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October 25, 2005

VIA ELECTRONIC FILING

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: ISO New England Inc., Docket No. ER05-508-000
Motion for Leave to Reply, and Limited Reply, of ISO New England Inc.**

Dear Secretary Salas:

Transmitted electronically for filing in the referenced docket is the Motion for Leave to Reply, and Limited Reply, of ISO New England Inc.

If there are any questions concerning this filing, please call me at (202) 661-2205.

Very truly yours,

/s/

Howard H. Shafferman
Counsel for
ISO New England Inc.

Enclosure

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

ISO New England Inc.) **Docket Nos. ER05-508-___**

**MOTION FOR LEAVE TO REPLY, AND LIMITED REPLY, OF
ISO NEW ENGLAND INC.**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), 18 C.F.R. § 385.213, ISO New England Inc. (the “ISO”) hereby submits its limited reply to the Reply of ANP Funding I, LLC, Calpine Eastern Corporation and Calpine Energy Services, L.P., Lake Road Generating, L.P. and Mirant Americas Energy, LP, Mirant New England, LLC, Mirant Canal, LLC and Mirant Kendall, LLC (collectively, the “Indicated Generators”) filed on October 18, 2005 (the “Generator Reply”).

I. BACKGROUND AND INTRODUCTION

On September 8, 2005, the ISO and other parties to this proceeding filed a Partial Settlement Agreement. The Partial Settlement Agreement’s revisions to Appendix H of Market Rule 1¹ modify and clarify the procedures, rights and responsibilities of the ISO and Market Participant generators during Cold Weather Conditions. Revised Appendix H provides for vigilant ISO monitoring of Cold Weather Conditions and a number of measures designed to enhance the ability of the New England bulk power system to be prepared for and respond to the stresses of extreme cold weather, such as occurred in January 2004.

¹ Market Rule 1 is Section III of the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (the “Tariff”). Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Tariff.

Under Paragraph D of the Partial Settlement Agreement (“Paragraph D”), interested parties were to submit briefs to the Commission on September 28, 2005 regarding the unresolved issue of

the nature of the generating obligations, if any, that a de-listed Resource on Economic Outage has or should have if, during a Cold Weather Event, the ISO has requested Return From Economic Outage on a “best efforts” basis of ICAP Resources on Economic Outage and requested Return From Economic Outage, on a voluntary basis, of fully de-listed Resources, and additional generating Resources are still needed to avoid implementation of ISO New England Operating Procedure 7 – Action in an Emergency [“OP7”].

Other parties were permitted to reply to these briefs within 20 days thereafter.

The ISO filed its brief on September 28, 2005, explaining that the Federal Power Act (“FPA”), existing contractual arrangements, tariff provisions, reliability standards and Commission policy already reflect the obligation of de-listed Resources to Return From Economic Outage and produce energy in order to avoid load-shedding under OP7 conditions. This obligation is referred to by the ISO in its brief as the “Last Resort Requirement.”

Importantly, the Indicated Generators have chosen at this juncture not to oppose the ISO’s assertion of an obligation by generators to help prevent load shedding during cold weather conditions. For instance, the Generator Reply:

do[es] not reject any obligation that exists under the Federal Power Act (‘FPA’) or the ISO-NE Tariff to help prevent load shedding during extreme cold weather conditions.²

In addition, the Generator Reply states that:

...Indicated Generators are willing to accept, for this winter, that de-listed generators may be required to make efforts to return from service from Economic

² Generator Reply, at 1.

Outage at ISO-NE request under certain conditions to avoid involuntary load shedding during Cold Weather Events.³

However, the Generator Reply, in addition to accepting an obligation to help prevent load shedding during extremely cold weather, proposes several changes to Market Rule 1 and Appendix H (as revised in the Partial Settlement Agreement) regarding the triggering of the Last Resort Requirement and the compensation provided to de-listed Resources⁴ returning from Economic Outage. Specifically, and as discussed in greater detail in Section III below, the Indicated Generators propose to add a condition to the triggering of de-listed Resources' obligations, namely, that the request to Return from Economic Outage must be made by 8:00 a.m. on the day before a Cold Weather Event day. With respect to compensation, the Indicated Generators seek a higher capacity payment than that provided in Section III.8.3.3.1(b) of Market Rule 1.

II. MOTION FOR LEAVE TO REPLY

The Indicated Generators have sought affirmative relief in the form of market rule changes, rather than filing (on September 28) an initial brief on the unresolved legal issue – as contemplated in Paragraph D – or simply replying to the position of the ISO and the New England Conference of Public Utilities Commissioners, Inc. (“NECPUC”) regarding that unresolved legal issue.⁵

³ Generator Reply, at 9.

