121 FERC ¶ 61, 068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Maine Independent System Administrator, Inc.	Docket Nos. ER07-1251-000 ER07-1251-001

ORDER CONDITIONALLY ACCEPTING REVISED TARIFF SHEETS AND MARKET RULES

(Issued October 19, 2007)

1. On August 3, 2007, the Northern Maine Independent System Administrator, Inc. (NMISA) submitted for filing proposed revisions to the NMISA FERC Electric Tariff Original Volume No. 1 (Tariff) and to the NMISA First Revised Rate Schedule No. 2 (Market Rules). On August 31, 2007, after further negotiations with the Maine Public Utilities Commission (MPUC), NMISA submitted an amended proposal to revise its Tariff and Market Rules. In this order we conditionally accept the proposed revisions to NMISA's Tariff and Market Rules as amended in NMISA's August 31, 2007 filing and as further clarified as discussed below.

I. Background

2. NMISA is a Commission-approved independent system administrator and regional transmission group that encompasses the transmission systems of all Commission-jurisdictional and non-jurisdictional utilities in Northern Maine. The electric system in Northern Maine is not directly interconnected with the rest of New England, ISO New England, any New England Power Pool (NEPOOL) participant, or any other domestic electric system. The region's only access to the electric system that serves the remainder of New England is through Canadian transmission facilities owned by New Brunswick Power Corp. (NB Power) and operated by the New Brunswick System Operator (NBSO).

3. On April 13, 2007, in Docket No. ER07-744-000, NMISA submitted proposed revisions to its Tariff and Market Rules setting capacity obligations that would require load serving entities, referred to as Competitive Electricity Providers (CEPs), to back the energy used to serve native load in Northern Maine with adequate generating capacity. The revisions would also have broadened NMISA's sanctioning authority and made changes necessary to "synchronize" the Northern Maine market with the New Brunswick

market and its revised market rules. According to NMISA, reliability concerns had arisen when Integrys Energy Services Inc. (Integrys), the CEP that is the sole provider of standard offer service in Northern Maine, did not back the energy it used to serve native load in Northern Maine with adequate generating capacity.

4. Several parties protested the April 13, 2007 filing including the MPUC and Integrys. The protesters expressed concerns about, inter alia: (a) the likely increase in retail electricity prices that would result from the proposed changes; (b) the lack of information on the rationale for, and the likely effects of, the proposed revisions; and (c) the deficiencies inherent in the proposed capacity obligations framework.

5. On June 4, 2007, the Commission rejected NMISA's April 13, 2007 filing without prejudice, primarily because NMISA did not provide "sufficient information to determine the effects of its proposed revisions" and thereby failed to demonstrate that the proposed revisions were just and reasonable.[1]

II. NMISA's Filing

6. On August 3, 2007, as amended on August 31, 2006, NMISA submitted a revised filing in the instant docket, stating that it "remained firm in its belief that it was essential that the clarifications to the capacity obligations be made as soon as possible" in light of the reliability concerns prompting the April 13 filing. In response to the June 4 Order, NMISA states that the revised filing provides detailed explanations of the reasons for and the implications of the various changes that it proposes. NMISA also notes that the revised filing is the result of a collaborative process among the stakeholders, including the extensive involvement of the MPUC staff as well as discussions with the NBSO. According to NMISA, the revised proposal is based on language in the "Capacity Obligations" section of the NBSO Electricity Market Rules. NMISA states that this synchronization is essential because of Northern Maine's proximity to, and current dependence on, New Brunswick's transmission facilities and wholesale markets.

7. NMISA requests an effective date of September 1, 2007, to permit market participants to make appropriate arrangements in time for commencement of the winter capability period, which begins on November 1, 2007.

