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May 21, 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. ER08-830-000**

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 May 6, 2008 comments of EnerNOC Inc. and the May 7, 2008 comments of the New England Power Pool Participants Committee.

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.

)

Docket No. ER08-830-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF ISO NEW ENGLAND INC.**

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 this answer (“Answer”) to the comments of EnerNOC Inc. (“EnerNOC”) and the New England Power Pool Participants Committee (“NEPOOL”) on the April 15, 2008 filing (“April 15 Filing”) of the ISO proposing revisions to its Day-Ahead Load Response Program (“DALRP”) heat rate index (“DALRP Heat Rate Revision”).¹

To the extent the Commission interprets Rule 213(a)(2) as prohibiting an answer to comments, such as those filed in this proceeding, the ISO moves, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2007), for leave to accept this Answer.² The Commission has the authority to waive this prohibition for good cause.³ 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

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

² *See ISO New England Inc.*, 111 FERC ¶ 61,328 at P 6 (2005) (interpreting Rule 213(a)(2) as generally prohibiting answers to comments). Rule 213(a)(2) prohibits answers to “an answer, a motion for oral argument, or a request for rehearing,” but does not mention comments.

³ *See* 18 C.F.R. § 385.101(e) (2007).

proceeding,⁴ provide information helpful to the disposition of an issue,⁵ permit the issues to be narrowed or clarified,⁶ or aid the Commission in understanding and resolving issues.⁷ 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 EXECUTIVE SUMMARY

A. Introduction

The DALRP Heat Rate Revision proposes to change the effective heat rate upon which the DALRP minimum offer price is based from 12.92 to 11.37 MMBtu/MWh. As explained in the April 15 Filing, this lower effective heat rate would increase the number of days DALRP offers would clear the Day-Ahead Energy Market without overly sacrificing baseline accuracy. In particular, based on the April 2008 Forward Reserve Fuel Index of \$10.08/MMBtu, the DALRP Heat Rate Revision would reduce the minimum offer price from \$130/MWh to \$115/MWh. Based on 2007 Day-Ahead Energy Market prices, this change would increase the percentage of DALRP program hours that would clear at the minimum offer price from 11 percent to 21 percent, providing additional opportunities for DALRP offer clearance while continuing to appropriately limit the availability of the financial incentive for reducing demand to high-demand periods. At the same time, this change would maintain fidelity to the principle

⁴ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378, at 62,443 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999).

⁵ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100, at 61,287 n.11 (1999).

⁶ 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 ¶ 61,3(i)35, at 62,323 n.1 (1998).

⁷ 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).

of customer baseline accuracy that can detect whether load reductions are real. *No protests were filed.*

Relevant to this Answer, substantive comments were submitted by EnerNOC and NEPOOL. EnerNOC requests immediate approval of the DALRP Heat Rate Revision and that it be made effective June 1, 2008, instead of July 1, 2008, as requested by the ISO.⁸ EnerNOC also requests that “the Commission direct ISO-NE to *immediately* convene an additional stakeholder process to address ... the absence of a methodology to ensure accurately calculated customer baselines in the DALRP.”⁹

NEPOOL, in turn, explains that it does not support the Revision, asserting that it “seeks to change the original design and intent of the DALRP without completing an evaluation of the overall program.”¹⁰ NEPOOL also suggests that, “[w]hile the DALRP Revisions [accepted in Docket No. ER08-538-000] and DALRP Heat Rate Revision might both be just and reasonable in the abstract, it would not be reasonable here in the absence of support by both NEPOOL and state regulators to approve a change that does not improve the status quo.”¹¹

B. Executive Summary

As explained in further detail below:

- The Commission should not alter the July 1, 2008 effective date requested by the ISO as the filing public utility.
- The Commission should reject EnerNOC’s demand that the ISO immediately convene additional stakeholder processes. The ISO already has planned to begin

⁸ EnerNOC Comments at 11.

⁹ *Id.* at 1 (emphasis added); *see also id.* at 10-11.

¹⁰ NEPOOL Comments at 2.

¹¹ *Id.*

a comprehensive review with stakeholders of the Load Response Programs, and requiring earlier action would conflict with other existing regional priorities.

