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June 10, 2009

**VIA ELECTRONIC FILING
AND OVERNIGHT MAIL**

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Motion to File Reply Comments and Reply Comments of the New England Power
Generators Association, Inc. - Docket No. ER09-1051

Dear Secretary Bose:

In accordance with Rules 212 and 213 of the Commission's Rules of Practice and Procedure (18 CFR §385.212 and § 385.213), the New England Power Generators Association, Inc. hereby files its Motion to File Reply Comments and Reply Comments in the above-captioned docket.

Copies of this transmittal letter and pleading are being sent to each person designated on the official service list in the above-captioned docket.

Sincerely,

Christopher P. Sherman
General Counsel
New England Power Generators Association, Inc.

Enclosures (1)

cc. Service List

acknowledges that these comments cannot be made as of right, but hereby move for leave to answer the initial comments that were made in this proceeding that challenge the integrity of the New England stakeholder process and its achievement of a mission statement and other reforms to address the Commission's directives in Order 719. Thus, the Commission should find good cause to permit these reply comments given the complexity of the market subject matter and the important precedent this case may set.²

II. COMMUNICATIONS

NEPGA requests that all further correspondence, communications and other documents relating to this matter be served upon the following individuals:

Angela O'Connor, President
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* *Designated for service*

III. BACKGROUND

On October 17, 2008, the Commission issued Order 719, a final rule, which was the culmination of a lengthy generic proceeding that included three technical conferences, an advanced notice of proposed rulemaking and notice of proposed rulemaking and numerous comments in response. The Order, among other things, required that independent system

² Although an answer to an answer is not authorized by the Rules of Practice and Procedure, the Commission allows such answers when they will aid the Commission's decision-making process and clarify the issues before the Commission. *See, e.g., ISO New England, Inc.*, 119 FERC ¶ 61,239 at P 20 (2007) (accepting answers because "they have provided information that assisted us in our decisionmaking process"); *Entergy Servs., Inc.*, 119 FERC ¶ 61,187 at P 6 (same); *Gulf S. Pipeline Co.*, 118 FERC ¶ 61,262 at P 7 (2007) (accepting answers because they would "aid in the Commission's review of the instant proposal"); *Occidental Power Servs. Inc. v. PJM Interconnection, L.L.C.*, 103 FERC ¶ 61,285 at P 10 (2003) (accepting answer to answer that provided clarification to the Commission).

operators and regional transmission organizations (RTOs) submit a compliance filing to modify and improve the operation of wholesale electric markets specifically in the substantive areas of demand resource participation in ancillary service markets, price formation, long-term power contracting, market monitoring policies and RTO responsiveness.

On April 28, 2009, ISO New England, Inc. (“ISO-NE”) and the New England Power Pool (“NEPOOL”) submitted a joint filing to the Commission containing reforms in compliance with Order 719, including proposed revisions to the ISO-NE tariff and the NEPOOL Participants Agreement. The filing was the cumulative result of an extensive stakeholder process seeking to address the directives of Order 719 in the areas of: (1) demand resource participation in the ancillary service markets and market pricing during periods of operating reserve shortage; (2) long-term power contracting; (3) market-monitoring policies; and (4) the responsiveness of regional transmission organizations (RTOs) and ISOs to their customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.

NEPGA filed a timely paperless intervention in this docket on May 26, 2009. Several parties intervened in the docket, and several of those parties filed substantive comments therein.

