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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 Nos. ER08-832-000, OA08-110-000

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 Beacon Power Corporation.

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

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. BACKGROUND

A. Order No. 890 Compliance Filing

On October 11, 2007, the ISO, the Participating Transmission Owners (“PTO”), the PTO Administrative Committee, Cross-Sound Cable Company, LLC, the Schedule 20A Service Providers, Maine Electric Company Inc., and the New England Power Pool (“NEPOOL”) (together, the “Filing Parties”) jointly filed proposed revisions to Sections I and II of the ISO Tariff to comply with the Commission’s Order No. 890⁸ on preventing undue discrimination or preference in transmission service.⁹ The Order No. 890 Compliance Filing, among other things, modified Schedule 3 (Regulation and Frequency Response Service) of the ISO’s Open Access Transmission Tariff (“ISO OATT”)¹⁰ to incorporate the changes made to Schedule 3 of the Commission’s *pro forma* OATT as adopted in Order No. 890. These revisions would allow non-generating resources to provide Regulation and Frequency Response Services provided they meet the same technical requirements as other resources.¹¹

The Order No. 890 Compliance Filing also informed the Commission that the ISO had initiated a review of Market Rule 1 (Section III of the ISO Tariff) to identify the modifications necessary to fully effectuate the revisions to Schedule 3 of the ISO OATT. Specifically, the Order No. 890 Compliance Filing stated:

⁷ See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12266 (March 15, 2007), *FERC Statutes and Regulations* ¶31,241 (2007), *reh'g pending* (“Order No. 890”).

⁹ See Amendments to the ISO New England Inc. Transmission, Markets and Services Tariff in Compliance with Order No. 890, filed on October 11, 2007, in Docket No. ER08-54 (“Order No. 890 Compliance Filing”).

¹⁰ The ISO OATT is Section II of the ISO Tariff.

¹¹ See Order No. 890 Compliance Filing, Attachment 2, ISO Tariff Sheet No. 744.

ISO-NE has revised Schedule 3 (Regulation and Frequency Response) to adopt the changes made in the *pro forma* OATT by incorporating the phrase “other non-generating resources capable of providing this service.” As provided in Schedule 3 of the ISO OATT, Regulation-related charges are made pursuant to Market Rule 1. Market Rule 1 currently provides for Regulation service to be supplied only from generating resources. Accordingly, certain corresponding revisions are necessary in Market Rule 1 in order to fully integrate the provision of Regulation and Frequency Response by non-generating resources. To that end, ISO-NE has initiated a review of Market Rule 1 to identify the modifications necessary to fully effectuate this change. These modifications will be presented at the NEPOOL Markets Committee for stakeholder review and input, and subsequently filed with the Commission for approval.¹²

On November 1, 2007, Beacon Power filed a Motion to Intervene and Comments (“Order No. 890 Comments”) on the ISO’s Order No. 890 Compliance Filing, requesting an “immediate implementation of Market Rule 1 changes”¹³ and asking that the Commission “direct ISO NE to make the necessary changes to Market Rule 1 and establish deadlines (*e.g.*, 90 days) within which ISO-NE must provide FERC with detailed reports about progress being made to finalize Market Rule 1 and to petition FERC for approval of the rules.”¹⁴ The ISO responded to Beacon Power’s Order No. 890 Comments on November 16, 2007.

On May 7, 2008, the Commission accepted, with some modifications, the ISO’s Order No. 890 Compliance Filing in *ISO New England Inc.*, 123 FERC ¶ 61,133 (2008) (“May 7 Order”). Addressing Beacon Power’s requests,¹⁵ the May 7 Order states:

Order No. 890 modified Schedule 3 to permit regulation and frequency response service to be provided by generating units as well as other non-generation resources, and ISO-NE will not fully comply with Order No. 890 until non-generation resources can provide this service. We recognize ISO-NE’s commitment to revise Market Rule 1 in accord with Order No. 890. We direct ISO-NE to make these modifications to Market Rule 1 within 90 days of the date of this order.¹⁶

¹² *Id.* at 30.

