

September 15, 2009

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket No. EL09-47-000
Blumenthal v. ISO New England Inc., et al.

Docket No. EL09-48-000
*The Connecticut Department of Public Utility Control, et al. v. ISO New
England Inc., et al.*

(Consolidated)

Dear Secretary Bose:

Please find attached for electronic filing the Connecticut Representatives' Expedited Application for Issuance of a Subpoena for the Production of Documentary Evidence to the ISO New England's Independent Market Monitor, Potomac Economics Ltd.

Please contact Kimberly Frank at telephone number (202) 682-3578 if you have any questions about this filing.

Respectfully submitted,

_____/s/
Randall L. Speck

Enclosure

cc: Service List

Requests to the ISO New England Independent Market Monitor, Potomac Economics Ltd. (“Data Requests”) and is necessary to obtain information regarding the allegations of market manipulation that are the subject of this proceeding.

I. BACKGROUND

On September 14, 2009, the Connecticut Representatives notified Potomac Economics via telephone that they intended to serve non-party data requests on Potomac Economics. Following the telephone call with Dr. David B. Patton, the President of Potomac Economics, counsel for the Connecticut Representatives e-mailed Dr. Patton a copy of the Data Requests that same day.

On September 15, 2009, via e-mail, Dr. Patton e-mailed counsel for the Connecticut Representatives that Potomac Economics was willing to accept service of the Data Requests.

II. REQUEST FOR SUBPOENA

Under Rule 409, it is well settled that the use of a subpoena is appropriate with respect to those who are not parties to the proceeding.¹ The Commission’s power to subpoena documents and other materials outside the context of the attendance of the person subpoenaed at a hearing or deposition springs from the legislative grant that it was given by Congress in Section 307 of the Federal Power Act, 16 U.S.C. § 825f.² A subpoena should be granted “if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant to the agency’s inquiry.”³

¹ See, e.g., *Transcontinental Gas Pipe Line Corp.*, 39 FERC ¶ 61,221, 61,783 (1987); *Trans Alaska Pipeline System*, 9 FERC ¶ 61,133, 61,267 n.9 (1979).

² *Enron Power Marketing, Inc., et al.*, Docket Nos. EL03-180-000, EL03-154-000, and EL02-115-008 (“Order Confirming Issuance of Subpoena,” Dec. 3, 2003).

³ *Transcontinental Gas*, 39 FERC at ¶ 61,783.

Although Potomac Economics is not a party to these proceedings, the information and documentary evidence it possesses as ISO New England's external market monitor is expected to lead to the production of relevant information that is necessary to develop a full and complete record.⁴ Specifically, responses to the attached requests will allow the Connecticut Representatives to discover and adduce evidence that is within the scope and purpose of the discovery related to the issues set for hearing.⁵ Moreover, the information requested in the attached requests is different from, additional to, and probative of the information retained by parties to this case.

III. REQUEST FOR EXPEDITIOUS HANDLING

The Connecticut Representatives respectfully request that this application be handled expeditiously, especially in light of the Track II procedural schedule. Moreover, assuming that Potomac Economics may object to some of the information sought through this subpoena, the Connecticut Representatives need time to resolve any potential motion to quash the subpoena and any motions to compel production.

IV. CONCLUSION

For the foregoing reasons, the Connecticut Representatives request that the Presiding Judge issue the attached subpoena to Potomac Economics, pursuant to Rule 409 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.409.

⁴ See *Williams Natural Gas Co.*, 72 FERC ¶ 61,170 (1995); *Mojave Pipeline Co.*, 38 FERC ¶ 61,249 (1987).

⁵ *Blumenthal, et al. v. ISO New England, Inc., et al.*, 128 FERC ¶ 61,182 at P 53-57 (Aug. 24, 2009); see *Colorado Interstate Gas Co.*, 11 FERC ¶ 61,178 (1980).

Date: September 15, 2009

Respectfully submitted,

/s/

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Counsel for the Connecticut Department of
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/s/

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Counsel for the Connecticut Office of Consumer
Counsel

/s/

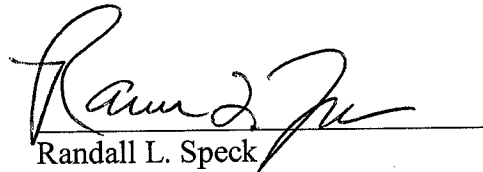
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Counsel for Richard Blumenthal, Attorney General
for the State of Connecticut

VERIFICATION

City of Washington)
)
District of Columbia) SS:

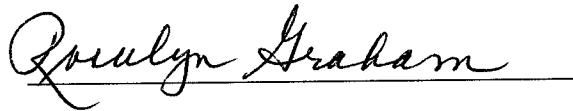
Randall L. Speck, after being sworn, deposes that he is a partner at Kaye Scholer LLP, Counsel for the Connecticut Department of Public Utility Control and Co-Counsel for the Connecticut Representatives, that he has read the attached Expedited Application for the Issuance of a Subpoena for the Production of Documentary Evidence and is familiar with its contents and that all statements of fact therein are true and correct to the best of his knowledge and information.


