131 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ISO New England Inc. and
New England Power Pool

Docket No. ER10-1088-000

ORDER ACCEPTING TARIFF CHANGES

(Issued May 28, 2010)

1. On April 23, 2010, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (collectively, the Filing Parties) submitted conforming changes to section I.2.2 to the ISO-NE Transmission, Markets and Services Tariff (Tariff), in preparation for the commencement of the first Capacity Commitment Period of the Forward Capacity Market (FCM) on June 1, 2010. The Filing Parties request expedited treatment, issuance of an order by May 31, 2010 and waiver of the 60-day prior notice requirement so that the changes can become effective June 1, 2010, concurrent with the start of the first Capacity Commitment Period. For the reasons stated below, the Commission accepts the changes to the ISO-NE Tariff effective June 1, 2010, as requested.

I. <u>Background and Summary of Filing</u>

2. ISO-NE is preparing to commence the first Capacity Commitment Period associated with the FCM for the 2010/2011 Capability Year.[1] Prior to the Capacity Commitment Period, ISO-NE implemented an Installed Capacity (ICAP) Transition Period that began on December 1, 2006 and will end with the commencement of the first Capacity Commitment Period on June 1, 2010. In this filing, the Filing Parties submit revised tariff sheets that revise, remove, and add definitions to section I.2.2 of the ISO-NE Tariff. The changes update the capacity-related definitions to reflect their usage in the FCM and remove references to the ICAP Transition Period.

[1] The 2010/2011 Capability Year extends from June 1, 2010 to May 31, 2011.

A. Economic Maximum Limit

3. Under the ICAP Transition Period rules, the Tariff relied on a definition for Economic Maximum Limit (Eco Max) which represents both the highest available output of the resource and the amount that is offered from that resource for commitment and economic dispatch. The current Tariff definition for Eco Max is as follows:

> **Economic Maximum Limit or Economic Max** [Eco Max] is the maximum generation, in MW, of a Market Participant's generating unit during non-Emergency Condition. This represents the highest available output from the unit for economic dispatch and is based on the physical operating characteristics and operating permits of the unit as submitted as part of a Resource's Offer Data.[2]

4. The Filing Parties point out that, following June 1, 2010, the FCM rules do not impose an energy market offer requirement for portions of resources that are not subject to a Capacity Supply Obligation (CSO). The Filing Parties indicate that continued use of the current Eco Max definition would raise issues for both CSO resources and non-CSO resources. For CSO resources, when a market participant wishes to offer only a portion of a resource's full capability into the energy markets, the Eco Max will not reflect the highest available capability of the resource. Similarly, non-CSO resources cannot indicate the highest available output from the resource without offering that output for commitment and economic dispatch via an energy market offer. Therefore, the Filing Parties propose a revised definition of Eco Max that represents only the amount of energy from a resource that a market participant is willing to offer for commitment and economic dispatch. The Filing Parties propose the following revised Eco Max definition:

> **Economic Maximum Limit or Economic Max** [Eco Max] is the maximum available output, in MW, of a resource that a Market Participant offers to supply in the Day-Ahead Energy Market or Real-Time Energy Market, as reflected in the resource's Supply Offer. This represents the highest MW output a Market Participant has offered for a resource for economic dispatch. A Market Participant must maintain an up-to-date Economic Maximum Limit for all hours in which a resource has been offered into the Day-Ahead Energy Market or Real-Time Energy Market.

[2] *See* Transmittal Letter at 7 (emphasis in original).

B. Real-Time High Operating Limit

5. To reflect the changes in the CSO offer terms, the Filing Parties also propose a new defined term, Real-Time High Operating Limit (RTHOL). RTHOL was created to capture the concept of the highest available capability of a resource, regardless of whether the market participant intends to make the entire available capability above its CSO economically available. Specifically, the Filing Parties propose the following definition for RTHOL:

> **Real-Time High Operating Limit** [RTHOL] is the maximum output, in MW, of a resource that could be achieved, consistent with Accepted Electric Industry Practice, in response to an ISO request for Energy under Section III.13.6.4 of Market Rule 1, for each hour of the Operating Day, as reflected in the resource's Offer Data. This value is based on real-time operating conditions and the physical operating characteristics and operating permits of the unit.[3]

6. The Filing Parties state that RTHOL will be updated throughout the day to reflect the actual available output of a unit. Additionally, the Filing Parties state that RTHOL data is needed by the ISO to inform its request for capacity that is not subject to a CSO under section III.13.6.4. To accommodate this need, the ISO will use the RTHOL value provided by a market participant for a resource to determine what energy is available from a resource above any CSO. But, as section III.13.6.4 makes clear, a market participant is under no obligation under the Tariff to provide energy in response to an ISO request.

