

127 FERC ¶ 61,142
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. ER09-864-000

ORDER ACCEPTING PROPOSED INSTALLED CAPACITY REQUIREMENTS
FOR 2009/2010 CAPABILITY YEAR

(Issued May 21, 2009)

1. On March 19, 2009, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, the Filing Parties) jointly submitted for filing ISO-NE's Installed Capacity Requirements (ICR) for the 2009/2010 Capability Year¹ pursuant to the settlement agreement establishing the Forward Capacity Market (FCM Settlement Agreement)² and section 205 of the Federal Power Act (FPA).³ In this order, we accept ISO-NE's ICRs, effective June 1, 2009, the start of the 2009/2010 Capability Year.

I. Background

2. The ICRs are ISO-NE's projected measures of the capacity (i.e., generation, imports, and demand resources) necessary to satisfy the New England control area's total forecasted load requirements and to maintain sufficient reserve capacity to meet reliability requirements for the New England Control Area. Under section III.12.3 of Market Rule 1 (Consultation and Filing of Capacity Requirement), ISO-NE calculates the ICRs each Capability Year and must file the ICRs with the Commission under section 205 of the FPA.

¹ ISO-NE's 2009/2010 Capability Year runs from June 1, 2009, through May 31, 2010.

² *Devon Power, LLC*, 115 FERC ¶ 61,340, *order on reh'g and clarification*, 117 FERC ¶ 61,133 (2006) (FCM Settlement Agreement).

³ 16 U.S.C. § 824d (2006).

3. On June 16, 2006, the Commission approved the FCM Settlement Agreement, which established the Forward Capacity Market in New England. The FCM Settlement Agreement provides a transition period (beginning December 1, 2006, and ending May 31, 2010) during which fixed payments will be made to all ICAP resources based on their monthly unforced capacity (UCAP) ratings.⁴ The 2009/2010 ICR values will not be used for establishing the amount of ICAP LSEs must procure, as was the case in prior years. Instead, during the transition period, the ICR values will be used to calculate the annual and monthly ICAP reserve margins for use in determining the UCAP ratings of demand resources, other demand resources, and the New York Power Authority contracts. In addition, the 2009/2010 ICRs will serve to inform stakeholders regarding the status of New England's resource adequacy for the 2009/2010 Capability Year.

II. The Filing

4. The Filing Parties state that the proposed 2009/2010 Capability Year ICRs were developed using essentially the same methodology and process used by NEPOOL for more than twenty years prior to the beginning of regional transmission organization (RTO) arrangements in New England and by the ISO-NE to develop ICR values since the 2005/2006 Capability Year.⁵ Specifically, the Filing Parties state that the ICRs for the 2009/2010 Capability Year were determined using well established modeling assumptions regarding a variety of factors, including load forecast, assumed resource availability, and tie benefits.⁶ They state that ISO-NE's and NEPOOL's stakeholder process resulted in consensus agreement regarding the assumptions and modeling methods used to establish the proposed ICRs.

⁴ On April 20, 1998, ISO-NE began operating an installed capacity (ICAP) market requiring load serving entities (LSE) to procure a specified amount of capacity each month based on each particular LSE's projected peak demand and a required reserve margin. ICAP is used to determine the monthly UCAP requirements (with various adjustments) that each market participant must provide.

⁵ Filing at 4-5. The Filing Parties note that the same methodology and process were also used for developing the Commission-accepted ICR values, Hydro Québec interconnection capability credits, and related values for the 2010/2011 and 2011/2012 Capability Years, as reflected in the amount of capacity procured in the first Forward Capacity Auction, adjusted due to the need of the FCM Settlement Agreement to project ICRs three years in advance. *Id.* at 5 (citing *ISO New England Inc.*, 125 FERC ¶ 61,154 (2008), and *ISO New England Inc.*, 121 FERC ¶ 61,250 (2007)).

⁶ *Id.* at 5.