⁴ “De-listed Resources,” as used herein, are those Resources that have chosen not to have any part of their capacity become ICAP Resources during the month at issue.

⁵ The Indicated Generators waited until October 18, 2005 to express their initial views concerning the unresolved issue, nonetheless terming it a “reply.” It should be noted that other owners of generating Resources, in addition to the Indicated Generators, are parties to the Partial Settlement Agreement.

The ISO should be permitted to file a limited reply because it represents the ISO's response to the initial expression of the Indicated Generators' views on the unresolved issue and thus is consistent with the spirit of Paragraph D. In addition, accepting this limited reply is consistent with Commission precedent. The Commission has found good cause to permit answers where they are otherwise prohibited in various circumstances, including where the answer would assure a complete record in the proceeding, *see, e.g., Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378, at p. 62,443 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999), provide information helpful to the disposition of an issue, *see, e.g., CNG Transmission Corp.*, 89 FERC ¶ 61,100, at p. 61,287 n.11 (1999), permit the issues to be narrowed or clarified, *see, e.g., PJM Interconnection, LLC*, 84 FERC ¶ 61,224, at p. 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335, at p. 62,323 n.1 (1998), or aid the Commission in understanding and resolving issues. *See, e.g., Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009, at p. 61,016 (2000).⁶

The ISO believes that its reply will assure a more complete record in this proceeding and otherwise assist the Commission in understanding and resolving the issues presented.

III. DISCUSSION

The ISO genuinely appreciates the Indicated Generators' recognition of the role they can play in preventing load shedding in New England during extreme cold weather conditions. The affirmative actions of generators, the ISO and all sectors of the electric power community in New England will be crucial to avoiding life-threatening outages during such conditions.

⁶ *See also ISO New England Inc. and New England Power Pool*, 110 FERC ¶ 61,202 at P 29 (2005).

The Generator Reply does not refute the legal arguments made by the ISO and NECPUC.⁷ For purposes of this proceeding, the Indicated Generators have conceded that an obligation of de-listed generators to make efforts to Return from Economic Outage and produce energy in the face of imminent load shedding under OP7 is consistent with statutory, contractual and other provisions reflecting this obligation.

However, the Indicated Generators seek a change in Market Rule 1 and revised Appendix H so that a de-listed generator on Economic Outage would be notified of the requirement to return to service no later than 8:00 a.m. the day before the Cold Weather Event.

The Indicated Generators state, further, that the compensation available to de-listed generators for returning from Economic Outage and producing energy is insufficient to address the costs they would incur in undertaking such efforts.⁸ The existing compensation, as described by the ISO in its brief, consists of:

- (i) the compensation described in Section III.8.3.3.1(b) – namely, a capacity payment for the entire month (the Obligation Month’s Unforced Capacity (“UCAP”) clearing price), plus any additional reasonably incurred maintenance and opportunity type costs; (ii) the applicable Locational Marginal Price (subject to the provisions of Section III.H.3.6 providing a mechanism for exceeding the

⁷ The Indicated Generators continue to rely, in Section II.A. of the Generator Reply, on a portion of Appendix B to Market Rule 1, *i.e.*, the Sanctions Rule. However, their selective quotation – describing the prerogative of generators to make economic decisions affecting availability – excludes other language reflecting the *context* of the rule, which is that generators *will not be sanctioned* for those decisions. The Sanctions Rule is silent on whether generators must assist in efforts to avoid load shedding. Similarly, the Indicated Generators may not rely on the Commission orders stating the principles that generators should have the freedom to make the business determination whether or not to participate in the *capacity markets* and that de-listed generators should not have to comply with the same maintenance rules as those participating in the *capacity markets*, because the Commission has never ruled that such principles will excuse generators (whether participating in the capacity markets or not) from making efforts during emergencies to help minimize or eliminate the need for load shedding.

⁸ The Indicated Generators also believe that the required efforts should be at a level consistent with “Good Utility Practice,” rather than “best” efforts.

\$1,000/MWh price cap otherwise reflected in Market Rule 1); and (iii) other compensation (such as Operating Reserve Credits) as provided in Market Rule 1.

Premised on the costs and risks alleged to be entailed in returning from Economic Outage, the Indicated Generators seek, in addition to the existing compensation provided under Market Rule 1, a payment of the ICAP bid cap of \$6.66/kW-month (rather than the UCAP clearing price for that month) to de-listed Resources that succeed in providing generation in response to the ISO's direction to return from Economic Outage on a Good Utility Practice basis.

