

129 FERC ¶ 61,213
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.
New England Power Pool

Docket No. ER10-52-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued December 10, 2009)

1. On October 13, 2009, pursuant to Section 205 of the Federal Power Act (FPA),¹ ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (collectively, the Filing Parties) filed with the Commission market rule revisions² to Appendix J of Market Rule 1 related to the Alternative Technologies Regulation Pilot Program (Pilot Program).³ These revisions, *inter alia*, extend in a limited way the enrollment deadline for the Pilot Program to allow other alternative technologies the opportunity to participate in the program. In this order, the Commission accepts the proposed revisions effective December 13, 2009, as requested.

¹ 16 U.S.C. § 824d (2006).

² ISO New England Inc., FERC Electric Tariff No. 3, Section III, Appendix J, 1st Revised Sheet Nos. 8305 and 8309.

³ Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in ISO-NE's Transmission, Markets and Services Tariff.

I. Background

2. In Order No. 890⁴, the Commission amended the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Regarding the sale of other ancillary services including energy imbalance, operating reserve and spinning reserve by load resources, the Commission found that such sales should be permitted where appropriate on a comparable basis to service provided by generation resources.⁵ Accordingly, Order No. 890 amended the *pro forma* OATT to indicate that Reactive Supply and Voltage Control, Regulation and Frequency Response, Energy Imbalance, Spinning Reserves, Supplemental Reserves and Generator Imbalance Services may be provided by generating units as well as other non-generation resources such as demand resources where appropriate.

3. On May 7, 2008, the Commission accepted a modified filing submitted by ISO-NE and NEPOOL, among others, in compliance with the directives of Order No. 890.⁶ In its order, the Commission found that ISO-NE would not fully comply with Order No. 890 until revisions were made to the ISO-NE OATT permitting non-generation resources to provide Regulation and Frequency Response service. The Commission directed ISO-NE to make these modifications within 90 days.

4. On August 5, 2008, the Filing Parties submitted tariff revisions establishing the Pilot Program in order to permit Market Participants with resources incorporating new, alternative technologies to provide and be paid for regulation services on a trial basis. The Filing Parties explained that the intent of the Pilot Program was to allow the ISO and participating Market Participants to evaluate the manner in which such alternative technologies are able to provide regulation services and, depending on the results of the program, to implement further revisions to the market rules that would allow resources incorporating alternative technologies to participate in the regulation market under terms and conditions comparable to other Market Participants. On September 15, 2009, the

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁵ *Id.* P 888.

⁶ *ISO New England Inc.*, 123 FERC ¶ 61,133 (2008).

Commission accepted, by delegated letter order, tariff revisions allowing the provision of regulation by non-generating resources and instituting the Pilot Program.⁷

5. The Pilot Program began on November 18, 2008, and under its original terms, new resources were invited to begin to participate at any time during the first 12 months of the program, i.e., by November 30, 2009. The Pilot Program would continue through the later of the 18th full calendar month of operation or the effective date of the implementation of permanent market rule changes reflecting the results of the program. Although the Filing Parties committed to work diligently to develop and implement market rule revisions that result from the Pilot Program, they cautioned that it could take up to two years to complete, install and fully test the software changes necessary to implement the Market Rule changes.

6. The Filing Parties limited the size of the program to thirteen megawatts, which represents ten percent of the average hourly weekday regulation requirement and is small enough that failure of participating resources to perform as expected would not prevent remaining resources from maintaining the reliability of the system. The Filing Parties also limited participation by any single type of technology to no more than ten megawatts, and no participant can initially enroll more than five megawatts. Thus, the Pilot Program encouraged broad participation. Despite these efforts, the Pilot Program currently has a single participant that provides two megawatts of regulation service using flywheel technology.

II. Proposed Revisions to Pilot Program

7. Under the existing tariff, Resources intending to participate in the Pilot Program must be operable by November 30, 2009. The proposed tariff revisions would allow Resources in the Pilot Program to commence operation at any time prior to the termination of the Pilot Program, as long as the participating entity has met two milestones by November 30, 2009: (A) the entity has executed a Market Participant Service Agreement or has submitted a completed application for New England Power Pool membership, including the required application fee; and (B) the entity has submitted documentation to ISO-NE identifying the technology proposed to be used to provide regulation services, and the locations where principal facilities and equipment will be installed. The Filing Parties contend that this will allow for the inclusion of alternative regulation technologies that might otherwise be excluded due to the fact that they are still being developed and may miss the deadline for operability. In addition, the Filing Parties

⁷ *ISO New England Inc.*, Docket No. ER08-54-006 (Sept. 15, 2009) (unpublished letter order).

propose several other small revisions to the market rules that, they state, are intended to correct typographical errors or clarify the language of the rules.

