

133 FERC ¶ 61,013  
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. ER07-397-005

ORDER ON COMPLIANCE

(Issued October 5, 2010)

1. On May 12, 2010, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (jointly, Filing Parties) filed revisions to section III.13 of the ISO-NE's Tariff to ensure that double compensation of costs associated with the capability to provide reactive service does not occur, as required by the Commission's February 28, 2007 order.<sup>1</sup> As discussed below, we find that the Filing Parties' filing complies with the February 2007 Order.

**I. Background**

2. On December 29, 2006, Filing Parties filed a comprehensive set of amendments to Schedule 2 of the ISO-NE's Open Access Transmission Tariff (OATT), including a proposal to update the Schedule 2 Capacity Cost (CC) rate to account for the addition of new generation to the mix of dynamic reactive resources in New England since 1998. The Maine Public Utilities Commission (MPUC) challenged the Schedule 2 Amendments, claiming that the Schedule 2 CC payments resulted in double compensation in light of the payments to generators under the FCM settlement agreement.<sup>2</sup>

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<sup>1</sup> *ISO New England Inc.*, 118 FERC ¶ 61,163 (2007) (February 2007 Order), *order denying reh'g*, 126 FERC ¶ 61,212 (2009) (March 2009 Order), *order on clarification*, 130 FERC ¶ 61,005 (2010) (January 2010 Order).

<sup>2</sup> *See Devon Power, LLC*, 115 FERC ¶ 61,340, *order on reh'g*, 117 FERC ¶ 61,133 (2006), *affirmed in relevant part sub nom. Maine Public Utilities Comm'n v.*

(continued...)

3. In the resulting order, the Commission found, inter alia, that transition payments do not compensate resources for their reactive power capabilities because they are below the cost of new entry.<sup>3</sup> However, the Commission stated that it was concerned that double recovery could occur during the first Forward Capacity Auction because the Forward Capacity Auction payments equal the cost of new entry. Accordingly, the Commission required ISO-NE to implement, prior to the commencement of the first Forward Capacity Auction commitment year beginning June 1, 2010, tariff provisions to ensure that resources eligible for CC payments under Schedule 2 that ensure that reactive supply and voltage control do not receive double compensation.<sup>4</sup>

4. Separately, on September 28, 2008, in Docket No. EL07-38-000, MPUC filed a revised amended complaint against ISO-NE, advancing essentially the same arguments regarding double recovery made in this proceeding. MPUC argued that the Schedule 2 CC rate results in double compensation of capital costs by generators when combined with the payments provided to generators under the FCM Settlement agreement.<sup>5</sup> In response, ISO-NE filed a game theoretic analysis to demonstrate the absence of a double recovery issue. In its February 2009 order on MPUC's complaint, the Commission found that the Schedule 2 CC rate payments for reactive service do not result in double recovery.<sup>6</sup> The Commission also found that sellers in the competitive Forward Capacity Auction will have incentives to submit bids that take into account revenues from the CC Rate component and, as a result, "double recovery is not a concern."<sup>7</sup>

5. Shortly after issuing the February 2009 Order, the Commission issued the March 2009 Order in this proceeding, denying a request for rehearing on the basis that the

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*FERC*, 520 F.3d 464 (2008) (approving FCM Settlement agreement). The FCM Settlement agreement provides that fixed payments will be made to all installed capacity during a transition period beginning December 1, 2006 and ending June 1, 2010, at which point payments from Forward Capacity Auctions will commence.

<sup>3</sup> February 2007 Order, 118 FERC ¶ 61,163 at P 30.

<sup>4</sup> *Id.*

<sup>5</sup> MPUC September 25, 2008 Complaint, Docket No. EL07-38-000, at 5-6.

<sup>6</sup> *Maine Public Utilities Commission v. ISO New England Inc.*, 126 FERC ¶ 61,090, at P 39 (February 2009 Order), *order on reh'g*, 128 FERC ¶ 61,012 (2009) (July 2009 Order).

<sup>7</sup> *Id.* P 45.

