

121 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc.
New England Power Pool

Docket Nos. ER07-546-002
ER07-547-001
ER07-546-003
(not consolidated)

ORDER ACCEPTING COMPLIANCE FILINGS

(Issued October 19, 2007)

1. In this order, the Commission accepts two compliance filings made by ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) to comply with the Commission's prior directives regarding New England's Forward Capacity Market (FCM).

I. Background

2. On February 15, 2007, ISO-NE filed with the Commission proposed market rules implementing the FCM.¹ In an order issued April 16, 2007,² the Commission conditionally accepted the FCM Market Rules subject to certain conditions.

3. The Commission required two separate compliance filings in the April 16 Order. First, the Commission directed ISO-NE to make a compliance filing setting forth the order of priority in which ISO-NE will consider certain important regional projects, including issues related to the implementation of FCM. Those issues included: (1) the redesign of the interconnection queue; (2) implementation of the FCM; (3) compensation for units whose de-list bids have been rejected for

¹ ISO New England Inc., Filing Containing Revisions to Market Rules Implementing FCM Settlement Agreement, filed on February 15, 2007 in Docket No. ER07-546-000 (February 15 Filing).

² *ISO New England Inc.*, 119 FERC ¶ 61,045 (2007) (April 16 Order).

reliability reasons; and (4) integration of seasonal demand resources into the FCM.³ The Commission ordered ISO-NE to make this filing on the earlier of September 1, 2007, or thirty days after a meeting with the New England Conference of Public Utility Commissioners (NECPUC) and NEPOOL stakeholders where such prioritization was meaningfully addressed.⁴ While the Commission did not pre-judge the prioritization process in the April 16 Order, the Commission did provide specific comments and requirements with respect to certain issues. The Commission stated that the interconnection queue issue “is of sufficient importance to merit...a position near to the top of any list of priority”⁵ and that “it would be desirable to have [ISO-NE’s] Reliability Agreement process redesign in place before the first Forward Capacity Auction.”⁶ The Commission also required a stakeholder process to address the integration of seasonal demand resources into the FCM and directed ISO-NE to make a compliance filing by February 29, 2008, that “reports on both the composite bid process and on the status of this stakeholder process, including, if appropriate, a schedule for implementing options that better optimize seasonal bids for the second auction scheduled for December 2008.”⁷

4. Second, the Commission directed ISO-NE to make a compliance filing, also by September 1, 2007, to address issues across four main areas: (1) review of de-list bids; (2) revisions related to Static De-list Bids for rating reductions due to ambient air conditions; (3) capacity imports over the Phase I/II HVDC-TF interconnection with Hydro-Quebec (HQ Interconnection); and (4) various administrative and/or clarification revisions.

A. Docket Nos. ER07-546-002 and ER07-547-001

i. June 21 Filing

5. On June 21, 2007, ISO-NE and NEPOOL submitted a compliance filing (June 21 Filing) to comply with the Commission’s directive to set forth the order of priority in which ISO-NE will consider certain regional projects. In the June 21 Filing, ISO-NE explains that since the issuance of the April 16 Order, ISO-NE has

³ April 16 Order at P 60, 62, 82.

⁴ *Id.* at P 82.

⁵ *Id.* at P 69.

⁶ *Id.* at P 85.

⁷ *Id.* at P 152.

held a number of ongoing consultations with NECPUC and NEPOOL to discuss prioritization issues that reflects the input of and is supported by NEPOOL. Specifically, ISO-NE identified, as the most essential issues to address, the following: (1) completing implementation of the FCM, including qualifying resources for, and running, the first auction; (2) implementation of Long-term Firm Transmission Rights (LFTR) pursuant to the Commission's Order No. 681 and 681-A;⁸ (3) review of composite offers and treatment of seasonal demand resources so as to fully facilitate the participation of demand resources in the capacity market; (4) review of the relationship between the interconnection queue and the FCM; and (5) review of the form of and compensation for Reliability Must Run agreements.⁹ ISO-NE also requested that the Commission convene a technical conference during the week of July 23, 2007 to discuss the priorities outlined in the June 21 Filing and other relevant projects that will occupy NEPOOL stakeholder and ISO-NE resources over the next two years.

ii. Comments, Protests, and Answers

6. Notice of the June 21 Filing was published in the Federal Register, with interventions, comments and protests due on July 12.¹⁰

7. Timely motions to intervene, protests or comments were filed by the Connecticut Department of Public Utility Control, the New Hampshire Public Utilities Commission, and the Rhode Island Public Utilities Commission (collectively, the State Commissions), Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, Constellation), and the Maine Public Utilities Commission (Maine PUC). ISO-NE and NEPOOL each filed motions for leave to answer the protests, and answers.

8. The State Commissions and Maine PUC opposed ISO-NE's June 21 Filing, asserting that ISO-NE's list of priorities did not reflect those commenters' priorities.

⁸ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 71 Fed. Reg. 43564 (Aug. 1, 2006), FERC Stats. & Regs. ¶ 31.226 (2006) (Order No. 681); *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681-A, 71 Fed. Reg. 98440 (Nov. 27, 2006), 117 FERC 61,201 (2006), *reh 'g requested* (Order No. 681-A).

