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**VIA ELECTRONIC FILING**

The Honorable Philis Posey  
Acting Secretary  
Federal Energy Regulatory Commission  
Room 1A-East, First Floor  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: ISO New England Inc., Docket No. ER07-546-000**

Dear Ms. Posey:

Attached for electronic filing in the above-referenced docket is the *Motion for Leave to Answer and Answer 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.  
Robin E. Remis, Esq.

Counsel for ISO New England Inc.

Attachment

cc: Official Service List



and Comments on Revisions to Market Rule 1 Relating to the Forward Capacity Market (“New England PUCs Answer”).<sup>3</sup>

## I. INTRODUCTION

To the extent that certain arguments have already been raised and addressed in the ISO’s Answers filed on March 23, 2007, and March 30, 2007,<sup>4</sup> the ISO, in this *Answer*, incorporates by reference its responses therein and does not elaborate on them here. However, with respect to certain arguments raised by FirstLight and the New England PUCs, the ISO provides the instant *Answer* to clarify the issues, assure a more complete record in this proceeding, and otherwise assist the Commission in understanding and resolving the issues raised in these specific Answers.

Only after the conclusion of the stakeholder process and the filing of the FCM market rules, FirstLight seeks to expand the definition of demand resources in the FCM to include certain resources that generate electricity rather than reduce load, *i.e.*, pumped storage facilities. Such an unauthorized expansion is inconsistent with the FCM Settlement, contrary to the market rules and is simply an unjustified attempt to exploit the market rules and unwarrantedly extract money from consumers. Additionally, in response to comments raised by certain parties<sup>5</sup>

<sup>3</sup> Motion to Answer and Answer by the Connecticut Department of Public Utility Control, the New Hampshire Public Utilities Commission, and the New England Conference of Public Utility Commissioners to Protests of and Comments on Revisions to Market Rule 1 Relating to the Forward Capacity Market, Docket No. ER07-546-000 (filed March 23, 2007) (“New England PUCs Answer”).

<sup>4</sup> The ISO on March 30, 2007 filed an Answer to protests and comments in Docket No. ER07-547-000, which was the docket established by the Commission for review of the remaining tariff provisions that were not docketed in Docket No. ER07-546-000. *See* Motion for Leave to Answer and Answer of ISO New England Inc., Docket No. ER07-547-000 (filed March 30, 2007) (“March 30 Answer”).

<sup>5</sup> *See* Notice of Intervention, Protest, and Comments of the Connecticut Department of Public Utility Control Regarding Revisions to Market Rule 1 Relating to the Forward Capacity Market, Docket No. ER07-546-000 (filed March 8, 2007); Motion to Intervene, Protest and Comments of New England Conference of Public Utilities Commissioners, Docket No. ER07-546-000 (filed March 8, 2007); Motion to Intervene, Protest and Comments of Massachusetts Municipal Wholesale Electric Company and Connecticut Municipal Electric Energy Cooperative Regarding Revisions to Market Rule 1 Relating to the Forward Capacity Market, Docket No. ER07-546-000 (filed March 8, 2007); New England PUCs Answer. *See also* Motion for Leave to Answer and Answer of Capacity Suppliers, Docket No. ER07-546-000 (filed March 23, 2007). The Capacity Suppliers are Mirant Energy Trading,

regarding the just and reasonable price to be paid to resources whose bids are rejected in the FCM for reliability reasons, the ISO would like to clarify that it is not seeking Commission action at this time. In fact, as the ISO stated in its earlier pleadings, issues related to cost recovery under reliability agreements are not ripe for review and any substantive ruling by the Commission would be premature. Prior to raising such issues before the Commission, a stakeholder process must be convened and the issues must be vetted in that forum. This process has not yet occurred.

