

143 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc. and New England Power Pool Docket No. ER13-1257-000
Participants Committee

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 20, 2013)

1. On April 10, 2013, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, Filing Parties) jointly submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to the ISO-NE Financial Assurance Policy (Financial Assurance Policy)² and the ISO-NE Billing Policy (Billing Policy)³ (together, Policies).⁴ The proposed revisions align the timing for suspending market participants that fail to cure a financial assurance default, with recently-accepted timing changes to the Day-Ahead Energy Market schedule.⁵ The proposed revisions also impose additional consequences for market participants that receive more than one notice of a financial assurance default in a rolling 365-day period.
2. As discussed below, we accept the proposed revisions to become effective on May 23, 2013, as requested.

¹ 16 U.S.C. § 824d (2006).

² The Financial Assurance Policy is Exhibit IA to Section I of the ISO-NE Transmission, Markets, and Services Tariff (Tariff). Capitalized terms used herein but not defined are intended to have the meaning given in the Tariff.

³ The Billing Policy is Exhibit IB to Section I of the Tariff.

⁴ On May 8, 2013, ISO-NE filed a letter revising the requested effective date for the proposed revisions from May 15, 2013 to May 23, 2013.

⁵ See *ISO New England Inc. and New England Power Pool*, 143 FERC ¶ 61,065 (2013) (April 24 Order).

I. Background

3. Currently, under the Financial Assurance Policy, a market participant that receives a notice that one of its credit test percentages⁶ exceeds 100 percent of the sum of its financial assurance must cure the default by 10:00 a.m. of the next business day or ISO-NE will suspend the market participant from participating in the New England markets. Similarly, under the Billing Policy, ISO-NE will suspend a market participant that is in default for amounts due to ISO-NE if the default is not cured by 10:00 a.m. of the second business day after the date the payment was due.⁷ The current timing for suspension allows ISO-NE to use the hours between 10:00 a.m. and 12:00 p.m. to exclude any bids that the suspended participant submitted into the Day-Ahead Energy Market, identify load assets that must be transferred back to a host utility, and terminate any external transactions submitted by the suspended participant before the market closes at 12:00 p.m.⁸

II. Proposed Tariff Revisions

4. The April 24 Order accepted changes to the Day-Ahead Energy Market schedule. As a result, the Day-Ahead Energy Market will close at 10:00 a.m. instead of 12:00 p.m., and the proposed revisions would conform the deadlines in the instant Policies to the revised Day-Ahead Energy Market schedule. Specifically, the Filing Parties propose to move the deadline to cure credit defaults from 10:00 a.m. to 8:30 a.m. to allow ISO-NE sufficient time to exclude bids submitted by suspended market participants and take other necessary actions prior to the new, 10:00 a.m. closing of the Day-Ahead Energy Market.

⁶ Under Financial Assurance Policy Section III.B.2.c, credit test percentages refer to a market participant's Market Credit Test Percentage, Financial Transmission Rights Credit Test Percentage, or Transmission Credit Test Percentage. These credit test percentages describe how the financial assurance provided by a market participant will be applied. For example, financial assurance shall first be allocated so as to ensure that the market participant's Market Credit Test Percentage is no greater than 100 percent. Any financial assurance that remains after the first allocation shall be allocated so as to ensure that the market participant's Financial Transmission Rights Credit Test Percentage is no greater than 100 percent. Finally, any financial assurance that remains after the second allocation shall be allocated so as to ensure that the market participant's Transmission Credit Test Percentage is no greater than 100 percent.

⁷ Section 3.7 of the Billing Policy.

⁸ Testimony of Marc D. Montalvo, ISO-NE's Director of Enterprise Risk Management (ISO-NE Testimony), sponsored by ISO-NE, at 3-4.

5. ISO-NE notes that the change in timing for suspension under the Policies decreases the amount of time market participants have to cure a financial assurance or payment default. As a result, ISO-NE states, it will be more critical for market participants to manage their collateral requirements to avoid suspension. Therefore, ISO-NE also proposes to include in the Financial Assurance Policy additional consequences for market participants that receive more than one notice of a financial assurance default in a rolling 365-day period. The proposed revisions provide that if a market participant receives a notice that one of its credit test percentages exceeds 100 percent, and that same market participant has received one to five such notices in the previous 365 days (not including the instant notice), then that market participant must provide sufficient financial assurance to lower its credit test percentages to less than or equal to 90 percent by 8:30 a.m. on the next business day to avoid suspension. Further, a market participant that has received six or more notices during the previous 365 days must maintain a credit test percentage of less than or equal to 90 percent until the market participant no longer has six or more such notices during the applicable 365-day period.⁹

6. ISO-NE, explains that these revisions should have no material impact on market participants that follow financial assurance management best practices,¹⁰ noting that market participants may avoid suspension simply by avoiding default. Mr. Montalvo asserts that to minimize suspensions, which are disruptive to the market, the proposed revisions will cause market participants that receive frequent default notices to maintain additional collateral approximating best practices.¹¹

7. The Filing Parties state that the Budget and Finance Subcommittee discussed the proposed revisions with ISO-NE at the subcommittee's March 27, 2013 meeting, and note that no subcommittee member objected to the revisions. The Participants Committee unanimously supported the revisions at its April 5, 2013 meeting.

