UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

) )
) ) Docket No. ER13-2266-000
) )

ISO New England Inc.

NOTICE OF INTERVENTION AND PROTEST OF
THE MAINE PUBLIC UTILITIES COMMISSION

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), and the Combined Notice of Filings # 2, issued on August 28, 2013, the Maine Public Utilities Commission ("MPUC"), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 101 Second Street, Hallowell, Maine, 04347, respectfully files this Notice of Intervention ("Intervention") and Protest of the filing by ISO New England Inc. ("ISO-NE" or "ISO") providing the results of its Winter Reliability Program, proposed in Docket No. ER13-1851-000 ("Winter Reliability Program") and modified in Docket ER13-1851-001. ISO-NE asks the Commission to find that the proposed rates resulting from the bids selected by ISO-NE through the winter program are just and reasonable.

The Winter Program Results Filing underscores the flaws identified by the MPUC in its protest of the Winter Reliability Program: (1) that the ISO-NE had failed to support its need determination and (2) that the program failed to provide transparent and objective metrics for the ISO to determine which bids to select. Accordingly, the MPUC protests the Winter Program Results Filing. Specifically the MPUC raises the following concerns


with this rate filing: (1) ISO-NE failed to properly determine the specific need for the amount purchased; (2) The cost of the program is almost double the high end of the cost range estimated by ISO-NE, and the ISO has failed to demonstrate that the resulting rate is just and reasonable; and (3) the ISO should have determined whether the winter program is necessary given the Commission’s decision on the complaint by the New England Power Generators Association ("NEPGA").

I. PRELIMINARY STATEMENT

The MPUC’s Notice of Intervention is filed pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.214(a)(2) (2013), and the Commission’s June 28, 2013 Combined Notice of Filings #2 in which the Commission established July 19, 2013 as the date by which interventions and protests were to be filed in the instant 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 (2013):

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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. 35-A M.R.S. § 101 et seq. It is, therefore, a “state commission” under the Commission’s regulations, 18 C.F.R. § 1.101(k) (2013). Accordingly, the MPUC hereby gives notice of its intervention pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214(a)(2) (2013) and respectfully requests that the Commission recognize the MPUC as an intervenor in this proceeding, with all rights attendant thereto.

III. BACKGROUND

In February of 2013, ISO-NE issued a discussion paper entitled “Winter Operations Summary, January – February 2013” (“Winter Operations Paper” or “Paper”). The Winter Operations Paper described a cold stretch in January and a blizzard in February during which ISO had to commit additional generating resources to ensure that adequate resources were available. ISO states that “[t]hese commitments were driven by the inadequacy of generator fuel arrangements and the uncertainty this created for ISO system operators.” The Paper compared temperatures from during the cold stretch in January and the February blizzard against other cold stretches in 1979 and 2004 in which temperatures were colder than during the events in 2013. The Paper stated that in addition to developing longer-term market design changes to improve generator performance, ISO would develop a set of immediate solutions that can be in effect for winter 2013-2014.

4 Available at the following link: http://www.iso-ne.com/committees/comm_wkgrps/prtcnts_comm/prtcnts/mtrls/2013/mar12013/index.html.

5 Id. at 2.
On June 28, 2013, ISO-NE filed its Winter Reliability Program. In the filing ISO describes the circumstances influencing its development of the program:

Specifically, during the 2012-13 winter, the ISO saw a number of instances in which natural gas-fueled generation did not have sufficient fuel to provide energy at or even near the generator’s stated capacity as reflected in their daily offers. Increased and relatively extreme volatility in natural gas prices during the 2012-13 winter exacerbated fuel procurement issues. In addition, it was evident that many dual fuel and oil-only resources did not have sufficient fuel to allow for reliable operation during extended and/or repeated periods of cold weather.6

Using assumptions drawn from its Winter Operations Paper, ISO-NE proposed a program to ensure the availability of additional oil-fired generation and demand response for the 2013-2014 winter. ISO-NE established the amount of MWh it would need from oil and demand response as up to 2.4 million MWh (which is roughly equivalent to 4.2 million barrels of oil). ISO proposed to evaluate bids to supply these MWh in accordance with criteria outlined in proposed Section III.K.6.7 Regarding the expected costs of the Program, ISO-NE stated that the costs to the region will be based on the accepted bids to provide the service, “which should be based largely on the costs quantified by [ISO’s consultant] Analysis Group.”8 Analysis Group estimated that the cost of the winter reliability program would range from $16 to $43 million.9

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7 Id. at 28.

