources, Real-Time Demand Resources, or Real-Time Emergency Generation Resources." See section III.1 of Market Rule 1.

<sup>3</sup> FERC Electric Tariff No. 3, section III, Fourth Revised Sheet No. 7319B and Third Revised Sheet No. 7319C, respectively.

serve their pre-reduction load, and then receive a capacity payment for their commitment to reduce load.

3. Load reconstitution was required in ISO-NE prior to FCM. However, when the FCM market rules were formed in 2006, ISO-NE and the stakeholders agreed not to require it for the first three Capacity Commitment Periods, that is, through May 31, 2013, because the quantity and distribution of Demand Resources clearing in the Forward Capacity Auction (FCA), as well as their impact on regional capacity cost allocation, were unknown. Section III.13.7.1 of the ISO-NE tariff requires that ISO-NE, in consultation with NEPOOL stakeholders and state utility regulators, evaluate the need for a load reconstitution methodology for Demand Resources and report to the Commission, on or before September 1, 2009.

4. In its September 1, 2009 report, the Filing Parties asked the Commission to defer the requirement that ISO-NE and NEPOOL evaluate whether to institute a load reconstitution methodology, so that issues related to price responsive demand as well as changes to the FCM rules could be resolved.<sup>4</sup> On September 25, 2009, a delegated letter order approved a deferral of discussions until February 2010 and required the Filing Parties to file a recommendation with the Commission on or before July 1, 2010.

## **II. Details of the June 30, 2010 Filing**

5. On May 12, 2010, the ISO-NE Markets Committee voted to extend the current practice of not reconstituting load for an additional two Capacity Commitment Periods. That amendment was voted and passed with 65.4 percent in favor. Subsequently, on June 4, 2010, 92.67 percent of the NEPOOL Participants Committee voted to amend the proposal to remove the requirements of section III.13.7.3.1, which require ISO-NE and NEPOOL to evaluate the need for a load reconstitution methodology.

6. ISO-NE believes that load reconstitution is needed to mitigate capacity cost shifting and to achieve efficiency and comparable treatment between Demand Resources and generation resources.<sup>5</sup> In the absence of load reconstitution, retail customers that participate as Demand Resources would be paid for load reduction in addition to being allocated the smaller share of the capacity costs associated with their load reduction in the

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<sup>4</sup> See Docket No. ER09-1666-000.

<sup>5</sup> See Filing, Robert V. Laurita Testimony at 6.

coincident peak load hour. Customers that do not participate as Demand Resources, on the other hand, would be allocated a disproportionately high share of capacity costs.<sup>6</sup>

7. ISO-NE estimates that load reconstitution would result in a \$10.1 million decrease in allocated capacity costs for the New Hampshire, West Central Massachusetts, and South East Massachusetts Load Zones, with an increase in allocated capacity costs for the remaining load zones (assuming that all active Demand Resources that cleared the FCA for the 2012/2013 Capacity Commitment Period would reduce load coincident with the system peak).<sup>7</sup> Demand Resources could consider an expected FCM payment in addition

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<sup>6</sup> The Filing Parties provide the following example to illustrate how load reconstitution can mitigate cost shifting between two customers:

Assume that there are only two customers in the electric system each consuming 10 MW at the time of the coincident system peak. Each customer would receive an equal allocation of capacity costs. If one of those customers subsequently provides a 2 MW Demand Resource through the FCM, that customer would receive a payment for 2 MW of capacity. Without reconstitution (and assuming that the Demand Resource reduces 2 MW coincident with the system peak), this customer would receive both a payment for 2 MW, and an allocation of capacity costs for 8 MW, resulting in a net capacity bill of only 6 MW. The other customer (still with a 10 MW load) would have to pay for capacity as though it were a 12 MW customer so that sufficient revenue is collected to pay all capacity suppliers. By reconstituting the load of the customer with the 2 MW demand resource, the customer would be billed for 10 MW of capacity, but would also receive a payment for its 2 MW Demand Resource resulting in a net capacity bill of 8 MW, which is equal to its actual load at the time of system peak. The other customer would continue to pay for 10 MW of load as before.

*Id.* at 8.

<sup>7</sup> *Id.* at 8-9. Under the assumption that active Demand Resources are not dispatched at the time of the peak, and load reductions are attributable only to passive Demand Resources, ISO-NE estimates a \$4.6 million increase in allocated capacity costs for the Connecticut and Vermont Load Zones, with a \$4.6 million decrease in allocated capacity costs for the remaining Load Zones (Maine, New Hampshire, North East Massachusetts, Rhode Island, South East Massachusetts, and West Central Massachusetts).

to the value of retail capacity saving from load reduction when forming offers for the FCA. The result could be a Demand Resource that clears the FCA when the clearing price is below the cost for the resource to reduce load due to an offer that anticipates avoided capacity charges in addition to capacity payments.

