NOTICE OF INTERVENTION AND PROTEST OF THE MAINE PUBLIC UTILITIES COMMISSION AND THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

I. COMMUNICATIONS

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):

Lisa Fink
Benjamin J. Smith
State of Maine
   Public Utilities Commission
18 State House Station
Augusta, ME  04333-0018
(207) 287-1389 (telephone)
(207) 287-6343 (telephone)
lisa.fink@maine.gov
benjamin.j.smith@maine.gov

Lynn Fabrizio
Staff Attorney
State of New Hampshire
   Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH  03301
(603) 271-6030 (Telephone)
Lynn.Fabrizio@puc.nh.gov

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).

The NHPUC is the state agency charged under New Hampshire law with the “general supervision of all public utilities” in the state. N.H. Rev. Stat. Ann. §§ 362:2 and 374:3. The NHPUC is empowered to confer or cooperate with other state and federal agencies on matters relating to its supervision of utilities. Id. at § 363:18. Under New Hampshire's Electric Utility Restructuring Act, NHPUC is further charged with advocating New Hampshire's interests before the Commission and other regional and federal bodies and with advancing New Hampshire's interests with "respect to wholesale electric issues, including policy goals relating to fuel diversity, renewable energy and energy efficiency, and to assure nondiscriminatory open access to a safe, adequate, and reliable transmission system at just and reasonable prices." Id. at § 374-F:8. Finally, the NHPUC is granted authority under New Hampshire law to investigate all existing or proposed interstate rates, fares charges, classifications and related rules and regulations where any act thereunder may take place within the state. Id. at § 363:22-23. Accordingly, the MPUC and the NHPUC hereby give notice of their intervention pursuant to Rules 212 and 214 of the Commission’s rules of practice and procedure.²

III. BACKGROUND

The requirement for ISO-NE to undertake a stakeholder process and file a methodology for calculating tie benefits for the third annual reconfiguration auction derived from a Commission order in which the Commission accepted ISO-NE’s

determination of tie benefits for the third annual reconfiguration auction for the 2010/2011 capability year but, because of numerous concerns raised in protest to the ISO-NE proposal in that case, directed ISO-NE to undertake a stakeholder process to Address the contention raised by NESCOE and other commentors that ISO-NE failed to provide the analysis requested by some stakeholders in connection with alternative proposals, with detailed explanations of reliability needs, estimated emergency events, and cost implications of options.\(^3\)

The Commission further required ISO-NE to file any proposed changes to the tie benefits methodology by the end of 2010, for application to the Third ARA for the 2012/2013 Capacity Commitment Period. The Commission also noted ISO-NE’s concern with the use of an “as is” methodology because the resulting tie benefits of 3,415 MW of emergency assistance would result in a reserve margin over the peak load forecast of 4.3% compared with the reserve margin of 9.7% that was consistent with the reserve margin previously approved by the Commission.\(^4\) In that Commission proceeding, ISO-NE had expressed concern that using an “as is” methodology for the third ARA would result in too high a level of tie benefits and thus an over-reliance on emergency assistance from neighboring control areas. ISO-NE was concerned that using an “as is” tie benefits value reduced the installed capacity requirement and thus the reserve margin so that the prior approved reserve margin of 9.7% would be reduced to 4.3%.

In the stakeholder process leading up to the December 30 filing, ISO-NE presented several discussions from its operations division. These presentations purported to show through a deterministic analysis using stressed system conditions (90/10 loads, export constraints, etc.) the amount of emergency assistance that could be relied on if all

of the events modeled under the deterministic analysis actually occurred. This approach came to be known as the Upper Operational Tie Benefits Limit (“UOTBL”). Many in the stakeholder process including NESCOE and NECPUC representatives raised concerns about using a deterministic overlay onto resource adequacy determinations such as the determination of tie benefits and installed capacity requirements to limit the level of tie benefits that should be considered available. These representatives also requested that cost analysis of various approaches be performed early in the process to help inform the discussion.

