

157 FERC ¶ 61,238
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Maine Independent Administrator, Inc.

Docket No. ER17-192-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF AMENDMENT
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 22, 2016)

1. Northern Maine Independent System Administrator, Inc. (NMISA) filed an amendment to Market Rule 10 in its Tariff regarding the use of certain resources in meeting capacity obligations.¹ In this order, we accept NMISA's proposed amendment of its Open Access Transmission Tariff (Tariff), subject to refund, suspend it for a nominal period, to become effective November 1, 2016, as requested, and establish hearing and settlement judge procedures.

I. Background

2. NMISA states that it is a Commission-approved independent system administrator and regional transmission group that encompasses the transmission system of all Commission-jurisdictional and non-jurisdictional utilities in the northernmost and easternmost part of the State of Maine, located in portions of Aroostook, Washington, and Penobscot Counties (Northern Maine).²

3. NMISA explains that the electric transmission system in Northern Maine is not directly interconnected with the rest of New England or any other domestic electric system. Thus, NMISA points out that its market participants are not subject to ISO New England Inc.'s (ISO-NE) jurisdiction and do not participate in the New England Power Pool. NMISA states that Northern Maine's only access to the transmission system

¹ Northern Maine Independent System Administrator, Inc., Northern Maine Market Rules, NMMR #10, Capacity Obligations (1.0.0).

² NMISA Transmittal Letter at 1.

that serves the remainder of New England is through the transmission facilities of New Brunswick Power Corporation, and that NMISA is part of the New Brunswick Balancing Authority Area.³

II. NMISA's Filing

4. NMISA states that this filing makes a discrete change to the capacity obligations in Northern Maine outlined in Market Rule 10. NMISA states that the current version of Market Rule 10.2(d) outlines a deliverability-assurance requirement for resources outside of the Northern Maine transmission system in order to provide eligible unforced capacity. NMISA asserts that this requirement used to be necessary due to a transmission constraint between Northern Maine and New Brunswick and the fact that, absent reasonable assurance of deliverability from New Brunswick, a resource located outside Northern Maine could not be depended upon to meet the capacity obligation. However, NMISA states that an application to replace and upgrade the Tinker transformer (Tinker upgrade) located at the New Brunswick-Northern Maine interface was accepted on September 25, 2015, and, as a result of this upgrade, the interface will no longer be constrained. Therefore, according to NMISA, there will no longer be any need for market participants to make a specific showing of deliverability for a resource located outside Northern Maine but within the New Brunswick Balancing Authority Area, because there will be assurance that transmission service will be available over the unconstrained interface.⁴

III. Notice of Filing and Responsive Pleadings

5. Notice of NMISA's filing was published in the *Federal Register*, 81 Fed. Reg. 76,343 (2016), with interventions and protests due on or before November 17, 2016. The Maine Public Utilities Commission (Maine Commission) and The Maine Office of the Public Advocate (Public Advocate) filed notices of intervention. ReEnergy Biomass Operations LLC (ReEnergy) filed a notice of intervention and a protest.

6. Public Advocate filed comments, and NMISA and Maine Commission filed answers to ReEnergy's protest. ReEnergy submitted an answer to these answers and comments.

³ *Id.*

⁴ *Id.* at 2-3.

7. Houlton Water Company, Van Buren Light and Power District, Eastern Maine Electric Cooperative, Inc., and Louisiana-Pacific Corporation (collectively, Maine Customer Group) filed an out-of-time motion to intervene and comment.

A. Protest

8. ReEnergy states that NMISA has failed to show if and when proposed transmission system upgrades would eliminate the constraints that are the basis for the current restriction, or how capacity in other parts of the New Brunswick Balancing Authority Area can be assumed to be fully deliverable to the Northern Maine Transmission System.⁵ ReEnergy further states that permitting competitive electricity providers in Northern Maine to rely on capacity in the New Brunswick Balancing Authority Area, without requiring deliverability assurances, could jeopardize and distort locational price signals.⁶

9. ReEnergy claims that there is no evidence that the Tinker upgrade will provide assurance that transmission service will be available over the unconstrained interface. Further, ReEnergy claims that NMISA does not disclose if the Tinker upgrade has been completed or, if not, provide an explanation of when the upgrade will be completed and why it would be just and reasonable to eliminate the deliverability-assurance requirement prior to such completion. ReEnergy contends that, absent a showing that the Tinker upgrade is in place, at a minimum the filing should be rejected as premature.⁷ ReEnergy further argues that, even assuming completion of the upgrade, there is no evidence presented that it would be appropriate to treat the New Brunswick-Northern Maine interface as completely unconstrained. Therefore, ReEnergy concludes that the filing should be rejected because it fails to show that the interface will be unconstrained.⁸

10. ReEnergy contends that NMISA's erroneous assumptions could have severe reliability consequences and result in incorrect price signals if transmission constraints are not properly recognized.⁹ ReEnergy states that the Northern Maine market is relatively small with a limited number of in-region resources and limited interconnection

⁵ ReEnergy Protest at 1.