Randall L. Speck

Subscribed and sworn to
before me this 15th day of September, 2009.

Notary Public

My Commission Expires: 10/1/2011


Quelyn Graham

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

SUBPOENA DUCES TECUM

Richard Blumenthal, Attorney General)	
for The State of Connecticut)	
)	
v.)	Docket No. EL09-47-000
)	
ISO New England Inc., <i>et al.</i>)	

The Connecticut Department of Public)	
Utility Control and the Connecticut)	
Office of Consumer Counsel,)	
)	
v.)	Docket No. EL09-48-000
)	
ISO New England Inc., <i>et al.</i>)	

(Consolidated)

YOU ARE HEREBY COMMANDED, pursuant to Rule 409 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.409, to produce the documentary evidence and information designated below no later than ten business days from the date upon which you are served with this subpoena, or _____, 2009. Notice of any objections to full compliance with this subpoena should be given in writing as soon as possible, but not later than _____, 2009.

THIS RULE APPLIES TO THE SUBPOENA THAT IS BEING SERVED:

Pursuant to Rule 410(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.410, "a recipient of a subpoena, who does not intend to comply with a discovery request must notify in writing the participant seeking discovery within a reasonable time in advance of the date on which a response or other action in conformance with the discovery request is due. A recipient of the subpoena may either provide a notice of objection or file a motion to quash."

**CONNECTICUT REPRESENTATIVES' REQUESTS TO THE ISO NEW ENGLAND
INDEPENDENT MARKET MONITOR, POTOMAC ECONOMICS LTD.**

The Connecticut Department of Public Utility Control ("CT DPUC"), the Connecticut Office of Consumer Counsel ("CT OCC") and Richard Blumenthal, Attorney General for the State of Connecticut ("CT AG") (collectively, the "Connecticut Representatives") submit the following requests for information to Potomac Economics, Ltd., the ISO New England Inc. independent market monitoring unit ("IMMU"). Please provide all written and documentary responses as they become available, and in any case, not later than September ____, 2009.

The Connecticut Representatives request that the IMMU provide three copies of the data and information specified below, one each to

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In responding to these requests, please apply the following definitions and instructions:

DEFINITIONS

- A. “Commission” or “FERC” means the Federal Energy Regulatory Commission.
- B. “Data Request” includes interrogatories, data, discovery, and document requests.
- C. “Documents” refer to all writings and records of every type in your possession, control, or custody, including but not limited to: testimony and exhibits, memoranda, correspondence, letters, email messages, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, spreadsheets, charts, books, pamphlets, photographs, maps, bulletins, corporate or other minutes, notes, diaries, log sheets, ledgers, transcripts, microfilm, microfiche, computer data, computer files, computer tapes, computer inputs, computer outputs and printouts, vouchers, accounting statements, budgets, Workpapers, engineering diagrams (including “one-line” diagrams), mechanical and electrical recordings, telephone and telegraphic communications, speeches, and all other records, written, electrical, mechanical, or otherwise and drafts of any of the above. “Documents” includes copies of documents, where the originals are not in your possession, custody, or control. “Documents” include every copy of a document that contains handwritten or other notations or that otherwise does not duplicate the original or any other copy. “Documents” also include any attachments or appendices to any document.
- D. “Identification” and “identify”:
 - 1. when referring to a communication mean to (a) state the date, place, and circumstances of the communication; (b) identify each party to the

communication and each person who was present when it was made; (c) state the substance of the communication in detail; and (d) identify each document that memorializes or summarizes the communication.

2. when used with respect to a document mean to state (a) the nature of the document (e.g., letter, email, memorandum, corporate minutes); (b) the date, if any, appearing thereon; (c) the date, if known, on which the document was prepared; (d) the title of the document, the general subject matter of the document; (e) the number of pages comprising the document; (f) the identity of each person who wrote, dictated, or otherwise participated in the preparation of the document; (g) the identity of each person who signed or initiated the document; (h) the identity of each person to whom the document was addressed; (i) the identity of each person who received the document or reviewed it; (j) the location of the document; and (k) the identity of each person having possession, custody, or control of the document.

