

157 FERC ¶ 61,025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

ISO New England Inc. and New England Power Pool Participants Committee Docket Nos. ER16-2451-000

New York Independent System Operator, Inc. AD16-26-000

ORDER ACCEPTING MARKET RULE CHANGES
AND REQUIRING INFORMATIONAL REPORT

(Issued October 18, 2016)

1. On August 19, 2016, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (together, the Filing Parties) submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed tariff changes intended to enhance liquidity in ISO-NE's Forward Capacity Market (FCM). In this order, the Commission accepts those changes, effective October 19, 2016. The Commission also, in a separate docket, directs the New York Independent System Operator, Inc. (NYISO) to submit an informational report, as discussed further below.

I. Background

A. FCM

2. ISO-NE operates a forward market to procure capacity.² Every year in February, ISO-NE holds a Forward Capacity Auction (FCA), in which capacity suppliers compete to be selected to provide capacity to the New England region on a three-year forward basis. The suppliers that clear the auction receive Capacity Supply Obligations that commit them to provide capacity for a year-long delivery period (the Capacity Commitment Period) that runs from June 1, three years after the FCA, through the

¹ 16 U.S.C. § 824d (2012).

² See generally *Devon Power LLC*, 115 FERC ¶ 61,340 (FCM Settlement Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006) (FCM Rehearing Order), *aff'd in relevant part sub nom. Maine Public Utilities Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008), *order on remand, Devon Power LLC*, 126 FERC ¶ 61,027 (2009).

following May 31.³ Thus, the suppliers that cleared the 10th Forward Capacity Auction (FCA 10), held on February 8, 2016, received Capacity Supply Obligations for the June 1, 2019 - May 31, 2020 Capacity Commitment Period.

3. Between each FCA and its associated Capacity Commitment Period, suppliers have opportunities to either procure additional Capacity Supply Obligations or sell the Capacity Supply Obligations they already have for that Capacity Commitment Period. During that three-year period between the FCA and its associated Capacity Commitment Period, ISO-NE holds three Annual Reconfiguration Auctions, in which suppliers may seek to shed or acquire Capacity Supply Obligations at a market-determined auction clearing price. Prior to each Annual Reconfiguration Auction, a window for bilateral transactions (bilateral window) occurs during which suppliers may trade with counterparties outside of auctions to sell or acquire Capacity Supply Obligations at a price agreed to by the parties. Finally, approximately two months prior to each month of the Capacity Commitment Period, ISO-NE holds a monthly reconfiguration auction and a monthly Capacity Supply Obligation bilateral window that provide resources the opportunity to shed or obtain a Capacity Supply Obligation for a single month of the commitment period.⁴

B. August 19, 2016 Filing

4. On August 19, 2016, the Filing Parties submitted the instant filing under section 205 of the Federal Power Act (FPA).⁵ The Filing Parties state that they are proposing changes to the FCM market rules in the ISO-NE Transmission, Markets and Services Tariff (Tariff)⁶ that would give qualified resources additional opportunities to procure and exchange Capacity Supply Obligations. As the Filing Parties explain, a new resource that clears in an FCA is not obligated to provide capacity until three years and four months hence, but may be developed and ready to supply capacity prior to that time. The Filing Parties propose that, if such a resource can demonstrate to ISO-NE that it will be ready to provide capacity by the start of a Capacity Commitment Period prior to the Capacity Commitment Period associated with the FCA in which the resource first

³ Transmittal, August 19, 2016 Filing, Docket No. ER16-2451-000 (Transmittal), at 4.

⁴ *Id.* at 4-5.

⁵ 16 U.S.C. § 824d (2012).

