

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

<b>ISO New England, Inc. and New England Power Pool, Inc.</b>	) ) ) )	<b>Docket No. ER10-1690-000</b>
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**MOTION TO INTERVENE AND PROTEST OF  
RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to Sections 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 214, and the Commission’s Combined Notices of Filings dated July 2, 2010, the Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby files this Motion to Intervene and Protest on the ISO New England Inc. (“ISO-NE”) joined by the New England Power Pool (“NEPOOL”) Participants Committee (“NEPOOL”) (together, the “Filing Parties”) July 1, 2010 filing of revised tariff sheets to change the Forward Reserve Credit formula used to calculate payments in the Forward Reserve Market (“FRM”) (the “Tariff Change”).<sup>2</sup> In support of this Motion to Intervene and Protest, RESA submits as follows:

**I. MOTION TO INTERVENE**

**A. Correspondence and Communications**

Correspondence and communications regarding this matter should be addressed to the following person(s), and the same should also be designated for service on the

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<sup>1</sup> RESA’s members include ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; PPL EnergyPlus; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

<sup>2</sup> *ISO-New England Inc. and New England Power Pool*, Revision to ISO-NE Forward Reserve Market Credit Calculation, Submitted on July 1, 2010 in Docket No. ER10-1690-000. (“Transmittal Letter”).

Commission's official list for this proceeding:

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RESA is a non-profit trade association of independent corporations that are involved in the competitive supply of electricity. RESA and its members are actively involved in retail electricity markets throughout the United States, including retail markets in each of the Commission-approved RTO/ISOs. Many of RESA's members are active in ISO-NE markets.

**B. Interests of RESA**

With members as participants in ISO-NE and purchasers of capacity and energy and participants in the forward capacity market in the ISO-NE, RESA has an interest in this proceeding that cannot be represented by any other party. Its Motion to Intervene is in the public interest and RESA respectfully moves that its Motion to intervene be granted.

**II. BACKGROUND**

On July 1, 2010, the Filing Parties submitted revised tariff sheets to change the Forward Reserve Credit formula used to calculate payments in the FRM. According to the Filing Parties, the Tariff Change applies to the Forward Reserve Credit Calculation for a Reserve Zone only if, for reliability reasons, ISO-NE denied the option for resources to prorate the MWs that are subject to Capacity Supply Obligations in FCM for the

Capacity Zone containing that Reserve Zone.<sup>3</sup> Under the Tariff Change, in those narrow circumstances, the Forward Reserve Credit calculation will net the Capacity Clearing Price adjusted as described in Section III.13.2.7.3(b) of the FCM rules, rather than the Capacity Clearing Price.<sup>4</sup>

By way of background, generators who clear in the FRM receive the net of the FRM clearing price and the FCM clearing price. The current rules provide for a deduction of the full FCM clearing price. When a surplus of capacity clears in the FCM, load pays only for the Installed Capacity Requirement. Therefore, when excess capacity clears, which has been the case, capacity resources can choose to receive a prorated clearing price on the full amount of MW's cleared, or the full clearing price, on a prorated amount of MW's. ISO-NE has the right, however, to deny "MW prorating" for reliability reasons. For the 2010/11 commitment period, ISO-NE did not allow any resources in Connecticut to prorate out their MW's. Therefore, Connecticut capacity resources will be paid the pro-rated price of approximately \$4.25/kW-month, while the full clearing price was \$4.50/kW-month.

### III. PROTEST

RESA objects to the Filing Parties' filing and submits that the Commission should reject it. This mechanism is nothing new. Market Participants have been aware of the pro-ration mechanism for more than two years, but waited to the last possible moment to make this filing. This failure to bring this matter to the Commission sooner will have an unjust and unreasonable impact on Load Serving Entities ("LSEs") who have already entered into bi-lateral contracts in reliance on the Tariff in place today. Finally, as

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<sup>3</sup> Transmittal Letter at p. 1.

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

acknowledged by ISO-NE in the stakeholder process, the proposed change is unnecessary in a competitive Forward Reserve Market.

