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January 8, 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, Docket No. ER10-438-000

Dear Secretary Bose and Deputy Secretary Davis:

Attached for filing in the above-captioned proceeding are Supplemental Comments of the New England Power Pool (“NEPOOL”) Participants Committee. Please contact me if you have any questions or need any further information regarding this filing.

Respectfully submitted,

/s/
Eric K. Runge
Counsel to the NEPOOL Participants
Committee

cc: ISO New England Inc.

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

ISO New England Inc.

)

Docket No. ER10-438-000

**SUPPLEMENTAL COMMENTS OF THE
NEW ENGLAND POWER POOL PARTICIPANTS COMMITTEE**

(January 8, 2010)

I. INTRODUCTION

The New England Power Pool (“NEPOOL”) Participants Committee submits these comments to supplement the filing it jointly made with ISO New England Inc. (“ISO-NE”) on December 15, 2009 in this proceeding (the “Jump Ball Filing”). In that filing, NEPOOL and ISO-NE included separate transmittal letters (the “NEPOOL Transmittal Letter” and the “ISO-NE Transmittal Letter”, respectively) reflecting their separate views on their proposed amendments to the Market Rules. Since the initial filing, NEPOOL has had additional opportunity to review the ISO-NE transmittal letter and supporting testimony, and now provides these supplemental comments to the NEPOOL Transmittal letter.

In the Jump Ball Filing, ISO-NE filed, *inter alia*, its proposed change to the Market Rule¹ provision regarding the calculation of tie benefits for the third annual reconfiguration auction (“3rd ARA”) in the Forward Capacity Market (the “ISO-NE Amendment”). ISO-NE also filed NEPOOL’s proposed alternative amendment to the section of the Market Rules pertaining to the

¹ Capitalized terms used but not defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. (“ISO-NE”) Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (“ISO-NE Tariff”), the Second Restated New England Power Pool Agreement, and the Participants Agreement.”

calculation of tie benefits for the 3rd ARA (the “NEPOOL Amendment”).² ISO-NE filed the NEPOOL Amendment along with its own proposal, based on NEPOOL’s position that Section 11.1.5 of the Participants Agreement (the so-called “Jump Ball Provision”) applies to NEPOOL’s alternative Market Rule amendment.³ In the Jump Ball Filing, both ISO-NE and NEPOOL set forth their arguments as to why Section 11.1.5 either does or does not apply to the NEPOOL Amendment. Also, in the Jump Ball Filing, both ISO-NE and NEPOOL set forth their arguments, with supporting testimony, as to why the Commission should accept each of the respective amendments to the Market Rules. In these supplemental comments, which are based on a further review of ISO-NE’s complete filing package, including the testimony of ISO-NE’s witnesses, NEPOOL addresses specific points about both the applicability of the Jump Ball Provision and the justness and reasonableness of the NEPOOL Amendment.

² The NEPOOL Amendment to the Market Rules would keep the existing tie benefits calculation method in place but temporarily cap the amount of tie benefits that would be used as an input into determining the Installed Capacity Requirement (“ICR”) for the 3rd ARA. Under the NEPOOL Amendment, the cap would stay in place for two Capacity Commitment Periods (2010/2011 and 2011/2012) and ISO-NE would be obligated, by the end of 2010, to review with Market Participants and, as necessary, file proposed Market Rule amendments reflecting a methodology for tie benefit calculations to apply to future 3rd ARAs beginning with the 3rd ARA for the 2012/2013 Capacity Commitment Period. The NEPOOL Amendment was supported by NEPOOL through a vote of the Participants Committee of 66.61% in favor. The ISO-NE Amendment received only 11.66% support.