For the reasons set forth below, the ISO believes that the proposals present a number of concerns.

A. The Proposed Trigger of 8:00 a.m. Day-Ahead Creates a Mismatch

The Indicated Generators' proposal that the requirement for de-listed Resources to use efforts to Return from Economic Outage and produce energy be triggered by ISO at or before 8:00 a.m. on the day before a Cold Weather Event day does not coordinate appropriately with the purpose of the Last Resort Requirement, i.e., to avoid implementing OP7 (including load-shedding).

Quite simply, the ISO will not know whether implementation of OP7 load-shedding is needed until during the Cold Weather Event day itself, much less 24 hours in advance of Cold Weather Event peak hours. The ISO certainly does not reject having the ability to call for efforts by de-listed Resources to Return from Economic Outage well in advance of potential load shedding. However, if the trigger is to be exercised by the ISO that far in advance, it cannot be premised (as proposed by the ISO in Appendix H shown in Attachment A to its brief) on avoiding implementation of OP7 and associated load-shedding. Instead, it would need to be premised on other measures that the ISO is in a position to assess day-ahead, such as a projected exhaustion – during the Cold Weather Event day – of ten-minute reserves.

B. The Costs Described by Indicated Generators, If Substantiated, Would Appear to Qualify as Opportunity Costs Already Compensable Under Section III.8.3.3.1(b)

Section II.E of the Generator Reply describes a variety of types of costs and risks that allegedly would be incurred by the Indicated Generators in complying with the Last Resort Requirement. In keeping with the limited nature of this reply, the ISO will not engage in a detailed analysis of these types of costs. Instead, the ISO wishes to point out that Section III.8.3.3.1(b) already allows for the collection of opportunity costs – a point glossed over in the Generator Reply. Based on their description of the costs and risks, the Indicated Generators already have an avenue for collecting a wide variety of costs incurred (if substantiated) in complying with the Last Resort Requirement, namely, as opportunity costs.

C. The Higher Capacity Payment Sought For Compliance with the Last Resort Requirement Raises a Number of Concerns

At the end of the Generator Reply, the Indicated Generators propose (as item 2.b on pages 27-28) a payment of \$6.66/kW-month (*i.e.*, the ICAP bid cap) for complying with the Last Resort Requirement. This proposal is premised on the assertion that, for de-listed Resources, the ICAP clearing price for the month in question was not found to be a sufficient incentive for those Resources to participate in the capacity market for that month.

Given the need to reply quickly, the ISO has not had an opportunity to evaluate fully the market impacts of this proposal. However, the ISO is concerned that the disparity, in a month in which the Last Resort Requirement is triggered, in the capacity payments made to returning de-listed Resources as compared with those made to ICAP Resources (*i.e.*, \$6.66 per kW-month vs. the monthly ICAP clearing price, respectively) could create equity issues among generators,

given that the value of capacity is the same in the emergency hours, whether the source is an ICAP Resource or formerly de-listed Resource.⁹

IV. STATEMENT OF ISSUES

The ISO's reply addresses:

(1) the absence of rebuttal in the Generator Reply regarding whether de-listed Resources on Economic Outage have an obligation to comply with the Last Resort Requirement; and

(2) whether the proposal reflected in the Generator Reply for adjustments to Appendix H: (a) reflects an appropriate trigger for the Last Resort Requirement; (b) ignores existing avenues (*i.e.*, opportunity cost recovery under Tariff Section III.8.3.3.1(b)) for compensation of costs and risks of complying with the Last Resort Requirement; and (c) due to the higher proposed capacity payment for de-listed Resources complying with the Last Resort Requirement than for ICAP Resources, creates equity issues among generators and issues regarding allocation among Market Participants of the incremental capacity payment to generating Resources.

⁹ In addition, the Indicated Generators' proposal does not specify how the responsibility for the incremental capacity payments made to de-listed Resources Returning from Economic Outage and producing energy would be allocated among Market Participants.

V. CONCLUSION

For the reasons stated herein, the ISO respectfully requests that the Commission:

- accept and consider this limited reply, and
- rule on the legal issue presented in paragraph D of the Partial Settlement Agreement in the manner requested in the ISO's brief filed in this proceeding on September 28, 2005.

Respectfully submitted,

/s/

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Date: October 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 25th day of October, 2005.

/s/ _____
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