**A. Proposed Tariff Changes Made In the 11<sup>th</sup> Hour Creates Unjust and Unreasonable Results**

As stated above, the proposed Tariff Change applies to the Forward Reserve Credit Calculation for a Reserve Zone only if ISO-NE denied, for reliability reasons, the option for resources to prorate the MWs that are subject to Capacity Supply Obligations (CSO's) in the FCM for the Capacity Zone containing that Reserve Zone. Market Participants, NEPOOL and ISO-NE were aware of the tariff provision and that facilities providing CSO's in Connecticut were denied MW proration in March of 2008 for the 2010/2011 operating year, when ISO-NE made their filing to the Commission on March 3, 2008 notifying the Commission and the market participants of their decision to deny MW proration in Connecticut for reliability reasons.<sup>5</sup>

Now, more than two years later, the Filing Parties are requesting an expedited comment period so that they can slip in this proposed Tariff change so that it will be effective for the August 18, 2010 FRM auction.<sup>6</sup> If permitted to go into effect, the Filing Parties' proposal will cause significant harm to LSEs such as RESA members.

For example, LSEs have already contracted with end-use customers and participated in default service supplier auctions for the 2010/2011 operating year. LSEs relied on the current tariff provisions in effect at the time of the auction in order to develop and provide pricing for these contracts. LSEs relied on the results of the auction and on the Auction Results Filing in order to make their service offerings available to

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<sup>5</sup> See *ISO-New England, Inc. Forward Capacity Auction Filing Results Filing*, Submitted on March 3, 2008 in Docket No. ER08-633-000 at pp. 11 and 12. ("Auction Results Filing").

<sup>6</sup> Transmittal Letter at p. 2.

others. In this filing, the Filing Parties want to change the rules at the last minute to essentially collect additional monies from LSEs who have no opportunity to recover the additional costs to the extent that they entered into fixed price contracts with their customers. If the change were made when the problem arose, almost two and half years ago, then LSEs would have had the ability to price in the change. However, LSEs had no notice, no indication from ISO-NE and no reason to believe that this change would occur for the 2010/2011 operating year, and relied on the existing Commission-approved Tariff provisions to develop pricing, lock in contracts with end use customers, and provide offers for default supply obligations.

**B. The Proposed Tariff Changes are Unnecessary; the Market Will Account Properly for the Pricing Concern Identified**

The Filing Parties seek to make a last minute substantive tariff change when the market, in conjunction with the existing Tariff provisions, will take care of the identified concern. The Filing Parties state in the Transmittal Letter:

Under the current Tariff language, presuming that the offers in the FRM are submitted under competitive conditions, the FCA capacity rate would be the Capacity Clearing Price and would be a constant within all offers. Similarly, under the Tariff Change, again presuming that the offers in the FRM are submitted under competitive conditions, the FCA capacity rate would be the Capacity Clearing Price adjusted as described in Section III.13.2.7.3(b) of the FCM rules to account for prorationing and would be a constant within all offers. Thus, under both circumstances, there should be no change in the Forward Reserve Payment Rate due to the Tariff Change (this assumes that the price cap is not binding). The FCA capacity rate netted in the FRM settlement is the same for all Market Participants offering a FRM product for a Reserve Zone.<sup>7</sup>

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<sup>7</sup> Transmittal Letter at p. 5.

RESA agrees with the Filing Parties analysis which essentially states that the proposed Tariff change is unnecessary in a competitive market because a generator will account for the \$0.25/kW-month in its offer. The generator, in a competitive market, will increase its offer if the full FCM is deducted from the FRM clearing price and decrease its offer an equivalent amount if the pro-rated FCM is deducted. Therefore, under ISO-NE's acknowledged rationale, in a competitive market, the resulting net FRM price would be the same under either scenario, rendering the proposed Tariff change unnecessary.

