

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Wholesale Competition in Regions
with Organized Electric Markets**

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Docket Nos. RM07-19-000 and
AD07-7-000

**COMMENTS OF MAINE PUBLIC UTILITIES COMMISSION
ON NOTICE OF PROPOSED RULEMAKING
WITH REGARD TO WHOLESALE COMPETITION IN REGIONS WITH
ORGANIZED ELECTRIC MARKETS**

The Maine Public Utilities Commission (“MPUC”) hereby submits its comments on the Notice of Proposed Rulemaking (“NOPR”) issued in the above-captioned proceeding on February 22, 2008, entitled *Wholesale Competition in Regions with Organized Electric Markets*, 122 FERC ¶ 61,167 (2008).

I. Preliminary Statement

The person to whom correspondence, pleadings and other papers relating 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 (2007):

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II. Demand Response and Market Pricing

In the NOPR, the Commission emphasizes the importance of demand response to the competitiveness of the Wholesale Electric Market. Specifically it states:

[D]emand response helps to hold down wholesale power prices; increases awareness of energy usage; provides for more efficient operation of markets; mitigates market power; enhances reliability; and encourages new technologies that support the use of renewable energy resources, distributed generation, and advanced metering.¹

The Commission proposed several means of modifying existing market rules in order to eliminate barriers to demand response in organized markets.

The MPUC agrees with the Commission with respect to the critical importance of demand response. In its August 2007 scenario analysis, the New England Independent System Operator Inc. (“ISO-NE”) evaluated the impact of seven scenarios upon the impacts on emissions and the effect on demand side resources.² This report analyzed seven potential scenarios affecting the costs of energy production while weighing the benefits and impact, both economic and environmental, if one methodology were

¹ Wholesale Competition in Regions with Organized Electric Markets, 73 Fed. Reg. 12,576, 12,581 (Mar. 7, 2008), 122 FERC ¶ 61,167, at P 27 (2008) (“NOPR”).

² ISO NEW ENGLAND INC., NEW ENGLAND ELECTRICITY SCENARIO ANALYSIS (Aug. 2, 2007), available at http://www.iso-ne.com/committees/comm_wkgrps/othr/sas/mtrls/elec_report/scenario_analysis_final.pdf (“SCENARIO REPORT”).

employed over the other.³ Of the seven scenarios considered, the Energy Efficiency/Demand Response (“EE/DR”) scenario generally produced the lowest costs.⁴

Further, ISO-NE has reported that during the first half of 2007, demand response programs provided significant energy price savings to New England and to Maine. In its semi-annual status report on its load response programs, ISO-NE states: “During the first half of the Reporting Period, the Load Response Program reduced real-time LMPs by approximately \$0.19/MWh across the entire wholesale market in New England.”⁵

The MPUC notes that demand response is a critical element in the wholesale electric market, not only in providing energy price savings, but also in reducing the need for additional generating and transmission infrastructure, as recently demonstrated by the level of demand response participation in the first Forward Capacity Market (“FCM”) auction. Of the 1,813 MW of the new capacity acquired by ISO-NE, almost two-thirds (1,188 MW) was from new demand-side resources and only 626 MW came from new supply-side resources.⁶

While the MPUC agrees with the Commission about the critical importance of demand response to the efficient functioning of the wholesale electric markets, it also generally agrees with the New England Power Pool’s (“NEPOOL”) view expressed in comments being filed in response to this NOPR that the Commission should not impose

³ The seven scenarios consisted of the following: the “Queue” mix, demand-side resources, nuclear plant capacity, new coal fire plants using integrated gasification combined-cycle technology, new gas-fired combined-cycle power plants, new renewable plants, increased imports of hydroelectricity and other low emission resources.

⁴ See Table 5-2: “Total Annual Revenue Requirements and Annual Net Revenues for the Scenarios under the Common Set of Assumptions,” *in* SCENARIO REPORT at 55; *see also* SCENARIO REPORT at 7 (noting capacity energy savings resulting from demand response and benefit of reduced emissions).

⁵ ISO NEW ENGLAND INC., SEMI-ANNUAL STATUS REPORT ON LOAD RESPONSE PROGRAMS OF ISO NEW ENGLAND, INC., FERC Docket No. ER03-345, at 8 (Dec. 28, 2007).

