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**VIA ELECTRONIC FILING**

The Honorable Kimberly D. Bose, Secretary  
The Honorable Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
Room 1A-East, First Floor  
888 First Street, N.E.  
Washington, D.C. 20426

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

Dear Secretary Bose and Deputy Secretary Davis:

Attached for electronic filing in the above-referenced docket is the *Request for Clarification or, in the Alternative, Rehearing of ISO New England Inc.* A copy of the foregoing 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**

ISO New England, Inc. and  
New England Power Pool Participants Committee

Docket Nos. ER10-787-000

New England Power Generators Association v.  
ISO New England Inc.

EL10-50-000

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.

EL10-57-000

(consolidated)

**REQUEST FOR CLARIFICATION OR,  
IN THE ALTERNATIVE, REHEARING  
OF ISO NEW ENGLAND INC.**

Pursuant to Rules 212 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),<sup>1</sup> ISO New England Inc. (the “ISO”) hereby requests clarification or, in the alternative, rehearing of the Commission’s April 23, 2010 *Order on Forward Capacity Market Revisions and Related Complaints* in this proceeding (“April 23 Order”)<sup>2</sup> on the narrow and related issues of the timing for implementation of any ultimately ordered changes and the expiration of the just-accepted rule changes.

In the April 23 Order, the Commission set certain issues for a paper hearing with briefs due on July 1 and September 1, 2010. Unless the Commission ultimately decides that no changes are necessary, given the time it will take to complete the many steps associated with modifications of the Forward Capacity Market (“FCM”) design, it will

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<sup>1</sup> 18 C.F.R. §§ 385.212, 385.713 (2009).

<sup>2</sup> Order on Forward Capacity Market Revisions and Related Complaints, 131 FERC ¶ 61,065 (issued April 23, 2010) (“April 23 Order”).

not be possible to implement material changes to the design (to the extent that the Commission may determine that such changes are necessary) in time for the fifth Forward Capacity Auction (“FCA”). The fifth FCA is scheduled to be run in June, 2011, but has several critical dates well in advance of that date, with certain actions occurring as early as October, 2010. Even if the Commission were to act swiftly on market design changes proffered by the ISO or by others, it would not be possible to have those changes implemented for the fifth FCA. After the Commission issues its order on the new design elements addressed in the July 1 and September 1 filings, new market rules will need to be written, vetted through the stakeholder process, and filed with the Commission. The Commission will need to act on the rules, and the ISO will be required to develop and test the new software that will need to be in place for the first auction in which the market design takes effect. Even if the scope of changes resulting from this process is relatively narrow, it will simply not be possible to complete the steps necessary for new rules to be effective for the fifth FCA in June 2011.

For this reason, the ISO requests that the Commission clarify or modify its order to permit the just-approved rules to stay in effect until new rules are approved and to extend the implementation date for ultimately approved changes until no earlier than the sixth FCA, which is scheduled for April, 2012. The ISO requests that the Commission grant this request and order the ISO to work with stakeholders to develop a schedule for filing rules in accordance with the order and file the proposed schedule within 30 days of the Commission’s decision on the issues set for paper hearing. The ISO will begin software development and implementation efforts when the order is issued and will file a

final implementation schedule within 30 days of the Commission's approval of rule changes resulting from the paper hearing.

## **I. BACKGROUND**

On February 22, 2010, the Filing Parties submitted in Docket No. ER10-787-000 *Various Revisions to FCM Rules Related to FCM Redesign* ("FCM Redesign Filing") pursuant to Section 205 of the Federal Power Act ("FPA"). In that filing, the ISO requested an effective date of April 23, 2010 for the rule changes therein, so that they may be effective for the fourth FCA, scheduled for August 2, 2010.<sup>3</sup> On March 15, several parties filed comments and protests objecting to the FCM Redesign Filing, many of which sought sweeping changes to the design of FCM. On March 30, the ISO filed its Answer to those protests. On March 24, the New England Power Generators Association ("NEPGA") filed a complaint under Section 206 of the FPA,<sup>4</sup> which essentially reiterated its protest, asserting that several aspects of the FCM rules are not just and reasonable and, accordingly, requested that the Commission order changes to those rules. On April 4, 2010 PSEG Energy Resources & Trade LLC, *et al.* ("PSEG") also filed a Section 206 complaint challenging the FCM market rules.<sup>5</sup> On April 6, 2010 and April 22, 2010, respectively, the ISO filed answers to these complaints.

In the April 23 Order, the Commission found certain aspects of the FCM Redesign Filing to be just and reasonable. These elements were accepted and excluded

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<sup>3</sup> FCM Redesign Filing, Transmittal Letter at p. 35.

<sup>4</sup> *New England Power Generators Ass'n v. ISO New England Inc.* ("NEPGA v. ISO-NE"), Docket No. EL10-50-000.