⁹ June 21 Filing at 9-10.

¹⁰ 72 Fed. Reg. 36444 (2007).

9. On July 25, 2007, the Commission issued an order granting and denying rehearing and denying clarification regarding the FCM Market Rules in Docket No. ER07-546-001.¹¹ Subsequently, on August 10, 2007, ISO-NE and the State Commissions filed joint supplemental comments on the June 21 Filing. NEPOOL then filed comments in support of ISO-NE and State Commissions' supplemental comments.

10. In their August 10 supplemental comments, ISO-NE and the State Commissions state that in light of the July 25 Rehearing Order and subsequent discussions between the filing parties, ISO-NE has committed to adopt firm dates for filing specific rules revisions and withdraws its request for technical conference. ISO-NE and the State Commissions explain that they have agreed to dates for two specific issues: 1) October 1, 2008, for the interconnection queue redesign and 2) July 1, 2008 for the process by which units whose de-list bids have been rejected for reliability reasons are to be compensated. In its comments supporting the Joint Filing, NEPOOL notes that it supports the proposed deadlines with the understanding that such tariff revisions are not mandatory, and that after full consideration of the issues, ISO-NE may elect to not file any tariff revisions.

B. Docket No. ER07-546-003

i. August 31 Filing

11. On August 31, 2007, ISO-NE and NEPOOL submitted a compliance filing (August 31 Filing) to comply with the Commission's directive set forth in the April 16 Order and affirmed in the July 25 Rehearing Order to make various revisions to the FCM Market Rules. ISO-NE requests that the Commission issue an order on the August 31 Filing by October 31, 2007. The revisions to the FCM Market Rules proposed by the August 31 Filing are summarized below.

12. Consistent with the Commission's finding in the April 16 Order and affirmed in the July 25 Rehearing Order, ISO-NE has submitted modifications to the FCM Market Rules to state that when a de-list bid is rejected by the Internal Market Monitoring Unit (Market Monitor), ISO-NE will provide an explanation of the reasons the bid was rejected, including the resource's net risk-adjusted going forward costs as determined by the Market Monitor. The affected market participant may then either notify ISO-NE that it will participate in the Forward Capacity Auction using the Market Monitor-determined bid price, or elect to challenge the Market Monitor's determination before the Commission. If the market participant elects to participate in the Forward Capacity Auction using the

¹¹ *ISO New England, Inc.*, 120 FERC ¶ 61,087 (2007) (July 25 Rehearing Order).

Market Monitor-determined bid price, that market participant may not challenge the Market Monitor's determination of the resource's net risk-adjusted going forward and opportunity costs.

13. The August 31 Filing also revises the FCM Market Rules to provide that if the Market Monitor determines that a bid may be an attempt to manipulate the Forward Capacity Auction, ISO-NE will refer the matter to the Commission. The August 31 Filing, as required by the April 16 Order, also revises the FCM Market Rules to provide that if the Market Monitor finds that there may be an attempt to exercise physical withholding by a summer resource during the review of that resource's historical values, ISO-NE will refer the matter to the Commission.

14. In the April 16 Order, the Commission directed ISO-NE to revise the FCM Market Rules to allow generating resources with temperature-dependent capacity to de-list at prices below two times the cost of new entry.¹² In compliance with this directive, ISO-NE proposes to make this revision in the instant August 31 Filing; however, because the deadline for submitting Static De-list Bids for the first Forward Capacity Auction has already passed, ISO-NE proposes to implement the change beginning with the second Forward Capacity Auction.

15. With respect to capacity imports over the HQ Interconnection, the Commission directed ISO-NE to amend the FCM Market Rules so that in the Forward Capacity Auction, only HQ Interconnection capacity that does not degrade HQ Interconnection Capacity Credits will be allowed.¹³ The Commission also directed ISO-NE to remove from the FCM Market Rules the reservation requirement for import HQ Interconnection capacity contracts.¹⁴ To comply with the Commission's directives, ISO-NE proposes in the August 31 Filing to limit the maximum amount of import capacity over the HQ Interconnection in the Forward Capacity Auction to the total amount of the capacity transfer limit of the tie minus the value of the remaining HQ Interconnection Capacity Credits. Further, because the Commission's ruling in the April 16 Order does not allow for HQ

¹² April 16 Order at P 142.

¹³ *Id.* at P 168. The Commission found that purchasing imported capacity that reduces the tie benefit would increase the Installed Capacity Requirement within New England, thus increasing the amount of capacity that must be purchased by New England customers.

¹⁴ *Id.* at P 169. The Commission held that because import capacity contracts over the HQ Interconnection that reduce HQ Interconnection Capacity Credits are not allowed, round-the-clock transmission reservations for HQ Interconnection capacity contracts are not necessary.

Interconnection capacity contracts, the August 31 Filing proposes to delete or modify certain sections relating to HQ Interconnection capacity.¹⁵ The August 31 Filing also proposes other changes to the FCM Market Rules to account for the Commission's ruling in the April 16 Order with respect to the HQ Interconnection,¹⁶ and makes various other administrative and typographical changes to the FCM Market Rules.¹⁷

ii. Notice

16. Notice of the August 31 Filing was published in the *Federal Register*, with interventions, comments and protests due on September 21.¹⁸ None was filed.