⁶ ISO New England Inc., ISO New England Inc. Transmission, Markets and Services Tariff, III.13.1, III.13.1 Forward Capacity Auction Qualification, 46.0.0, III.13.3, III.13.3 Critical Path Schedule Monitoring, 11.0.0, III.13.4, III.13.4 Reconfiguration Auctions, 16.0.0, III.13.5, III.13.5 Bilateral Contracts in the Forward Capacity Market, 17.0.0, III.13.6, III.13.6 Rights and Obligations of Capacity Resources, 27.0.0 and III.13.7, III.13.7 Performance, Payments and Charges in the FCM, 46.0.0.

participated, then ISO-NE may qualify the resource to participate in an Annual Reconfiguration Auction or Capacity Supply Obligation bilateral window for an earlier Capacity Commitment Period.

5. The Filing Parties propose to modify certain FCM qualification rules to facilitate the ability of New Capacity Resources to supply capacity beginning four months after participating in their first FCA. In particular, the rules changes would provide Import Capacity Resources backed by one or more External Resources the opportunity (currently available to generators and demand response within ISO-NE) to provide capacity beginning one or two years after participating in their first FCA.⁷ The Filing Parties state that these market rules changes are designed to increase liquidity in the FCM by providing qualified resources additional opportunities to procure and exchange Capacity Supply Obligations.⁸

II. Notice of the Filing and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 58,923 (2016), with interventions, comments, and protests due on or before September 9, 2016.

7. Consolidated Edison Energy, Entergy Nuclear Power Marketing, Exelon Corporation, National Grid, Emera Energy Services, NRG Power Marketing LLC and GenOn Energy Management, LLC (collectively, NRG), Eversource Energy Service Company, Dominion Resources Services, Roseton Generating LLC (Roseton), the City of New York and a group of large customers (collectively, City), the Long Island Power Authority (LIPA), the New York Independent System Operator (NYISO), the Indicated New York Transmission Owners (NYTOs),⁹ and Niagara Mohawk filed timely motions to intervene. The New York Public Service Commission (New York Commission) filed

⁷ Transmittal at 5-6. Filing Parties' proposed market rule changes would additionally (1) establish a new form of bilateral contracting in which Market Participants can, as the Capacity Commitment Period approaches, trade seasonal Capacity Supply Obligations during the third annual bilateral window, (2) eliminate a restriction that in most cases prevents Generating Capacity Resources without a Capacity Supply Obligation from participating freely in the Real-Time Energy Market, (3) eliminate a requirement that ISO-NE make a filing with the Commission to terminate the Capacity Supply Obligation of a resource that has voluntarily withdrawn from the FCM resource development process, and (4) specify in the Tariff the deadline by which certain resources must submit monthly bilateral contracts to ISO-NE.

⁸ *Id.* at 1-2.

⁹ The NYTOs are Central Hudson Gas & Electric Corp., Consolidated Edison Co. of New York, Inc., New York Power Authority, New York State Electric & Gas Corp., Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corp. NYTOs Limited Protest at 1 n.1.

a timely notice of intervention. The New England State Committee on Electricity (NESCOE), Brookfield Energy Marketing LP (Brookfield), and the Independent Power Producers of New York and New England Power Generators Association (IPPNY/NEPGA) filed motions to intervene out of time.

8. NYISO and the NYTOs filed timely protests. The New York Commission and City filed timely comments. IPPNY/NEPGA, Roseton, NRG, ISO-NE, and NEPOOL submitted answers to the protests, the NYTOs submitted an answer to Roseton's and NRG's answers, and NYISO submitted an answer to IPPNY's, Roseton's, NRG's, and NEPOOL's answers. The New York Commission submitted an answer in support of NYISO's answer.

A. Protests and Comments

9. The responsive pleadings only address the possible consequences of the Roseton 1 generating station serving as an ISO-NE capacity resource one year sooner than previously expected. The Roseton 1 generating station is located in the State of New York. Roseton 1 has obtained a Capacity Supply Obligation in ISO-NE for the 2018/2019 and 2019/2020 Capacity Commitment Periods. Under the proposed revisions, Roseton 1 could seek to provide capacity a year earlier, for the 2017/2018 Capacity Commitment Period, by participating in the relevant Annual Reconfiguration Auctions and bilateral transaction periods.