³ Section 11.1.5 of the Participants Agreement provides in its entirety as follows:

If the Participants Committee vote relating to an ISO Market Rule proposal results in the approval by the Participants Committee by a Participants Vote equal to or greater than 60% of a Market Rule proposal that is different from the one proposed by ISO, including, but not limited to, a Governance Participant proposal, ISO shall, as part of any required Section 205 filing, describe the alternate Market Rule proposal in detail sufficient to permit reasonable review by the Commission, explain ISO’s reasons for not adopting the proposal, and provide an explanation as to why ISO believes its own proposal is superior to the proposal approved by the Participants Committee. The Commission will not be required to consider whether the then-existing filed rate is unlawful, and may adopt any or all of ISO’s Market Rule proposal or the alternate Market Rule proposal as it finds, in its discretion, to be just and reasonable and preferable.

II. COMMENTS

A. The Jump Ball Provision Applies to All Market Rule Amendments, Including the NEPOOL Amendment.

In the NEPOOL Transmittal Letter, NEPOOL explained that the plain language of Section 11.1.5 is clear on its face and applies squarely to the NEPOOL Amendment.⁴ The NEPOOL Amendment meets the two threshold requirements for application of the Jump Ball Provision. First, it is “a Market Rule proposal that is different from the one proposed by ISO”.⁵ Second, the NEPOOL Amendment received a Participants Committee vote equal to or greater than 60%. Thus, NEPOOL has the right to have the NEPOOL Amendment submitted on equal footing with ISO-NE’s Market Rule change as a filing under Section 205 of the Federal Power Act, and the Commission has the latitude to choose between them. Contrary to ISO-NE’s view, the NEPOOL Amendment does *not* set ICR values. Instead, it reflects the continued preference of NEPOOL not to change the “as-is” methodology contained in the existing, Commission-approved Market Rule for calculating tie benefits for 3rd ARAs, but to place an upper limit on such tie benefits (the “Cap”) for a period of two years, while a stakeholder process is conducted for review of the Market Rule.

In ISO-NE Transmittal Letter, ISO-NE argues that Section 11.4 of the Participants Agreement trumps the Jump Ball Provision.⁶ In essence, ISO-NE argues that if a proposed

⁴ NEPOOL Transmittal Letter at p. 5.

⁵ The Participants Agreement defines “Market Rules” to “mean the rules for the administration of the New England Markets filed with the Commission in accordance with this Agreement and accepted by the Commission.”

⁶ See ISO-NE Transmittal Letter at pp. 5-7. Section 11.4 of the Participants Agreement provides in its entirety as follows:

11.4 Installed Capacity Requirements. ISO shall, in its discretion, determine and file with the Commission pursuant to Section 205 of the Federal Power Act the Installed Capacity Requirements for each Power Year. ISO shall present Installed Capacity

Market Rule change pertains to the ICR, then that change is not subject to the Jump Ball Provision, and the Commission may not consider that alternative Market Rule amendment on an equal footing with ISO-NE's proposal. ISO-NE seeks to bolster this assertion with the argument that applying Section 11.1.5 to ICR related amendments would render Section 11.4 meaningless.⁷ ISO-NE further suggests that, because changes to the ICR-related provisions of the Market Rules are reviewed by the Reliability Committee rather than the Markets Committee before going to the Participants Committee for final vote, this stakeholder process indicates an intended different treatment of such Market Rules, including exclusion from the Jump Ball Provision.⁸

ISO-NE's argument against the applicability of Section 11.1.5 is wrong for at least four reasons. First, the plain meaning of Section 11.1.5 requires its application in this situation. As NEPOOL pointed out in its transmittal letter, the Participants Agreement defines the term "Market Rules" as used in Section 11.1.5 broadly to include *all* of the Market Rules, and does not carve out *any* that relate to ICR. The language of the jump ball provision in Section 11.1.5 was heavily negotiated by the parties to the Participants Agreement. Had they intended to exclude any category of Market Rules from the jump ball provision they could easily have done so, but they did not. Nor did they make that provision subject to Section 11.4. The plain meaning of Section 11.1.5 is that it applies to *all* Market Rules. Section 11.4 does not provide an exception to that applicability.

Requirements for each Power Year to Governance Participants pursuant to the processes described in Sections 11.1.2 and 11.1.3 for consideration of proposed changes in Market Rules, and the Participants Committee shall take an advisory vote on the proposed Installed Capacity Requirements for any Power Year. ISO's filing with the Commission of the Installed Capacity Requirements shall report on the advisory vote of the Participants Committee.

