157 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.	Docket Nos. ER17-68-000
New England Power Pool Participants Committee	ER17-68-001

ORDER ACCEPTING PROPOSED TARIFF REVISIONS

(Issued December 9, 2016)

1. On October 12, 2016, pursuant to section 205 of the Federal Power Act (FPA),[1] ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (collectively, Filing Parties), jointly submitted proposed revisions to sections I and III of Market Rule 1 of ISO-NE's Transmission, Markets and Services Tariff (Tariff).[2] The Filing Parties state that the proposed revisions include resource dispatchability changes to improve price formation in the ISO-NE energy market and enhance overall system reliability.[3] As discussed below, we accept the proposed Tariff revisions, with different sections of the Tariff revisions to become effective December 12, 2016, December 1, 2018, and June 1, 2020, as requested.

[1] 16 U.S.C. § 824d (2012).

[2] ISO New England Inc., FERC FPA Electric Tariff, ISO New England Inc. Transmission, Markets and Services Tariff, I.2, I.2 Rules of Construction; Definitions, 92.0.0; III.1, III.1 Market Operations, 33.0.0; III.13.6, III.13.6 Rights and Obligations of Capacity Resources, 28.0.0; III.14 Regulation Market, III.14 Regulation Market, 8.0.0. ISO New England Inc., FERC FPA Electric Tariff, ISO New England Inc. Transmission, Markets and Services Tariff, I.2, I.2 Rules of Construction; Definitions, 94.0.0.

[3] Transmittal at 22. The Filing Parties submitted Part 1 and 2 Transmittals in Docket Nos. ER17-68-000 and ER17-68-001, respectively. The references herein refer to the Part 1 Transmittal.

I. Background and Summary of Filing

2. The Filing Parties state that dispatchable resources participate in ISO-NE's energy market by submitting priced energy offers that demonstrate the economic willingness of the Market Participant[4] to operate its resource, and that allow its price to be incorporated into the Locational Marginal Prices (LMP). The Filing Parties explain that, when a resource is dispatchable, it submits a supply offer into the energy market that is based on price ("price-based") and reflects the resource's economic and physical operating characteristics.[5] The Filing Parties state that dispatchable resources receive Dispatch Instructions[6] electronically from ISO-NE that require the resources to increase or decrease their output, based on the economic and physical parameters provided in each resource's supply offer. The Filing Parties explain that a resource that is non-dispatchable is not capable of receiving electronic Dispatch Instructions from ISO-NE, but instead receives a manual Dispatch Instruction through a call from ISO-NE to change its output. Furthermore, the Filing Parties explain that a non-dispatchable resource is permitted to self-schedule its resource for generation in the energy market.[7]

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[4] "Market Participant" is a participant in the ISO-NE markets (including a Financial Transmission Rights-Only Customer) that has executed a Market Participant Service Agreement, or on whose behalf an unexecuted Market Participant Service Agreement has been filed with the Commission. *See* ISO New England Inc., Transmission, Markets and Services Tariff, General Terms and Conditions, § I. 2.2, Definitions.

[5] Transmittal at 5.

[6] "Dispatch Instruction" means directions that ISO-NE gives to Market Participants, which may include instructions to start up, shut down, raise or lower generation, curtail or restore loads from Demand Resources, change External Transactions, or change the status of a Dispatchable Asset Related Demand in accordance with the Supply Offer, Demand Bid, or Demand Reduction Offer parameters. Such instructions may also require a change to the operation of a Pool Transmission Facility. Such instructions are given through either electronic or verbal means. *See* ISO New England Inc., Transmission, Markets and Services Tariff, General Terms and Conditions, § I.2.2, Definitions.

[7] For a generator asset, "Self-Schedule" is the action of a Market Participant in committing or scheduling its Resource, in accordance with applicable ISO-NE manuals, to provide service in an hour, whether or not in the absence of that action the Resource would have been scheduled or dispatched by ISO-NE to provide the service. For a

(continued...)