<sup>5</sup> *PSEG Energy Resources & Trade LLC v. ISO New England Inc.* ("PSEG v. ISO-NE"), Docket No. EL10-57-000.

from the paper hearing proceeding established in that order.<sup>6</sup> However, the Commission found that other rule changes in the FCM Redesign Filing were not shown to be just and reasonable. These issues were set for paper hearing as discussed above, and they include: (1) issues relating to the Alternative Capacity Price Rule (“APR”); (2) modeling of Capacity Zones and appropriate market power mitigation; and (3) the proper value of the so-called Cost Of New Entry (“CONE”) (collectively referred to as the “Paper Hearing Issues”). In consideration of the fact that the ISO must conduct its next FCA in August 2010 (the fourth FCA), and to avoid the uncertainty that would result from not having replacement tariff provisions in place to govern that FCA, the Commission accepted the rule changes related to the Paper Hearing Issues, suspended them for a nominal period, and made them effective April 23, 2010.<sup>7</sup>

The Commission added that it anticipates that the recently-filed rules related to the Paper Hearing Issues will only be effective for the fourth FCA, and that its order resulting from the paper hearing will be effective going forward for auctions after August 2010 (*i.e.*, beginning with the fifth FCA).<sup>8</sup> As part of these holdings, it accepted and placed into effect the extension of the floor price for the fourth FCA, but noted that the

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<sup>6</sup> The issues excluded from the paper hearing include: the proposal to develop both local resource adequacy (“LRA”) and transmission security analysis (“TSA”) based requirements for import-constrained Capacity Zones and to set the local sourcing requirement (“LSR”) at the higher of the two values; the general provision to decouple the FCA Starting Price from the CONE; the proposed revisions to the rules governing the review of offers below 0.75 times CONE; the compensation of resources that cannot prorate for reliability reasons; and the clarifications concerning the obligations of resources without a Capacity Supply Obligation (“CSO”). April 23 Order at P 16.

<sup>7</sup> *Id.* at P 15.

<sup>8</sup> *Id.* at P 21 (“The Commission anticipates issuing an order in sufficient time to allow all parties to implement our findings prior to FCA #5.”).

Commission in its final order accepting an appropriate APR mechanism will terminate the price floor coincident with implementation of the new APR.<sup>9</sup>

The Commission set forth a schedule whereby first briefs on the Paper Hearing Issues will be submitted on July 1, 2010. The parties were directed to submit briefs addressing the Commission's questions, either supporting their prior proposal, or making new proposals. In addition, parties with other positions on those issues (such as the complainants in Docket Nos. EL10-50-000 and EL10-57-000) must simultaneously submit briefs supporting their views. Second briefs responding to arguments made in the first briefs are due September 1, 2010.

The ISO reads the Commission's order to state that the Commission has significant concerns with the capacity market design, which must be addressed in the first and second briefs. As directed by the Commission, the ISO, in its role as the independent administrator of the New England market, will make its filing setting forth changes to the FCM market design intended to address the issues set forth by the Commission in the April 23 Order, and will file a second brief on September 1, 2010, commenting as appropriate on the filings of others.

## **II. SPECIFICATION OF ERROR/STATEMENT OF ISSUES**

1. The Commission erred in setting forth a schedule for implementation of market design changes after the first and second briefs that is not achievable if the Commission orders any material changes to the design.
2. The Commission erred in stating that the rules related to the Paper Hearing Issues and the price floor would remain in effect for the fourth FCA only.

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<sup>9</sup> April 23 Order at P 19.

**III. REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING**

**A. The Commission should permit sufficient time for implementing the FCM design changes resulting from the paper hearing.**

In the April 23 Order, the Commission has posed a significant challenge for the ISO and other New England parties to address major aspects of the FCM design in a very brief period of time. The parties were directed to comment upon various complex issues and sub-issues related to the APR, the modeling of zones and appropriate mitigation, and CONE in filings to be made by July 1, 2010, approximately ten weeks from the date of the Commission's order.

The ISO intends to review and address these issues thoroughly and diligently, mindful of its unique role as the Independent System Operator. The ISO will make every effort to complete its work and make its filing of any proposed changes to the market design by the Commission's deadline of July 1. And the ISO will respond to proposals and arguments made in the first briefs by September 1, as established in the Commission's procedural schedule.

However, as noted above, the ISO seeks clarification or rehearing of the implementation time frame for changes resulting from the paper hearing. While the Commission's procedural schedule will allow for a Commission order on the FCM redesign proposals prior to running the fifth FCA, if the Commission orders design changes, several major steps need to occur between the time that the Commission issues its order on the Paper Hearing Issues and the date of the fifth FCA. Once the Commission issues an order, market rules implementing those changes must be written and taken through the stakeholder process. This step is required by the governing

NEPOOL Participants Agreement,<sup>10</sup> and typically requires several months to complete (or longer, for more complicated or controversial issues). Once the stakeholder process is complete, the resulting rules must be filed with and approved by the Commission, which typically requires another two months. Furthermore, internal software development, testing, and possibly training must occur prior to the start of the next FCA. Even if the scope of changes is relatively narrow (of which there is no guarantee), it is not possible to complete all of these steps prior to June 2011, when the fifth FCA is scheduled to be run.

