

151 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

ISO New England Inc.
New England Power Pool Participants Committee

Docket No. ER14-2407-004

ORDER GRANTING REHEARING

(Issued April 17, 2015)

1. By order issued September 9, 2014,¹ the Commission accepted ISO New England Inc.'s (ISO-NE)² proposed revisions to Market Rule 1 of its Transmission, Markets and Services Tariff (Tariff), intended to aid ISO-NE in maintaining reliability during winter 2014-2015 (2014-2015 Winter Reliability Program, or Program). The Commission also required ISO-NE to initiate a stakeholder process to develop a proposal to address reliability concerns for the 2015-2016 winter and future winters, as necessary, and submit informational progress reports. On October 9, 2014, the New England Power Generators Association, Inc. (NEPGA) filed a motion for clarification of the Commission's directive in the September 9, 2014 Order requesting that the Commission clarify that ISO-NE is required to implement a market-based winter reliability solution in time for the 2015-2016 winter. On January 20, 2015, the Commission granted NEPGA's motion for clarification to explain that the Commission intended that ISO-NE would determine whether a winter reliability solution is necessary for the 2015-2016 winter and future winters, and, if so, develop an appropriate market-based solution through the stakeholder process that can be implemented beginning with the 2015-2016 winter.³ ISO-NE seeks

¹ *ISO New England Inc. and New England Power Pool Participants Committee*, 148 FERC ¶ 61,179 (2014) (September 9, 2014 Order).

² This order refers to ISO-NE as the filing party; however, as detailed in the September 9, 2014 Order, the New England Power Pool Participants Committee (NEPOOL) also sponsored the original filing.

³ *ISO New England Inc. and New England Power Pool Participants Committee*, 150 FERC ¶ 61,029, at P 10 (2015) (January 20, 2015 Order).

rehearing of the clarification in the January 20, 2015 Order. As discussed below, we grant rehearing.

I. Background

2. On July 11, 2014, as amended on July 14, 2014, ISO-NE submitted the 2014-2015 Winter Reliability Program as a temporary, out-of-market solution to ensure adequate fuel supplies by creating incentives for dual-fuel resource capability and participation, offsetting the carrying costs of unused firm fuel purchased by generators, and providing compensation for demand response services. ISO-NE stated that the Program is modeled on the previous year's winter reliability program (sometimes referred to as 2013-2014 Winter Reliability Program).⁴

3. ISO-NE explained that, leading up to the 2014-2015 winter, ISO-NE was hopeful that market improvements such as offer flexibility changes⁵ and the Commission's clarification of generator obligations⁶ would sufficiently address the region's dependence on natural gas for the 2014-2015 winter. However, ISO-NE stated that three factors caused it to conclude that a program for the 2014-2015 winter was necessary: (1) the retirements of non-natural gas generation capable of producing a significant amount of energy during the winter period, (2) the fact that natural gas pipeline constraints during the 2013-2014 winter were worse than expected, and (3) resources had difficulty replenishing oil inventories mid-season during the 2013-2014 winter.

⁴ See *ISO New England Inc.*, 144 FERC ¶ 61,204 (2013), *reh'g denied*, *ISO New England Inc.*, 147 FERC ¶ 61,026 (2014) (accepting subject to condition 2013-2014 Winter Reliability Program); see also *ISO New England Inc.*, 145 FERC ¶ 61,023 (2013), *reh'g denied*, *ISO New England Inc.*, 147 FERC ¶ 61,027 (2014) (accepting, subject to condition, 2013-2014 Winter Reliability Program bid results).

⁵ See *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,014 (2013), *order on compliance*, 147 FERC ¶ 61,073 (2014). The offer flexibility changes refer to a set of market rule changes that will allow market participants to, among other things, submit hourly reoffers in the real-time market and submit offers that vary by hour.

⁶ See *New England Power Generators Ass'n, Inc. v. ISO New England Inc.*, 144 FERC ¶ 61,157 (2013) (absent demonstrated inability to obtain natural gas or transportation, ISO-NE's Tariff imposes a strict performance obligation on capacity resources).

