



Sherry A. Quirk  
202.778.6475  
squirk@schiffhardin.com

June 2, 2010

1666 K STREET N.W., SUITE 300  
WASHINGTON, DC 20006

t 202.778.6400  
f 202.778.6460

www.schiffhardin.com

**VIA ELECTRONIC FILING**

The Honorable Kimberly D. Bose, Secretary  
The Honorable Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: ISO New England Inc. and New England Power Pool, Docket No. ER10-787-000, -003; New England Power Generators Association Inc. v. ISO New England Inc., Docket No. EL10-50-000, -001; PSEG Energy Resources & Trade LLC, et al. v. ISO New England Inc., Docket No. EL10-57-000, -001 (consolidated)**

Dear Secretary Bose and Deputy Secretary Davis:

Attached for electronic filing in the above-referenced, consolidated dockets is the *Motion for Leave to File Answer and Answer of ISO New England Inc.* The attached Motion and Answer responds to: (i) the *Answer of the Boston Gen Companies* filed on May 17, 2010 by Boston Generating, LLC, Mystic I, LLC, Mystic Development, LLC, and Fore River Development, LLC in opposition to ISO New England Inc.'s *Request For Clarification or, in the Alternative, Rehearing* filed on May 5, 2010 in Docket Nos. ER10-787-003, et al; and (ii) the *Request for Clarification or, in the Alternative, Rehearing of the New England Power Generators Association; the Request for Clarification or, in the Alternative, Rehearing of NextEra Energy Resources, LLC; and the Request for Rehearing by the Connecticut Department of Public Utility Control, the New England Conference of Public Utility Commissioners, NSTAR Electric Company, the Northeast Utilities Companies, National Grid USA, the Energy Consortium, and the Connecticut Office of Consumer Counsel.* A copy of the attached has been served upon all parties included in the Commission's service list. If you have any questions or concerns regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Sherry A. Quirk  
Sherry A. Quirk, Esq.  
Counsel for ISO New England Inc.

Attachment

cc: Official Service List

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

<b>ISO New England Inc. and New England Power Pool</b>	)	<b>Docket No. ER10-787-000, -003</b>
	)	
	)	
<b>New England Power Generators Association, Inc. v. ISO New England Inc.</b>	)	<b>Docket No. EL10-50-000, -001</b>
	)	
	)	
<b>PSEG Energy Resources &amp; Trade LLC, PSEG Connecticut LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC v. ISO New England Inc.</b>	)	<b>Docket No. EL10-57-000, -001</b>
	)	
	)	<b>(consolidated)</b>

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

Pursuant to Rules 101(e), 212, and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),<sup>1</sup> ISO New England Inc. (the “ISO”) hereby submits its *Motion for Leave to File Answer and Answer* (“Answer”) to address several recent pleadings in these consolidated dockets.<sup>2</sup> First, this

---

<sup>1</sup> 18 C.F.R. §§ 385.101(e), 385.212, and 385.213 (2009).

<sup>2</sup> *ISO New England Inc. and New England Power Pool; New England Power Generators Association Inc. v. ISO New England Inc.; PSEG Energy Resources & Trade LLC, PSEG Power Connecticut LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC v. ISO New England Inc.*, Answer of the Boston Gen Companies, Docket Nos. ER10-787-003 et

Answer addresses the answer filed on May 17, 2010 by Boston Generating, LLC, Mystic I, LLC, Mystic Development, LLC, and Fore River Development, LLC (collectively, “Boston Gen”). The Boston Gen Answer responds to the ISO’s May 5, 2010 request for clarification or rehearing<sup>3</sup> of the Commission’s April 23, 2010 order<sup>4</sup> in the above-captioned dockets.<sup>5</sup> The Commission’s April 23 Order was issued in response to the filing of *Various Revisions to FCM Rules Related to FCM Redesign* (“FCM Redesign Filing”) submitted on February 22, 2010 by the ISO and the New England Power Pool (“NEPOOL”) Participants Committee (together, the “Filing Parties”).<sup>6</sup>

Second, this Answer responds to certain requests for clarification and rehearing of the Commission’s April 23 Order filed on May 24, 2010 in the above captioned dockets by: (i) the New England Power Generators Association (“NEPGA”); NextEra Energy

---

*al.* (filed May 17, 2010) (“Boston Gen Answer”); Request for Clarification or, in the Alternative, Rehearing of the New England Power Generators Association, Docket Nos. ER10-787-000, *et al.* (filed May 24, 2010) (“NEPGA Pleading”); Request for Clarification or, in the Alternative, Rehearing of NextEra Energy Resources, LLC, Docket Nos. ER10-787-000, *et al.* (filed May 24, 2010) (“NextEra Pleading”); Request for Rehearing by the Connecticut Department of Public Utility Control, the New England Conference of Public Utility Commissioners, NSTAR Electric Company, the Northeast Utilities Companies, National Grid USA, the Energy Consortium, and the Connecticut Office of Consumer Counsel, Docket Nos. ER10-787-000, *et al.* (filed May 24, 2010) (“CT DPUC Pleading”).

