UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc. **Docket No. ER01-3086-000**

MOTION OF THE MAINE PUBLIC UTILITIES COMMISSION TO INTERVENE OUT OF TIME AND COMMENTS IN SUPPORT OF FILING

I. INTRODUCTION

The Maine Public Utilities Commission ("MPUC") hereby moves to intervene and file comments in support of the ISO's proposed extension of the bid cap to protect consumers from the exercises of market power during capacity shortages.

II. MOTION TO INTERVENE OUT OF TIME

In accordance with Rule 214 of the rules of Practice and Procedure of the Federal Energy Regulatory Commission[1] ("Commission"), the MPUC hereby moves for leave to intervene out of time in the above-captioned proceeding.

The MPUC designates the following persons for service and communications with respect to this matter and requests that their names be placed on the official service list for this case and asks that all communications be addressed to them separately:

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[1] 18 C.F.R. § 385.214 (2000).

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Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state.[2]

On September 20, 2001, ISO New England Inc. (the ISO) submitted for filing with the Federal Energy Regulatory Commission (Commission), amendments under Section 205 of the Federal Power Act to the Special Interim Market Rule originally filed with the Commission on November 1, 2000.

The MPUC has an interest in this proceeding which cannot be protected adequately by any other party. The MPUC has actively participated in cases involving the interim bid cap in New England. Due to oversight, the MPUC was not able to intervene in a timely manner. Since this motion is being filed early in this proceeding, the MPUC does not believe that it will disrupt the proceedings or that any party will be prejudiced.

WHEREFORE, MPUC believes that good cause exists for granting this motion to file its intervention out of time and requests that the Commission act favorably thereon.

III. BACKGROUND

In *NSTAR Services Co*, the Commission ordered the implementation of a $1000 bid cap during OP4 conditions. *NSTAR Services Co.*, 92 FERC ¶ 61,065 (2000) ("*NSTAR*"). The Commission stated:

> We agree with NSTAR that in capacity constrained periods where OP4 conditions apply, the existing New England market does not operate in a manner consistent with a typical competitive market. In a

[2] 35-A M.R.S.A. § 101 *et seq.*

> typical competitive market, a supplier's offer price is constrained by the prices offered by competing suppliers and by the amounts that buyers are willing to pay. Buyers would purchase less as the price increased. Such pricing constraints do not exist in New England at present during OP4 conditions.
>
> First, when OP 4 conditions are declared or anticipated in advance of the day-ahead bidding deadline, generators know that virtually all bids will be accepted for either energy or operating reserves. Thus, the bids of generators are not constrained by the bids offered by competing generators, because during OP4 conditions, there is little or no spare generation capacity to compete away the business of generators submitting high bids. New England's existing market rules make it profitable for generators to submit very high bids for a small portion of their capacity. During OP4 conditions, the very high bids must be accepted and set the market clearing price, which would be paid for all of the applicable product (energy or operating reserves) in the ISO's market.

NSTAR, 92 FERC at 61,198. The Commission identified other flaws which contributed to the problem of market power during conditions of limited capacity. These included the lack of demand response capability and the absence of a day-ahead market. The Commission noted that "[u]nder a multi-settlement system, buyer[s] who are price responsive would have time to react to prices." *Id*. at 61,199. Finally, the Commission noted that "[t]hese conditions are exacerbated by the continuing problems with market design in New England and recent problems of coordination with the New York ISO have created market conditions which require measures to lessen volatility in New England energy market prices, especially during OP4 conditions, while these issues are addressed." *Id*.

In addition, the Commission also found that the interim bid cap was appropriate for New England because PJM had a $1000 bid cap in place since its inception and the Commission was concurrently approving a bid cap of $1000 for NYISO. In response to concerns raised by generators that the $1000 bid cap would discourage generator participation in the market and investment in new generation, the Commission observed that "a $1000 bid cap has been in place in the PJM market since PJM's inception as an ISO and does not appear to have discouraged generators from participating in the PJM market *nor from adding capacity to the PJM market*." *Id.* at 61,200. (emphasis added). Further the Commission found that there was a benefit in having a uniform bid cap across the Northeast region:

> Our decision to approve the bid cap at the level of $1000 in the New England energy market is also influenced by our concerns about coordination with neighboring control areas during periods of mutual capacity deficiency or emergencies. Different bid caps in neighboring control areas could create supply problems. A single cap across major trading regions would limit incentives to sell into a higher price region during capacity shortages that affect several regions simultaneously.

Id.

On November 1, 2000 the ISO submitted for filing a proposed Special Interim Market Rule to extend the temporary $1000 per MWH bid caps through March 31, 2001. The Commission, in approving the requested extension and responding to concerns raised in protests, reiterated its rationale from its July 26 Order:

> In the July 26 Order, we justified the imposition of temporary bid caps, in part, based on continuing problems in market design but also on the lack of competitiveness during capacity deficient periods characterized by OP4 conditions and the lack of demand responsiveness to price. Importantly, the expectation that an OP4 condition will occur or a declaration of an OP4 condition sends a signal to market participants that all, or almost all, bids may be taken the following day. In such a circumstance, there is no upper limit to the prices bid into the market.
>
> We also disagreed with the contention that a $1000 per MWh bid cap would provide a significant deterrent to new investment, particularly over the next one to two years. *The bid cap provides a limit to arbitrarily high bids, but allows a significant margin for profit above the marginal costs of the most expensive unit existing or*

> *planned in New England*. In addition, the bid cap was approved initially, and is being extended now, during a transition period in which ISO-NE and market participants are exploring ways to remedy the underlying problems that continue to exist in the ISO-NE markets. Until these remedies are in place, bid caps are necessary.

