

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

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

ISO New England Inc. and  
New England Power Pool Participants Committee

Docket No. ER09-1003-000

ORDER ACCEPTING TARIFF REVISIONS  
AND REQUIRING COMPLIANCE FILING

(Issued June 11, 2009)

1. In this order, the Commission accepts tariff changes submitted by ISO New England, Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (collectively, the Filing Parties) revising certain provisions of New England's Forward Capacity Market (FCM) and requires a compliance filing.

**I. Filing**

**A. FCM**

2. As detailed in numerous proceedings before this Commission, ISO-NE has recently implemented the FCM, pursuant to which capacity resources (both generators and demand resources) compete to provide capacity to New England, on a three-year-forward basis, by participating in an annual Forward Capacity Auction.

3. On April 15, 2009, the Filing Parties proposed changes to several aspects of the market rules governing the FCM. The Filing Parties state that the instant revisions include clarifications and corrections of existing rules and eliminate additional provisions that are unlikely to be used or are not cost effective. The Filing Parties note that the proposed changes were unanimously supported by the NEPOOL Participants Committee and NEPOOL will submit an additional filing to detail the discussions of the Participants Committee.

4. The Filing Parties request an effective date of June 15, 2009 for the proposed tariff changes.

## **B. Notice of Filings**

5. Notice of the filing was published in the *Federal Register*, with motions to intervene, notices of intervention, comments and protests due on or before May 6, 2009.<sup>1</sup> The NRG Companies,<sup>2</sup> Constellation,<sup>3</sup> the Mirant Parties,<sup>4</sup> Exelon Corporation, PSEG,<sup>5</sup> Northeast Utilities Service Company, and Dynegy<sup>6</sup> filed timely motions to intervene, and PSEG also submitted comments. Dominion Resources submitted a motion to intervene out of time. In addition, NEPOOL filed a supplement to the joint filing. ISO-NE filed an answer to PSEG's comments.

## **II. Discussion**

### **A. Procedural Issues**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2008)), the notice of intervention and the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. We will grant the unopposed motion to intervene out-of-time of Dominion Resources given its interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept ISO-NE's answer and will, therefore, reject it.

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<sup>1</sup> 74 Fed. Reg. 19,074 (2009).

<sup>2</sup> NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

<sup>3</sup> Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.

<sup>4</sup> Mirant Energy Trading, LLC, Mirant Canal, LLC, and Mirant Kendall, LLC.

<sup>5</sup> PSEG Energy Resources & Trade LLC and PSEG Power Connecticut LLC.

<sup>6</sup> Dynegy Power Marketing, Inc., Casco Bay Energy Company, LLC, and Bridgeport Energy, LLC.

**B. Release of Surplus Capacity**

8. In its supplemental filing, NEPOOL notes that only one of the eighteen proposed rule changes (known as the “Omnibus 4 Revisions”) triggered any significant discussion at the Participants Committee. The proposed revisions to section III.13.4.3 address the general methodology that ISO-NE can use to release excess capacity in annual reconfiguration auctions. NEPOOL states that in the stakeholder process, PSEG and Dynegy sought to address a related situation that occurred in the first Forward Capacity Auction. NEPOOL notes that during the first Forward Capacity Auction, participants in Connecticut with capacity obligations in excess of established capacity requirements were not allowed to pro-rate their capacity obligation by the excess amount but instead received compensation at a rate below the price floor.<sup>7</sup> In light of the proposed instant revisions to section III.13.4.3, NEPOOL states that PSEG and Dynegy sought changes in the stakeholder process to address a potential situation whereby the reliability need that initially prevented the pro-ration of the excess capacity of these Connecticut resources is subsequently eliminated before the commitment period for that auction. PSEG and Dynegy proposed revisions to address this specific situation through either reduced capacity obligations or additional compensation through the redirection of payments that would have otherwise been made for capacity retained for reliability reasons but subsequently released.

9. NEPOOL notes that ISO-NE did not support PSEG and Dynegy’s proposed amendments based in part on the fact that the only situation to which the amendments might apply is the first Forward Capacity Auction and because the reliability need from the first Forward Capacity Auction that precluded the pro-ration of capacity in Connecticut was unlikely to be eliminated. Additionally, NEPOOL states that ISO-NE noted that the revisions raised by PSEG and Dynegy would present software issues and would delay other FCM deliverables. NEPOOL states that some participants did not agree with ISO-NE’s assessment, yet agreed that there was no reason to address their concerns if the reliability needs in Connecticut would continue to preclude any pro-ration of capacity in excess of established requirements. As such, NEPOOL states that ISO-NE committed to update the reliability requirements for the period covered by the first Forward Capacity Auction. Further, NEPOOL notes that if the revised projections determine that the reliability needs in Connecticut that precluded pro-ration are no longer necessary, ISO-NE and the participants have agreed that the stakeholder process would then consider how to address the concerns raised by PSEG and Dynegy.