10. NYISO does not object to ISO-NE's proposed revisions but states that, if ISO-NE's proposed revisions become effective for ISO-NE's 2017-2018 Capacity Commitment Period, the resulting "material pricing inefficiencies" could unnecessarily increase costs for New York consumers by an estimated \$341 million.¹⁰ As NYISO's market monitor, David Patton, explains:

When the New York capacity resource is available and New England calls for it, the NYISO will input the export in its real-time dispatch model . . . which will increase NYISO's aggregate generator dispatch level by the amount of the export. The increase in output will actually be produced from NYISO's marginal generating resources (not necessarily from the capacity resource itself). Hence, the NYISO must simply have enough generation in aggregate throughout [the New York Control Area (NYCA)] to satisfy the export obligation.¹¹

¹⁰ NYISO Protest at 1, 2, 6. This estimate is based on a hypothetical 500 MW export sale from Roseton 1. NYISO notes that the actual impact would depend on multiple variables, primarily the extent to which capacity from capacity-constrained areas in NYCA is actually sold into ISO-NE's market, but also on NYISO's Installed Capacity Demand Curves and the effect of new entry and retirements. *Id.* at 2, 8.

11. In other words, NYISO's market monitor states that, although the Roseton 1 unit will continue to provide reliability services to NYISO's constrained G-J Locality, where it is physically located, NYISO's current market rules will require the NYISO auction to clear as if that unit no longer exists. As a result, NYISO argues, its auction will unnecessarily procure replacement capacity for Roseton 1 located in the G-J Locality, resulting in higher clearing prices in that locality.

12. NYISO states that this increase in local capacity prices "will increase suppliers' revenues for other resources in the Localities [and] . . . create a large and inefficient incentive for suppliers in NYISO's Localities to export capacity to raise prices,"¹² an incentive to exercise market power that existing market power mitigation measures do not fully address.

13. NYISO states that, to address this concern prior to the beginning of the 2018-2019 Capacity Commitment Period, when the Roseton 1 station would, under the existing ISO-NE Tariff, first be allowed to begin providing capacity into ISO-NE, it has been considering modifications to its capacity market design to account for capacity that could be exported from capacity-constrained areas.¹³ However, NYISO asserts that the Filing Parties' proposed October 19, 2016 effective date significantly reduces the time available for it to modify its market design and fully consider the scope of potential solutions and pricing inefficiencies and limits the opportunity for stakeholder input.¹⁴ NYISO states that it is working on an emergency remedy, but is uncertain that such remedy could be implemented in time or could fully account for complex, interrelated considerations without unintended consequences.

14. Thus, NYISO requests a deferral of ISO-NE's proposed revisions related to import capacity for one year to allow NYISO sufficient time to develop a permanent solution to the concerns described above that fully accounts for interrelated economic, reliability, planning, and market power considerations. It states that this relief would prevent harmful, inefficient economic outcomes in New York during ISO-NE's 2017-2018 Capacity Commitment Period, would not affect commitments that have been made or would be able to be made for ISO-NE's 2018-2019 Capacity Commitment Period, and would not alter the reasonable expectations of generators in NYISO.¹⁵ NYISO states that such a deferral would be consistent with Commission precedent recognizing that action to

¹¹ Affidavit of David Patton, Attachment to NYISO Protest (Patton Affidavit), at 5 ¶ 12.

¹² Patton Affidavit at 8 ¶ 24.

¹³ NYISO Protest at 7.

¹⁴ *Id.* at 9-11.

¹⁵ *Id.* at 3-4.

prevent rule changes regarding interregional seams that produce unjust and unreasonable results is appropriate.¹⁶ NYISO states that if the Commission denies its request for a one-year deferral, it “would attempt to fashion an immediate market rule change.”¹⁷

15. The NYTOs support NYISO’s request, asserting that the proposed effective date for the import provisions of ISO-NE’s proposed revisions is unjust and unreasonable. The NYTOs argue that an effective date of June 1, 2018 is reasonable to allow NYISO and its stakeholders necessary time to develop contemporaneously required market rule changes for New York, thereby avoiding unjust and unreasonable rates in the G-J Locality.¹⁸ The NYTOs state that they support NYISO’s effort to fast-track such market rule changes to correct the market design flaw ISO-NE’s proposed revisions would cause.¹⁹ Likewise, City and the New York Commission support NYISO’s limited protest and request that the Commission defer the effective date of the import provisions of ISO-NE’s proposed revisions until June 1, 2018 to avoid unjust and unreasonable price impacts on New York consumers.