Schedule 2 CC rate payments for reactive service and the capacity payments, whether transition payments or Forward Capacity Auction revenues, do not result in double recovery of capital costs.<sup>8</sup> However, the March 2009 Order repeated the directive from the underlying February 2007 Order that ISO-NE must implement, prior to the commencement of the first Forward Capacity Auction commitment year, tariff provisions that ensure the resources eligible for CC rate payments for reactive service under Schedule 2 do not receive double compensation.<sup>9</sup>

6. On April 6, 2009, ISO-NE requested clarification of the Commission's March 2009 Order in this proceeding, arguing that it repeated a filing requirement that is now unnecessary. The Commission denied the request for clarification. The Commission held that although our previous analyses have found that bidding incentives in the Forward Capacity Auctions make double recovery "highly unlikely," and that incentives to sellers to submit bids that take into account revenues from the capacity component make double recovery "*less of a concern*,"<sup>10</sup> such provisions remain necessary to provide certainty that double recovery of capital costs for generating equipment does not occur. The Commission found that this was consistent with the July 2009 Order, in which the Commission stated while it was not convinced that over-recovery was occurring, ISO-NE was nevertheless required to propose tariff language out of "an abundance of caution."<sup>11</sup>

## **II. Filing Parties' Proposal**

7. Filing Parties state that to address the Commission's directive, and consistent with its prior commitment to modify the FCM market rules, ISO-NE engaged in discussions with stakeholders in February 2010, following the January 5, 2010 Order. Filing Parties also state that in developing a proposal to comply with the Commission's directive, ISO-NE considered the Commission's prior orders in this proceeding providing that double recovery is *not* a concern: (i) during the FCM Transition Period, (ii) when the Forward Capacity Auction clearing price is less than "the agreed-to full (or gross) cost of new entry," (iii) when a Forward Capacity Auction is competitive, and (iv) when the Forward Capacity Auction clearing price is set by a resource without VAR capability (i.e., a non-

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<sup>8</sup> March 2009 Order, 126 FERC ¶ 61,212 at P 15.

<sup>9</sup> *Id.* P 18.

<sup>10</sup> January 2010 Order, 128 FERC ¶ 61,012 at P 12 (citing February 2007 Order, 126 FERC ¶ 61,090 at P 19).

<sup>11</sup> *Id.* P 19.

VAR capable resource).<sup>12</sup> With this as a foundation, ISO-NE developed tariff language to be included in the FCM rules (section III.B of the ISO Tariff) that provides additional certainty against double compensation by requiring a certification from VAR-capable generating resources that they will reduce their offers into the Forward Capacity Auction by the amount of their expected revenues from the Schedule 2 CC rate. Filing Parties state that the revised tariff language received the support of the NEPOOL Markets Committee and Participants Committee.<sup>13</sup>

8. Specifically, ISO-NE has revised section III.13.1.1.2.2.3 (Offer Information) of its Tariff to add the following language:

(c) By submitting a New Capacity Qualification Package, the Project Sponsor certifies that an offer from the New Generating Capacity Resource will not include any anticipated revenues the resource is expected to receive for its capacity costs as a Qualified Reactive Resource pursuant to Schedule 2 of Section II of this Tariff.<sup>14</sup>

Filing Parties state that this tariff language addresses the Commission's requirements by prohibiting a New Generating Capacity Resource, i.e., the resource capable of setting the Forward Capacity Auction clearing price – from including in its Forward Capacity Auction offer anticipated revenues that it expects to receive as a Qualified Generator Reactive Resource under Schedule 2, consistent with the expected competitive market behavior. Filing Parties contend that by precluding a resource eligible to set the Forward Capacity Auction clearing price from including those anticipated revenues in its offer, concerns about the possibility of double compensation are addressed.<sup>15</sup>

9. Filing Parties contend that its revisions to section III.13 of the Tariff addresses the Commission's directives by providing a market-based approach to resolve the concern with a potential for double compensation in a manner that respects the FCM market design, recognizing that neither the Schedule 2 CC negotiated-rate nor the FCM capacity payment arises from a traditional cost-of-service methodology based on the cost of equipment associated with any particular generator. It contends that its revisions provide further assurance that resources eligible to receive the CC payment under Schedule 2 do

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<sup>12</sup> Filing Parties May 12, 2010 Filing at 10.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 11.