Various stakeholders also presented alternative proposals during the stakeholder process, including a proposal by NESCOE that obtained the support of the NEPOOL Reliability Committee. ISO-NE stated that it could not support that proposal or a proposal by the Massachusetts Attorney General. In an effort to try to address ISO-NE concerns a proposal with a lower tie benefits level than that proposed by NESCOE was developed by National Grid. The proposal by National Grid would have resulted in a tie benefits level of approximately 2,320 MW. The National Grid proposal would have produced a reserve margin of slightly over 13.2% and slightly under 13.7%. Ultimately ISO-NE abandoned the concept of the UOTBL because it decided that using an “at criteria” approach for the third annual reconfiguration auction was the only viable approach.

---

4 Id at n. 128.
5 While reserve margins are a product and not a driver of tie benefits and installed capacity requirements in New England, ISO-NE suggests in its December 30 filing that New England’s installed capacity requirement is not robust enough by comparing New England’s earlier reserve margins to that of other regions. Thus, though the reserve margin comparison is not relevant, since it is provided in the ISO-NE filing, it is important to at least put in the reserve margin information relevant to the various proposals rejected by ISO-NE as well as ISO-NE’s own “at criteria” proposal.
On December 10, ISO-NE presented its proposed tie benefits methodology to the New England Power Pool Committee, including its proposal to use “at criteria” for the third ARA auction. The “at criteria” proposal would produce approximately 1700 MW of tie benefits resulting in a reserve margin of over 15% which is significantly higher than the reserve margin of 9.7% previously found acceptable by ISO-NE and the Commission. See Brattle Group Report at 5, appended to ISO-NE’s December 30th Filing.

Approximately one day before the December 10 NEPOOL meeting, ISO-NE provided a cost impact analysis by the Brattle Group. While the National Grid proposal received a majority of NEPOOL support with 59.72% voting for the proposal, it narrowly failed to reach the 60% threshold for NEPOOL support. The ISO-NE proposal failed to win NEPOOL support with 48.76% support. In its December 30th Filing, in response to the Order, ISO-NE submitted its proposed tariff revisions resulting from the stakeholder review.

IV. PROTEST

A. The MPUC Supports and Adopts by Reference the NESCOE comments

NESCOE, while supporting much of the ISO-NE filing made the following four points:

1. ISO-NE’s use of “at criteria” conditions for external Control Areas is overly conservative and does not adequately consider consumer cost implications.

---

6 ISO-NE’s August 25, 2010 presentation provides a table indicating that a tie benefits level of 1600 MW results in a reserve margin of 15.8 percent while a tie benefits level of 2,000 results in a reserve margin of 14.5%. August 25, 2010 presentation at 9.
2. ISO-NE’s cost analysis is incomplete and did not receive stakeholder review.

3. The exclusion of transmission constraints in external Control Areas if such constraints would increase the value of tie benefits is not realistic and requires further consideration by ISO-NE and stakeholders.

4. ISO-NE and stakeholders should review modeling of Ontario and PJM in no more than three years.

The MPUC agrees with these points and the discussion of them in the NESCOE filing and adopts them by reference herein.

**B. ISO-NE’s use of “at criteria” conditions for external control areas is overly conservative and does not fully explain what aspects of the probabilistic modeling or assumptions used in the “as is” analysis are of concern to ISO-NE.**

From materials presented in the stakeholder process and from its filing, it is clear that ISO-NE’s fundamental concern with the “as is” approach in the Third ARA is that the end result arrives at a tie benefits level that the operators at ISO-NE feel is too high. Thus, ISO-NE initially came up with the concept of the UOTBL. By placing a cap on the level of tie benefits, the UOTBL was intended to provide the ISO-NE operations unit with some measure of comfort that with an “as is” approach, the tie benefits level would not be so high so as to adversely affect reliability. The UOTBL used a deterministic approach with a 90/10 load forecast and other stressed system conditions. On the other hand, the modeling done either using an “as is” or “at criteria” approach uses a probabilistic simulation which incorporates numerous assumptions regarding outage levels and transfer capability. When neighboring control areas have a projected surplus, under an “as is” analysis, this surplus is considered in determining the level of emergency assistance that may be available. However, under an “at criteria” analysis, the analysis
reduces the surplus to only the amount of capacity that would result in a loss of load expectation (LOLE) of one day in ten years

Ultimately, ISO-NE’s rejection of any “as is” approach demonstrates ISO-NE’s lack of confidence that it can rely on data produced by the probabilistic modeling. However, from an analytic standpoint, the appropriate response to this concern should be to examine the data going into the model. In fact, the Commission noted in its February 12 Order that ISO-NE never explained why the “as is” methodology results in such a relatively high level of tie benefits. February 12 Order, n. 128.