¹³ Order No. 890 Comments at 4.

¹⁴ *Id.* at 6.

¹⁵ *See* May 7 Order at P 22.

¹⁶ *Id.* at P 23.

The ISO is in the process of reviewing the modifications to the Regulation and Frequency Response Services market rules with stakeholders and intends to comply fully with the Commission's May 7 Order.

B. Order No. 890-A Compliance Filing

On April 15, 2008, the Filing Parties jointly filed in the above-captioned docket proposed revisions to the ISO OATT to comply with the Commission's Order No. 890-A, which largely affirmed Order No. 890.¹⁷ The Order No. 890-A Compliance Filing included minimal revisions to the ISO OATT mainly because the revisions adopted in the *pro forma* OATT did "not disturb the fundamental nature of the reforms adopted in Order No. 890."¹⁸ Of particular relevance to this Answer, Order No. 890-A did not disturb the amendments to Schedule 3 of the *pro forma* OATT adopted in Order No. 890,¹⁹ which the ISO adopted in Schedule 3 of the ISO OATT in its compliance filing with Order No. 890.

On May 6, 2008, a day prior to the Commission's May 7 Order accepting the ISO's Order No. 890 Compliance Filing and addressing Beacon Power's concerns, Beacon Power filed a Motion to Intervene and Comments ("Order No. 890-A Comments") in the above-captioned docket requesting "that the Commission determine that the OATT is not operational under the existing Market Rules and direct the ISO-NE to complete the process to modify Market Rule 1 no later than upon the completion of the . . . Pilot Program."²⁰ Going beyond the scope of Order

¹⁷ See Amendments to the ISO New England Inc. Transmission, Markets and Services Tariff in Compliance with Order No. 890-A, filed on April 15, 2008, in the above-captioned docket ("Order No. 890-A Compliance Filing").

¹⁸ Order No. 890-A at P 38.

¹⁹ See *id.* at PP 494-499.

²⁰ Order No. 890-A Comments at 10. In the Order No. 890-A Comments Beacon Power makes reference to the non-generating resource pilot program which the ISO began to develop shortly after submitting the Order No. 890 Compliance Filing. This program, which is addressed below in this Answer, is intended to evaluate the ability of various non-generating resource technologies to provide Regulation and Frequency Response Service and to determine whether the existing market rules and operating procedures should be modified to enhance the provision of Regulation and Frequency Response Service by non-generation resources. The proposed pilot program is in

Nos. 890 and 890-A, Beacon Power further requests that the Commission “direct ISO-NE to work with Beacon Power to create a tariff that specifically authorizes all non-generation resources to compete in the ancillary services market on a comparable basis with legacy generators.”²¹

II. ANSWER

A. The Commission’s May 7 Order Already Directs the ISO to Revise Market Rule 1 to Comply with Order No. 890

As discussed above, the Commission’s May 7 Order accepting the ISO’s Order No. 890 Compliance Filing already directs the ISO to modify Market Rule 1 to allow for non-generating resources to provide Regulation and Frequency Response Service under Schedule 3 of the ISO OATT. Addressing Beacon Power’s concerns, the May 7 Order “direct[s] ISO-NE to make these modifications to Market Rule 1 within 90 days of the date of this order.”²² It is therefore unnecessary for the Commission to grant the relief requested by Beacon Power in this docket.

The ISO intends to fully comply with the Commission’s directive in the May 7 Order by filing revisions to Market Rule 1 in Docket Nos. ER08-54, *et al.* For the avoidance of doubt, the ISO notes that it has already revised Schedule 3 of the ISO OATT to conform to the Commission’s *pro forma* OATT. Specifically, the ISO’s Order No. 890 Compliance Filing revised Schedule 3 to adopt the changes made in the *pro forma* OATT by incorporating the phrase “other non-generating resources capable of providing this service.”²³ However, as the Order No. 890 Compliance Filing explained, Regulation-related charges are made pursuant to Market Rule 1, which currently provides for Regulation service to be supplied only from

addition to the anticipated revisions to the existing market rules to allow non-generating resources to provide service under the existing technical requirements. The ISO is currently reviewing the proposed pilot program with stakeholders.

