

147 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

ISO New England Inc. and New England Power Pool Docket No. ER13-1877-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued April 29, 2014)

1. On January 17, 2014, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, the Filing Parties) submitted changes to the ISO-NE Transmission, Markets and Services Tariff (Tariff) to comply with the Commission's October 3, 2013 Order.¹ We accept the compliance filing to be effective December 3, 2014, as requested.²

I. Background

2. On July 1, 2013, the Filing Parties submitted proposed changes to the Tariff involving energy market enhancements intended to provide greater flexibility for market participants to structure and modify their supply offers in the day-ahead and real-time markets (Offer Flexibility Changes).

3. The Offer Flexibility Changes will allow market participants to, among other things, modify the cost-related parameters of a supply offer up to 30 minutes prior to the hour during the operating day and submit cost-related parameters of a supply offer that may vary by hour, rather than with the same parameters for all hours of an operating day. Market participants may also submit offers as low as negative \$150/MWh (referred to as the energy offer floor).

¹ See *ISO New England Inc.*, 145 FERC ¶ 61,014 (2013) (October 3, 2013 Order).

² ISO New England Inc., FERC FPA Electric Tariff, ISO New England Inc. Transmission, Markets and Services Tariff, [Appendix A, Appendix A Market Monitoring, Reporting and Market Power Mit, 28.0.0](#).

4. Most relevant here, the Offer Flexibility Changes will provide conforming changes to the mitigation rules contained in Appendix A of the Tariff. For example, the Offer Flexibility Changes require the Internal Market Monitor (IMM) to develop hourly reference levels rather than reference levels that are fixed for an operating day.³ The Appendix A changes also included a fuel price adjustment mechanism that allows market participants to submit updated fuel price expectations for each resource, reflected in the reference levels that are automatically calculated for each resource as part of the market power mitigation structure, without prior review by the IMM. This mechanism is intended to prevent market participants from entering fuel price adjustments as a means to avoid mitigation. For example, if a market participant enters a fuel price adjustment, it must submit documentation verifying that the submitted fuel price is based on a fuel price quote, contract, or price from an electronic trading system. A market participant that fails to submit verification will be excluded (“locked-out”) from submitting fuel price adjustments for the applicable resource for two months following the first failure and six months following the second failure within a 12-month period.

5. On October 3, 2013, the Commission conditionally accepted the Offer Flexibility Changes, subject to ISO-NE submitting revised Tariff records reconciling the proposed Tariff language with ISO-NE’s statements in the proceeding regarding how the IMM would calculate reference levels for locked-out resources. Specifically the Commission directed ISO-NE to specify that the IMM will use updated information to calculate the hourly reference levels for locked-out resources, and to clarify that the IMM will make the hourly reference levels available to individual resources.⁴

II. Compliance Filing

6. The Filing Parties submitted their compliance filing on January 17, 2014. The Filing Parties state that the revised Tariff provisions address the first compliance requirement by clarifying that locked-out market participants may continue to use the consultation provisions in section III.A.3.1 of Appendix A to provide updated fuel price information to the IMM and have their reference levels updated to reflect that

³ The hourly reference levels incorporate fuel price information from market participants. Specifically, reference levels will be calculated using the lower of either a submitted fuel price from a market participant, or a price calculated by the IMM. Participant-submitted fuel price changes for the reference levels will not be reviewed by the IMM prior to submitting the change.

⁴ October 3, 2013 Order at PP 35-36.

information.⁵ In addition, the Filing Parties propose to change the deadline for submitting updated fuel price information pursuant to the consultation process from 6:00 p.m. on the day prior to the operating day to anytime between 8:00 a.m. and 5:00 p.m. during the operating day and at least one hour prior to the close of the next hourly supply offer submittal period.⁶

7. The Filing Parties also submitted revised Tariff provisions specifying that reference levels will be made available to market participants whenever they are calculated.⁷

III. Notice of Filings and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 4685 (2014), with interventions and protests due on or before February 7, 2014.

9. New England Power Generators Association, Inc. (NEPGA) filed a timely motion to intervene and protest. On February 21, 2014, ISO-NE filed an answer, and on February 24, 2014, NEPOOL filed an answer.