8. The Filing Parties state that, since the start of the Pilot Program, ISO-NE has held discussions with 12 additional parties interested in potentially enrolling in the Pilot Program. ISO-NE states that some of these parties are close to operation but may not be able to meet the current November 30, 2009 operation deadline. ISO-NE states that these potential program participants include a vehicle-to-grid technology that would use plug-in electric vehicles to provide regulation service and a fuel-switching technology that would provide regulation by switching heating load between electricity and natural gas. In addition, the Filing Parties state that there are as many as four additional entities that are evaluating participation in the Pilot Program, including another vehicle-to-grid proposal, two demand response technologies, and a proposal to use an existing power electronics installation to provide regulation.

9. The Filing Parties contend that maximum participation in the Pilot Program is important so that ISO-NE may obtain an understanding of the full range of issues that might arise when incorporating alternative technologies into the competitive Regulation market. They state that the lessons learned from the evaluation of a flywheel technology, such as the one currently participating in the Pilot Program, may be misleading or irrelevant when applied to different technologies. The Filing Parties contend that, by extending the participation deadline, there is a good chance that several of the other alternative technologies described above will be able to participate in the Pilot Program.

10. Moreover, the Filing Parties contend that the time period between the releases of ISO-NE's network model effectively shortened the period of time available to prospective Pilot Program participants for qualification in the Pilot Program. They explain that the Pilot Program requires registration in ISO-NE's energy management system but such registration is not possible unless the Resource is represented in ISO-NE's network model. The Filing Parties contend that this is problematic because ISO-NE's network model is updated three or four times per year, the last update being in September 2009 and the next update projected for late January 2010. Thus, any resource that comes online between September 2009 and the current operation deadline of November 30, 2009, will not be represented in the network model and may not be registered in the energy management system, thus barring such resources from participating in the Pilot Program.

III. Notice of Filing and Responsive Pleadings

11. Notice of the Filing Parties filing was published in the *Federal Register*, 74 Fed. Reg. 54985 (2009), with protests or motions to intervene due on or before November 3, 2009. Northeast Utilities Service Company filed a timely motion to intervene. Also, Beacon Power Corporation (Beacon Power) filed a timely motion to intervene and

comments. ISO-NE filed an answer to the motion to intervene and comments of Beacon Power.

12. Beacon Power supports the enrollment of new technologies in ISO-NE's FERC-approved Pilot Program, a program in which it is currently the sole participant. However, Beacon Power contends that extending the enrollment deadline should not delay establishing permanent market rules for energy storage resources, which Beacon maintains it has already proven capable of providing. Beacon Power further contends that its decision to enroll, invest and expand its business was based on the expectation that the market rules would be revised to allow full participation in the Regulation market under terms and conditions comparable to other participants.

13. Beacon Power contends that the Filing Parties offer no valid reason as to why enrolling new participants in the Pilot Program would justify precluding the development of market rules to allow Beacon Power's flywheel technology to participate in the Regulation market. Beacon Power argues the process to design new rules should not wait until data from new enrollees can be evaluated. In accepting the proposed tariff revisions, Beacon Power asks the Commission to clarify that there is no reason to delay the development of market rules that would allow Beacon Power's flywheel technology to participate in the Regulation market despite the fact that different technologies may require different rules. Beacon Power states that since the beginning of the Pilot Program, New York Independent System Operator, Inc., Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, LLC, have either implemented or proposed changes to their regulation market to integrate flywheel energy storage resources. Beacon Power comments that these changes can serve as a guide to ISO-NE in developing the necessary market rule revisions.

14. According to Beacon Power, delaying participation for entities that have demonstrated ability is unfair, more costly to ratepayers and contravenes Order No. 890. Beacon Power contends the purpose of the Pilot Program has been served. Beacon Power contends that delaying the process is unwarranted, limits their role in the market while not allowing ISO-NE to fully realize the benefits of the new technology, and undermines competition. Beacon Power points out that, unlike generator resources in the Regulation market, a participant in the Pilot Program can provide no more than 5 megawatts, which limits the amount of revenue and curtails the development of these technologies in the area. In addition, Beacon Power states the fact that alternative technologies are not eligible to receive Regulation Opportunity Cost payments is another inequity in how non-generation and generation resources are paid. Beacon Power explains that these payments have historically been 30-40 percent of a generator's compensation for providing Regulation Service in ISO-NE and that without them alternative technologies do not receive comparable payment for comparable service. Beacon Power asserts it is discriminatory that Regulation Opportunity Costs are only available to specific technologies and there is a need to remedy this inequity when

developing the permanent market rules. Beacon Power states that ISO-NE has procured excess regulation service for balancing during the Pilot Program and allowing the full participation of Beacon Power in the Regulation Service market would reduce these purchases and provide a savings to ratepayers.

