

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

New England States	)	Docket No. EL13-34-000
Committee on Electricity	)	
	)	
v.	)	
	)	
ISO New England Inc.	)	
	)	
ISO New England Inc.	)	Docket No. ER12-953-001

**(not consolidated)**

**ANSWER TO MOTION FOR SUMMARY DISMISSAL OF  
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rule 213 of the Rules of Practice and Procedure<sup>1</sup> (“Rules”) of the Federal Energy Regulatory Commission (“Commission”), the New England States Committee on Electricity (“NESCOE”) hereby files this Answer to ISO New England Inc.’s (“ISO-NE”) Motion for Summary Dismissal in Docket No. EL13-34-000.

On December 28, 2012, NESCOE filed a Complaint pursuant to Section 206 of the Federal Power Act<sup>2</sup> (“FPA”) and Rules 206, 207, and 212<sup>3</sup> (“Complaint”) against ISO-NE, alleging that the buyer-side mitigation provisions of proposed tariff revisions<sup>4</sup> to the ISO-NE Transmission, Markets and Services Tariff (“Tariff”) are unjust and unreasonable without an

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<sup>1</sup> 18 C.F.R. §§ 385.213 (2012).

<sup>2</sup> 16 U.S.C. § 824e (2006).

<sup>3</sup> 18 C.F.R. §§ 385.206, 385.207, and 385.212 (2012).

<sup>4</sup> *ISO New England Inc.*, Compliance Filing, Docket No. ER12-953-001 (filed December 3, 2012) (“Compliance Filing”).

exemption for state-sponsored public policy resources promoted by state statutes.<sup>5</sup> On the same day, NESCOE filed, pursuant to Section 205 of the FPA, a protest to the ISO-NE Compliance Filing (“Protest”). On January 14, 2013, ISO-NE filed an Answer in Opposition to Motion to Consolidate, a Motion for Summary Dismissal of Complaint, and an Answer to Complaint.

Contrary to ISO-NE’s contention, the proposed Tariff revisions, which NESCOE submits are unjust and unreasonable pursuant to its Section 206 Complaint, should not be in effect for *any period of time* absent resolution of the issues set forth in the Complaint. In conformance with Commission guidance, NESCOE filed a Complaint that demonstrates that the offer floor mitigation rules are unjust and unreasonable as applied to new renewable resources developed pursuant to legitimate state laws and regulations. Further, NESCOE simultaneously filed its Protest and moved to consolidate the two proceedings so that the Commission could contemporaneously consider the Complaint, the proposed tariff revisions, and the policy implications associated with effectively barring new renewable resources from the Forward Capacity Market (“FCM”). In the interest of administrative efficiency and to obviate uncertainty and delay in the Forward Capacity Auction schedule, the Commission should, consistent with its guidance in the January 19, 2012 Order,<sup>6</sup> reject ISO-NE’s Motion for Summary Dismissal.

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<sup>5</sup> See also *ISO New England Inc.*, Motion to Intervene and Protest of the New England States Committee on Electricity, Docket No. ER12-953-001 (Filed December 28, 2012) (Protest). NESCOE also filed a Motion to Consolidate Proceedings on December 28, 2012, seeking leave to consolidate the docket initiated in response to the Complaint and the docket established for ISO-NE’s Compliance Filing, Docket Nos. EL13-34-000 and ER12-953-001, respectively.

<sup>6</sup> *ISO New England Inc. and New England Power Pool Participants Committee, order on reh’g and clarification*, 138 FERC ¶ 61,027 (2012) (January 19, 2012 Order), at P 89.

## I. Background

### A. ISO-NE's Compliance Filing

In its April 13, 2011 Order, the Commission “directed ISO-NE and its stakeholders to develop an offer floor mitigation construct in which asset-class-specific benchmark offer floors are applied to offers from new resources.”<sup>7</sup> In response, the ISO-NE Internal Market Monitoring Unit (“IMM”) developed a series of tariff revisions to implement buyer-side mitigation through an offer floor mitigation construct, commonly known as the Minimum Offer Price Rule (“MOPR”).<sup>8</sup> On December 3, 2012, ISO-NE filed, in Docket No. ER13-953-001, proposed revisions to the Tariff in response to the Commission’s March 30, 2012 Order on the FCM.<sup>9</sup> The MOPR would apply to all new resources offering into the FCM, including renewable resources.