## II. MOTION FOR LEAVE TO ANSWER

As a general matter, the Commission's Rules of Practice and Procedure prohibit Answers to Answers.<sup>6</sup> The Commission has the authority, however, to waive this prohibition for good cause.<sup>7</sup> The Commission has found good cause to permit replies where they are otherwise prohibited in various circumstances, including where the answer would assure a complete record in the proceeding,<sup>8</sup> provide information helpful to the disposition of an issue,<sup>9</sup> permit the issues to be narrowed or clarified,<sup>10</sup> or aid the Commission in understanding and resolving issues.<sup>11</sup> The ISO believes that this *Answer* will clarify the issues, assure a more complete record in this proceeding, and otherwise assist the Commission in understanding and resolving the issues

LLC, Mirant Canal, LLC, and Mirant Kendall, LLC (collectively, "Mirant"), Boston Generating, LLC ("Boston Generating") and FPL Energy, LLC ("FPLE").

<sup>6</sup> See 18 C.F.R. § 385.213(a)(2) (2006).

<sup>7</sup> See 18 C.F.R. § 385.101(e) (2006).

<sup>8</sup> See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999).

<sup>9</sup> See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

<sup>10</sup> See, e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at 62,323 n.1 (1998).

<sup>11</sup> See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

raised in response to the February 15 Filing. For these reasons, the ISO respectfully requests that the Commission grant the ISO's motion to provide the following *Answer*.

### **III. ANSWER**

#### **A. Pumped Storage is a Generating Resource and is Precluded from Being Treated as a Demand Resource in the FCM.**

##### **1. FirstLight Arguments**

FirstLight filed an Answer in response to the ISO's March 23 Answer and requests FERC to direct the ISO and NEPOOL to permit resources that result in additional and verifiable reductions in end-use demand but that are not located behind the end-use meter -- namely, pumped storage hydroelectric facilities -- to qualify as Demand Resources in the FCM.

FirstLight argues that the ISO provides no basis to distinguish between pumped storage resources and other batteries that are used as load management that are located behind the end-use meter. According to FirstLight, behind-the-meter batteries, like pumped storage resources, also require a charge in off-peak hours and use off-peak electricity as a fuel for storage to permit later displacement of on-peak hour loads.<sup>12</sup> In addition, behind-the-meter batteries used as load management also offset peak hour loads by increasing load, during relevant performance hours, yet they qualify for Demand Resource status.<sup>13</sup> FirstLight states that all load management devices that consume electric energy in charging a battery (in front of or behind the end-use meter) for later use in meeting peak demand result in an increase in overall load on the system and load in off-peak hours.<sup>14</sup>

<sup>12</sup> FirstLight Answer at 2-3.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 3-4.

FirstLight argues that the ISO does not dispute that increasing off-peak loads for purposes of storing energy in a behind-the-meter battery to support an end-use customer's on-peak demand would be deemed to provide a Demand Reduction Value.<sup>15</sup> Therefore, the only issue is location (behind the meter vs. in front of the meter), and there is no basis to conclude that large scale peak shaving in front of the meter is less valuable than a smaller scale peak shaving behind the meter.<sup>16</sup>

FirstLight also argues that permitting a pumped storage facility to qualify as a Demand Resource will not result in "double counting" of its capacity values. FirstLight clarifies that it seeks classification of pumped storage as a Demand Resource as an alternative to participating in the FCM as a generator and it is not requesting that pumped storage be credited as both a generator and a Demand Resource for the same megawatts in the same Capacity Commitment Period.<sup>17</sup>

Finally, FirstLight alleges that the language of the FCM Settlement expressly contemplates revisions to the market rules "to permit pumped storage facilities to qualify in the FCM as Demand Resources."<sup>18</sup> FirstLight interprets the following language as supporting its claim: "the role of demand response resources in the market will continue to evolve as Market Rule 1 Appendix E and the Load Response Manual are revised"<sup>19</sup> and "details concerning how

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 6.

<sup>19</sup> Explanatory Statement in Support of Settlement Agreement of the Settling Parties and Request for Expedited Consideration and Settlement Agreement Resolving All Issues ("FCM Settlement"), *Devon Power LLC, et al.*, Docket Nos. ER03-563-000, *et al.* (March 6, 2006) at Section VIII.J.2.a.

