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February 15, 2008

**VIA ELECTRONIC FILING**

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

**Re: ISO New England Inc.,  
Docket No. ER08-538-000**

Dear Ms. Bose:

Transmitted electronically for filing in the referenced docket is the Motion for Leave to Answer and Answer of ISO New England Inc. to the February 8, 2008 Protest and Provision of Affidavit in Support of the Industrial Energy Consumer Group's Motion to Intervene, Protest, and Preliminary Comments.

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**

ISO New England Inc.

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Docket No. ER08-538-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER  
OF ISO NEW ENGLAND INC. TO THE PROTEST  
OF THE INDUSTRIAL ENERGY CONSUMER GROUP**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213 (2007), ISO New England Inc. (“ISO”) hereby submits its Answer to the February 8, 2008 “Protest and Provision of Affidavit in Support of the Industrial Energy Consumer Group’s Motion to Intervene, Protest, and Preliminary Comments” (“IECG Protest”).

The ISO also hereby moves, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2007), for leave to file an answer. The Commission has the authority to waive the prohibition against answers to protests for good cause.<sup>1</sup> 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,<sup>2</sup> provide information helpful to the disposition of an issue,<sup>3</sup> permit the issues to be narrowed or

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<sup>1</sup> See 18 C.F.R. § 385.101(e) (2004).

<sup>2</sup> See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378, at 62,443 (1998), *reh’g denied*, 89 FERC ¶ 61,246 (1999).

<sup>3</sup> See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100, at 61,287 n.11 (1999).

clarified,<sup>4</sup> or aid the Commission in understanding and resolving issues.<sup>5</sup> The ISO believes that its answer will assure a more complete record in this proceeding and otherwise assist the Commission in understanding and resolving the issues presented.

## I. INTRODUCTION AND ANSWER

On February 5, 2008, the ISO filed market rule revisions (the “DALRP Revisions”) to restore the minimum offer price under the Day-Ahead Load Response Program (“DALRP”)<sup>6</sup> to a level that reflects the program’s intended design and, thereby, to eliminate strategic behavior by some DALRP participants seeking to be paid for exaggerated load reductions.

On February 8, IECG filed the IECG Protest to supplement its earlier motion to intervene that was filed on February 6, 2008. In its latest filing, IECG (i) argues that its alternative proposal for changes to DALRP would have been “less harmful” and (ii) submits an affidavit (the “Huhtamaki Affidavit”) from one of its members, Raymond D. McMullin of Huhtamaki Food Service Inc. (“Huhtamaki”), allegedly demonstrating that the DALRP Revisions “unnecessarily penalize” some participants.<sup>7</sup>

As explained in further detail below, the DALRP Revisions are just and reasonable, and the ISO and stakeholders adequately considered and rejected IECG’s alternative changes to the

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<sup>4</sup> See, e.g., *PJM Interconnection, LLC*, 84 FERC ¶ 61,224, at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335, at 62,323 n.1 (1998).

<sup>5</sup> See, e.g., *ISO New England Inc. and New England Power Pool*, 110 FERC ¶ 61,202 at P 29 (2005); *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009, at 61,016 (2000).

<sup>6</sup> Market Rule 1 is Section III of the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (the “ISO Tariff”). Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the ISO Tariff.

<sup>7</sup> IECG Protest at 2; see also *id.* (“Huhtamaki’s experience ... is clear demonstration that some customers have acted in good faith in reliance on the Day Ahead Load Response Program, they have made significant investments to allow their operations to reduce load in response to the program, they provide real and measurable load reductions to the ISO market, and they will be materially harmed by the ISO’s actions in revisiting its rate schedules in the manner proposed.”).

DALRP. In addition, the Huhtamaki Affidavit only further justifies the need for the DALRP Revisions, because Huhtamaki’s permanent load shifting is just another form of strategic bidding that, if treated as demand response, is harmful to system reliability and results in unjust and unreasonable rates for New England’s ratepayers.

**A. The February 5 Filing Is Just and Reasonable, and the ISO Did Not Ignore IECG’s Alternative**

The Protest argues that the ISO acted improperly during the stakeholder process by refusing to adopt the IECG-sponsored alternative to the DALRP Revisions.<sup>8</sup> IECG’s contention is both immaterial and factually inaccurate.

