

131 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ISO New England Inc. and New England Power Pool Docket No. ER10-902-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 20, 2010)

1. On March 17, 2010, ISO New England Inc. (ISO-NE) and the NEPOOL Participants Committee (collectively, Filing Parties) submitted revised tariff sheets pursuant to section 205 of the Federal Power Act (FPA)¹ implementing changes to Market Rule 1 to require capacity importers to submit energy offers at competitive prices and to subject capacity importers to penalties for failing to comply with certain Forward Capacity Market (FCM) participation requirements. As discussed below, the Commission accepts the revised tariff sheets, effective June 1, 2010, as requested.

I. Background

2. When the Installed Capacity (ICAP) transition period began,² Market Rule 1 did not include a requirement for market participants to submit energy offers associated with

¹ 16 U.S.C. § 824d (2006).

² The ICAP transition period began in December 2006 and, because of the forward nature of the FCM in New England, the 2010-2011 Power Year (i.e., June 1, 2010, through May 31, 2011) is the first year for which capacity was auctioned. The transition period (from December 1, 2006, to May 31, 2010) bridges the gap between December 2006 and the 2010-2011 Power Year.

capacity imports at competitive prices.³ The ICAP competitive offer requirements were designed to provide proper incentives to market participants into New England. The Filing Parties identify three requirements that allow market participants to import capacity into New England during the ICAP transition period. The first requirement allows market participants to submit energy offers associated with the capacity imports at competitive prices. The second requirement establishes a methodology that calculates competitive offer levels for energy transactions associated with ICAP import contracts consisting of an *ex ante* daily value based on historic data and an hourly value based on hourly market outcomes. The third requirement subjects ICAP importers to performance penalties based on the percent of hours that full delivery of requested energy is provided relative to the hours that energy was requested.⁴

II. March 17 Filing

3. According to the March 17 filing, the ICAP transition period will end on June 1, 2010, concurrently with the starting date of the FCM's first capacity commitment period. The Filing Parties state that, under the FCM, capacity obligations and supply will be governed by the FCM rules in section III.13 of Market Rule 1.⁵ As a result, the Filing Parties propose some FCM-specific rules—termed the FCM Competitive Import Requirements—to allow capacity importers to continue to submit corresponding energy offers at competitive prices and to meet their energy delivery requirements. The Filing Parties state that other than recognizing at least one material difference between the ICAP Transition Period framework and the FCM rules,⁶ the FCM Competitive Import

³ On March 20, 2009, the Filing Parties submitted their competitive offer requirements for the ICAP transition period. On June 11, 2009, the Commission accepted the tariff sheets but suspended them to further examine whether the penalty exemption for situations in which the energy prices are higher in New York than in New England is just and reasonable. *ISO New England Inc.*, 127 FERC ¶ 61,235 (2009). Subsequently, On November 3, 2009, the Commission accepted the compliance filing regarding the penalty exemption. *ISO New England Inc.*, 129 FERC ¶ 61,101 (2009).

⁴ No penalty will apply to energy transactions with ICAP import contracts within the New York Control Area in the hours that the real-time energy market price at the source location is higher than the real-time Locational Marginal Price at the associated New England control area external node.

⁵ ISO-NE Transmission, Markets, & Services Tariff, § III.13 (hereinafter, Market Rule 1). Section III of ISO-NE's Transmission, Markets, & Services Tariff (Tariff) is Market Rule 1.

⁶ In the FCM structure, the performance of each capacity resource is evaluated hourly, rather than monthly.

Requirements will establish offer and energy delivery requirements for capacity imports under the FCM that are similar to the requirements currently in effect for the ICAP Transition Period.

4. The FCM Competitive Import Requirements contain four key components: (1) the requirement to offer energy associated with capacity obligations at prices equal to or less than a threshold price; (2) the requirement to offer an energy quantity equal to the Capacity Supply Obligation; (3) the requirement to provide energy when requested by ISO-NE; and (4) the requirement to exempt certain existing import capacity resources associated with long-term contracts.

5. The FCM Competitive Import Requirements compare import offers to the threshold prices for the corresponding and prior operating days. Under the FCM Competitive Import Requirements, energy import transactions associated with capacity obligations must be offered at prices equal to or less than a threshold price. A single threshold price will be determined for each operating day for all interfaces and will apply to all hours of the operating day. The Filing Parties state that the daily threshold price will be equal to the product of the then-current Forward Reserve heat rate and the fuel cost (\$/MMbtu) of the Peak Energy Rent (PER) Proxy Unit, which is the lower of either the ultra low-sulfur No. 2 oil price measured at New York Harbor or the Algonquin City Gate daily gas index. Further, the Filing Parties note that for the first three capacity commitment periods (June 1, 2010, through May 31, 2013), the daily threshold price will be calculated using the same fuel cost, but instead of the Forward Reserve heat rate the PER Proxy Unit heat rate (of 22,000 btu per kilowatt-hour (kWh)) will be used. According to section III.13.7.2.7.1.1.1(b)(iii) of Market Rule 1, after the first capacity commitment period, the PER Proxy Unit rate shall be periodically reviewed.

