

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

)	
)	Docket Nos. ER14-2419-000
ISO New England Inc.)	ER14-2419-001
)	EL14-52-000
)	

**MOTION TO INTERVENE AND COMMENTS OF
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), the Commission’s July 14, 2014 Notice of Filings #2, and the Commission’s July 15, 2014 Notice of Filings #1, the New England States Committee on Electricity (“NESCOE”) hereby files this motion to intervene and comments in the above-captioned proceeding.¹

On July 14, 2014, ISO New England Inc. (“ISO-NE”) filed tariff revisions related to the Forward Capacity Market² (“FCM”) rules in compliance with the Commission’s May 30 Order (the “July 14 Filing”).³ While the July 14 Filing addressed several capacity market design issues in response to the May 30 Order, NESCOE’s comments are limited to rule changes relative to intra-zonal constraints.

¹ 18 C.F.R. §§ 385.212 and 385.214 (2012).

² Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff (“Tariff”).

³ *ISO New England Inc. and New England Power Pool*, Order on Tariff Filing and Instituting Section 206 Proceeding, 147 FERC ¶ 61,172 (May 30, 2014) (“May 30 Order”).

I. Communications

Pursuant to Rule 203,⁴ the person to whom correspondence, pleadings, and other papers in regard to this proceeding should be addressed and whose name is to be placed on the Commission's official service list is designated as follows:

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II. Motion to Intervene

NESCOE is the Regional State Committee for New England. It is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO New England administers.⁵ NESCOE's mission is to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the lowest reasonable cost over the long term, consistent with maintaining reliable service and environmental quality.

This proceeding concerns, among other things, the rules governing the FCM, New England's resource adequacy market. This proceeding has system reliability, consumer cost, and environmental implications. NESCOE has a direct, immediate, and substantial interest in this proceeding, which will not be adequately represented by any other party. In addition,

⁴ 18 C.F.R. § 385.203 (2012).

⁵ *ISO New England, Inc.*, 121 FERC ¶ 61,105 (2007).

NESCOE’s participation in this proceeding as the representative of the New England Governors will serve the public interest. NESCOE respectfully requests leave to intervene in this matter.

III. Background

A. *May 30, 2014 FCM Performance Incentives Order*

On January 17, 2014, ISO-NE and the New England Power Pool (“NEPOOL”) Participants Committee jointly filed alternative sets of tariff revisions intended to provide incentives for resource performance. The ISO-NE alternative, called FCM Pay-for-Performance (“PfP”), focused on the FCM with a re-defined capacity product. The NEPOOL alternative, among other things, increased administrative price adders in the energy market during periods of scarcity (so-called Reserve Constraint Penalty Factors or “RCPFs”). On May 30, 2014, the Commission found that “neither proposal standing alone has been shown to be just and reasonable.”⁶ The Commission instituted a proceeding under Section 206 of the Federal Power Act and required ISO-NE to submit Tariff revisions reflecting a modified version of its proposal and an increase in the RCPFs consistent with the NEPOOL proposal.⁷ Among other things, the Commission found that ISO-NE’s proposal “potentially sends improper price signals in the event of an intra-zonal transmission constraint.”⁸

In the May 30 Order, the Commission stated, “while we generally agree with ISO-NE that as part of its proposed two-settlement capacity market design, exemptions for non-performance should be minimal, we find that *an exemption is appropriate in instances where an intra-zonal constraint may lead to improper price signals to capacity resources.*”⁹ (emphasis added) According to the Commission, such improper price signals may “incent a generating

⁶ May 30 Order, at P 1.

⁷ *Id.*

⁸ *Id.*, at P 23.

⁹ *Id.*, at P 62.

resource on the export side of the [intra-zonal] constraint to submit energy market offer prices that are below its actual marginal operating costs in order to be dispatched at the greatest quantity possible and thereby maximize its Capacity Performance Payment.”¹⁰ The Commission directed ISO-NE “to submit Tariff revisions to address the improper price signals in this scenario or further explain why the exemption is not necessary.”¹¹

In a June 30, 2014 filing, the NEPOOL Participants Committee requested that the Commission clarify the scope of the non-performance exemption for intra-zonal constraints.¹²

B. Compliance Requirement and Subsequent Stakeholder Process

On June 20, 2014, ISO-NE shared its plan for compliance with the NEPOOL Markets Committee.¹³ In its June 20 presentation, ISO-NE provided its interpretation of the Commission’s compliance requirement and concern regarding improper price signals.¹⁴ ISO-NE’s discussed the implications for performance payments and drew an analogy to the energy market. According to ISO-NE, “[t]he PFP design effectively applies a scarcity price ‘premium’ to suppliers’ [real time] marginal incentives, in addition to the [real time Locational Marginal Price].”¹⁵ ISO-NE indicated that it was “evaluating a comprehensive compliance solution.”¹⁶

¹⁰ May 30 Order, at P 67.

¹¹ *Id.*

¹² Request for Clarification of the New England Power Pool Participants Committee, Docket Nos. ER14-1050-000 and ER14-1050-001 (Filed June 30, 2014) (“NEPOOL Request for Clarification”).

¹³ June 16, 2014 Memorandum to NEPOOL Markets Committee, R. Ethier and J. McDonald, available at http://www.iso-ne.com/committees/comm_wkgrps/mrktls_comm/mrktls/mtrls/2014/jun202014/a02_pfp_comp_memo.pdf.

