

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

ISO New England Inc.,)	
)	
New England Power Pool)	Docket No. ER15-1650-000
Participants Committee)	
)	

**MOTION TO INTERVENE AND COMMENTS OF
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure (the “Rules”) and the Commission’s May 1, 2015 Notice of Filings #2, the New England States Committee on Electricity (“NESCOE”) hereby files this Motion to Intervene and Comments in the above-captioned proceeding.¹ On May 1, 2015, ISO New England Inc. (“ISO-NE”) and the New England Power Pool Participants Committee (“NEPOOL”) jointly filed tariff revisions to implement changes recommended by the Internal Market Monitor (“IMM”), to be effective for the tenth Forward Capacity Auction in February 2016 (“FCA 10”) (collectively, the “Market Monitoring Changes”).² These Market Monitoring Changes are intended to address concerns associated with the exercise of market power in the Forward Capacity Market (“FCM”). For the reasons discussed below, NESCOE supports the package of revisions contained in the Market Monitoring Changes.

¹ 18 C.F.R. §§ 385.212 and 385.214 (2012).

² Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff.

I. Communications

Pursuant to Rule 203,³ the persons to whom correspondence, pleadings, and other papers in regard to this proceeding should be addressed and whose names are to be placed on the Commission's official service list are designated as follows:

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II. Motion to Intervene

NESCOE is the Regional State Committee for New England. It is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO-NE administers. NESCOE's mission is to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the lowest reasonable cost over the long term, consistent with maintaining reliable service and environmental quality.

This proceeding concerns information related to market monitoring in the FCM. The IMM's mitigation of offer prices and other efforts to improve competition in the FCM directly affect resource participation in the FCM and the prices that New England customers pay for capacity. This proceeding thus has system reliability, consumer cost, and environmental

³ 18 C.F.R. § 385.203 (2014).

implications. NESCOE has a direct, immediate, and substantial interest in this proceeding, which will not be adequately represented by any other party. In addition, NESCOE's participation in this proceeding as the representative of the New England Governors will serve the public interest. NESCOE respectfully requests leave to intervene in this matter.

III. Comments

NESCOE supports the Market Monitoring Changes as incremental improvements to the FCM mitigation regime. The proposed reforms are designed to focus mitigation on resources with the ability to exercise market power, improve the accuracy and integrity of suppliers' offers in the auction, and more consistently apply mitigation to new and existing capacity resources.⁴ Considered together, the Market Monitoring Changes are likely to enhance the IMM's effectiveness and thereby increase the competitiveness of the FCM, for the ultimate benefit of consumers. In short, these collective changes provide significant consumer protections while improving the capacity auction process.

The comments in this section address the four main aspects of the market monitoring-related changes: the Dynamic De-List Bid Threshold, Static De-List Bid flexibility, treatment of New Import Capacity Resources, and the Pivotal Supplier Test.

A. Increasing the Dynamic De-List Bid Threshold

The Dynamic De-List Bid Threshold ("DDB Threshold") is "intended to establish a price threshold below which mitigation for market power is likely to be redundant."⁵ The price

⁴ ISO New England Inc. and New England Power Pool Filing of Market Monitoring Changes, Docket No. ER15-1650-000 (May 1, 2015), Joint Testimony of Jeffrey D. McDonald and Robert V. Laurita ("McDonald-Laurita Testimony") at 3-4; Joint Testimony of Jeffrey D. McDonald and Scott S. Hodgdon ("McDonald-Hodgdon Testimony") at 3-4.

⁵ McDonald-Laurita Testimony at 4.

threshold is based on the type of resource that is likely to be the marginal unit in the auction, which according to the IMM is an “older oil-fired steam unit.”⁶ As discussed below, the IMM’s increased DDB Threshold appears to be responsive to current market conditions.

