

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

ISO-New England Inc.)	
)	Docket No. ER13-1877-000
and)	
)	
New England Power Pool Participants Committee)	
)	

**MOTION TO INTERVENE AND COMMENTS OF THE
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 214, and in accordance with the Commission’s Combined Notice of Filings #2, dated July 1, 2013, the New England Power Generators Association, Inc. (“NEPGA”)¹ hereby files this Motion to Intervene and Comments in response to the ISO New England, Inc.’s (“ISO-NE”) and the New England Power Pool Participants Committee’s (“Participants Committee”- jointly with ISO-NE, the “Filing Parties”) proposal to allow Market Participants greater opportunities to modify their Supply Offers in the Day Ahead Energy Market (“DAEM”) and Real-Time Energy Market (“RTEM”), as filed by the Filing Parties on July 1, 2013, in the above-captioned proceeding (“Offer Flexibility Changes”).

I. Motion to Intervene and Communications

NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA’s member companies represent approximately 27,000 megawatts of installed capacity throughout the New England region.

¹ The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. As active participants in the ISO-NE capacity and wholesale electricity markets, NEPGA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

All correspondence and communications related to this proceeding should be addressed to the following individuals:

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II. Background

Under the existing market rules, a Market Participant must submit its Supply Offer for the DAEM by 10:00 AM on the day before the Operating Day. A Market Participant may modify its Supply Offer, as it applies to the RTEM, between 1:30 and 2:00 PM on the day before the Operating Day ("Re-Offer Period"). A Market Participant cannot change the cost-related parameters of its Supply Offer after the Re-Offer Period. Under the Offer Flexibility Changes, a Market Participant can change the cost-related parameters of its offer up to 30 minutes prior to the hour to which the Supply Offer applies. Specifically, for generating resources, a Market

Participant can modify its energy Blocks, Start-Up Fee, No-Load Fee, fuel type, and the Regulation Supply Offer price and quantity.

III. COMMENTS

The Offer Flexibility Changes, most significantly the ability for Market Participants to submit different Supply Offers for each hour in the DAEM and RTEM and change their Supply Offer price and cost parameters in real-time up to 30 minutes before the applicable hour (“Hourly Reoffers”), will significantly improve DAEM and RTEM price formation and efficiency. Hourly Reoffers will allow resources to timely price changes in the cost of fuel, among other cost and price inputs and parameters, in their Supply Offers. The ability to update fuel costs, in particular, will allow real-time energy prices to more accurately reflect the marginal cost of energy, which in turn will result in improved price formation and transparency. The Internal Market Monitor (“IMM”), however, is proposing several amendments to Appendix A to Market Rule 1 (“Mitigation Rules”) that are unjustly and unreasonably punitive and could suppress market prices below the marginal cost of energy, thereby penalizing all resources.

For these reasons, the Commission should approve the Offer Flexibility Changes subject to changes to the IMM’s proposed penalty provisions, as discussed below.

A. The Proposed Mitigation Rules Unjustly and Unreasonably Penalize Market Participants

The IMM proposes to penalize Market Participants that fail either of two “verification tests.”² First, a Supply Offer must be within 10% of the Reference Level (greater or less than) as determined by the IMM based on the fuel price submitted by the Market Participant.³ Second, a Market Participant must provide the IMM with documentation “that allows the IMM to derive a

² Testimony of Mario S. DePillis Jr., Ph.D, Docket No. ER13-1877 (“DePillis Testimony”), at p. 13.

³ *Id.* at p. 14.

fuel price similar to that requested by the Market Participant.”⁴ Should a Market Participant fail either test, it may not submit a fuel price adjustment for the affected resource in any hour for 2 months.⁵ If it does so a second time within a year, it may not submit a fuel price adjustment for 6 months.⁶ This is an unjust and unreasonable penalty provision due to the uncertainty inherent in natural gas markets (especially in pipeline-constrained New England), its potential price suppressing effect, and its disproportionate magnitude. NEPGA understands the IMM’s interest in defining a competitive bid monitoring process, but the consequences of mitigation, if necessary, should be limited to the specific Market Participant and commensurate with the specific Supply Offer behavior. Denying the ability to reflect actual fuel price exposure for real time dispatch for a 2 or 6 month period is inefficient and punitive to the rest of the competitive market supply.