8 Id., Testimony of Robert Ethier and Peter Brandien at 29-30, appended to Winter Reliability Program filing (emphasis added).

9 Id. at 29. In its Answer in Docket No. ER13-1851, ISO-NE appears to back away from the Analysis Group cost estimate stating that it expected the costs to be within the Analysis Group estimate “plus a competitive profit margin and risk premium.” ISO New England Inc., Motion for Leave to Answer and Answer of ISO New England Inc., Docket No. ER13-1851-000 (filed August 6, 2013) at 8. However, the testimony referenced in the Answer says nothing about an adder for profit margin and risk premium. Rather the testimony states flatly as quoted above that the bids should be based largely on the Analysis Group Cost estimate.
ISO-NE determined that the bids received by the July 30 deadline were inadequate, because they totaled only 1.415 million of the 2.4 million MWh sought, and the cost was approximately $60.66 million. As a result, ISO proposed Emergency Winter Amendments on August 9, 2013. The purpose of the Emergency Winter Amendments was to reduce the amount of risk built into the program, thereby encouraging increased participation in the program.\footnote{ISO New England Inc., Emergency Amendments to Pending Filing Regarding the Winter 2013-14 Reliability Program, Docket Nos. ER13-1851-001 and ER13-1851-002 (filed August 9, 2013).}

On August 26, 2013, ISO-NE filed the list of the selected bids from the second round of bidding. Of the 2.4 million MWh ISO-NE sought, ISO selected 1.995 million MWh at a purchase price of $78.756 million. Of the amount purchased 1,991,505 MWh were from oil or dual fuel units and 3,780 MWh were from one demand response supplier. The amount selected for purchase was 83.1 % of the amount ISO-NE had targeted for purchase. The purchase price, however, is almost double the high end of ISO-NE’s cost estimate. The August 26, 2013 filing makes no mention of the cost estimate in ISO-NE’s June 28\textsuperscript{th} filing and does not explain why the cost of the Winter Reliability Program is reasonable other than comparing the average per MWh cost of the supply of the selected bids compared to the per MWh amount in the first round of bidding.

On August 26, 2013, the Commission issued an Order on a complaint filed by the New England Power Generators Association ("NEPGA"). The Commission found that "the Tariff imposes a strict performance obligation on capacity resources and that capacity resources may not take economic outages." \textit{New England Power Generators Association, Inc. V, ISO New England Inc., 144 FERC \$ 61,157, P.1} (2013). However
the Commission also found that under the tariff, a demonstrated inability to obtain natural
gas or transportation (as opposed to an economic decision not to procure fuel or
transportation) may result in the unit's physical unavailability which is a legitimate
excuse for non-performance. *Id.*

**IV. PROTEST**

A. **ISO-NE's Proposed $79 Million Additional Purchase Is Not Just and Reasonable Because the Flaws in the Need Determination Have Not Been Corrected.**

In its Protest in Docket ER13-1851 of the Winter Reliability Program, the MPUC requested that the Commission direct ISO-NE to fix inadequacies in the determination of need in the Winter Reliability Program. The MPUC pointed out that the ISO used extreme temperatures to determine need and questioned why ISO-NE had not used ISO-NE's resource adequacy metrics.\(^{11}\) ISO-NE has not provided an explanation for the use of such extreme temperatures to determine need\(^ {12}\) or explained why using less extreme temperatures, such as using winter weather normal temperatures, could not or should not be used to determine the amount of incremental purchase.\(^ {13}\) The amount ISO-NE determined was necessary for purchase was a critical component of the Winter Reliability Program, and the results suggest that a significantly reduced need would have resulted in a large reduction in cost. For example, ISO-NE states that 43% 

\(^{11}\) MPUC Winter Reliability Program Protest at 5-8.