The IECG alternative is immaterial because IECG has no legal authority to submit proposed changes to the ISO Tariff. In the DALRP Revisions, the ISO proposes to amend its tariff pursuant to Section 205 of the Federal Power Act. Under Section 205, the Commission “plays ‘an essentially passive and reactive’ role”<sup>9</sup> whereby it “can reject [a filing] only if it finds that the changes proposed by the public utility are not ‘just and reasonable.’”<sup>10</sup> The Commission limits this inquiry “into whether the rates proposed by a utility are reasonable – and [this inquiry does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.”<sup>11</sup> Thus, the Commission must accept the DALRP Revisions if found to be just and reasonable, regardless of whether any proposal by IECG or any other entity might

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<sup>8</sup> IECG Protest at 3.

<sup>9</sup> *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir 1984)).

<sup>10</sup> *Id.*

<sup>11</sup> *See ISO New England Inc.*, 114 FERC ¶ 61,315 at P 33 and n.35 (2005), citing *Pub. Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201, 1211 (10th Cir. 1987) and *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (“*City of Bethany*”), *cert. denied*, 469 U.S. 917 (1984).

also be just and reasonable,<sup>12</sup> which, for the reasons discussed in the February 5 Filing and reiterated in Section I.B. below, the IECG alternative is not.

**B. IECG’s Alternative Is Vague and Ineffective at Resolving the Strategic Bidding Problems the ISO Identified in the DALRP Revisions**

Implicitly conceding that the strategic bidding behaviors identified in the February 5 Filing are problematic, IECG contends that its alternative, in addition to existing auditing and enforcement provisions in the ISO’s Load Response Program Manual, “would have addressed the concern raised by the ISO without unfairly penalizing good faith participants in the program and without violating public policy.”<sup>13</sup> IECG is wrong.

IECG’s alternative has three elements: (i) imposing a “freeze” on each DALRP participant that has had a static customer baseline for over two months; (ii) removing any such freeze only under voluntary action in consultation with the ISO to reset the customer baselines; and (iii) requiring each DALRP participant to reset its customer baseline in every subsequent six-month period.<sup>14</sup>

The IECG alternative would not effectively address the concerns of the ISO or other stakeholders regarding the strategic behavior by some DALRP participants. First, IECG’s proposal is too vague to constitute tariff language. For instance, it is unclear what sort of “voluntary” action would qualify for a lifting of the “freeze” on DALRP payments. Similarly, the IECG alternative provides only that protocols for verifying customer baselines “would be subsequently considered in the Participant Process,” without providing any insight into the

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<sup>12</sup> Cf. *Southern California Edison Co., et al.*, 73 FERC ¶ 61,219 at 61,608 n. 73 (1995) (“Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.” (citing *City of Bethany*, 727 F.2d at 1136)).

<sup>13</sup> IECG Protest at 3.

<sup>14</sup> *Id.*

nature of the protocols. In each case, IECG's alternative contemplates bestowing vague and impermissibly broad discretion on the ISO to determine whether a DALRP participant would continue to receive payments from the program.

In addition, the six-month cycle would, absent adjusting the fixed \$50/MWh minimum offer price, facilitate the ability of a DALRP participant to exaggerate an asset's Customer Baseline and then lock it in for the next six months.<sup>15</sup> IECG offered no guidance, either during the stakeholder process or in its protest, as to how these problems could be avoided. At best, IECG's alternative would allow a DALRP participant to engage in strategic behavior twice a year, instead of only once, in order to maintain payments for exaggerated load reductions.

**C. Huhtamaki's Permanent Load Shifting Strategy Demonstrates the Need for the DALRP Revisions, As Huhtamaki Should Not Earn Demand Response Payments, But Could Qualify as an "Other Demand Resource"**

The IECG Protest purports to identify an example of actions taken by one DALRP participant (Huhtamaki) that supposedly demonstrates why the ISO's DALRP Revisions should be rejected. However, the IECG Protest in fact lends greater impetus to the acceptance of the DALRP Revisions: Huhtamaki's collection of daily payments for a permanent shift in its load to off-peak hours is contrary to the rules and the rationale of the Real-Time Demand Response Program and the optional DALRP available to Real-Time Demand Response participants, and constitutes another reason for the development of the DALRP Revisions. The fact that a customer might have permanently reduced or shifted its load does not imply that its Customer Baseline, which is used to determine the demand reduction quantity, ought to be frozen at a particular level indefinitely. Although Huhtamaki normally has a seasonal demand for electricity

