

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

<b>ISO New England, Inc.</b>	)	
	)	
<b>and</b>	)	<b>Docket No. ER10-787-000</b>
	)	
<b>New England Power Pool</b>	)	
	)	
	)	

**NOTICE OF INTERVENTION AND COMMENTS  
OF THE MAINE PUBLIC UTILITIES COMMISSION AND  
THE MAINE OFFICE OF PUBLIC ADVOCATE**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure, the Maine Public Utilities Commission, by and through counsel, Lisa Fink and Benjamin Smith, State of Maine Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018, and the Maine Office of the Public Advocate (collectively, “MPUC”) files this Notice of Intervention and Comments in the above-captioned proceeding in response to the February 22, 2010 filing by ISO New England, Inc (“ISO-NE”) and New England Power Pool (“NEPOOL”) relating to various changes to the design of the Forward Capacity Market.<sup>1</sup>

**I. PRELIMINARY STATEMENT**

This filing is submitted pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. §§ 385.212, 385.214 (2008), and the Commission’s February 22, 2010 Combined Notice of Filings, in which the Commission

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<sup>1</sup> Various Revisions to FCM Rules Related to FCM Redesign, *ISO New England Inc., et al.*, Docket No. ER10-787-000 (Feb. 23, 2010) (“Joint Filing”), *amended by* Supplement to Various Revisions to FCM Rules Related to FCM Redesign, *ISO New England Inc., et al.*, Docket No. ER10-787-000 (Feb. 25, 2010) *and* Supplement of the New England Power Pool Participants Committee, *ISO New England Inc., et al.*, Docket No. ER10-787-000 (Mar. 1, 2010) (“NEPOOL Supplement”).

established March 15, 2010 as the date by which interventions and protests are to be filed in this proceeding.

The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2008):

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## **II. NOTICE OF INTERVENTION**

Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. *See* 35-A M.R.S.A. § 101 *et seq.* It is, therefore, a "state commission" under the Commission's regulations. 18 C.F.R. § 1.101(k) (2008). Accordingly, the MPUC hereby gives notice of its intervention pursuant to Rules 212 and 214 of the Commission's rules of practice and procedure.<sup>2</sup>

## **III. BACKGROUND**

On February 22, 2010, ISO New England Inc. ("ISO-NE" or "ISO") and the New England Power Pool ("NEPOOL") Participants Committee (together, the "Filing Parties") submitted to the Federal Energy Regulatory Commission ("FERC" or "Commission")

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<sup>2</sup> 18 C.F.R. §§ 385.212, 385.214 (2008).

various revisions to the Forward Capacity Market ("FCM") rules (collectively referred to as "Rule Changes"). The filing followed a several month stakeholder and working group process that was initiated after the filing of the internal market monitor's initial assessment of the Forward Capacity Market, which was required under Section 13.8.4 of Market Rule 1.

The Market Monitor Report examined the first two Forward Capacity Auctions ("FCAs") and concluded:

The FCM has met its objective of attracting and retaining the capacity needed to meet the region's ICR for the first two commitment periods. The INTMMU performed a detailed review of the amount and types of resources purchased in the first two FCAs and the resultant prices and found sufficient competition and robust supply. An additional assessment of the FCM should be made after the completion of at least one full FCM cycle comprising an FCA, reconfiguration auctions for the same capacity commitment period, and the fulfillment of capacity obligations during a delivery year.

In addition, the report noted that the fact that total capacity in the amount of 15% of the cleared capacity qualified but did not clear in both auctions supports the conclusion that the FCM is attracting sufficient interest from new resources to both meet the objectives of procuring sufficient resources and to do so at a reasonable price.<sup>3</sup>

The report further stated:

Several conclusions about the competitiveness of the FCM can be drawn from the results of the first two FCAs. First, clearing at the floor price in both auctions is consistent with the large amounts of surplus capacity that cleared in each auction (1,772 MW in FCA #1 and 4,755 MW in FCA #2). Additionally, because of the large amount of new, in-market resources (primarily new demand resources) that remained in the auction until the floor price was reached, both FCA #1 and FCA #2 would have cleared at the floor price even if no out-of-market resources had participated in the auctions. This indicates that the FCAs successfully attracted sufficient new resources for the auctions to be considered competitive. Another important

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<sup>3</sup> Internal Market Monitoring Unit Review of the Forward Capacity Market Auction Results and Design Elements, ISO New England Inc. Market Monitoring Unit (June 5, 2009) ("Internal Market Monitor Report") at 1. Document available online at [http://www.iso-ne.com/markets/mktmonmit/rpts/other/fcm\\_report\\_final.pdf](http://www.iso-ne.com/markets/mktmonmit/rpts/other/fcm_report_final.pdf).

conclusion is that, to date, the FCAs have successfully retained existing resources, including those that have Reliability Agreements. Of the 3,200 MW with Reliability Agreements as of January 1, 2007, the only resources that sought to leave the market and had to be retained for reliability reasons were the two Norwalk Harbor units that participated in FCA #1 for a total of 330 MW.

