

153 FERC ¶ 61,338
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

ISO New England Inc.

Docket Nos. EL16-15-000

ISO New England Inc.
New England Power Pool Participants Committee

ER14-1639-000
(Not Consolidated)

ORDER INSTITUTING SECTION 206 PROCEEDING

(Issued December 28, 2015)

1. In this order, we find that ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff) is unjust, unreasonable, unduly discriminatory or preferential because it applies vertical demand curves within constrained zones, which does not sufficiently address concerns such as price volatility and a susceptibility to the exercise of market power as part of its Forward Capacity Market (FCM) rules. Accordingly, to address these concerns, we institute a proceeding in Docket No. EL16-15-000 pursuant to section 206 of the Federal Power Act (FPA)¹ to require ISO-NE to submit Tariff revisions by March 31, 2016 that provide for inclusion of zonal sloped demand curves in its FCM rules, to be implemented beginning with the eleventh Forward Capacity Auction (FCA or auction) (FCA 11).

2. This order also dismisses the New England Power Generators Association, Inc.'s (NEPGA) June 22, 2015 Motion for Clarification and Request to Direct Compliance submitted in Docket No. ER14-1639-000.

¹ 16 U.S.C. § 824e (2012).

I. Background

3. By order issued January 24, 2014, the Commission directed ISO-NE to submit a sloped demand curve for use in the FCM by April 1, 2014, to allow sufficient time for implementation prior to the ninth FCA (FCA 9).² The directive was based on ISO-NE's commitment to file a sloped demand curve that would eliminate the need for administrative pricing rules that result in different prices for new and existing capacity, during periods of insufficient competition and inadequate supply.

4. On April 1, 2014, ISO-NE filed a proposal for a system-wide sloped demand curve, which eliminated the need for administrative pricing at the system-wide level. However, ISO-NE stated that time constraints prevented it from developing sloped demand curves for its constrained zones (zonal sloped demand curves) in time for FCA 9. ISO-NE stated its intention to complete the work required in order to implement sloped demand curves at the zonal level for the tenth FCA (FCA 10).³

5. By order issued May 30, 2014, the Commission accepted, subject to condition, ISO-NE's proposed system-wide sloped demand curve, finding that at that time, it represented an important improvement to the FCM.⁴ However, the Commission noted ISO-NE's commitment to develop zonal sloped demand curves to be in place for FCA 10. As the Commission stated, "[w]e expect [ISO-NE] to submit these zonal demand curve changes by January 2, 2015, to allow sufficient time for review, approval and implementation for FCA 10."⁵

6. On December 2, 2014, in Docket No. ER14-1639-000, the proceeding in which the Demand Curve Changes Order issued, ISO-NE filed an update regarding its progress in developing zonal sloped demand curves. It stated that, while it had made substantial progress, it would not be able to meet the Commission's January 2, 2015 filing deadline,

² *ISO New England Inc.*, 146 FERC ¶ 61,038, at P 30 (2014) (January 24, 2014 Order).

³ *ISO New England Inc. and New England Power Pool*, April 1, 2014 Demand Curve Changes Tariff Revisions filing at 2-3.

⁴ *ISO New England Inc.*, 147 FERC ¶ 61,173, at P 29 (2014) (Demand Curve Changes Order); *reh'g denied*, 150 FERC ¶ 61,065 (2015).