4. ISO-NE stated that it anticipated the need for some form of a winter reliability program for each winter prior to implementation of the two-settlement capacity market design⁷ scheduled to take effect in June 2018. However, ISO-NE stated that it would evaluate whether it is feasible to design and implement a market-based solution for the remaining winters before the two-settlement capacity market design becomes effective.⁸

5. In the September 9, 2014 Order, the Commission accepted the proposed Tariff revisions. Noting that it still prefers a long-term, market-based solution, the Commission recognized the particular challenges to reliability for the coming winter and the temporary nature of the proposed Tariff provisions in making its determination.⁹ The Commission stated that it expects ISO-NE to abide by its commitment to develop a long-term, market-based solution to address winter reliability issues. Thus, the Commission directed ISO-NE to initiate a stakeholder process by January 1, 2015 to develop a proposal to address reliability concerns for the 2015-2016 winter and future winters, as necessary, and required ISO-NE to submit a stakeholder meeting schedule and periodic progress reports.¹⁰

6. Also in the September 9, 2014 Order, the Commission rejected commenters' requests for the Commission to initiate a section 206 proceeding and order ISO-NE to file a market-based winter program.¹¹ The Commission noted that ISO-NE has made efforts to address the region's dependence on natural gas by initiating market improvements through the stakeholder process such as offer flexibility changes in the energy market, as well as reserve market improvements that include changes to the failure-to-reserve

⁷ See *ISO New England Inc.*, 147 FERC ¶ 61,172 (2014), *order on compliance*, *ISO New England Inc.*, 149 FERC ¶ 61,009 (2014). The two-settlement capacity market design refers to the impending market design under which a resource that produces energy or provides reserves during Capacity Scarcity Conditions in excess of a *pro rata* share of its capacity supply obligation would receive additional revenue, while a resource that produces less than its *pro rata* share would face a reduction in its net capacity revenue. According to ISO-NE, the two-settlement capacity market design will create strong financial incentives for resources to perform during scarcity conditions, when energy and reserves are most needed, and remedy the problem that many New England resources currently fail to perform during scarcity conditions.

⁸ ISO-NE July 11, 2014 Transmittal at 9.

⁹ September 9, 2014 Order, 148 FERC ¶ 61,179 at PP 39-41.

¹⁰ *Id.* P 41.

¹¹ *Id.*

penalty and failure-to-activate penalty,¹² and by implementing a Reserve Constraint Penalty Factor (RCPF)¹³ for replacement reserves.¹⁴

7. On October 8, 2014, ISO-NE submitted an informational filing containing its proposed stakeholder meeting schedule. On December 8, 2014, February 6, 2015, and April 8, 2015, ISO-NE submitted informational filings containing progress reports on the stakeholder process.

8. As noted above, on October 9, 2014, NEPGA sought clarification that the September 9, 2014 Order required ISO-NE to develop and implement a market-based solution to address winter reliability issues in time for the 2015-2016 winter.¹⁵ On January 20, 2015, the Commission granted NEPGA's motion for clarification to the extent that it explained, "the Commission intended that ISO-NE would determine whether a winter reliability solution is necessary for the 2015-2016 winter and future winters, and, if so, develop an appropriate market-based solution through the stakeholder process that can be implemented beginning with the 2015-2016 winter."¹⁶ The Commission recognized that while the two-settlement capacity market design could help address winter reliability concerns in the future, that design will not be fully implemented until the 2018-2019 Capacity Commitment Period.¹⁷

II. Request for Rehearing

9. ISO-NE seeks rehearing of the January 20, 2015 Order's clarification that if ISO-NE determines that a winter reliability solution is necessary for the 2015-2016 winter and future winters, it must develop an appropriate market-based solution through the

¹² *ISO New England, Inc.*, Docket No. ER13-1733-000 (Aug. 15, 2013) (delegated letter order).

¹³ RCPFs set the proxy reserve market clearing price when available reserves are insufficient or the cost of sufficient reserves exceeds the RCPFs. ISO-NE notes that, since the reserve and energy markets are co-optimized, when RCPFs are triggered, energy market prices will increase as well.

¹⁴ *ISO New England, Inc.*, Docket No. ER13-1736-000 (Aug. 15, 2013) (delegated letter order).

¹⁵ NEPGA Motion for Clarification at 1.

¹⁶ January 20, 2015 Order, 150 FERC ¶ 61,029 at P 10.