6. The Filing Parties argue that the threshold price methodology described above is an improvement over the methodology currently used during the ICAP transition period, which is calculated and equal to the 99th percentile of fuel-adjusted energy prices during the peak hours when New England was a net importer of energy at that interface over the previous 30 days. The Filing Parties further explain that market participants submitting energy offers above the threshold price will be subject to a penalty equal to the product of the import capacity resource's Capacity Supply Obligation and the corresponding

interface capacity clearing price divided by the number of days in the month.⁷ However, market participants will not be penalized for failing to provide energy to New England when the corresponding real-time New York energy price is greater than the real-time New England price, unless ISO-NE has implemented the actions of Operating Procedure No. 4 (OP4)⁸ during a capacity deficiency.

7. With respect to the requirement to offer an energy quantity equal to the Capacity Supply Obligation, the Filing Parties state that the total quantity offered in the day-ahead and real-time energy markets by a capacity importer must be equal to that importer's total Capacity Supply Obligation for every hour. For any hour in which this does not occur, the market participant will be assessed a penalty equal to the product of the corresponding interface capacity clearing price and the difference between the Capacity Supply Obligation and the total amount offered, divided by the number of hours in the month. In the March 17 filing, the Filing Parties recognize an exception to this requirement, namely, that capacity importers are exempt from the energy offer requirement when they are using their allocated maintenance hours.⁹

8. Regarding the requirement to provide energy when requested by ISO-NE, the Filing Parties specify that for every hour that energy provided from an external transaction associated with an import capacity resource is less than the amount requested

⁷ It is the Commission's understanding that, for example, if Capacity Supply Obligation is equal to 10,000 kilowatts (kW), the interface capacity clearing price is \$4.50 per kilowatt-month (kW-mo), the offer is greater than the threshold price, and assuming 30 days in a given month, the penalty for failure-to-offer will be \$1,500 (10,000 kW times \$4.50/kW-mo, divided by 30 days) each operating day. *See* Andrew Gillespie's October 15, 2009 presentation entitled, "Competitive Offer Requirements for External Capacity Transactions," *available at* http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2009/oct152009/a8_iso_presentation_10_15_09.ppt.

⁸ This procedure establishes criteria and guides for actions during capacity deficiencies, as directed by ISO-NE and as implemented by ISO-NE and the Local control centers. The OP4 procedure may be implemented any time one or more among a list of events, or other similar events, occur or are expected to occur, for example, when available resources are insufficient to meet the anticipated load plus operating reserve requirements or "[a]ny other serious threat to the integrity of the bulk power system." Operating Procedure No. 4, *available at* http://www.iso-ne.com/rules_proceeds/operating/isone/op4/op4_rto_final.pdf.

⁹ Additional information regarding this exception can be found in the proposed changes to section III.13.6.1.2.1 of Market Rule 1.

by ISO-NE, the market participant will be assessed a penalty equal to the product of the corresponding interface capacity clearing price and the difference between the amount requested and the amount provided, divided by the number of hours in the month.

According to the Filing Parties, no penalty will be assessed for not providing energy when the corresponding real-time New York energy price is greater than the real-time New England price, unless ISO-NE has implemented an OP4 event. Furthermore, no penalty will be assessed if the relevant interface is already operating at its full import capability into New England.

9. In regards to the requirement to exempt certain existing import capacity resources associated with long-term contracts, the Filing Parties state that existing import capacity resources associated with the Vermont Joint Owners (VJO) and New York Power Authority (NYPA) contracts, which are noted in section III.13.1.3.3(c) of Market Rule 1, will be exempt from the penalty provisions of the FCM-competitive requirements, provided that the associated transactions are self-scheduled and perform according to their contract terms. The Filing Parties contend that because these long-term contracts have been in effect prior to the implementation of ISO-NE's Standard Market Design, specific provisions have been made to accommodate these existing contracts.¹⁰

III. Notice of Filing and Responsive Pleadings

10. Notice of the March 17 filing was published in the *Federal Register*, 75 Fed. Reg. 14,589 (2010), with interventions and protests due on or before April 7, 2010. Brookfield Energy Marketing Inc.; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; Dynegy Power Marketing Inc. and Casco Bay Energy Company, LLC; Exelon Corporation; GDF Suez Energy Marketing NA, Inc.; Northeast Utilities Service Company; NRG Companies;¹¹ and The United Illuminating Company filed timely motions to intervene. Richard Blumenthal, the Connecticut Attorney General (Connecticut Attorney General); the Connecticut Office of Consumer Counsel (CT OCC); and the Connecticut Department of Public Utility Control (CT DPUC) filed timely motions to intervene and comments.

