

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

ISO New England Inc. and New England)	
Power Pool Participants Committee)	Docket No. ER13-1851-000
)	
)	

**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 June 28, 2013 Combined Notice of Filings #2, the New England States Committee on Electricity (“NESCOE”) hereby files this Motion to Intervene and Comments in the above-captioned proceeding.

On June 28, 2013, ISO New England Inc. (“ISO-NE”) and the New England Power Pool (“NEPOOL”) Participants Committee (together, the “Filing Parties”) jointly filed with the Commission proposed Tariff¹ revisions to implement an out-of-market procurement of incremental energy from certain demand response resources, oil-fired generators, and dual fuel units, as well as other measures intended to promote reliable system operations during the upcoming 2013-14 winter (the “2013/2014 Winter Program”).² The 2013/2014 Winter Program is largely time-limited to a three month period, December, 2013 through February, 2014, with only proposed changes to certain market monitoring rules to be implemented as permanent revisions.

¹ 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”).

² ISO New England Inc., Winter 2013-2014 Reliability Program, Docket No. ER13-1851-000 (filed June 28, 2013) (“Winter Program Filing”).

As detailed below and expressed during the stakeholder process, while NESCOE has a threshold concern regarding consumer investments in incremental reliability when the Commission is presently considering the scope of baseline resource performance obligations under the Forward Capacity Market (“FCM”), ISO-NE acted appropriately in identifying risks to reliable service for the coming winter and in proposing this set of stopgap solutions. NESCOE appreciates ISO-NE’s refinement of the proposal over the course of the stakeholder process³ and in response to discussions with the states. NESCOE’s acceptance of the 2013/2014 Winter Program as a one-time set of reliability enhancements targeted for the coming winter is based on an understanding and expectation that the proposed procurement will be sufficiently competitive to maintain total program costs generally within the cost estimate range ISO-NE has provided and that the program will include other key aspects detailed below.

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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³ The NEPOOL stakeholder process culminated in a Participants Committee vote of 85.62% in favor of supporting the program. *See id.* at 26.

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-NE administers.⁴ 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 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, 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. COMMENTS

The Filing Parties describe the system operational challenges in 2012-2013 that motivated the development of the 2013/2014 Winter Program, including fuel procurement challenges experienced by natural gas-fired generators and instances where dual fuel and oil-only resources lacked sufficient inventory "to allow for reliable operation during extended and/or repeated periods of cold weather."⁵ In proposing this interim solution for next winter, ISO-NE took appropriate action in response to a risk it identified to reliable system operations. Importantly, the 2013/2014 Winter Program includes key aspects that establish necessary

⁴ *ISO New England Inc.*, 121 FERC ¶ 61,105 (2007).

⁵ Winter Program Filing at 5. *See id.* at Joint Testimony of Robert G. Ethier and Peter Brandien on Behalf of ISO New England Inc. ("Ethier/Brandien Testimony") at 5-6, 8-9.

parameters around this out-of-market solution, including confining most of the program to a single winter period and employing mechanisms to minimize consumer cost exposure.

The Filing Parties also reference regional discussions currently underway regarding potential market-based solutions to address future system reliability challenges, ranging from more immediate market rule changes to longer-term solutions.⁶ Given the possibility of future short- to mid-term reliability measures designed to procure incremental energy, in commenting below on the 2013/2014 Winter Program, NESCOE provides its expectations regarding approaches and program attributes relative to any such future program. Immediately below, NESCOE details a threshold and overriding concern regarding requests for consumers to bear the costs of incremental investments in reliability when there is an open proceeding before the Commission regarding generators' existing resource performance obligations.

A. The Scope of Existing Performance Obligations Must be Clarified Before Additional Incremental Investments in Reliability Are Requested

While the necessity of expedient action warrants the limited measures reflected in the 2013/2014 Winter Program, NESCOE and the region as a whole cannot be asked to make a reasoned judgment regarding any future need for incremental investments in reliability without resolution regarding the level of resource performance consumers have already secured in exchange for FCM payments. In a complaint pending before the Commission, *New England Power Generators Association v. ISO New England Inc.* (“NEPGA Complaint”), the Commission is asked to clarify the existing performance obligations under the ISO-NE Tariff that generators assume in return for annual capacity payments.⁷

⁶ Winter Program Filing at 5-6.

