

MEMORANDUM

TO: Participants Committee Members and Alternates

FROM: Michelle Gardner, NEPOOL Counsel

DATE: April 26, 2010

RE: FERC Order in FCM Redesign Proceedings (ER10-787-000, EL10-50-000, EL10-57-000)

On April 23, 2010, the FERC issued its order on the revisions to the Forward Capacity Market (“FCM”) resulting from the FCM Working Group process filed by the ISO-NE and NEPOOL on February 22, 2010 (the “FCM Rule Revisions”). The FERC accepted some of the FCM Rule Revisions but found other revisions raised concerns that had not been fully addressed and therefore set those changes to be addressed in a paper hearing prior to the FERC issuing its final order. The FCM Rule Revisions that were fully accepted by the FERC and not set for a paper hearing are listed in Part A below. The FCM Rule Revisions that are set for a paper hearing as listed in Part B below. Given the timing of the upcoming Fourth FCA, the FERC did accept those FCM Rule Revisions listed in Part B for that auction, while noting its intent to issue a final order in time to be applied prospectively for the Fifth FCA and beyond. The FERC also noted that the FCM Rule Revisions are the outcome of a stakeholder process that was properly conducted under NEPOOL’s governance procedures.

In addition to the list of issues in Parts A and B, the FERC also found that the extension of the price floor had not been shown to be just and reasonable. However, given what it described as the flaws in the existing APR, the FERC approved the extension of the price floor as a transitional mechanism. The FERC did state its expectation that in its final order accepting an appropriate APR mechanism, which it anticipates issuing for the Fifth FCA and beyond, it will terminate the price floor coincident with the implementation of the new APR. The FERC did not, therefore, set the issue of the price floor for consideration in the paper hearing.

The FERC consolidated the proceedings initiated by the Complaints filed by NEPGA (EL10-50-000) and PSEG/NRG (EL10-57-000) with the FCM Rule Revisions, requiring all issues and alternative proposals in those Complaint proceedings to be addressed in the paper hearing for the FCM Rule Revisions. First Briefs are required to be filed by July 1, 2010 addressing questions raised by the FERC in its order, supporting prior proposals, or making new proposals. Second Briefs are required to be filed by September 1, 2010. The FERC stated its intention to issue an order in this proceeding in time for the Fifth FCA. In addition, the FERC stated that they strongly encouraged the parties to continue to negotiate so that these questions may be resolved by consensus to the greatest extent possible. Upon request, the FERC will appoint a settlement judge to assist with such negotiated resolution.

Part A: Tariff Provisions Not Set for Paper Hearing (P 16 of Order)

We consider the stakeholder process leading to the proposed revisions to have been appropriate (P 36-37), and we accept the following proposed Rule Changes as just and reasonable (i.e., the following issues are not required to be considered as part of the paper hearing established in this proceeding): the proposal to develop both local resource adequacy (LRA) and transmission security analysis (TSA) based requirements for import-constrained Capacity Zones and to set the local sourcing requirement (LSR) at the higher of the two

values (P 108); the general provision to decouple the FCA Starting Price from the Cost of New Entry (CONE) as detailed below (P 139); the proposed revisions to the rules governing the review of offers below 0.75 times CONE (P 156); the compensation of resources that cannot prorate for reliability reasons (P 163); and the clarifications concerning the obligations of resources without a CSO (P 169). Additionally, the Commission is not setting for hearing the non-rate issues contained in PP 184-191 (e.g., Maine's concerns regarding the cost analysis, GDF Suez' concerns on LSE self-supply designations, and witness status of Miles O. Bidwell).

Part B: Tariff Provision Set for Paper Hearing (P 18 of Order)

As further discussed in the body of the order, the issues that we will consider in the paper hearing, and as to which we request briefing from the parties, are as follows:

a. Issues Relating to Alternative Price Rule (APR)

- 1) Triggering conditions, if any, for the APR
- 2) Treatment of OOM resources that create capacity surpluses for multiple years
- 3) Appropriate price adjustment under APR

b. Modeling of Capacity Zones

- 1) Whether zones should always be modeled
- 2) Whether all de-list bids should be considered in the modeling of zones
- 3) Whether a pivotal supplier test is necessary
- 4) Whether revisions to the current mitigation rules would be necessary in order to model all zones

c. Proper Value of CONE

Whether the value of CONE should be reset

We will continue to provide you with more details relating to this Order as such information develops. If you have any questions about this memo or about the Order, please contact Michelle Gardner, Day Pitney LLP, 617-345-4697, mcgarder@daypitney.com.