In fact, during the stakeholder process, ISO-NE agreed that the change is unnecessary in a competitive market and opposed the calls for a Tariff change. ISO-NE's position was articulated through a memorandum dated June 16, 2010 to the Participants Committee from Mr. Ethier, Vice President, Market Development, which addressed a proposed rule change by PSEG seeking to change the settlement rule for the FRM under the theory that it nets the wrong FCA rate.<sup>8</sup> Mr. Ethier concluded that:

The FRM design, as implemented through the FRM Conforming Changes in September 2009, anticipates that resources will receive different FCM payment rates for a variety of reasons. To account for this, a standard FCM Capacity Clearing Price is deducted from the FRM payments in each reserve zone. To make a special exception for resources denied prorationing in CT is inconsistent with the FRM design, is unnecessary for the construction of competitive offers, and treats those particular CT resources differently than all other resources that might have different payment rates for a variety of other reasons. There is no efficiency or competitive offer argument that supports PSEG's proposed changes. If such a change is motivated by a perceived unfairness to resources that were denied prorationing, it should be recognized that this change will help only a small, seemingly arbitrary portion of

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<sup>8</sup> See Mr. Robert Ethier's memorandum, dated June 16, 2010, in opposition to PSEG Proposed Revisions to the Forward Reserve Market which Mr. Ethier presented at the June 18, 2010, Participant's Committee meeting, (attached hereto as Attachment A).

the resources that were denied pro-rationing in CT and may disadvantage other resources.<sup>9</sup>

Note, the proposed Tariff change by the Filing Parties is identical to the one proposed by PSEG at the June 16, 2010 Participants Committee meeting.

**C. The Proposed Tariff Change is Unnecessary Because the FRM Auction Will Likely Clear or Nearly Clear the \$14/kW-month Cap, Making the Only Effect of the Proposed Change An Unanticipated Increase in Amounts Paid by LSEs to Generators**

Existing market conditions will likely force the FCM auction to clear at the cap in Connecticut regardless of the proposed Tariff change. Because of the shortage of reserves in Connecticut, past FRM auctions have cleared at or near the cap of \$14/kW-month for the Connecticut zone and there are no changed market conditions that that would change that result for the winter 2010/11 auction. Therefore, it is unlikely that this proposed Tariff change would have any impact on the Connecticut FRM clearing price, because the FRM clearing price will be at or near the cap of \$14.00/kW-month with or without the proposed Tariff change.

While there is no effect on the FRM clearing price resulting from the proposed Tariff change, for LSEs, the proposed Tariff change causes significant harm. LSEs will be forced to absorb the increased FRM costs that would be remitted to generators for reserves. Under the proposed Tariff change, LSEs would pay more to generators for reserves, \$14.00/kW-month (the market cap) minus \$4.25/ kW-month under the proposed tariff change, versus \$14.00/kW month (the market cap) minus \$4.50 under the existing effective Tariff. Therefore, LSE's who relied on the existing ISO-NE Tariff as a

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<sup>9</sup> *Id.* at p. 3.

component of its price to end use and default service contracts will be unduly harmed because they will not have an opportunity to recoup these additional FRM costs nor will they have planned for it.

In order to prevent significant harm and in order to allow competitive markets to work, the commission should reject the Tariff filing and allow generators to price their offers in the August 18, 2010 FRM as intended and in accordance with the currently effective Tariff and Market Participants' reasonable expectations. If the reserve market is competitive and there are sufficient reserves, then, as ISO-NE argues in the filing and during the stakeholder process, there is no need for the proposed Tariff change. In contrast, if the reserve market is not competitive, then the proposed Tariff changes will accomplish nothing more than saddle LSEs with a \$0.25/kW-month FRM price increase that they did not anticipate and that will cause significant financial harm.

For the aforementioned reasons the Commission should deny the Filing Parties' request and allow the current tariff provision to remain in place for the August 18, 2010 FRM auction.

## **V. CONCLUSION**

WHEREFORE, RESA respectfully requests that the Commission grant RESA's motion to intervene and designate RESA as a party to this proceeding, with all the rights



appropriate to that status. Further, RESA respectfully requests that the Commission reject the Filing Parties' revisions to the ISO-NE Forward Reserve Market Credit Calculation.