⁷ *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*

NESCOE stated in comments on the NEPGA Complaint that the proceeding was inextricably linked with the 2013/2014 Winter Program, proposals being developed for subsequent winters, and longer-term measures to address reliability challenges.⁸ Without a definitive resolution to this fundamental question regarding *baseline* performance obligations under the Tariff, NESCOE cannot make a meaningful judgment about what consumers should have to buy *incrementally* in the interest of reliability. Drawing on a simple analogy, this is like being asked to buy additional homeowner’s insurance without knowing what the current policy already covers.

In its comments on the NEPGA Complaint, NESCOE respectfully requested that the Commission act expeditiously in clarifying the scope of existing resource performance obligations.⁹ Such prompt and clear action on the NEPGA Complaint will ensure that the 2013/2014 Winter Program is the last instance in which the region is asked to make a judgment about incremental investments without clarity on the baseline level of performance obligations consumers have already purchased.

B. Brief Description of the 2013/2014 Winter Program

The Filing Parties set forth the four components comprising the 2013/2014 Winter Program. The first two components, demand response resources and units providing “oil inventory services,” would be eligible to participate in an ISO-NE competitive solicitation of up

England Power Generators Assoc., Answer of ISO New England Inc., Docket No. EL13-66-000 (filed June 6, 2013).

⁸ *New England Power Generators Assoc.*, Motion for Leave to File Comments Out-of-Time and Comments of the New England States Committee on Electricity, Docket No. EL13-66-000 (filed June 21, 2013), at 4.

⁹ *Id.* at 3-5.

to 2.4 million MWh of incremental energy.¹⁰ Resources selected to participate would provide services from December 1, 2013 through February 28, 2014.¹¹

Demand response resources are eligible to bid if they are (i) new assets not currently participating in the wholesale markets, or (ii) existing assets with excess capacity (i.e., the capacity offered into the 2013/2014 Winter Program is not needed to meet its obligations under the FCM).¹² ISO-NE will seek to procure up to 200 such demand response assets, with additional rules regarding eligibility set forth in the proposed Appendix K.¹³

For oil inventory services, both oil-fired generating resources and dual fuel units capable of switching to oil within five hours would be eligible to participate in the ISO-NE procurement.¹⁴ In addition, such dual fuel units would be permitted to bid a “replenishment block.”¹⁵ Among other requirements relative to replenishment, a unit must have an initial block that is equal to the full tank and is generally required to replenish within five days of the tank decreasing by one-third of the initial block.¹⁶ Units can bid up to three such “replenishment blocks” into the program.¹⁷ The replenishment option is “intended to facilitate participation in the [program] by efficient dual fuel units, which tend to have small oil tanks.”¹⁸

In exchange for maintaining the level of oil inventory offered in their bids, oil-fired generators and dual fuel units would receive a monthly payment reflecting their bid amount.¹⁹

Demand response resources are compensated in the form of both monthly capacity and energy

¹⁰ Winter Program Filing at 8.

¹¹ *See id.* at proposed Appendix K, Section III.K.1.

¹² *Id.* at 9.

¹³ *Id.*

¹⁴ *Id.* at 15.

¹⁵ *Id.* at 16; Ethier/Brandien Testimony at 20.

¹⁶ Winter Program Filing at 16; Ethier/Brandien Testimony at 20.

¹⁷ Winter Program Filing at 16; Ethier/Brandien Testimony at 20.

¹⁸ Winter Program Filing at 16.