⁷ *Id.* at p. 6.

⁸ *Id.* at p. 7.

Section 11.4 does not address amendments to Market Rules; nor does it change the Commission's authority to consider both ISO-NE and NEPOOL Market Rule changes on equal footing and choose between them. Instead, Section 11.4 addresses the determination and filing of ICR, which the ISO must do every year *in accordance with existing Market Rules*.

Second, ISO-NE is incorrect in its argument that NEPOOL's interpretation of Section 11.1.5, as being applicable to ICR related Market Rule amendments, would render Section 11.4 meaningless. As explained above, Section 11.4 does not address amendments to the Market Rules. Instead, it addresses the periodic determinations and filings of ICR that ISO-NE must do under the Market Rules in effect from time-to-time. ISO-NE would still have discretion regarding such determinations and filings, subject to existing Market Rules, Commission authority and the requirements of the Federal Power Act.

Third, ISO-NE is incorrect in its argument that references to the Participant Processes (NEPOOL review and advisory votes) and to the Market Rules in Section 11.4 mean that the ISO has sole discretion to file ICR-related Market Rule changes.⁹ The references in Section 11.4 to the Participant Processes described in Sections 11.1.2 and 11.1.3 refer to the fact that ISO-NE must take its ICR determinations through the NEPOOL stakeholder process for advisory votes just as it would for proposed changes to the Market Rules, but it has discretion regarding what to file for those ICR determinations under the existing rules. The reference to the Market Rules in Section 11.4 simply means that the same review and voting processes will be used to consider ICR values under existing Market Rules as for changes to the Market Rules themselves. NEPOOL's interpretation of Section 11.1.5 would not change any of that process or ISO-NE's discretion under the existing rules and, therefore, would not render Section 11.4 meaningless.

⁹ *See Id.*

ISO-NE, however, is trying to expand its sole discretion under Section 11.4 to include any and all changes to the Market Rules that are related to the ICR and its determination. If the ISO-NE's arguments prevail, the result would be to substantially impair the rights of NEPOOL under the existing Commission-approved right under the Jump Ball Provision to have its alternative Market Rule amendments considered by the Commission on an equal footing with ISO-NE's. ISO-NE's arguments if accepted would also limit the authority of the Commission to adopt a preferred alternative to an ISO-NE-proposed Market Rule amendment.

Fourth, ISO-NE is incorrect in its argument that, because the subject Market Rule change was reviewed by the NEPOOL Reliability Committee (which has purview over reliability related matters) rather than the NEPOOL Markets Committee (which has purview over markets related matters) the Jump Ball Provision does not apply. The fact that one Technical Committee versus another reviews a Market Rule change (in this case the Reliability Committee reviewed the proposed Market Rule change based on its reliability expertise) in no way determines whether the Market Rule amendment is subject to the Jump Ball Provision. Similarly, the decision worked out between NEPOOL and ISO-NE as to which Technical Committee should review and recommend a Market Rule change for Participants Committee consideration has no bearing on the authority of the Commission to consider NEPOOL alternative market rule proposals on an equal footing with those of ISO-NE. There is no language in Section 11.1.5 of the Participants Agreement that treats any particular kind of Market Rule change different than any other kind. Moreover, all Market Rule changes, including the NEPOOL Amendment, are ultimately voted on by the Participants Committee. The Technical Committees simply provide recommendations on those Market Rule changes to the Participants Committee for its vote.

B. The NEPOOL Amendment Is Just and Reasonable and Preferable to the ISO-NE Amendment.

ISO-NE's main argument against the NEPOOL Amendment is that the megawatt amount of tie benefits used as the Cap on tie benefits for calculation of ICR is not based on sound analysis, but instead "represents a tie benefits value reached by assembling a majority of stakeholder votes".¹⁰ ISO-NE dismisses the fact that the Cap was based on a method of calculating individual tie line contributions with a ten percent reduction to address ISO-NE concerns about over-reliance on tie benefits in the form of emergency assistance from neighboring control areas. While ISO-NE argues its own methodology somehow reflects a more sound analysis, there is no suggestion that the NEPOOL Amendment results in ICR values that would violate accepted reliability criteria, which NEPOOL submits bound the zone of reasonableness in this instance.

