

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

ISO New England Inc. and ) Docket No. ER12-1643-001  
New England Power Pool )

**MOTION TO INTERVENE OUT OF TIME,  
ANSWER IN SUPPORT OF REQUEST FOR EXTENSION, AND, IN THE  
ALTERNATIVE, LIMITED REQUEST FOR RECONSIDERATION OF  
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rules 212, 213, and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, and 385.214, the New England States Committee on Electricity (“NESCOE”) hereby files this Motion to Intervene Out of Time, Answer in Support of Request for Extension, and, in the Alternative, Limited Request for Reconsideration of the Commission’s June 20, 2013 Order on Proposed Tariff Revisions (“June 20 Order”) in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

On February 6, 2013, ISO New England Inc. (“ISO-NE”) made a compliance filing with the Commission, as required by Order No. 755<sup>2</sup> and subsequent orders, proposing Tariff<sup>3</sup> changes to implement a revised compensation methodology governing the provision of frequency regulation service (“February 2013 Proposal”). The February 2013 Proposal revised an initial compensation methodology that ISO-NE and the New England Power Pool Participants Committee (“NEPOOL”) proposed in an April 30, 2012 filing (“April 2012 Filing”), which the

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<sup>1</sup> *ISO New England Inc. and New England Power Pool*, 143 FERC ¶ 61,250 (2013).

<sup>2</sup> *Frequency Regulation Compensation in the Organized Wholesale Power Markets*, Order No. 755, 137 FERC ¶ 61,064 (2011) (Order No. 755), *reh’g denied*, 138 FERC ¶ 61,123 (2012).

<sup>3</sup> Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the “Tariff”).

Commission rejected in a November 8, 2012 Order as non-compliant with the directives set forth in Order No. 755.<sup>4</sup> In the June 20 Order, the Commission accepted the February 2013 Proposal but rejected ISO-NE's requested effective date of January 1, 2015, imposing instead an effective date of 180 days from the June 20 Order, and subject to ISO-NE submitting a further compliance filing.<sup>5</sup> On July 19, 2013, ISO-NE filed with the Commission a request for extension or, in the alternative, expedited rehearing ("ISO-NE Extension Request") that seeks an effective date of October 1, 2014.

NESCOE recognizes the importance of, and the Commission's interest in, implementing these changes to New England's frequency regulation market. However, NESCOE is concerned that the Commission's decision to require ISO-NE to fully implement the Tariff revisions by the deadline imposed in the June 20 Order could have the unintended effect of delaying other critical regional initiatives that have the potential to provide significant reliability and market efficiency benefits, including measures that may help to address challenges arising from New England's increased reliance on natural gas-fueled generation. For this reason, NESCOE respectfully submits this answer in support of the requested extension and limited request for reconsideration of the June 20 Order. NESCOE is not yet a party to this proceeding and also respectfully requests that the Commission grant its late intervention.

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<sup>4</sup> *ISO New England Inc., et al.*, 141 FERC ¶ 61,110 (2012) ("November 2012 Order").

<sup>5</sup> June 20 Order at P 1.

## **II. SERVICE AND COMMUNICATIONS**

The persons to whom correspondence, pleadings, and other papers in regard to this proceeding should be addressed and whose names are to be placed on the Commission's official service list are designated as follows:

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## **III. MOTION TO INTERVENE OUT OF TIME**

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-NE administers.<sup>6</sup> 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.

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<sup>6</sup> *ISO New England Inc.*, 121 FERC ¶ 61,105 (2007).

The interests of the citizens of New England are directly affected by the subject matter of this proceeding. In the June 20 Order, the Commission required ISO-NE to implement the Tariff revisions governing regulation market changes within 180 days of the June 20 Order, subject to a further ISO-NE compliance filing. In the April 2012 Filing, ISO-NE detailed the work needed to implement the regulation market changes and explained how this work fit within the other significant priorities being implemented in the New England region, which compete for the same internal and external development resources, including, in particular, the resources needed to design and implement the software for the regulation market.<sup>7</sup> Since the April 2012 Filing, ISO-NE, the states, and stakeholders have continued efforts to address system reliability challenges and make needed enhancements to the energy markets.