III. Notices of Filings and Responsive Pleadings

8. Notice of NMISA's August 3, 2007, filing was first published in the *Federal Register*, 72 Fed. Reg. 45,802 (2007), with interventions and protests due on or before August 24, 2007. Integrys Energy Services, Inc. filed a timely motion to intervene and

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[1] *Northern Maine Independent System Administrator, Inc.*, 119 FERC ¶ 61,231 (2007) (June 4 Order).

comment supporting the proposed revisions. The MPUC filed a timely motion to intervene and comments on the proposed revisions. Boralex Industries Inc. filed a timely motion to intervene without substantive comments.

9. Notice of NMISA's August 31, 2007, filing was published in the *Federal Register*, 72 Fed. Reg. 52,873 (2007), with interventions and protests due on or before September 21, 2007. The MPUC filed comments in support of the amended filing provided that NMISA make one additional revision. On September 26, 2007, NMISA submitted an answer agreeing to make the revision.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NMISA's answer because it has provided information that assisted us in our decision-making process.

B. Tariff and Market Rule Revisions

12. NMISA's proposed revisions to its Tariff and Market Rules address three areas of interest: (i) amendments to clarify and explicitly set forth the capacity obligation in effect in Northern Maine; (ii) amendments to NMISA's sanctioning authority; and (iii) amendments to accommodate recent changes in the New Brunswick market and various administrative revisions necessary to conform the NMISA Tariff and Market Rules to changes that have occurred since they were filed with the Commission in 1999 and 2000. We will conditionally accept NMISA's filing as amended and as further clarified, effective September 1, 2007,[2] and we address each of these issues below.

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[2] *Central Hudson Gas and Electric Co.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

1. Capacity Related Revisions

a. NMISA's Original Filing

13. NMISA submits a new Market Rule 10 and conforming Tariff and Market Rule changes to make explicit the capacity obligation in Northern Maine.[3] NMISA states that it has enforced capacity obligations since its inception but that recent incidents in which a CEP served native load with energy not backed by capacity have spurred NMISA to make the capacity obligation explicit. NMISA asserts that its proposed revisions do not give it the authority to impose a new capacity requirement on CEPs because it has always had that authority and has always enforced the capacity obligations under the Tariff and Market Rules that have been in effect since March 1, 2000.

14. NMISA states that it needs to clarify the existing capacity obligation in the Northern Maine market in light of reliability concerns that first arose in October 2006 when Integrys did not back the energy it used to serve native load with adequate generating capacity.

15. As proposed, Market Rule 10.3 would define the aggregate Capacity Obligation for the Northern Maine market as the projected peak load plus projected operating reserve requirements.[4] This aggregate obligation would serve as the basis for determining each CEP's Capacity Obligation for each Capability Period.[5] Under Market

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[3] NMISA explains that there is no capacity market in Northern Maine because, given the modest size of the Northern Maine market, market participants chose not to add the level of expense and complexity that would be involved in the establishment of a capacity market. Rather, NMISA states that there are two interrelated and Commission-approved capacity obligations: 1) the requirement that each CEP must meet hourly Balanced Schedule requirements on a day-ahead basis and 2) the Tariff and Market Rules obligate NMISA to ensure that Northern Maine complies with its own reliability standards, which must be consistent with the applicable North American Electric Reliability Corporation and Northeast Power Coordinating Council standards. *Northern Maine Independent System Administrator, Inc.*, 89 FERC ¶ 61,179 (1999). Capitalized terms, to the extent not defined herein, have the meaning set forth in Market Rule 1. Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet Nos. 1-11.

[4] Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet No. 69.

[5] Capability Period is defined by NMISA as the period for which rights and obligations of NMISA and Market Participants are determined with respect to the procurement and provision of Capacity. NMISA operates two Capability Periods: (1) a winter Capability Period running from November through March, and (2) a summer

Rule 10.1, a CEP would meet its Capacity Obligation by offering sufficient Eligible Unforced Capacity.[6] Eligible Unforced Capacity would include the actual commitment of capacity from each CEP required to serve projected load plus the projected operating reserve and provide requisite Ancillary Services. It would also take into account established operating characteristics and planned outages. NMISA would determine the Eligible Unforced Capacity and Eligible Installed Capacity for each applicable Resource[7] for each Capability Period. A CEP would be able to serve load that it designates to NMISA as interruptible load with Resources not backed by Capacity.[8]