With the implementation of the FCM Pay-for-Performance (“PfP”) reforms,⁷ the DDB Threshold has increased. To reflect the net risk adjusted going forward costs and anticipated net performance payments associated with PfP, the DDB Threshold was increased from \$1.00/kW-month to \$3.94/kW-month in advance of FCA 9.⁸ With the benefit of reviewing *actual* offers from FCA 9, the first auction to include the impact of PfP, the IMM has identified that the DDB Threshold would need to be further updated to reflect current going forward costs, adjusted risk premiums, and market participants’ estimation of PfP risk for FCA 10.⁹

Based on a review of Static De-List Bids of “30 oil and dual fuel fossil steam and combustion turbine generators, representing approximately 5,100 MW of capacity, submitted for FCA 9,” the IMM believes the DDB Threshold should be set at \$5.50/kW-month.¹⁰ According to the IMM, the average net risk adjusted going forward costs for the likely marginal unit have increased from \$2.75/kW-month to \$3.70/kW-month.¹¹ The expected net payments and financial risks for a similar unit have also increased from an anticipated \$1.19/kW-month (pre-FCA 9) to the average of relevant market participants’ estimates of \$1.80/kW-month (post-FCA 9).¹²

⁶ *Id.*, at 5.

⁷ PfP is a two-settlement market design that, among other things, imposes significant financial penalties on capacity resources for under-performance.

⁸ ISO New England Inc. and New England Power Pool, 147 FERC ¶ 61,172 (2014), at 91 and 96; McDonald-Laurita Testimony at 5.

⁹ *Id.*, at 5-9, 13.

¹⁰ *Id.*, at 11.

¹¹ *Id.*

¹² *Id.*

The IMM based its updated DDB Threshold estimate on a robust sample of the most current information. Moreover, the IMM has bifurcated the PfP component of the DDB Threshold into net performance payments and a risk premium.¹³ Such an approach enables the IMM to assemble a more granular estimate of the marketplace’s perception of PfP risk. The IMM has also committed to “assess whether a re-evaluation of the threshold is warranted” based on market conditions and participant conduct.¹⁴ This assessment is in addition to an automatic review at least every three years.

The updated DDB Threshold appears to be both responsive to market changes and designed to enable the IMM to focus on those resources that would offer capacity above the likely marginal unit. Accordingly, NESCOE supports the increased DDB Threshold proposed by the IMM.

B. Limiting Static De-List Bid Flexibility

NESCOE supports the IMM’s proposed Static De-List Bid flexibility changes. The IMM has stated that: “Based on the history of supplier conduct during the eighth and ninth Forward Capacity Auctions,” capacity suppliers could use flexibility under the current rules to submit inappropriately inflated Static De-List Bids.¹⁵ According to the IMM, before the past two auctions, “Market Participants reduced the IMM-approved Static De-List Bid price by, on average, 37%.”¹⁶ Such conduct makes the IMM believe that “a Market Participant can approach the Static De-List Bid process as a risk free price exploration exercise” that enables Market Participants to “test the waters’ to learn the boundaries of what the IMM considers a reasonable

¹³ *Id.*, at 8-9, citing the January 17, 2014 Testimony of Mr. LaPlante and Dr. Gheblealivand in Docket No. ER14-1050-000.

¹⁴ *Id.*, at 13.

¹⁵ *Id.*, at 15.

¹⁶ *Id.*, at 20.

risk premium or opportunity cost.”¹⁷ The IMM is concerned that such conduct would “threaten the integrity of the Forward Capacity Auction process as a means to achieving a competitive capacity price for New England.”¹⁸

According to the IMM, an accurate review process “hinges on Market Participants submitting accurate information in good faith.”¹⁹ Moreover, the IMM contends that the Static De-List Bid review process was originally intended “to allow the IMM to conduct the market power mitigation cost reviews using accurate and unbiased information.”²⁰ That said, a measure of flexibility has been incorporated into the rules “to afford Market Participants the opportunity to ‘fine tune’ its Static De-List Bid to reflect last minute information it may have learned about its resource since its last communication with the IMM and which may affect the Static De-List Bid Price.”²¹ Therefore, the IMM proposes “to narrow this flexibility and remove the incentives for inflating Static De-List bids.”²²

Under the IMM proposal, a Market Participant will only be allowed to reduce its Static De-List Bid by \$1/kW-month.²³ If such a bid is more than \$0.99/kW-month above the DDB Threshold, the Market Participant would not be permitted to withdraw its Static De-List Bid (essentially converting it to a Dynamic De-List Bid).²⁴ In addition, if the Market Participant is found to have market power through the pivotal supplier test, the lower of the IMM-adjusted (mitigated) price or the Market Participant-adjusted (reduced by as much as \$1/kW-month) Static

¹⁷ *Id.*, at 23 and 24.

