

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

**ISO New England Inc. and
New England Power Pool**

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)

Docket No. ER10-1088-000

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

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 and 385.213 (2009), ISO New England Inc. (“ISO”) hereby submits an Answer to the Motion to Intervene and Comments of Consolidated Edison Solutions, Inc. and Consolidated Edison Energy, Inc. (“Con Ed”) filed on May 10, 2010 (the “Protest”)¹ in the above-captioned proceeding.²

I. INTRODUCTION

The Protest was filed in response to the joint filing by the ISO and the New England Power Pool (“NEPOOL”) Participants Committee (collectively, the “Filing Parties”) on April 23, 2010 (the “Joint Filing”).³ The Joint Filing proposes revisions to the ISO Tariff to revise, remove and add certain definitions in Section I.2.2 of the ISO Tariff that pertain to the New

¹ *ISO New England Inc. and New England Power Pool*, Motion to Intervene and Comments of Consolidated Edison Solutions, Inc. and Consolidated Edison Energy, Inc., Docket No. ER10-1088-000 (filed May 10, 2010). Con Ed’s filing is captioned “Comments,” and is filed pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure. However, in their pleading Con Ed specifically protests the substance of the market rule revisions filed in this docket and requests relief indicative of a protest filed pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure. Accordingly, the ISO is treating Con Ed’s pleading as a protest for purposes of this Answer.

² Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (“ISO Tariff”), the Second Restated New England Power Pool Agreement, the Participants Agreement and the Joint Filing. Market Rule 1 is Section III of the ISO Tariff.

³ The transmittal letter of the Joint Filing is referred to herein as the “Filing Letter.”

England capacity market and to make related conforming changes (the “FCM Definitions Revisions”). The Protest takes issue with the payment provisions in Section III.13.6.4 of Market Rule 1, which is an existing provision in Market Rule 1 which the Joint Filing proposes to revise by adding a reference to the newly defined term “Real-Time High Operating Limit.”

The Protest is an impermissible attempt to expand the scope of the ISO Tariff revisions that are addressed in the Joint Filing and is based on arguments that have been squarely rejected by the Commission in a prior proceeding. For these reasons, the Protest should be denied.

II. MOTION FOR LEAVE TO ANSWER

The ISO hereby moves, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2009), for leave to file an answer to the Protest. As a general matter, the Commission’s rules prohibit responses to protests.⁴ However, the Commission has the authority to waive this prohibition for good cause.⁵ 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,⁶ provide information helpful to the disposition of an issue,⁷ permit the issues to be narrowed or clarified,⁸ or aid the Commission in understanding and resolving issues.⁹ The ISO believes its answer will assist the Commission by narrowing and clarifying the matters that are at issue in the Joint Filing, which is made necessary by Con Ed’s misinterpretation of the scope of the proposed tariff revisions as reflected in its

⁴ See 18 C.F.R. § 385.213(a)(2) – (a)(3) (2009).

⁵ *Id.*

⁶ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh’g denied*, 89 FERC ¶ 61,246 (1999).

⁷ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

⁸ 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).

⁹ See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

Protest. Accordingly, the ISO respectfully requests that the Commission grant its motion to provide the following answer.

III. ANSWER

The Filing Parties have demonstrated the justness and reasonableness of the FCM Definitions Revisions. None of the arguments in the Protest show that the revisions, including in particular the addition of the Real-Time High Operating Limit definition and its incorporation into a new sub-Section III.13.6.4.1 of Market Rule 1, are unjust and unreasonable or require further clarification. Contrary to the suggestions in the Protest, the addition of the term “Real-Time High Operating Limit” simply provides the ISO with a mechanism for tracking generator capacity that is not subject to a Capacity Supply Obligation (“CSO”), so that the ISO can determine how much energy is available to request from a generator pursuant to the existing provisions in Section III.13.6.4 of Market Rule 1. The existing provisions of Section III.13.6.4, already accepted by the Commission, establish the rules that allow the ISO to request energy from generator capacity that is not subject to a CSO and specify how Market Participants will be compensated for such energy.