### B. NEPOOL Stakeholder Process and The New England States’ Renewables Exemption Proposal

Following ISO-NE’s presentation of their proposed MOPR to the New England Power Pool (“NEPOOL”) Markets Committee in the fall of 2011, several stakeholders developed exemption proposals in connection with renewable resources. The Massachusetts Attorney General (“Mass AG”) developed an exemption for wind and solar resources, similar to the exemption from the MOPR in the PJM Interconnection.<sup>10</sup> On behalf of First Wind and Renewable Energy New England, Boreas Renewables developed an exemption proposal that

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<sup>7</sup> *ISO New England Inc. and New England Power Pool Participants Committee, order on reh’g and clarification*, 138 FERC ¶ 61,027 (2012) (January 19, 2012 Order) at P 82, citing *ISO New England Inc. and New England Power Pool Participants Committee*, 135 FERC ¶ 61,029 (2011) (April 13, 2011 Order).

<sup>8</sup> Compliance Filing, Transmittal at 8-28; *See also* Joint Testimony of Marc D. Montalvo and David H. Naughton, (the “Joint Montalvo / Naughton Testimony”) and ISO-NE Tariff Section III.A.21.

<sup>9</sup> *ISO New England Inc. and New England Power Pool Participants Committee*, 138 FERC ¶ 61,238 (2012) (March 30, 2012 Order).

<sup>10</sup> *See* Massachusetts Attorney General Presentation to the NEPOOL Markets Committee, *Massachusetts Attorney General Proposal: FCM Limited Categorical Exemptions* (December 6, 2011) available at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrkt comm/mrkt/mtrls/2011/dec672011/a07b\\_ma\\_ag\\_presentation\\_11\\_09\\_11.ppt](http://www.iso-ne.com/committees/comm_wkgrps/mrkt comm/mrkt/mtrls/2011/dec672011/a07b_ma_ag_presentation_11_09_11.ppt).

expanded upon the rejected Alternative Price Rule mechanism.<sup>11</sup> NESCOE developed an initial version of its categorical exemption to the MOPR supported by the six New England states (the “Renewables Exemption Proposal”).<sup>12</sup> The proposed MOPR and the three exemption proposals were presented by their proponents and discussed by market participants and ISO-NE at the NEPOOL Markets Committee in the fall of 2011. At that time, none of the exemption proposals garnered the votes required to amend ISO-NE’s package of compliance measures.<sup>13</sup> ISO-NE’s package of compliance measures, including the MOPR with no exemptions, received 2.45% of NEPOOL Markets Committee support.<sup>14</sup>

Subsequently, ISO-NE and the NEPOOL Participants Committee sought more time so that stakeholders and states could engage in a process to discuss, and hopefully reach a consensus on, comprehensive reforms to the FCM.<sup>15</sup> However, the March 30, 2012 Order required ISO-NE to submit a compliance filing on December 3, 2012.<sup>16</sup> Throughout the spring, summer, and fall of 2012, stakeholders and states continued to discuss redesigning the FCM. When that stakeholder process resulted in useful dialogue but no agreement on comprehensive reforms, ISO-NE resumed with advancing the compliance package developed in the fall of 2011.

Following lengthy stakeholder and state discussions regarding FCM redesign described above, NESCOE modified its original exemption proposal to incorporate feedback NESCOE

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<sup>11</sup> See Boreas Renewables Presentation to the NEPOOL Markets Committee, *FCM Offer Review Trigger Price Renewables Exemption Proposal* (December 6, 2011) available at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrks\\_comm/mrks/mtrls/2011/dec672011/a07d\\_renew\\_first\\_wind\\_presentation\\_11\\_30\\_11.ppt](http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2011/dec672011/a07d_renew_first_wind_presentation_11_30_11.ppt).

<sup>12</sup> See NESCOE Presentation to the NEPOOL Markets Committee, *New England States Collective Approach: ORTP Exemptions* (December 6, 2011), available at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrks\\_comm/mrks/mtrls/2011/dec672011/a07c\\_nescoe\\_presentation\\_12\\_06\\_11.pdf](http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2011/dec672011/a07c_nescoe_presentation_12_06_11.pdf).

<sup>13</sup> See Actions of the NEPOOL Markets Committee (December 7, 2011) at 2-3, available at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrks\\_comm/mrks/actions/2011/mc\\_actions\\_11120607.doc](http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/actions/2011/mc_actions_11120607.doc).

<sup>14</sup> *Id.* at 5.

<sup>15</sup> March 30, 2012 Order at P 4.