<sup>3</sup> Request for Clarification or, In the Alternative, Rehearing of ISO New England Inc., Docket Nos. ER10-787-003 *et al.* (filed May 5, 2010) (“ISO Request for Clarification”).

<sup>4</sup> *ISO New England, Inc. and New England Power Pool Participants Committee et al.*, Order on Forward Capacity Market Revisions and Related Complaints, 131 FERC ¶ 61,065 (2010) (“April 23 Order”).

<sup>5</sup> Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO’s Transmission, Markets and Services Tariff (FERC Electric Tariff No. 3) (the “Tariff”). Section III of the Tariff is Market Rule 1.

<sup>6</sup> *See ISO New England Inc. and New England Power Pool, Various Revisions to FCM Rules Related to FCM Redesign*, Docket No. ER10-787-000 (filed February 22, 2010); *ISO New England Inc. and New England Power Pool, Supplement to Filing of Various Revisions to FCM Rules Related to FCM Redesign*, Docket No. ER10-787-000 (filed February 25, 2010) (enclosing page 28 which was inadvertently omitted from the initial February 22 filing). The February 22 and February 25 filings shall be collectively referred to herein as the FCM Redesign Filing.

Resources, LLC (“NextEra”); and (iii) the Connecticut Department of Public Utility Control, the New England Conference of Public Utility Commissioners, NSTAR Electric Company, the Northeast Utilities Companies, National Grid USA, the Energy Consortium, and the Connecticut Office of Consumer Counsel (collectively, “CT DPUC”). Those parties also raise arguments concerning the timing and implementation of FCM rules that are subject to the paper hearing set by the Commission in the April 23 Order, and make substantive arguments concerning certain market design elements related to the matters set for paper hearing. The ISO takes no position at this time on the substantive issues raised by Boston Gen, NEPGA or the CT DPUC.

## **I. INTRODUCTION**

The recent filings in this proceeding demonstrate the chasm that continues to separate the competing viewpoints on the issues that the Commission has set for paper hearing. On one side, NEPGA and Boston Gen urge the Commission to move at breakneck speed to implement further changes to the FCM, based upon the premise of capacity market collapse that these suppliers have not proven but that they seek further discovery to establish. NEPGA and Boston Gen seem to take as a foregone conclusion that the Commission will order significant further changes to various fundamental elements of the FCM design, and that those changes will be the ones advocated by the generator representatives. NEPGA is poised to file tariff language implementing those changes in the paper hearing itself, and is convinced that we are so near a conclusion on fixing the problems they have identified that they assert that no further stakeholder process to address those rules will be necessary after the paper hearing.

On the other side, a broad array of interests, including members of the New England Conference of Public Utility Commissioners, transmission owners, and consumer representatives argue strenuously that no further changes to the FCM beyond those already filed in this proceeding are warranted, and that hence there should not even be a paper hearing.<sup>7</sup> This is not a chasm that will be bridged easily or quickly.

For its part, the ISO continues to advocate a more balanced approach. In its February 22, 2010 FCM Redesign Filing, the ISO urged the Commission to approve the newly filed rule revisions, but acknowledged that further FCM improvements were possible. The ISO committed to use the NEPOOL stakeholder process, within at most 18 months, to address a further set of issues that had been identified in working with stakeholders. In its April 23 Order, the Commission approved many of the filed FCM changes, but directed a paper hearing to address a set of issues that largely overlaps with the issues that the ISO had identified for further process in the FCM Redesign Filing. The Commission did not provide for an 18-month process but, instead, set these matters for resolution before the Commission itself through a paper hearing process.

The Order indicated that further revisions resulting from the paper hearing should be in place for the fifth Forward Capacity Auction (“FCA”), which is currently scheduled for June, 2011. In its May 5, 2010 Request for Clarification, the ISO explained that having further changes implemented for the fifth FCA was not possible, and asked that

---

<sup>7</sup> While the ISO does not in this Answer address each argument advanced by the CT DPUC, the ISO is already on record as supporting additional changes to the Tariff above and beyond those presented in the FCM Redesign Filing to address several market design issues. FCM Redesign Filing at pp. 10-11. Thus, the ISO disagrees with the CT DPUC’s contention (CT DPUC Pleading at p. 26) that no further proceedings are necessary.

the Commission provide further time for the issues set for paper hearing to be turned into market rules and implemented.<sup>8</sup>

The ISO believes that the Commission's paper hearing, if conducted as described in the April 23 Order and fleshed out by the ISO in its Request for Clarification, constitutes a well balanced approach, and would avoid placing the Commission in the position of choosing between the extreme and unacceptable positions advocated in the latest rounds of pleadings: either approving the entire package of supplier market design changes or rejecting them in favor of the CT DPUC's position. In short, the ISO suggested that after the Commission ordered briefing, an order on the paper hearing issues could issue in roughly two months – approximately November 1, 2010. The ISO proposed a filing within 30 days of the paper hearing order which would set out the timeframe for developing rules and another filing regarding implementation when rules are approved. While the ISO did not propose specific dates for the rules or implementation, it clearly demonstrated that the five months from November 1, 2010, to March 1, 2011, was far too short to implement the paper hearing order. NEPGA's newly proposed schedule would represent an unwarranted acceleration of the process that is inconsistent with good market design practice,<sup>9</sup> and the CT DPUC's desire to halt the