The addition of the term Real-Time High Operating Limit has nothing to do with the manner in which Market Participants are compensated when they choose to provide energy in response to a request from the ISO under Section III.13.6.4. Accordingly, Con Ed’s request that Section III.13.6.4 be revised to indicate that offers for energy under this provision will be exempted from market power mitigation is an impermissible attempt to expand the scope of this proceeding.

Con Ed's requested relief is also directly contrary to the Commission's July 14, 2009 order in Docket No. ER09-1144-000 (the "July 14, 2009 Order").¹⁰ In the July 14, 2009 Order, the Commission expressly rejected requests by certain market participants for a determination that the existing market mitigation rules not apply to offers to provide energy in response to an ISO request pursuant to Section III.13.6.4. Accordingly, even if the issues raised in the Protest were within the scope of this proceeding, Con Ed's Protest is barred by the Commission's prior determination on this matter.

A. The Protest Requests a Commission Determination on Matters that are Well Outside the Scope of This Proceeding and Therefore Should Be Denied

The Protest solely addresses the manner in which Market Participants will be compensated when they voluntarily provide energy in response to an ISO request pursuant to Section III.13.6.4 of Market Rule 1. The existing provisions of Section III.13.6.4 provide the ISO the ability to "request that a Generating Capacity Resource having capacity that is not subject to a Capacity Supply Obligation provide energy for reliability purposes in the Real-Time Energy Market." The existing rules indicate that "if such resource does provide energy from that capacity, the resource shall be paid based on its most recent offer and is eligible for NCPC."

The Joint Filing involves, in relevant part, a new defined term (Real-Time High Operating Limit) that provides the mechanism by which market participants advise the ISO of the maximum output, in MW, of a generating resource that could be achieved in response to an ISO request for energy under Section III.13.6.4. Specifically, the FCM Definitions Revisions add a new sub-Section III.13.6.4.1 that requires Market Participants to report to the ISO an up-to-date value of the available capacity of generating resources so that the ISO's system operators

¹⁰ *ISO New England Inc. and New England Power Pool Participants Committee*, Order Accepting Tariff Revisions, 128 FERC P 61,023 (issued July 14, 2009).

are aware of the quantity of energy that may be made available in response to a request under Section III.13.6.4. The FCM Definitions Revisions do not revise any existing provision in Section III.13.6.4, including the payment provision, and they do not impact the manner in which Market Participants are compensated for energy provided pursuant to this provision.

Despite the fact that the FCM Definitions Revisions have nothing to do with the payment provisions in Section III.13.6.4 of Market Rule 1, Con Ed asserts that the compensation provision in the existing provisions of Section III.13.6.4 is ambiguous and asks that the Commission “direct ISO-NE and NEPOOL to revise its Market Rule to clarify that the compensation [under Section III.13.6.4] is based on the unmitigated bid for energy in excess of the unit’s CSO.”¹¹

Con Ed’s request is well beyond the scope of the FCM Definitions Revisions. As indicated above, the entire revision to Section III.13.6.4 – which adds the sentence “For purposes of facilitating ISO requests for energy under Section III.13.6.4, a Market Participant must report an up-to-date Real-Time High Operating Limit value at all times for a resource” in a new sub-Section III.13.6.4.1 – has no impact on or relation to the amount that a Market Participant will be compensated should it agree to an ISO request for energy under Section III.13.6.4.

Con Ed is using this Section 205 proceeding to inappropriately challenge provisions of the ISO Tariff that are not at issue here and which, therefore, may only be challenged through a separate Section 206 complaint.¹² Furthermore, Con Ed makes no attempt to demonstrate that

¹¹ Protest at pp. 3-4.

