UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England, Inc. and	**)**	**Docket No. ER10-1653-000**
New England Power Pool, Inc.	**)**	
	)	

MOTION TO INTERVENE AND COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to Sections 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.212 and 214, and the Commission's Combined Notices of Filings dated July 2, 2010, the Retail Energy Supply Association ("RESA")[1] hereby files Comments on the ISO New England Inc. ("ISO-NE") joined by the New England Power Pool ("NEPOOL") Participants Committee ("NEPOOL") (together, the "Filing Parties") June 30, 2010 filing of revised Tariff sheets to extend the ISO-NE practice of not reconstituting the load reductions resulting from the activation of Demand Resources. RESA does not support further delay in implementation of reconstituting load reductions for Demand Resources in ISO-NE. This issue has been debated and discussed in great detail. Such a program should already be in place in ISO-NE. Further delay is unwarranted. In support of this Motion to Intervene and Comments, RESA submits as follows:

[1] 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.

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 Commission's official service list for this proceeding:

Elizabeth W. Whittle	Melissa L. Lauderdale
Nixon Peabody LLP	Director of Government & Regulatory Affairs
401 Ninth Street, N.W.	Integrys Energy Services, Inc.
Suite 900	549 Bluehaw Dr.
Washington, DC 20004	Georgetown, TX 78628
202-585-8338	512-863-0044
202-585-8080 (fax)	512-213-9146 (fax)
ewhittle@nixonpeabody.com	mllauderdale@integrysenergy.com

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 and participate in, among others, Demand Response programs.

B. Interests of RESA

With members as participants in ISO-NE and purchasers of capacity and energy and participants in the demand response programs in 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

The Filing Parties seek to delay further development of a load reconstitution program that would be applicable to the participation of Demand Response in ISO-NE's Forward Capacity Market ("FCM"). As noted by the Filing Parties in the Transmittal Letter, load reconstitution is "a process that involves increasing the loads of a particular end-use consumer. . . by the amount of load reduction for which they are receiving compensation through the wholesale electricity market" for the purposes of determining the proportional share of capacity costs allocable to an end-use customer[2]. Payment of demand response as capacity supply is intended to be a rebate against capacity charges associated with that load. Load reconstitution is a requirement of ISO-NE's Load Response Programs but not currently required to account for the participation of Demand Resources in the FCM. At the time the FCM was developed, there was a stakeholder agreement that deferred implementation of load reconstitution until after the first three Capacity Commitment Periods (June 1, 2010 through May 31, 2013), with the explicit understanding that in 2009 stakeholder discussions would commence to further discuss the matter.[3]

Specifically, Market Rule 1, Section III.13.7.3.1 obligated ISO-NE to "file its recommendation to institute or not institute a load reconstitution methodology with the FERC pursuant to Section 205 of the Federal Power Act on or before September 1, 2009." While ISO-NE commenced stakeholder discussions in February 2009, when September 1, 2009 came around, "the parties" requested further delay in a report

---

2 Transmittal Letter at p. 3.

3 *Id*.

submitted to the Commission.[4] Discussions were deferred until February 2010 purportedly so that stakeholders could consider load reconstitution in the context of the ISO-NE's price-responsive demand initiative. When the Commission issued the Notice of Proposed Rulemaking ("NOPR") in Docket No. RM10-17-000, ISO-NE put the whole matter on hold.[5] Now, the Filing Parties seek to defer indefinitely load reconstitution – a methodology that will lower the costs for end-use customers and prevent the undue reliance on uplift for cost collection.

ISO-NE supports load reconstitution. Robert V. Laurita, filing testimony on behalf of ISO-NE in the June 30 Filing, testifies to the benefits of load reconstitution. Mr. Laurita states:

> Load reconstitution is needed to mitigate the shifting of capacity costs from retail customers receiving capacity payments as Demand Resources to other retail customers who are not participating as Demand Resources. Furthermore, reconstituting the loads of retail customers participating as a Demand Resource by the amount of the reduction sold in the capacity market is needed to achieve economic efficiency and comparability of treatment between generation and Demand Resources participating in the FCM.[6]

Mr. Laurita goes on to detail how load reconstitution accomplishes the above-noted goals and objectives.[7]

Despite the benefits, and despite the fact that ISO-NE was prepared to move forward and implement load reconstitution for Demand Resources effective June 1, 2013, the Markets Committee thwarted ISO-NE's efforts by passing an amendment to a motion to implement load reconstitution for Demand Resources to be a motion to extend the

---

4 *Id*. at p.5.

5 *Demand Response Compensation in Organized Wholesale Energy Markets*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,656 (2010) ("Demand Response NOPR").