3. when used with respect to a person, mean to state (a) his or her full name; (b) his or her most recent known home address and telephone number; (c) his or her present title and position; and (d) his or her present and prior connections or associations with any participant or party to this proceeding.

F. “IMMU” means the ISO-NE external independent market monitoring unit, Potomac Economics Ltd., its employees, agents, consultants, representatives, attorneys, officers, directors, and any other person acting on behalf of Potomac Economics Ltd.

G. “INTMMU” means the ISO-NE internal market monitoring unit.

- H. “ISO-NE” refers to ISO New England Inc, its employees, agents, consultants, representatives, attorneys, officers, directors, and any other person acting on behalf of ISO New England Inc.
- I. “March 20, 2009 Filing” means the document, *ISO New England and New England Power Tool, Tariff Revisions Regarding Competitive Offer Requirement for Capacity Imports*, filed in FERC Docket ER09-873-000 and dated March 20, 2009.
- J. “March 19, 2009 LaPlante/O’Connor Testimony” means the testimony sponsored by Messrs. LaPlante and O’Connor in the March 20, 2009 Filing in FERC Docket No. ER09-873-000.
- K. “Market Rule” means ISO-NE’s FERC Electric Tariff No. 3, Section III – Market Rule 1, as is existed at any time during the Transition Period.
- L. “May 6, 2009 LaPlante/O’Connor Testimony” means the Joint Testimony of David LaPlante and John P. O’Connor filed on May 6, 2009 in FERC Docket Nos. EL09-47-000 and EL09-48-000.
- M. “NNY Capacity Resource” refers to any capacity resource that has committed during the Transition Period to import over the Northern New York AC Interface and has submitted offers in the energy market greater than \$329/MWh.
- N. “NYISO” or “New York ISO” means New York Independent Service Operator.
- O. “Relating to” or “related to” means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.
- P. “Tariff” means ISO-NE’s Electric Tariff filed with FERC.

- Q. “Transition Period” means the period from December 1, 2006, through June 30, 2009, inclusive.
- R. “UCAP” means Unforced Capacity, as defined in the ISO-NE Tariff.
- S. “Workpapers” means all Documents created, used, relied upon, cited, referenced, considered, rejected, and/or read by You and any of Your witnesses, consultants, or experts, including persons working at such witnesses’, consultants’, and/or experts’ direction.
- T. “You” or “Your” refers to Potomac Economics Ltd., the IMMU for ISO-NE.

INSTRUCTIONS

- A. These Data Requests are directed to the IMMU, including all of its past or present officers, directors, agents, or employees.
- B. These Data Requests call for all information, including information contained in documents, that relates to the subject matter of the Data Requests and that is known or available to You.
- C. Where a Data Request has separate subdivisions or related parts or portions, a complete response is required to each such subdivision, part, or portion. Any objection to a Data Request should clearly indicate the subdivision, part, or portion of the Data Request to which it is directed.
- D. If a Data Request specifically requests an answer in response rather than the production of documents, an answer is required. The production of documents will not suffice.
- E. These Data Requests are continuing in nature and require supplemental responses when further or different information with respect to the same is obtained.

- F. Each response should be furnished on a separate page headed by the individual data request being answered.
- G. Each Data Request to “provide all documents . . .” or similar phrases includes a request to identify all such documents.
- H. If a Data Request can be answered in whole or in part by reference to the response to another Data Request served in these proceedings, it is sufficient to do so by specifying the parts of the other response that are responsive, and by specifying whether the response to the other Data Request is a full or partial response to the instant Data Request. If it constitutes a partial response, the balance of the instant Data Request must be answered.
- I. If You cannot answer a Data Request in full, after exercising due diligence to secure the information necessary to do so, state the answer to the extent possible, state why You cannot answer the Data Request in full, and state what information or knowledge You have concerning the unanswered portions.
- J. If in answering any of these Data Requests You believe that any Data Request is ambiguous, set forth the language You believe is ambiguous and the interpretation You are using in responding to the Data Request.
- K. If a document requested is unavailable, identify the document, describe in detail the reasons why the document is unavailable, and state where the document can be obtained.
- L. If You refuse to respond to a Data Request by reason of a claim of privilege, or for any other reason, state the type of privilege claimed and the facts and circumstances You rely upon to support the claim of privilege or the reason for refusing to respond. With respect to requests for documents to which You refuse to respond, identify each such document.