[new demand side management installations] qualify as capacity Resources will be reflected in the Market Rules.”<sup>20</sup> Thus, according to FirstLight, the FCM Settlement does not preclude the ISO from permitting pumped storage facilities to qualify as Demand Response resources.<sup>21</sup>

## **2. ISO Response**

As demonstrated by the significant steps that the ISO has taken to ensure that demand can participate in the FCM, this market is explicitly designed to facilitate the participation of true demand resources. Fundamentally, however, the flaw in the FirstLight argument is that Northfield Mountain, the resource in dispute, is not a demand resource but, rather, a generator. Simply stated, demand resources are resources located behind a meter that, in fact, will reduce customer demand at that location; generators, on the other hand, are facilities that produce energy to serve load. Taken to its logical extreme, FirstLight’s arguments would lead to the conclusion that all generators operating on peak are reducing demand and should be considered demand resources.

As the ISO noted in its March 23 Answer, FirstLight’s contentions should be rejected because pumped storage facilities do not reduce demand, they generate electricity to supply demand. The market rules explicitly prohibit generating resources on the wholesale side of the meter from being treated as demand resources and, thus, FirstLight’s argument should be rejected outright. FirstLight’s argument that technologies that shift demand from off peak to on peak hours are, by definition, demand response, is incorrect as the rules contain no such provisions. Peak shifting technologies, because they provide electricity through generation and

<sup>20</sup> *Id.* at Section VIII.J.2.b.

<sup>21</sup> FirstLight Answer at 6.

do not actually reduce demand, would qualify as demand resources only if they met the definition of distributed generation, not because they are peak shifting technologies. One result of the proposed rule would be to increase the capacity value of FirstLight's pumped storage facility by the reserve margin *without the reduction in regional demand that justifies the reserve margin decrease*. The proposed modification to the market rules sought by FirstLight should be rejected as an unjustified attempt to exploit the definition of demand response without actually reducing demand and thereby unwarrantedly extract money from the customers who ultimately pay for demand response.

Appendix E of Market Rule 1 detailing the Load Response Program explicitly provides: "Generating Resources that are already qualified as generating assets are not eligible to participate in the Load Response Program."<sup>22</sup> Moreover, the FCM market rules unequivocally prohibit pumped storage facilities from participating in the FCM as Demand Resources. Namely, the market rules provide: "Generation resources cannot participate in the Forward Capacity Market as Demand Resources, unless they meet the definition of Distributed Generation."<sup>23</sup> For purposes of the FCM, Distributed Generation is defined as:

***[G]eneration resources directly connected to end-use customer load and located behind the end-use customer's billing meter, which reduce the amount of energy that would otherwise have been produced by other capacity resources on the electricity network in the New England Control Area during Demand Resource On-Peak Hours, Demand Resource Seasonal Peak Hours, Demand Resource Critical Peak Hours, Real-Time Demand Response Event Hours, or Real-Time Emergency Generation Event Hours, provided that the aggregate nameplate capacity of the generation resource does not exceed 5 MW, or does not exceed the most recent annual non-coincident peak demand of the end-use metered customer at the location where the generation resource is directly connected, whichever is greater. Distributed***

<sup>22</sup> Market Rule 1, Section III.E.1.2 (Eligibility).

<sup>23</sup> February 15 Filing, Attachment 2, Market Rule 1 Clean Tariff Sheets at Section III.1.3 (Definitions).

Generation resources are not eligible for energy payments from ISO-administered energy markets.<sup>24</sup>

Therefore, by definition, pumped storage facilities may not be treated as Demand Resources.

Pumped storage facilities are not distributed generation because they are not “directly connected to end-use customer load and located behind the end-use customer’s billing meter.” FirstLight acknowledges the location of such facilities and, thus, there should be no dispute that they are not Demand Resources.

