

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

ISO New England Inc.

)

Docket No. ER14-1939-000

**COMMENTS OF
THE NEW ENGLAND POWER POOL PARTICIPANTS COMMITTEE**

(May 19, 2014)

Pursuant to Rule 212 of the Commission's¹ Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2014), the New England Power Pool ("NEPOOL") Participants Committee² hereby provides its comments ("NEPOOL Comments") to the requested waiver filing submitted by ISO New England Inc. ("ISO-NE") on May 9, 2014 in the above-referenced proceeding³ (the "Waiver Filing"). NEPOOL appreciates the efforts of ISO-NE to involve stakeholders in its consideration of how to handle a potential new Capacity Zone for the ninth Forward Capacity Auction ("FCA 9"). Given the circumstances here and how quickly this matter has unfolded, the request for waiver was not presented separately to NEPOOL for vote and, accordingly NEPOOL does not take a position on the waiver request. NEPOOL presents these comments, though, to

¹ Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in ISO-NE's Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (the "Tariff"), the Second Restated New England Power Pool Agreement and the Participants Agreement ("PA"). Section III of the Tariff is referred to as "Market Rule 1."

² NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and it has grown to include approximately 430 members. The Participants include all of the electric utilities rendering or receiving services under the ISO Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, demand response providers, end users, developers, and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission in *ISO New England Inc. et al.*, 109 FERC ¶ 61,147 (2004), the Participants act through the NEPOOL Participants Committee. The NEPOOL Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. NEPOOL is the principal stakeholder organization for the New England Regional Transmission Organization ("RTO").

³ NEPOOL timely moved to intervene in the above-captioned docket by document-less intervention on May 14, 2014.

underscore the importance of including stakeholder input in the development of changes to Capacity Zones.

I. BACKGROUND

On January 31, 2014, ISO-NE submitted proposed changes to the ISO-NE Tariff to address Capacity Zone formation in the ISO-NE Forward Capacity Market (“FCM”) to comply with the Commission’s directions in Docket No. ER12-953-004 (the “Compliance Proposal”). NEPOOL did not support those changes.⁴ In that filing ISO-NE proposed a method for identifying Capacity Zones and a process for NEPOOL input into, and Commission review of, proposed new Capacity Zones. Among other features, the Compliance Proposal contained a provision that requires ISO-NE to receive Commission approval of any new proposed Capacity Zone boundary prior to the Existing Capacity Qualification Deadline in the FCM for the use of that new boundary in an upcoming Forward Capacity Auction (“FCA”).

While NEPOOL did not support the Compliance Proposal, it worked closely and constructively with ISO-NE to ensure a process whereby any proposed change to boundaries of the Capacity Zones would be submitted to the NEPOOL Reliability Committee for a vote before those changes were filed with the Commission for approval. In the agreed-upon stakeholder process, ISO-NE also committed: (i) to keep the Markets Committee currently apprised of stakeholder discussions about potential changes to Capacity Zones, given the potentially material market effects of such changes; and (ii) to propose further changes to the ISO-NE Tariff to eliminate the restriction on trading Capacity Supply Obligations between Capacity Zones in time for use in the Capacity Commitment Period covered by FCA 9.

⁴ NEPOOL filed comments in that proceeding on February 21, 2014, describing the stakeholder process and its result.

On April 28, 2014, the Commission issued its order accepting ISO-NE's Compliance Proposal,⁵ including ISO-NE's commitment to submit proposed new Capacity Zone boundaries for Commission approval. During the first part of 2014, while awaiting the Commission's order, ISO-NE presented to stakeholders information concerning the potential for a new Southeastern Massachusetts/Rhode Island ("SEMA/RI") Capacity Zone. Those presentations were made both to the non-voting Planning Advisory Committee and the voting NEPOOL Reliability Committee. ISO-NE signaled its intent then, and ultimately decided to use SEMA/RI as a new Capacity Zone boundary for the upcoming FCA 9.

Given the April 28 Order, and the Existing Capacity Qualification Deadline of June 2, 2014, there was insufficient time for completion of the stakeholder process, a FERC filing, and approval of the proposed new Capacity Zone to meet the requirements of the Tariff. Accordingly, rather than delay the implementation of a new Capacity Zone beyond FCA 9, ISO-NE is requesting the Commission to approve a one-time waiver of the provision of Section III.12.3 of the Tariff.⁶ That provision requires that any new Capacity Zone to be used in a given FCA receive approval from the Commission prior to the Existing Capacity Qualification Deadline for that FCA.⁷ Alternatively, ISO-NE requests that, if the Commission does not grant a waiver of Section III.12.3 of the Tariff, the Commission approve the SEMA/RI Capacity Zone boundary on or before May 30, 2014, so that the SEMA/RI Capacity Zone may be modeled in FCA 9.⁸

⁵ *ISO New England, Inc.*, 147 FERC ¶ 61,071 (April 28, 2014) (the "April 28 Order").