16. NMISA explains that new Market Rule 10 will establish explicit capacity obligations for CEPs and other load serving entities within the NMISA market. NMISA states that the proposed rule is largely based on the provisions of section 5.4 of the NBSO Electricity Market Rules. According to NMISA, this approach, in addition to stating the capacity requirements in Northern Maine more explicitly, also facilitates the "synchronization" of NMISA's capacity obligation with those of the NBSO. NMISA argues that this synchronization is essential in light of Northern Maine's proximity to and dependence on New Brunswick's transmission facilities and wholesale markets.

17. NMISA further states that Market Rule 10 expressly recognizes that NMISA operates as a sub area of the Maritimes Control Area, and it therefore ensures that the

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Capability Period running from April through October. Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet No. 2.

[6] Eligible Unforced Capacity is defined as a generating unit's or import's Eligible Installed Capacity de-rated to account for the unit's or import's forced outage rate, energy limits, and intermittent output. Eligible Installed Capacity is defined as the net output of a generating unit or net import that can be achieved on a sustained basis under normal weather conditions when called upon by NMISA in each Capability Period. Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet No. 4.

[7] Resource is defined as any source of electric energy, capacity, or ancillary services, firm or non-firm, including any electric generating unit, combination of generating units, demand-side management, contractual right to purchase electric capacity, energy, or ancillary services, used to supply load with energy to meet Capacity Obligations in the Northern Maine market. Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet No. 8.

[8] Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet No. 68.

NMISA sub area bears an equitable responsibility for the overall system reliability of the Maritimes Control Area.

18. NMISA also proposes additional capacity-related revisions to other sections of the Market Rules to clarify certain rules and to reflect the changes embodied in Market Rule 10.

b. Comments

19. In its comment on the August 3 filing, Integrys states that it participated in the stakeholder process that resulted in the filing and that it supports the resulting Market Rules, which it describes as "a reasonable way to address capacity issues in electrically-isolated [N]orthern Maine."[9]

20. In its response to NMISA's August 3 filing, the MPUC states that it "supports in concept" the structure of the new capacity obligation as long as it is consistent with the intent of the proposed Market Rule, i.e., that the rule does not impose additional capacity obligations on CEPs. The MPUC, however, expresses concern that language added to several of the Market Rules could be interpreted in a manner inconsistent with its understanding of the intent.

21. According to the MPUC, the proposed new language in the Market Rules can be interpreted as giving NMISA authority to require a CEP to secure additional capacity if, for example, a weekly C-14 report shows a deficiency due to a forced outage. The MPUC expresses strong opposition to NMISA having such authority "in that it would require CEPs to, in essence, buy capacity twice."[10] The MPUC also expresses concern that certain language could be interpreted as requiring a CEP to purchase firm transmission through New Brunswick into Northern Maine if the secured capacity resource is outside the region. Furthermore, the MPUC notes that the terms "firm energy" and "firm energy-only" were not defined and thus could be interpreted as an additional type of capacity obligation that is inconsistent with the intent of the new Market Rule. In addition, the MPUC contends that some of the language appears to give NMISA discretion to determine that a CEP has not met its capacity obligation because it is not adequate, even if the CEP has followed all of the requirements of Market Rule 10.

c. NMISA's Amended Filing

22. On August 31, 2007, NMISA submitted an amended filing to accommodate the concerns of the MPUC. Included in these amendments were revisions to the definition of

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[9] Integrys' Comments at 3.

[10] MPUC's August 24th Comments at 6.