¹² The Commission has held that “[a] protest does not expand the scope of a proceeding.” *Southern Company Services, Inc.*, 116 FERC ¶ 61,070 at P 26 (2006). In another proceeding involving an ISO filing pursuant to Section 205 of the FPA, the Commission rejected efforts to expand the scope of the proceeding to include matters more properly raised in a complaint under Section 206. *ISO New England Inc.*, 112 FERC ¶ 61,060 at PP 13-14 (2006) (“MMWEC’s protest, which expresses concerns regarding the current reporting requirements in section IV.B.6.2 of ISO-NE’s tariff and does not raise concerns with the actual reports at issue in this docket, is more properly filed in a complaint proceeding under section 206 of the FPA.”).

the actual revisions being proposed for Section III.13.6.4, or any other aspect of the FCM Definitions Revisions, are unjust and unreasonable.¹³ Therefore, the Commission should deny Con Ed's request because it is beyond the scope of this proceeding.

B. The Relief Requested in the Protest Should Be Denied Because the Commission Has Already Addressed and Expressly Rejected a Prior Request that Offers to Provide Energy Pursuant to an ISO Request under Section III.13.6.4 Not Be Subject to the Existing Market Power Mitigation Rules

The Commission has squarely rejected the very request that Con Ed makes in its Protest regarding the application of market power mitigation provisions to payments for energy provided pursuant to an ISO request under Section III.13.6.4. In a July 14, 2009 Order accepting certain revisions to the Forward Capacity Market rules,¹⁴ the Commission rejected arguments by certain parties that Section III.13.6.4 and related provisions on resources without a CSO were unjust and unreasonable because they apply the same market power mitigation rules to energy offers from resources without a CSO as are applied to energy offers from resources with a CSO.¹⁵ Accordingly, Con Ed is raising arguments in this proceeding that were expressly rejected by the Commission in its prior consideration of Section III.13.6.4. Con Ed raises no new issues of law

¹³ *Atlantic City Elec. Co. v. FERC*, 295 F. 3d 1, 23 (D.C. Cir. 2002) (“In order to make any change in an existing rate or practice [pursuant to Section 206 of the FPA], FERC must first prove that the existing rates or practices are ‘unjust, unreasonable, unduly discriminatory or preferential.’ Then FERC must show that its proposed changes are just and reasonable.”).

¹⁴ *ISO New England Inc. and New England Power Pool*, Various Revisions to FCM Rules Related to Rights and Obligations, Payments and Charges, and Performance, Docket No. ER09-1144-000 (filed May 15, 2009) (the “May 2009 FCM Revisions”). In the May 2009 FCM Revisions filing, the ISO and NEPOOL proposed various revisions to the rights and obligations provisions of the Forward Capacity Market rules. These revisions included moving the provisions on ISO requests for energy from capacity that is not subject to a CSO to Section III.13.6.4, and the elimination of the block loading requirement for energy provided in response to such a request, in order to allow resources called under this provision to be economically dispatched and to set the clearing price. May 2009 FCM Revisions filing, Transmittal Letter at pp. 8-9; July 14, 2009 Order at P 17.

¹⁵ July 14, 2009 Order at P 18 (summarizing the argument of the NRG Companies, the Mirant Companies and GDF Suez Energy North America in a joint protest filed in response to the May 2009 FCM Revisions filing) and PP. 31-34 (analyzing and rejecting each of the arguments of the joint protesters).

or fact that warrant the Commission's reconsideration of the determinations it made in the July 14, 2009 Order. Accordingly, Con Ed's requested relief should be denied.¹⁶

IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission: (i) grant the ISO's *Motion for Leave to Answer*; and (ii) reject the Protest and the relief sought therein.

Respectfully submitted,

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¹⁶ With respect to Con Ed's assertion that energy provided pursuant to a request from the ISO under Section III.13.6.4 "should also be eligible for NCPC and to set the Real-Time Energy Market clearing price," Protest, at p. 4, the ISO notes that (1) the existing provisions in Section III.13.6.4 state in relevant part that a resource that provides energy under this provision is eligible for NCPC, and (2) in the May 2009 FCM Revisions the ISO removed the block loading requirement for energy that is provided pursuant to an ISO request under Section III.13.6.4 to allow such resources to be economically dispatched and to set the market clearing price. See the July 14, 2009 Order at P 34.

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 14th day of May, 2010.

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