8. The Filing Parties request that the Commission waive the 60-day prior notice provisions of section 35.3 and the filing requirements of section 35.13 of the Commission's regulations,¹² to allow the proposed Tariff revisions to become effective

⁹ Transmittal Letter at 5-6; ISO-NE Testimony at 5-9.

¹⁰ According to ISO-NE, under best practices, market participants actively monitor positions and adjust financial assurance to maintain a credit test percentage at or below 80 percent. ISO-NE Testimony at 6.

¹¹ ISO-NE Testimony at 5-8.

¹² 18 C.F.R. § 35.13 (2012). This provision requires public utilities to file certain detailed cost and other information related to an examination of traditional cost-of-service rates. The Filing Parties state that waiver is appropriate because ISO-NE is not a traditional investor-owned utility. Transmittal Letter at 7.

May 23, 2013, coincident with the effective date of the Day-Ahead Energy Market schedule changes.¹³ The Filing Parties further request waiver of the provisions of section 35.14 of the Commission's regulations, to the extent necessary.¹⁴ The Filing Parties note that the regulations generally require public utilities to file certain cost and other information related to examining traditional cost-of-service rates, but state that ISO-NE is not a traditional investor-owned utility.

III. Notice of Filing, Interventions and Protests

9. Notice of the proposed Tariff revisions was published in the *Federal Register*, 78 Fed. Reg. 23,244 (2013), with interventions and protests due on or before April 25, 2013. Exelon Corporation, Northeast Utilities Service Company, NRG Companies and Twin Cities Power, LLC (Twin Cities) filed timely motions to intervene. Twin Cities also filed a limited protest. On May 6, 2013, NEPOOL filed an answer. On May 9, 2013, Twin Cities filed an answer to NEPOOL's answer.

IV. Discussion

A. Procedural Issues

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept NEPOOL's or Twin Cities' answers and will, therefore, reject them.

B. Protest

12. Twin Cities does not contest the proposal to change the time for curing defaults from 10:00 a.m. to 8:30 a.m. to allow bids from market participants with uncured defaults to be excluded from the Day Ahead Energy Market. However, Twin Cities opposes the proposal to include in the Policies additional consequences applicable to market

¹³ On May 8, 2013, ISO-NE contemporaneously submitted in Docket No. ER13-895-002 a notice of proposed effective date of May 23, 2013 for the Day-Ahead Energy Market schedule changes and, in this proceeding, a letter requesting a corresponding May 23, 2013 effective date for the revisions proposed here. In its letter, ISO-NE states that the software for both sets of Tariff changes cannot be uncoupled and therefore both sets of revisions must be simultaneously implemented.

¹⁴ Transmittal Letter at 7.

participants that receive one or more notices of a financial assurance default within a rolling 365-day period. Specifically, Twin Cities objects to the proposal to apply different cure percentages to market participants based on the number of notices of financial assurance default received within a rolling 365-day period.

13. Twin Cities states that ISO-NE proposed these tariff revisions for the first time at the March 27, 2013 Budget and Finance Subcommittee meeting, with no prior vetting in the stakeholder process.¹⁵ Twin Cities argues the proposed changes are not needed to implement the Day-Ahead Energy Market schedule changes, stating that ISO-NE has not provided any evidence, other than the unsupported testimony of Mr. Montalvo, suggesting that the number of financial assurance defaults received by a Market Participant is directly linked to, or predicts, a default. Further, Twin Cities states that there is no analysis explaining why the proposed frequency of financial assurance defaults (one to five) and time period (a rolling 365-day period) is appropriate. Moreover, Twin Cities argues that the proposal would not necessarily prevent losses, but would instead result in companies that did not receive notices of financial assurance default having less collateral on hand to cover a default.¹⁶