There is a further problem as well – important milestones for each FCA take place long before the FCA itself is conducted. For example, 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 Bids, which are submitted at prices keyed to CONE. Similarly, by October 15, 2010, new resources must submit offers below 0.75 times CONE. These lead times are necessary for review by the Internal Market Monitor and filing of auction inputs with the Commission, which must occur months before the FCA is run, pursuant to the FCM rules. If as a result of the paper hearing, CONE for the fifth FCA is changed, it will be too late to allow participants to make new decisions and to re-submit Static De-List Bids or offers below 0.75 times CONE. As another example, the zones being modeled for an FCA must be finalized sufficiently in advance of the FCA to allow the submission of offers composed of separate resources. Such offers are due approximately four months prior to the start of

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<sup>10</sup> *Participants Agreement among ISO New England Inc. and the New England Power Pool and the Individual Participants*, January 21, 2009, available at [http://www.iso-ne.com/committees/comm\\_wkgrps/othr/rto/mtrls/participants\\_agreement.pdf](http://www.iso-ne.com/committees/comm_wkgrps/othr/rto/mtrls/participants_agreement.pdf). The Participants Agreement is the contract between the ISO and NEPOOL that outlines the stakeholder process, including director elections, NEPOOL's voting rights, and the stakeholder sector and committee structure.

the FCA, but are limited in some cases to resources that are located in the same Capacity Zone. If the results of the paper hearing change the modeling of Capacity Zones for the fifth FCA, it will not be possible for participants to properly submit, and the ISO to evaluate, offers composed of separate resources. These examples serve only to illustrate the problem – there are certainly others. In sum, depending on the particular changes resulting from the paper hearing process, implementation in time for the start of the FCA itself is insufficient – implementation must also account for the many steps that occur prior to the FCA.

For these reasons, the ISO respectfully requests that the Commission clarify its order or grant rehearing and delay the implementation date of ultimately Commission-approved changes until no earlier than the sixth FCA based upon rule development and implementation schedules to be filed by the ISO within 30 days of the Commission’s order on the Paper Hearing Issues and within 30 days of approval of the rules, respectively.

**B. The Commission should confirm that it will delay the elimination of the floor price and permit all the rules related to the Paper Hearing Issues to remain in effect until the new market rules implementing the redesigned FCM are in place.**

In the April 23 Order, the Commission noted that while it generally does not approve of price floors, it recognizes that “as a transitional mechanism to offset the flaws in the existing APR, an extension of the price floor in this case may be appropriate.”<sup>11</sup> Accordingly, the Commission accepted, suspended, and placed into effect the price floor. The Commission added that it did not set the floor price for hearing because it expected that in its final order accepting an appropriate APR mechanism, the Commission “will

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<sup>11</sup> April 23 Order at P 19.

terminate the price floor coincident with implementation of the new APR.”<sup>12</sup> In addition, the Commission permitted the rules related to the Paper Hearing Issues to be effective for the fourth FCA only.

As the ISO explained above in Section III.A, it will be impossible for the ISO to implement new market rules on the Paper Hearing Issues in time for the fifth FCA unless no material changes are made. If the Commission accepts the ISO’s request with respect to the Paper Hearing Issues, as discussed above, it will be necessary to confirm that all the rules relating to the Paper Hearing Issues, and the rules implementing the floor price as well, will remain in effect until the new rules resulting from the paper hearing are implemented, and that such rules will be effective prospectively only.

The Commission was mindful of this concern when it recognized in the April 23 Order that the floor price may be appropriate in this case as a transitional mechanism to offset the flaws in the existing APR. Allowing the floor price to expire prior to the design and implementation of new market rules will result in a potential gap between the termination of the price floor and the implementation of the new APR, which is clearly not what is intended.<sup>13</sup> Accordingly, the ISO respectfully requests that the Commission extend the floor price until new market rules are in place so that the floor price is terminated coincident with the implementation of the new APR.

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<sup>12</sup> April 23 Order at P 19.

<sup>13</sup> *Id.*

#### IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant this request and postpone the implementation of market rule changes on the Paper Hearing Issues until no earlier than the sixth Forward Capacity Auction with a rules development schedule to be submitted by the ISO within 30 days of the issuance of the Commission's order on the paper hearing and an implementation schedule to be submitted within 30 days of the Commission's approval of the rules. Furthermore, the currently effective rules relating to the Paper Hearing Issues and the floor price should be ordered to remain in effect until the effective date of the rules regarding the Paper Hearing Issues.

Respectfully submitted,

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Counsel for ISO New England Inc.

Dated: May 5, 2010

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2009), upon each person designated on the official service list in this proceeding as compiled by the Secretary of the Federal Energy Regulatory Commission.

Dated at Washington, D.C., this 5<sup>th</sup> day of May, 2010.

/s/ Sherry A. Quirk  
Sherry A. Quirk