FirstLight’s contention that there is no basis to conclude that large scale peak shaving in front of the meter is less valuable than a smaller scale peak shaving behind the meter should be rejected.<sup>25</sup> The rules regarding demand response clearly distinguish between the treatment of behind the meter generation (distributed generation) and generation in the wholesale market. The rules for Demand Resources give an advantage to actual demand response by increasing its capacity credit by the avoided capacity reserve percentage. Only if a generator actually reduces load should it receive the percentage reserve adder. To assure that this credit is only given appropriately, the ability to receive this credit is limited to resources less than 5 MW or the size of the load to which they are interconnected.

Moreover, as explained in the ISO’s March 23 Answer, performance of Demand Resources for purposes of ascertaining Demand Reduction Values is measured during on-peak hours when pumped storage facilities are operating as generating resources. Pumped storage facilities clearly do not meet the basic definition of Demand Resources set forth in Section III.1.3 of the proposed market rules which defines Demand Resources as:

<sup>24</sup> *Id.* (emphasis added).

<sup>25</sup> FirstLight Answer at 4.

... installed measures (i.e., products, equipment, systems, services, practices and/or strategies) *that result in additional and verifiable reductions in end-use demand on the electricity network in the New England Control Area* during Demand Resource On-Peak Hours, Demand Resource Seasonal Peak Hours, Demand Resource Critical Peak Hours, Real-Time Demand Response Event Hours, or Real-Time Emergency Generation Event Hours....<sup>26</sup>

The value provided by a pumped storage project is its ability to produce on-peak generation and reserves by *increasing* load albeit during off-peak hours on the electric system, not by reducing load during relevant performance hours. A resource that increases overall load and produces no additional and verifiable *reduction* in demand during relevant performance hours is not a Demand Resource. The underlying rationale associated with paying demand resources assumes actual displacement of load behind the meter. Pumped storage facilities are not displacing load behind the meter and thus should not be compensated in the FCM as Demand Resources.

In addition, FirstLight cites to the New England PUCs' Answer as supporting its objection to rules that would preclude peak-shifting facilities like pumped storage from the definition of Demand Response. In their Answer, the New England PUCs state:

Second, the FCM Settlement recognized the particular need for flexible criteria when qualifying Demand Response Resources and required stakeholders to develop “a distinct method . . . to allow energy efficiency and demand response resources (other than Real Time Demand Response) to be fully integrated as Qualified Capacity in the Forward Capacity Market.” Demand Response can be a highly effective, economical way to reduce peak load, and the FCM Settlement mandated expansive rules to encourage development of resources that will promote this objective. Thus, FirstLight properly objects to rules that would preclude peak-shifting facilities like pumped storage from the definition of Demand Response. Analytically, peak-shifting facilities are no different from a more traditional demand response resource that can shut down its consumption during peak loads and move that same consumption to periods of lower load. For

<sup>26</sup> February 15 Filing, Attachment 2, Market Rule 1 Clean Tariff Sheets at Section III.1.3 (Definitions) (emphasis added).

that reason, the Commission should require ISO-NE to modify the rules to permit peak-shifting facilities to qualify as Demand Resources.<sup>27</sup>

However, the New England PUCs' statements are inaccurate. Analytically, peak shifting resources are fundamentally different from demand resources because demand resources reduce the load that must be served while peak shifting resources generate on-peak to serve load and only load reductions should receive the reserve margin increase because the reduction in load is the source of the reduction in reserve margin. For the reasons stated above, pumped storage hydroelectric facilities do not qualify as Demand Resources in the FCM.

FirstLight incorrectly argues that the FCM Settlement does not prohibit an existing pumped storage facility from participating in the FCM as a Demand Resource.<sup>28</sup> In support of this claim, FirstLight relies on the following language contained in the FCM Settlement: "the role of demand response resources in the market will continue to evolve as Market Rule 1 Appendix E and the Load Response Manual are revised"<sup>29</sup> and "details concerning how [new demand side management installations] qualify as capacity Resources will be reflected in the Market Rules."<sup>30</sup> FirstLight's argument is baseless. The ISO does not disagree that the FCM Settlement contemplates the *role* of Demand Resources evolving as the Load Response Manual is revised; however, nowhere in the FCM Settlement does it provide for an ever expanding *definition* of such resources. Further, the ISO agrees that the details associated with qualification of capacity resources shall be reflected in the market rules and, in fact, the market rules filed on February 15 contain extensive provisions regarding qualification of resources for participation in

<sup>27</sup> New England PUC Answer at 15.