A. Comments/Protests

10. NEPGA challenges the proposed Tariff revisions, arguing that they prohibit locked-out resources from seeking a change to an hourly reference level outside of normal business hours,⁸ which NEPGA argues does not comply with the Commission's directive, and is inefficient and punitive to the rest of the competitive market supply. NEPGA asserts that the Commission ordered the IMM to treat locked-out resources and those able to make fuel price adjustments identically with respect to the ability to seek a change to an hourly reference level, and that only the mechanism by which a resource may seek a change to an hourly reference level differs for locked-out resources. NEPGA

⁵ Under section III.A.3.1 of Appendix A, a market participant may consult with the IMM with respect to the information and analysis used to determine reference levels under section III.A.7 of Appendix A.

⁶ Transmittal at 2-3.

⁷ *Id.* at 3. Tariff section III.A.3.3.

⁸ According to ISO-NE, normal business hours are between 8:00 a.m. and 5:00 p.m.

argues that the Commission intended for the IMM to update hourly reference levels for locked-out resources based on real-time, operating day changes in fuel prices without limitation.⁹

11. NEPGA states that the Tariff changes only allow for adjustments for nine hours during the operating day, thereby ignoring the other fifteen hours of the day during which the IMM will not accept any relevant fuel price information that would justify an increase to a locked-out resource's reference level. NEPGA states that, for locked-out resources, stale supply offers could potentially suppress prices and disrupt efficient economic dispatch – resulting in some of the harmful consequences the Offer Flexibility Changes are intended to remedy. NEPGA asserts that the proposed compliance provisions represent an unjust and unreasonable reversion to inflexible hourly supply offers and market inefficiencies.¹⁰

B. Answers

12. In its answer, ISO-NE states that the consultation hours correspond to the hours in which verifiable fuel price information is available. Specifically, ISO-NE states that during normal business hours, the IMM will use real-time trades, bids and offers to verify requests to update reference levels. After the end of the business day, ISO-NE explains, there is virtually no additional real-time information available to the IMM to use to verify requests. ISO-NE notes that there are only two published day-ahead price indices for natural gas, both of which the IMM uses to update the reference levels for all natural gas-fired resources the day before the operating day. ISO-NE states that there is no same-day index for natural gas prices. Thus, ISO-NE explains, any proposed fuel price changes submitted by a locked-out resource after business hours will be based solely on information available to that market participant, which the IMM would not be able to verify. ISO-NE argues that verification is essential for locked-out resources because they previously submitted inaccurate price information, potentially subjecting the market to artificially high prices.¹¹

13. ISO-NE states that the Offer Flexibility Changes and ISO-NE's compliance filing provide market participants a reasonable opportunity to modify their supply offers more

⁹ NEPGA Protest at 4-6.

¹⁰ *Id.* at 6-8.

¹¹ ISO-NE Answer at 5-6.

frequently, while also utilizing market power mitigation to ensure that electricity prices reflect competitive outcomes. ISO-NE further states that the proposed provisions do not prevent market participants, even those that are locked-out, from submitting competitive offers or from having an opportunity to recover their costs. ISO-NE notes that if a locked-out market participant's offers are significantly higher than other offers, then they may be mitigated, whereas if that market participant's offers are consistent with the offers submitted by other market participants, they are unlikely to be mitigated.¹² ISO-NE argues that such mitigation is appropriate for offers that do not appear to reflect market conditions, and it is necessary to protect the integrity of the market.¹³ ISO-NE contends that its proposal provides ample opportunity for market participants to reflect legitimate fuel cost expectations in the reference levels associated with their resources and to avoid inappropriate mitigation.¹⁴

14. In its answer, NEPOOL explains that, in response to NEPGA's concerns in the stakeholder process, the IMM explained that it intended to be flexible in applying the rules regarding the lock-out provisions, but it does not have sufficient staff on call or available information after 5:00 p.m. to make a decision on whether to allow an hourly reference level change. NEPOOL also states that the stakeholder vote in favor of ISO-NE's compliance filing suggests that NEPOOL members accepted the IMM's explanation that information outside of business hours would not be sufficiently robust to permit an immediately informed view as to whether to accept fuel price adjustments above the identified threshold. NEPOOL notes that some members indicated that they were comforted by the IMM's assurance that it would take into account that market pricing information outside the 8:00 a.m. to 5:00 p.m. window was very limited and would be flexible in accepting such limited information in lieu of locking out resources.¹⁵

¹² *Id.* at 6-7.