¹⁹ *Id.* at 15.

payments.²⁰ Appendix K sets forth the different non-performance penalties applicable to participating resources.²¹

The third component of the 2013/2014 Winter Program provides compensation for dual fuel units that conduct a successful test of their ability to switch to oil within five hours.²² Only units that are providing oil inventory services in response to ISO-NE's procurement are eligible for such compensation.²³

The fourth program component seeks to implement permanent changes to market monitoring rules that would permit dual fuel units to offer their higher cost fuel without having to justify this practice in advance.²⁴ This change is designed to provide generators "with greater flexibility in managing fuel supplies for dual fuel resources."²⁵

The cost estimate for the 2013/2014 Winter Program is between the range of \$16 to \$43 million.²⁶ Under the proposal, these costs would be allocated to Regional Network Load.²⁷

C. Program Length, Competition and Cost Discipline are Essential Components of the 2013/2014 Winter Program

The 2013/2014 Winter Program includes key features that place necessary bounds around out-of-market costs. First, the 2013/2014 Winter Program reflects a set of solutions that are largely confined to a three-month period over the coming winter. This restriction is imperative. Under the circumstances, an out-of-market procurement and other program costs are acceptable, but must extend no further. As described above, the 2013/2014 Winter Program should be the

²⁰ *Id.* at 11.

²¹ *Id.* at proposed Appendix K, Section III.K.9.

²² *Id.* at 17-18.

²³ *Id.* at 17.

²⁴ *Id.* at 18.

²⁵ *Id.*

²⁶ *Id.* at n. 68.

²⁷ *Id.* at 25.

last occasion in which the region is asked to evaluate the need for incremental reliability investments when clarity regarding the level of performance consumers have already paid for may obviate or lessen such a need.

In addition, NESCOE's acceptance of the 2013/2014 Winter Program is based in part on ISO-NE's ability to exercise discretion in purchasing less than the full 2.4 million MWh if prices are materially higher than ISO-NE's cost estimate.²⁸ The Filing Parties assert that there will be "sufficient competition" in connection with the proposed procurement.²⁹ Based on discussions over the course of the stakeholder process, it is NESCOE's understanding that ISO-NE anticipates that such a level of competition will restrain costs within ISO-NE's \$16 to \$43 million cost estimate range for the program. However, a proposed solicitation could ultimately yield costs on an order of magnitude larger than ISO-NE's cost estimate and there is no provision in the 2013/2014 Winter Program to cap costs. To the extent there is a significant upward deviation from ISO-NE's cost projection, NESCOE expects ISO-NE to exercise its discretion to deem the procurement uncompetitive and purchase less than the total amount solicited. Given that the 2013/2014 Winter Program is essentially an insurance policy, as well as the questions pending before the Commission regarding the scope of existing resource performance obligations, ISO-NE must balance program costs with the uncertainty that next winter's conditions may not require the insurance purchased with ratepayer money.

Also, a critical factor in measuring the success of the 2013/2014 Winter Program will be the level of competition achieved through the out-of-market procurement. The Filing Parties state that "[i]t is reasonable to assume that, since there is sufficient competition, generators will

²⁸ See Ethier/Brandien Testimony at 29 (stating that ISO-NE "is not required to purchase the entire 2.4 million MWh and may exercise its discretion to purchase less" if prices are very high).

²⁹ Winter Program Filing at 8.

bid in their baseline inventory in a competitive way that reflects their minimal incremental cost.”³⁰ It is essential that the 2013/2014 Winter Program realizes a robust level of competition. Such competition will ensure that these out-of-market costs, which consumers will ultimately bear, will be minimized to the extent possible.

In part to increase the overall level of competition, NESCOE strongly supported the inclusion of a demand response component as well as the addition of the replenishment provision for oil resources that would allow efficient dual fuel units with smaller tanks to participate meaningfully in the 2013/2014 Winter Program. The replenishment provision will thus promote competition by allowing units with smaller oil tanks to offer greater levels of energy than a single tank could provide. It will also have a number of attendant benefits: (i) facilitating participation by more efficient generators with better environmental performance attributes, (ii) allowing for a reduction in the quantity of oil remaining in tanks at the program’s end, and (iii) enhancing reliable operations through the participation of units with generally fast response times and flexibility in responding to unanticipated events.