Balanced Schedule and Firm Energy as well as other revisions to the Market Rules as requested by the MPUC.

d. MPUC's Comments on NMISA's Amended Filing

23. In its comments in response to NMISA's amended filing, the MPUC seeks further clarification of the meaning of "Firm Energy" to ensure that that meaning is consistent with the understanding the parties reached during the discussions that resulted in NMISA's amended filing. The MPUC expresses concern that "once a CEP meets its capacity obligation in advance, a forced or scheduled outage of the capacity procured by the CEP will not impose any additional obligation on the CEP (unless the forced outage causes a deficiency for the Balancing Area)."[11] The MPUC therefore requests further clarification as to the reference to capacity in the definition of "Firm Energy" in the interest of avoiding future disputes.

e. NMISA's Response to MPUC's Comments

24. In its response to the MPUC's request for clarification, NMISA contends that the clarification in its amended filing used the precise wording for the definition of Firm Energy requested by the MPUC. Nevertheless, NMISA provides further clarification, as requested by the MPUC, "in the interest of moving this proceeding forward without further delay."[12] NMISA offers that, in the context of section 10.3.8 and elsewhere in the Market Rules, Firm Energy shall be defined as "the capacity already provided to meet the Capacity Obligation under Market Rule 10 and not an additional purchase (except where the capacity fails to meet the 70% availability standard in the Market Rules)."[13] NMISA notes that this clarification is substantively identical to the clarification requested in the MPUC's comments.

f. Commission Determination

25. The Commission finds that NMISA's proposed revisions appropriately set forth necessary capacity obligations and will ensure greater system reliability in Northern Maine and are, therefore, just and reasonable. Capacity obligations need to be clearly defined and the Northern Maine market needs to be synchronized with the New Brunswick market in order to foster smooth operation of the market, and NMISA's filing as amended and further clarified does so. The Commission therefore conditionally accepts NMISA's proposed revisions to its Market Rules and Tariff with respect to

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[11] *Id.* at 4.

[12] NMISA's Answer at 1.

[13] *Id.* at 2.

capacity obligations, subject to incorporation of the proposed clarification sought by the MPUC on "Firm Energy."

2. NMISA's Sanctioning Authority

a. NMISA's Original Filing

26. NMISA argues that it needs to revise its sanctioning authority in light of its recent experience with respect to imposition of sanctions on Integrys and, therefore, consistent with the Commission's order accepting Market Rule 7,[14] it seeks to add new provisions to address specific acts of misconduct that could cause operational harm to NMISA. According to NMISA, the proposed revisions will expressly provide that a Market Participant's failure to meet its Capacity Obligation can, if such failure meets the other criteria of Market Rule 7, be deemed sanctionable.

27. NMISA further argues that the additional sanctioning authority is necessary because NMISA does not have the financial resources to procure capacity for deficient CEPs for protracted periods of time without either being compelled to surcharge its members or exhausting its own limited line of credit. Furthermore, given the relatively small size of the Northern Maine market, failure of any one market participant to meet its Capacity Obligation can threaten system reliability and impose costs on all other market participants. The sanctions-related revisions are therefore intended to dissuade conduct that could do such harm.

28. NMISA proposes new provisions that state more explicitly sanctionable behavior. These include: the failure of a Market Participant to meet its Capacity Obligation or follow an NMISA direction or order issued pursuant to the NMISA's authority under the Tariff and Market Rules.

29. Market Rule 10.3.5 provides for NMISA to purchase the necessary capacity to meet a capacity deficiency in the event a CEP fails to meet its Capacity Obligation, and then bill the CEP for up to twice the actual cost of the capacity. Three months prior to the start of a Capability Period, NMISA would determine whether the capacity and other resources designated by a CEP are adequate to meet its Capacity Obligation. If NMISA determines that the CEP is deficient, the CEP must remedy that deficiency to the satisfaction of NMISA at least two months prior to the start of the Capability Period. If the deficiency is not remedied, NMISA will, to the extent necessary, purchase the

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[14] *Northern Maine Independent System Administrator, Inc.*, 91 FERC ¶ 61,060 (2000). Market Rule 7 sets forth the procedures and standards under which NMISA can impose sanctions for certain violations of a Market Participant's obligations under the NMISA Tariff, Market Rules and NMISA directions and/or orders pursuant thereto.

capacity needed to meet the Capacity Obligation and bill the deficient CEP for the costs incurred at up to twice actual costs.

