

LAW OFFICES  
**BALLARD SPAHR ANDREWS & INGERSOLL, LLP**  
601 13<sup>TH</sup> STREET NW, SUITE 1000 SOUTH  
WASHINGTON, DC 20005-3807  
202-661-2200  
FAX: 202-661-2299  
WWW.BALLARDSPAHR.COM

PHILADELPHIA, PA  
BALTIMORE, MD  
BETHESDA, MD  
DENVER, CO  
LAS VEGAS, NV  
PHOENIX, AZ  
SALT LAKE CITY, UT  
VOORHEES, NJ  
WILMINGTON, DE

October 17, 2007

**VIA ELECTRONIC FILING**

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: University of New Hampshire, Docket No. ER08-20-000;  
Motion to Intervene and Comments of ISO New England Inc.**

Dear Secretary Bose:

Transmitted electronically for filing in the referenced docket is the Motion to Intervene and Comments 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*

Howard H. Shafferman  
Counsel for  
ISO New England Inc.

Enclosure

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

**University of New Hampshire**

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**Docket No. ER08-20-000**

**MOTION TO INTERVENE AND COMMENTS OF  
ISO NEW ENGLAND INC.**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), 18 C.F.R. § 385.212 and 385.214 (2007), ISO New England Inc. (“ISO”)<sup>1</sup> moves to intervene and submit comments in the above-captioned proceeding regarding the University of New Hampshire’s (“UNH”) Request For Expedited Consideration And Voided Designation Or Waiver Of Market Rule 1 Allowing UNH’s Cogeneration Facility To Participate In the Transition Period And In The Forward Capacity Market As A Demand Resource (the “Request”) filed on October 2, 2007.

The Request asks that the Commission void the settlement-only generator designation of UNH’s 7.5 MW cogeneration unit (“7.5 MW Unit”). Alternatively, the Request asks for a waiver of the Market Rules to allow the Facility to participate in the ICAP Transition Period (“Transition”) as an Other Demand Resource (“ODR”) and to allow the Facility to be qualified as a Demand Resource in the Forward Capacity Market (“FCM”).

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<sup>1</sup> Capitalized terms used but not defined are intended to have the same meaning given to such terms in the ISO’s Transmission, Markets and Services Tariff (FERC Electric Tariff No. 3) (“Tariff”), the Second Restated New England Power Pool Agreement, the March 6, 2006 Explanatory Statement and Settlement Agreement in Docket Nos. ER03-563-000 *et al.*, and the February 15 Filing Containing Revisions to Market Rules Implementing the FCM Settlement in Docket No. ER07-546-000

## **I. COMMUNICATIONS**

Correspondence and communications regarding this filing should be addressed to the undersigned as follows:

Raymond W. Hepper  
Kevin W. Flynn  
ISO New England Inc.  
One Sullivan Road  
Holyoke, MA 01040-2841  
Tel: (413) 540-4592  
Fax: (413) 535-4379  
E-mail: [rhepper@iso-ne.com](mailto:rhepper@iso-ne.com)

and

Howard H. Shafferman  
Ballard Spahr Andrews & Ingersoll, LLP  
601 13<sup>th</sup> Street, N.W., Suite 1000 South  
Washington, D.C. 20005  
Tel: (202) 661-2205  
Fax: (202) 661-2299  
E-mail: [hhs@ballardspahr.com](mailto:hhs@ballardspahr.com)

## **II. IDENTITY OF THE ISO**

The ISO is a private, non-profit entity that serves as the regional transmission organization (“RTO”) for New England. The ISO administers the New England energy markets and operates the New England bulk power system pursuant to the ISO New England Inc. Transmission, Markets and Services Tariff (“ISO Tariff”) and the Transmission Operating Agreement with the New England transmission owners. In its capacity as the RTO for New England, the ISO has the responsibility to protect the short-term reliability of the control area as well as to provide oversight and fair administration of the New England markets.

### III. BACKGROUND

UNH has two generators, which according to its pleading, are intended to serve campus load: a 400 kW steam turbine (“400 kW Unit”) and the 7.5 MW Unit. Both units are behind the meter at UNH’s interconnection with Public Service New Hampshire (“PSNH”). On April 28, 2006, PSNH registered the 400 kW Unit with the ISO as a Settlement Only Generator (“SOG”).<sup>2</sup>

Subsequent to the SOG registration, UNH placed in service the 7.5 MW Unit to operate in conjunction with the existing 400 kW Unit (collectively, the “7.9 MW Facility”). The 7.9 MW Facility has exported energy to the electric grid and these energy exports exceeded the output of the 400 kW Unit, meaning by straightforward mathematics that the 7.5 MW Unit has also acted as an SOG, and has been settled as such by the ISO. PSNH was paid for these energy exports and also received and forwarded to UNH the *de minimis* Transition payments for the 7.9 MW Facility.

The Request explains that although the 7.9 MW Facility was properly designated and settled as a SOG by the ISO, including the 7.5 MW Unit as part of the SOG settled output was the result of a miscommunication with PSNH.<sup>3</sup> According to UNH, it did not intend for the output of the 7.5 MW Unit to be sold into the electric grid, although small sales from the 7.5 MW Unit output have occurred inadvertently on occasion. Rather, UNH explains, the purpose of the 7.5 MW Unit is to supplement UNH’s energy self-supply.<sup>4</sup> Based on the ISO’s

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<sup>2</sup> Request at p. 2.

<sup>3</sup> *Id.* at pp. 3-4. Counsel for UNH has confirmed to the ISO that UNH had intended to leave the SOG designation of the 400 kW Unit unchanged, and simply to avoid designating the 7.5 MW Unit as an SOG.

