

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket No. ER04-798-000

**MOTION TO INTERVENE AND LIMITED PROTEST OF THE NEW ENGLAND  
CONFERENCE OF PUBLIC UTILITIES COMMISSIONERS**

In accordance with Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> the New England Conference of Public Utilities Commissioners (“NECPUC”) hereby submits its motion to intervene and protest in the above-captioned proceeding.

I.

In accordance with Rule 2010, 18 C.F.R. § 385.2010 (2003), NECPUC hereby designates the following persons for service of documents in this proceeding:

Harvey L. Reiter  
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II.

NECPUC is a not-for-profit corporation comprising public utility commissioners of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Formed fifty years ago and funded by the New England states, NECPUC’s mission is the promotion of regional cooperation and effective communication on all public utility matters within New England. As a representative of New England’s interests

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<sup>1</sup> 18 C.F.R. § 385.214 (2000).

concerning the electric industry, NECPUC has a vital stake in the operation of the New England Power Pool (“NEPOOL”) and ISO New England, Inc. (ISO-NE)

### III.

On April 30, 2004, ISO New England Inc. (ISO-NE) submitted notice to the Commission regarding the correction of Day-Ahead Energy Market results for April 19, 2004 and an application pursuant to section 205 of the Federal Power Act to revise Market Rule 1 to address the events of April 19, 2004 and other such situations. ISO-NE's April 30, 2004 filing informs FERC that unusually high locational market prices in the Day Ahead market on April 19th were the result of ISO calculation errors and that corrections were required under its existing tariff to conform those prices to the filed rate. Although the ISO states that the corrections were permitted and required under its existing tariff, it also invokes Section 6.17 of the ISO-NEPOOL Agreement to make a unilateral filing to amend Market Rule 1 - what it calls the Day Ahead Proposal - to establish a more formal and transparent process by which the ISO can correct errors of the type that occurred on April 19th. More specifically, the proposal would require ISO-NE to provide a "flagging notice" within a time period specified in the revised tariff of any errors it has tentatively flagged for correction. The ISO states that the proposal helps ensure correct marketplace prices and, by including reasonable time limits, promotes marketplace price certainty.

While NECPUC is generally supportive of ISO-NE's proposal to correct the Day-Ahead Energy Market (DAM) results for April 19, 2004 and to make revisions to Market Rule 1 clarifying procedures for correcting DAM results, it is concerned that the time frame proposed by ISO-NE for error identification is too short. ISO-NE originally proposed a 24-hour window

for such identification, but revised the window downward to 18 hours for Operating Days subsequent to April 30, 2004 based on stakeholder comments. Despite ISO-NE's assertion that it is able to accommodate an 18 hour window (ISO-NE Proposal, p. 8), the facts are that more time was needed for ISO-NE to identify the error in the DAM results for April 19th.

Whereas the proposed revision would require error identification no later than 10:00 a.m. of the applicable Operating Day, ISO-NE did not post a special notice to its website until 12:31 p.m. on April 20 describing the pricing anomalies for the April 19 DAM results. ISO-NE Proposal, p. 8. A special notice dated 12:31 p.m. April 19 notes the large congestion component for certain Nodes and the divergence between DAM results and Real-Time LMPs. However, the notice goes on to explain that the high Day-Ahead nodal LMPs are representative of approved line outages and cleared Demand Bids and that the divergence stems from modeled outage elements not commencing in real time as originally scheduled. ISO-NE Proposal, Attachment 3. This explanation indicates that as of 12:31 p.m. April 19, more than 20 hours after the normal posting of DAM results, ISO-NE still thought that the DAM results were correct, though different than the Real-Time LMPs. It is only in the 4:02 p.m. April 21 notice, 72 hours after the normal posting of DAM results, that ISO-NE declares that the DAM results were in error. ISO-NE Proposal, Attachment 3. Given this time frame for ISO-NE to identify an error in the April 19 DAM results, it is irrational to impose an 18 hour window for the identification of future errors. The ability to check the DAM results against the divergent real-time prices may have helped the ISO to recognize that the DAM prices required a follow-up to determine if an error had occurred. Requiring an 18 hour window forecloses ISO-NE from using much of the real-time results to check the DAM results.