¹⁴ June 20, 2014 Presentation to NEPOOL Markets Committee, *FCM Pay for Performance: Compliance Requirement (revision 1)*, P. Alivand et. al. (“June 20 Presentation”), available at http://www.iso-ne.com/committees/comm_wkgrps/mrktls_comm/mrktls/mtrls/2014/jun202014/a02_iso_presentation_r1.pptx.

¹⁵ June 20 Presentation, at 13.

¹⁶ June 20 Presentation, at 9.

On July 8, 2014, ISO-NE presented its compliance approach to the NEPOOL Markets Committee.¹⁷ For the specific locations affected by intra-zonal constraints, ISO-NE’s compliance approach does not exempt resources from non-performance penalties. Instead, ISO-NE proposes to adjust the “Capacity Performance Payment (for a resource on the export side of a binding intra-zonal transmission constraint) so that it receives no credit for energy supplied” as well as a “deduction from its Capacity Base Payment.”¹⁸ The Markets Committee voted on the ISO-NE approach that same day. No market participant voted to support the proposal, with some abstentions noted.¹⁹

On July 10, 2014, the NEPOOL Participants Committee voted on the ISO-NE intra-zonal compliance approach, again with no market participants in support (some abstentions noted).²⁰

IV. Comments

The states acknowledge and appreciate both the Forward Capacity Auction (“FCA”) qualification schedule and the Commission’s compliance requirement deadline. However, there is a need for additional time to consider ISO-NE’s intra-zonal constraint compliance approach and potential alternatives. States and market participants, especially Maine and those affected in the Maine zone, had only one meeting to evaluate and discuss the change in expected FCM outcomes. There may be unintended consequences from ISO-NE’s proposed approach that

¹⁷ July 8, 2014 Presentation to NEPOOL Markets Committee, *FCM Pay for Performance: Compliance Requirement (revision 2)*, P. Alivand et. al. (“July 8 Presentation”), available at http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2014/jul89102014/a03_iso_presentation_07_08_14_r2.pptx.

¹⁸ July 14 Filing, at 9.

¹⁹ July 8, 2014 Memorandum to NEPOOL Markets Committee, *Actions of the Markets Committee*, A. Kuznecow (“July 8 MC Notice of Actions”), available at http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/actions/2014/mc_actions_14070810.doc.

²⁰ July 11, 2014 Memorandum to NEPOOL Participants Committee, *Noticed Action of the NEPOOL Participants Committee*, D. Doot (“July 10 PC Notice of Actions”), available at http://www.nepool.com/uploads/NPC_NOA_20140710.pdf

warrant further consideration, especially as they relate to existing resources that have already submitted their offers for the upcoming FCA.

Market participants were expecting an exemption from performance payments for resources limited by intra-zonal constraints.²¹ Minutes from the July 10 NEPOOL Participants Committee meeting indicate that market participants expressed a range of views regarding ISO-NE's approach, including a perceived shift in the compliance approach.²² Additionally, the minutes indicate that stakeholders were, on the day of the vote, only beginning to realize the breadth of the changes, that other possible alternatives were being considered, and that adequate time was not available to explore such alternatives. As previously mentioned, none of the market participants voted in support of ISO-NE's proposal at either the Markets or Participants Committees.²³ The degree of change in the ISO-NE proposal between what it presented for discussion and what it presented for a vote also took the states by surprise.²⁴

For resources behind intra-zonal constraints, there is a significant difference in expected FCM outcomes between a performance exemption and the ISO-NE compliance approach. Rather than exempting these resources from Capacity Performance Payments, ISO-NE intends to apply negative Capacity Performance Payments for these resources under such circumstances. ISO-NE would, in effect, deduct from the pre-paid Capacity Base Payment through a negative

²¹ The June 30 NEPOOL Participants Committee's Request for Rehearing references the May 30 Order's determination that an exemption is appropriate. NEPOOL Request for Clarification, at 2.

²² Preliminary Minutes of the July 10, 2014 NEPOOL Participants Committee Meeting, August 1, 2014 Meeting, Agenda Item #1 (*Marked to Show Changes from Draft Circulated 7/18/2014*) ("July 10 PC Minutes"), at 3072-3077, available at http://www.nepool.com/uploads/NPC_20140801_Composite4.pdf.

²³ July 8 MC Notice of Actions and July 10 PC Notice of Actions.

²⁴ "A number of members expressed concern about what they received as a shift in the ISO's proposal, with some members particularly troubled by how different (at least from his understanding) the ISO's proposal was from the proposal first presented at the June 20 Markets Committee meeting." July 10 PC Minutes.

Capacity Performance Payment.²⁵ The states did not foresee ISO-NE's proposed Capacity Base Payments "claw back" and were expecting an exemption, as described in the Commission's May 30 Order.

Accordingly, NESCOE respectfully requests that the Commission provide states and market participants with the reasonable amount of time to discuss this compliance requirement that should have been afforded previously and remand the issue back to the NEPOOL stakeholder process for additional consideration. In the alternative, NESCOE respectfully requests the Commission provide reasonable process for states and stakeholders to consider and provide the Commission views on the arguments and alternative remedies that NEPOOL market participants may make in this proceeding and the Requests for Clarification on the May 30 Order. NESCOE understands the time constraints in this matter, however, states and stakeholders deserve a reasonable, even if expedited, opportunity to consider and opine on proposals whether in the NEPOOL stakeholder process or before the Commission.

²⁵ July 14 Filing, at 10.

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Longmeadow, Massachusetts this 4th day of August, 2014.

Respectfully submitted,

/s/ Benjamin S D'Antonio

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