In one example reflecting such efforts, ISO-NE and NEPOOL recently filed with the Commission proposed Tariff revisions to provide market participants with greater flexibility to modify offers in the energy markets to account for changing fuel costs and operating costs (the “Offer Flexibility Changes”).<sup>8</sup> In comments being filed with the Commission today in Docket No. ER13-1877, NESCOE details its general support for these changes and the consumer benefits these revisions are expected to provide through improved market efficiency and reliability. The ISO-NE Extension Request states that the Offer Flexibility Changes project, as well as other significant priorities, may suffer if ISO-NE is directed to attempt to implement the regulation market changes within 180 days of the June 20 Order.<sup>9</sup> To the extent that ISO-NE’s ability to adequately address high priority initiatives in New England is impaired by the deadline

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<sup>7</sup> See June 20 Order at P 13.

<sup>8</sup> ISO New England Inc., Energy Market Offer Flexibility Changes, Docket No. ER13-1877-000 (filed July 1, 2013) (“Offer Flexibility Filing”).

<sup>9</sup> See ISO-NE Extension Request at 2, 10-15.

to implement regulation market changes, there may be significant impacts on the New England wholesale electricity markets and, thus, on New England consumers.

Based on the foregoing, NESCOE has a direct and substantial interest in this proceeding, which will not be adequately represented by any other party. Accordingly, NESCOE respectfully requests leave to intervene in this matter, and submits that good cause exists to accept this motion to intervene out-of-time. NESCOE's intervention at this stage will not prejudice other parties to this case for the reasons provided below, and NESCOE's participation in this proceeding as the representative of the New England Governors will serve the public interest. NESCOE recognizes that the Commission disfavors granting intervention at the rehearing stage,<sup>10</sup> but notes that it is not seeking rehearing, and that its interest in this proceeding is limited to the effective date of the Tariff revisions. In particular, in light of the ISO-NE Extension Request on this same issue, NESCOE's participation will not disrupt the proceeding and may assist the Commission in its deliberations. For these reasons, NESCOE requests that the Commission permit its intervention in this proceeding, as provided by Rule 214.

If, however, the Commission does not grant NESCOE's motion to intervene, NESCOE respectfully requests that the Commission permit NESCOE's participation as *amicus curiae*, which would allow NESCOE "to carry out its responsibilities and would contribute to [the Commission's] consideration of the issues in this case."<sup>11</sup> NESCOE's request for reconsideration will assist the Commission in understanding the issues.

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<sup>10</sup> See, e.g., *Williston Basin Interstate Pipeline Co.*, 112 FERC ¶ 61,038, at P 12 (2005).

<sup>11</sup> *Midwest Independent Transmission System Operator*, 104 FERC ¶ 61,105, at P 18 (2003); see also *Virginia Electric & Power Co.*, 27 FERC ¶ 61,093 (1984) (allowing filing of amicus brief in support of rehearing request).

#### **IV. ANSWER IN SUPPORT OF REQUESTED EXTENSION, AND IN THE ALTERNATIVE, REQUEST FOR RECONSIDERATION**

NESCOE supports the requested extension of time for ISO-NE to implement the Tariff revisions by October 1, 2014. If, however, the Commission does not grant the requested extension, NESCOE respectfully requests that the Commission reconsider its decision to require ISO-NE to implement its February 2013 Proposal within 180 days from the date of June 20 Order.