¹⁷ *Id.*

stakeholder process that can be implemented beginning with the 2015-2016 winter. ISO-NE asks the Commission to permit the continuation of the current out-of-market winter reliability program construct, possibly with an expanded scope to encompass other resource types. ISO-NE states that the reversal is warranted given that the options for developing a market-based solution in the context of existing obligations are, at best, potentially less effective than the current winter reliability program, and, at worst, less effective, inefficient, controversial and expensive to implement.¹⁸ ISO-NE explains that the impending two-settlement capacity market design will resolve the current reliability issues by comprehensively defining generators' obligations and compensating them for meeting these obligations. However, ISO-NE states that there are two market-based approaches to improve the sufficiency of the existing structure in the short term: (1) adding obligations and related incentives (a proposal offered by NEPGA in the stakeholder process), or (2) enhancing incentives for existing obligations.¹⁹

10. ISO-NE explains that although NEPGA introduced a market-based proposal through the stakeholder process, that approach would layer obligations on top of the existing structure by compensating generators for providing a broad service like "reliability" or "availability." ISO-NE states that NEPGA's proposal involves developing a comprehensive market on top of the current framework, which is inefficient, and also would be controversial, resource-intensive, and expensive. According to ISO-NE, significant time would be spent in the stakeholder process on the more controversial aspects of the program, a protracted regulatory process and litigation are likely, and the implementation effort will displace other project priorities.²⁰ ISO-NE expects that NEPOOL participants and state regulators would dispute the many potentially contentious features of a new market including the application of the Peak Energy Rent rules, proposed exclusions that will forgive failures to perform, and an appropriate penalty structure.

11. ISO-NE states that, if the market structure is voluntary, the region runs the risk of insufficient participation, as occurred in the first iteration of the 2013-2014 winter program, and if the program is mandatory, there will be difficult issues to resolve regarding whether offers should be reviewed and potentially mitigated, whether a demand curve is required, and how to treat previously-cleared capacity resources.²¹ ISO-NE maintains that because full program implementation must occur by August in order to

¹⁸ Rehearing Request at 2.

¹⁹ *Id.* at 8-9.

²⁰ *Id.* at 9.

²¹ *Id.* at 10.

have time to run an auction, produce results, and give stakeholders time to prepare to supply the product beginning in December, other projects would have to be displaced to accommodate the schedule.²² ISO-NE states that it has already analyzed its Wholesale Markets Project Plan to assess projects that would be deferred and these include, at a minimum, efforts in 2015 related to the Generation Control Application and Coordinated Transaction Scheduling projects. ISO-NE states that deferral of these projects will have a ripple effect on projects scheduled in 2016 and beyond, including projects that target improved price formation in the energy market. Further, according to ISO-NE, if participation is too limited, the exemptions too numerous, or the incentives and penalties too few, the market will not produce the desired results. ISO-NE states that for this reason, as well as the concerns outlined above about the inefficiency of layering obligations on top of the current structure, ISO-NE abandoned plans to develop a “light” version of the two-settlement capacity market design to bridge the gap until 2018.²³

12. ISO-NE states that the other way to improve the existing structure is to strengthen the incentives for existing obligations, such as increasing RCPFs. ISO-NE states that the advantage of this approach is the relative simplicity of software and Tariff changes, which will create less disruption to other project priorities. ISO-NE states that increasing RCPFs is the only market option it has studied that has development and implementation costs proportional to its three-year life span and that strengthens incentives for real-time performance during winter scarcity conditions.²⁴ However, ISO-NE warns that this proposal may not provide the same fuel assurance as the current winter program because it relies on resource owners’ judgment regarding the appropriate actions to take in anticipation of a few potential high-priced periods, which are unpredictable due to a variety of system conditions. ISO-NE states that this is a concern under the current capacity market design.²⁵

13. If the Commission grants rehearing, ISO-NE states that it will work with stakeholders to develop an expanded version of the current winter program. ISO-NE states that it would maintain the structure in which generators are paid only for unused fuel at the end of the season, and the narrow objective will still be to compensate generators for adopting ISO-NE’s estimates of how much fuel is needed at the beginning

²² *Id.*

²³ *Id.* at 11.

²⁴ *Id.* at 12 (citing *ISO New England Inc.*, 147 FERC ¶ 61,172, at PP 108-109 (2014)).