3. The Filing Parties explain that the three principal market design changes will: (1) apply dispatchability requirements to a broader range of resources, (2) require intermittent resources participating in the Forward Capacity Market to offer into the day-ahead energy market,[8] and (3) facilitate participation of alternative technologies that both consume and inject energy in the energy market as dispatchable resources.[9] The Filing Parties also state that the proposed revisions update the definition of settlement-only resources to clarify how the capacity of these resources is measured.[10]

4. The Filing Parties state that to achieve these goals, the proposed revisions will require non-dispatchable resources to purchase equipment and communications software to respond to electronic Dispatch Instructions. The Filing Parties explain that Market Participants will need to order a Remote Terminal Unit (RTU) to receive electronic signals, and a communication circuit to connect the RTU to the ISO-NE network. The Filing Parties also explain that the proposed revisions require Market Participants to submit order forms for equipment to ISO-NE by January 15, 2017, and resources must work with ISO-NE to become dispatchable within 12 months of ordering the equipment. According to the Filing Parties, if a Market Participant is not able to convert to a dispatchable resource within 12 months, the Market Participant must submit a plan to ISO-NE that explains how the Market Participant will become dispatchable on a reasonable timeline.[11]

5. The Filing Parties state that there are approximately 5,200 MW of generation capacity that currently operate as non-dispatchable resources and therefore are not

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generator asset, Self-Schedule is the action of a Market Participant in committing or scheduling a generator asset to provide energy in an hour at its economic minimum limit, whether or not in the absence of that action ISO-NE would have scheduled or dispatched the generator asset to provide the energy. *See* ISO New England Inc., Transmission, Markets and Services Tariff, General Terms and Conditions, § I.2.2, Definitions. Transmittal at 6.

[8] Filing Parties request an effective date of December 12, 2016 for these revisions. Transmittal at 2-3.

[9] Filing Parties request an effective date of December 1, 2018 for these revisions. Transmittal at 3.

[10] Filing Parties request an effective date of June 1, 2020 for these revisions. Transmittal at 3, 16.

[11] Transmittal at 12-13.

required to respond to electronic Dispatch Instructions. The Filing Parties further state that the proposed revisions mostly impact 300 MW of settlement-only resources and 900 MW of intermittent power resources, and would not apply to 4,000 MW of nuclear and solar resources.[12]

6. The Filing Parties state that the proposed revisions do not prohibit a dispatchable resource from self-scheduling at its economic minimum output level, and dispatchable resources can adjust their offer prices either through a day-ahead energy market offer, or adjustments to hourly offers in the real-time energy market, to generate above an economic minimum level.[13] According to the Filing Parties, dispatchable resources will submit supply offers into the energy market that reflect prices at which they are willing to provide energy, and participants can shape hourly offers to reflect willingness to generate at particular output levels at certain times during the day, including willingness to offer at high prices at night.

7. The Filing Parties state that the proposed revisions provide reliability benefits because they will allow system operators to respond more efficiently to potential system emergencies by not requiring time-consuming manual actions to dispatch resources to increase or decrease their output.[14] In addition, the Filing Parties state that these revisions improve price formation because they more directly incorporate these non-dispatchable, intermittent power resources into LMP. The Filing Parties explain that non-dispatchable generators cannot be "marginal" and therefore cannot participate directly in price formation; thus, they request ISO-NE to schedule their resources as

[12] Transmittal at 9-10. The Filing Parties state that they plan to eventually develop dispatchability rules for solar resources when ISO-NE has developed a more accurate forecasting mechanism for these resources. The Filing Parties also state that nuclear resources will remain non-dispatchable because these facilities receive Dispatch Instructions through telephone communications, and electronic communications could create duplicative Dispatch Instructions that would be confusing and could delay response during critical times. *Id.* at 10 - 11.

[13] The Filing Parties explain the rules require offer prices to be adjusted instead of the dispatchable resource calling ISO-NE to re-declare an economic minimum level. Transmittal at 13.

[14] Transmittal at 7. The Filing Parties state that this issue is most evident in export constrained areas during low load conditions, such as during night hours, when significant proportions of generation can be non-dispatchable and generation can exceed load.

"price takers" that are willing to accept any price for their output.[15] According to the Filing Parties, the proposed revisions would require non-dispatchable resources to reflect their desire to generate in a price-based supply offer, which would be reflected in a LMP value.

8. The Filing Parties state the rule changes are closely related to the Do Not Exceed (DNE) Dispatch rules that were accepted in 2015.[16] The Filing Parties state that the DNE rule changes applied dispatchability requirements to largely wind and solar resources, whereas the proposed revisions for resource dispatchability rule requirements will expand dispatchability requirements to the other types of intermittent resources including wood-burners, trash burners, and settlement-only resources.

II. Notice of Filing and Responsive Pleadings

9. Notice of the Filing Parties' filing was published in the Federal Register, 81 Fed. Reg. 71,715 (2016), with interventions and protests due on or before November 2, 2016. Timely-filed motions to intervene were submitted by National Grid, Exelon Corporation, Kimberly-Clark Corporation, Entergy Nuclear Power Marketing, LLC, NRG Power Marketing LLC, and GenOn Energy Management, LLC. Eversource Energy Service Company (Eversource) filed a timely motion to intervene and comments on November 2, 2016. On November 17, 2016, ISO-NE and NEPOOL filed answers.