<sup>28</sup> FirstLight Answer at 5-6.

<sup>29</sup> FCM Settlement at Section VIII.J.2.a.

<sup>30</sup> *Id.* at Section VIII.J.2.b.

the FCM. The language cited allegedly in support of FirstLight's position has no relevance whatsoever and its arguments should be rejected.

Finally, FirstLight acknowledges that it did not raise the issue during the extensive stakeholder process or prior to the February 15 Filing. To this end, FirstLight claims that it "was not fully aware of the implications of the Demand Resource eligibility criteria with respect to FirstLight's participation in the FCM"<sup>31</sup> and cites to a November 13, 2006 Notice of Consummation of Transaction regarding pumped storage facilities in which it acquired ownership interests in a pumped storage facility. This transaction was consummated while the stakeholder process was going on and three months prior to the filing of the market rules. In addition to the substantive reasons why FirstLight's arguments should be rejected, as a procedural matter, it should not be permitted to raise new issues at this time after the conclusion of the lengthy stakeholder process and the February 15 Filing when it was aware of its acquisition of pumped storage facilities.

**B. Issues Related to Reliability Agreements are Not Ripe and the Commission Should Take No Action With Regard Thereto.**

Connecticut Department of Public Utility Control, NECPUC, and Massachusetts Municipal Wholesale Electric Company and Connecticut Municipal Electric Energy Cooperative filed comments, and the New England PUCs submitted a subsequent Answer, regarding modification of the existing rules associated with cost recovery under reliability agreements. There seems to be a misunderstanding of certain non-substantive statements in the February 15 Filing regarding the just and reasonable price to be paid to a resource whose bid is rejected for

<sup>31</sup> Motion to Intervene and Protest of FirstLight Parties, Docket No. ER07-546-000 (filed March 8, 2007) at n.13.

reliability reasons.<sup>32</sup> The ISO would like to make it clear that it is not seeking Commission action and, in fact, believes that a substantive ruling on issues related to reliability agreements and the appropriate prices thereunder is premature. The ISO must vet issues related to such agreements through the stakeholder process prior to raising them before the Commission. This consultation with the stakeholders has not yet occurred.

As the Capacity Suppliers correctly note in their Answer, nothing in the FCM Settlement or the proposed rules modify or contemplate modification of policies associated with reliability agreements. In fact, the February 15 Filing explicitly provides:

The proposed rules do not resolve how such a just and reasonable rate will be determined, the form of the Reliability Agreement providing for such just and reasonable rates or the process of obtaining such a Reliability Agreement. To accomplish these ends, the ISO anticipates revising Sections I.3.9 and I.3.10 of the Tariff and the existing market rules (many of which are in Appendix A of Market Rule 1) dealing with Reliability Agreements and compensation thereunder. This major effort will also require significant stakeholder review, ISO resources and Commission approval.<sup>33</sup>

No action may be taken with regard to the current market rules associated with reliability agreements prior to conducting a stakeholder process as required by Section 11 of the Participants Agreement. The ISO reiterates statements in the February 15 Filing and the March 23 *Answer* that issues related to reliability agreements are reserved for stakeholder review and a future filing, and no action or guidance is necessary by the Commission at this time.

<sup>32</sup> See, e.g., February 15 Filing at 40.

<sup>33</sup> *Id.* at 18.

#### IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission: (i) grant the ISO's *Motion for Leave to Answer*; and (ii) reject the *Answers* discussed herein.

Respectfully submitted,

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Dated: April 9, 2007

## **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 (2006), 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 9th day of April, 2007.

/s/ Sherry A. Quirk

Sherry A. Quirk