15. ISO-NE responds that developing market rule revisions based solely on Beacon Power's performance in the Pilot Program would require a significant duplication of efforts for a second round of rule changes once performance data has been evaluated for other participants in the Pilot Program. ISO-NE responds that this is impractical and infeasible given the heavy demands on its limited resources, such as preparing for the commencement of the first Capacity Commitment Period for the Forward Capacity Market, and market rule revisions are not required under the Pilot Program rules. ISO-NE contends that Beacon Power's request incorrectly assumes that ISO-NE has gathered all necessary performance data for Beacon Power's flywheel technology. Moreover, ISO-NE explains that it has conveyed to Beacon Power that it would like additional performance data before making any final conclusions on what modifications to the Regulation market are appropriate. ISO-NE states that it is evaluating issues pertaining to comparability of performance between the alternative technologies and other resources providing Regulation, whether the provision of Regulation by alternative technologies impacts the efficiency of other resources, and the overall effectiveness of the Regulation control provided by the alternative technologies. ISO-NE states that allowing alternative technologies to provide Regulation service requires modifications to the ISO's real-time energy management system software and modifications to this program requires the use of substantial programming resources followed by major testing and implementation efforts. ISO-NE believes it is therefore neither practical nor cost effective to carry out these efforts for the Regulation market on a per technology basis. ISO-NE believes that the Commission should accept the joint filing as filed notwithstanding Beacon Power's comments.

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

18. The Commission accepts the proposed tariff revisions as just, reasonable, and not unduly discriminatory or preferential and in the public interest. Extending the eligibility deadline for the Pilot Program in a limited way will give ISO-NE the opportunity to study the effectiveness of additional technologies to gain an understanding of the full range of issues that might arise when incorporating alternative technologies into the competitive Regulation market. Future market rule revisions resulting from the Pilot Program will benefit from the participation of additional technologies. We conclude that the proposed revisions balance the need to expand the deadline for participation in the Pilot Program with the need to provide definite deadlines to implement the Pilot Program and develop market rule revisions allowing non-generation resources to participate in the Regulation market on a basis comparable to generation resources.

19. Moreover, the revised tariff sheets do not change the length of the Pilot Program or the proposed implementation timeline. Under the existing tariff language, the Pilot Program was set to continue for at least eighteen months from its commencement or until the effective date of the implementation of Regulation market rule revisions reflecting the results of the Pilot Program. The revised tariff sheets do not change these time frames. Although ISO-NE originally set a goal of identifying market rule changes to reflect the first twelve months of data and submitting them for the Commission's acceptance no later than eighteen months after commencement of the Pilot Program, there was never any obligation for ISO-NE to develop and implement such market rule revisions within such time.⁸ Order No. 890 did not set a deadline for implementing such market rule revisions and we do not intend to impose one here.

20. Although we appreciate the fact that Beacon Power has developed a technology that could function on a larger scale in the competitive Regulation market, we are not persuaded that ISO-NE should expedite development of market rule revisions to accommodate a single participant with a single technology. Moreover, the recovery of Regulation Opportunity Costs for flywheel technology participating in the Pilot Program is outside the scope of this proceeding. In its filing letter presenting the initial tariff revisions to implement the Pilot Program, ISO-NE made clear that Resources in the Pilot Program will not receive payments for Regulation Opportunity Costs because Pilot Program resources do not directly participate in the energy market and as such will not incur lost opportunities in the energy market. Beacon Power should raise its cost recovery concerns in the stakeholder process that will ultimately follow the Pilot Program and produce the Market Rule revisions. Finally, we believe that due to the experimental

⁸ ISO-NE August 5, 2008 Filing, Docket No. ER08-54-006, at 14.

nature of the Pilot Program, it is reasonable for ISO-NE to procure additional regulation services and limit the size of the facilities participating in the Pilot Program.

21. The Commission appreciates ISO-NE's collaborative efforts with stakeholders in developing its Pilot Program to accommodate the unique characteristics of alternative technologies and remove barriers that may preclude alternative technologies from participating in the regulation market on a comparable basis with other regulation providers.

The Commission orders:

The Filing Parties' filing is hereby accepted, effective December 13, 2009, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.