6 Laurita Testimony , p.6, lines 15-21.

7 Laurita Testimony, p. 6, line 6 – page 10, line 20.

status quo for two more Capacity Commitment Periods. As a result of this change, the earliest that load reconstitution for Demand Resources would be implemented on ISO-NE would be 2016. The resolution adopted and that formed the basis for the Tariff changes submitted in the filing provides:

> [t]he Committee agrees with ISO-NE to defer until September 2011 efforts to implement voluntarily a load reconstitution methodology for Demand Resources with the understanding and agreement that ISO-NE will file a recommendation to institute or not to institute a load reconstitution methodology with the FERC pursuant to Section 205 of the Federal Power Act on or before February 1, 2012 to become effective for the Sixth Forward Capacity Auction on April 2, 2012, and the further understanding that this agreement does not restrict an earlier filing by ISO-NE and/or an earlier effective date if either is required to comply with any final FERC determinations on this issue in ongoing proceedings.

RESA seeks a Commission declaration that no further delays should be permitted. While it was settled that implementation of reconstitution to assure fair distribution of capacity charges could be deferred for the first three FCAs, there was no such settled expectation for subsequent FCAs. Failure to reconstitute loads can result in capacity charge rates which discriminate among loads. It is not just or reasonable and should not be permitted beyond the deferral period addressed by the FCM Settlement Agreement. The Commission should take ISO-NE up on its offer, stated above, to require an earlier effective date and decline to permit further delays. ISO-NE should be directed to commence immediately the stakeholder process again and make a filing by November 1, 2010 with, at a minimum, details regarding Tariff changes necessary to implement load reconstitution for Demand Resources in the FCM.

III.
COMMENTS

RESA members provide value added, risk managed energy products to serve end-use customers in ISO-NE, including Demand Response, energy efficiency, carbon foot-printing and renewable credits. RESA members have been active participants in the stakeholder discussions and agree with the findings of ISO-NE that load reconstitution for Demand Resources is just and reasonable and should be implemented for the FCM. Further delay is not warranted and the Commission should not agree to further delay.

A. Load Reconstitution for Demand Resources is a Critical Component of a FCM

Load reconstitution for Demand Resources is a critical component of a FCM. Participation by Demand Resources in the FCM is an election by a customer or group of customers not to take firm electric service in the forward period. In essence, customers seeking to sell Demand Resources as capacity are seeking to avoid the cost of purchasing capacity in return for a commitment to abide by the terms of non-firm service (i.e., to curtail usage when directed by ISO-NE where purchased capacity to meet the aggregate demand of the aggregate loads which pay FCM charges is inadequate to serve those firm load needs reliably). Were the FCM design to simply reduce the FCM charges with no supply-side payment, this election would work as intended without any reconstitution step. A non-firm customer (having sold Demand Resources as capacity) would have a net zero settlement for capacity – neither buying it in the first instance, nor credited as selling supply.

As the testimony of Robert Laurita at page 6, lines 15-17 indicates, "[l]oad reconstitution is needed to mitigate the shifting of capacity costs from retail customers

receiving capacity payments as Demand Resources to other retail customers who are not participating as Demand Resources." Failure to first charge for the capacity service upsets this accounting, charges customers electing firm service too much and over-credits customers electing non-firm service for all or only a portion of their demand. The effect of this mismatch is clear in the following example.

Assume that "Customer Firm" has a consistent coincident peak load of 90MWs.
"Customer DR" would have a coincident peak load of 10MWs if not selling and delivering 5MWs of DR as capacity.

(1) ISO-NE develops an Installed Capacity Requirement reflecting the full potential firm service needs. Assume it is 100MW times a 10% reserve margin or 110MWs.

(2) ISO-NE procures 110MWs of capacity as 105MWs of generation plus import capacity and 5MW of DR at a price of $3.00/kw-month. Total charges (before PER deductions and performance penalties) of $3,960,000 for the year.

(3) ISO-NE allocates these charges to all customers based on their coincident peak load contribution from the prior year (reflecting DR activations during the coincident peak load as peak load – reflecting the fact that the next settlement step rebates the capacity charge). Total coincident peak load for cost allocation purposes is 100MWs.

    a. Customer Firm is charged $3,564,000.

    b. Customer DR is charged $396,000.

(4) ISO-NE then rebates the capacity service charges to Customer DR in the delivered amount of the DR capacity sold. Customer DR gets a rebate of $180,000. Assuming zero PER deductions and no non-performance penalties, the net charges to both customers are:

    a. Customer Firm has a net charge of $3,564,000.

    b. Customer DR has a net charge of $396,000 – $180,000 or $216,000.[8]

[8] A supply credit offset of the peak load plus reserve margin components of the Installed Capacity Requirement cannot be fully offset by other than perfect resources. As a result, the DR credit as supply cannot offset the full capacity charges (specifically the reserve margin component) without introducing the "potential to harm New England because it can lead to under-procurement of resources in the Forward Capacity Auction" Paragraph 33 of FERC Order in Docket No. ER09-209-000 (issued December 23, 2008).

Now consider the flawed capacity market settlement which results from the absence of reconstituting the peak load.

(1) ISO-NE develops an Installed Capacity Requirement reflecting the full potential firm service needs. Assume it is 100MW times a 10% reserve margin or 110MWs.