- The Commission should reject NEPOOL’s suggestion that the ISO is required to demonstrate something more than the justness and reasonableness of the DALRP Heat Rate Revision as required in Section 205 of the Federal Power Act (“FPA”) in order for the Commission to accept it.
- The April 15 Filing does not change the original design and intent of the DALRP because DALRP payments would still be limited to peak demand periods.

II. ANSWER

A. The Commission Should Not Alter The July 1 Effective Date Requested in the April 15 Filing

EnerNOC asks the Commission to require the ISO to make the DALRP Heat Rate Revision effective June 1, 2008, instead of July 1 as requested by the ISO.¹² The Commission should reject EnerNOC’s request. As the filing public utility, the ISO has the “statutory right to amend [its] rates and charges and to propose that, absent waiver, the amendments be made effective after 60 days’ notice.”¹³ That is exactly what the ISO proposed with the DALRP Heat Rate Revision, and another entity may not request a different effective date.¹⁴ Consequently, only the public utility holding the Section 205 rights may exercise the “fundamental” right to request an effective date consistent with FPA Section 205 or to request a waiver of FPA Section 205 notice requirements.

Furthermore, EnerNOC’s request, if granted, would require the ISO to implement the DALRP Heat Rate Revision with less than the sixty days’ notice required by Section 205, absent

¹² EnerNOC Comments at 11-12.

¹³ *Entergy Services, Inc.*, 119 FERC ¶ 61,190, at P 19 (2007); *see also Entergy Services, Inc.*, 120 FERC ¶ 61,089 at P 11 (2007).

¹⁴ *Entergy Services, Inc.*, 119 FERC ¶ 61,190, at P 19 (rejecting a request by the Louisiana Public Service Commission to establish a different effective date); *Entergy Services, Inc.*, 120 FERC ¶ 61,089 at P 11 (same).

a showing of good cause. No waiver of the sixty-day notice requirement has been requested (by either the ISO or EnerNOC). Therefore, the Commission should reject EnerNOC's request.

B. The ISO Already Has Planned to Begin with Stakeholders in October a Comprehensive Review of the Load Response Programs; Requiring Earlier Action Would Conflict With Other Existing Regional Priorities

As the April 15 Filing explains, the ISO is committed to review with stakeholders the future of the Load Response Programs, including the DALRP. This review is scheduled to begin in October 2008. As part of this review, if price-response programs are to be continued after May 2010, baseline methodologies appropriate for the type of program that would be implemented at that time will be considered as well.¹⁵ Because the timeframe for this review has been calibrated to recognize other existing regional priorities, the ISO opposes EnerNOC's request for a prescriptive order that the ISO must "immediately convene" an additional stakeholder process.¹⁶

C. The Commission Should Reject NEPOOL's Suggestion That A Showing of the DALRP Heat Revision's Justness and Reasonableness Is Not Sufficient for Commission Acceptance

NEPOOL suggests that, "[w]hile the DALRP Revisions and the DALRP Heat Rate Revision might both be just and reasonable in the abstract, it would not be reasonable here in the absence of support by both NEPOOL and state regulators to approve a change that does not improve the status quo."¹⁷ In other words, NEPOOL suggests that even if the DALRP Heat Rate Revision is just and reasonable, *and even though no protests were filed*, the Commission should nevertheless not accept it because it lacks the support of NEPOOL – and state regulators,

¹⁵ Contrary to EnerNOC's representation, the ISO did *not* identify the customer baseline methodology as a "'fundamental' flaw" in the DALRP. EnerNOC Comments at 5 & n.8.

¹⁶ EnerNOC Comments at 10-11.

¹⁷ NEPOOL Comments at 2.

allegedly¹⁸ – unless found to “improve the status quo.” NEPOOL’s comments, however, conflict with the requirements of Section 205 of the FPA by suggesting that a different standard of review should apply where a supporting advisory vote has not been achieved.

Section 205 of the FPA “gives a utility [*i.e.*, the ISO] the right to file rates and terms for services rendered with its assets.”¹⁹ Under Section 205, the Commission “plays ‘an essentially passive and reactive’ role”²⁰ whereby it “can reject [a filing] only if it finds that the changes proposed by the public utility are not ‘just and reasonable.’”²¹ 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.”²² The change proposed herein “need not be the only reasonable methodology, or even the most accurate.”²³ As a result, even if an intervenor or the Commission develops an alternative proposal, the Commission must accept the ISO’s Section 205 filing if it finds that the filing is just and reasonable.²⁴

¹⁸ New England’s state regulators in fact have their own organization: the New England Conference of Public Utility Commissioners (“NECPUC”). Although NECPUC has intervened in this proceeding, it did not submit a protest or comment.