⁶ See ISO-New England Inc., Transmittal Letter accompanying Forward Capacity Auction Results Filing, FERC Docket No. ER08-633-000, at 6 (Mar. 3, 2008).

the specific requirements set forth under the demand response section of the NOPR on ISO-NE. The Commission should allow ISO-NE to work with state regulators and NEPOOL to make existing programs more robust and to eliminate barriers to demand response participation. The MPUC agrees with NEPOOL that an evaluation and reporting requirement would be a more efficient process, especially where New England has taken a leadership role in including demand response in its markets, especially in its capacity markets.

Specifically, MPUC agrees with NEPOOL's comments regarding the NOPR's four proposed reforms to address Commission concerns about limits on the market clearing price during a system emergency. The Commission proposed that each region either must adopt one of the following four approaches or demonstrate the adequacy of its existing market rules to address the Commission's concerns: (1) increasing the energy supply offer caps and demand bid caps above the current levels during an emergency, (2) requiring RTOs and ISOs to allow only demand bid caps to be raised above the current level, while keeping generation offer caps in place, (3) requiring a demand curve for operating reserves in the RTO and ISO market, and (4) requiring the RTOs and ISOs to modify their market rules to set the market-clearing prices for all supply and demand response resources at the payment made to participants in an emergency demand response program.⁷

As NEPOOL states in its comments filed in response to the Commission's NOPR, the ISO-NE forward reserve market already implements a demand curve for dealing with operating reserve shortages through its locational forward reserve market.

⁷ NOPR at PP 123-26.

Thus, there is no need for ISO-NE to adopt any of the other approaches. It is worth emphasizing, however, that in New England, it is particularly unreasonable to impose a requirement to remove bid caps from the energy market or take other steps that remove consumer protections prior to a showing that consumers can change their behavior to avoid being harmed from the type of price spikes that resulted in FERC's adoption of the bid caps in the first place. *See NSTAR v. New England Power Pool and ISO New England, Inc.*, 92 FERC ¶ 61,065 at 61,199 (2000) (noting that in ISO-NE price spikes such as the \$6000/MWH price spike that occurred on May 8, 2000 did not function "to ration scarce supplies among customers, because most retail customers do not see the prices").

The MPUC notes that there are several flaws in the Commission's proposal. First, the bid cap of \$1000 per MWH is sufficiently high for a price effect to be recognized for those that have an ability to respond to price. Furthermore, the cap is automatically raised in the ISO-NE energy market if the system is also short of operating reserves. If the system is short of ten-minute operating reserves, as it would be when reliability is stressed and energy prices are peaking, then the cap rises to \$2,000 per MWH.

Second, as Commissioner Kelly noted in her dissent, "it is not responsible to allow energy supply offer caps and demand bid caps to rise without regard to impact on consumers."⁸ The MPUC agrees with Commissioner Kelly that, in advance of greater penetration of advance metering, consumers are lacking the ability to respond to price spikes:

⁸ Statement of Commissioner Kelly at 1, *in* NOPR (citations omitted).

Some may look at this as a chicken and egg debate where if we allow energy supply offer caps and demand bid caps to increase without restraint this will raise prices thereby encouraging additional generation and demand response to enter the market. On the other hand, what happens in the meantime to consumers as we allow prices to rise without restraint and we are still waiting for these theoretical incentives to building adequate generation and demand response infrastructure to kick in? We must never lose sight of the interests of consumers as we engage in this kind of philosophical debate because they will be the ones who will lose out if we miscalculate. The necessary generation and demand response infrastructure must be in place prior to allowing energy supply offer caps and demand bid caps to rise or be eliminated. Unfortunately, this is not the case. As Commission staff noted in the 2006 FERC Staff Demand Response Assessment, advanced metering currently has low market penetration of less than six percent in the United States. This means that consumers do not have the tools they need in order to make choices regarding rising prices and respond accordingly.⁹

Third, the justification for the need for a capacity market in New England was the existence of the bid cap. The Commission's rationale that the Peak Energy Rent ("PER") adjustment in the FCM counters the price effect of eliminating the bid caps only partially applies. While the PER adjustment limits the payments received by units receiving FCM revenues, it does not necessarily limit the energy market price that customers pay. For example, de-listed units can make high priced bids up to whatever external bid cap is imposed (if any) without being subject to the PER adjustment. Thus, while the PER does limit the revenues some units will receive, it does not limit the energy market clearing price nor the payments to the de-listed resources.