11. Both the Connecticut Attorney General and CT OCC urge the Commission to accept the Filing Parties' proposed rule changes regarding the FCM Competitive Import Requirements. The Connecticut Attorney General adopts and supports the comments

¹⁰ As noted above, proposed revisions regarding the contract end dates of these long-term contracts are noted in section III.13.1.3.3(c) of Market Rule 1.

¹¹ For purposes of this filing, NRG Companies are: NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

filed by CT DPUC. CT OCC incorporates by reference the comments made by CT DPUC.

12. CT DPUC states that it supports the proposed changes. According to CT DPUC, the Filing Parties' FCM Competitive Import Requirements are a just and reasonable approach to preserve the value of capacity commitments. CT DPUC explains that the proposed rules give importers express incentives to make their energy available at reasonable rates in all hours by penalizing them if they "offer capacity-backed energy above a 'competitive' threshold, fail to offer the amount of energy required by their Capacity Supply Obligations, or deliver less energy to New England than requested."¹² However, CT DPUC requests that the Commission order the ISO-NE's Market Monitor to investigate and report on the FCM competitive offer requirements and to file detailed analyses semi-annually. CT DPUC proposes that such analyses include: (1) capacity importers' offers relative to the thresholds, with data of mitigation of energy offers; (2) whether external resources are being scheduled in merit and whether resources are providing energy when requested; and (3) the prices at which scheduled energy is delivered.¹³ According to CT DPUC, these reports will allow the Commission to evaluate the efficacy of the rules and to determine whether changes are needed.

13. On April 20, 2010, ISO-NE submitted an answer. ISO-NE contends that CT DPUC's requested reports from ISO-NE's Internal Market Monitor unjustifiably adds an administrative burden, because the information CT DPUC seeks is provided in quarterly and annual reports that the Internal Market Monitor is already required to prepare.¹⁴

IV. Commission Determination

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the

¹² CT DPUC Comments at 8 (footnote omitted).

¹³ CT DPUC Comments at 10.

¹⁴ ISO-NE Answer at 3 (citing sections III.A.12.2.2 and III.A.12.3 of Market Rule 1 with respect to the Market Monitor's quarterly reports and annual review, respectively).

decisional authority. We will accept ISO-NE's answer because it has provided information that assisted us in our decision-making process.

B. Discussion

16. As an initial matter, we note that the parties to this proceeding generally support the proposed tariff revisions, but at the same time CT DPUC makes further requests.

17. The Commission finds that the proposed tariff revisions establishing competitive FCM import rules are just and reasonable because they would facilitate greater competition among capacity importers submitting energy offers at competitive prices in New England. The Commission also finds that the reformed penalty structure on the whole will provide a more meaningful incentive for capacity importers to deliver energy when they are requested to do so. Furthermore, no party has voiced opposition to these proposed rules.

18. CT DPUC asks the Commission to require the Internal Market Monitor to investigate and report on the FCM competitive offer requirements and to file those analyses semi-annually, as discussed above. Under its current Tariff, ISO-NE is obligated to conduct periodic reviews of the PER Proxy Unit heat rate of 22,000 btu/kWh used during the first three Capacity Commitment Periods (heat rate is used to determine the daily threshold price).¹⁵ Section III.13.7.2.7.1.1.1(b)(iii) of Market Rule 1 reads:

The PER Proxy Unit shall have a 22,000 Btu/kWh heat rate. This assumption shall be periodically reviewed after the first Capacity Commitment Period [that ends May 31, 2011,] by the ISO.... [A]ny changes to the heat rate of the PER Proxy Unit will be considered in the stakeholder process in consultation with the state utility regulatory agencies, shall be filed pursuant to section 205 of the Federal Power Act, and shall be applied prospectively to the settlement of any future Forward Capacity Auctions.

19. Further, section III.A.12.2.2 of Market Rule 1 requires the Internal Market Monitor to provide a quarterly report of "market data regularly collected by the Internal Market Monitor in the course of carrying out its functions under this Appendix A and analysis of such market data." Moreover, section III.A.12.3 requires an annual review of

¹⁵ See Joint Filing at 7.

the operations of the New England markets, including an evaluation of the procedures for determining energy, reserve, and regulation clearing prices.¹⁶

20. ISO-NE's Tariff already obligates ISO-NE to periodically review the competitive offer requirements; the Tariff also currently obligates the Internal Market Monitor to conduct quarterly reports and annual reviews, as discussed above. Accordingly, the existing requirements for thorough periodic reviews and reports by ISO-NE and the Internal Market Monitor, as well as a robust stakeholder process, should ensure that stakeholders are provided sufficiently detailed information upon which to further address any issue relating to the threshold price and the penalty provisions.

21. Accordingly, we will accept ISO-NE's proposed revisions to Market Rule 1.

The Commission orders:

The Filing Parties' proposed tariff revisions are hereby accepted, as discussed in the body of this order, to become effective June 1, 2010.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ ISO-NE Answer at 4.