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

⁸ *Id.* at 2-3.

⁹ *Id.* at 4-5.

capacity with New Brunswick and, therefore, any one market participant in violation of capacity obligations can threaten system reliability and impose cost on all other market participants. Furthermore, ReEnergy avers that NMISA acknowledges in its filing that the deliverability-assurance requirement is based on the recognition that, without reasonable assurance of deliverability from New Brunswick, a resource located outside Northern Maine could not be depended upon to meet the capacity obligation.

11. ReEnergy alleges that, even with the assumed completion of the Tinker upgrade, up to approximately 140 MW of load in Northern Maine could be reliant on 98 MW of available transmission capacity from New Brunswick to the Northern Maine Transmission System.¹⁰ ReEnergy states that in approving the Tinker upgrade the New Brunswick Energy and Utilities Board expressly recognized that the upgrade was required to support the existing 74 MW of firm reservations and that the current capacity of 74 MW on the interface is fully subscribed. ReEnergy contends that the Tinker upgrade would only result in 24 MW of increased firm additional transmission capacity.¹¹

12. ReEnergy also contends that NMISA's proposal would result in undue discrimination against resources in other balancing authority areas like those in the ISO-NE region, which would continue to have to satisfy the deliverability-assurance requirement in order to be deemed eligible to provide capacity.¹²

13. ReEnergy maintains that rejecting the filing would help preserve reliability without unreasonably disadvantaging or burdening any market participant. ReEnergy further states that, even if the Tinker upgrade eliminates the constraint, it should be easy—and certainly not an unreasonable burden—for market participants to show that they have the firm transmission arrangements necessary to comply with the deliverability-assurance requirements.¹³

B. NMISA's Answer

14. NMISA responds that, while Market Rule 10 was added in 2007, NMISA had been enforcing capacity obligations since its inception in 2000. NMISA explains that Market Rule 10 was added to make explicit the capacity obligations after a competitive

¹⁰ *Id.* at 6.

¹¹ *Id.* at 3-4.

¹² *Id.* at 6-7.

¹³ *Id.* at 7.

electricity provider failed to back the energy it used to serve native load in Northern Maine with adequate generating capacity.¹⁴ NMISA notes that it will continue to exercise its authority under the Tariff to ensure that the Northern Maine Transmission System has, at all times, adequate transmission and generation capacity to satisfy the NMISA reliability standards, which are consistent with the applicable standards set by the North American Electricity Reliability Corporation (NERC) and the Northeast Power Coordinating Council (NPCC).¹⁵

15. NMISA maintains that ReEnergy desires to maintain the unnecessary deliverability-assurance condition in order to gain a competitive advantage for its own generation units, not for the reliability consequences ReEnergy alleges. NMISA states that ReEnergy's assertions about reliability have no basis in fact.¹⁶ NMISA contends that the specific deliverability-assurance condition will no longer be necessary because the Tinker upgrade and Line 691 rebuild will enable the Northern Maine Transmission System to meet its N-1 obligation without relying on Reliability Must Run contracts.¹⁷

16. NMISA points out that ReEnergy is aware, notwithstanding its argument, that the Tinker upgrade has not yet been completed. NMISA states that, based on current estimates, the upgrade could be completed as early as January 2017, but it may not be placed in service until spring 2017 in order to avoid the need to disrupt service during the winter capability period.¹⁸ NMISA contends that it would be just and reasonable to eliminate the deliverability-assurance requirement prior to the completion, because ReEnergy's generating units in Northern Maine have already been committed as capacity resources for the NMISA's 2016-2017 winter capability period. NMISA elaborates that the combination of this in-region capacity and the current New Brunswick-Northern Maine interface transfer capability is more than adequate to meet the Northern Maine region's capacity requirements until the Tinker upgrade is placed into service.¹⁹

¹⁴ NMISA Answer at 2.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

17. NMISA takes issue with ReEnergy's data. It states that, while ReEnergy contends that there is 140 MW of load in Northern Maine, ReEnergy erroneously includes Eastern Maine Electric Cooperative, which is not connected to New Brunswick via the subject Emera Maine-New Brunswick interface, and, therefore, should not be counted. NMISA further states that the relevant load for the summer 2016 capability period was 102 MW and the total Emera Maine capacity requirement for that period, including the reserve margin was 124 MW. Counting the Tinker upgrade, NMISA states that the total transfer capability from New Brunswick to Northern Maine at the subject interface during the summer period will be 129 MW.²⁰ Moreover, NMISA states that, after additional changes contemplated for 2017, the total transfer capability at the interface would have no limit, given a studied load level of 105 MW.²¹

