

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

ISO New England Inc.

Docket Nos. ER06-647-000
ER06-647-001

ORDER ACCEPTING CHANGES TO FINANCIAL ASSURANCE/BILLING
POLICIES

(Issued April 17, 2006)

1. In this order, we accept proposed amendments (Amendments) filed on February 16, 2006 (February 16 Filing), by ISO New England Inc. (ISO or ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (jointly, Filing Parties) to the ISO Financial Assurance Policy for Market Participants, the ISO Financial Assurance Policy for Non-Market Participant Transmission Customers, the ISO Financial Assurance Policy for Non-Market Participant FTR (Financial Transmission Rights) Customers and Non-Market Participant Demand Response Providers (collectively, the Policies), and the ISO Billing Policy (Billing Policy).

Background

2. The Filing Parties state that these proposed amendments will provide NEPOOL, its Participants and ISO-NE with greater assurance that payments owed will be received as and when due. The Policies do this by establishing commercially reasonable financial assurance and credit review procedures, pre-approving certain forms of collateral as acceptable forms of financial assurance, defining the conditions under which the ISO conducts business to avoid the possibility of failure of payment, and minimizing the impact on all covered entities of payment defaults. Further, the Policies define the operating procedures through which the ISO will notify Market Participants and Non-Market Participants of the amounts due to them or from them under the ISO tariff, define the method by which such payments will be made and the timing for those payments, outline the steps that the ISO can take to attempt to recover past due amounts, and define how the ISO will make up for any shortfall of funds if such recovery attempts fail.

According to the Filing Parties, the Policies respond to the Commission's Policy Statement on Credit-related Issues¹ (Policy Statement) by, inter alia, clarifying the Policies so as to enhance customers' understanding and compliance, memorializing certain internal ISO processes to make the calculation of financial assurance more transparent, providing a new secure, web-based user interface to permit customers to actively monitor their financial and collateral positions, and shortening the settlement period by shortening the time for customers to pay invoices from four to three business days. Also included in the amendments are changes designed to better align requirements of the Policies with the actual risks of virtual traders.

3. The Filing Parties note that the proposed amendments are scheduled to be implemented in three phases (Tiers 0, 1, and 2), beginning on April 17, 2006, with the final phase being implemented on or after October 1, 2006. The Parties state that they will provide thirty (30) days' notice before actual implementation of Tiers 1 and 2. On March 17, 2006, ISO-NE gave notice that, contingent on their acceptance by the Commission, the Tier 1 changes will become effective on April 17, 2006.

Notice of the Filing and Responsive Pleading

4. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 11193 (2006), with comments, protests, and interventions due on or before March 16, 2006. A joint motion to intervene was filed by Mirant Energy Trading, L.L.C., Mirant Canal, LLC, and Mirant Kendall, LLC. The Northeast Utilities Companies (NU), by their agent Northeast Utilities Service Company (NUS), and Select Energy, Inc. (Select Energy) on its own behalf filed a motion to intervene. DC Energy, LLC filed comments in support of the filing, and BOC Energy Services, Inc. (BOCES) filed a motion to intervene and limited protest.

5. On March 23, 2006, the Commission issued a deficiency letter requesting that ISO-NE provide additional information on its February 16 Filing to assist the Commission in making a decision. On March 24, 2006, the Filing Parties submitted a joint response demonstrating that their initial February 16 Filing had provided the information that the Commission sought in its March 23, 2006 deficiency letter.

¹ Policy Statement on Credit-related Issues for Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations, 109 FERC ¶ 61,186 at PP22-24 (2004).

6. The March 24, 2006 response was noticed with comments, protests, and interventions due on or before April 3, 2006. None was filed.

Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

BOCES Protest

8. BOCES questions whether the ISO's proposal to shorten the payment period from four business days to three business days is just and reasonable, and not unduly discriminatory or preferential. BOCES requests that the Commission not approve any proposals to modify the current four business day payment period for ISO invoices. BOCES states that it currently engages in limited activity in ISO markets, purchasing only the energy and other products necessary to serve its affiliated manufacturing facility in Kittery, Maine. It explains that it has limited staff and, in an effort to minimize overhead to serve its affiliated facility at the lowest possible cost, has attempted to minimize investment in additional infrastructure and personnel. The accounts payable system it currently uses, BOCES states, is not set up to accommodate a three business day payment term. BOCES claims that modifications to this system would be required, or manual intervention necessary, to ensure that ISO invoices were paid on time. BOCES states that with any type of manual intervention, mistakes can occur, and a three business day payment term would not allow sufficient time to correct any problems. Additionally, BOCES asserts that any shortening of the ISO's payment term could preclude BOCES's planned use of Automated Clearing House transactions to pay invoices, a less expensive method than paying invoices by wire transfer, and would be unduly burdensome to small load-serving entities.

Commission Conclusion

9. The Commission will accept the ISO's revisions to its Policies for Tier 0 and Tier 1 effective on April 17, 2006 and for Tier 2, effective after 30 days notice, on or after October 1, 2006. We find that the proposed revisions are consistent with our Policy Statement and improve the transparency of credit procedures, reduce collateral requirements, and better align ISO-NE's financial assurance requirements with its risks.

10. Although the Commission is sympathetic to the implementation difficulties that BOCES may encounter in moving to a three business day payment cycle, we believe that the benefit of greater efficiency and reduced collateral requirements for all ISO-NE customers outweighs those difficulties and makes the three business day payment cycle just and reasonable and not unduly discriminatory or preferential. In response to the

direction in our May 27, 2004 Order² to explore through its stakeholder process whether the amount of time for payment of ISO invoices could be shortened from four to two days, ISO-NE twice declined, citing implementation difficulties such as those BOCES expresses. Now ISO-NE has again worked through its stakeholder process and has achieved a consensus³ for the changes proposed in the instant filing, including the shortening of the payment cycle to three business days. Thus ISO-NE and the majority of its stakeholders were able to agree on shortening of the payment cycle.

11. Further, ISO-NE's Billing Policy provides opportunity for exceptions to the three business day payment requirement that BOCES may explore. Specifically, Section 1.4 of Section 1, Exhibit ID of the ISO Transmission, Markets and Services Tariff states: "In addition to the regular billing described above the ISO will issue special, extraordinary statements as and when required under the Documents or in order to adjust for special circumstances. Such statements shall be payable in accordance with the instructions set forth therein." The Commission encourages ISO-NE to work with BOCES to achieve a mutually agreeable arrangement that would accommodate BOCES's situation.

The Commission orders:

ISO New England, Inc.'s Amendments to its Financial Assurance Policies and the ISO Billing Policy are hereby accepted for filing, to be effective as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

² New England Power Pool, 107 FERC ¶ 61,201 (2004) ("May 27 Order").

³ The NEPOOL Participants Committee voted to support the amendments with 77.71 percent in favor. Transmittal at p. 4.