10. PSEG states that the proposed Omnibus 4 Revisions lack any mechanism that would allow itself and other affected companies to be released from their first Forward

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<sup>7</sup> Suppliers outside of Connecticut were allowed to choose whether to pro-rate the amount of capacity they would sell, or the price they would be paid for their capacity. Suppliers within Connecticut, however, were required to deliver all of their capacity and to pro-rate price. *See* ISO-NE tariff, section III.13.2.7.3(b).

Capacity Auction capacity obligation if ISO-NE later determines that these additional MWs in Connecticut that were prevented from being pro-rated are not needed for reliability.<sup>8</sup> Rather, PSEG states that under the Omnibus 4 Revisions, the only way that these resources can be relieved of their obligation is to “buy back” the capacity obligation, compounding an already unjust and unreasonable situation. PSEG notes as it has in related proceedings that ISO-NE’s interpretation of the tariff is unjust and unreasonable since these Connecticut capacity resources are being paid less relative to other capacity resources in ISO-NE, despite being needed for reliability.<sup>9</sup> PSEG states that despite ISO-NE’s assertion that the capacity need for these resources was unlikely to be eliminated for this commitment period, just over a week earlier ISO-NE indicated in a preliminary update that as much as 220 MW of capacity could be released inside of Connecticut while still satisfying those reliability needs. As such, PSEG concludes that it supports the compromise described in NEPOOL’s supplemental filing and asks the Commission to direct ISO-NE and NEPOOL to report on the resolution of this issue.

### C. Commission Determination

11. The Commission accepts the proposed tariff revisions, which clarify many of the existing rules and eliminate certain current FCM provisions that were either used infrequently or were not cost effective. As detailed previously, the proposed revisions were unanimously supported by the NEPOOL Participants Committee. Addressing PSEG’s concern over the ability of resources with reliability obligations in Connecticut from the first Forward Capacity Auction to reduce their capacity obligation should the current reliability need no longer exist, we will require ISO-NE to report to the Commission on the ensuing resolution of this issue. Based on the information before us in this proceeding, if some or all of these Connecticut resources are found to no longer be needed for reliability, then PSEG’s request for additional steps in this context is reasonable in light of the proposed revisions to section III.13.4.3, which address, *inter alia*, how ISO-NE will enter supply offers into an annual reconfiguration auction to release excess capacity. As such, we will require the Filing Parties to report to the Commission on the status of any subsequent reliability determinations involving these

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<sup>8</sup> PSEG explains that despite the lack of price separation amongst capacity zones during the first Forward Capacity Auction and a capacity excess in Connecticut of 1090 MW relative to the Local Sourcing Requirement, due to local reliability requirements ISO-NE has not allowed cleared Connecticut units to de-list portions of their units consistent with section III.3.3.7.3(b) of ISO-NE’s tariff. As a result, PSEG states that these resources are required to accept the pro-rated price of \$4.254/kW-month while the rest of the capacity in New England will receive the floor price of \$4.50/kW-month.

<sup>9</sup> PSEG cites its related interventions in Docket ER08-633-000 in which the Commission approved the results of the first Forward Capacity Auction.

resources from the first Forward Capacity Auction, including any proposed stakeholder processes, within 90 days of the date that such subsequent reliability determinations are made.

12. Regarding PSEG's concerns over ISO-NE's interpretation of its tariff regarding compensation for these resources needed for reliability in the first Forward Capacity Auction, we note that the Commission has previously addressed this issue.<sup>10</sup> In that order, we stated that PSEG's claim that resources not allowed to prorate should be paid the otherwise applicable clearing price "would violate section III.13.2.7.3(b) of the ISO-NE Tariff and the FCM Settlement, which prohibit ISO-NE from purchasing more capacity than what is equal to the ICR times the clearing price."<sup>11</sup> We also rejected PSEG's interpretation based on the fact that the FCM Settlement and FCM rules subject prorating decisions to a reliability review.<sup>12</sup> Further, in a subsequent order, the Commission required the New England stakeholders to convene a stakeholder process to address reliability issues related to Local Sourcing Requirements and the establishment of Capacity Zones prior to the fourth Forward Capacity Auction, with any proposed revisions required by February 20, 2010.<sup>13</sup>

The Commission orders:

(A) The Filing Parties' proposed tariff sheets are hereby accepted and made effective June 15, 2009, as requested.

(B) As discussed in the body of the order, ISO-NE and NEPOOL are required to make a subsequent filing with the Commission, within 90 days of the date of any subsequent reliability determinations involving the resources from the first Forward Capacity Auction that were unable to choose their method of pro-ration.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>10</sup> *ISO New England Inc.*, 123 FERC ¶ 61,290, at P 74-75 (2008).

<sup>11</sup> *Id.* P 74.

<sup>12</sup> *Id.* P 75.

<sup>13</sup> *ISO New England Inc.*, 126 FERC ¶ 61,115, at P 52 (2009).