(2) ISO-NE procures 110MWs of capacity as 105MWs of generation plus import capacity and 5MW of DR at a price of $3.00/kw-month. Total charges (before PER deductions and performance penalties) of $3,960,000 for the year.

(3) ISO-NE allocates these charges to all customers based on their coincident peak load contribution from the prior year (*except that DR activations during the coincident peak load are not reconstituted as peak load – ignoring the fact that the next settlement step rebates the capacity charge*). Total coincident peak load for allocation purposes is 95MWs.

   a. Customer Firm is charged $3,751,579 (***$187,579 higher***).

   b. Customer DR is only charged $208,421 ($187,579 lower).

(4) ISO-NE then rebates the capacity service charges to Customer DR in the delivered amount of the DR capacity sold. Customer DR gets a rebate of $180,000. Assuming zero PER deductions and no non-performance penalties, the net charges to both customers are:

   a. Customer Firm has a net charge of $3,751,579. (Pays **$41.68/kw-yr** for firm service)

   b. Customer DR has a net charge of $208,421 – $180,000 or $28,421. (*Pays **$5.68/kw-year** for the 5MWs of firm service Customer DR does consume*).

   c. Correct rate is $3,960,000/year divided by 100MWs or **$39.60/kw-year**.

The resulting rate in the absence of load reconstitution for Demand Resources is unjust and unreasonable. Two customers pay different rates for the same capacity service. The cause for this disparate and unduly discriminatory treatment of these two customers is the failure to implement the load reconstitution step that ensures that the base charges first exist before the Demand Resources capacity supply payment (rebate to capacity charges) is settled. This unduly discriminatory treatment cannot be ignored or deferred any longer and Host Participant Assigned Meter Readers' must assume their obligation to assure the resulting FCM rate is implemented in a non-discriminatory manner. Increased

cost or administrative burden to achieve the just and reasonable outcome offers no excuse for further delay.

B. Implementing Load Reconstitution Should Not Be Delayed Any Further

Load reconstitution for Demand Resources is overdue. Load Reconstitution has been part of Load Response Programs since 2003.[9] It should have been a feature of the FCM at its inception, but, as detailed by ISO-NE in the Transmittal Letter, the program was deferred. The clear intent of the stakeholders at the time of development of the FCM was to have ISO-NE to file by September 1, 2009 "its recommendation to institute or not to institute a load reconstitution methodology…" In the Laurita Testimony, ISO-NE has expressed its position that load reconstitution should be implemented. There is simply no need for further delay and ISO-NE must not be unduly influenced by market participants that do not seek implementation of load reconstitution for Demand Resources in the FCM. The explanations for further delay are not persuasive.

First, ISO-NE appears to convey the view that implementation of load reconstitution should be put on hold until the Commission issues a final rule in the Demand Response NOPR.[10] There is no need to wait until the Commission issues a final rule in the Demand Response NOPR. Load reconstitution is already in place in ISO-NE. It is an established and functioning program. Expanding it to the FCM is an extension of an ISO-NE program and is one tailored to the unique circumstances that exist in ISO-NE.

Second, merely because there are ongoing stakeholder discussions on other facets of FCM does not make it necessary to cease development and implementation of load

---

[9] Laurita Testimony at p. 3, lines 18-20.

[10] Laurita Testimony at p.11, lines 4-20. It is interesting to note that even ISO-NE's support for further delay seems tepid at best.

reconstitution. If an RTO/ISO waited until each piece of each program was complete before starting another enhancement, nothing would be accomplished. There is no reason that load reconstitution for Demand Resources cannot be implemented while other FCM-related efforts are underway in the stakeholder process.

Finally, further delay harms the market and will result in further market inefficiencies. ISO-NE supports development of load reconstitution for Demand Resources in the FCM. Its testimony describes articulately the reasons why load reconstitution is important to ensure market efficiency and send proper price signals. The failure to reconstitute load causes increased costs to certain end use customers and continues the use of an implicit form of uplift to collect costs that could otherwise be collected through proper price signals. Further delays to commence further discussions on the matter for two Capacity Commitment Periods delays what ISO-NE has acknowledged should be implemented. In sum, RESA submits that the Commission should not approve of further delay and should order ISO-NE and stakeholders to recommence discussions with the intent to make a further filing with the Commission by November 1, 2010.

WHEREFORE, RESA respectfully requests that its Motion to Intervene be granted and that its Comments are accepted and considered in this proceeding.

Respectfully submitted,

/s/ Elizabeth W. Whittle
Elizabeth W. Whittle
Attorney for
Retail Energy Supply Association

Of Counsel:

Nixon Peabody, LLP
401 Ninth Street, N.W.
Suite 900
Washington, DC 20004
202-585-8338
202-585-8080 (fax)
ewhittle@nixonpeabody.com

Dated: July 21, 2010

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 21st day of July, 2010.

/s/Elizabeth W. Whittle
Elizabeth W. Whittle