

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

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Docket No. EL00-62-041

**COMMENTS OF THE MAINE PUBLIC UTILITIES COMMISSION ON
COMPLIANCE FILING**

Pursuant to the Commission's December 28, 2001 notice in the above-captioned proceeding, the Maine Public Utilities Commission (MPUC) makes the following comments in response to ISO New England's (ISO-NE) December 20, 2001 filing (December 20 filing) in the above docket made in compliance with the Commission's Order on Rehearing issued on November 20, 2001. *ISO New England, Inc.*, 97 FERC ¶ 61,212 (2001) (November 20 Order)¹ MPUC submits these comments to urge the Commission to clarify that the advance ICAP purchase requirement contained in ISO-NE's filing is not a reasonable long term mechanism and should not be relied upon by market participants as more than a temporary provision. Indeed, as noted below, it is only the temporary nature of the tariff provisions that ISO-NE would put in place and the relatively limited impact of those provisions under current market conditions that would justify their implementation. These points are discussed in more detail below.

BACKGROUND

The Commission's November 20 Order required the ISO to implement an advance purchase requirement in which the load serving entity (LSE) knows before the beginning of the supply month what its ICAP obligation will be for that month. In

¹ The December 20 filing incorporates ISO-NE's December 3, 2001 report filed in compliance with the Commission's August 28, 2001 Order in this docket. *ISO New England, Inc.*, 96 FERC ¶ 61,234 (2001) (August 28 Order). Accordingly, MPUC's comments address both the December 3, 2001 and the December 20, 2001 filings.

response to that order, on December 20, 2001, ISO made a compliance filing relating to an end-of-the-month Installed Capacity (ICAP) cure period and the advance purchase requirement. The ISO itself expresses reservations about its compliance filing, stating that, while it could not implement a true advance purchase requirement in the immediate future, its filing, based on historical purchases, had the “virtue” that it could be implemented in the short term and was the best that could be done under the circumstances.

COMMENTS

There are two serious specific problems with ISO-NE’s filing. First, by the ISO’s own account, the proposed ICAP scheme does not reasonably relate a supplier’s ICAP obligation to its actual sales level – it is based instead on historical purchases and usage. The result here is to place added risk and cost on load servers who must still purchase ICAP without knowledge of their actual responsibility and, presumably, to increase the price they must charge for electricity.

Second, the proposed scheme can require some customers to pay for ICAP twice in a given month. In particular, if a customer switches suppliers mid-month, both its original and its new suppliers must each cover that customer’s ICAP needs for the entire month. This double charging of ICAP tends to increase the cost of serving load and the prices customers must pay for no legitimate reason.

These problems notwithstanding, MPUC recognizes that the tariff provisions the ISO has proposed in compliance with the Commission’s November 20 Order would only be temporary. Moreover, given the surplus of capacity under current market conditions, the impact of the proposed tariff provisions, although undesirable, will be limited. In other words, while the tariff provisions will tend to inflate the demand for ICAP services -- and hence the prices consumers

would have to pay -- the harm will be limited because the price of ICAP, absent some sort of manipulation, should be relatively low regardless of the specific rules. That said, MPUC urges the Commission to emphasize that because the compliance tariff provisions will only be short-term and temporary, market participants should be cautioned not to act in reliance on the continuation of the compliance tariff terms, or on other portions of the current market rules for ICAP.

MPUC also urges the Commission to clarify that it is far more important that a functional long-term market for ICAP be developed. The Commission has recognized the weaknesses of the existing ICAP regime. This recognition led to the requirement that ISO make the December 3, 2001 filing on future directions for ICAP and, perhaps more importantly, an ongoing series of discussions among participants in the New England, New York, and PJM markets over the design of the ICP market. Further, we appreciate the participation of Commission staff in the first meeting among these participants and hope that the Commission will continue to participate and support this effort.

We too intend to continue to participate in the development of a workable and effective capacity market. While we do not intend to continue that discussion here at any length, we would like to take this opportunity to indicate what are, in our opinion, the most fundamental principles of developing an ICAP market. In particular, we believe: (1) that an ICAP market is a direct governmental intrusion into an increasingly competitive electricity market, (2) that no such intrusion should take place unless and until there are well articulated policy statements defining the goal(s) of that intrusion, (3) that the development of the ICAP mechanism must be reasonably certain to achieve the policy goals at a reasonable cost, and (4) that the ICAP mechanism be flexible enough to

accommodate all strategies to achieve its goals including both the supply and demand sides, new as well as existing technologies, and more flexible operating and institutional arrangements such as reserve sharing.

Conversely, an ICAP mechanism whose goal is merely to create an additional revenue stream from one party to another or one which is adopted simply because some market participants once had a vague expectation that they would receive an ill defined revenue stream and priced their offer to buy existing generation accordingly is simply unacceptable. Not only would such an approach fail to protect electricity customers from near term high prices but, more importantly, it would lock in place a regulatory intrusion into the electricity market which would, we fear, lead to new inefficiencies in the future.

The MPUC looks forward to participating in the ongoing discussions of developing a workable ICAP 'market.'

Respectfully submitted,

THE MAINE PUBLIC UTILITIES COMMISSION

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Dated: January 22, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document by first class mail upon each party on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C., this 22nd day of January, 2002.

Harvey L Reiter