B. Answers

16. NRG and Roseton state that the statutory test for approval of a utility’s rates is solely whether the rates for the customers served under the Tariff in question—i.e., ISO-NE customers—will be just and reasonable. They assert that the impact to NYISO customers is speculative²⁰ and that NYISO has acknowledged that the relief that it requests would have an adverse effect on ISO-NE.²¹ Roseton asserts that NYISO has overstated the dollar impact from ISO-NE’s filing on NYISO load by more than \$100

¹⁶ *Id.* at 12-13 (citing *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,212 (2003); *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,288 (2003); *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,106 (2004) (SECA Cases), in which the Commission sought to eliminate through-and-out rates in the PJM Interconnection, Inc. and the Midcontinent Independent System Operator, Inc. as part of its effort to minimize the adverse impact of seams between the two regions).

¹⁷ NYISO Protest at 4.

¹⁸ NYTOs Protest at 4.

¹⁹ *Id.* at 5.

²⁰ NRG Answer at 3, Roseton Answer at 3, 13.

²¹ NRG Answer at 3 (citing Patton Affidavit at 9 ¶ 27 (“We recognize that the deferral may have some effect on New England because it would remove some supply from the New England reconfiguration auction that may otherwise clear”)).

million, and that even that figure will be too high if another planned resource in the Lower Hudson Valley, CPV Valley, enters the market as scheduled in early 2018.²²

17. IPPNY/NEPGA, Roseton, and NRG state that NYISO's deferral request conflicts with open and efficient competitive markets, because it would unfairly prevent capacity sales from a lower-cost region to a higher-cost region. IPPNY/NEPGA assert that, so long as capacity prices in ISO-NE are higher than capacity prices in New York, NYISO's market power mitigation rules already recognize that exports of capacity to New England are efficient and consistent with a competitive market. Roseton states that it seeks the option to sell the Roseton 1 capacity to the market that values it the most, which is permissible under NYISO's tariff, and that this is a just and reasonable outcome.²³ NRG similarly argues that NYISO's deferral request runs counter to Commission goals of fostering competitive markets.²⁴

18. NRG and Roseton additionally assert that NYISO is engaging in "a form of protectionism," by "seek[ing] to sequester for [its] own use generating capacity that has found a more lucrative market elsewhere by perpetuating for another year a flaw in the market design of a neighboring market."²⁵ Roseton argues that the SECA Cases NYISO cites are inapplicable here, because they show that the Commission will take action to prevent *anti*-competitive results resulting from seams problems, not *pro*-competitive results as would be the case if the Commission accepted the import provisions of the Filing Parties' filing.

19. IPPNY/NEPGA and Roseton further assert that NYISO's proposed process to file changes to its tariff for the 2017-2018 Capacity Commitment Period by November 2016, which could become effective by January 2017, will address the concern raised in NYISO's protest.²⁶ NRG similarly argues that NYISO can address its concerns by filing under section 205 or 206 of the Federal Power Act.

20. ISO-NE states that it takes no position regarding the effects of the Filing Parties' proposal on NYISO's markets, but argues that it is not appropriate to alter the Filing Parties' filing where there is no assertion that any portion of the rule is unjust and unreasonable.²⁷ It further argues that it is NYISO's existing tariff, rather than the Filing

²² Roseton Answer at 10-11.

²³ *Id.* at 22.

²⁴ NRG Answer at 3-4.

²⁵ *Id.* at 3; *see also* Roseton Answer at 22.

²⁶ IPPNY/NEPGA answer at 5-6; Roseton Answer at 8-9.