⁵ *Id.* P 41.

but it continued to hope that zonal sloped demand curves could be filed and put in place prior to FCA 10.⁶

7. Also of relevance here, in an order issued January 30, 2015 in a separate proceeding, the Commission addressed continued challenges to ISO-NE's administrative pricing rules at the zonal level. In response to those concerns, the Commission reiterated its expectation that ISO-NE would have zonal sloped demand curves in place for FCA 10.⁷ However, it declined to direct ISO-NE to file zonal sloped demand curves in time for FCA 9, noting ISO-NE's representation in its December 2, 2014 informational report that "the stakeholder process [was] well underway."⁸

8. Nearly five months later, on May 18, 2015, ISO-NE submitted another report in Docket No. ER14-1639-000, stating that it would not be able to submit zonal sloped demand curves in time for FCA 10. ISO-NE noted that a preliminary design that its stakeholders had considered and rejected was inadequate by several measures and might not have achieved reliability and price volatility objectives under varied zonal configurations, including configurations for FCA 10. ISO-NE stated that "due to significant complexities associated with analyzing the interaction of the system-wide and zonal demand curves and the dynamic nature of the annual process for updating capacity zones,"⁹ ISO-NE intends to defer any zonal demand curve changes for FCA 10 and "work toward developing robust improvements that will function under a broad range of potential system and market conditions."¹⁰ ISO-NE committed to filing a further progress report no later than October 31, 2015.

9. On June 22, 2015, NEPGA filed a motion in Docket No. ER14-1639-000 requesting that the Commission clarify that it relied on ISO-NE's commitment to file zonal sloped demand curves when it accepted the system-wide sloped demand curve. NEPGA asserts that ISO-NE failed to show that the preliminary zonal sloped demand curve design that stakeholders rejected will not address ISO-NE's resource adequacy

⁶ ISO New England Inc., Dec. 2, 2014 Informational Report on Progress Toward Developing Zonal Demand Curves.

⁷ *Id.*

⁸ *ISO New England Inc.*, 150 FERC ¶ 61,066, at P 12 (2015) (order on rehearing regarding revisions the administrative pricing provisions of the FCM rules).

⁹ ISO-NE May 18, 2015 Informational Report at 3-4.

¹⁰ *Id.* at 4.

concerns. NEPGA requests that the Commission initiate a section 206 proceeding directing ISO-NE to file, in time for FCA 10, a modified version of that proposal, which reflects additional revisions NEPGA proposes in its motion.¹¹ On July 2, 2015, ISO-NE filed an answer to NEPGA's motion, asserting that the motion should be rejected on procedural grounds as an improperly filed and deficient complaint. ISO-NE also challenges the motion on substantive grounds, reiterating the information contained in its May 18, 2015 informational report regarding the delays it has experienced in developing zonal sloped demand curves.¹²

10. On October 30, 2015, ISO-NE filed a third report in Docket No. ER14-1639-000 updating the Commission on its progress toward developing zonal sloped demand curves. ISO-NE stated that, after additional evaluation, it has developed a conceptual proposal to use its full-scale reliability planning simulation system to develop zonal sloped demand curves for each FCA on an annual basis. Under this approach, ISO-NE would conduct the annual simulation process according to a consistent set of design principles reflecting reliability, sustainability, and cost-effectiveness. ISO-NE stated that it presented this conceptual approach to stakeholders in early October and intends to provide further details, including quantitative and qualitative analyses, over the next few months. ISO-NE stated that it expects stakeholders to consider a final proposal in April 2016 and anticipates making a Commission filing shortly thereafter; however, ISO-NE notes that this schedule is tentative and could be lengthened by issues that arise during the stakeholder process.¹³

II. Discussion

11. We find that ISO-NE's Tariff is unjust, unreasonable, or unduly discriminatory or preferential because ISO-NE applies vertical demand curves within constrained zones, which does not sufficiently address concerns such as price volatility and a susceptibility to the exercise of market power. Accordingly, we institute a proceeding in Docket No. EL16-15-000, pursuant to section 206 of the FPA, to require ISO-NE to submit

¹¹ New England Power Generators Association, Inc., June 22, 2015 Motion for Clarification and Request to Direct Compliance (NEPGA Motion). We note that the

Motion was filed in Docket No. ER14-1639-000, but was incorrectly captioned as Docket No. ER14-1639-002.

¹² ISO New England Inc., July 2, 2015 Answer of ISO New England.