After a Market Participant has submitted a fuel price adjustment, it must provide the IMM with a quote from a named supplier, an invoice, or a price from a public trading platform.⁷ If the fuel price reflected in the documentation differs from the fuel price the Market Participant includes in its Supply Offer, the Market Participant is subject to the penalties described above.⁸ A Supply Offer may be based on a fuel price that is different than the price reflected in the documentation if the IMM approves an “addor” value (or methodology the Market Participant will use to determine the adder) to the fuel price.⁹ The fuel price “addor” or adder methodology must be approved by the IMM “in advance.”¹⁰ That the Mitigation Rules allow for an “addor” is an acknowledgement that the documented fuel price may legitimately differ from a fuel price

⁴ *Id.* at pp. 14-15.

⁵ *Id.* at p. 17.

⁶ *Id.*

⁷ *Id.* at p. 15.

⁸ *Id.* at p. 14.

⁹ *Id.* at p. 15.

¹⁰ *Id.*

used as the basis for a Supply Offer. As the IMM explains, a quote from a supplier may be “for a different time period than the period for which they are submitting a Supply Offer”¹¹ and therefore may not reflect a resource’s actual fuel costs. “[V]olatility observed in the intra-day gas market on the publically trading platforms”¹² can cause documented prices to be stale for one or more of the hourly reoffer periods. Likewise, “a Market Participant may need to apply an adder to reflect different natural gas purchase quantities.”¹³ If a Market Participant does not have an updated quote for a quantity greater than that quoted by a supplier or on a publically traded platform, or cannot obtain a quote for a price at the quantity the resource needs, the quote available to the Market Participant may not reflect its actual fuel costs.¹⁴

The “adder” provision, though helpful, is not a sufficient safeguard against penalizing Market Participants for basing their Supply Offers on their anticipated actual fuel costs. As noted, an adder or adder methodology must be approved in advance by the IMM. It is unreasonable to expect that a Market Participant can predict, with absolute precision, all of the adders or adder methodologies that may be necessary to account for the myriad of possible reasons (and combinations of reasons) described by the IMM for how a quote or trading platform price may differ from actual fuel costs. A Market Participant is subject to a 2 month prohibition from adjusting its Supply Offer for a single failure to predict in advance every scenario that may lead to a quote or trading platform price differing from actual fuel costs, and a 6 month prohibition for a second failure to do so.¹⁵ Alternatively, a Market Participant may choose not to

¹¹ *Id.* at p. 16.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ While the proposed mitigation structure seems aimed at preventing market fraud by sellers, it will result in over-mitigation as legitimate transactions will result in penalties, as described herein. Instead of relying on such excessive mitigation which may interfere with efficient markets and penalize Market Participants for legitimate fuel price adjustments, the IMM should report fraudulent behavior that it becomes aware of to the Commission.

increase its Supply Offer to reflect its actual fuel costs if it has not predicted its need for an adder (and received approval from the IMM) in advance, potentially suppressing marginal prices and disrupting efficient economic dispatch, some of the very harms the Offer Flexibility Changes are intended to remedy.¹⁶ It is unjust and unreasonable to force Market Participants to choose between basing their Supply Offers on their actual fuel costs or risk a severe penalty for a single failure to document a fuel price consistent with an actual fuel price. It is even more so considering the market-wide effects of the IMM's proposed penalties which may suppress the energy prices for all other Market Participants.

The sheer magnitude of the proposed penalty also weighs against its approval. Under the Offer Flexibility Changes, a Market Participant will have 25 opportunities per operating day to adjust its Supply Offer based on a change in fuel price; 24 for each of the hours of the operating day and one for the (existing) Re-Offer Period.¹⁷ A 2 month prohibition on adjusting Supply Offers based on fuel price, therefore, denies a Market Participant the opportunity to change its Supply Offer in approximately 1,500 consecutive re-offer periods. A 6 month prohibition denies a Market Participant the opportunity to change its Supply Offer in approximately 4,500 consecutive re-offer periods. A Market Participant subject to the IMM's proposed penalties would be forced to include in its Supply Offers a risk premium reflecting gas market volatility over the course of a day (rather than on an hourly basis), an inefficient offer practice the Offer Flexibility Changes are intended to extinguish.¹⁸ The IMM's proposed penalties, therefore, could significantly curtail the desirable market efficiencies the Offer Flexibility Changes will bring to the ISO-NE energy markets, due to a Market Participant's inability (through potentially no fault

¹⁶ Joint Testimony of Robert G. Ethier and Christopher A. Parent, Docket No. ER13-1877-000 ("Ethier/Parent Testimony"), at pp. 8-10.

¹⁷ DePillis Testimony at p. 8.

¹⁸ Ethier/Parent Testimony at p. 8.

of its own) to document expected fuel costs which can be extremely unpredictable. This excessive penalty construct is a prime example of how heavy-handed over-mitigation can have a distorting effect on market outcomes and should be rejected.