¹⁸ *Id.*, at 15.

¹⁹ *Id.*, at 22.

²⁰ *Id.*, at 26.

²¹ *Id.*, at 19.

²² *Id.*, at 15.

²³ *Id.*, at 24.

²⁴ *Id.*, at 24-25.

De-List Bid price will be used in the auction.²⁵ Lastly, a Static De-List Bid will be permitted to convert to a Non-Price Retirement Request *only* if the IMM has mitigated the bid.²⁶

The IMM has based its assessment of Market Participant conduct over the course of the two most recent auctions. When investigating the rationale behind the conduct, “no participant identified any information learned after receiving a Qualification Determination Notification that explained why it was necessary to so materially change the Static De-List Bid or withdraw it altogether.”²⁷ An average bid reduction of 37%, stated differently, is equal to an initial bid being approximately 50% higher than the price the Market Participant was actually willing to accept in the auction. The dollar-based limitations on bid adjustment proposed by the IMM are:

(1) “roughly equivalent to the average prices needed to recover the de-listed resources’ annualized capital investments”, and (2) “approximately equal to the de-listed resources’ average infra-marginal energy rents.”²⁸ The proposed limitations, therefore, appear to be warranted *and* narrowly tailored.

The IMM has carefully established a foundation and justification for the proposed limits to flexibility, and NESCOE supports these changes. They appear well designed to restore accuracy and integrity to the Static De-List Bid submission and review process.

C. Appropriate Treatment of New Import Capacity Resources

In response to the Commission’s September 16, 2014 show cause order, ISO-NE revised its Tariff to “provide for the review and potential mitigation of importers’ offers in a manner

²⁵ *Id.*, at 25.

²⁶ *Id.*, at 30.

²⁷ *Id.*, at 22.

²⁸ *Id.*, at 27.

similar to the manner in which other, existing resources are reviewed and mitigated.”²⁹ Such revisions included a pivotal supplier test for New Import Capacity Resources.³⁰ On December 15, 2014, the Commission found the revisions to be a “significant step toward decreasing the opportunity for importers to exercise market power, because pivotal suppliers will be required to submit offers consistent with their net risk-adjusted going forward and opportunity costs.”³¹ However, ISO-NE indicated its intent to continue to “consider further enhancements to the Tariff that will align the treatment of New Import Capacity Resources with that of existing resources.”³² After further consideration, the IMM has proposed additional changes as part of the Market Monitoring Changes, intended to apply mitigation consistently to all new and existing resources.

As the IMM states, “the word ‘New’ in the term ‘New Import Capacity Resource’ does not actually indicate that the resource providing the capacity is a new resource.”³³ Moreover, the current rules that apply a pivotal supplier test to New Import Capacity Resources similarly do not actually indicate whether a resource is a new or existing resource.³⁴ Using a pivotal supplier test, in isolation, to determine whether a resource will be subject to supplier-side (existing) or buyer-side (new) mitigation may have unintended consequences.³⁵ For example, imported capacity (backed by an existing resource over an existing tie line) that is found to be non-pivotal would be treated like a new resource under the current rules. Conversely, imported capacity (backed by a

²⁹ *ISO New England Inc.*, Order to Show Cause, 148 FERC ¶ 61,201 (2014), at 1.
³⁰ *ISO New England Inc.*, Order Conditionally Accepting Tariff Revisions and Directing Compliance Filings, 149 FERC ¶ 61,227 (2014), at 8.
³¹ *Id.*, at 24.
³² *Id.*, at 16.
³³ McDonald-Hodgdon Testimony at 10.
³⁴ *Id.*, at 10-11.
³⁵ *Id.*, at 12.

new resource over a new or expanded tie line) that is found to be pivotal would be treated like an existing resource.³⁶ These unintended, yet foreseeable, consequences may fall short of the Commission's directive to review and potentially mitigate importers' offers in a manner similar to other existing resources. As a result, the IMM proposes Tariff changes designed to treat capacity imports that: (1) function like new resources similar to other new domestic capacity resources, and (2) function like existing resources similar to other existing domestic capacity resources.