²¹ *Id.*

²² May 7 Order at P 23.

²³ The revisions to Schedule 3 of the ISO OATT are shown in redlined text in Attachment 2 to the ISO’s Order No. 890 Compliance Filing.

generating resources. Certain corresponding revisions are therefore necessary in Market Rule 1 in order to fully integrate the provision of Regulation and Frequency Response Service by non-generating resources.

During the next few months the ISO will be presenting to stakeholders its proposed revisions to Market Rule 1 to permit non-generating resources to provide Regulation and Frequency Response Service, and thereafter intends to file those changes with the Commission to fully comply with the May 7 Order. Any issues regarding the revisions to Market Rule 1 with respect to the provision of Regulation and Frequency Response Service by non-generating resources should be addressed following the ISO's compliance filing in Docket Nos. ER08-54, *et al.*, and not in this proceeding.

B. Beacon Power's Request That the ISO Develop New Market Rules Beyond Those Required In Order to Allow Non-Generating Resources to Provide Regulation and Frequency Response Service is Outside the Scope of Order Nos. 890 and 890-A

Beacon Power's request that the Commission direct the ISO to develop tariffs to allow new technologies such as Beacon Power's energy storage technology to provide Regulation and Frequency Response Service is beyond the scope of Order Nos. 890 and 890-A. Granting Beacon Power's request would also be inconsistent with the stated purpose of these orders. Further, such mandate is unnecessary because, as Beacon Power acknowledges, the ISO has already initiated efforts to implement a program that would evaluate the performance of new technologies so that the ISO may evaluate whether modifications to existing market rules are necessary to enhance the ability of such new technologies to provide Regulation and Frequency Response Service.

Beacon Power's request that the ISO develop new market structures that specifically apply to new technologies such as Beacon Power's energy storage technology is beyond the

scope of Order Nos. 890 and 890-A. Explaining the modifications to the ancillary services schedules in the *pro forma* OATT, Order No. 890 states:

We therefore modify Schedules 2, 3, 4, 5, 6, and 9 of the pro forma OATT to indicate that Reactive Supply and Voltage Control, Regulation and Frequency Response, Energy Imbalance, Spinning Reserves, Supplemental Reserves and Generator Imbalance Services, respectively, may be provided by generating units as well as other non-generation resources such as demand resources where appropriate.²⁴

Order No. 890 modified Schedule 3 to allow all non-generating resources to provide Regulation and Frequency Response Service *to the extent capable*; that is, to the extent the non-generating resource can meet the applicable technical standards and requirements for the provision of that service. Order No. 890 did not require transmission providers to amend the scope of the ancillary services markets or operating requirements to match the individual characteristics of specific new technologies.

In fact, in response to a number of requests to further extend the current scope of the ancillary services, the Commission explicitly stated in its Order No. 890:

As stated in the NOPR and repeated above the purpose of this rulemaking is to strengthen the pro forma OATT to ensure that it achieves its original purpose – remedying undue discrimination – *not to create new market structures or, as proposed here, to modify existing market structures*. We do not believe that altering the scope of the current ancillary services markets is needed to remedy undue discrimination at this time.²⁵

Order No. 890 also made clear that “nothing in this rulemaking is intended to upset the market designs used by existing ISOs and RTOs.”²⁶ Order No. 890-A affirms these determinations by the Commission. As the Commission explained, Order No. 890-A does not change “the fundamental nature of the reforms adopted in Order No. 890,” including the revision to Schedule 3 of the *pro forma* OATT.

²⁴ Order No. 890 at P 888. *See also* Order No. 890-A at P 499 (affirming Order No. 890).

²⁵ *Id.* at P 892 (emphasis provided).

²⁶ *Id.* at P 158.