- M. Identify the person who prepared each response and the person who will bear ultimate responsibility for the truth of each response.
- N. If no document is responsive to a Data Request that calls for a document, so state. In each such instance, the Data Request should be treated as an interrogatory.
- O. Responses to the Data Requests should be submitted as they become available.
- P. If information responsive to a Data Request is available in electronic format, please provide a diskette or CD containing the information in a program that is compatible with Microsoft Excel, Microsoft Word, or Adobe Acrobat. For any files containing formulas or links, please provide the responsive information with all formulas or links intact and enabled.
- Q. Unless another time period is specified, all data requests relate to the Transition Period.
- R. All dates are to be understood as though they were preceded by the phrase "on or about".
- S. The use of a verb in any tense shall be construed as the use of that verb in all other tenses, wherever necessary to bring within the scope of the requests information that might otherwise be construed to be outside their scope.
- T. The use of a word in its singular form shall be deemed to include within its use the plural form as well, and vice versa, wherever necessary to bring within the scope of the requests information that might otherwise be construed to be outside their scope.
- U. Any word or phrase that is defined in ISO-NE's Market Rule 1 shall have the same meaning in this Data Request.
- V. Each page of any documents produced should be stamped or otherwise marked with a unique sequential number that includes the alphabetic prefix "IMMU" (e.g., IMMU000001, etc.).

W. To the extent that responses to all requests cannot be completed by September __, 2009, please provide a schedule for the expected completion date for each request.

X. Please provide all responses to Data Requests by email and in an electronic form.

DATA REQUESTS

CT/IMMU 1-1. Please provide copies of all responses that the IMMU prepares in response to Data Requests by other participants in this proceeding, including the litigation Staff of the Commission's Office of Enforcement, and copies of Your Data Requests to other participants.

CT/IMMU 1-2. Please identify each communication that anyone at the IMMU had with either the INTMMU, ISO-NE or NYISO (including external or internal market monitoring entities) concerning the March 19, 2009 LaPlante/ O'Connor Testimony. For each such communication please provide

- a. The date and time of the communication;
- b. Whether the communication was oral or in writing and, if in writing, the form of the communication (*e.g.*, email, letter, memo, etc.);
- c. Any data or documents relating to the communication;
- d. The custodian of data or documents provided in Your response to (c);
- e. Each person who participated in the communication;
- f. The title of each person who participated in the communication; and
- g. The entire substance of the communication.

CT/IMMU 1-3. Please identify each communication that anyone at the IMMU had with the INTMMU, ISO-NE or NYISO (including external or internal market monitoring entities) concerning the May 6, 2009 LaPlante/O'Connor Testimony. For each such communication please provide

- a. The date and time of the communication;

- b. Whether the communication was oral or in writing and, if in writing, the form of the communication (*e.g.*, email, letter, memo, etc.);
- c. Any data or documents relating to the communication;
- d. The custodian of data or documents provided in Your response to (c);
- e. Each person who participated in the communication;
- f. The title of each person who participated in the communication; and
- g. The entire substance of the communication.

CT/IMMU 1-4. Please identify each communication that anyone at the IMMU had with ISO-NE, with the INTMMU, with any NNY Capacity Resource, or with the NYISO (including external or internal market monitoring entities) relating in any way to any NNY Capacity Resource's energy market offers (either in the Day-Ahead or Real-Time markets), the possible dispatch of those resources, the ability of those resources to perform if called, any decision whether those resources should be called, or any reliability need for those resources, from December 1, 2005 through August 31, 2009. For each such communication please provide

- a. The date and time of the communication;
- b. Whether the communication was oral or in writing and, if in writing, the form of the communication (*e.g.*, email, letter, memo, etc.);
- c. Any data or documents relating to the communication;
- d. The custodian of data or documents provided in Your response to (c);
- e. Each person who participated in the communication;
- f. The title of each person who participated in the communication;
- g. The entire substance of the communication; and
- h. Any documents relating to those Market Participants' offers since December 1, 2006, in the ISO-NE Day-Ahead or Real-Time energy markets.

CT/IMMU 1-5. Please provide any analysis or compilation that the IMMU has prepared relating to any of the NNY Capacity Resources' participation in the capacity market or their energy offers in the ISO-NE Day-Ahead or Real-Time energy markets after December 1, 2006. Please identify the author(s) and the date that analysis or compilation was prepared.