While the ISO-NE’s focus on reliable system operation is appropriate, the most conservative approach is not always the most appropriate response, especially given costs associated with this conservatism. ISO-NE’s juxtaposition of long-term planning concerns, such as the ability to sustain the level of surplus in New York, onto the short-term implication of whether a significant portion of the surplus existing several months before the third ARA would still be available by the time of the third ARA, places conservatism over logical analysis. For example, while ISO witness Mark Karl states (in support of considering only that amount of New York capacity that would result in a reliability level to meet the “one day in ten years” level) “[a] major unit may trip, requiring extended maintenance, or may decide to retire,” the probabilistic analysis has already assumed forced outage rates for all capacity when determining the tie benefits. The “what if” of a deterministic analysis is not appropriate to overlay onto a probabilistic analysis in which the likelihood of certain events based on historical information (such as forced outage rates) is already accounted for. Thus, ISO-NE’s preferred methodology is overly conservative and this over conservatism will result in additional consumer costs.
In addition, ISO-NE’s concerns about reliability reductions that stem from recognizing a higher level of tie benefits is not supported in its filing. For example, ISO-NE suggested that a methodology that increased the tie benefits level would result in the purchase of a lower level of installed capacity and therefore it would be required to call on emergency assistance more often. Brandien Testimony, pp. 17-18. However, ISO-NE never provided any analysis of how much more often emergency assistance would be required. This was, in fact, one of the matters that the Commission expected ISO-NE to address. February 12 Order, P. 81 (“The stakeholder process in this regard also should address the contention raised by NESCOE and other commenters that ISO-NE failed to provide the analysis requested by some stakeholders in connection with alternative proposals, with detailed explanations of reliability needs, estimated emergency events and cost implication of options.”) (emphasis added).

The MPUC acknowledges and appreciates the assistance ISO-NE provided in analyzing various alternatives developed by the Massachusetts Attorney General, NESCOE and National Grid. However, ISO-NE’s rejection of any “as is” approach, even the one developed by National Grid, and its ultimate fall back to the most conservative approach (increasing the reserve margin from approximately 9.6% to over 15%) without fully exploring the ramifications of the proposal which garnered a majority of NEPOOL participant support leaves the stakeholder process unfinished.

In the end, ISO-NE rejected all other alternatives because they did not “equally address reliability concerns,” December 30 Filing, Transmittal letter at 37, but ISO-NE’s reliability concerns as set forth in the Karl and Brandien testimony must be analyzed in the context of whether the deterministic overlay triggering these concerns is reasonable.
especially considering the additional it will impose on consumers. Further, ISO-NE
should further explore the possibility of whether an approach similar to that supported by
a majority of NEPOOL participants, one which results in a reserve margin of over 13%,
may be a viable and reliable alternative. Accordingly, the MPUC supports NESCOE’s
request for an additional stakeholder process and asks that this process address the
concerns stated in NESCOE’s Comments and also those discussed herein.

Dated: January 25, 2011

Respectfully submitted,

/s/ Lisa Fink
Lisa Fink
Benjamin J. Smith
State of Maine
Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018
Tel: (207) 287-1389
lisa.fink@maine.gov

/s/ Lynn Fabrizio
Lynn Fabrizio
Staff Attorney
State of New Hampshire
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301
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 25 day of January, 2011.

/s/ Jacob McDermott
Jacob A. McDermott
State of Maine
   Public Utilities Commission
   18 State House Station
   Augusta, ME  04333-0018
   Tel: 207-287-6341
   Jacob.a.mcdermott@maine.gov