²⁷ ISO-NE Answer at 3.

Parties' proposed effective date, which creates the risk of an inefficient outcome in NYISO's markets. Accordingly, it is only through modifications to NYISO's tariff that the purported risk may be avoided.

21. NEPOOL states that it does not agree with protestors that New England should lose a full year of benefits from its improvements to the FCM to accommodate a full stakeholder process in NYISO to review changes to its markets.²⁸ It argues that this is not a case in which the proposed changes would cause an unjust, unreasonable, or unduly discriminatory outcome in New England's wholesale markets, and further notes that no party in this proceeding contests that the Filing Parties' proposed revisions reflect just and reasonable enhancements to the FCM.

22. NEPOOL argues that the question before the Commission in this proceeding is whether the Filing Parties' proposed revisions are just and reasonable.²⁹ While the Commission has the authority in certain instances to delay the effectiveness of the proposed changes, NEPOOL states, any such delay could not be longer than five months, and must be supported by factual findings that are not possible here. NEPOOL contends that the proper solution to NYISO's concerns is to address such issues through changes to NYISO's market rules. It notes that there is sufficient time for NYISO to address these concerns before the relevant Annual Reconfiguration Auction, and that NYISO stakeholders have already begun work on solutions.³⁰

23. The NYTOs argue, contrary to NRG's and Roseton's assertions, that nothing in the FPA limits the Commission's authority or its obligation under section 205 to consider the effect of ISO-NE's proposal on all customers, including those outside of New England. The NYTOs reiterate that while the impact on New York consumers may not be known with certainty, they assert there is no question that the impact will be significant and exceed any harm to ISO-NE from a delay. According to the NYTOs, if the proposed changes are implemented as planned, it would preclude the NYISO and its stakeholders from considering all corresponding changes that may be needed to maintain just and reasonable rates in New York.³¹

24. NYISO, in its answer, states that several of the answers are misleading by implying that NYISO's stakeholder process has made enough progress in developing a temporary solution that that temporary solution will obviate the need for the temporary deferral requested. NYISO believes that any tariff revisions it is able to file will be controversial, because they will have been developed without an adequate opportunity to

²⁸ NEPOOL Answer at 6.

²⁹ *Id.* at 7.

³⁰ *Id.* at 8-9.

³¹ NYTOs Answer at 2-5.

garner stakeholder consensus. NYISO further states that NYISO must obtain supermajority stakeholder support before making a filing under section 205, and that achieving this level of stakeholder approval is far from certain. NYISO points out that at the October 7, 2016 meeting of NYISO's Installed Capacity Working Group, there was "no clear consensus on how to revise the capacity market rules in order to address the issues presented by" ISO-NE's filing here.³²

25. NYISO also states that it is not seeking to preclude the efficient operation of the markets and efficient transactions in them. However, NYISO disagrees with IPPNY and Roseton that it has not demonstrated there is a flaw in ISO-NE's proposal and instead argues that not providing NYISO's requested relief and allowing the implementation of ISO-NE's proposed rule, the very thing that would trigger a flaw in New York, would be an inefficient market outcome in and of itself.³³ Lastly, according to NYISO, Roseton's arguments that existing market power mitigation rules obviate the need for the requested deferral are unfounded, do not address the inefficiencies in the auction clearing prices, and instead, highlight the need for the deferral so that NYISO and its stakeholders may further consider the mitigation rules.³⁴ The New York Commission supports NYISO's answer.

III. Discussion

A. Procedural Issues

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the notice of intervention and timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding.

27. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2016), we will grant NESCOE's, Brookfield's and IPPNY/NEPGA's motions to intervene out of time, as granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by IPPNY/NEPGA, Roseton, NRG, ISO-NE, NEPOOL, the NYTOs, NYISO, and the New York Commission because they have provided information that assisted us in our decision-making process.

³² *Id.* at 4.

³³ *Id.* at 6.

³⁴ *Id.* at 8.