CT/IMMU 1-6. Please provide any communications that anyone at the IMMU had with any NNY Capacity Resource relating to its energy offers in the ISO-NE Day-Ahead or Real-Time energy markets, including

- a. The date and time of the communication;
- b. Whether the communication was oral or in writing and, if in writing, the form of the communication (*e.g.*, email, letter, memo, etc.);
- c. Any data or documents relating to the communication;
- d. The custodian of data or documents provided in Your response to (c);
- e. Each person who participated in the communication;
- f. The title of each person who participated in the communication; and
- g. The entire substance of the communication.

CT/IMMU 1-7. For each NNY Capacity Resource, please provide any communications that anyone at the IMMU had with any NNY Capacity Resource relating to its Installed Capacity commitments including

- a. The date and time of the communication;
- b. Whether the communication was oral or in writing and, if in writing, the form of the communication (*e.g.*, email, letter, memo, etc.);
- c. Any data or documents relating to the communication;
- d. The custodian of data or documents provided in Your response to (c);
- e. Each person who participated in the communication;
- f. The title of each person who participated in the communication; and

- g. The entire substance of the communication.

CT/IMMU 1-8. Please identify all communications and provide all documents prepared by the IMMU for the ISO-NE Board of Directors, any of its committees, or any member of the Board relating to the performance or energy offers of any NNY Capacity Resource in the energy market or the performance or Installed Capacity commitments of any NNY Capacity Resource in the capacity market. For each such communication, please provide

- a. The date and time of the communication;
- b. Whether the communication was oral or in writing and, if in writing, the form of the communication (*e.g.*, email, letter, memo, etc.);
- c. Any data or documents relating to the communication;
- d. The custodian of data or documents provided in Your response to (c);
- e. Each person who participated in the communication;
- f. The title of each person who participated in the communication; and
- g. The entire substance of the communication.

CT/IMMU 1-9. Please identify any communications between anyone at the IMMU with ISO-NE, with the INTMMU, with anyone at any of the NNY Capacity Resources, or with the NYISO (including external or internal market monitoring entities) relating to “the price of the energy export supply offers submitted by capacity importers in the New York market” (referenced in the May 6, 2009 LaPlante/O’Connor Testimony at 18:9-10) and for each such communication, please provide

- a. The date and time of the communication;
- b. Whether the communication was oral or in writing and, if in writing, the form of the communication (*e.g.*, email, letter, memo, etc.);
- c. Any data or documents relating to the communication;
- d. The custodian of data or documents provided in Your response to (c);

- e. Each person who participated in the communication;
- f. The title and employer of each person who participated in the communication;
and
- g. The entire substance of the communication.

CT/IMMU 1-10. According to Your 2008 Assessment of the Electricity Markets in New England (June 2009) at 16, at several factors prevent real-time price differences between New England and New York from being fully arbitrated. Please indicate whether You have analyzed how the NNY Capacity Resources' offering strategy affected arbitrage inefficiencies between New England and New York, and provide all documents and data related to Your analyses.

CT/IMMU 1-11. According to Your 2008 Assessment of the Electricity Markets in New England by Potomac Economics (June 2009) at 21, Your simulations showed that under optimal hourly scheduling consumers in both regions together would have saved \$320 million in 2006 and 2007, \$83 million of which would have been saved in New England. (a) Please indicate whether some portion of those savings is attributable to the optimization of the NNY Capacity Resources' offering strategy, and if so, please identify those savings. In addition, (b) please provide any simulation results updating this analysis for all or a portion of the 2008 or 2009 periods and (c) indicate whether some portion of those savings is attributable to the optimization of the NNY Capacity Resources' offering strategy, and if so, please identify those savings.

Date: September __, 2009

_____/s/
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 Public Utility Control

_____/s/
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Counsel for Richard Blumenthal, Attorney
 General for the State of Connecticut

/s/

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New Britain, CT 06051
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Fax: (860) 827-2929
Email: Joseph.Rosenthal@ct.gov

Counsel for the Connecticut Office of
Consumer Counsel

The undersigned, being duly and lawfully authorized so to do, hereby issues this Subpoena Duces Tecum at Washington, D.C., this _____ day of _____, 2009.

The Honorable H. Peter Young
Presiding Administrative Law Judge

IN TESTIMONY WHEREOF, the seal of the Federal Energy Regulatory Commission has been affixed hereto this _____ day of _____, 2009.

(Impress seal here)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above mentioned on this _____ day of _____, 2009.

My commission expires on the _____ day of _____, 20____.

MARSHAL'S RETURN OF SERVICE

The within subpoena was personally served on _____,
of _____
on the _____ day of _____, 2009 at _____.

United States Marshal

I **CERTIFY** that the person named herein was in attendance as a witness at _____
_____ on _____.

(Month, day or days, and year)

(Name of person certifying with official title)