---

<sup>8</sup> Specifically, in that request, the ISO asked that the Commission: (i) postpone the implementation of market rule changes on the issues set for a paper hearing in the April 23 Order until no earlier than the sixth Forward Capacity Auction; (ii) require the ISO to submit (a) a rules development schedule within 30 days of the issuance of the Commission's order on the paper hearing and (b) an implementation schedule within 30 days of the Commission's approval of the rules; and (iii) permit the rules that the Commission approved in the April 23 Order to stay in effect until new rules are approved. Request for Clarification at pp. 2-3.

<sup>9</sup> NEPGA Pleading at pp. 5-9. Not only does NEPGA seek to accelerate the process, but it seeks to expand its scope as well. The ISO does not here take a position on NEPGA's request that the Commission indicate that the floor price will not necessarily be eliminated or that the value of CONE for future FCAs is at issue in the paper hearing, but the ISO will respond separately to NEPGA's Motion for Disclosure of Evidence Held by ISO New England and its Internal Market

proceedings entirely would leave important issues unaddressed. The chasm between these positions, however, further underscores the tremendous amount of work still to be done to address these complex and contentious issues, and the impracticality of getting further changes implemented in time for the fifth FCA. The Commission should proceed with the paper hearing, but on a timetable that does not undermine the likelihood of achieving good design solutions to the problems identified.

Addressing the recently-filed pleadings directly, as explained in more detail below, Boston Gen and NEPGA are incorrect that the ISO misread the Commission's April 23 Order with respect to the schedule for completing potential further changes to the FCM.<sup>10</sup> In fact, the ISO understands the proposed schedule, and not only is it not practicable, but rather it is impossible even using optimistic assumptions. Allowing only two to three months to develop sound market design changes, and the accompanying rule revisions, that are very complicated and that are certainly controversial is simply not reasonable. The proposed schedule also ignores the implementation requirements associated with these changes, and ignores the fact that many of the milestones associated with the fifth FCA will have irrevocably passed by the time the Commission would rule on the revised rules.

Moreover, Boston Gen and NEPGA's proposals to make isolated changes to the FCM schedule so that the changes can become effective before the fifth FCA are likewise unreasonable and must be squarely addressed.<sup>11</sup> For example, a directive to postpone the fifth FCA, as suggested by Boston Gen, would have a complicated ripple effect that

---

Monitoring Unit, filed May 28, 2010 in Docket Nos. ER10-787-000, EL10-50-000 and EL10-57-000.

<sup>10</sup> Boston Gen Answer at p. 5 and NEPGA Pleading at p. 6.

<sup>11</sup> Boston Gen Answer at pp. 6-7 and NEPGA Pleading at pp. 5-9.

would require a complete re-working of the FCM schedule for upcoming FCAs, reconfiguration auctions, and bilateral submission windows. While not impossible, delaying the fifth FCA would itself constitute a difficult and resource-consuming challenge, and must not be undertaken lightly. Furthermore, it would reintroduce shorter periods between FCAs and their related Capacity Commitment Periods, a goal which the ISO and NEPOOL have carefully sought to cure by extending this period by roughly two months with each succeeding auction – until the long-intended roughly three year planning period is achieved.

As it has stated repeatedly, the ISO will work diligently and seriously to address the important issues that the Commission has set for paper hearing. The Commission should not be swayed by Boston Gen’s and NEPGA’s dramatic overstatement of the urgency of the problems associated with the FCM<sup>12</sup> into imposing an unrealistic and counterproductive timeline. Writing detailed, and likely extensive, rules to effectuate the design changes resulting from the paper hearing will be very time consuming. Then those rules must be taken through a stakeholder process that is likely to be contentious.

---

<sup>12</sup> In arguing that whatever changes result from the paper hearing must be in effect for the fifth FCA, Boston Gen asserts that the FCM is “verging on collapse” and that it is “manifestly failing to achieve the purposes for which it was established.” Boston Gen Answer at pp. 4-6. Boston Gen does not explain these statements, but they are plainly incorrect. Each FCA that has been conducted so far has attracted significant participation from new supply and demand side resources, a primary objective of the FCM. *See e.g., ISO New England Inc.*, Informational Filing for Qualification in the Forward Capacity Market, Docket No. ER10-1185-000 (filed May 4, 2010) at p. 29 (noting that the FCM continues to attract resources to participate in the FCA). The forecasted energy needs of the region have changed since the FCM was initially designed, and now faces a significant surplus of capacity, so it should not be a surprise that clearing prices in the FCAs have reached the price floor. *ISO New England Inc. and New England Power Pool*, Motion for Leave to File Answer and Answer of ISO New England Inc., Attachment A, Affidavit of David LaPlante, the Vice President of the Internal Market Monitoring Unit at the ISO at P 6, Docket No. ER10-787-000 (filed March 30, 2010) (“ISO Motion for Leave to File Answer and Answer”). In no way does this constitute a “collapse” or “failure” of the market.