What ISO-NE's argument ignores is that both the ISO-NE proposed tie benefit value and the NEPOOL proposed Cap diverge from tie benefit amounts that would result from an analytically pure analysis. Instead, each proposal reflects a compromise within a range of outcomes that are within reliability criteria. Use of the existing Market Rule's "as-is" calculation for the 3rd ARA resulted in a tie benefit amount of 3,415 MW.¹¹ Using the "at-criteria" analysis based on current data resulted in a tie benefit amount of 1,525 MW, as ISO-NE has stated in its

¹⁰ ISO-NE Transmittal Letter at p. 8. The Cap proposed in the NEPOOL Amendment is 2,286 MW that would apply for just two Capacity Commitment Periods- 2010/2011 and 2011/2012. NEPOOL and ISO-NE are committed to continue to work within the New England stakeholder process to identify and submit later this year more permanent rules for the 3rd ARAs in Capacity Commitment Periods beginning in 2012/2013.

¹¹ The "as-is" method of calculating tie benefits and its difference from the "at-criteria" method is explained in the NEPOOL Transmittal Letter at pp. 6-7 and in the ISO-NE Transmittal Letter at p 9.

supporting testimony.¹² Neither of the outer limit results of using current as-is and at-criteria analysis (3,415 MW and 1,525 MW, respectively) were acceptable to NEPOOL or ISO-NE, partly for reliability concerns and partly for policy considerations. NEPOOL has proposed temporary use of the Cap in the amount of 2,286 MW. ISO-NE has proposed using the at-criteria result from the primary Forward Capacity Auction, which in this case results in a tie benefit amount of 1,860 MW. ISO-NE states in the ISO-NE Transmittal Letter that it has relied on a tie benefit amount derived from past analyses for the sake of “stability”.¹³ Surely, given the fact that ISO-NE’s own tie benefit amount is not based purely on technical analysis, but also on the policy purpose of stability, the method underlying the NEPOOL Amendment is as sound as the basis for the ISO-NE Amendment.

According to ISO-NE, both the ISO-NE tie benefit value and the Cap proposed in the NEPOOL Amendment would result in an ICR that meets the one-day-in-ten-years loss of firm load expectation (the “LOLE”) reliability standard that has long been the foundation for determining resource adequacy for New England.¹⁴ Moreover, the ISO-NE’s own risk analysis has shown that use of an amount of tie benefits in the amount of the proposed cap would only slightly increase the risk of ISO-NE having to take emergency actions such as voltage reduction on the system.¹⁵ NEPOOL submits that *both the proposed ISO-NE Amendment and proposed NEPOOL*

¹² See “Prepared Testimony of Mr. Mark. G. Karl on Behalf of ISO New England Inc.” (the “Karl Testimony”), at p. 16.

¹³ ISO-NE Transmittal Letter at p. 16.

¹⁴ See Karl Testimony at pp.14-15, stating that even the 3,415 MW amount of tie benefits would on “a purely theoretical, probabilistic adequacy basis” meet the LOLE standard, which *is* a theoretical, probabilistic resource adequacy standard. If the 3,415 MW amount meets the LOLE standard it follows that lesser amounts of tie benefits, such as the Cap, would also meet that standard.

¹⁵ See “Testimony of Frederick R. Plett on Behalf of NEPOOL” at pp. 11-13 and the ISO-NE study cited therein.

Amendment produce outcomes that are within a zone of reasonableness from a reliability perspective. Nothing in the ISO-NE's Transmittal Letter or supporting testimony contradicts that conclusion.