The current rules for reviewing and mitigating offers from New Import Capacity Resources were developed on an expedited basis in response to the Commission's show cause order. The IMM proposal for treating imported capacity is an improvement upon the existing rules, which may have unintended consequences. The IMM proposal more directly aligns the review and potential mitigation of capacity import offers with the Commission's directive. NESCOE supports this change.

D. Integrated and Enhanced Pivotal Supplier Test

Under the current rules, a pivotal supplier test is applied separately to Existing Capacity Resources and to New Import Capacity Resources.³⁷ However, as discussed above, New Import Capacity Resources can effectively function more like existing resources than new resources. Moreover, separately testing whether these two categories of capacity resources are pivotal ignores the possibility that either, or both, can be used to satisfy resource adequacy targets through the FCM.³⁸ The current pivotal supplier tests also have several important limitations.

³⁶ *Id.*, at 8-12.

³⁷ *Id.*, at 29.

³⁸ *Id.*, at 29.

They do not comprehensively consider affiliate relationships between market participants³⁹ or zonal interface transfer limits for existing resources.⁴⁰ Lastly, the current pivotal supplier tests are performed before “a number of important auction inputs are finalized.”⁴¹

To address the fragmented, inconsistent, and limited scope of the current Pivotal Supplier Test, the IMM proposes several reforms. First, the IMM proposes to integrate the separate pivotal supplier tests into one.⁴² New Import Capacity Resources that function more like existing resources will be included with existing capacity in the test of whether existing capacity is sufficient to meet the resource adequacy targets. Also, interface transfer limits will be incorporated into the zonal resource adequacy assessment.⁴³ Next, the amount of capacity over which a supplier is deemed to have control will include capacity owned by affiliates or through contractual arrangements.⁴⁴ Lastly, the IMM’s proposed pivotal supplier test will be performed closer to the auction so that capacity that has submitted a Non-Price Retirement Request will be removed from the portfolio of existing capacity resources.⁴⁵

The proposed integrated and enhanced pivotal supplier test appears better suited to identify capacity suppliers that may have the ability to exercise market power. As discussed above, the term “new” in New Import Capacity Resources may not reflect actual economics. Integrating the subset of New Import Capacity Resources that function more like existing resources into the test of whether existing capacity can satisfy resource adequacy targets makes good sense. Incorporating interface transfer limits into the zonal version of the pivotal supplier

³⁹ *Id.*, at 47.

⁴⁰ *Id.*, at 32.

⁴¹ *Id.*, at 45.

⁴² *Id.*, at 34-35.

⁴³ *Id.*, at 36-37.

⁴⁴ *Id.*, at 47-49.

⁴⁵ *Id.*, at 44-47.

test better reflects the conduct of the auction and provides a more accurate sense of whether the capacity can actually be delivered. If an interface transfer limit restricts the ability for a supplier to deliver capacity, then it follows that they are less likely to be able to exercise market power across a zonal boundary in the auction. Including affiliate and contractual relationships in the amount of capacity controlled by a supplier also comports with wholesale marketplace dynamics. Finally, moving the pivotal supplier test closer to the auction to enable removal of to-be-retired capacity will improve the accuracy of the test. For all of these reasons, NESCOE supports the IMM's proposed reforms to the Pivotal Supplier Test.

IV. Conclusion

For the reasons stated herein, NESCOE respectfully requests that the Commission (i) grant its Motion to Intervene, and (ii) consider the above comments in this proceeding.

Respectfully submitted,

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Date: May 22, 2015

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Longmeadow, Massachusetts this 22nd day of May, 2015.

Respectfully submitted,

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