18. NMISA also states that ReEnergy's implicit assumption that the transmission system, and in particular its interfaces, should be planned based on no generation being interconnected to the transmission system and that 100 percent of the load must be capable of being served through transmission imports is unrealistic. NMISA elaborates that Northern Maine currently has 176.9 MW of in-region generating capacity, and it is not realistic that all of the 16 generating facilities would be unavailable at the same time.²²

19. NMISA states that it does not propose to eliminate the requirement for all balancing authority areas, because while NMISA has direct knowledge that the Northern Maine-New Brunswick interface will be unconstrained as a result of a specific upgrade, it does not have similar knowledge with respect to other interfaces, nor does NMISA have any control of the dispatch facilities outside the New Brunswick Balancing Authority Area. Further, NMISA states that ReEnergy has provided no evidence that other interfaces are similarly unconstrained or that resources in other balancing authority areas are otherwise similarly situated to those in New Brunswick.²³

20. NMISA argues that ReEnergy's claim that the requirement is not an unreasonable burden ignores the adverse consequences of imposing a firm transmission mandate where none is needed. NMISA states that if it were to maintain the requirement, market

²⁰ *Id.* at 6.

²¹ *Id.*, Attachment 1.

²² *Id.* at 7.

²³ *Id.* at 8.

participants would have an incentive to acquire and hoard firm transmission capacity, thereby preventing other resources from effectively participating in the market.²⁴

C. Additional Answers

21. Maine Commission states that the Commission should defer to NMISA, since NMISA is the entity charged with ensuring that the Northern Maine Transmission System has adequate transmission and generation capacity to satisfy applicable reliability standards. Further, Maine Commission explains that, despite ReEnergy's complaint that the proposed amendment would result in undue discrimination against resources in other balancing areas such as ISO-NE, retaining the firm transmission requirement would provide an advantage to NMISA resources through the required purchase from NMISA suppliers, such as ReEnergy. Maine Commission concludes that such an outcome would reduce competition among supply resources and would have an adverse impact on consumers as well as the market in the long-term.²⁵

22. Maine Commission states that it accepted a standard offer bid for service beginning November 1, 2016, for Emera Maine, which included a fixed price for the first seven months and a 31-month extension term that is contingent on the Commission's approval of this filing, prior to March 31, 2017. In Maine Commission's view, the Commission's approval is critical to the provision of standard offer service under the bid accepted by the Maine Commission.²⁶

23. Maine Customer Group states that it repudiates ReEnergy's claim that it is not an unreasonable burden for market participants to comply with the requirement, even if it is no longer necessary. Maine Customer Group explains that the requirement carries with it a cost for generation capacity that effectively increases the cost of energy from resources outside of the Northern Maine Transmission System. Maine Customer Group alleges that ReEnergy is in position as supplier of such generation capacity to directly affect the cost that market participants would have to absorb. Maine Customer Group concludes that, if that cost can be eliminated, additional resources may be able to supply more competitively priced energy, to the benefit of all electric consumers in Northern Maine.²⁷

²⁴ *Id.* at 8-9.

²⁵ Maine Commission Answer at 5-6.

²⁶ *Id.* at 4.

²⁷ Maine Consumer Group Answer at 5.

24. Public Advocate states that, due to the impending upgrade, the interface will no longer be constrained, and thus, the requirement is no longer needed. Public Advocate contends that, given this increase in the transfer capacity, Market Rule 10 would impede competition to Northern Maine. In Public Advocate's opinion, the proposed amendment would allow resources within New Brunswick to avoid an incremental transmission reservation cost, which would reduce their total energy costs, thereby benefiting customers in Northern Maine.²⁸ Public Advocate states that it fully supports NMISA's original filing and subsequent answer.²⁹

D. Answer to Answers

25. ReEnergy argues that NMISA's answer still does not provide any evidence that the interface is in fact unconstrained.³⁰ ReEnergy contends that there is no Market Rule prohibiting ReEnergy and the purchaser of its capacity from agreeing to terminate that capacity commitment, thereby allowing the buyer to rely on other resources, including external resources, to satisfy its capacity obligations.³¹ Further, ReEnergy claims that, if NMISA's contention that there is no need for external capacity for the winter of 2016-2017 were true, then there would also be no need to implement the proposed Market Rules change for the winter of 2016-2017. ReEnergy asserts that NMISA's real motivation for the proposal is due to Maine Commission agreeing to a standard bid contingent on the Commission's acceptance of the proposed Market Rule 10 by March 31, 2016.³²

