

121 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc. and New England Power Pool Docket No. ER07-1245-000

ORDER ACCEPTING INFORMATION POLICY REVISION

(Issued October 18, 2007)

1. In this order, the Commission accepts ISO New England Inc. (ISO-NE) and New England Power Pool Participants Committee's (NEPOOL) (together, Applicants) joint filing to reduce the lag time for posting Demand Bid and Supply Offer data on ISO-NE's website from 180 days after the day for which each Demand Bid and Supply Offer was in effect to the first day of the fourth calendar month following the month during which the applicable Demand Bids and Supply Offers were in effect (Information Policy Revision), effective March 1, 2008.

I. Background

2. On August 3, 2007, ISO-NE and NEPOOL filed a revised tariff sheet¹ to reduce the lag time for posting Demand Bid and Supply Offer data on ISO-NE's website from 180 days after the day for which each Demand Bid and Supply Offer was in effect to the first day of the fourth calendar month following the month during which the applicable Demand Bids and Supply Offers were in effect (i.e., essentially from six months to roughly three months). ISO-NE also states that, under the Information Policy Revision, the information will be posted in a manner that does not reveal the specific load or supply asset, its owners, or the name of the entity making the bid or offer. NEPOOL voted to support the Information Policy Revision with a 79.90 percent vote in favor.

3. ISO-NE previously filed this revision with the Commission in Docket No. ER07-444-000, and the Commission rejected the change without prejudice to the ISO-NE filing a better supported proposal.² Subsequently, the Commission issued an

¹ 1st Revised Sheet No. 9410, Superseding Original Sheet No. 9410 to ISO New England Inc. FERC Electric Tariff No. 3, Attachment D – ISO New England Information Policy.

² *ISO New England Inc.*, 118 FERC ¶ 61,224 (2007) (March 19 Order).

Advance Notice of Proposed Rulemaking (ANOPR) in which the Commission sought comment on requiring all Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to post offer and bid data, without identification of the market participants, on their websites with a lag time of three months.³

4. ISO-NE supports the Information Policy Revision with the inclusion of testimony by Hung-Po Chao, Ph.D., the Director of the ISO's Internal Market Monitoring Unit. Dr. Chao's testimony states that the earlier release of bid data adds transparency that helps the public understand wholesale electricity markets, improves market confidence, and allows market participants and state regulators to supplement the market monitoring functions. Dr. Chao submits that misuse of bidding information is unlikely due to a competitive market structure, effective market monitoring and mitigation procedures, and the nature of bidding information turning "stale" with time.⁴ Also, Dr. Chao points out that, in the event that a shorter lag period were observed to have a negative impact on the market, ISO-NE would have the authority under section 11.2 of the Participants Agreement to unilaterally file a rule change in "Exigent Circumstances," in order to address the impact.⁵

5. ISO-NE explains that in order to implement its Information Policy Revision, it must make a number of changes to its software and business practices. Based on its assessment of its own internal resources, ISO-NE has determined that it could begin publishing bid data on a three-month lagging basis as of March 2008. Accordingly, ISO-NE requests an effective date of March 1, 2008.

³ *Wholesale Competition in Regions with Organized Electric Markets*, FERC Stats. & Regs. ¶ 32,617 at P 127 (2007) (issued on June 22, 2007, in Docket Nos. RM07-19-000 and AD07-7-000).

⁴ "[P]otentially particular to New England, seasonal variations in load and in the available generation mean that collusion and manipulation would be as unlikely with 90-day-old masked bid data as they are with 180-day-old masked bid data." See August 3 Filing, Chao Affidavit.

⁵ As defined in section 1 of the Participants Agreement, "Exigent Circumstances" are circumstances such that ISO-NE determines in good faith that (i) failure to immediately implement a new Market Rule, Operating Procedure, Reliability Standard, provision of the Information Policy, Non-Transmission Owner (TO) Open Access Transmission Tariff (OATT) Provision or Manual would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking the procedures set forth in sections 11.1, 11.3 or 11.4 would not allow for timely redress of ISO-NE's concerns.

II. Notice, Interventions, Protests, and Responsive Pleadings

6. Notice of the August 3, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 45,803 (2007), with interventions and protests due on or before August 24, 2007. Northeast Utilities Service Company⁶ and PSEG Energy Resources and Trade LLC filed timely motions to intervene. The New England Conference of Public Utility Commissioners (NECPUC) filed a motion to intervene out-of-time and comments in support. The Mirant Parties,⁷ the NRG Parties,⁸ FPL Energy, LLC,⁹ Boston Generating, LLC and the Dynegy Parties¹⁰ (collectively, Generators) jointly filed, a timely motion to intervene and protest. The Massachusetts Municipal Wholesale Electric Company (MMWEC) and Connecticut Municipal Electric Energy Cooperative (CMEEC) jointly filed a motion to intervene out-of-time and answer to the Generators' protest.

7. The Generators are opposed to Applicants' proposal to shorten the current lag time for release of generator, load, and financial bid and offer data. The Generators note that under the current six-month delay, no information is released until the relevant season has ended, which makes any bidding patterns that may have materialized irrelevant. The Generators argue that the type of aggregated information that ISO-NE already reports, in more or less real-time (e.g., zonal and nodal prices, zonal and system demands, etc.), along with the bid and offer data released after 180 days, provides the appropriate level of transparency to enable participants to evaluate overall market dynamics. The Generators argue that shortening the lag time for release of individual participant bid and offer information would expand the potential for an individual participant to attempt to react to the bidding behavior of other individual participants.

⁶ As agent for The Connecticut Light and Power Company, Western Massachusetts Power Company, and Public Service Company of New Hampshire.