Respectfully submitted,

/s/Elizabeth W. Whittle

Elizabeth W. Whittle

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Retail Energy Supply Association

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Dated: July 22, 2010

## **Attachment A**

ISO new england

memo

To: Participants Committee  
From: Bob Ethier  
Date: June 16, 2010  
Subject: PSEG Proposed Revisions to the Forward Reserve Market

#### **PSEG Concern**

The proposed rule change by PSEG seeks to change the settlement rule for the Forward Reserve Market (FRM) under the theory that it nets the wrong FCA rate. PSEG believes resources located in CT, which were denied pro-rationing in the first Forward Capacity Auction (FCA 1), will be disadvantaged if the rule is not revised because they receive a lower effective FCM payment rate than other resources. The proposed revisions modify the FRM settlement rule to deduct the Capacity Clearing Price adjusted for the prorated price under price floor as described in Section III.13.2.7.3 (b) rather than deducting the full Capacity Clearing Price. The difference is \$0.24/kW-mo.

#### **Forward Reserve Market (FRM) Background**

The FRM conforming changes to the Forward Capacity Market (FCM) were filed with FERC in September 2009 (FERD09-1766-000) and approved in December 2009. The rule changes provided, among other things, that in the FRM settlement, the Capacity Clearing Price is netted from the FRM clearing price. The FRM conforming changes were developed recognizing that while different resources may receive different FCM payment rates (e.g. due to multi-year commitment elections, or by acquiring obligations through a bilateral transaction or one of the many reconfiguration auctions), the Capacity Clearing Price from the FCA applicable to the reserve zone for the relevant time period is always netted from the FRM payment.

The reason for this decision is because of the design of the FRM. The FRM selects the lowest incremental cost resource for forward reserves based on a rate that reflects the incremental costs of providing forward reserves of the marginal FR bidder. The design does not depend on a net revenue calculation nor does it depend on the actual (and separate) FCM payment stream to a particular resource.

As the market is designed, FRM offers would normally be the sum of the incremental cost to provide forward reserves and the (known) FCM capacity rate that will be netted in the FRM settlement.<sup>1</sup> This allows all FRM participants to compete based upon incremental FR costs within a reserve zone. The FCA capacity rate should act as a constant within all offers. The FCA clearing price netted in the FRM settlement is the same for all resources offering a FRM product for a reserve zone, is not a resource-specific rate, and is not linked to the

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<sup>1</sup> When a bidder formulates its offer, it considers incremental costs for providing FR such as expected foregone energy revenues, expected foregone commitment costs, expected FRM penalties, incremental O&M and capacity investment and a risk premium associated with providing FR. Given the settlement rule for the FRM, the bidder must also include in its offer the FCA clearing price that will be deducted during FR settlement. Both the FRM settlement rule and the FCA clearing price are known prior to the FR auction. The FRM settlement rule that nets the FCA clearing price applies regardless of the capacity market price a resource actually receives through the FCM settlement.

recovery of actual costs. Details about the FRM design, including a discussion about different design options, are described in an ISO memo dated May 2005 ([The Relationship between LFRM & LICAP Prices](#)).

#### **ISO Response**

Under the current rules, CT resources do not face a competitive disadvantage when compared to the Rest of Pool resources in the FRM. All resources in a reserve zone face the exact same FCM deduction. Under the FCM, a resource may acquire and transfer obligations at many different prices through the FCA, annual and monthly reconfiguration auctions and bilateral transactions. Some resources may have no CSO or may have locked in a price for multiple commitment periods. The FRM settlement uses the highest FCA capacity clearing price from the capacity zone(s) associated with the reserve zone. This provides a common starting point for all bidders competing for a FRM product in a reserve zone. The highest clearing price, rather than some lower price, is subtracted to eliminate the possibility of double-compensation for capacity costs. When constructing a FRM offer for a particular reserve zone, a participant would include the FCA capacity clearing price that is being deducted from the FR clearing price in its offer, not the FCA capacity clearing price received for some particular resource from the Participant's portfolio that might be used to meet the FRM obligation. Any difference in compensation to two like resources providing capacity and the same FRM product is due to differences in capacity payments, not FRM payments (ignoring other markets.)