C. Requested Effective Date

7. The Filing Parties request an effective date of June 1, 2010, to coincide with the start of the first Capacity Commitment Period.

II. Notice of Filings and Responsive Pleadings

8. Notice of the Filing Parties' filing was published in the *Federal Register*,[4] with interventions and protests due on or before May 10, 2010. Timely motions to intervene were filed by Exelon Corporation; Dynegy Power Marketing, Inc. and Casco Bay Energy Company, LLC; Constellation Energy Commodities Group, Inc. and Constellation

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[3] *Id.* at 7-8.

[4] 75 *Fed. Reg.* 23,750 (2010).

NewEnergy, Inc.; and Northeast Utilities Service Company. In addition, Consolidated Edison Solutions, Inc. and Consolidated Edison Energy, Inc. (collectively, ConEd Energy) filed a motion to intervene and protest.

9. On May 13, 2010, Dominion Resources Services Inc. (Dominion) filed a motion to intervene out-of-time.

10. On May 14, 2010, ISO-NE filed a motion for leave to answer and answer in response to ConEd Energy's protest. On May 26, 2010 NEPOOL also filed a motion for leave to answer and answer.

III. Discussion

A. Procedural Matters

11. 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.

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant Dominion's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. 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 and NEPOOL's answers because they have provided information that assisted us in our decision-making process.

B. Eco Max and RTHOL

1. ConEd Energy Protest

13. ConEd Energy protests the Filing Parties' request that the new defined terms of Eco Max and RTHOL be put into effect on June 1, 2010, without further clarification describing how resources without a CSO responding to an ISO-NE request to provide energy for reliability purposes will be compensated.[5] ConEd Energy requests that the Commission direct the Filing Parties to revise the language of section III.13.6.4 of Market Rule 1 to clarify that the compensation is based on an unmitigated bid for energy in excess of the unit's CSO. Additionally, ConEd Energy argues that the energy offer

[5] ConEd Energy Protest at 2.

segment between the CSO and RTHOL should be eligible for Net Commitment Period Compensation (NCPC) and also to set the Real-Time Energy Market clearing price.[6]

14. ConEd Energy notes that the Filing Parties reference section III.13.6.4, which states that, when a non-CSO resource "does provide energy from that capacity, the resource shall be paid based on its most recent offer and is eligible for NCPC." According to ConEd Energy, the language of the proposed definitions is not explicit and should be clarified to indicate such compensation. ConEd Energy further states that, in a presentation to the Markets Committee, ISO-NE explained that, when required for reliability purposes, ISO-NE may request a generator to operate up to the RTHOL limit. If the resource agrees, ISO-NE would re-declare the generator's Eco Max to the RTHOL value (or other requested dispatch value) for the relevant hours for dispatch and settlement. However, ConEd Energy argues that ISO-NE's proposal is ambiguous as to whether the RTHOL offer segment would be subject to mitigation. Additionally, because the RTHOL offer segment reflects a unit's capability in excess of its CSO for which it will receive no capacity payment, this segment should not be subject to mitigation rules consistent with energy from other non-capacity resources.[7]

15. ConEd Energy states that, given the ambiguous language of section III.13.6.4 and the proposed definitions, the Commission should require the Filing Parties to revise Market Rule 1 to clarify that compensation is based on the unmitigated bid for energy in excess of the unit's CSO. Also, ConEd Energy believes that this offer segment between the CSO and the RTHOL should also be eligible for NCPC and to set the Real-Time Energy Market clearing price and such eligibility should also be clarified in the Tariff.[8]

2. <u>ISO-NE Answer</u>

16. ISO-NE characterizes ConEd Energy's protest as an impermissible attempt to expand the scope of the proceeding. Additionally, ISO-NE states that ConEd Energy has used arguments that have been rejected by the Commission in a prior proceeding.[9] On that basis, ISO-NE requests that the Commission deny the protest.

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[6] *Id.* at 2-3.

[7] *Id.* at 3.

[8] *Id.* at 4.

[9] ISO-NE Answer at 2, 5-6 (citing *ISO New England Inc. and New England Power Pool Participants Committee*, 128 FERC ¶ 61,023 (2009) (July 2009 Order)).