IV. REPLY COMMENTS OF NEPGA

1. NEPGA Supports the Proposed Mission Statement as a Product of the Collaborative Order 719 Stakeholder Process

The NEPOOL Participants Agreement sets forth a detailed Participant Process “intended to facilitate a collaborative process between the Governance Participants (Individual Participants and the NEPOOL Participants) and ISO to assist ISO in fulfilling its responsibilities as the RTO for New England.”³ Commenters that have suggested that the process is a mere “orchestration” of stakeholders, or political lobbying to sway choice and control a huge swath of economic

³ See, Participants Agreement between ISO-NE, NEPOOL and Individual Participants, §10.

activity, employ a circular argument that ignores the necessity for a stakeholder process.⁴ It is because the ISO-NE marketplace represents in excess of 340 market participants engaging in approximately \$10 billion in wholesale electricity transactions that a stakeholder process is so necessary. NEPGA does not suggest that the stakeholder process is perfect – compromise does not always produce the best market designs to achieve maximum efficiency⁵ – but much as Churchill noted of democracy, it’s the worst possible system except for all the others that have been tried.

ISO-NE has been the Regional Transmission Organization (“RTO”) for New England since February 1, 2005. As the RTO, ISO-NE is responsible for the day-to-day operation of the regional grid as well as for administering the regional markets pursuant to a set of tariffs and rules approved by the Commission. Through the stakeholder process discussed *infra*, ISO-NE has developed and memorialized a mission statement to clarify the objectives of the conduct of the organization in the execution of its duties.⁶

Consistent with the Energy Policy Act of 2005, the ISO-NE wholesale electricity market is an economically dispatched market: a relatively straightforward concept whereby the costs to serve a given level of electricity demand are minimized by dispatching lower-cost resources before dispatching higher cost resources.⁷ The concept becomes more difficult as an RTO is

⁴ Consumer Demand Response Initiative at 14.

⁵ Chandley, John and Hogan, William, *Electricity Market Reform: APPA's Journey Down the Wrong Path*, (April 16, 2009).

⁶ ISO Tariff at I.1.3 and in § 1.3 of Attachments A and A-1 (Market Participant Service Agreement and alternative Market Participant Service Agreement)

⁷ EAct 2005, Sec.1234 (b) “economic dispatch” to mean “the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.”

forced to balance, among other factors, diverse policy demands and environmental laws that alter the otherwise straightforward dispatch of the market. NEPGA recognizes the concerns over rising electricity rates; however, rising electricity costs have not been a signal of failure of the regional competitive markets, nor are they attributable to the RTO. Rather, the costs visible in the wholesale markets are a direct result of rising fuel and other commodity costs and these rising costs have been experienced proportionately by all markets.⁸ One of the important benefits of competitive wholesale markets is to convey these costs, and enable investors and consumers to make investment and consumption decisions accordingly.

NEPGA acknowledges that cost and reliability are inseparable within the rubric of our regional energy policy, as well as within the demands of electric consumers. NEPGA supports a mission statement that directs the ISO to perform its vital planning and market operations functions in a cost-effective manner.

2. Demand Response has Extensive Opportunities in the New England Markets

Demand response has been a part of the New England electricity system for many years. Even before the 1998 implementation of a competitive wholesale market in New England, NEPOOL had implemented a reservation payment system for voluntary curtailments by customers during capacity shortages.⁹ The broad-based recognition of the role of demand response and a regional stakeholder process has allowed the region to develop several demand response programs since the markets have been in place that have been aimed at “jump-starting”

⁸ Since 1999, electricity prices have generally increased the same (34%) across states with organized markets and across those without such markets. In particular, increases in five selected regulated states (Nevada, Florida, Mississippi, Louisiana, and Oklahoma) ranged from 39% to 62% during this same time. Open Letter to Policy Makers from Vicky A. Bailey, et al, Former Chairs and Commissioners of the Federal Energy Regulatory Commission (May 31, 2007)

⁹ A Critical Examination of ISO-Sponsored Demand Response Programs, CAEM-DEFG, 12, (2005).

the price-responsive demand industry in New England. These programs, while making payments beyond pure market pricing, have enabled the technology and communications infrastructure to evolve in a rapid manner. As such, NEPGA disagrees with commenters that suggest that “the ISO-NE Tariff and its Market Rules are still restrictive, and barriers continue to stifle the demand response participation.”¹⁰ In fact, such claims are not supported by the facts that, since ISO began operations, demand resource capability has grown from 100 MW to over 2,500 MW.¹¹