5. The Filing Parties state that the forecasted peak loads of the entire New England control area for the 2009/2010 Capability Year are used to develop the corresponding ICRs detailed in the filing. The Filing Parties also state that the peak load forecasts were developed by ISO-NE using economic and demographic assumptions as reviewed and agreed to by the NEPOOL Load Forecast Committee.⁷ The Filing Parties state that the ICR calculation methodology takes into consideration all possible peak loads represented by weekly distributions. The Filing Parties explain that the projected New England Control Area 50/50 summer peak load for the 2009/2010 Capability Year is 27,875 megawatts (MW), i.e., 95 MW lower than the previous peak load forecast for the 2008/2009 Capability Year of 27,970 MW.⁸ The Filing Parties explain that the decrease in peak loads reflects the current general economic downturn.

6. Additionally, the Filing Parties state that the proposed 2009/2010 ICRs reflect assumptions regarding various forms of resources. The Filing Parties state that demand response resources totaling 1,914 MW (a 261 MW increase from 1,653 MW in the 2008/2009 Capability Year) were modeled in the ICR calculation, including resources that provide real-time peak load relief when ISO-NE implements Operating Procedure 4 (Actions during a Capacity Deficiency). Further, they state that other demand side resources, which consist primarily of energy efficiency programs, totaling 506 MW (reflecting an increase of 339 MW from the 167 MW last year) were also modeled in the ICR calculation. The Filing Parties state that capacity additions are reflected in the ICR calculation, including those under construction, which ISO-NE approved for interconnection, and which are expected to be in-service by July 1, 2009. In addition, they state that Daily Cycle Hydro units are also reflected in the ICR calculation, as well as purchases and sales. The Filing Parties advise that existing generating capacity of 31,443 MW is projected for the summer of the 2009/2010 Capability Year, which is an increase of 342 MW from the 31,101 MW of existing capacity assumed for the summer of the 2008/2009 Capability Year, reflecting generation additions, no capacity attritions, as well as changes in generator ratings.⁹

⁷ *Id.* at 7-8.

⁸ The Filing Parties explain that 50/50 summer peak refers to the peak load having a 50 percent chance of being exceeded, and is expected to occur at a weighted New England-wide temperature of 90.4 degrees Fahrenheit. A 90/10 summer peak refers to the peak load having a 10 percent chance of being exceeded, corresponds to a forecast 29,780 MW, and is expected to occur at a weighted New England-wide temperature of 94.2 degrees Fahrenheit.

⁹ Filing at 8.

7. The Filing Parties state that, as with the ICRs approved by the Commission for past Capability Years, the proposed ICRs reflect resource availability (performance) assumptions. They state that demand response performance was measured based on actual response during 2008-event response audits and one Operating Procedure 4-event for which these resources were requested to respond.¹⁰ They also state that other demand side resources were modeled at 100 percent available. The Filing Parties further state that the generating unit availability modeling reflects projected scheduled maintenance and forced outages. They explain that individual generating unit maintenance is based on each unit's historical five-year average of scheduled maintenance (or NERC data for the same class of unit, if five-year average data are not available). Similarly, individual generating unit forced outage assumptions are based on the unit's five-year historical forced outage data (or NERC data for the same class of unit).

8. The Filing Parties state that ties with neighboring control areas reduce ICRs and the need to buy capacity within New England; the ties with neighboring control areas provide assistance that New England can rely on, without jeopardizing reliability in New England or its neighboring control areas, in the event of a capacity shortage in New England. They state that the amount of tie benefits is fixed during the transition period at 2,000 MW at annual peak based on the 2003 Tie Benefits Study, but the methodology will change for allocating the total tie benefits for the 2010/2011 Capability Year for the neighboring control areas, namely, the Hydro Québec, New Brunswick, and New York interties.¹¹ They explain that the 2,000 MW tie benefits assumption consists of 1,200 MW from the Hydro Québec Interconnection Capability Credits (HQICC), 600 MW of tie benefits from the New York ties, and 200 MW of tie benefits from the New Brunswick tie.¹²

9. Finally, the Filing Parties state that the Reliability Committee voted to recommend that the Participants Committee support the proposed 2009/2010 Capability Year values

¹⁰ *Id.*

¹¹ *Id.* at 9 (citing *ISO New England Inc.*, 124 FERC ¶ 61,298 (2008)).

¹² *Id.*; *see also id.* at 10-11. The Filing Parties note that the annual ICR filing does not set any or allocate any ICAP credit rights for interties; however, they state that the HQICC values represent capacity credits that are allocated to Hydro Québec Interconnection Rights Holders, which are entities that hold certain rights over the high-voltage, direct current transmission line that connects Québec to the New England region.

by a vote of 67.1 percent in favor.¹³ Further, they point out that at the March 6, 2009 Participants Committee meeting the Committee voted 72.85 percent in favor.