¹³ ISO New England Inc., Oct. 30, 2015 Informational Report on Progress Toward Developing Zonal Demand Curve Improvements.

Tariff revisions by March 31, 2016 that provide for inclusion of zonal sloped demand curves in its FCM rules, to be implemented beginning with FCA 11.

12. As the Commission explained in the Demand Curve Changes Order, issued nearly a year ago, the use of vertical demand curves in the FCM presents challenges such as increased price volatility and a susceptibility to the exercise of market power.¹⁴ When vertical demand curves are used, even small increases or decreases in supply can result in large changes in price, because a fixed amount of capacity must be procured. In addition, because a small decrease in supply can lead to a significantly higher price, sellers may have an incentive to withhold certain resources. Further, given the shift in New England's capacity supply in recent years, as noted in the Commission's January 24, 2014 Order on administrative pricing,¹⁵ it is even more important to ensure that the market produces accurate price signals.

13. While the Commission in the Demand Curve Changes Order accepted ISO-NE's system-wide demand curve as an improvement to ISO-NE's then-existing Tariff and has previously rejected calls to direct ISO-NE to submit zonal sloped demand curves, the Commission did so considering the practical challenges of immediately implementing zonal sloped demand curves, as explained by ISO-NE in its pleadings. The Commission at that time determined that, on balance, it was just and reasonable to allow ISO-NE to delay implementing zonal sloped demand curves until FCA 10 because the system-wide sloped demand curve changes would begin to address the identified concerns, and because it would be administratively difficult to implement zonal sloped demand curves for FCA 9. However, the Commission remained cognizant of the foregoing concerns and, as noted above, the Commission has monitored ISO-NE's progress and remarked in various orders its expectation that ISO-NE would submit zonal sloped demand curves by January 2, 2014. Now, nearly a year after that date, and nearly a year and a half after the Commission first stated its expectation that ISO-NE would file zonal sloped demand curves, ISO-NE still has not filed with the Commission to incorporate the use of sloped demand curves for the constrained zones.¹⁶

14. While ISO-NE continues to explain its delay in developing zonal sloped demand curves, ISO-NE does not dispute the general benefits of implementing zonal sloped demand curves. The continued delay creates uncertainty for market participants and the

¹⁴ Demand Curve Changes Order, 147 FERC ¶ 61,173 at P 29 (citing January 24, 2014 Order, 146 FERC ¶ 61,038)).

¹⁵ January 24, 2014 Order, 146 FERC ¶ 61,038 at P 26.

¹⁶ See, e.g., *id.* at PP 29, 56, 83.

continued use of vertical demand curves in constrained zones results in less efficient markets and affects confidence in market outcomes. Accordingly, the general challenges cited by ISO-NE do not justify further delay.

15. Based on the foregoing, we find that concerns with continued use of vertical demand curves weigh more heavily than they did a year ago. Specifically, we find that ISO-NE's Tariff is unjust, unreasonable, unduly discriminatory or preferential because it applies vertical demand curves within constrained zones, which does not sufficiently address price volatility and susceptibility to the exercise of market power.

16. Therefore, pursuant to section 206 of the FPA, we direct ISO-NE to submit Tariff revisions by March 31, 2016 providing for zonal sloped demand curves to be implemented beginning in FCA 11.

17. Given our directives in this order, we dismiss NEPGA's June 22, 2015 motion. NEPGA will have the opportunity to raise concerns when ISO-NE submits its zonal sloped demand curves proposal.

The Commission orders:

(A) Pursuant to section 206 of the Federal Power Act, by March 31, 2016, ISO-NE must submit Tariff revisions that provide for zonal sloped demand curves to be implemented beginning in FCA 11, as discussed in the body of this order.

(B) Any interested person desiring to be heard in Docket No. EL16-15-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2015)) within 21 days of the date of issuance of this order.

(C) NEPGA's Motion for Clarification and Request to Direct Compliance is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.