A. Comments

10. Eversource states that the proposed revisions for resource dispatchability requirements do not address impacts on: (1) exemptions and legal rights of qualified facilities (QFs); (2) legal obligations of host utilities under the Public Utility Regulatory Policies Act of 1978 (PURPA);[17] and (3) the Commission's regulations implementing PURPA.

11. Eversource states that the Filing Parties' proposed revisions will integrate many of its QF resources into the ISO-NE markets, without consideration of existing PURPA contracts with host utilities and the Commission's PURPA regulations. Furthermore, Eversource states, QF suppliers that are: (1) 20 MW or less, (2) under a contract

[15] Transmittal at 6.

[16] The Filing Parties refer to Docket No. ER15-1509-000, *et al*.

[17] 16 U.S.C. § 824a-3 (2012).

executed before March 17, 2006, or (3) under a state regulatory authority's implementation of PURPA are exempted from sections 205 and 206 of the FPA.[18]

12. Eversource asserts that the proposed revisions also conflict with section 292.304(d) of the Commission's regulations,[19] positing that the revisions constrain the ability of QFs to determine the amount of energy available for PURPA sales. Specifically, according to Eversource, the revisions violate the right for QFs to have the option to provide energy or capacity to be available for purchase, or to provide energy pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term. Eversource argues that the Filing Parties' proposed revisions would remove the ability for QFs to decide whether to make any energy available for PURPA sales.

13. Additionally, Eversource states that the proposed revisions are inconsistent with section 292.307(b) of the Commission's regulations, which Eversource asserts bars a utility from curtailing purchases from a QF unless there is a system emergency.[20] Eversource also states that by allowing ISO-NE to send dispatch instructions that request QFs to not operate, the revisions allow host utilities to forgo their mandatory purchase obligations under section 210(m) of PURPA. According to Eversource, ISO-NE does not have the authority to adopt market rules that would relieve host utilities of their mandatory purchase obligations under PURPA.

14. Eversource further states that the Commission has accepted market rules that provide QFs either an option to elect to provide energy as a behind-the-meter resource acting as a load-reducer, or a hybrid option to participate in organized markets, as a proxy for making as-available sales under existing PURPA contracts.[21] Eversource argues the Filing Parties have not provided these options for QFs in their proposed revisions, and, even if the Commission determines QFs can preserve their PURPA rights by submitting supply offers into the energy market at the offer price floor, the imposition of equipment installation costs and requirements in order to do so is contradictory to the exemption from section 205 of the FPA. According to Eversource, it would be unjust and

[18] Eversource Comments at 5-6 (citing 18 C.F.R. 292.601(c)(1) (2016)).

[19] Eversource Comments at 6 (citing 18 C.F.R. § 292.304(d) (2016)).

[20] Eversource Comments at 6 (citing 18 C.F.R. § 292.307(b) (2016)).

[21] Eversource Comments at 7. *See Occidental Chemical Corp. v. The Midwest Independent System Operator,* Inc., 155 FERC ¶ 61,068 (2016) (*Occidental*).

unreasonable to impose equipment costs on QFs for engaging in activities that are exempt from section 205 of the FPA.

B. Answer

15. In its answer, ISO-NE states that Eversource's comments are based on the premise that the proposed revisions will require QFs with which Eversource has power purchase agreements to participate in ISO-NE's markets, interfering with their PURPA contracts. ISO-NE states that the proposed revisions do not require a QF to sell energy into ISO-NE's energy market in lieu of selling energy to its host utility at an avoided cost rate, and the proposed revisions do not affect the QF's right to sell to its host utility. ISO-NE states that its proposed revisions apply only to registered participants in ISO-NE's markets, and QFs that are affected by the proposed revisions have already registered their generation assets with ISO-NE.[22]

16. ISO-NE states that, if a QF wants to sell its energy at its contracted avoided cost rate, it can offer into the market at a price low enough to ensure it will clear and run in real time. ISO-NE further explains that, if the QF wants to run at full capacity during certain hours, and at less than full capacity during other hours, then it can shape its offer to ensure that it clears the market for hours it wants to run. Moreover, ISO-NE explains, if a QF does not clear the day-ahead market, but may need to run in the real-time market, then it can self-schedule in the real-time market as a price taker at its economic minimum limit in order to do so.[23]

17. ISO-NE disagrees with Eversource's assertion that curtailment of a QF violates the host utility's mandatory purchase obligation. ISO-NE argues that QFs have flexibility through self-scheduling and economic offer parameters to prevent their facilities from being dispatched down (i.e., effectively curtailed), except in the event of a system emergency, which ISO-NE asserts the Commission has previously accepted.[24] ISO-NE argues that it is permissible for ISO-NE to dispatch the resource down within the range provided by the QF. ISO-NE states any dispatch regime, including a QF's dispatchable range, can be curtailed in response to a potential or actual system emergency to avoid imminent loss of load, disruptions of service, and threats to life or property,

[22] ISO-NE Answer at 5.