<sup>16</sup> *Id.*, at Ordering Paragraph (B).

received in the intervening FCM stakeholder discussions. NESCOE then presented its enhanced Renewables Exemption Proposal for discussion with ISO-NE and stakeholders. As with NESCOE's original exemption proposal, NESCOE brought its enhanced (the current version) Renewables Exemption Proposal through the stakeholder process at the NEPOOL Markets Committee.<sup>17</sup> In the normal course of the stakeholder process, NESCOE developed market rule language that would amend the ISO-NE compliance filing to include NESCOE's proposed exemption from MOPR.<sup>18</sup>

Resuming the NEPOOL stakeholder process from the fall of 2011, ISO-NE, the Mass AG, and NESCOE brought their respective FCM proposals before the NEPOOL Participants Committee on November 2, 2012. The NEPOOL Participants Committee then voted on the Mass AG and NESCOE amendments to the ISO-NE compliance filing. The Mass AG received 66.76% in support and the NESCOE Renewables Exemption Proposal received 56.92% in support.<sup>19</sup> The Mass AG proposal received the votes required to amend the ISO-NE compliance package and compete against the ISO-NE un-amended compliance package in a direct vote. The amended compliance package including the Mass AG exemption proposal received 28.72% in support, compared to 13.34% in support of the ISO-NE compliance package with no exemption to the MOPR.<sup>20</sup> As the alternative proposal did not receive 60% of the NEPOOL Participants'

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<sup>17</sup> NESCOE Presentation to the NEPOOL Markets Committee, *New England States Collective Approach: ORTP Exemptions* (September 12, 2012), available at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrks\\_comm/mrks/mtrls/2012/sep11122012/a15b\\_nescoe\\_presentation\\_09\\_12\\_12.pdf](http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2012/sep11122012/a15b_nescoe_presentation_09_12_12.pdf).

<sup>18</sup> NESCOE's market rule language is attached to the December 28, 2012 Complaint.

<sup>19</sup> New England Power Pool Participants Committee, Notice of Actions Taken at November 2, 2012 Meeting, available at [http://www.iso-ne.com/committees/comm\\_wkgrps/prtepnnts\\_comm/prtepnnts/actions/noa\\_npc\\_20121102.pdf](http://www.iso-ne.com/committees/comm_wkgrps/prtepnnts_comm/prtepnnts/actions/noa_npc_20121102.pdf).

<sup>20</sup> See *ISO New England Inc.*, Comments of the New England Power Pool Participants Committee, Docket No. ER12-953-001 (filed December 21, 2012) at 9-10 (NEPOOL Comments). National Grid sponsored the amendment putting forward the Renewables Exemption Proposal.

support, NEPOOL’s Section 205 rights were not triggered.<sup>21</sup> ISO-NE declined the opportunity to include an exemption to the MOPR in their compliance filing.

## II. ANSWER

The Commission should reject ISO-NE’s motion to dismiss and instead consider contemporaneously ISO-NE’s proposed Tariff revisions implementing buyer-side mitigation and NESCOE’s Renewables Exemption Proposal.

First, in the January 2012 Order, the Commission itself affirmed that a complaint under Section 206 of the FPA is the appropriate statutory vehicle for demonstrating “that ISO-NE’s offer floor mitigation tariff rules are unjust and unreasonable as applied to a particular project or projects.”<sup>22</sup> NESCOE filed such a Complaint consistent with this guidance, seeking to ensure that the proposed Compliance Filing tariff revisions regarding buyer-side mitigation will not be in effect for *any period of time* without resolution of the states’ claims that the changes are unjust and unreasonable. However, relying upon verb tenses as the basis for seeking summary dismissal, ISO-NE contends that “a complaint cannot lie against the ISO *at the present time*.”<sup>23</sup> This point misses the practical effect of implementing buyer-side mitigation as filed by ISO-NE:

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<sup>21</sup> Participants Agreement, Section 11.1.3; *See also* NEPOOL Comments at fns. 28-29 discussing the “jump ball” provision of the Participants Agreement, Section 11.1.5. Unlike some other regional state committees, NESCOE has no Section 205 rights.

<sup>22</sup> January 19, 2012 Order, 138 FERC ¶ 61,027 at P 89. In the April 2011 Order, the Commission invited resources to seek a case-by-case exemption to the MOPR. April 13, 2011 Order, 135 FERC ¶ 61,029, *Concurring Opinion of Commissioner LaFleur and Chairman Wellinghoff* at 1-2. A categorical exemption for certain renewable resources eliminates the financial and administrative burden on developers of renewable resources required by state statute from having to seek from the Commission an exemption to the MOPR under Section 206 individually. A limited categorical exemption also eliminates for such developers the uncertainty associated with whether and if so when the Commission may grant an exemption on a project-by-project basis.