The results of the first two FCAs indicate that the market for new resources is competitive, an important assumption underlying the FCM. In addition to the 900 MW of new resources that cleared the market in FCA #1 and the 3,134 MW of new resources that cleared in FCA #2, approximately 3,600 MW of additional capacity qualified for FCA #1, and an additional 4,000 MW qualified for FCA #2 and did not clear. This indicates that the supply of new resources was robust. As described in Section 4, the qualified resources had various technologies and locations with a broad range of costs reflected in offer prices. One of the most interesting results of the first two FCAs (as discussed in Section 4) was the large amount of demand-resource capacity that cleared in each auction. Capacity from these resources represents about 7% of NICR for FCA #1 and 9% of NICR for FCA #2, respectively. Demand resources improve the efficiency with which the region uses capacity. The region's low load factor (i.e., the ratio of the average hourly load during a year to peak hourly load, such that a significant amount of capacity is needed in only a very few hours), means that a significant opportunity exists to improve the efficiency with which the region uses capacity. The analysis shows that the large amount of demand resources that cleared the first two FCAs is consistent with the region's load factor and load shape.<sup>4</sup>

The IMMU report recommended some changes to the FCM including changes to the requirements for establishing zones and modifications to the Alternative Price Rule ("APR"). It further recommended that the price floor be allowed to expire after the third FCA as provided for in the existing FCM design.<sup>5</sup>

In one of the initial meetings of the FCM working group several states issued a paper (which explained that the views therein were not expressing a NECPUC position) expressing concern with both the existing APR as well as some of the APR

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<sup>4</sup> *Id.* at 4.

<sup>5</sup> The external market monitor also reviewed the first two FCA auction results as well as the IMMU report. The external monitor specifically endorsed sections of the report relating to the local sourcing requirement and treatment of demand resources. *Id.*

recommendation proposals that emerged from the IMMU report and from supplier presentations. The document, among other things, expressed concern that the current APR rule, including the definition of out-of-market capacity (“OOM”), specifically stating “[t]he existing APR may inadvertently affect the FCA results by classifying most, if not all, bilateral contracts and self supply as OOM resources, thereby, inhibiting the legitimate use of such means of meeting capacity obligations.”<sup>6</sup>

NECPUC eventually supported the Design Basis Document that produced the market rule changes filed by ISO-NE and NEPOOL with the MPUC abstaining from the vote. ISO-NE’s agreement to continue to address the issue of further refining the definition of OOM resources, when the APR should be triggered and how the price should be set under the APR and its agreement to retain an economic consultant to assist it to consider these issues and finally its agreement that the economic consultant will consider approaches that allow reliance on auction prices rather than administrative price setting wherever that is reasonably possible was critical to the MPUC’s decision to abstain rather than oppose supporting the ISO-NE and NEPOOL proposed changes.

#### **IV. COMMENTS**

While the MPUC does not oppose the changes filed by ISO-NE and NEPOOL, there are several matters that warrant comment. First, NECPUC representatives several times asked the ISO-NE for an analysis of the cost implications of the proposed major design changes and no such analysis was ever provided. The MPUC believes that this failure is not in accord with the commitment that ISO-NE made in Docket No. ER09-

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<sup>6</sup> This document can be accessed at the following link: [http://www.iso-ne.com/committees/comm\\_wkgrps/othr/fcmwg/mtrls/2009/aug312009/apr\\_8\\_28\\_09\\_states.pdf](http://www.iso-ne.com/committees/comm_wkgrps/othr/fcmwg/mtrls/2009/aug312009/apr_8_28_09_states.pdf)

1051.<sup>7</sup> Further, MPUC's abstention was due, in part, to the absence of analysis regarding the cost implications of the proposed market rule changes.

Second, the MPUC questions whether three APRs were absolutely necessary when an alternative of keeping the existing floor may have been a simpler and more elegant approach. Since the concern was whether the price would eventually fall to a level that would not retain existing generation and attract new entry, it seemed logical to address this concern by establishing a floor at a level that attracted new entry and retained existing generation. Indeed, a new floor was adopted that starts at the existing floor from the third FCA, but this floor is *in addition* to rather than instead of the additional APR mechanisms. The stakeholder process committed to by the ISO-NE should examine whether the floor price in the ISO-NE/NEPOOL proposal is sufficient without the additional APRs.

Third, comments about the carry-forward of existing OOM are warranted. It is the MPUC's understanding that the carry-forward provision was agreed to by NECPUC as a compromise in a total package of market design changes. The issue was whether there should be a carry-forward and, if so, what should be the limit on the number of years for which the carry-forward should apply. The longer the number of years the capacity from resources designated as OOM is carried forward, the more likely it is that one of the APRs will be triggered (depending on other factors as well). NECPUC and

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<sup>7</sup> In ISO-NE's compliance filing to Order 719, ISO-NE committed to the following obligation:

In evaluating any major ISO initiative that affects market design, system planning or operation of the New England bulk power system, and to improve the functioning of ISO-NE competitive markets for the benefit of consumers, the ISO will provide quantitative and qualitative information on the need for and the impacts, including costs, of the initiative.

ISO-NE Transmittal Letter, dated April 28, 2009, in Docket ER09-1051 at 117.

load interests at NEPOOL sought a shorter time frame than seven years for the carry-forward of OOM; however they eventually adopted the package containing the seven year limit which was supported by ISO-NE. Because the major strength of the FCM is that prices are competitively set rather than administratively determined, design changes that cause more administrative price setting, have the potential to detract from the FCM's best feature. Thus, the Commission should reject any effort by suppliers to further extend the carry-forward limit beyond the seven-year period.

Finally, in the future stakeholder process, to which ISO-NE has committed, it is critical that the definition of OOM be further refined in order to avoid classifying as OOM bilateral contracts that are not entered into the auction for the purpose of lowering the price. For example, ISO-NE and its consultant should consider whether contracts that are entered into to promote renewable investment, consistent with state and national policy goals, should be classified as OOM.

**V. CONCLUSION**

While not protesting the NEPOOL/ISO-NE filing, the MPUC submits these comments to underscore the areas that it believes need further work in the future.

Dated at Hallowell, Maine, this 15th day of March, 2010.

Respectfully submitted,

/s/ Lisa Fink

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate.

Dated at Hallowell, Maine, this 15th day of March, 2010.

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