14. Finally, according to Twin Cities, the Tariff revisions are unduly discriminatory because, they establish different cure percentages for different groups of participants based on a factor that is not predictive of defaults. Twin Cities asserts that ISO-NE has not provided a valid reason why the cure percentages would be 100 percent for a party with no previous defaults, but 90 percent for those with more. Twin Cities contends that the proposal would create an undue preference for one class of customers, and if ISO-NE wishes to change a certain cure percentage, it should be the same percentage for all market participants.¹⁷

C. Determination

15. We find that the proposed Tariff revisions reasonably coordinate the timing of ISO-NE's Policies with the modified Day-Ahead Energy Market schedule,¹⁸ to help ensure against undue credit risk to ISO-NE and avoid other adverse market consequences. The revisions provide a reasonable opportunity for ISO-NE to prevent participants in default from participating in the Day-Ahead Energy Market until the default is cured. As ISO-NE notes, the revisions provide ISO-NE with sufficient time to

¹⁵ Twin Cities Protest at 1-2.

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 6-7.

¹⁸ *See* April 24 Order, 143 FERC ¶ 61,065.

recognize any overnight market activities, bill payments, late received wires, or late received amendments to letters of credit that could cure a market participant's credit default and, in such cases, no suspension should ensue. As stated in Order No. 741, managing risk and credit requires a balance between protecting the markets from costly defaults and ensuring that barriers to entry for market participants are not prohibitive.¹⁹ Implementing the revisions to the Policies should result in fewer defaults, fewer suspensions and a reduction in risk for the ISO-NE market without creating an undue burden on market participants. Accordingly, we will accept the proposed Tariff revisions and grant waiver of the Commission's 60-day notice requirement, to allow the revisions to become effective May 23, 2013, as requested.²⁰

16. While Twin Cities disputes the proposal to apply different cure percentages to market participants based on the number of defaults, its arguments are unconvincing. As an initial matter, Twin Cities' assertion that the proposal was not properly vetted through the stakeholder process does not square with its own acknowledgement that the Budget and Finance Subcommittee discussed the revisions with ISO-NE at its March 27, 2013 meeting. Further, as the Filing Parties note, the Participants Committee unanimously supported the revisions to the Policies at its April 5, 2013 meeting.

17. We disagree with Twin Cities' argument that Mr. Montalvo's testimony is insufficient to support the link between the number of financial assurance defaults by a market participant and the risk of default. His testimony, along with the rest of the Filing Parties' submission, adequately supports the proposed Tariff revisions.

18. We are also not persuaded by Twin Cities' argument that prior default is not a predictor of future default and therefore it is unreasonable to assess different cure percentages based on prior defaults. Twin Cities' argument is at odds with the way credit markets work generally.²¹ Moreover, ISO-NE is responsible for managing credit risk for

¹⁹ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317, at P 2 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

²⁰ Given that the Tariff revisions are intended to coordinate the Policies' implementation with the Day-Ahead Energy Market, and ISO-NE's representation that the software changes for the two sets of Tariff revisions are linked, we agree with ISO-NE that the effective date of the Tariff revisions should coincide with the May 23, 2013 effective date of the modified Day-Ahead Energy Market schedule.

²¹ For example, banks examine an applicant's credit history in determining whether to issue a credit card or approve a loan and in determining the applicable interest rate. Additionally, credit rating agencies such as Moody's and Standard & Poor's review companies' current and historical performance when assigning a credit rating.

its market and generally is in the best position to judge its market participants' ability to meet the established credit requirements and determine the risk and impact of a default in its markets.²² We accept as reasonable ISO-NE's assessment that, if a market participant has defaulted more than once within a rolling 365-day period, the likelihood of it occurring again is greater than if it had not occurred at all.

19. To that end, we disagree with Twin Cities' assertion that the proposal is discriminatory because it establishes different cure percentages for different groups of participants. The proposal provides the same requirements for all market participants unless and until a market participant defaults on one or more of its credit test percentages. For example, it is not until a market participant's credit test percentages exceeds 100 percent, more than once, that it is required to provide sufficient financial assurance to lower its credit test percentages to less than or equal to 90 percent. When defaults occur, all similarly situated market participants are subject to the same higher credit requirements. Therefore, it is up to the market participant to maintain the best possible credit management practices in order to avoid having to post additional financial assurance.

20. Based upon the foregoing, we will accept the proposed Tariff revisions, to become effective May 23, 2013, as requested.

The Commission orders:

The proposed revisions to the Financial Assurance Policy and Billing Policy are hereby accepted, to become effective May 23, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² See *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320, at P 46 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011) (In the context of discussing the economic impact credit policies may have on market participants, the Commission stated that ISOs and RTOs are in the best position, in the first instance, to assess to what extent credit practices, as implemented in their markets, will have an adverse effect on their market participants, as well as the potential harm to the market in the event of a default).