[23] ISO-NE Answer at 6.

[24] ISO-NE Answer at 7 (citing *Occidental*).

including a transmission constraint.[25] ISO-NE states these are non-discriminatory curtailments of QFs that are consistent with the Commission's regulations implementing PURPA.[26]

18. ISO-NE argues that its market rules provide QFs the equivalent to the Midcontinent Independent System Operator, Inc.'s "hybrid QF" option that ISO-NE states the Commission accepted in *Occidental*.[27] ISO-NE explains that there are several ways a QF can participate in ISO-NE's energy markets and receive a PURPA avoided cost rate, including bilateral transactions or by designating the resource as being owned by the host utility.[28] Furthermore, ISO-NE states that QFs in the ISO-NE region are not obligated to participate in ISO-NE's energy markets, and a QF can choose to operate exclusively as a behind-the-meter resource on its host utility's system.[29]

19. ISO-NE additionally states that the proposed revisions are not contrary to the Commission's regulations exempting certain sales by QFs under sections 205 and 206 of the FPA. ISO-NE asserts that nothing in the proposed revisions would compel a QF to submit a rate under section 205 or would make the price of any QF's sales subject to review under section 206. ISO-NE also takes issue with Eversource's assertion the proposed revisions require QFs to install equipment in order to preserve their PURPA rights. ISO-NE responds that Eversource overlooks the fact that the proposed revisions apply only to generators that have chosen to register with ISO-NE. ISO-NE asserts that it is reasonable for registered resources, including QFs, to be subject to ISO-NE's operational control. Further, according to ISO-NE, the assignment of capital and operating costs of equipment required to comply with the proposed revisions is not at issue in this proceeding and should be dismissed as outside the scope of this proceeding.[30]

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[25] ISO-NE Answer at 8 (citing *Reliability Standard TOP-001-1 - Reliability Responsibilities and Authorities*, North American Electric Reliability Corporation B.R2).

[26] ISO-NE Answer at 8-9 (citing 18 C.F.R. § 292.307(b) (2016) and *Occidental* at P 74).

[27] ISO-NE Answer at 9.

[28] ISO-NE Answer at 10 (citing e Tariff § I.2.2, Internal Bilateral for Market for Energy; Market Rule 1, Tariff § III.1.7.10).

[29] ISO-NE Answer at 11 (citing Manual M-RPA §§ 1.4.3, 1.5.3).

[30] ISO-NE Answer at 13.

20. In its answer, NEPOOL urges the Commission to accept the proposed revisions as filed, without modification or condition. According to NEPOOL, Eversource raised its concern during the NEPOOL stakeholder process; however, Eversource did not suggest any revisions to the rule changes to address its concern.[31] NEPOOL states that at the July 2016 Markets Committee Meeting, ISO-NE described how QFs would be treated under various circumstances, explaining that the changes would only impact QFs that elected to register, and even those QFs retained the right to control their dispatch by self-scheduling. NEPOOL states that no effort was made at the August 5, 2016 Participants Committee meeting to explain why different treatment for different QFs was reasonable or justified.

21. NEPOOL argues that Eversource was not persuasive, in either the NEPOOL stakeholder process, or in its filed comments, in explaining why it is necessary or even desirable to provide some QFs preferential or discriminatory treatment over other resources, be they QFs or not. NEPOOL explains that unless QFs voluntarily register to be subject to central dispatch, they are under no obligation to participate in the ISO-NE markets. Thus, for any QF that is not registered, the proposed revisions do not affect how the QF decides to sell energy under PURPA. According to NEPOOL, even if a QF has registered, it still has the ability under the proposed revisions to control its output by self-scheduling.[32]

III. Commission Determination

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that has assisted us in our decision-making process.

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[31] NEPOOL Answer at 3-4.

[32] NEPOOL Answer at 7 (citing to NEPOOL n.21. *See* October 12 Filing at 13. Under the proposed revisions, pursuant to Section III.1.10.9(d), a Market Participant with a Dispatchable Resource can continue to request to Self-Schedule the resource at its Economic Minimum Limit).