The Commission should allow sufficient time for those steps to be taken with the care they require.

In that vein, the Commission should disabuse NEPGA of the idea that filing tariff revisions in the paper hearing will be productive.<sup>13</sup> Especially given the widely divergent views of the generators and load, it makes no sense for tariff language to be proposed or considered at this point in the proceeding. Major design issues must be resolved by the Commission in the paper hearing process and only after the design issues are resolved can tariff language be drafted. It is an understatement to say that the FCM rules are a lengthy, complex, and interrelated set of provisions and that changes in design principles may ripple throughout these rules. If NEPGA files detailed rule language in support of its positions, all other parties to this proceeding will be forced to respond to the details of that proposed language – just in case the Commission is inclined to accept it – rather than focus on the larger unresolved design questions. Beyond simply missing the forest for the trees, the parties will be arguing about blades of grass before even understanding which forest they are in. For these reasons, and to efficiently use the very limited time the Commission has provided, the ISO will not file tariff changes with its briefs. Such changes can only be filed after the Commission rules on the design issues. Furthermore, the Participants Agreement prevents the ISO from unilaterally proposing tariff changes.

Finally, NextEra again raises an issue with respect to the treatment of unobligated capacity in the FCM. NextEra raised this very issue in a protest of the FCM Redesign Filing, which was appropriately rejected by the Commission in the April 23 Order.

---

<sup>13</sup> NEPGA Pleading at p. 7.

NextEra raises no new arguments and its pleading here should be rejected on the same grounds that it was previously rejected.

## II. MOTION FOR LEAVE TO FILE ANSWER

In this *Answer*, the ISO responds to Boston Gen's Answer in opposition to the ISO's request for clarification or rehearing of certain aspects of the Commission's order regarding the ISO's FCM Redesign Filing.<sup>14</sup> In addition, the ISO responds to requests for clarification and rehearing of the Commission's April 23 Order filed by NEPGA, NextEra, and the CT DPUC. Although the Commission's Rules of Practice and Procedure prohibit answers to answers,<sup>15</sup> the Commission has the authority to waive this prohibition for good cause,<sup>16</sup> such as where the answer would assure a complete record in the proceeding,<sup>17</sup> provide information helpful to the disposition of an issue,<sup>18</sup> permit the issues to be narrowed or clarified,<sup>19</sup> or aid the Commission in understanding and resolving issues.<sup>20</sup> The ISO believes that this *Answer* will clarify the issues raised by Boston Gen, assure a more complete record in this proceeding, and otherwise assist the Commission in understanding and resolving these issues. In particular, the ISO seeks to correct certain inaccurate assumptions underlying Boston Gen's Answer and to explain that the fifth FCA cannot simply be delayed, as Boston Gen suggests, without serious

---

<sup>14</sup> See Boston Gen Answer at p. 2.

<sup>15</sup> 18 C.F.R. § 385.213(a)(2).

<sup>16</sup> *Id.* at § 385.101(e).

<sup>17</sup> See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999).

<sup>18</sup> See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

<sup>19</sup> See, e.g., *PJM Interconnection, L.L.C.*, 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>20</sup> See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

ramifications. For the foregoing reasons, the ISO respectfully requests that the Commission grant this *Motion* and accept the following *Answer*.

### III. ANSWER

#### A. **The ISO's Timing Concerns Are Not Based On A Misreading Of The Commission's April 23 Order – An Order From The Commission On Final Rules By March 1, 2011 Is Simply Not Practicable**

Boston Gen states that the ISO's timing concerns may be based on a misreading of the Commission's order.<sup>21</sup> In the April 23 Order, the Commission stated its intent, "*if practicable, [to] issue an order terminating the transitional market rules and accepting longer-term market rules before March 1, 2011.*"<sup>22</sup> Boston Gen assumes that the ISO misread the March 1, 2011 date as the date by which the Commission would rule on the paper hearing, which would then kick off the subsequent rule development process. NEPGA similarly states that "ISO-NE appears to envision some additional stakeholder process after March 1, 2011, to finalize market rules."<sup>23</sup> In fact, the ISO understands the proposed schedule, and not only is it not practicable, but rather it seems impossible, even under the most optimistic assumptions.

First, the time period for developing and filing rules is insufficient. Working forward, pursuant to the Commission's paper hearing schedule, parties will submit responsive briefs on September 1, 2010. In the normal course, the Commission would issue an order by approximately November 1, 2010. Working backwards from the potential March 1, 2011 order date, the rules themselves would have to be filed on or about January 1, 2011. This leaves the ISO and stakeholders only two months – from

---

<sup>21</sup> Boston Gen Answer at p. 5.