The Commission is left with two proposals for tie benefits that could be acceptable from a reliability perspective, but only one of which is preferable from a stakeholder support and cost consideration perspective. The NEPOOL Amendment continues for two years using the existing Market Rule's as-is method of calculation that has been approved by the Commission, subject to the Cap of 2,286 MW of tie benefits. The ISO-NE's Amendment simply locks down, for "stability", the amount of tie benefits that was determined for the primary Forward Capacity Auction under an analysis that is different than was agreed to by NEPOOL and ISO-NE for the 3rd ARA and that does not take into account the most recently available data.

The real difference between the two proposals is in how certain assumptions should be made at varying times in the ICR development process and the cost considerations connected to them. That is a policy issue affecting consumers in the New England states, hence the initiative on the part of the Office of the Massachusetts Attorney General ("MA AG") to make the proposal that led to the NEPOOL Amendment.¹⁶ Both ISO and NEPOOL have agreed that this matter deserves careful deliberation through additional stakeholder process. Until that process is concluded, the NEPOOL Amendment provides a reasonable interim result. NEPOOL agrees that pure reliability decisions should not be dictated by NEPOOL vote, but that is not the case here, where both Market Rule changes are designed to produce results that are well within the range of reasonableness associated with LOLE reliability criteria calculations. Under these conditions,

¹⁶ The MA AG serves as a consumer advocate for Massachusetts electricity consumers.

cost considerations and stakeholder support *do matter* and should be taken into account.¹⁷ The facts here demonstrate that the NEPOOL Participants took the various analyses, data, and policy concerns into consideration and concluded that, at least until additional stakeholder process can be concluded, the tie benefits Cap under the NEPOOL Amendment would meet reliability requirements, and do so in a way that is preferable to what has been proposed by ISO-NE.

C. Stakeholder Process for Comprehensive Review of Tie Benefits Rules

In the ISO-NE Transmittal Letter, ISO-NE has proposed changing the schedule for addressing some tie benefits issues that were scheduled to be addressed in a filing submitted by February 1, 2010 and instead address tie benefits issues comprehensively in a filing submitted by the end of 2010.¹⁸ NEPOOL understands that ISO-NE intends to make filing in this month formally reporting (the “ISO Report”) this change in the schedule for resolution of those issues as part of a comprehensive treatment of tie benefits issues and a filing with the Commission by the end of 2010. The NEPOOL Participants Committee will consider this proposed change in schedule at its February 5, 2010 meeting, and will provide any comments to the Commission on the ISO Report as appropriate after that meeting.

NEPOOL notes that in the ISO-NE Transmittal Letter and in the supporting testimony, ISO-NE makes certain statements about the degree of consensus that exists regarding certain tie benefits issues.¹⁹ While consensus might be developing on some of these issues, it is an overstatement to say that consensus now exists among stakeholders and between stakeholders

¹⁷ The NEPOOL Transmittal Letter reflects the outcome of the NEPOOL votes on this matter, and notes that the support for the NEPOOL Amendment, while over the 60% Vote requirement, was not unanimous and was opposed by many Participants that own generation within New England.

¹⁸ ISO-NE Transmittal Letter at pp. 11-12.

¹⁹ *See Id.* at p.11; *see also* “Prepared Testimony of Mr. Mark. G. Karl on Behalf of ISO New England Inc.”, at p. 24.

and ISO-NE on any of these issues. NEPOOL Participants have been and will be actively engaged in the ongoing and upcoming deliberations on tie benefits issues in effort to establish consensus.

III. CONCLUSION

For the reasons stated herein and in the NEPOOL Transmittal letter and its supporting testimony, NEPOOL requests that the Commission issue an order determining that Section 11.1.5 of the Participants Agreement applies to all Market Rule changes, including the NEPOOL Amendment, and that the NEPOOL Amendment is just and reasonable and preferable to the ISO-NE Amendment.

Respectfully submitted,

NEPOOL PARTICIPANTS COMMITTEE

By: _____/s/_____

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Dated: January 8, 2010

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with the Combined Notice of Filings #1 issued December 18, 2009, I have this day served the foregoing document electronically upon ISO New England Inc.

Dated at Hartford, Connecticut this 8th day of January, 2010.

/s/

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