The Commission provides in its June 20 Order a description of the scale of New England's regulation market, noting the "small size" of this market and that, in 2011, it reflected a value of "\$13.3 million, or 0.2 percent of the cost of electricity."<sup>12</sup> To put these numbers into broader context, the total value of New England's energy markets in 2011, which includes payments to regulation service providers, was over \$7 billion.<sup>13</sup>

NESCOE recognizes the importance of design enhancements to the frequency regulation market, as well as the consumer benefits achievable through the Commission's reforms to this market. However, NESCOE is concerned that the implementation deadline set forth in the June 20 Order could unintentionally result in the delay of other ongoing initiatives with the potential to provide consumers with greater market efficiency and system reliability benefits, including changes that provide an additional tool to help coordinate gas and electric markets and help address reliability concerns related to the region's growing reliance on natural gas as a fuel supply. In considering ISO-NE's request to extend the deadline to October 1, 2014, and this request for reconsideration, NESCOE respectfully asks the Commission to balance the need for

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<sup>12</sup> June 20 Order at P 7.

<sup>13</sup> See ISO New England Inc., 2012 Regional System Plan, at 24-25, available at <http://www.iso-ne.com/trans/rsp/2012/index.html>.

expedient implementation of the full regulation market changes with other high-priority projects in the New England region.

In the ISO-NE Extension Request, ISO-NE states that it is not capable of meeting the implementation deadline even if it diverted resources from other projects.<sup>14</sup> ISO-NE describes the “multi-stepped project” involved in identifying and making software changes, developing operating documents, and training personnel on using software.<sup>15</sup>

In addition to these stated resource and temporal constraints, ISO-NE also outlines significant projects underway that could be delayed if resources are immediately shifted to implementing the frequency regulation market changes.<sup>16</sup> Most prominently, ISO-NE cites the Offer Flexibility Changes, filed with the Commission after the June 20 Order, as a critical and high priority project that may not be able to meet a proposed aggressive implementation schedule absent an extension of the deadline relative to the regulation market revisions.<sup>17</sup> ISO-NE provides additional examples of potential project delays, such as initiatives related to the elimination of seams with the New York Independent System Operator (“NYISO”) that could save consumers millions of dollars annually and improving the integration of wind into system operations.<sup>18</sup>

Balancing these various priorities and acknowledging the extent of its resources, ISO-NE requests an implementation date of October 1, 2014. This date accelerates the January 1, 2015 deadline that it requested in the February 2013 Proposal and, according to ISO-NE, reflects “the most aggressive schedule for implementing the Commission-approved changes without delaying

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<sup>14</sup> ISO-NE Extension Request at 7-8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 10-15.

<sup>17</sup> *Id.* at 12-14.

<sup>18</sup> *Id.* at 15; Joint Affidavit of Vamsi Chadalavada and M. David Hameedy for ISO New England Inc. at 17.

other projects, including some that will have a more significant impact on market efficiency, customer savings, and system reliability[.]”<sup>19</sup> The ISO-NE Extension Request also notes that ISO-NE’s 2013 capital budget filing, which the Commission accepted effective January 1, 2013,<sup>20</sup> moved back the schedule for implementing the frequency regulation market changes to the fourth quarter of 2014 because of the priority of ongoing work to address system reliability concerns.<sup>21</sup>

NESCOE is not in a position to address ISO-NE’s internal and external resource constraints and how they may relate to prioritizing and implementing various projects. However, to the extent that the implementation deadline imposed in the June 20 Order adversely impacts ISO-NE’s ability to finalize activities with wide-ranging market and reliability implications, NESCOE is concerned about the effect that such delays will have on consumers and, in particular, the cost of maintaining system reliability in the near-term.

ISO-NE is explicit regarding the effect of the regulation market implementation on the time schedule for putting in place the Offer Flexibility Changes: if the Commission does not grant the requested extension and makes the former the higher priority, the Offer Flexibility Changes will almost certainly not be in place to help address system operation issues for the 2014/2015 winter season.<sup>22</sup> In the comments NESCOE filed today on the Offer Flexibility Changes, NESCOE notes that such changes provide a mechanism for gas-fired generators to account for changing fuel costs that may occur over the course of an Operating Day.<sup>23</sup> In this manner, increased offer flexibility helps align the marginal cost of electricity with the actual cost

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<sup>19</sup> ISO-NE Extension Request at 7.

<sup>20</sup> *ISO New England Inc.*, 141 FERC ¶ 61,275 (2012).