B. Substantive Issues

28. The Commission finds the Filing Parties' proposed revisions to be just and reasonable, and accepts them, effective October 19, 2016, as requested. As the Filing Parties explain, the proposed revisions will increase liquidity in the FCM by providing qualified resources additional opportunities to procure and exchange Capacity Supply Obligations. We find that these revisions will facilitate increased competition, by allowing commercially-available new capacity resources additional opportunities to procure and exchange Capacity Supply Obligations through Annual Reconfiguration Auctions and bilateral contracts.

29. We also agree that the proposal to allow market participants to trade a seasonal strip of Capacity Supply Obligations improves capacity market liquidity by increasing opportunities for bilateral trade in advance of the Capacity Commitment Period. In addition, we accept the Filing Parties' proposals to: (1) eliminate a restriction that in some cases restricts the participation of generating capacity resources without a Capacity Supply Obligation in the Real-Time Energy Market; (2) eliminate a requirement that ISO-NE make a filing with the Commission to terminate a resource's Capacity Supply Obligation when that resource has voluntarily withdrawn from the FCM resource development process; and (3) specify in the Tariff a deadline by which certain resources must submit monthly bilateral contracts to ISO-NE. We find that these Tariff revisions will improve the ability of non-Capacity Supply Obligation generators to participate more fully in the Real-Time Energy Market, relieve administrative burden, and clarify market procedures.

30. We also accept the Filing Parties' proposal to give Import Capacity Resources backed by one or more External Resources the opportunity to provide capacity beginning one or two years after participating in their first FCA. Once a resource is capable of providing service, it benefits both that resource and the market generally to enable it to provide that capacity. The Filing Parties' proposal will create an increased pool of resources that are available to transact in the Annual Reconfiguration Auctions and bilateral windows, and thus provide greater competition within the FCM.

31. In accepting ISO-NE's proposal, we note that protestors do not challenge the justness and reasonableness of the specific tariff revisions. They instead ask the Commission to defer the effective date of ISO-NE's filing to provide additional time for NYISO to address a concern within NYISO's markets. However, to be clear, the concerns raised by NYISO are not the result of ISO-NE's proposed tariff revisions, but result from NYISO's treatment of generators that export capacity from within a constrained locality under its current market rules. We are not persuaded that the potential behavior of New York suppliers provides a sufficient basis to reject ISO-NE's filing in this case, and deferring the effective date of an otherwise just and reasonable proposal would be inconsistent with the notice provision in section 205 of the FPA.³⁵

32. Having stated the foregoing, we acknowledge NYISO's concerns about a potential flaw in its market rules. NYISO states that it has already initiated discussions with its stakeholders to address concerns regarding the export of capacity from a constrained locality and the need to avoid associated pricing inefficiencies, as identified by protestors here. Stakeholder documents indicate that NYISO is anticipating filing relevant tariff changes on November 16, 2016, in order to have rules in place before the NYISO 2017-2018 Strip Auction.³⁶ We encourage NYISO stakeholders to complete these discussions in a timely manner. We also encourage NYISO to make the anticipated tariff filing with the Commission to address these concerns before the relevant market and implementation deadlines. In order to provide the Commission with timely, actionable information we direct NYISO to file an informational report addressing its progress in preparing any tariff filing with the Commission. That informational filing should be submitted in Docket No. AD16-26-000 only, on or before November 4, 2016, so that the Commission can assess whether additional Commission action would be appropriate.

The Commission orders:

(A) ISO-NE's proposed revisions are hereby accepted, effective October 19, 2016, as discussed in the body of this order.

(B) NYISO is hereby directed to submit an informational report on or before November 4, 2016, in Docket No. AD16-26-000 only, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁵ 16 U.S.C. § 824d (d) (2012). *See Indiana & Michigan Elec. Co. v Federal Power Commission*, 502 F.2d 336, 341 (D.C. Cir. 1974) (citing *United Gas Pipe Line Co. v. Memphis Light, Gas & Water Division*, 358 U.S. 103 (1958) (notice provision provides not only minimum notice period for customers and Commission but also maximum waiting period for utility)).