ISO New England, Inc., 93 FERC ¶ 61,248 at 61,823 (2000) (emphasis added).

On May 8, 2001, the Commission approved the extension of the $1000 bid cap through October 31, 2001. 95 FERC 61,184 (2001). At that time, the Commission cited several factors for not granting a longer extension of the bid cap. These included an improved supply outlook for the summer of 2001, the ISO's recently approved demand-side response program and the ISO's newly developed market monitoring and mitigation provisions and associated screens.

In its filing, the ISO discusses the actual summer capacity situation, the amount of load reduction effected by its load response programs and the limited ability of market monitoring and mitigation provisions to address pricing of external contracts. The ISO states that peak load during the summer was significantly higher than projected and that this factor as well as reductions from generator outages resulted in energy prices reaching the 1000/MWh bid cap during 15 hours in July and August.[3] In addition, the ISO reports that its demand response programs reduced load by less than 100 MWh, which was significantly below its projected reductions of 300 to 600 MWhs. Finally, it explains that external contracts are not subject to effective market monitoring because they do not have a continuing existence, as would a physical unit, "so that [an external contract's] bid today cannot be compared with its bids in previous periods." Filing at 6. In addition, the mandatory link between external ICAP and External energy creates an incentive for pricing the external energy very high as a means of economically

[3] All of the $1000 ECPs were set by external contracts.

withholding the energy and purchasing only ICAP. Finally, ISO-NE notes that PJM has a permanent 1000 MWh bid cap and NYISO has requested an extension of its $1000 MWh bid cap.

ISO-NE also proposes to expand the coverage of the rule to all hours to create consistency with the bid caps now in place in PJM and New York, however, the ISO does not expect this adjustment to operate differently from the rule currently in place in New England. Filing at 4. The ISO's extension proposal makes other minor technical changes.

IV. COMMENTS

A. Conditions Warranting the Price Cap Still Exist

The New England control area continues to make progress in its transition to competitive markets. Increased capacity and new development of demand response programs indicate that the markets are moving in the right direction. However, the MPUC strongly agrees with ISO-NE's assessment that it is premature to remove protections while the electricity markets are still in transition.

The ISO filing demonstrates that there are still many hours in which the market is not competitive. During periods of capacity shortage, external contracts set the clearing price. The ISO concludes that

> When external contracts were permitted to set the clearing price, this predictably resulted in prices of $1000, and past experience shows that without the Special Interim Rule prices could be much higher.

Affidavit of Stephen Whitley, appended to ISO filing. The Commission's own analysis supports this conclusion:

> The expectation that an OP4 condition will occur or a declaration of an OP4 condition sends a signal to market participants that all, or almost all, bids may be taken the following day. In such a circumstance, there is no upper limit to the prices bid into the market.

93 FERC at 61,823.

Further, while the ISO, Participants and regulators continue to make progress in the development of demand responsiveness, ISO-NE acknowledges that "[a]chieving significant amounts of load response has been a challenge nationally." Filing at 4. Finally, New England still has no multisettlement system, a market improvement that the Commission has identified as critical to allowing buyers who are price responsive "time to react to prices." 92 FERC 61,199.

B. Extension of the Bid Caps Will Not Curb Investment in New Generation

The Commission has repeatedly rejected arguments that a $1000/MWh bid cap will stifle new investment in generation. In fact, the Commission's observation that $1000/MWh "allows a significant margin for profit above the marginal costs of the most expensive unit existing or planned in New England," *ISO New England, Inc., 93 FERC at 61,823*, is borne out by continuing new investment in generation in New England (and in the Northeast) where the bid cap is in effect.

C. Continuing the Bid Cap is Consistent Both with SMD and with the Transition to a Northeast Market.

As the ISO points out, the PJM platform has a permanent bid cap, and the New York ISO has requested an extension of its bid cap.[4] Filing at 4, 7. Thus, because the proposed extension of the bid cap for the New England control area maintains consistency with PJM and New York, it promotes both the implementation of the Standard Market Design (SMD) and the transition to a Northeast RTO.

[4] *New York Independent System Operator, Inc*, Docket No. ER01-3001 (filed September 4, 2001)

Further, the Commission's concern stated in the *NSTAR* Order that in a tight capacity situation that affected the entire Northeast region, sellers would have an incentive to sell into the high priced region, unless a uniform bid cap covered the entire region, would be addressed by granting ISO-NE's proposed extension of the bid cap. In the absence of a bid cap for New England, sellers would have an incentive to sell into New England at higher than $1000 MWh prices, thus causing unreasonably high prices in New England and exacerbating shortages in PJM and New York.

V. CONCLUSION

For the reasons stated above, the MPUC supports the ISO's proposed extension of the interim bid cap.

Respectfully submitted,

MAINE PUBLIC UTILITIES
COMMISSION

By:________________________________

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Dated: October 16, 200l

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 list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 16th day of October, 2001.

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Harvey L. Reiter