III. Market Monitoring Policies

The Commission has also proposed to remove tariff administration and mitigation from the functions of the Market Monitoring Units ("MMUs") while leaving that function to the respective to the ISOs and RTOs. MPUC does not support this proposal.

⁹ *Id.* at 2.

Currently, ISO-NE employs an internal and external market monitor. The internal marketing monitor is largely responsible for daily tariff administration including mitigation. The internal monitor is also responsible for monitoring the FCM and ensuring that bids and other practices by generators are in compliance with the tariffs and market rules. The external monitor is primarily responsible for reviewing and reporting on the markets in New England.

The Commission has not demonstrated that there is a lack of independence or a conflict of interest in having those who are experts in the areas of market mitigation performing day-to-day mitigation. The internal market monitors understand the interaction of the markets and the significance of the market data it analyzes. Thus, it would be extremely inefficient to move these functions to an area that had to duplicate this expertise.

As noted by Commissioner Kelly in her dissent, “[t]he MMUs are better positioned to make determinations regarding the exercise of market power than are the RTO/ISO staff members who frequently have long standing close personal relationships with the very market participants whose actions at times need to be mitigated.”¹⁰

IV. Implementation of a Hybrid Board

The NOPR proposes to promote responsiveness of RTOs/ISOs by allowing them to adopt hybrid boards with stakeholder members. On this point, the MPUC agrees with the reasoning employed by Commissioner Kelly in her dissent that stated as follows:

Having an independent board is the cornerstone of RTO/ISO policy. Order Nos. 888 and 2000 require that RTO/ISO be independent from market participants in order to provide regional transmission and energy market services on a non-discriminatory basis. If an RTO or ISO adopted

¹⁰ *Id.*

a hybrid board, I do not believe they could be categorized as independent.¹¹

That said, the MPUC has concerns with the responsiveness of RTOs to consumers. As previously expressed by MPUC, ISO-NE has insufficient incentives as it is to motivate it to seek least cost solutions for consumers, and it is not accountable to regional governmental authorities.¹² ISO-NE is responsible to ensure reliable and competitive markets; however, these objectives do not focus on cost containment or price reduction for consumers.¹³ The Commission should consider requiring RTOs to place a stronger emphasis on cost containment in its administration and development of wholesale electric markets.

V. Information Sharing with State Commissions

The MPUC stresses the need for a greater level of information sharing by ISO-NE with state Commissions. While in New England there are rules in place that set forth a process for state Commissions to gain access to information protected by the Information Policy, *see* Attachment D to ISO-NE OATT § 3.3, there is no process that the MPUC is aware of that would allow the ISO to contact state Commissions about a specific market problem in a similar manner to its ability to provide such information to the Commission. In a recent case, this gap has been shown to be problematic. ISO-NE has made allegations about problems with and possible strategic behavior in the day ahead load response program. It recently disclosed to the MPUC that it was unable to notify the

¹¹ *Id.* at 3-4.

¹² *See* MAINE PUBLIC UTILITIES COMMISSION, FINAL REPORT TO THE UTILITIES & ENERGY COMMITTEE OF THE LEGISLATURE 26-30 (Jan. 15, 2008), *available at* http://www.maine.gov/mpuc/staying_informed/legislative/2006legislation/ISO-NEFinalReport.doc (examining continued participation by Maine transmission and distribution utilities in the New England Regional Transmission Organization).

¹³ *Id.* at 27.

MPUC of these problems sooner than they were released publicly because this would have been a release of confidential information. Thus, there was no way for the MPUC to request specific information under the specific procedures approved by the Commission, because the MPUC was unaware of the existence of any problem. Where there are protections in place to ensure that confidential information remains confidential when disclosed to a state Commission, the Commission should direct ISO-NE to share confidential information with the state Commissions in the same or similar manner to its information sharing with the Commission.

VI. Conclusion

MPUC appreciates the Commission's interest in promoting demand response and other measures critical to the functioning of an effective wholesale electric market. The MPUC hopes that the Commission will work with state regulators to further the goals of increasing demand response participation in all of the markets, retaining effective market monitoring and protecting consumers from unjust and unreasonable rates.

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Respectfully submitted,

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