NESCOE could not find the 2013/2014 Winter Program acceptable without the features described above. These aspects of the 2013/2014 Winter Program help to minimize consumer cost exposure and impose appropriate parameters around the length and cost of the program.

D. With Less Need for Expediency, Any Future Programs Should Be Fuel-Neutral and Allow for Sufficient Time to Understand the Identified Need and Estimated Program Costs

The Filing Parties describe how the objectives of securing incremental energy “in time for the winter” and “with minimal market distortions” limited the selection of possible

³⁰ *Id.* at 8.

solutions.³¹ Accordingly, only two primary asset types are eligible to respond to ISO-NE's proposed solicitation for incremental energy: demand response resources and units with oil inventory (oil-fired generators and dual fuel units). NESCOE expressed its preference during the stakeholder process for a more fuel neutral solution that could provide additional competition, as did ISO-NE and others.³² However, the need ISO-NE identified for next winter did not accord sufficient time to explore thoroughly the range of potential material negative market and operational implications arising from such an approach.³³ ISO-NE has agreed that if future winter programs are needed they will be fuel-neutral,³⁴ and NESCOE expects any future designs—if they are even needed in the first place—to reflect a market-based, fuel-neutral approach.

Without the time constraints of a same-year implementation, NESCOE further expects that ISO-NE will begin articulating its system needs and the costs associated with proposed solutions well in advance of any future winter program. During the stakeholder process leading up to the filing of the 2013/2014 Winter Program, NESCOE raised concerns regarding ISO-NE's methodology to determine the quantity of incremental energy needed for next winter, particularly the use of winter 2003-2004 as a planning baseline. As the Joint Filers note, the region experienced the coldest weather over the last decade during winter 2003-2004.³⁵ NESCOE's acceptance of the 2013/2014 Winter Program is in part due to ISO-NE selecting the lower end of their incremental needs assessment as the purchase amount. However, this acceptance of the 2013/2014 Winter Program should not be construed as NESCOE endorsing the planning criteria

³¹ *Id.* at 6-8.

³² *Id.* at 7.

³³ *See id.* at 7 (describing ISO-NE's concerns with implementing a fuel-neutral program for this winter).

³⁴ *Id.*

³⁵ *Id.* at 6

that ISO-NE relied upon in defining its need, including ISO-NE's use of winter 2003-2004 as a proxy for future temperatures or the gas-fired generation reduction curve used to model the availability of generators as temperatures drop.³⁶

The level and quality of needs analysis in this case is not representative of the level and quality of needs analyses upon which resource investments have been or should be made in order to secure adequate resources. More time must be allotted in the future for states and stakeholders to analyze, question, understand, and have a higher level of confidence in the needs assessment that underlies proposed costly reliability measures.

Similarly, in connection with any future program, sufficient time is needed to explore in greater detail the cost implications for consumers. The cost estimate range ISO-NE provided for the 2013/2014 Winter Program, \$16 to \$43 million, is acceptable under the circumstances. However, for future initiatives, NESCOE expects a further refinement and definition of short- and long-term cost impacts. Moreover, the ability of ISO-NE to maintain costs for the 2013/2014 Winter Program within the range of its cost projections will increase confidence not only in this program but in any future program proposals as well.

E. Proposed Implementation Schedule

NESCOE supports the proposed implementation schedule set forth in the Winter Program Filing. This schedule seeks to ensure that resources will be selected and capable of performing by the beginning of the winter.³⁷ Further, by including a mechanism for ISO-NE to delay the program start for each day that a Commission order is not received by November 1, the proposal appropriately seeks to limit the regulatory risk to resources participating in the program. This mechanism reduces a resource's exposure to non-performance charges arising from insufficient

³⁶ See Ethier/Brandien Testimony at 14-15.

³⁷ See Winter Program Filing at 23-24.

time to plan for program implementation, which in turn diminishes the risk premiums reflected in bids and costs that may ultimately be passed on to consumers.

IV. 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: July 19, 2013

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 19th day of July, 2013.

Respectfully submitted,

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