8. According to the June 30, 2010 filing, ISO-NE stakeholders have set an internal deadline of September 2011 for efforts to implement a load reconstitution methodology, with the understanding that ISO-NE will file its recommendation whether to institute a load reconstitution methodology with the Commission on or before February 1, 2012, to become effective for the Sixth Forward Capacity Auction on April 2, 2012.<sup>8</sup> ISO-NE states that the stakeholders are waiting until the issuance of a Commission Final Rule on Demand Response Compensation in Docket No. RM10-17-000<sup>9</sup> and for resolution of major issues regarding FCM design that were set for hearing before the Commission.<sup>10</sup> ISO-NE states that, while such issues have not focused on the treatment of demand resources in the capacity market, any changes from those proceedings could affect ISO-NE and stakeholder views of any future load reconstitution rules.

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

9. Notice of the June 30, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 40805 (2010), with interventions and protests due on or before July 21, 2010. Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; Hess Corporation; Maine Public Utilities Commission (Maine PUC); and Northeast Utilities Service Company filed timely motions to intervene or notices of intervention. The Massachusetts Department of Public Utilities (Mass DPU) filed a notice of intervention and comments and the Retail Energy Supply Association (RESA) filed a timely motion to intervene and comments. On August 3, 2010, the Maine PUC filed an amended intervention and comments.

10. The Mass DPU, without further analysis, agrees with the Filing Parties' rationale but stresses that differing views on the advantages and disadvantages of implementing load reconstitution persist. The Maine PUC states, *inter alia*, that it agrees with the Mass DPU and supports continuing the current practice of not reconstituting the load of

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<sup>8</sup> See Filing at 6-7.

<sup>9</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Notice of Proposed Rulemaking, 75 Fed. Reg. 15362 (Mar. 29, 2010), FERC Stats. & Regs. ¶ 32,656 (2010).

<sup>10</sup> *ISO New England Inc.*, 131 FERC ¶ 61,065 (2010) (setting for paper hearing proposed changes to the FCM rules).

demand response participants in the FCM, but it withholds further comment until the issue is ripe for consideration.<sup>11</sup>

11. RESA filed adverse comments urging the Commission to deny the Filing Parties' request to further delay the implementation of load reconstitution for Demand Resources in the FCM. RESA argues that failure to reconstitute loads can result in capacity charges that unduly discriminate among loads. RESA states that the Filing Parties' own joint testimony illustrates how load reconstitution can help mitigate the shifting of capacity costs among retail customers.<sup>12</sup> RESA urges the Commission to require ISO-NE to reconvene the stakeholder process to evaluate the need for a load reconstitution methodology, and make a filing by November 1, 2010.

12. On August 5, 2010, NEPOOL filed a motion for leave to answer and answer. NEPOOL contends that RESA incorrectly asserts that the Filing Parties seek to defer indefinitely load reconstitution. According to NEPOOL, the Filing Parties have committed to file a recommendation on load reconstitution with the Commission no later than February 1, 2012, to become effective for the Sixth FCA on April 2, 2012. NEPOOL also states that during the stakeholder process, a supermajority of the participants agreed that there was too much uncertainty at this time to decide whether or not to reconstitute load. Further, reconstituting load at this time will place additional demands (such as ensuring that necessary and accurate data are available) on meter readers because they have not yet addressed the challenges associated with implementing load reconstitution.

#### **IV. Commission Determination**

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

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), 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.

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<sup>11</sup> Maine PUC Amended Intervention and Comments at 2-3.

<sup>12</sup> RESA Comments at 7-9.

**B. Discussion**

15. The Commission conditionally accepts the Filing Parties' proposed revisions to ISO-NE's Market Rule 1, which extend the current practice of not reconstituting the load reductions for Demand Resources participating in ISO-NE's FCM.

16. The Commission previously accepted a proposal not to require load reconstitution for the first three Capacity Commitment Periods because the quantity and distribution of Demand Resources clearing in the FCA, as well as their impact on regional capacity cost allocation, were unknown. We find that a short extension of this practice is consistent with that prior action and a reasonable step at this time. In making these findings, we note that ISO-NE and other parties describe considerable uncertainty as to how Commission action in other proceedings may affect an ISO-NE proposal on load reconstitution. We also note both RESA's concerns about further delay in resolving issues related to load reconstitution and the overwhelming support from ISO-NE's stakeholders for postponing further discussions on this issue for a short time.

17. In addition, the Commission accepts the Filing Parties' commitment to file a recommendation on load reconstitution with the Commission no later than February 1, 2012, to become effective for the Sixth FCA on April 2, 2012.

**The Commission orders:**

(A) The Filing Parties' proposed tariff revisions are hereby conditionally accepted, as discussed in the body of this order, to become effective August 30, 2010.

(B) The Filing Parties must file its recommendation whether to institute a load reconstitution methodology no later than February 1, 2012, to become effective for the Sixth Forward Capacity Auction on April 2, 2012.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.