<sup>4</sup> *Id.*

communications with UNH counsel, UNH is not seeking to change the SOG registration of the 400kW unit.

Subsequent to the inclusion of the 7.5 MW Unit's output as part of the existing SOG, UNH submitted the required documentation and fees for the 7.5 MW Unit to participate in the Transition as an ODR and the required documentation and Qualification Review Deposit for qualification as a Demand Resource in the FCM. On May 18, 2007, the ISO notified UNH that the 7.5 MW Unit did not qualify as an ODR because it was registered as a SOG. On October 3, 2007, the ISO further notified UNH the unit did not meet the requirements to participate in the FCM as a Demand Resource.

The Market Rules do not allow SOGs to participate in the FCM as a Demand Resource. By definition, the Market Rules preclude Distributed Generation resources from participating in ISO-administered energy markets, thereby prohibiting the 7.5 MW Unit from participation in the FCM as a Demand Resource. Specifically, the Market Rules state that:

*Distributed Generation resources are not eligible for energy payments* from ISO-administered energy markets. Generation resources cannot participate in the Forward Capacity Market as Demand Resources, unless they meet the definition of Distributed Generation.<sup>5</sup>

UNH acknowledges that because it received energy payments for the 7.5 MW Unit, the ISO properly disqualified the unit as a Demand Resource.<sup>6</sup> UNH explains, however, that since it never intended to sell energy, and because the output from 7.5 MW Unit was mistakenly included by PSNH as part of the existing SOG, the Commission should grant the relief in the Request.

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<sup>5</sup> Tariff, Section III.13.3.2 (emphasis added).

<sup>6</sup> Request at p. 7

### **III. REQUEST TO INTERVENE**

Because the ISO has an interest that may be directly affected by the outcome of this proceeding, the Commission should grant the ISO's motion to intervene. Specifically, UNH's request in this proceeding directly affects the ISO's interests in operating the Transition and the first Forward Capacity Auction ("FCA").

### **IV. COMMENTS**

The ISO takes no position as to whether the Commission should grant or deny the Request. UNH has submitted the required documents for the 7.5 MW Unit to participate in the Transition (as an ODR) and the first FCA as a Demand Resource. If the Commission grants the relief in the Request, the 7.5 MW Unit would be eligible to qualify in the requested classifications, subject to two qualifiers.

First, because the 400 kW Unit will remain a SOG, UNH must have the proper OP-18 compliant metering in place to ensure that the two units can be distinguished as a SOG and Demand Resource. Second, the ISO notes that PSNH is the Lead Market Participant for the 7.5 MW Unit. Under the Tariff, the Lead Market Participant is responsible for registration of a resource.<sup>7</sup> Therefore, the ISO's ability to reclassify the 7.5 MW Facility as requested by UNH would be predicated on PSNH's acquiescence to the relief sought in the Request.

If the Commission decides to approve the Request, the Commission should explicitly provide that its decision is limited to the specific and unique facts presented here and does not constitute established precedent that would allow generators to circumvent the definitions of ODRs, Demand Resources and Distributed Generation in the Market Rules. Further, if the

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<sup>7</sup> Tariff, Section IV.A.1.47

Commission grants the Request, the decision should be consistent with Commission precedent holding that generators may not participate in the FCM as Demand Resources.<sup>8</sup>

Moreover, the ISO requests that any Commission order approving the Request be effective prospectively and not require future waivers. As noted above, the 7.5 MW Unit is eligible to qualify for Transition payments as an ODR, and for the first FCA as a Demand Resource, if the Commission grants the relief requested. Thus, there is no need for a retroactive effective date. The effective date for changing the resource classification and associated Transition payments from SOG to ODR should be the first day of the month following a Commission order in order to be consistent with ODR reporting requirements.<sup>9</sup>

While the ISO takes no position on the Commission's disposition of the Request, the ISO recognizes that this is the first time that the FCA is being run and that the FCM Rules are lengthy and complex. All of these counterbalancing factors should be considered by the Commission when it decides this matter. Such an approach would not be inconsistent with Commission policy as applied to similarly unusual factual circumstances.<sup>10</sup>

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<sup>8</sup> *ISO New England Inc.*, 119 FERC ¶ 61,045 at P 156 (2007).

<sup>9</sup> Tariff, Section III.8.3.6.2.4

<sup>10</sup> *See, e.g., Waterbury Generation LLC v. ISO New England, Inc.*, 120 FERC ¶ 61,007 (2007).

## V. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that it be permitted to intervene in, and made a party to, the subject proceeding, with all rights attendant thereto. In addition, the ISO respectfully requests that the Commission accept and consider its comments as discussed above.

Respectfully submitted,

/s/

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Raymond W. Hepper  
Kevin W. Flynn  
Vice President and Assistant General  
Counsel  
ISO New England Inc.  
One Sullivan Road  
Holyoke, MA 01040  
(413) 540-4592  
[rhepper@iso-ne.com](mailto:rhepper@iso-ne.com)

/s/

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Howard H. Shafferman  
Ballard Spahr Andrews & Ingersoll, LLP  
601 13<sup>th</sup> Street, N.W., Suite 1000 South  
Washington, D.C. 20005  
(202) 661-2205  
[hhs@ballardspahr.com](mailto:hhs@ballardspahr.com)

Counsel for ISO New England Inc.

Dated: October 17, 2007

**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 17<sup>th</sup> day of October, 2007.

/s/ Pamela S. Higgins  
Pamela S. Higgins  
Ballard Spahr Andrews & Ingersoll, LLP  
601 13th Street, N.W., Suite 1000 South  
Washington, D.C. 20005  
(202) 661-2258