<sup>22</sup> April 23 Order at P 23 (emphasis added).

<sup>23</sup> NEPGA Pleading at p. 6.

November 1, 2010 to January 1, 2011 – to work together to develop and file what is likely to be a complex and contentious set of rule changes. This process involves the ISO drafting an initial set of market rules after the Commission’s order, reviewing and modifying those rules with the NEPOOL Markets Committee in two or three meetings, voting those rules at this Committee and taking the rules to the NEPOOL Participants Committee for a final vote.

This two month period could be extended some, perhaps, if the Commission were to accept NEPGA and Boston Gen’s invitations to compress the Commission’s timeframe for the issuance of orders.<sup>24</sup> If the Commission works quickly after the September 1, 2010 briefs are filed, perhaps an order could be issued by the middle of October 2010. Similarly, the rules could be filed less than 60 days prior to the March 1, 2011 order date, perhaps as late as the middle of January 2011. This would extend the window in which the ISO and stakeholders could develop and file the rules from two to three months.

Even three months is insufficient time to develop sound market rules of the magnitude involved in these proceedings. As NEPGA and Boston Gen are well aware, substantial market redesign, and the associated rules development process, is complex and extremely time consuming. This will be true especially if the changes ultimately ordered by the Commission are anything close to those championed by NEPGA and Boston Gen. The changes they support are not trivial; they represent fundamental design changes that would require significant analysis, design work, and rule changes. For example, one of the simplest-sounding proposals – modeling all zones all the time – will require significant and fundamental redesign of the clearing engine used to calculate

---

<sup>24</sup> NEPGA Pleading at p. 8; Boston Gen Answer at p. 7.

prices in the auction, and may require adjustments to the descending clock auction itself. While the eight energy zones proposed for modeling do not currently contain “nested” zones they do exhibit the characteristics of a “mesh network,” where one zone is significantly interconnected to several others, and at least one zone (Connecticut) may be approaching a condition where both an export limit and an import limit must be enforced simultaneously. Moreover, these changes to zonal modeling will require that a new and comprehensive mitigation plan be developed and written out.<sup>25</sup> The changes to the Alternative Capacity Price Rules proposed by NEPGA and supported by Boston Gen and other generators are similarly complicated. Moreover, this complicated analytic and design work must take place against the backdrop of a very contentious stakeholder process. The rule revisions to implement changes such as these are likely to be extensive and complicated, and drafting those revisions will be time-consuming and difficult. Moreover, reaching consensus among many parties with divergent interests on that detailed rule language is likely to be an immense challenge. To expect all of that to be accomplished entirely within the two-, or at most, three-month window contemplated in the current schedule is simply not reasonable.<sup>26</sup>

It is also worth noting that for this schedule to succeed, all parties would have to exercise a restraint not often demonstrated in this proceeding. Parties would have to

---

<sup>25</sup> See e.g., Motion to Intervene and Comments of Potomac Economics, Ltd. on Revisions to FCM Rules Related to FCM Redesign Filed By ISO New England, Inc., Docket No. ER10-787-000, at pp. 18-19 (filed March 15, 2010); Internal Market Monitoring Unit Review of the Forward Capacity Market Auction Results and Design Elements, ISO New England Inc. Market Monitoring Unit (June 5, 2009) (“Internal Market Monitor Report”), available at [http://www.iso-ne.com/markets/mktmonmit/rpts/other/fcm\\_report\\_final.pdf](http://www.iso-ne.com/markets/mktmonmit/rpts/other/fcm_report_final.pdf).

<sup>26</sup> It is also worth noting that this two- or three-month window will include the holiday season, when it is often difficult to schedule meetings and make significant progress, despite everyone’s best intentions.

refrain from seeking leave to submit further responses to the briefs filed with the Commission on September 1, 2010. Moreover, for this schedule to succeed, the Commission's order on the paper hearing in October 2010 and the March 1, 2011 order on the rules must both be uncontested, which given the history of this proceeding seems unlikely.

Second, NEPGA's notion that a completely new set of FCM rules can be filed and approved within the confines of two rounds of briefs and a single Commission order is imprudent and simply not achievable. Attempting to overcome the ISO's position in this proceeding that sufficient time is needed to properly draft, vet, and file rules to implement further FCM changes, NEPGA unilaterally declares that it will file rule changes in the paper hearing<sup>27</sup> – a step not directed or suggested by the Commission – and states that as a result “[i]t is not clear that any additional stakeholder process will be required after the order on the paper hearing.”<sup>28</sup> While perhaps NEPGA hopes to achieve a favorable outcome for its members by submitting tariff sheets consistent with its desired outcome in this case, such a step is premature and completely at odds with the goal of good market design. These are complicated issues that require thorough and thoughtful analysis and design. Rule writing follows naturally from design decisions, and to pretend otherwise would result in a wildly inefficient use of resources. NEPGA's “encourage[ment]”<sup>29</sup> notwithstanding, the ISO has no intention of filing proposed rules in either of the two scheduled briefs.