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<sup>15</sup> These weaknesses of the IECG alternative are also discussed in the February 5 Filing, Transmittal Letter at 20-21 & Attachment 1 (Yoshimura Testimony) at 35-36.

that varies with capacity utilization at the Huhtamaki facility,<sup>16</sup> by bidding every day and creating a static Customer Baseline, the payments received by Huhtamaki do not recognize normal seasonal changes in capacity utilization at the Huhtamaki facility. Compensation to Huhtamaki for load reductions should be measured relative to these normal seasonal changes in capacity utilization – compensation should not be made for load that would not have been consumed in the first place.<sup>17</sup>

Additionally, the manner by which Huhtamaki participates in the ISO's Real-Time Demand Response Program and in the optional DALRP to collect capacity and energy payments is harmful to system reliability, because Huhtamaki is not capable of delivering real-time relief in the quantity expected by the ISO when needed. If the ISO calls upon Huhtamaki to respond to a real-time capacity shortage (Operating Procedure No. 4) event, but the additional load reduction that the system needs in real-time has already been removed from the system, the system will not receive the quantity of demand response it had been expecting from this customer.

As previously recognized by the Commission, DALRP is intended to compensate for load reductions during periods when demand is high relative to supply whereby such payments are more likely to result in general benefits to all ratepayers and to society as a whole.<sup>18</sup>

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<sup>16</sup> Huhtamaki Affidavit at ¶ 4. Huhtamaki capacity utilization ranges from “a high of 90% to a low of 50-60%.”

<sup>17</sup> Because Huhtamaki has failed to register as an Other Demand Resource, or “ODR,” it has evaded the measurement and verification requirements that apply to demand resources that provide services through load-shifting activities. An approved measurement and verification plan is needed to accurately determine the quantity of savings produced by an Other Demand Resource.

<sup>18</sup> *New England Power Pool and ISO New England Inc.*, 101 FERC ¶ 61,344 at P 44 (2002) (“The program is intended to encourage reduced consumption during peak periods when demand is high relative to supply ... and energy prices rise. It is reasonable to limit the additional payment incentive for reducing demand to periods when demand is high relative to supply, and not to offer the incentive when supply is ample relative  
(continued...)”)

However, Huhtamaki's actions are much more likely to result in negative net social benefits since its offer to reduce load at \$50/MWh would result in payments for purported load reductions during relatively low-cost periods when the marginal benefits of load reductions are low.

In any event, appropriate alternatives already exist for entities like Huhtamaki that seek compensation for permanent demand shifts. Specifically, Huhtamaki can participate in New England's range of demand response programs by registering as an Other Demand Resource ("ODR").<sup>19</sup> ODRs are designed to accommodate energy efficiency, load management, and distributed generation resources that permanently reduce or shift load. Market participants are entitled to receive ICAP Transition Payments for the value of their ODRs. Huhtamaki and other entities engaged in energy efficiency, load management, or distributed generation activities should be participating as ODRs, and not as part of the Real-Time Demand Response Program and the optional DALRP.<sup>20</sup>

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(...continued)

to demand."). The Commission affirmed that philosophy on rehearing. *New England Power Pool and ISO New England, Inc.*, 105 FERC ¶ 61,211 at P 21 (2003).

<sup>19</sup> See ISO Tariff § III.8.3.6.2.

<sup>20</sup> Currently, 40 projects representing 365 MWs of capacity are presently registered with the ISO as ODRs.

## II. CONCLUSION

For the reasons stated herein, the Commission should reject the IECG Protest, process the February 5 Filing expeditiously, and accept the DALRP Revisions without suspension or hearing. The ISO also plans to respond to any additional pleadings that might be filed as the expedited comment period closes.

Respectfully submitted,

/s/ James H. Douglass

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Counsel for  
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February 15, 2008

## **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 this proceeding.

Dated at Washington, D.C. this 15<sup>th</sup> day of February, 2008.

*/s/ Lyndsey Sites*

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