⁷ The Mirant Parties consist of Mirant Energy Trading, LLC, Mirant Canal, LLC, and Mirant Kendall, LLC.

⁸ The NRG Parties consist of NRG Power Marketing Inc., Connecticut Jet Power LLC, Devon Power LLC, Middleton Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

⁹ FPL Energy, LLC operating subsidiaries in ISO-NE include: FPL Energy Cape, LLC, FPL Energy Maine Hydro LLC, FPL Energy Seabrook, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPLE Rhode Island State Energy L.P., and Northeast Energy Associates, a limited partnership.

¹⁰ Dynegy Parties consist of Bridgeport Energy, LLC, Casco Bay Energy Company, LLC, and Dynegy Power Marketing, Inc.

8. Stating that Applicants have provided no new or determinative support to justify their proposal, the Generators raise two arguments why shortening the lag time could be harmful to the goal of achieving well-functioning competitive markets. First, the Generators state that a party may re-create ISO-NE's dispatch of the system and calculation of clearing prices and that the earlier release of bidding information could enable strategic behavior in the markets, which may be inappropriate or manipulative. Second, the Generators claim that a participant may want to learn the structure and level of a competitor's bids and its incremental and decremental bid activity in order to strategically modify the participant's own bids and activities in the market. The Generators state that, while it is widely accepted that such behavior is of minimal concern with the six month delay, ISO-NE has provided no evidence that the risk of such behavior would not be increased by shortening the delay. The Generators further note that the increased risk relating to transparency of data is being reviewed by the Commission in Docket No. AD06-11-000, where the Commission initiated a proceeding pursuant to section 220 of the Federal Power Act (FPA), enacted pursuant to section 1281 of the Energy Policy Act of 2005;¹¹ in that proceeding, as relevant here, the Commission is considering, the needs of market participants regarding price transparency in wholesale electricity markets.

9. MMWEC and CMEEC state that the Generators submit no evidentiary reply in response to the Chao testimony and only speculate on the harms that could occur if masked market data were released on a three-month basis. MMWEC and CMEEC note that the Generators' "showing" of potential harm is ironic, in that the entities that would benefit from price increases resulting from collusive or other inappropriate behavior are generators. MMWEC and CMEEC continue that no "load" interests have expressed concern or protested that moving to a three-month lag will increase the possibility for either collusion or other forms of market manipulation. MMWEC and CMEEC add that certain load interests have argued that six-month lags are too long, and that market transparency and monitoring needs require far more rapid release of the data.

10. In response to the Generators' claim that a party may try to recreate ISO-NE's dispatch system, MMWEC and CMEEC state that the Generators insinuate that ISO-NE is trying to facilitate strategic behavior by some market participants, but do not explain why ISO-NE would have an incentive to take that step. Also, MMWEC and CMEEC note that increased transparency should enable other market participants to detect collusion or inappropriate behavior and bring it to the attention of the market monitor or the Commission. MMWEC and CMEEC suggest that the Generators' concerns have more to do with concerns about a potentially enhanced ability of consumers to police the marketplace, as opposed to potential collusion or inappropriate bidding practices.

¹¹ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1281, 119 Stat. 594, 978-79 (2005) (to be codified at 16 U.S.C. § 824t).

III. Discussion

A. Procedural Matters

11. 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 who filed them parties to this proceeding. Given the early stage of this proceeding, their interests, and the absence of undue prejudice or delay, the Commission finds good cause to grant the untimely, unopposed motion to intervene of NECPUC and the untimely, unopposed motion to intervene of MMWEC and CMEEC.

12. 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 MMWEC and CMEEC's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

13. We will accept Applicants' joint filing. In our March 19 Order, we found that the Applicants did not provide the Commission with adequate information to determine whether the proposed tariff revision was just and reasonable and not unduly discriminatory or preferential. Additionally, in the March 19 Order we also found that there was an insufficient basis in the record to address the arguments raised by Generators that a shorter lag may increase opportunities for inappropriate strategic behavior. In the instant proceeding, however, we find that ISO-NE and NEPOOL have provided sufficient information and support, in Dr. Chao's testimony, showing that it is just and reasonable and not unduly discriminatory or preferential to reduce the lag in posting Demand Bid and Supply Offer data on ISO-NE's website. The Commission finds Dr. Chao's testimony regarding increased transparency and competitive market structure to be persuasive and accepts the Information Policy Revision.

14. We find that Dr. Chao's testimony persuasively addresses concerns about the ability of market participants to engage in collusion by explaining that a three-month release lag adds notable market transparency without a commensurate increase in the risk of collusive market power and notes that those who supported increased transparency were among those that would arguably be the most exposed to the theoretical risk of collusion and manipulation. Dr. Chao also states that if reducing the lag period for releasing masked bid data were observed to have a negative impact on the market, ISO-NE would have the authority and ability to expeditiously file a rule change to address that impact. Additionally, ISO-NE's tariff will still contain language that requires information to be presented in a manner that does not reveal the specific load or supply asset, its owners, or the name of the entity making the bid or offer. The combination of ISO-NE's ability to expeditiously file a rule change and tariff language that masks the

bid/offer data protects against collusion and inappropriate behavior in the market, while also masking individual bidders'/offerors' bid and offer data.¹²

15. Finally, the Commission finds that good cause exists to grant the Applicants' request for waiver of the 120-day advance notice requirement of 18 C.F.R. § 35.3 (2007), to allow the Information Policy Revision to become effective March 1, 2008.

The Commission orders:

Applicants' proposal is hereby accepted as filed, effective March 1, 2008.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² Our conclusion here is based on ISO-NE's showing in support of its Information Policy Revision and should not be interpreted as prejudging the outcome of the data release issue in the ANOPR in Docket Nos. RM07-19-000 and AD07-7-000. *See supra* note 3.