not receive double compensation by effectively prohibiting the resource setting the Forward Capacity Auction clearing price – consistent with competitive market behavior – from including in its Forward Capacity Auction offer expected revenues from the CC rate component under Schedule 2.<sup>16</sup>

10. Filing Parties request an effective date of June 1, 2010. They argue that because the new language applies in the Forward Capacity Auction qualification process, its application will start with the qualification process associated with the sixth Forward Capacity Auction, for the 2015-2016 capacity commitment period. Filing Parties contend that this is because the submittal window for the new capacity qualification packages for the Forward Capacity Auctions one through five have or will have been completed by the time the new subsection becomes effective. They state that the revised rules will first apply to new capacity qualification packages submitted for the sixth Forward Capacity Auction in early 2011.<sup>17</sup>

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

11. Notice of this proceeding was published in the *Federal Register*, 75 Fed. Reg. 29,530 (2010), with interventions, comments, or protests due on June 2, 2010. Motions to intervene were filed by GDF Suez Energy Marketing NA, Inc. and the Vermont Public Service Board (VPSB).<sup>18</sup> A protest was filed by MPUC, the New Hampshire Public Utilities Commission, VPSB, and Martha Coakley, the Attorney General of the Commonwealth of Massachusetts (collectively, Joint Protestors). Filing Parties filed an answer to the protest.

12. The Joint Protestors argue that Filing Parties' compliance filing does not comply with the Commission's prior orders. First, the Joint Protestors argue that the proposed tariff revisions fail to provide certainty that double recovery will not occur beginning in the first Forward Capacity Auction commitment year. They contend that Filing Parties' proposal does not take effect until the sixth Forward Capacity Auction commitment year,

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<sup>16</sup> *Id.* at 13.

<sup>17</sup> *Id.* at 12.

<sup>18</sup> VPSB styled its motion a "motion to intervene out-of-time," although it filed its motion on May 27, 2010, prior to the June 2 due date for interventions. VPSB explains that it is a member of the New England Conference of Public Utilities Commissioners NECPUC, which already is an intervenor in this proceeding.

and thus fails to comply with the January 2010 Order.<sup>19</sup> They contend that Filing Parties' argument that the compliance filing nevertheless complies with the January 2010 Order assumes that ISO-NE's proposal is the only option capable of complying with the Commission's directives. They argue that contrary to Filing Parties' argument, it is possible to ensure that there is no double recovery in the first Forward Capacity Auction commitment year. Joint Protestors contend that there are multiple options, including utilizing the offset provisions in the Forward Reserve Market, where the Forward Capacity Auction clearing price is subtracted from the Forward Reserve Market clearing price in determining the payment to Forward Reserve Market resources.

13. Second, the Joint Protestors contend that the compliance filing fails to provide any certainty that over-recovery will not occur among existing generators. They argue that Filing Parties is interpreting the prior orders too narrowly, requiring only that they provide certainty that the Forward Capacity Auction clearing price does not include any anticipated revenues from the Schedule 2 CC payment. The Joint Protestors contend that the Commission's directive was not drafted so narrowly, and that Filing Parties must provide certainty that double recovery of the cost of generating equipment does not occur.<sup>20</sup> They note that this requirement does not direct Filing Parties to focus on what revenues were included in the clearing price, because if that were the case the Commission would not have required certainty that over-recovery does not occur beginning in the first Forward Capacity Auction commitment year because there would be no way to affect the bidding in the first Forward Capacity Auction since it occurred several years ago.<sup>21</sup>

14. The Joint Protestors propose two possible approaches to the proposed tariff revision. The first approach is that a resource that successfully bids into the Forward Capacity Auction for any given year is not entitled to a Schedule 2 CC payment. The Joint Protestors suggest a second approach in which the owner of a generating resource that successfully bids into the Forward Capacity Auction for any given year beginning in the first Forward Capacity Auction is not eligible to receive a CC payment for any month in the year for which it has a capacity obligation unless an officer of the owner of that generating unit signs an affidavit stating that in the absence of the CC payment, the

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<sup>19</sup> Joint Protestors June 2, 2010 Protest at 6 (citing January 2010 Order, 130 FERC ¶ 61,005 at P 8).

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 8.

owner of the generation unit would not recover the capital costs for the equipment necessary to provide reactive service.