II. Procedural Issues

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2007)), the notices of intervention and the timely-filed unopposed motions to intervene serve to make the entities filing them parties to the proceeding in Docket Nos. ER07-546-002 and ER07-547-001. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept ISO-NE's and NEPOOL's answers to the protests, and therefore reject them. We will accept ISO-NE's and the State Commissions' August 10 supplemental comments, and NEPOOL's answer to

¹⁵ ISO-NE proposes to delete Sections III.13.1.3.3 and III.13.1.3.5.1.1, and modify Section III.13.7.2.2.

¹⁶ Section III.13.2.3.3(d) has been revised to reflect that ISO-NE will treat HQ Interconnection Capacity Credits as a tie benefit that cannot be reduced by capacity imports; Section III.13.2.3.3(d)(ii) has been revised to remove the references to separately modeled HQ Interconnection capacity zones; Section III.13.7.2.1.1(d) has been revised to remove the offset in the load reduction credit for HQ Interconnection Capacity Credits used in the calculation of the Installed Capacity Requirements; Section III.12.10 has been revised to remove language that would have reduced the value of HQ Interconnection Capacity Credits; and the definitions of HQ Net Interconnection Capability Credit and Installed System Capability have been revised to remove provisions relating to the netting of HQ Interconnection Capacity Credits.

¹⁷ August 31 Filing transmittal letter at 9-10.

¹⁸ 72 Fed. Reg. 52873 (2007).

those supplemental comments, because they have provided information that assisted us in our decision-making process.

III. Discussion

18. The Commission will accept both ISO-NE's June 21 Filing and August 31 Filing.

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19. Regarding the June 21 Filing, ISO-NE's and the State Commissions' August 10 supplemental comments, and NEPOOL's answer, the Commission finds that the prioritization of issues explained in the June 21 Filing and the specific deadlines proposed in ISO-NE and the State Commissions' supplemental comments meet our requirements in the April 16 Order. As we noted in the April 16 Order, the interconnection queue redesign issue should be a high priority for ISO-NE and its stakeholders, and ISO-NE has appropriately committed to address the issue and file any proposed changes to the market rules by October 1, 2008.

20. Regarding the proposed deadline of July 1, 2008, to file any proposed changes to the compensation methodology for units whose de-list bids have been rejected for reliability reasons, the Commission finds this date to be reasonable. While the April 16 Order stated that it would be desirable to have a compensation methodology in place for units needed for reliability by the start of the first Forward Capacity Auction, the Commission refrained from imposing specific time constraints on ISO-NE for this filing. ISO-NE has pursued this issue through the stakeholder process and has determined a specific and reasonable date by which it will file any redesign proposal for compensating units needed for reliability. The State Commissions have agreed to this date, and no party filed subsequent comments disagreeing with this date.

21. We further recognize NEPOOL's concern that, while ISO-NE has committed to specific dates by which it will file any redesign of the interconnection queue and reliability compensation methodology, ISO-NE is not obligated to make any design changes if it determines through its stakeholder process that the current designs are adequate, just, and reasonable. As we noted in the July 25 Rehearing Order, however, "it is now clear...that ISO-NE and NEPOOL are not contemplating retention of the approved [interconnection queue provision] in perpetuity."¹⁹

¹⁹ July 25 Rehearing Order at P 113.

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22. Turning to the August 31 Filing, the Commission finds ISO-NE's proposed revisions to the FCM Market Rules to be compliant with our directives in the April 16 Order and the July 25 Rehearing Order. The Commission finds reasonable and consistent with our directives in the April 16 Order ISO-NE's revisions to (a) the process by which a Market Participant is notified its bid has been rejected as inconsistent with its net risk-adjusted going forward and opportunity costs and (b) the process by which that Participant may choose to enter the Market Monitor's estimation of its costs as its bid. We also find ISO-NE's revisions to the Market Monitor's coordination with the Commission in the case of possible attempts at physical withholding or manipulation to be compliant with our directive in the April 16 Order.

23. The Commission finds reasonable ISO-NE's proposal to delay until the second Forward Capacity Auction the implementation of the market rule revision allowing Static De-list Bids to be entered at prices below two times the cost of new entry for units that are dependent on ambient air temperatures to provide capacity. Since Static De-list Bids have already been submitted for the first Forward Capacity Auction, implementing this revision to be effective for the first Forward Capacity Auction would require allowing generators with output dependent on ambient air temperatures to resubmit Static De-list Bids at this late stage. This would allow these units an unfair competitive advantage, since their bids could factor in the publicly-known bids already submitted by other units for the first Forward Capacity Auction. Plus, as ISO-NE points out in its August 31 Filing, re-opening the de-list bid submission window for all existing units could not be done without delaying the first Forward Capacity Auction, a most undesirable result. It is therefore reasonable to delay implementation of this FCM Market Rules revision until the second Forward Capacity Auction.

The Commission orders:

We hereby accept the filings as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.