<sup>21</sup> ISO-NE Extension Request at 23-24.

<sup>22</sup> *Id.* at 2, 13.

<sup>23</sup> Motion to Intervene and Comments of the New England States Committee on Electricity, Docket No. ER13-1877-000 (filed July 22, 2013), at 4.

of production, improving market efficiency and providing system reliability benefits.<sup>24</sup>

Incremental reliability needs for winter 2014/2015 and beyond have yet to be defined, to the extent they are even needed in the first place.<sup>25</sup> However, reliability benefits achieved through the Offer Flexibility Changes have the potential to reduce the level of any additional reliability measures needed to address system operational challenges in winter 2014/2015 and subsequent periods.

In considering other extension requests, the Commission has taken into account the effect that full implementation of an order would have on a region's larger ongoing initiatives. For example, the Commission granted a request by the Southwest Power Pool, Inc. ("SPP") for an extension of time to implement certain requirements in Order No. 719 where SPP asserted that doing so "would divert both internal and vendor resources necessary for development of SPP's Integrated Marketplace, thus causing delays while providing no concomitant benefit to SPP stakeholders."<sup>26</sup>

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<sup>24</sup> The proposed revisions should additionally help to address the Commission's concern expressed in *Dominion Energy Marketing, Inc.*, 143 FERC ¶ 61,233, at P 28 (2013) that the Tariff lacks "flexibility to allow for cost recovery by resources that respond under extraordinary circumstances."

<sup>25</sup> For example, as NESCOE has stated in other proceedings, a complaint is currently pending before the Commission, *New England Power Generators Association v. ISO New England Inc.* ("NEPGA Complaint"), regarding the existing performance obligations under the ISO-NE Tariff that generators assume in return for annual capacity payments. *New England Power Generators Assoc. v. ISO New England Inc.*, Complaint and Request for Expedited Consideration, Docket No. EL13-66-000 (filed May 17, 2013); *New England Power Generators Association*, Answer of ISO New England Inc., Docket No. EL13-66-000 (filed June 6, 2013). Disposition of the NEPGA Complaint, which may answer this fundamental question regarding baseline performance obligations, is thus inextricably linked with future proposals in the region to purchase incremental levels of reliability.

<sup>26</sup> *Southwest Power Pool, Inc.*, Notice of Extension of Time in Docket Nos. ER09-1050-001, *et al.* (Nov. 30, 2011). SPP's Integrated Marketplace proposal included establishing day-ahead and real-time energy markets. See *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,047, at n. 14 (2012).

In the instant proceeding, the full implementation of regulation market changes should similarly be balanced against other regional initiatives competing for the same resources but that are capable of providing a greater scale of consumer benefits and address high priority natural gas-electric challenges in New England. New England's regulation market, while structured to perform an integral service, is a fraction of the region's larger energy markets. On the other hand, the proposed Offer Flexibility Changes will impact the operation of the day-ahead and real-time markets in a fundamental way and have the potential to provide a broader range and magnitude of consumer benefits. Further, the Offer Flexibility Changes, which were not filed at the time of the June 20 Order, reflect an additional step toward better aligning the electric and gas markets. Other initiatives, such as resolving seams issues with NYISO, also provide the opportunity for significant consumer benefits. NESCOE urges the Commission to consider the timing for implementation of these activities, and the level of associated consumer benefits, in reconsidering the required timing of Order No. 755 implementation in New England.

## **V. CONCLUSION**

For the reasons stated herein, NESCOE respectfully requests that the Commission (i) grant its Motion to Intervene Out of Time in this proceeding, or in the alternative, permit NESCOE's participation as *amicus curiae*; and (ii) grant ISO-NE's requested extension of time, or, in the alternative, grant reconsideration of the decision to make the February 2013 Proposal effective within 180 days of the June 20 Order.

Respectfully submitted,

*/s/ Jason R. Marshall*

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Date: July 22, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 22<sup>nd</sup> day of July, 2013.

By: /s/ Phyllis G. Kimmel

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