---

<sup>27</sup> NEPGA Pleading at p. 7.

<sup>28</sup> *Id.* at p. 6.

<sup>29</sup> *Id.* at p. 7.

The ISO also cannot help but note that these rule changes could easily affect scores or even hundreds of individual tariff sheets, and that exhaustive argument about individual words and phrases of proposed tariff language is quite commonplace, and can be expected to be even more likely in this case, given the controversial nature of the matters set for paper hearing. It is fanciful to expect that such contentious issues will be capable of resolution with only one opportunity for parties to respond, in the second round of briefs, to extensive tariff language that will be unveiled for the first time in the first briefs. NEPGA states that “[d]elay jeopardizes the markets,”<sup>30</sup> but the reckless adoption of inadequately developed changes to fundamental elements of the FCM presents a far greater risk.

Third, the schedule contemplated in the April 23 Order, even if everything went perfectly, does not adequately account for the time required for implementation. In their filings, Boston Gen and NEPGA trivialize the efforts needed to design, develop, test, and implement new software, business processes, and systems needed to conduct the FCA, and neglect entirely the need to train both market participants and ISO staff. These are crucial and time-consuming tasks.

Fourth, as the ISO explained in its Request for Clarification, important milestones for an FCA take place long before the FCA itself is conducted. In a sense, the fifth FCA has already begun. The show of interest submission window for new resources to indicate their desire to participate in the fifth FCA closed on May 14, 2010. The Existing Capacity Qualification Deadline for the fifth FCA is October 1, 2010. By that date, participants in the market must make decisions about whether to submit Static De-List

---

<sup>30</sup> NEPGA Pleading at p. 9.

Bids, which are submitted at prices keyed to the Cost of New Entry (“CONE”). Similarly, by October 15, 2010, new resources must submit offers below 0.75 times CONE. These lead times are necessary for the interconnection studies to be conducted to identify the transmission system modifications and probable cost of those modifications needed to interconnect proposed new resources, as well as providing for review of cost data by the Internal Market Monitor and filing of all auction inputs with the Commission, which must occur months before the FCA is run, pursuant to the FCM rules. By March 1, 2011, the Internal Market Monitor will have completed its review of such offers for the fifth FCA, which by rule must be filed with the Commission by March 8, 2011.<sup>31</sup> It will be simply impossible to implement revised mitigation rules that would have to become effective on March 1, 2011 for the fifth FCA.

**B. Adjustments To The FCM Schedule, As Proposed By Boston Gen And NEPGA Are No Simple Matter**

As if it were a trivial matter, Boston Gen states that “there is no reason why the Commission cannot extend certain FCM deadlines and/or shorten the forward period” in order to ensure that the forthcoming rule changes can be effective for the fifth FCA.<sup>32</sup> Boston Gen concedes that this is “not ideal,” but points out that because the first four FCAs used shorter time periods, it should be no problem to simply delay the fifth FCA.<sup>33</sup>

In making this argument, Boston Gen ignores the fact that the schedule of FCAs includes several delicate interdependencies, and that the various deadlines and completion dates for the first six FCAs were carefully puzzled together to progress

---

<sup>31</sup> See Tariff Section III.13.8.1.

<sup>32</sup> Boston Gen Answer at p. 7.

<sup>33</sup> *Id.*

smoothly from the shortened schedule associated with the first Capacity Commitment Period (beginning in 2010) to the full “steady state” annual schedule that will (according to the current schedule) first be achieved in association with the seventh Capacity Commitment Period (beginning in 2016). One piece of this schedule cannot be moved without affecting many others, and it is incorrect to suggest that because the first FCA used a shorter schedule, any subsequent FCA could also, on a whim, be performed on a similarly short schedule.

The most obvious examples of the cascading problems that delaying the fifth FCA would cause are with respect to the *sixth* FCA. The Existing Capacity Qualification Deadline for the sixth FCA is August 1, 2011. Some critical qualified capacity determinations for the sixth FCA are entirely dependent on the outcome of the *fifth* FCA (including, notably, the qualified capacity for existing resources that submit Permanent De-List Bids in the fifth FCA). Similarly, the interconnection and overlapping impacts analyses for the sixth FCA are based on the results of the fifth FCA. Any delay to the running of the fifth FCA is, then, also a delay to when qualification for the sixth FCA can begin. Depending on the length of the delay, these problems may propagate further to the *seventh* FCA and possibly beyond. A new schedule could also affect the timing and inputs for the various reconfiguration auctions and bilateral transaction windows.