15. In their answer, Filing Parties argue that the Joint Protestors' challenges to the compliance filing's market rule revisions are an attempt to re-litigate final Commission determinations. Specifically, they contend that the Joint Protestor's protest is an attempt to re-litigate the Commission's February 3, 2009 Order and July 8, 2009 Order, which ruled that compensation for capability to provide reactive service is not to be made through the FCM.<sup>22</sup> Filing Parties further state that the Joint Protestors' claim that the market rule revision fails to provide certainty that existing generators are not over-recovering capital costs for a particular generator's equipment is another attempt to assert prior claims that the Forward Capacity Auction-derived capacity payments and the Schedule 2 CC rate are two overlapping revenue streams compensating facilities for the same equipment.

16. Filing Parties assert that the prospective application of the market rule revision, which the Joint Protestors also challenge, does not make the rule change any less compliant.<sup>23</sup> Filing Parties state that double recovery is not a concern for the first three Forward Capacity Auctions, as each of these Forward Capacity Auctions have been certified by the ISO's Market Monitor, and accepted by the Commission, as competitive. Filing Parties state that the absence of double recovery during these Forward Capacity Auctions is also evidenced by the fact that the Forward Capacity Auction clearing prices for each of these Forward Capacity Auctions were below, not equal to, the cost of new entry, and the Forward Capacity Auction clearing prices for the first three Forward Capacity Auctions were not set by a VAR-capable resource, but the capacity clearing price floor provisions of section III.13.2.7.3 of Market Rule 1. Filing Parties recognize that these assessments have yet to take place for the fourth and fifth Forward Capacity Auctions and, consistent with its role, the ISO's Market Monitor commits to work directly with the Commission to address the presence of potential double compensation if either of these Forward Capacity Auctions are found to be non-competitive and the Forward Capacity Auction clearing price is set by a new VAR-capable resource.<sup>24</sup>

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<sup>22</sup> Filing Parties June 17, 2010 Answer at 9.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.* at 9.

#### IV. Discussion

##### A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>25</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>26</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Filing Parties' answer because it provided information that assisted us in our decision making process.

##### B. Commission Determination

18. The Commission finds that the Filing Parties' Tariff proposal complies with the Commission's February 28, 2007 Order. In that order, the Commission held that ISO-NE must ensure "that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation."<sup>27</sup> The proposed tariff language states that a Project Sponsor certifies that an offer from a new generating capacity resource "will not include any anticipated revenues the resource is expected to receive for its capacity costs" pursuant to Schedule 2 of the Tariff.<sup>28</sup> This tariff language addresses the Commission's directive by prohibiting a new generating capacity resource, i.e, the resource capable of setting the Forward Capacity Auction clearing price, from including in its Forward Capacity Auction offer anticipated revenues that it expects to receive as a qualified generator reactive resource under Schedule 2. We find that this provides the necessary certainty that the Forward Capacity Auction payment does not create "double recovery" of costs associated with the capability to provide reactive service.

19. The Joint Protestors argue that the proposed Tariff provision does not comply with the February 2007 Order because it cannot apply to new resources that bid in Forward Capacity Auction years 1-3 (because they have already qualified and bid in the auctions), and probably does not apply to Forward Capacity Auction 4. However, Joint Protestors have not provided any evidence that CC payments were included in bids in the first four

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<sup>25</sup> 18 C.F.R. § 385.214 (2010).

<sup>26</sup> *Id.* § 385.213(a)(2).

<sup>27</sup> February 2007 Order, 118 FERC ¶ 61,163 at Ordering Paragraph (B).

<sup>28</sup> Filing Parties May 12, 2010 Compliance Filing at 10.

Capacity Auctions. As noted by Filing Parties, each of the first three Forward Capacity Auctions has been certified by the ISO's Market Monitor as competitive.<sup>29</sup> The competitive nature of the auctions is further supported by the fact that the clearing prices for each of these Forward Capacity Auctions were below the cost of new entry.<sup>30</sup> With regard to the fourth Forward Capacity Auction, the ISO's Market Monitor commits to work directly with the Commission to address the presence of potential double compensation should the auction be found to be non-competitive and the Forward Capacity Auction clearing price is set by a new VAR-capable resource. Given this lack of any evidence to indicate any type of double recovery occurring in the first four auctions, we decline to require new tariff language as requested by the Joint Protestors.