10. ISO-NE requests an effective date of and Commission order prior to June 1, 2009, the commencement date of the 2009/2010 Capability Year.

III. Notice of Filing and Responsive Pleadings

11. Notice of ISO-NE's filing was published in the *Federal Register*, 74 Fed. Reg. 14,120 (2009), with interventions and protests due on or before April 9, 2009. Timely interventions were filed by the New England Conference of Public Utility Commissioners, Northeast Utilities Service Company,¹⁴ Dynegy Power Marketing Inc., Maine Public Utilities Commission (Maine Commission), and the New England States' Committee on Electricity. The Massachusetts Department of Public Utilities filed a notice of intervention, and the Connecticut Department of Public Utility Control (Connecticut DPUC) filed a notice of intervention and protest. NRG Companies¹⁵ filed a motion to intervene one day out-of-time. On April 13, 2009, the Maine Commission filed additional comments.

12. The Connecticut DPUC protests ISO-NE's proposed ICRs for the 2009/2010 Capability Year "on the same jurisdictional grounds that the [Connecticut] DPUC has raised in many previous proceedings."¹⁶ That is, the Connecticut DPUC contends that the Federal Power Act expressly and unmistakably reserves jurisdiction over generating facilities and resource adequacy determinations—i.e., the ability to set the ICR—to the states.¹⁷ Thus, the Connecticut DPUC contends that Commission has no valid basis for

¹³ Filing at 11.

¹⁴ In this filing, Northeast Utilities Service Company filed on behalf of the Northeast Utilities Companies, which include Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire.

¹⁵ In this filing the NRG Companies include NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

¹⁶ Connecticut DPUC Protest at 2.

¹⁷ *Id.* (citing 16 U.S.C. §§ 824(b)(1), 824f, 824o (2006)).

asserting its jurisdiction over ICR, and this ICR filing is beyond the Commission's authority to accept.

13. The Maine Commission adopts and incorporates by reference the Connecticut DPUC's arguments. The Maine Commission also notes that the question of whether the Commission has exceeded its statutory authority in setting the ICR is currently before the Court of Appeals for the District of Columbia Circuit, in which proceeding the Maine Commission has intervened.

IV. Discussion

A. Procedural Matters

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

B. Commission Determination

15. The annual ICR calculation is a regional process that has been used for twenty-five years to satisfy the New England Control Area's total forecasted load requirements and to maintain sufficient reserve capacity to meet reliability standards. The ICR calculation takes into consideration current reliability rules, expected load conditions, assumptions regarding various resources, and tie benefits from neighboring control areas. In addition, a thorough stakeholder process was conducted with respect to the proposed ICRs by ISO-NE and NEPOOL, which resulted in substantial consensus agreement regarding the assumptions and modeling methods. This process concluded with a sector vote of 72.85 percent of the Participants Committee in favor of the proposed ICRs. Based on our review of the instant filing, we concur with the Filing Parties that the proposed ICRs for 2009/2010 Capability Year are reasonable and consistent with the FCM Settlement Agreement. Accordingly, we will accept the proposed ICRs for filing, to become effective June 1, 2009, as requested.

16. With respect to the Connecticut DPUC's and the Maine Commission's position that the Commission has exceeded its jurisdiction, the Commission previously has

explained, and here maintains again, that it has jurisdiction over the ICR because it is a component of jurisdictional wholesale rates.¹⁸

The Commission orders:

The Commission hereby accepts ISO-NE's ICRs for filing effective June 1, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ The Commission has addressed these objections before and we adopt that analysis in this proceeding. *E.g.*, *ISO New England Inc.*, 111 FERC ¶ 61,185 (2005), *reh'g denied*, 112 FERC ¶ 61,254 (2005), *remanded sub nom. Conn. Dep't of Pub. Util. Control v. FERC*, No. 05-1411 (D.C. Cir. Apr. 20, 2007), *order on remand, ISO New England Inc.*, 122 FERC ¶ 61,144 (2008); *see also Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008) (affirming Commission jurisdiction over the Forward Capacity Market).