26. ReEnergy states that, in reference to the engineering study that NMISA presented, NMISA cites only the Total Transfer Capability (TTC), rather than considering the Transmission Reliability Margin (TRM). ReEnergy states that both the Commission and NERC have recognized that TRM represents the amount of transmission transfer capability necessary to ensure that the interconnected transmission network will be secure under a reasonable range of uncertainties in system conditions. ReEnergy alleges that there will only be 110 MW (129 MW TTC minus 19 MW TRM) of reliable transfer capability during the summer period and 112 MW (116 MW TTC minus 4 MW TRM) of

²⁸ Public Advocate Answer at 2.

²⁹ *Id.* at 3.

³⁰ ReEnergy Answer to Answer at 2.

³¹ *Id.* at 4.

³² *Id.*

reliable transfer capability during the winter period. ReEnergy concludes that, even using NMISA's capacity requirements of 124 MW in the summer and 118 MW in the winter, there is inadequate reliable transfer capability to assume that Northern Maine's capacity requirements can be satisfied using resources in other parts of the New Brunswick Balancing Authority Area.³³

27. ReEnergy contends that NMISA and Maine Commission erroneously suggest that there does not need to be adequate transfer capability from New Brunswick to Northern Maine to cover the entire capacity requirement because Northern Maine can rely on in-region generation. ReEnergy argues that the 176.9 MW that NMISA is referring to appears to include facilities that NMISA itself has elsewhere recognized as being retired. ReEnergy further contends that the fact that there is in-region generation does not mean that NMISA can rely on such generation to the extent that resources on the other side of the New Brunswick-Northern Maine interface are not deliverable, particularly when resources in NMISA have the option to commit capacity to other markets.³⁴ ReEnergy states, as NMISA acknowledges,³⁵ one of ReEnergy's units has already committed to ISO-NE for 2018-2020, and the other unit is committed to ISO-NE for 2019-2020.³⁶ ReEnergy states that is disingenuous for NMISA and the Maine Commission to suggest that in-region generation can be relied upon to backstop undeliverable external generation when resources in NMISA have the option to commit their capacity to other markets.³⁷

28. ReEnergy asserts that NMISA's references to current load, expected near-term transfer capability, and in-region capacity simply seek to obfuscate the fact that the actual tariff language includes no such limitations. Further, ReEnergy claims that the Market Rule would allow 100 percent of the load in Northern Maine to be served at the same time from resources on the New Brunswick side of the New Brunswick-Northern Maine interface.³⁸

³³ *Id.* at 5.

³⁴ *Id.* at 6.

³⁵ NMISA Answer at 5.

³⁶ ReEnergy Answer to Answer at 6.

³⁷ *Id.*

³⁸ *Id.* at 7.

29. ReEnergy asserts that these answers ignore the fact that promoting competition does not justify or require giving short shrift to reliability. ReEnergy states that respecting actual transmission constraints is essential to ensuring that competitive markets work efficiently and produce appropriate price signals.³⁹

IV. Discussion

A. Procedural Matters

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴⁰ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Further, we will grant the unopposed motion to intervene out-of-time and comments in support filed by Maine Customer Group given its interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.⁴¹ We accept NMISA's, Maine Customer Group's, Maine Commission's, Public Advocate's, and ReEnergy's answers because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

32. We find that NMISA's proposed Tariff amendment raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

33. Our preliminary analysis indicates that NMISA's proposed amendment to the deliverability-assurance requirement in Market Rule 10 of its Tariff has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Moreover, NMISA has not demonstrated that the Tinker upgrade located at the New Brunswick-Northern Maine interface will relieve the constraint at this interface, or that capacity located inside and outside of the Northern Maine Transmission System is capable of meeting Northern Maine's peak load capacity

³⁹ *Id.*

⁴⁰ 18 C.F.R. § 385.214 (2016).

⁴¹ *Id.* § 385.213(a)(2).

requirements before and after the Tinker upgrade. Accordingly, we will accept NMISA's proposed Tariff amendment for filing, subject to refund, suspend it for a nominal period, to become effective November 1, 2016, as requested, and establish hearing and settlement judge procedures.⁴²

34. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁴³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁴⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) NMISA's proposed Tariff amendment is hereby accepted for filing and suspended for a nominal period, to become effective November 1, 2016, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning NMISA's proposed Tariff amendment.

⁴² We will waive the Commission's 60-day prior notice requirement. *Id.* § 35.3.

⁴³ *Id.* § 385.603.

⁴⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The commission's website contains a list of Commission judges available for settlement. Proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2016), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.