20. The Joint Protestors also argue that the filing is not in compliance with the February 2007 Order because it applies only to new generators. However, we find that it is unnecessary to require the provision to apply to existing generators. The FCM, by design, provides limited opportunities for existing resources to affect the clearing price in the Forward Capacity Auction. Although existing resources participate in the Forward Capacity Auction and receive auction capacity payments, it is unlikely they will be able to participate in setting the Forward Capacity Auction clearing price -- and accordingly cannot influence the clearing price -- unless the existing resource requests to be removed from the auction by submitting a de-list bid to ISO-NE. Such a bid must be made in advance of the Forward Capacity Auction, and is reviewed by the ISO-NE's Market Monitor. For these reasons, we find that the proposed revisions as limited to new generators are in compliance with the February 2007 Order.

21. We agree with Filing Parties that the Joint Protestors' claim that the market rule revision fails to provide certainty that existing generators are not over-recovering capital costs for a particular generator's equipment is another attempt to assert prior claims that the Forward Capacity Auction-derived capacity payments and the Schedule 2 CC rate are two overlapping revenue streams compensating facilities for the same equipment. The

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<sup>29</sup> Filing Parties June 17, 2010 Answer at 8 (citing *ISO New England Inc.*, Forward Capacity Auction Results Filing, Docket No. ER08-633-000, at 2, 9, 12-13 (filed March 3, 2008) (certifying results of first Forward Capacity Auction); *ISO New England Inc.*, Forward Capacity Auction Results Filing, Docket No. ER09-467-000, at 2, 8-10 (filed Dec. 23, 2008) (certifying results of second Forward Capacity Auction); *ISO New England Inc.*, Forward Capacity Auction Results Filing, Docket No. ER10-186-000, at 3, 9-10 (filed Oct. 30, 2009) (certifying results of third Forward Capacity Auction)).

<sup>30</sup> See *ISO New England Inc.*, 130 FERC ¶ 61,145 (2010); *ISO New England Inc.*, 127 FERC ¶ 61,040 (2009); *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008).

Commission has previously found that, with respect to compensation for reactive service, “if generators are asked to provide additional services including VAR support or regulation, they will be compensated for those services through the appropriate ISO tariff or markets, not through the FCM.”<sup>31</sup> The CC Rate component of reactive service is a negotiated New England-wide rate for all VAR-capable resources that is designed to compensate qualified resources for their VAR capability to provide reactive service, but not for the costs associated with the equipment of a particular generator. Moreover, the CC Rate component is “a negotiated value and is not set equal to, nor is it intended to recover, the cost of service of any particular generating Resource.”<sup>32</sup> The CC Rate component also provides an appropriate financial inducement for qualified resources to invest in additional dynamic VAR capability, which ISO-NE currently relies on to reliably operate the system.<sup>33</sup> The Joint Protestors have provided no new arguments that persuade us to reconsider these prior determinations.

22. Lastly, the Joint Protestors propose two possible alternatives to the proposed tariff revision. However, in a compliance proceeding, the Commission considers only whether the filing complies with the underlying order.<sup>34</sup> As discussed above, we find that Filing Parties filing complies with the February 2007 Order, thereby making the merits of the Joint Protestors’ alternatives immaterial.

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<sup>31</sup>*ISO New England Inc.*, 125 FERC ¶ 61,102, at P 54 (2008) (quoting *ISO New England Inc.*, 119 FERC ¶ 61,239, at P 37 (2007)).

<sup>32</sup> February 2009 Order, 126 FERC ¶ 61,090 at P 42.

<sup>33</sup> *Id.*

<sup>34</sup> *PJM Interconnection, LLC*, 111 FERC ¶ 61,257, at P 14 (2005); *Ameren Services Co. v. Midwest Independent Transmission Service Operator, Inc.*, 131 FERC ¶ 61,210, at P 22 (2010) (explaining that the sole issue in a compliance proceeding is whether the filing satisfies the compliance requirements of the underlying order).

The Commission orders:

The Filing Parties' proposed Tariff provisions are hereby accepted for filing to become effective June 1, 2010.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.