Now, through the combination of the region’s Forward Capacity Market (“FCM”), existing load response programs and the filed changes in response to Order 719, demand response resources can participate directly in each of New England’s wholesale markets (energy, reserves and capacity) on a more comparable, or more advantaged, basis to conventional resources.¹² The market rules have been structured to be as inclusive and flexible as possible to create the greatest opportunity for demand response resources to participate.¹³ These efforts have enabled substantial participation by demand resources and load serving entities in the energy, reserves and capacity markets. Commenters that imply that ISO-NE has been less than supportive of demand response simply misrepresent the actions ISO-NE has undertaken to encourage demand response, at times to their preferred advantage, and the substantial entry of these resources into the markets in recent years.

¹⁰ Demand Response Supporters at 2. NEPGA is encouraged that the Demand Response Supporters do acknowledge that “ISO-NE has devoted a substantial amount of time and effort to address demand response participation, which has improved the overall market,” *Id.* at 5.

¹¹ Report of ISO New England Inc. and New England Power Pool Regarding Treatment of Price-Responsive Demand in the New England Electricity Markets, Docket No. ER08-830 dated March 27, 2009.

¹² For example, outside of a narrow set of operating conditions, demand resources sold as capacity are not required to provide any load reduction service, yet, it is mandatory for internal or external generators sold as capacity to offer their capability in *all hours*.

¹³ e.g., the amount of capacity offered by a demand resource can be as small as 100 kW. *See*, ISO-NE Market Rule 1, §III.13.1.4.1. Demand Resources. *Contrast*, Demand Response Supporters.

While perhaps acceptable in the early years to attract participation, it is not now reasonable (nor necessary) to artificially incent demand resources by offering subsidies to one resource at the exclusion of the basket of resources that lend to the overall efficiency and reliability of the bulk power system. New England's wholesale electricity market is well-established in some respects, and is continuing to develop toward the goal of effectively valuing all products offered into the markets, including demand resources. The marketplace is an open-access trading platform that produces the lowest-cost solution to meeting the demands for reliable electricity, subject to the physical constraints facing the system operators. In that context, comparable service should be comparably compensated, and NEPGA urges the Commission not to create inequities in the market that would alter an analysis of conventional energy supply and demand side resources and create unfair advantages for any particular resource class.¹⁴ Doing so would undermine the competitive market system and chill sufficient investment in diverse resources.

Furthermore, while subsidies create some economic distortions in the real time energy imbalance market, they do not jeopardize system reliability. On the other hand, participation as ancillary service supply requires that ISO-NE know the real time minute by minute status of what can be delivered in the next ten or thirty minutes (in the case of operating reserves), confidence that it can be sustained upon a contingency, and minute by minute verification that resources activated by ISO-NE is being delivered. These actions require real time precision to assure that line limits are not exceeded and the reliable operation of the system can be sustained. ISO-NE's changes permitting demand resources to participate under the existing technical requirements of Dispatchable Asset Related Demands (DARDs) permits participation without compromising on reliability.

¹⁴ *Contrast*, Consumer Demand Response Initiative 6 -9;

V. CONCLUSION

NEPGA respectfully request that the Commission grant this motion to answer the comments filed in the proceeding, and accept for filing the reply comments contained herein.



Christopher P. Sherman
General Counsel
New England Power Generators Association, Inc.
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June 10, 2009

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

ISO New England Inc.

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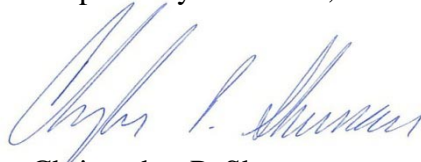
Docket No. ER09-1051

CERTIFICATE OF SERVICE

Pursuant to the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts on this 10th day of June 2009.

Respectfully submitted,



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