According to the IMM, the 2 and 6 month exclusion penalties are reasonable, in part, because “they correspond to a similar exclusion used in the New York market for participant-submitted fuel prices.”¹⁹ The IMM does not cite to a specific section of the New York Independent System Operator (“NYISO”) tariff, but is presumably referring to the NYISO Market Power Mitigation Measures. The circumstances that may give rise to an hourly offer exclusion under the NYISO Tariff, however, differ significantly from those proposed by the IMM. Specifically, the NYSIO Market Monitor may impose the 2 and 6 month penalties where a Market Party has, “over a time period of at least one week, submitted inaccurate fuel type or fuel price information that was biased in the Market Party’s favor.”²⁰ Unlike under the IMM’s proposal, therefore, the NYISO Market Monitor may impose penalties when the undesirable supply offer behavior has occurred over a significant period of time, *i.e., at least over the course of a full week*. The IMM is proposing the same penalties as NYISO, but for a single transgression. In addition, the NYISO allows a Market Party to consult with the Market Monitoring Unit prior to imposing an exclusion penalty, suggesting that a Market Party may justify its fuel price adjustment after the fact. The IMM is proposing to impose a 2 or 6 month penalty for a Market Participant’s failure to produce documentation created before the Market Participant changes its fuel price when, as discussed above, the documentation available to the

¹⁹ DePillis Testimony at p. 17.

²⁰ NYISO Tariffs, Market Administration and Control Area Services Tariff, MST (“NYISO Tariff”), 23 MST, Attachment H, § 23.3.1.4.7.8.

Market Participant prior to changing a fuel price may not reflect a legitimate, market-based fuel price change at the time of the Supply Offer.

For purposes of comparison, it is instructive to take note of another NYISO penalty provision that allows the Market Monitor to impose the 2 or 6 month penalties for “unjustified interactions between a Market Party’s virtual bidding and the submission of real-time Incremental Energy Bids that exceed the Incremental Energy Bids.”²¹ Specifically, the NYISO Market Monitor may impose these substantial penalties where a Market Party has a Virtual Load Bid scheduled for the same hour in which the Market Party seeks to make an hourly reoffer and the Market Party cannot justify, after the fact, an hourly reoffer that exceeds the reference price by the lower of \$100/MWh or 300%.²² The NYISO exclusion penalty, therefore, is intended to prohibit orchestrated attempts at virtual bid/hourly reoffer market manipulation where hourly reoffers exceed actual fuel costs by a significant margin. The NYISO Tariff also provides that the Market Monitor may impose an exclusion penalty where a Market Party generator is located in a Constrained Area and makes an uncompetitive hourly reoffer, apparently seeking to prohibit the exercise of undue market power within an import-constrained zone.²³ Conversely, the IMM proposes to impose a similar exclusion penalty to ISO-NE Market Participants where the Market Participant has not submitted a virtual bid (and therefore is not attempting to manipulate the market by some type of virtual bid/hourly reoffer arbitrage), is not necessarily in a import-constrained load zone, and cannot, based on documentation created before the relevant hour, justify a hourly reoffer that exceeds the reference price by 10%. The NYISO Tariff exclusion penalties, therefore, are not a proper benchmark for the IMM’s proposed penalties because the

²¹ *Id.*, § 23.4.7.2.

²² *Id.*

²³ *Id.*

NYISO exclusion penalties are intended to discourage and penalize more egregious supply offer behavior with a greater likelihood of adversely affecting efficient markets.

The IMM's proposed penalties, which can result from a Market Participant's failure to predict with absolute foresight every possible scenario that may lead a quote or trading platform price to be, in hindsight, inaccurate relative to the real-time fuel purchase in question (or from simple error), are disproportionate to the Market Participant actions that may give rise to the penalties. None of these potential penalty provision triggers are acts of malice or attempts to exercise undue market power or avoid mitigation, but are instead a reflection of the limitations of the IMM's proposed mitigation scheme *as contemplated by the IMM*. The IMM has a legitimate interest in incenting Market Participants to base their Supply Offers on actual fuel costs, but its proposed penalties could extinguish Market Participant Supply Offer flexibility for significant periods of time due, effectively, to the inherent volatility in natural gas markets. The Commission should therefore reject the IMM's proposed penalty provisions as unjust and unreasonable.

II. Conclusion

Wherefore, NEPGA respectfully requests that the Commission grant its motion for leave to intervene in this proceeding and adopt NEPGA's requests herein.

Respectfully Submitted,

/s/ Bruce Anderson

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts, July 22, 2013.

/s/ Bruce Anderson _____

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