30. In addition, NMISA proposes that intentional or repeated deficiencies may also expose the CEP to specified monetary sanctions under Market Rule 7.[15] According to NMISA, the level for each sanction is based on the severity of the violation, its potential for direct impact on reliability and the functioning of the markets, and the amount that NMISA determines is necessary to deter violations. NMISA proposes three categories of sanctions that may be imposed: (a) a Formal Warning in the form of written notification from NMISA to a Market Participant; (b) Administrative Sanctions in the form of fixed, per-event monetary charges (listed in Appendix 7-A); and (c) Formula-Based Sanctions, which are monetary charges determined based on formulas set forth in Appendix 7-A.[16]

31. NMISA also proposes several nonsubstantive revisions that are intended to clarify the definition of sanctionable behavior.[17]

b. <u>Comments</u>

32. While the MPUC and Integrys had protested the sanctions provisions in NMISA's earlier April 13 filing in Docket No. ER07-744-000, they did not raise any concerns in response to NMISA's August 3 and August 31 filings at issue here with respect to NMISA's proposed changes relating to sanctioning authority, sanctionable behavior, and imposition of sanctions.

[15] These are specified in Appendix 7-A of Market Rule 7. Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet No. 71.

[16] The additional sanctions proposed include, for example, Administrative Sanctions of: $5000 per event for failure to meet Capacity Obligations; $1000 per event for failure to follow directions or orders during normal operations; $5000 per event for failure to follow directions or orders that could result in a threat to reliability; and $10,000 per event for failure to follow directions or orders during a System Emergency. Each day that a sanctionable behavior continues constitutes a separate event. Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet No. 50.

[17] Northern Maine Independent System Administrator, Inc., proposed Second Revised FERC Rate Schedule No. 2, Original Sheet No. 44.

c. **Commission Determination**

33. The Commission finds that NMISA's proposed revisions to its Market Rules and Tariff with respect to sanctionable behavior and its sanctioning authority are appropriately designed to discourage conduct that would threaten system reliability and unnecessarily impose costs on other market participants and are, therefore, just and reasonable. Given its limited resources, the NMISA needs such sanctioning authority in order to ensure that the Northern Maine market functions smoothly and system reliability is not jeopardized. The Commission therefore accepts the relevant proposed revisions to its Market Rules and Tariff.

3. **Synchronization with New Brunswick Market and Administrative Changes**

a. **NMISA's Original Filing**

34. NMISA proposes revisions to its Tariff and Market Rules to accommodate recent changes in the New Brunswick market.

35. NMISA states that, for the first time since it began operations, it has completed a comprehensive review of its Market Rules. As a result of this review and NMISA's operating experience, NMISA has determined that certain revisions are necessary or desirable to improve the language in its Market Rules and to conform the Market Rules to changes in the New Brunswick Market that have occurred since they were filed. NMISA also proposes to make some administrative or "housekeeping" revisions to Tariff Sheet Nos. 42, 231 and 306. No comments were filed regarding these proposed revisions.

b. **Commission Determination**

36. The Commission finds that NMISA's proposed revisions to its Market Rules and Tariff are reasonably tailored to synchronize the Market Rules with changes that have occurred in the New Brunswick market. In particular, the revisions clarify the existing relationship between NMISA, NB Power and NBSO. The Commission accepts NMISA's proposed revisions to its Market Rules and Tariff reflecting changes to the New Brunswick market as a reasonable response to those changes. The Commission also accepts NMISA's administrative revisions to its Tariff.

The Commission orders:

(A) NMISA's proposed revisions to its Tariff and Market Rules are hereby conditionally accepted to become effective September 1, 2007, as discussed in the body of this order.

(B) NMISA is hereby directed to file, within 30 days, revised Market Rules and Tariff, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.