<sup>23</sup> *New England States Committee on Electricity v. ISO New England Inc.*, ISO New England’s Answer in Opposition to Motion to Consolidate, Motion for Summary Dismissal of Complaint, and Answer to Complaint, Docket No. EL13-34-000 (Filed January 14, 2013) (“ISO-NE Combined Motion and Answers”) at 4 (emphasis added).

while ratepayers are not charged for capacity until three years have transpired from the date of the auction to the capacity commitment period (in this case June 1, 2017), the proposed tariff provisions *immediately* affect new renewable resources considering whether to qualify for the auction.

Second, NESCOE filed its Section 206 complaint simultaneously with its Section 205 protest to enable FERC to consider the entirety of public policy implications of the MOPR raised by the New England states through NESCOE. Despite ISO-NE's requested effective date of February 12, 2013 - now less than a fortnight away from the instant filing - ISO-NE moves for Summary Dismissal because the pending tariff provisions implementing offer-floor mitigation "are not yet effective."<sup>24</sup> Separately, ISO-NE argues that NESCOE's Protest is "an impermissible collateral attack on the Commission's orders."<sup>25</sup> If, as ISO-NE appears to contend, NESCOE is simultaneously "too early" *and* "too late," ISO-NE urges the Commission to leave NESCOE no present avenue to challenge the proposed Tariff revisions. Such an outcome is inequitable and untenable.

Moreover, to dismiss the Complaint now would effectively invite a new, albeit identical complaint in as little as two weeks, the requested February 12, 2013 effective date. Not only would this result in additional burden on the Commission and run counter to administrative efficiency,<sup>26</sup> it also unnecessarily risks disruption to the schedule for, and participation in, the FCM.

For these reasons, unless ISO-NE is willing to stipulate that the effective date of the tariff provisions implementing offer-floor mitigation included in its Compliance Filing can be held

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<sup>24</sup> ISO-NE Combined Motion and Answers, at 2.

<sup>25</sup> ISO-NE Combined Motion and Answers at 3.

<sup>26</sup> See *Dixon v. Love*, 431 U.S. 105, 114 (1977) (noting "the substantial public interest in administrative efficiency").

until the issues raised in the Complaint are resolved, the Complaint must go forward and be consolidated with the Compliance Filing docket in order to ensure that there is no gap in timing. Consideration of the buyer-side mitigation provisions of the Compliance Filing and the Complaint concurrently serves the public interest, enabling the Commission to remedy unjust and unreasonable buyer-side mitigation provisions within the requested time frame and to minimize disruption to the qualification schedule.

To further minimize any such disruption, NESCOE respectfully requests that the Commission resolve the issues raised in NESCOE's Complaint as expeditiously as possible pursuant to Rule 206(g)(2). ISO-NE presumably seeks a February 12, 2013 effective date for the proposed tariff revisions so that market participants will know the rights and obligations of participation in the Show of Interest Window for the eight Forward Capacity Auction. NESCOE shares ISO-NE's solicitude for the FCA schedule and seeks to minimize any disruption to participation caused by uncertainty in the market rules and associated mitigation regime. Accordingly, NESCOE has attached to the Complaint market rule language that has already been presented to, and discussed in, the NEPOOL stakeholder process and, as described in the background section above, includes revisions NESCOE made in response to stakeholder feedback. Remanding the offer floor mitigation provisions of the compliance filing is unnecessary and would result in additional delay. NESCOE urges the Commission to consider the Complaint concurrently with the Compliance filing and issue an order based on the merits of the pleadings.

As detailed extensively in the Complaint, NESCOE's Renewables Exemption Proposal should be adopted because it provides a just and reasonable alternative to the ISO-NE proposal and achieves the appropriate balance between the Commission's and the states' shared interest in



promoting competitive outcomes in the wholesale electricity markets and supporting public policies required by law.<sup>27</sup> A competitive wholesale marketplace that instead turns a blind eye towards state energy and environmental policy and associated statutory requirements is not just and reasonable.

### **III. Conclusion**

For the reasons stated herein, NESCOE respectfully requests that the Commission deny ISO-NE's Motion for Summary Dismissal and grant the relief requested in its Complaint in this proceeding.

Respectfully submitted,

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/s/ Benjamin S D'Antonio

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Date: January 29, 2013

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<sup>27</sup> April 13, 2011 Order, 135 FERC ¶ 61,029, *Concurring Opinion of Commissioner LaFleur and Chairman Wellinghoff* at 1-2.

## 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 29th day of January, 2013.

Respectfully submitted,

/s/ Benjamin S D'Antonio

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