17. ISO-NE states that the addition of the term "Real-Time High Operating Limit" simply provides the ISO with a mechanism for tracking generator capacity that is not subject to a CSO, so that the ISO can determine how much energy is available to request from a generator pursuant to the existing provisions in section III.13.6.4 of Market Rule 1. ISO-NE further states that existing provisions, already accepted by the Commission, establish rules that allow the ISO to request energy from generator capacity that is not subject to a CSO, and specify how market participants will be compensated for such energy. ISO-NE also contends that the addition of the term "Real-Time High Operating Limit" has nothing to do with the manner in which market participants are compensated when they choose to provide energy without a CSO in response to a request from the ISO under section III.13.6.4. Therefore, ISO-NE states, ConEd Energy's request that section III.13.6.4 be revised to indicate that offers for energy under this provision will be exempted from market power mitigation is an impermissible attempt to expand the scope of this proceeding.[10]

18. ISO-NE also states that the FCM definitions revisions do not change any existing provision in section III.13.6.4, including the payment provision, and they do not affect the manner in which market participants are compensated for energy provided pursuant to this provision. Therefore, ISO-NE argues that ConEd Energy's request is beyond the scope of the FCM definitions revisions at issue here since new sub-section III.13.6.4.1 has no affect on or relation to the amount that a market participant will be compensated should it agree to an ISO request for energy under section III.13.6.4. ISO-NE contends that ConEd Energy is using this section 205 proceeding to inappropriately challenge provisions of the ISO Tariff that are not at issue here and which, therefore, may only be challenged through a section 206 complaint.[11] Finally, ISO-NE does not believe that ConEd Energy has effectively argued that the proposed Tariff revisions are not just and reasonable.

19. Additionally, ISO-NE states that the Commission has previously rejected requests by certain market participants for a determination that the existing market mitigation rules not apply to offers to provide energy in response to an ISO request pursuant to section III.13.6.4.[12] In the July 2009 Order, the Commission accepted revisions to the

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[10] *Id.* at 3.

[11] *See* 16 U.S.C. §§ 824d, 824e (2006). ISO-NE cites *Southern Company Services, Inc.*, 116 FERC ¶ 61,070, at P 26 (2006) to the effect that "[a] protest does not expand the scope of a proceeding."

[12] In its answer, NEPOOL emphasizes that stakeholders had previously considered issues similar to those raised in the protest and determined not to develop specific mitigation terms for non-CSO resources.

FCM rules and rejected arguments made by certain parties that section III.13.6.4 and related provisions dealing with resources without a CSO were unjust and unreasonable because they apply the same market power mitigation rules to energy offers from resources without a CSO as are applied to energy offers from resources with a CSO.[13] Because the Commission had previously rejected these arguments and ConEd Energy has not raised new issues of law or fact that warrant reconsideration of that policy by the Commission, ISO-NE argues that ConEd Energy's request for relief should be denied.[14]

3. <u>Commission Determination</u>

20. The Commission finds that the Filing Parties' changes to the ISO-NE Tariff are just and reasonable. We agree with ISO-NE that ConEd Energy seeks to raise issues that expand the scope of this proceeding and re-open issues on which we have already made a determination.

21. ConEd Energy seeks assurances that, for resources that provide energy from non-CSO capacity, the resource shall be paid based on its most recent offer and is eligible for NCPC. As ISO-NE confirms, however, section III.13.6.4 specifies how parties supplying non-CSO energy are compensated.[15]

22. As for ConEd Energy's request that non-CSO offers be relieved from the current mitigation provisions in the ISO-NE Tariff, we agree with ISO-NE that, as was the case in the July 2009 Order, ISO-NE has not proposed any changes to the mitigation provisions found in the ISO-NE Tariff, Market Rule 1, Appendix A. As indicated in the proceeding underlying the July 2009 Order, Appendix A "provides for mitigation to be applied to both CSO and non-CSO resources, and there is no provision in the currently-effective Appendix A that contemplates different forms of mitigation depending on a resource's participation in specific ISO-NE markets."[16] ConEd Energy's concerns with the instant filing are, in fact, an attempt to challenge the mitigation provisions which were previously found to be just and reasonable and which ISO-NE is not proposing to change.

23. Therefore, we reject ConEd Energy's claim that the issues it raises justify revisions to the ISO-NE mitigation rules, and, we accept the proposed changes to ISO-NE's Tariff, effective June 1, 2010, as requested.

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[13] July 2009 Order, 128 FERC ¶ 61,023 at P 18.

[14] ISO-NE Answer at 6-7.

[15] July 2009 Order, 128 FERC ¶ 61,023 at P 31-36.

[16] *Id.* P 31.

The Commission orders:

The April 23, 2010 ISO-NE and NEPOOL filing of changes to the ISO-NE Tariff is hereby accepted for filing, effective June 1, 2010, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.