¹³ *Id.* at 7. ISO-NE notes that, even if an offer is mitigated, a market participant still has the opportunity under section III.A.15 of the market rules to seek recovery of actual fuel or other costs that the market participant did not recover due to mitigation. *Id.*

¹⁴ ISO-NE Answer at 7.

¹⁵ NEPOOL Answer at 5.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), NEPGA's timely, unopposed motion to intervene serve to make it a party to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's and NEPOOL's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

17. We accept the Filing Parties' compliance filing to become effective December 3, 2014, for the reasons discussed below.

18. In the October 3, 2013 Order, the Commission accepted the Filing Parties' Offer Flexibility Changes subject to two conditions, specifically that (1) the IMM calculate the reference levels for locked-out resources based on updated information; and (2) the IMM make the hourly reference levels available to individual resources. NEPGA argues that the proposed Tariff revisions do not comply with the Commission's first condition – that ISO-NE must specify that the IMM will use updated information to calculate the hourly reference levels for locked-out resources – because it does not allow locked-out resources to change hourly reference levels outside of normal business hours. NEPGA claims that the Commission intended for the IMM to update hourly reference levels for locked-out resources based on real-time, operating day changes in fuel prices without limitation. We disagree.

19. The October 3, 2013 Order required ISO-NE to reconcile inconsistencies between what ISO-NE stated in its filing and the proposed Tariff language. Specifically, with respect to the first condition, the October 3, 2013 Order noted that ISO-NE's answer indicated that the IMM would calculate reference levels for locked-out resources based on a published day-ahead fuel price index but that the proposed Tariff provisions did not specifically state that the IMM would use a day-ahead price index rather than real-time (or operating day) price information. The Commission went on to find that, because the IMM will be calculating hourly reference levels that incorporate updated information, the IMM also should calculate the Reference Levels for locked-out resources based on updated information, instead of using the day-ahead price index. The October 3, 2013 Order did not require the IMM to begin calculating reference levels outside of business hours.

20. We agree with ISO-NE that because there is not sufficient real-time market information available outside normal business hours, the IMM would be unable to verify locked-out resources' requests to change reference levels during those hours. Thus, even if the IMM were to allow locked-out market participants to request a change in reference levels outside of business hours, it would be unable to verify those requests. Moreover, because the fuel price adjustment mechanism provides market participants with the latitude to increase a resource's reference level without prior review, it is reasonable for a market participant to be subject to a lock-out period if the IMM determines that the participant submitted a fuel price adjustment that it cannot substantiate or justify. As we stated in the October 3, 2013 Order, "[t]he lock-out provisions are intended to incentivize market participants to submit fuel price adjustments for their Reference Levels only when there is a reasonable explanation or documentation supporting the adjustment."¹⁶

21. Further, the revisions submitted here clarify that market participants may continue to use the consultation process described in section III.A.3.1 of Appendix A to provide updated information to the IMM. The IMM will update the reference levels to reflect that information during normal business hours. Moreover, the Tariff revisions make changes to the deadline for the consultation process described in section III.A.3.1 of Appendix A to provide updated information to the IMM, which will update the reference levels to reflect that information during normal business hours. By changing the deadline from 6:00 p.m. on the day prior to the operating day to anytime between 8:00 a.m. and 5:00 p.m. during the operating day and at least one hour prior to the close of the next hourly supply offer submittal period, the Tariff revisions provide locked-out market participants with significant additional flexibility to submit updated fuel price information.

22. With respect to the second compliance condition, the Tariff revisions specifically provide that updated reference levels will be made available to resources whenever calculated, as opposed to daily, which also complies with the October 3, 2013 Order's requirement.

¹⁶ October 3, 2013 Order at P 34.

The Commission orders:

The Commission hereby accepts the Filing Parties' compliance filing to become effective on December 3, 2014, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.