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January 7, 2010

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
The Honorable Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: ISO New England, Inc.; Docket No. ER10-186-000
Motion for Leave to Respond and Responsive Comments of the New England
Power Pool Participants Committee

Dear Secretary Bose and Deputy Secretary Davis:

Attached for filing in the above-captioned proceeding is the Motion for Leave to Respond and Responsive Comments of the New England Power Pool (“NEPOOL”) Participants Committee. A copy of the foregoing has been served on all parties included on the official service list for this proceeding maintained by the Secretary. Please contact me if you have any questions or need any further information regarding this filing.

Respectfully submitted,

Emile G. Buzaid,
Counsel to the
NEPOOL Participants Committee

cc: Official Service List

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

ISO New England Inc.

)

Docket No. ER10-186-000

**MOTION FOR LEAVE TO RESPOND AND RESPONSIVE COMMENTS OF
THE NEW ENGLAND POWER POOL PARTICIPANTS COMMITTEE**

(January 7, 2010)

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New England Power Pool (“NEPOOL”) Participants Committee² hereby submits this Motion for Leave to Respond and Responsive Comments to the pleadings filed by the PSEG Companies (“PSEG Pleading”), the Exelon Corporation (“Exelon Pleading”), and the Boston Gen Companies and the Mirant Parties (“Boston Gen and Mirant Pleading”) (collectively, the “Pleadings”).³ The Pleadings challenge certain aspects of and raise issues regarding the results of the third Forward Capacity Auction (“FCA”) filed by ISO New England Inc. (“ISO-NE”) on October 30, 2009 (the “ISO-NE Filing”). NEPOOL takes no position on any challenge in the Pleadings that pertains to whether ISO-NE has properly administered the FCA in accordance with the Commission-accepted Market Rules for the Forward Capacity Market (the “FCM Rules”). Those challenges are the only matters properly raised with the Commission in this proceeding.

¹ 18 C.F.R. §§ 385.212 and 385.213 (2009).

² Capitalized terms used but not defined in this Answer are intended to have the meanings given to such terms in the Second Restated New England Power Pool Agreement (the “Second Restated NEPOOL Agreement”), the Participants Agreement, the ISO New England Inc. Transmission, Markets and Services Tariff (the “ISO-NE Tariff”).

³ For purposes of this filing, the PSEG Companies are PSEG Energy Resources and Trade LLC and PSEG Power Connecticut LLC. The Boston Gen Companies are Boston Generating, LLC; Mystic I, LLC; Mystic Development, LLC; and Fore River Development, LLC. The Mirant Parties are Mirant Energy Trading, LLC; Mirant Canal, LLC; and Mirant Kendall, LLC.

Unfortunately, the Pleadings may be read by some to advocate for changes to the FCM Rules, which has prompted NEPOOL's responsive comments. NEPOOL files these responsive comments solely to urge the Commission to ensure that this proceeding *not* be expanded to address any concerns regarding the existing FCM Rules. Such concerns are outside the scope of this proceeding and there is an ongoing stakeholder process to address concerns with the existing FCM Rules. NEPOOL urges the Commission to remind stakeholders that changes to Market Rules should only be made pursuant to specific proceedings initiated to address such rule changes and not through administrative proceedings such as the instant docket. In addition, Market Rule changes should be initiated and conducted in accordance with the stakeholder process laid out in the Participants Agreement.

I. MOTION FOR LEAVE TO ANSWER

While the PSEG and Exelon Pleadings are self-described as “comments,” to the extent those pleadings are fairly read to request changes to the FCM Rules, they are effectively motions seeking affirmative relief from the Commission and NEPOOL is entitled to respond to such a motion notwithstanding how it is characterized.⁴ The Boston Gen and Mirant Pleading is self-described as a “protest”, but it also contains statements that could be read to seek affirmatively changes to the FCM Rules, to which NEPOOL is entitled to respond. To the extent the Commission considers the Pleadings to be protests, however, answers are not permitted except for good cause shown.⁵ Under these circumstances, NEPOOL moves for leave to answer the

⁴ See, e.g., *Iroquois Gas Transmission Sys., L.P.*, 61 FERC ¶ 61,341 at 62,341 n.9 (1992) (party is entitled to respond to affirmative request in a pleading regardless of how that pleading is captioned); *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 53 FERC ¶ 61,026, 61,101 (1990) (answer accepted to the extent it responded to a party's requests for affirmative relief).

