

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

ISO New England Inc. and New England)	Docket No. ER13-2313-000
Power Pool Participants Committee)	
)	
)	

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

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure (the “Rules”), 18 C.F.R. §§ 385.212 and 385.214 (2012), and the Commission’s September 4, 2013 Combined 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

I. COMMUNICATIONS

Pursuant to Rule 203, 18 C.F.R. § 385.203 (2012), 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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¹ The NESCOE managers for New Hampshire and Rhode Island have indicated that their respective states abstain from this filing.

II. BRIEF BACKGROUND

On September 4, 2013, ISO New England Inc. (“ISO-NE”) and the New England Power Pool (“NEPOOL”) Participants Committee made a joint filing with the Commission presenting alternative proposals to modify the definition of a Shortage Event in the rules governing the Forward Capacity Market (“FCM”) (the “Jump Ball Filing”).² The Jump Ball Filing reflects agreement between ISO-NE and NEPOOL on fundamental changes to the definition.³ In both the ISO-NE and NEPOOL versions, the Shortage Event trigger, currently limited to a deficiency of ten-minute operating reserves for at least thirty contiguous minutes, would be expanded to include a deficiency of thirty-minute operating reserves over that same timeframe.⁴ There are also proposed changes relating to Shortage Events in the context of import-constrained and export-constrained Capacity Zones.⁵

No Shortage Events have occurred under the current rules. With implementation of the expanded definition, the potential for a Shortage Event—and, in turn, penalties assessed against non-performing resources—is increased.⁶ However, even with this change, ISO-NE states that Shortage Events “are still likely to be rare.”⁷ In supporting testimony filed with the ISO-NE Transmittal Letter, ISO-NE estimates that since the beginning of the first Capacity Commitment Period (June 1, 2010) through the date of the Jump Ball Filing, three Shortage Events (one

² The Jump Ball Filing includes a ISO-NE Transmittal Letter and a NEPOOL Transmittal Letter, along with respective supporting testimony and other materials. 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”), the Second Restated New England Power Pool Agreement, and the Participants Agreement.

³ Jump Ball Filing at 2. *See* ISO-NE Transmittal Letter at 2; NEPOOL Transmittal Letter at 2.

⁴ Jump Ball Filing at 2.

⁵ *Id.*; ISO-NE Transmittal Letter at 13-14; NEPOOL Transmittal Letter at 9.

⁶ *See* ISO-NE Transmittal Letter at 9.

⁷ *Id.*

occurring in each of the three Capacity Commitment Periods) would have been triggered if the revised definition had been in place.⁸

The ISO-NE and NEPOOL proposals diverge on the effective date for the new definition. ISO-NE seeks an implementation date of November 3, 2013, while NEPOOL requests application of the changed definition beginning on June 1, 2017 to coincide with a Capacity Supply Obligation (“CSO”) secured through the next Forward Capacity Auction (“FCA”), to be conducted in February 2014. In the Jump Ball Filing, ISO-NE and NEPOOL set forth their respective arguments on the appropriate implementation date. This is the basis for competing proposals before the Commission.

III. 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-NE administers.⁹ 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.

The instant proceeding has, *inter alia*, system reliability and consumer cost implications. NESCOE has a direct, immediate, and substantial interest in this proceeding, which will not be adequately represented by any other party. In addition, 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.

⁸ *Id.*

⁹ *ISO New England Inc.*, 121 FERC ¶ 61,105 (2007).

IV. COMMENTS

NESCOE supports the expansion of the definition of a Shortage Event, which is reflected in identical terms in both the ISO-NE and NEPOOL proposals. The incentive for resources with a CSO to perform when the system needs capacity is a principal component of the FCM construct. ISO-NE explains the critical role that Shortage Events play under the current FCM rules:

[E]ach resource having a [CSO] has its performance measured during periods of reserve deficiency, and, if the resource is fully or partially unavailable during that period, its capacity payment is adjusted downwards. This financial penalty resulting from unavailability during reserve deficiencies is a central feature of the FCM design and was intended to be the primary mechanism by which resources that are being paid for their [CSOs] are held to the obligations undertaken in the FCM.¹⁰

The shortcoming of the existing rule, which applies only to ten-minute reserves, is evident. A deficiency of operating reserves for a sustained period of thirty minutes or more, whether ten-minute reserves or thirty-minute reserves, is indicative of a system under severe stress.¹¹ In such a case, a Shortage Event should be triggered to promote availability when capacity is needed at this critical time. That has not occurred under the current definition. Instead, as ISO-NE details, the existing rule has never triggered the Shortage Event penalty structure despite periods of prolonged reserve deficiencies.¹²

¹⁰ ISO-NE Transmittal Letter at 4.

¹¹ *See id.* at 7 (“[I]t is important to understand that an operating reserve deficiency indicates serious system conditions even without a violation of the ten-minute reserve requirement, whether for thirty minutes or at all. A violation of the thirty-minute reserve requirement itself is serious . . . especially if long in duration.”).

¹² *See, e.g., id.* at 8 (highlighting the system conditions on July 19, 2013, including a nearly 15 percent unavailability rate for generators given start orders on the fourth highest demand day on record and reserve deficiencies across several hours).

Broadening the scope of a Shortage Event, as both ISO-NE and NEPOOL propose, is thus a necessary revision to a broken market rule. It appropriately realigns the market rules with the intent of the FCM framework and recognizes the heightened importance of resource availability during periods of reserve deficiencies.

NESCOE agrees with ISO-NE that the flaws inherent in the current rule are serious enough to warrant application of the revised definition as soon as practicable. NESCOE recognizes the position of market participants supporting the NEPOOL proposal to apply a later date, asserting, among other arguments, that ISO-NE's requested implementation date unfairly alters the "deal" for capacity transactions that have already taken place.¹³ This concern is understandable. However, the failure of a central component of the FCM construct to function *at all* also constitutes a material change to the arrangement that states and others expected to be in place since the inception of the FCM and, more recently, when broad consensus was reached to extend the FCA price floor for an additional auction.¹⁴

Moreover, while ISO-NE expects Shortage Events to occur very rarely under the new definition, the adverse consequences of maintaining the status quo for several more years have already been borne out. Under the current rules, the system operator cannot rely on incentives for needed capacity when serious conditions arise. The recent events of July 19, 2013, when nearly 15 percent of the generation ordered to start was unavailable and reserves were deficient

¹³ NEPOOL Transmittal Letter at 12-16, 18.

¹⁴ See ISO New England Inc. and the New England Power Pool Participants Committee, Revisions to the ISO New England Transmission, Markets and Services Tariff Related to Forward Capacity Market, Docket No. ER12-953-000 (filed Jan. 31, 2012), at 3 (describing strong NEPOOL support and support from a majority of New England states for proposed market rule changes, including a one-time extension of the price floor, in the context of ongoing discussions around FCM design).

across several hours, underscore ISO-NE's challenge.¹⁵ Also, with the status quo in place, electricity consumers, who have collectively made billions of dollars in capacity payments, similarly cannot count on a meaningful measure of the resource performance they have purchased. Given these considerations, on balance, NESCOE supports the earlier implementation date reflected in the ISO-NE proposal.

V. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission (i) grant its Motion to Intervene, and (ii) consider the above comments in this proceeding.

Respectfully submitted,

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Date: September 25, 2013

¹⁵ See ISO-NE Transmittal Letter at 8.

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 Boston, Massachusetts this 25th day of September, 2013.

Respectfully submitted,

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