In other words, a delay in the fifth FCA would require a complete re-working of the schedules for subsequent FCAs, reconfiguration auctions, and bilateral windows. Reworking the schedule in such a manner is not impossible, but it is hardly a simple matter of only delaying the fifth FCA a bit, as Boston Gen suggests. Devising a new FCM schedule to accommodate a delay to the fifth FCA would be a considerable

challenge that itself would consume significant resources, and may require modifications to FCA support systems such as the Forward Capacity Tracking System and other supporting business processes that otherwise would not be impacted by the changes currently under consideration in the paper hearing. Finally, it is also worth noting that the schedules of FCAs and annual reconfiguration auctions are set forth in Market Rule 1, and changes to those schedules would themselves require filing and approval.

NEPGA's suggestion that slight modifications to the timelines leading up to the fifth FCA would allow these extensive changes to be in place for that FCA, as it is currently scheduled, is similarly misguided.<sup>34</sup> Referring to the ISO's explanation that the October 1, 2010 Existing Capacity Qualification Deadline is at odds with implementation of these changes in time for the fifth FCA, NEPGA argues that the Existing Capacity Qualification Deadline for the fifth FCA could just be pushed out from October 1, 2010 to April 30, 2011 without adverse consequences.<sup>35</sup> This conclusion is based on utterly irrelevant facts. NEPGA derives its proposed April 30, 2011 deadline by comparing the length of time between the Existing Capacity Qualification Deadline and the start of the Capacity Commitment Period for both the first and fifth FCAs. That interval for the first FCA was approximately 37 months, and for the fifth FCA is approximately 45 months. NEPGA asserts that the shorter interval observed for the first FCA could just as easily be used for the fifth FCA, and hence the Existing Capacity Qualification Deadline for the fifth FCA can be moved out to April 2011. Unfortunately for NEPGA, the interval between the Existing Capacity Qualification Deadline and the start of the associated Capacity Commitment Period is completely irrelevant in this regard.

---

<sup>34</sup> NEPGA Pleading at pp. 8-9.

<sup>35</sup> *Id.* at p. 8.

The ISO does not have three years to analyze the data submitted at the Existing Capacity Qualification Deadline, and so the amount of time until the start of the Capacity Commitment Period is meaningless. The ISO has only a few months to analyze and act on the data submitted on the Existing Capacity Qualification Deadline – de-list bids submitted on that date must be evaluated, and the results of that evaluation must be filed with the Commission 90 days prior to the start of the associated FCA. So the proper interval to review in this regard is the time between the Existing Capacity Qualification Deadline and the date of the informational filing to be made with the Commission prior to the start of the FCA itself. For the first FCA, this interval was approximately 6 months; for the fifth FCA, this interval is shorter – approximately 5 months. Clearly, there is no such slack in the schedule as NEPGA imagines. Moving the Existing Capacity Qualification Deadline for the fifth FCA to April 30, 2011 would require the Internal Market Monitor to use a time machine in order to perform its analysis and to file the results as required by the rules on March 8, 2011.<sup>36</sup> Alternatively, the entire schedule for the next few FCAs would have to be completely re-worked, as discussed above.

NEPGA’s assertions with respect to the timeline for zonal modeling are similarly infirm. In response to the ISO’s explanation that the zonal configuration must be determined prior to the submission of offers composed of separate resources, which are due approximately four months prior to the start of the FCA, NEPGA’s response is essentially to say “surely we can work it out.”<sup>37</sup> NEPGA notes that the Commission hopes to issue an order on rules by March 1, 2011, and states that this is only “a few

---

<sup>36</sup> The analysis is essentially the same with respect to the review of low-priced offers from new resources due on the New Capacity Qualification Deadline, which is generally only two weeks after the Existing Capacity Qualification Deadline.

<sup>37</sup> NEPGA Pleading at p. 9.

days” after the composite offer submission deadline, and concludes that the “narrow gap” can be closed with some combination of a quicker order from the Commission and adjusting of the deadline.<sup>38</sup> Leaving aside that the gap in question is properly counted in weeks rather than days, it ignores the time that parties will need to evaluate and accommodate the Commission’s determination in their offering decisions, ignores the time necessary for implementation, and assumes, wishfully, that no party will contest a March 1, 2011 order from the Commission.

For the many reasons the ISO has set forth in this Answer and in its previous filings in this proceeding, it is simply not reasonable to hope that the further changes to the FCM resulting from the Commission’s paper hearing can be implemented for the fifth FCA.

**C. NextEra’s Pleading Raises No New Issues And Should Be Rejected On The Same Grounds As Its Previous Protest On The Same Issue**

The FCM Redesign Filing included clarifying revisions to Section III.13.6.4 of the market rules to the effect that, where the ISO requests energy from unobligated capacity, the resource shall not be obligated “under Section III.13 of this Tariff by such a request” to provide energy from that capacity, and shall not be subject to any availability penalties “under Section III.13 of this Tariff by such a request” for failure to provide energy from that capacity.<sup>39</sup> Thus, the additional language simply clarified that the provision is intended to address only obligations or penalties under Section III.13 of the Tariff.<sup>40</sup>

---

<sup>38</sup> *Id.*

<sup>39</sup> FCM Redesign Filing at p. 24.