⁵ See, e.g., Rule 213(a)(2), 18 C.F.R. § 385.213(a) (2009) (“An answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, *unless otherwise ordered by the decisional authority*”). (Emphasis added.) The Commission permits replies that would otherwise be

Pleadings to the extent necessary for the Commission to consider these Responsive Comments. Pursuant to Rule 213(a)(2) of the Commission's Rules, the Commission may accept the filing of an answer to a protest for good cause shown when it leads to a more accurate and complete record, helps the Commission understand the issues, clarifies matters in dispute or errors, responds to new issues raised, or provides information that will assist the Commission in its decision-making process.⁶ NEPOOL respectfully submits that its comments in response to the Pleadings will assure a more complete record and will otherwise assist the Commission in reviewing the issues sought to be raised in this proceeding. Accordingly, NEPOOL submits that good cause exists for the Commission to grant this motion for leave to file this response.

II. COMMUNICATIONS

All correspondence and communications in this proceeding should be addressed to:

prohibited where the reply would assure a complete record in the proceeding; *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,443 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999); provide information helpful to the disposition of an issue; *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999); permit the issues to be narrowed or clarified; *PJM Interconnection LLC*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at 61,323 n.1 (1998); or aid the Commission in understanding and resolving the issues. *See, e.g., Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000). The Commission, on one or more of these grounds, allowed answers in *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 at P 22 (2002); *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,174 at P 6 (2002); *Cleco Power LLC*, 101 FERC ¶ 61,008 (2002); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,237 (2002); *Enbridge Offshore Pipelines (UTOS) LLC*, 99 FERC ¶ 61,141 (2002); *Nornew Energy Supply, Inc.*, 98 FERC ¶ 61,018 (2002); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co., et al.*, 105 FERC ¶ 61,053 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 (2003).

⁶ *See, e.g., PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co., et al.*, 105 FERC ¶ 61,053 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 (2003).

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III. ANSWER

Many of the concerns raised by movants in this proceeding challenge the ISO-NE's administration (*or potential administration*) of the FCM Rules, particularly as it applies to compensation for resources that may be denied the ability to prorate their MWs due to reliability reasons. NEPOOL emphasizes that it takes no position in these Responsive Comments on the issue of how the FCM Rules should be interpreted and that it has not separately considered and voted on any such interpretation(s).

Other concerns by movants, however, may be read to argue for changes to the current FCM Rules, and NEPOOL's responsive comments are to reinforce the message that such requests, implied or expressed, are not properly before the Commission in this proceeding. This is the proceeding to determine whether ISO-NE has properly conducted the third FCA under the FCM Rules. There is another stakeholder process underway in which any argument to change the FCM Rules may be properly addressed.

More specifically, in the latter half of 2009, NEPOOL, ISO-NE and the New England Conference of Public Utility Commissioners ("NECPUC") engaged in an extensive stakeholder process, ultimately tri-chaired by representatives of each organization, that was designed specifically to identify and refine desired changes to the FCM Rules. That process to date has

produced a design basis document that was considered and voted by the NEPOOL Participants Committee in order to provide guidance to ISO-NE and the NEPOOL Technical Committees in their efforts to develop and consider appropriate FCM Rule changes. The design basis document supported by NEPOOL was not fully supported by all Market Participants or the ISO, and it is very likely that the Commission will be asked to resolve some remaining disagreements.⁷ The process is still not complete, though, and when it is complete, it will have allowed for full consideration of and input by all interested parties on revised FCM Rules that are to be filed with the Commission pursuant to Section 205 of the Federal Power Act (“FPA”) on or before February of 2010 in order to become effective in time for the fourth FCA.

Until that stakeholder process is complete, the Commission should deny without prejudice to be re-raised any argument to change the FCM Rules and should not consider any responses in this proceeding to those arguments for change. If concerns with the FCM Rules have been considered within that process and are not addressed satisfactorily within that process, interested persons will have the opportunity either in response to the contemplated Section 205 filing or through proper complaint by an aggrieved person pursuant to Section 206 of the FPA to have those concerns heard and addressed by the Commission.

By way of example and illustration of NEPOOL’s position in this proceeding, the PSEG Pleading identifies a host of concerns with the FCM, including concerns PSEG characterizes as excessive out-of-market capacity, an ineffective Alternative Price Rule, an inappropriately low Cost of New Entry, a lack of zonal market price separation, flaws in the Local Sourcing

⁷ While an advisory vote to support changes to the design basis document to address some of their concerns passed with overwhelming support from members, in the end when there were advisory votes on the resulting documents, PSEG, Exelon, Boston Gen and Mirant were among a group of Participants that own generation in the region and that opposed the design basis documents because of unresolved concerns.