²⁵ *Id.* at 12. The current capacity market design is in effect until the two-settlement capacity market design becomes effective in 2018.

of the winter. However, ISO-NE states that it “will commit to discuss with stakeholders ways in which the winter program could be expanded from prior versions to include payments to all resources that can supply the region with fuel assurance” and that it “will work to enhance the current program structure to compensate resources such as coal and nuclear units in addition to the oil, LNG and demand resources that have participated in the past.”²⁶ If the Commission does not grant rehearing, ISO-NE states it will propose to increase RCPFs although that measure may not provide the same fuel assurances as the current winter program.²⁷

III. Procedural Matters

14. On March 4, 2015, the New England States Committee on Electricity (NESCOE) filed a motion for leave to answer and limited answer to ISO-NE’s request for rehearing. Rule 713(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2014) prohibits an answer to a request for rehearing. Accordingly, we reject NESCOE’s answer.

15. On March 10, 2015, Brookfield Energy Marketing LP filed a motion to intervene. In ruling on a late-filed motion to intervene, the Commission applies the criteria set forth in Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), and considers, among other things, whether the movant had good cause for failing to file the motion within the time prescribed, whether any disruption to the proceeding might result from permitting the intervention, and whether any prejudice to or additional burdens upon the existing parties might result from permitting the intervention. Considering those factors, we find that Brookfield failed to justify late intervention after the Commission issued a final order in this proceeding, and accordingly we deny Brookfield’s late-filed motion to intervene.

IV. Discussion

16. For the reasons discussed below, we grant ISO-NE’s request for rehearing.

17. On rehearing, ISO-NE explains that it has considered market-based solutions to winter reliability, but ISO-NE’s assessment of the two options it considered—adding obligations and related incentives, or enhancing incentives for existing obligations

²⁶ *Id.* at 13. In its most recent informational filing, ISO-NE states that at the March 10-11 Markets Committee meeting, ISO-NE reviewed the design of the winter program, including possible means of expanding the program to additional resource types.

²⁷ *Id.* at 14.

(RCPFs)—raises serious concerns about whether ISO-NE will be able to implement a market-based solution that is cost-effective and provides an adequate level of reliability. Noting ISO-NE’s observation that a winter reliability solution may be necessary for the next several winters, we find that an expanded version of the current winter program might better produce the desired results in terms of reliability than the introduction, at this point in time, of the market-based solutions examined by ISO-NE. Thus, we grant rehearing to allow the possibility that ISO-NE may file additional out-of-market winter reliability programs until the two-settlement capacity market design becomes effective in 2018. However, the Commission expects ISO-NE to abide by its commitment to work with stakeholders to expand any future out-of-market winter reliability program to include “all resources that can supply the region with fuel assurance,” such as nuclear, coal, and hydro resources.²⁸ To that end, if any future out-of-market program is not fuel neutral, we expect that ISO-NE would provide a detailed description of the options it considered to make the program fuel neutral and why those options were ultimately not included.

The Commission orders:

The request for rehearing is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Clark is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁸ See *id.* at 13.

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CLARK, Commissioner, *concurring*:

I vote in favor of today's order as a matter of pragmatism given the practical challenges ISO New England asserts in its filing. Nonetheless, I must express a degree of frustration given ISO-NE's inability or reluctance to move a market-based solution through the stakeholder process that would relieve persistent winter reliability concerns.

Since its inception, it was my impression that the out-of-market Winter Reliability Program was intended to be a short-term, stop-gap method of ensuring system reliability. Within this limited context, the Winter Reliability Program was first proposed in 2013. Now, two years later, ISO-NE continues to view the Winter Reliability Program as a suitable option not only for the winter of 2015-2016, but for the winters of 2016-2017 and 2017-2018.

While the most recent Winter Reliability Program was an improvement over its earlier iteration, it must be noted that the subsidies provided by these Winter Reliability Programs are particularly detrimental within a predominantly restructured electricity regime like ISO-NE. In such regions, merchant generation is a critical component of installed system capacity. Such markets rely upon accurate price signals to guide complex, multi-year investment, operational and retirement decisions. Distortions to price signals, which may provide temporary rate relief, often lead to price and rate shock in later years, as supply and demand fundamentals seek to quickly correct imbalances that have been allowed to develop. As such, after the launch of the two-settlement capacity market design in 2018, which ISO-NE has indicated will solve reliability concerns throughout the operating year, it is my hope that this Commission will cast a critical eye towards continued requests for seasonal deployment of out-of-market reliability programs that continue to distort price and investment signals.

Accordingly, I respectfully concur.

Tony Clark
Commissioner

Document Content(s)

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