B. Substantive Matters

24. The Commission accepts ISO-NE's proposed Tariff revisions, to become effective December 12, 2016, December 1, 2018, and June 1, 2020, as requested. The Filing Parties anticipate improvements to price formation and reliability as a result of these rule changes, benefits that are undisputed on the record here.

25. Eversource's concerns relate solely to QFs. Eversource asserts that the proposed revisions violate the PURPA rights of QFs and that the revisions will integrate many of the QFs into the ISO-NE energy markets without recognition that the QFs are exempt from FPA sections 205 and 206.[33] We disagree. First, as ISO-NE states, a QF is not obligated to participate in the ISO-NE administered energy markets and can instead choose to operate exclusively as a behind-the-meter resource on its host utility's system and not be under ISO-NE's direct operational control and not be subject to the proposed revisions.[34] As ISO-NE states, only Market Participants that have chosen to be registered with ISO-NE are required to comply with the proposed revisions. Therefore, if QFs prefer not to comply, they have the option to not register, or to deregister, as Market Participants and act as behind-the-meter resources without impacting their PURPA obligations and rights.

26. Additionally, we disagree with Eversource's argument that the revisions place a constraint on how registered QFs are able to decide what energy they make available to PURPA sales[35] and that the revisions undermine host utilities' mandatory QF purchase obligations under PURPA. In its answer, ISO-NE explains that two options are available to QFs to sell their energy at a predetermined contracted avoided cost rate: (1) using internal bilateral transactions[36] or (2) identifying the host utility as the "owner" of the QF.[37] ISO-NE states in its answer that most QFs in the ISO-NE region use this latter

[33] Eversource Comments at 5-6 (citing to 18 C.F.R. § 292.601(c) (2016)).

[34] ISO-NE Answer at 11.

[35] Eversource Comments at 6, (citing to 18 C.F.R. § 292.304(d) (2016)).

[36] An internal bilateral transaction is a transaction in the ISO-NE energy market where the buyer receives a reduction of MWs while the seller receives the corresponding increase. *See* Tariff § I.2.2, Internal Bilateral for Market for Energy; Market Rule 1, Tariff § III.1.7.10.

[37] ISO-NE Answer at 10-11 and n.32. ISO-NE suggests that the "ownership" designation would only apply for purposes of ISO-NE markets.

approach of identifying the host utility as the owner. ISO-NE additionally states that the proposed revisions will not restrict the amount of energy QFs sell to their host utilities. ISO-NE explains that a resource that does not clear the day-ahead energy market, but which needs to run in real time, may self-schedule in the real-time energy market as a price taker at its economic minimum limit, and then may adjust its price for incremental energy above its economic minimum limit to maximize its likelihood of being dispatched,[38] e.g., it may self-schedule by offering at the economic minimum limit at the offer price floor of -$150 per MWh.[39] We find that QFs participating in ISO-NE may rely on the above strategies and market mechanisms to effect PURPA sales to their host utility and preserve their PURPA obligations and rights.

27. Finally, Eversource argues that the rule changes represent an unlawful forced waiver of curtailment priority to QFs under PURPA. We disagree. ISO-NE explains that it will dispatch each resource only in accordance with the physical and economic parameters specified by the resource in its energy market supply offers, and a resource owner can "shape its offer" by submitting an offer consistent with its actual operating parameters, to communicate its level of dispatchability.[40] Additionally, the Commission's regulations allow an ISO/RTO to curtail QFs selling under PURPA in the event of a system emergency.[41] According to ISO-NE, nothing in the proposed revisions compromises QFs' protection from curtailments other than in system emergencies.[42] No evidence has been provided here to support a restriction on ISO-NE's ability to take reasonable actions to prevent or remedy the occurrence of system emergencies.

28. Given ISO-NE's explanation of strategies and market mechanisms available to QFs participating in ISO-NE and ISO-NE's commitment that nothing in the proposed revisions requires QFs to register as Market Participants or compromises their protection from curtailments other than in system emergencies, we find that the proposed revisions will not compromise QF PURPA obligations and rights.

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[38] ISO-NE Answer at 6-7.

[39] Transmittal at 7.

[40] ISO-NE Answer at 5-6.

[41] Lowell Testimony at 23-24.

[42] 18 C.F.R. § 292.307(b)(1) (2016); *see also* 18 C.F.R. § 292.101(b)(4) (2016) ("*System emergency* means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.").

The Commission orders:

Filing Parties' proposed Tariff revisions are hereby accepted, to become effective December 12, 2016, December 1, 2018, and June 1, 2020, as requested.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.