Requirements, the inability of the rules to allow for price separation, and the denial of delist bids because of reliability reasons.⁸ While it asks the Commission to consider its comments relating to FCM design in this proceeding, PSEG has indicated its belief that the third FCA has been conducted pursuant to the market rules,⁹ acknowledged that it has been actively engaged in stakeholder discussions to develop changes to the FCM Rules,¹⁰ and reported that it will present any concerns it has with the re-designed FCM to the Commission at the appropriate time.¹¹

Since the only issue in this proceeding is whether ISO-NE has administered the third FCA properly in accordance with the FCM Rules, and since PSEG appears to agree from its perspective that the third FCA has been conducted pursuant to the currently effective Market Rules, the many other complaints and concerns of PSEG should not be addressed at this time by the Commission. Gratifyingly, PSEG seems to recognize this is not the appropriate time or proceeding to address concerns with the current FCM Rules and has raised within the ongoing stakeholder process the concerns noted in the PSEG Pleading. The Commission in its ruling on the results of the first and second FCAs directed that concerns with the FCM rules be addressed in the NEPOOL stakeholder process, rather than in response to the auction results filing.¹² The Commission can consider with the benefit of a Section 205 filing at the conclusion of that process, whether and how best to address any unresolved concerns.

In another example, the Boston Gen and Mirant Pleading complains that ISO-NE is not properly interpreting or administrating its Tariff (or more precisely, *will not be* once it finalizes

⁸ See PSEG Pleading at 7.

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 6.

¹² See *ISO New England Inc.*, 123 FERC ¶ 61,290 at PP 17, 28, 36, 60, 65, 81, 82 (2008); *ISO New England Inc.*, 127 FERC ¶ 61,040 at P 30 (2009).

its proration decisions regarding the third FCA) by not allowing market participants with resources denied the ability to engage in MW prorating to be paid the full Capacity Clearing Price for the full amount of MW offered. While it is questionable whether this concern is ripe for consideration by the FERC here,¹³ Boston Gen and Mirant, importantly, are not arguing that the third FCA auction itself was administered improperly or in any way inconsistent with the FCM Rules. Boston Gen and Mirant go on, though, to request an order stating that, in the case of suppliers not permitted to engage in MW prorating, the full Capacity Clearing Price should be paid to all committed MWs of a resource retained for reliability reasons. Failing that, they ask that compensation for such resources in the 2012/2013 Capacity Commitment Period be made subject to the outcome of the ongoing stakeholder process, which is currently considering the issue of compensation along with a whole host of other issues to become effective for the 2013/2014 Capacity Commitment Period and beyond.¹⁴

NEPOOL takes no position at this time as to whether the current FCM Rules require or provide for a full Capacity Clearing Price payment for units denied the ability to prorate their MWs, but opposes any effort in this proceeding to have the Commission prejudge or force future changes to the FCM Rules. As NEPOOL understands the request, to the extent not ordered directly by the Commission, Boston Gen and Mirant are asking the Commission to order that stakeholder discussions, which are currently underway and expected to be complete in another month, necessarily include the 2012/2013 Capacity Commitment Period with respect to compensation for cleared MWs denied the ability to prorate. There is a Commission-approved

¹³ The stated basis for these concerns appears to be the ISO's statement in its testimony that resources retained for reliability in the third FCA *may not be allowed* to prorate by MW. [emphasis added] See ISO-NE Filing, Affidavit of Stephen J. Rourke at 29:21-22. It would seem that any concerns are best addressed when and if the ISO decides not to allow MW proration.

¹⁴ See Boston Gen and Mirant Pleading at 10.

stakeholder process to consider such changes with proper and full context, and there is a well understood Commission process for properly presenting any issues that remain at the conclusion of that stakeholder process. As noted by Boston Gen and Mirant, the design basis document, which provides advisory guidance to ISO-NE and NEPOOL in the ongoing stakeholder process, already contemplates that NEPOOL will review potential market rule changes affecting compensation for resources that might otherwise be denied the ability to prorate their cleared MWs for reliability reasons.¹⁵ To the extent market rule changes are necessary to achieve the result sought by Boston Gen and Mirant, they should be directed to raise their concerns regarding compensation for the 2012/2013 Capacity Commitment Period by following the appropriate stakeholder process and Commission procedure for seeking changes to market rules.

¹⁵ *Id* at 7.

IV. RELIEF REQUESTED

For the reasons stated herein, NEPOOL respectfully requests that the Commission (1) allow this pleading and consider NEPOOL's responsive comments in its review of the ISO Filing, and (2) limit this proceeding solely to an assessment of whether ISO-NE has administered the third FCA properly in accordance with the FCM Rules, denying without prejudice requests of any movants for prospective changes the FCM Rules to be raised only after completion of the ongoing stakeholder process and only in proper proceedings before the Commission.

Respectfully submitted,
NEPOOL Participants Committee

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Its Attorneys

Dated: January 7, 2010

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2010, I caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in the captioned proceedings.

Dated at Hartford, CT, this seventh day of January 2010.

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