Despite the scope and stated purpose of Order Nos. 890 and 890-A, Beacon Power seeks an order from the Commission directing the ISO to develop new tariffs that would provide adjustments to the operating requirements and ancillary service market structures in a manner similar to the Commission's directives in *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,172 (2008). That proceeding, however, did not involve the Commission's Order Nos. 890 or 890-A. Rather, unlike the above-captioned docket, that proceeding concerns the Midwest Independent Transmission System Operator, Inc.'s ("MISO") tariff revisions to implement a *new* centralized and co-optimized Energy and Ancillary Services Market specific to MISO's region.²⁷ As part of that effort, the Commission directed MISO to evaluate possible adjustments to its operating requirements and the Ancillary Services Markets procedures to specifically accommodate Beacon Power's energy storage technology. Such a directive in the instant docket, however, goes far beyond the scope of the Order Nos. 890 and 890-A requirements, and the Commission's May 7 Order does not contain any such directive to the ISO.²⁸ Instead, the May 7 Order only directs the ISO to modify its existing market rules to provide for the eligibility of non-generating resources to provide Regulation and Frequency Response Service.

C. Issues Regarding the Pilot Program are Not Relevant to the ISO's Compliance with Order No. 890, Order No. 890-A or the May 7 Order

In addition to its efforts to amend Market Rule 1 to fully comply with Order No. 890 as described in the ISO's Order No. 890 Compliance Filing and pursuant to the May Order in Docket Nos. ER08-54, *et al.*, the ISO is in the process of developing a non-generating resource

²⁷ See *Compliance Filing of Midwest Independent Transmission System Operator, Inc.*, Regarding Ancillary Services Markets Provisions, filed on April 25, 2008, in Docket No. ER07-1372-007.

²⁸ MISO's proposed revisions to implement a new Energy and Ancillary Services Market was not made in response to Order Nos. 890 or 890-A and its transmittal letter in support of those revisions does not mention those orders.

pilot program to evaluate the performance of new technologies, including Beacon Power's energy storage technology, and to determine the specific capabilities of these resources.²⁹ The pilot program, which is currently being vetted through the stakeholder process, would commence in November 2008 and continue for an eighteen-month period. The program may result in modification of market rules and operating procedures to enhance the provision of Regulation and Frequency Response Service by non-generation resources using new technologies.

Contrary to Beacon Power's arguments, the ISO's development of the pilot program is not required by Order No. 890, Order No. 890-A or the May 7 Order, which require the ISO to modify its existing market rules to permit non-generating resources to provide Regulation and Frequency Response Service, to the extent they are capable of meeting the existing requirements. The pilot program would modify the existing technical requirements, as warranted based on the evaluation of the pilot program, to enhance the participation of new non-generation technologies in the Regulation and Frequency Response Service market. The pilot program would therefore be beyond the scope of Order No. 890, Order No. 890-A, and the requirements of the Commission's May 7 Order. As such, Beacon Power's requests in the Order No. 890-A Comments regarding the pilot program are irrelevant to the Order Nos. 890 and 890-A proceedings and are also unnecessary.³⁰ For this reason, and consistent with the stated purpose

²⁹ See Order No. 890-A Comments at 7 ("Since January 2008, ISO-NE has been collaborating with its stakeholders, including Beacon Power, to design a pilot program that would evaluate the performance of new technologies . . . and provide regulation service in a realistic market environment.").

³⁰ See *id.* at 7-9. The request by Beacon Power that the ISO be ordered to develop and implement market rules no later than the end of the pilot program should also not be granted, for it fails to account for the very purpose for the pilot program, i.e., to provide the ISO with the information necessary to determine what modifications to existing market rules and operating procedures are necessary to permit new technologies to fully provide Regulation and Frequency Response Service. While the ISO intends to begin any necessary modifications to market rules and operating procedures as soon as the results of the program are clear (and such results could very well surface well before the end of the program), the ISO asserts that it would be premature to commit to developing and implementing such modifications by any particular date at this early stage.

of Order Nos. 890 and 890-A, the Commission should reject Beacon Power's request in the instant docket.

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission accept this Answer, including the ISO's position as expressed herein, and deny the requests of Beacon Power.

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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