¹⁹ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

²⁰ *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir 1984)).

²¹ *Id.*

²² 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).

²³ *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

²⁴ 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)).

The Participants Agreement²⁵ governs the processes by which Governance Participants, which by definition include NEPOOL Participants, provide and the ISO receives input and advice. That agreement did not change the standard of review to be applied under Section 205 of the FPA. The Participants Agreement (consistent with the Transmission Operating Agreement) provides for engagement by the ISO and NEPOOL in “Participant Processes” to review proposed changes to tariff documents. The Participant Processes include review by NEPOOL technical committees (here, the Markets Committee) and culminate in an “advisory vote” by the NEPOOL Participants Committee for or against such proposals. As Section 11.1.4 describes, an advisory vote by the Participants Committee “terminates the Participant Processes.” Importantly, “[a]ny proposal that has completed the [Participant Processes] may be filed by the ISO with the Commission under Section 205 of the FPA or implemented by ISO without filing if no filing is required.” Nothing in the Participants Agreement suggests that a different standard of review should apply in the circumstances in which an advisory vote does not reach the 60 percent threshold.²⁶ Here, however, NEPOOL asks the Commission to reject the filing even if it is just and reasonable. Further, it urges the Commission to apply a higher threshold not found in the text of Section 205, asking the Commission to premise rejection on a determination that the proposal is “less reasonable” than a proposal that fundamentally revises the customer baseline methodology.

Notwithstanding the legal infirmities of NEPOOL’s arguments, the DALRP Heat Rate Revision appears to satisfy NEPOOL’s suggested standard of review that the DALRP Heat Rate

²⁵ The Participants Agreement is available at http://www.iso-ne.com/regulatory/part_agree/participants_agreement.pdf.

²⁶ With respect to the DALRP Heat Rate Revision, the NEPOOL Participants Committee’s vote was 58.45 percent, 1.55 percent less than the required 60 percent threshold level.

Revision improve the current market rules. As explained in the Yoshimura Testimony and the filing letter, quantitative analysis indicates that the DALRP Heat Rate Revision would lower the effective heat rate, thereby increasing the number of days DALRP offers would clear the Day-Ahead Energy Market without overly sacrificing baseline accuracy. At the same time, this change would maintain fidelity to the principle of customer baseline accuracy that can detect whether load reductions are real. As a result, the DALRP Heat Rate Revision improves the current DALRP rules.

D. The April 15 Filing Does Not Change the Original Design and Intent of the DALRP Because Payments Would Still Be Limited to Peak Demand Periods

NEPOOL, without support or analysis, suggests that “the DALRP Heat Rate Revision seeks to change the original design and intent of the DALRP without completing an evaluation of the overall program.”²⁷ This contention is incorrect, and should be rejected.

The DALRP Heat Rate Revision is consistent with the Commission’s previously stated objective that DALRP payments be provided only during peak periods when demand is high relative to supply. In particular, it seeks to improve the recently accepted revisions in Docket No. ER08-538-000 that restored the minimum offer price under the DALRP to a level that reflects current fuel prices.

Although those changes successfully aligned the program with its intended design, the ISO nevertheless convened a stakeholder process to solicit suggestions from entities that had opposed the Docket No. ER08-538-000 revisions. Through that process, the ISO, responding to concerns raised by some stakeholders, developed the DALRP Heat Rate Revision proposed herein to adjust the program further, so as to increase the number of hours Demand Resources

²⁷ NEPOOL Comments at 2.

that would likely clear the market from 11 percent to 21 percent. This increased participation rate is still consistent with the Commission's previously stated objective that DALRP payments be provided only during peak periods when demand is high relative to supply.

In contrast, NEPOOL's criticism that the DALRP Heat Rate Revision is inconsistent with the original design and intent of the program is without evidentiary or analytical support and must be rejected.

III. CONCLUSION

For the reasons stated herein, the Commission should accept this Answer, act in accordance with the requests submitted herein, and unconditionally accept the DALRP Heat Rate Revision without suspension or hearing.

Respectfully submitted,

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May 21, 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 21st day of May, 2008.

/s/ Pamela S. Higgins

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