⁶ ISO-NE Waiver Filing at 1.

⁷ *Id.*

⁸ *Id.*

II. COMMENTS

The circumstances identified above prevented the opportunity for NEPOOL to discuss or vote on ISO-NE's waiver request in this proceeding, so NEPOOL is not in a position either to support or oppose ISO-NE's waiver request. The Commission has set a high bar for permitting waivers of the filed rate, but has found waivers justified provided the waiver criteria are met.⁹ NEPOOL members rely on the markets being administered in accordance with the Tariff and, as a general matter, waivers can cause problems and concerns for members who reasonably have that reliance. Had ISO-NE not provided an opportunity for formal NEPOOL input through the Reliability Committee on ISO-NE's underlying proposed Capacity Zone boundary change, the ISO-NE requested waiver would be far more troubling. Also, absent the special circumstances presented here, ISO-NE's failure to comply with the Tariff would very likely draw heavy opposition. Here though, ISO-NE sought to work within the spirit of its commitments and to provide meaningful opportunities for stakeholder input. Accordingly, NEPOOL asks that the Commission apply its standard for permitting waivers and grant ISO-NE's waiver request only if it has concluded that the standard has been met here.

If the Commission does grant the waiver, NEPOOL urges that the order make clear the Commission's expectation that there will be follow-through on the commitments made with stakeholders during the process to consider the Compliance Proposal. One of those commitments was to propose revisions to Market Rules to eliminate the restriction on trading Capacity Supply Obligations between Capacity Zones. At the January 10, 2014 Participants

⁹ The Commission has previously granted requests for waivers of tariffs in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem must be remedied; and (3) the waiver does not have undesirable consequences, such as harming third parties. See e.g., *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078 at P 38, n. 36 (2014).

Committee meeting, ISO-NE indicated it would support this change in 2014, in time for use in the Capacity Commitment Period covered by FCA 9, but requested that a Vote on this item be deferred until ISO-NE has worked through all the supporting details internally and with NEPOOL. NEPOOL unanimously supported this request with the understanding that this matter would be worked on with the Markets Committee, commencing soon. ISO-NE has begun the Tariff revision process to eliminate restrictions on trading Capacity Supply Obligations between Capacity Zones, and NEPOOL expects ISO-NE to fulfill its commitment in the near future in time for FCA 9.

A second ISO-NE commitment was to bring any proposed change to boundaries of the Capacity Zones to the Reliability Committee for a Vote before filing such proposed change with the Commission. This is an important commitment to NEPOOL because it provides the only opportunity for formal NEPOOL input into the decision to change Capacity Zone boundaries early enough to be meaningful in ISO-NE's development of the various FCM auction parameters. ISO-NE's related commitment to keep the Markets Committee involved in a timely and effective way in stakeholder discussions on potential changes to Capacity Zones provides further potential for meaningful and informed input on such changes.

As noted in ISO-NE's filing in this proceeding, the Reliability Committee was given the chance to consider and vote on ISO-NE's proposal for a new SEMA/RI Capacity Zone boundary. In this case, while the Vote was not unanimous, the Reliability Committee did support ISO-NE's analysis as being in accordance with the Capacity Zones rules as filed with the Commission. For the information of the Commission, NEPOOL notes that all members present from the Publicly Owned Sector opposed the motion on the SEMA/RI Capacity Zone boundary

and abstentions were noted from three other members, one from the Generation Sector and two from the Supplier Sector.

III. CONCLUSION

Given the circumstances here, NEPOOL requests that the Commission (1) consider this information in its evaluation of the ISO-NE Waiver Filing, (2) ensure that the facts here satisfy the standard for approving a waiver of the filed rate, and (3) signal in the order on the ISO-NE requested waiver the Commission's expectation that ISO-NE will follow through on the two commitments made in connection with the Compliance Proposal.

Respectfully submitted,
NEPOOL Participants Committee

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document to be served electronically upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission.

Dated at Boston, Massachusetts this 19th day of May 2014.

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