For example, in the case where an export constrained capacity zone (e.g. Maine) clears at a lower price than the Rest of Pool capacity zone in the FCA (e.g. \$2.00 vs. \$2.25), the FRM settlement rule for the Rest of System reserve zone deducts the Rest of Pool capacity zone's FCA clearing price (\$2.25) from the FRM clearing price. Any participant intending to meet its FRM obligation with a resource located in Maine would offer the incremental costs of providing FR, plus the \$2.25 Rest of Pool capacity zone's FCA clearing price, even though in the FCM settlement the resource will be paid at the lower (\$2.00) export constrained capacity zone's rate. The same offer approach should apply when bidding for a FRM product in Rest of System reserve zone when intending to meet the obligation with a resource located in an import constrained reserve zone.<sup>2</sup>

A concern has been expressed that the presence of the FRM offer cap warrants the change in the capacity price netting. When there are adequate FR supplies, the FRM should clear below the \$14/kW-mo cap. For competitive offers below the cap, the price deducted during the FRM settlement (and known in advance) may be fully reflected in the FRM offer. Only in cases where the price cap of \$14/kW-mo is binding on a resource's competitive offer, inclusive of the FCM Capacity Clearing price deduction, might there be a market distortion, and this applies without regard to the payment rate deducted from the FRM payment. However, the cap did not bind for the summer 2010 auction, and there is no evidence that it should bind for the winter 2010-11 auction. And beyond winter 2010-11, the prorating rejections of concern to certain participants are no longer possible.

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<sup>2</sup> At the Markets Committee, proponents of the change argued that the proposed change would better allow CT resources to compete equally to provide FR in the rest of system zone with resources that were not denied price proration. First, this is not necessary, and second, the proposed change does not actually modify the price that is backed out of the Rest of System reserve zone in the FRM settlement; this value remains the \$4.50 FCA clearing price for that location. The proposed language did not alter the compensation to participants providing FRM product in the Rest of System reserve zone.

<sup>3</sup> A change has been made to the FCM rules so that, beginning with the 2013 - 2014 capacity commitment period, a resource denied prorationing will be compensated at the FCA capacity clearing price rather than the prorated price. At the Markets Committee, proponents of the change represented that they are consistent with the FCM penalty provisions for generators since the FCM penalty is based on the Capacity Clearing Price adjusted for the price floor as described in Section III.13.2.7.3(b) rather than the Capacity Clearing Price. It is inappropriate to allow for the recovery of FCM shortfalls through the FRM. Many resources that were denied prorationing are ineligible to meet a FRM obligation so a rule change intended to allow for the recovery of FCM costs through the FRM would be discriminatory.

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An evaluation of the FRM offers in CT from the resource owners consistently offering significant MW near the \$14/kW-mo price cap shows that as capacity payments have risen from \$3.05/kW-mo in 2007 to \$4.26/kW-mo in 2010, the highest priced FRM offers have actually fallen. This reduction in the high-priced FRM offers has occurred despite the steady increase in capacity payments and the corresponding reduction in net FRM payments. These offers have consistently been below the offer cap. This pattern of increasing capacity payment deductions and decreased offers suggests that resources are able to fully reflect their costs of providing forward reserves under the current rules.

The FRM is not a mechanism to allow resources to recover perceived revenue shortfalls that may result from penalties or prorationing in the FCM or in other markets. That is all that this proposal would accomplish. The proposed rule change would allow select resources – only those that are denied prorationing and eligible to be assigned a FRM obligation – to recover certain perceived revenue shortfalls through the FRM. The proposal will not improve the efficiency of the FCM or remove any restrictions or inappropriate limitations on a resource's ability to offer competitively in the market.

#### **Conclusion**

The FRM design, as implemented through the FRM Conforming Changes in September 2009, anticipates that resources will receive different FCM payment rates for a variety of reasons. To account for this, a standard FCM Capacity Clearing Price is deducted from the FRM payments in each reserve zone. To make a special exception for resources denied prorationing in CT is inconsistent with the FRM design, is unnecessary for the construction of competitive offers, and treats those particular CT resources differently than all other resources that might have different payment rates for a variety of other reasons. There is no efficiency or competitive offer argument that supports PSEG's proposed changes. If such a change is motivated by a perceived unfairness to resources that were denied prorationing, it should be recognized that this change will help only a small, seemingly arbitrary portion of the resources that were denied pro-rationing in CT and may disadvantage other resources.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing document on each person listed on the Official Service List compiled by the Secretary in this proceeding.

Dated in Washington, DC this 22<sup>nd</sup> day of July, 2010.

/s/Elizabeth W. Whittle  
Elizabeth W. Whittle