\(^{12}\) In its answer in Docket No. ER13-1851, ISO suggests that lack of fuel rather than broken machinery is the performance issue the ISO was trying to address, and states therefore that a deterministic analysis is appropriate. However, it does not follow that a different performance issue precludes the use of a probabilistic analysis to set a baseline for determining need.

\(^{13}\) Even if, as ISO-NE suggested in its answer in Docket No. ER13-1851-000, a deterministic analysis is appropriate, a deterministic analysis still must use a reasonable baseline. Here, as discussed in the MPUC protest in Docket ER13-1851-000, ISO-NE has failed to provide a reasoned explanation for the use of extreme temperatures.
of the bids it received that were less than $10 per MWh. Further, as stated in the MPUC protest in Docket No. ER13-1851-000, the lack of transparent metrics for selecting the bids leaves the ISO in the position of adjusting its need based on an ad hoc determination of what price is too high.

**B. The Cost of the Procurement Far Exceeded the Estimated Cost and The Filing Does Not Support a Conclusion that the Resulting Rate is Just and Reasonable.**

ISO-NE’s Winter Program Results Filing fails to mention the cost estimate it supplied in proposing the Winter Reliability Program. In that docket, ISO-NE witnesses opined that the cost of the program would be based on the selected bids “which should be based largely on the costs quantified by the Analysis Group.” The cost range projected by ISO-NE was between $16 to $43 million. However, ISO-NE proposes to buy $79 million dollars of additional capacity. While ISO-NE explains how it decided to limit the amount of procurement (where the supply curve became too steep), it is not clear that the amount it did purchase was purchased at a reasonable price. For example, ISO states that the amount procured includes the 43% of bids that were less than $10 per MWh, the 25% that were between $10 and $20 per MWh and the 20% that were between $20 and $31 per MWh. However, there are no metrics that help the Commission to decide that $31 per MWh per month (over a three-month period) was a reasonable cut off point. Given the cost estimate supplied by ISO-NE, the flaws in the needs analysis, and the fact that the need may be reduced by the Commission’s decision in the NEPGA complaint (see discussion in part IV(C) below), it may have been unreasonable for ISO-NE to purchase more than the 43% of bids that were less than $10 per MWh. In short,

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14 It is not clear whether ISO-NE means $10 per MWh or $10 per MWh per month since only one bid in the list of selected bid actually came in below $10 per MWh.

15 Ethier and Brandien Testimony at 29-30, appended to Winter Reliability Program filing.
ISO-NE’s *ad hoc* determination to select $31 per MWh per month (over a three-month period) as the cut off fails to meet a just and reasonable standard.

C. The Commission’s Decision on the NEPGA Complaint Affects the Need Determination.

ISO-NE asserted in its answer to the NEPGA complaint that:

The repeated failure of some generators to meet these [capacity supply] obligations has necessitated a range of actions by the ISO and New England’s stakeholders, including Tariff violation referrals to the Commission, emergency stop-gap measures to support reliable operation for next winter, and consideration of a host of potential revisions to New England’s market designs.¹⁶

The Commission’s decision makes clear that it is a tariff violation for generators with a capacity supply obligation to make economic decisions not to procure fuel. While as the Commission points out, any claim of a tariff violation will be fact specific, the decision clarifies that the tariff imposes a strict performance obligation on capacity resources. At the very least, ISO-NE should reconsider its need determination in light of the Commission decision. While ISO-NE operators may opine that it is better to have too much supply than too little and may be more comfortable with the additional “insurance” that the winter program may provide, that is not the standard under which a proposal is judged to be just and reasonable. Accordingly, the Commission should require the ISO-NE to determine whether the program is necessary given the clarification provided by the Commission’s decision on the NEPGA Complaint.

V. CONCLUSION

For the reasons stated above, the MPUC respectfully asks the Commission to reject the proposed rate filing and direct ISO-NE to reassess its need determination consistent with the MPUC comments provided herein and in Docket No. ER13-1851-000.

¹⁶ ISO-NE Answer at 2, filed on June 6, 2013 to NEPGA Complaint, Docket No. EL13-66.
Dated: September 9, 2013

Respectfully submitted,

/s/ Lisa Fink

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Hallowell, Maine, this 9th day of September, 2013.

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