NECPUC believes that a longer time frame is needed for ISO-NE to identify possible errors in the DAM results and recommends that the time frame be consistent with the period to identify possible errors in such results approved for the New York Independent System Operator (NYISO) in its Temporary Extraordinary Procedures (TEPs). “The TEPs require NYISO to post a notice that it is considering price recalculations within twenty-four hours [of the real-time period for which the DAM results apply], but in any case no later than 5:00 p.m. on the day after the day in which a price correction would be needed.” *New York Independent System Operator, Inc.*, 104 FERC ¶ 61,214 P.6 (2004). Relative to the normal posting of DAM results by ISO-NE, the TEPs requirement allows anywhere from 32 to 49 hours (depending on which hour(s) of the day the DAM results are applicable to) for the identification of possible errors in DAM results. This approach would give ISO-NE adequate time to determine that there may be a mistake by allowing comparisons between real-time and day ahead prices. At the same time, the TEP model is still limited enough to avoid causing significant adverse impacts on market certainty.<sup>2</sup> Moreover, it has already been found by the Commission to be just and reasonable.<sup>3</sup> Further, the added time also allows market participants and other entities the opportunity to question whether there may be errors in the DAM results.

This latter point is particularly significant as it relates to the correction of what ISO-NE describes in its filing letter as “minor errors,” (Transmittal letter at 8) but that, in fact, may be proportionately significant to smaller customers and zones. As ISO-NE notes, what it terms

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<sup>2</sup> NECPUC notes that in extraordinary circumstances, such as the August 14, 2003 Blackout, the Commission granted the NYISO a waiver from this 24 hour flagging provision. NECPUC requests that the Commission approve the rule change subject to providing ISO-NE an opportunity to receive a waiver in similar extraordinary circumstances.

<sup>3</sup> While, at the request of NECPUC ISO-NE staff inquired of the NYISO staff about whether the window caused any problems with price certainty, it concluded that there were so few times that the NYISO actually used this provision that the NYISO experience did not provide any meaningful comparison. NYISO’s experience, however, should

“minor errors” “may occur more frequently than major errors” (Id.). The ISO states that its proposal will assure that “significant errors do not go undetected and uncorrected.” Id. But, as the Vermont Public Power Supply Authority (VPPSA) notes in its June 25, 2004 intervention, the ISO’s December 2003 Monthly Market Report described errors resulting in overcharges of about \$300,000 to Vermont utilities that went uncorrected. While NECPUC agrees that the importance of price certainty outweighs the harm from truly *de minimis* errors, NECPUC submits that errors of the magnitude cited in VPPSA’s intervention are not minor. The added time NECPUC urges herein will help ensure that fewer “significant errors go undetected and uncorrected” (Transmittal letter at 8) – and NECPUC states its understanding that ISO-NE will flag *all non- de minimis* errors.<sup>4</sup>

In addition to an adequate time frame for identifying errors in the DAM results, NECPUC also believes that ISO-NE needs to commit to certain obligations regarding its review and investigation of DAM results as part of the revision to Market Rule 1. If NECPUC and market participants are expected to accept limits to their ability to seek recourse when charged rates do not conform to filed rates, there needs to be some assurance that certain procedures have been followed and certain efforts been made to ascertain that the rates charged indeed conform to filed rates. For this reason NECPUC recommends that ISO-NE detail and commit to a schedule of steps it will take and information it will gather to determine that DAM results are correct. ISO-NE should file this schedule subject to FERC approval, with time provided for comment by interested parties. During the markets committee review process, ISO-NE described what steps it

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have led ISO-NE to the opposite conclusion, namely that the use of a longer window poses little threat to price certainty.

<sup>4</sup> VPPSA argues in its pleading that ISO-NE will have the discretion to ignore errors it regards as non-significant. (VPPSA Intervention at 4-5) NECPUC does not read the ISO’s filing so broadly. Rather, NECPUC understands the filing to obligate ISO-NE to flag and correct *all* errors it discovers during the correction window (“if the ISO determines.... that there may be one or more errors in the DAM results...the ISO *will* post... a flagging notice.”) Transmittal letter at 8.

would take to determine whether to flag the day ahead prices. ISO-NE should memorialize these steps in a compliance filing and also describe what steps it would take to follow-up on flagged prices.

IV.

Based on the foregoing, NECPUC has a direct and substantial interest in this proceeding and may be affected by its ultimate determination. NECPUC will not be represented adequately by any other party and may be adversely affected or bound without opportunity to present its position unless it is permitted to participate fully in the proceedings.

V.

WHEREFORE, NECPUC respectfully requests that its motion to intervene in the captioned proceeding be granted and that the Commission grant the relief requested herein.

Respectfully submitted,

NEW ENGLAND CONFERENCE OF PUBLIC  
UTILITIES COMMISSIONERS

s/Harvey L. Reiter  
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Dated: June 28 2004

**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 28th day of June, 2004

s/ Harvey L. Reiter  
Harvey L. Reiter

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