<sup>40</sup> *Id.*

NextEra protested the FCM Redesign Filing’s changes to Section III.13.6.4. In doing so, NextEra argued that Section III.13.6.4 should provide that generating resources that do not have Capacity Supply Obligations (“CSOs”) may only be called upon during emergencies.<sup>41</sup> In support of its argument, NextEra cited language contained in a Design Basis Document that was approved by NEPOOL during a November 6, 2009 Participants Committee meeting.<sup>42</sup> NextEra argued that the proposed revisions to Section III.13.6.4 of the Tariff were a complete reversal from the language contained in that Design Basis Document.<sup>43</sup> Accordingly, NextEra requested that the Commission reject the clarification revisions to Section III.13.6.4 and direct the ISO to submit a compliance filing providing that resources without a CSO may only be called upon during emergencies.<sup>44</sup>

In the April 23 Order, the Commission agreed with the Filing Parties that the clarifying changes in Section III.13.6.4 were appropriate.<sup>45</sup> The Commission emphasized that its assessment of whether the clarifying language is just and reasonable is not affected by whether a prior draft version of certain language was proposed in the stakeholder proceeding.<sup>46</sup> Rather, the Commission recognized that such iterations are to be expected in a stakeholder process.<sup>47</sup> After considering NextEra’s objections, the

---

<sup>41</sup> NextEra Pleading at p. 6.

<sup>42</sup> *Id.* at pp. 3-4.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at p. 6.

<sup>45</sup> April 23 Order at P 169.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

Commission concluded that Section III.13.6.4 as submitted in the FCM Redesign Filing is just and reasonable.

In its request for clarification or rehearing of the April 23 Order (the “NextEra Rehearing Request”), NextEra asked the Commission to clarify that NextEra’s concerns related to generating resources without a CSO *must* be addressed in a stakeholder process.<sup>48</sup> In the alternative, NextEra requested rehearing because, according to NextEra, the April 13 Order failed to consider how the changes to Section III.13.6.4 more broadly affect the obligations, risks and benefits of capacity resources committed in the FCM.<sup>49</sup> Once again, NextEra supported its request by arguing that the Section III.13.6.4 revisions are a reversal from the revision contained in the NEPOOL-approved Design Basis Document.<sup>50</sup>

NextEra’s argument that the revised language in Section III.13.6.4 should reflect the language in the NEPOOL-approved Design Basis Document is without merit. As the ISO already explained when it answered NextEra’s Protest, the NEPOOL-approved language referenced by NextEra was not supported by the ISO, in large part because it assigned an obligation to resources without a Capacity Supply Obligation.<sup>51</sup> Furthermore, after the Design Basis Document was approved by NEPOOL in November of 2009, the ISO, state representatives, and Market Participants continued to work together to develop market rule changes that addressed the concerns identified in the Design Basis Document, and ultimately settled on a single set of modifications (*i.e.*, the

---

<sup>48</sup> NextEra Pleading at p. 1.

<sup>49</sup> *Id.* at pp. 1-2.

<sup>50</sup> *Id.* at p. 4.

<sup>51</sup> *See* ISO Motion for Leave to File Answer and Answer at p. 27.

market rule changes that were filed in the FCM Redesign Filing, which included the clarifying changes to Section III.13.6.4). The Markets Committee considered and discussed those market rule changes over four meetings during the December 2009 - January 2010 time frame and ultimately voted to recommend that the Participants Committee approve them. The Participants Committee considered the market rule changes at its February 5, 2010 meeting and approved them by a 70.1% Vote. Therefore, NextEra's claim that the language in the Design Basis Document should take precedence over the actual market rule language that was fully vetted and voted by the Markets Committee and the Participants Committee should be rejected.

#### IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's Motion for Leave to File Answer and Answer, reject the Boston Gen Answer, the NEPGA Pleading, the CT DPUC Pleading, and the NextEra Pleading, and grant the ISO's May 5, 2010 request for clarification or rehearing as discussed herein.

Respectfully submitted,

ISO NEW ENGLAND INC.

By: /s/ Ray W. Hepper

Raymond W. Hepper, Esq.  
Kerim P. May, Esq.  
ISO New England Inc.  
One Sullivan Road  
Holyoke, MA 01040-2841  
Tel: (413) 540-4585  
Fax: (413) 535-4379  
E-mail: rhepper@iso-ne.com

/s/ Sherry A. Quirk

Sherry A. Quirk, Esq.  
Monica M. Berry, Esq.  
Schiff Hardin LLP  
1666 K Street NW, Suite 300  
Washington, DC 20006  
Tel: (202) 778-6475  
Fax: (202) 778-6460  
E-mail: squirk@schiffhardin.com

Dated: June 2, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon the parties designated on the official service list for the above-captioned dockets in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010 (2009).

Dated at Washington, D.C. on this the 2nd day of June, 2010.

*/s/ Sherry A. Quirk* \_\_\_\_\_  
Sherry A. Quirk, Esq.  
Attorney for ISO New England Inc.

DC\80105331.2