

B. Basis for Intervention

NECPUC is a not-for-profit corporation comprising all the public utilities commissioners of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Formed fifty years ago and funded by the New England states, NECPUC's mission is the promotion of regional cooperation and effective communication on all public utility matters within New England. As a representative of New England's interests concerning the electric industry, NECPUC has a vital stake in the operation of the New England power markets.

Good cause exists to grant NECPUC's motion to intervene out of time. The February 1, 2005 Notice provided just six business days to intervene and submit comments. NECPUC was unable to coordinate among its member state commissions and draft a response to the Joint Filing within this limited time frame. NECPUC asks that the Commission consider its comments, as the issue of reliable system operation during extreme cold weather periods is of critical importance to each of the NECPUC member commissions. In this respect, NECPUC intervened and submitted comments in the related case, *ANP v. ISO New England, Inc. and New England Power Pool, Inc.*, Docket No. EL05-39-000. Finally, granting NECPUC's motion herein will not cause delay or disruption in these proceedings, nor will it delay or prejudice any other party. For the reasons stated above, NECPUC respectfully requests that its motion be granted.

II. COMMENTS

A. Background

On December 6, 2004, ANP Funding I, LLC (“ANP”) filed a Complaint asserting that new NEPOOL Operating Procedure 20 (“OP 20”) and amended NEPOOL Operating Procedure 5 (“OP 5”) (collectively, the “OP Changes”), adopted in response to unusual cold-weather events occurring in New England during January 2004 (the “Cold Snap”), conflict with Section 3.2.6 of Appendix B to NEPOOL Market Rule 1, and, accordingly, should have been filed with FERC pursuant to Section 205 of the Federal Power Act (“FPA”).

NECPUC supported the ISO and NEPOOL answers in opposition to the Complaint and urged FERC to dismiss the Complaint. In addition to supporting the answers of NEPOOL and ISO-NE, NECPUC stated, in response to ANP’s suggestion that generators do not have an obligation to be available if needed by the ISO to maintain reliability:

[N]othing in the current market rules, NEPOOL agreements or operating procedures supports ANP’s suggestion that the rules now in place allow generators to refuse to operate their units when ISO-NE reasonably determines they are necessary for reliability. In fact, ANP’s view is inconsistent with the Commission’s own recent statement on the importance of generators’ compliance with reliability directives. *See, ISO New England, Inc.*, 106 FERC ¶ 61,280, P.174 (2004) (rejecting a supplier’s proposed modification to the RTO documents that could have been read to allow a generator to avoid compliance with a reliability directive issued by the RTO). Further NECPUC stresses the critical importance of having procedures in place to ensure that during severe cold weather events, system reliability is not jeopardized.

ANP Funding I, LLC, supra, Motion to Intervene and Answer of NECPUC at 3 (December 20, 2004). In its January 21 Order, the Commission did not rule on the merits of the Operating Procedures but concluded that OP 5 (which allows generators to declare Economic Outages and ISO to disallow and/or recall Economic Outages) and OP 20 (which specifies the extreme cold weather conditions under which ISO will disallow or recall Economic Outages) can affect rates and service and therefore are required to be filed under section 205 of the Federal Power Act. It did not address any of the assertions made by ANP regarding the merits of OP 20.

B. Appendix H to Market Rule 1

On January 28, 2005, in response to the January 21 Order, ISO-NE and NEPOOL filed Appendix H to Market Rule 1. Appendix H contains the cold weather procedures formerly contained in OP 20 and OP 5. These Cold Weather Event procedures were the provisions determined by ISO and NEPOOL to be appropriate to implement this winter during extreme cold weather conditions. Joint Filing at 6. Specifically, the procedures address:

- improved communication processes between the ISO, the owners of gas-fired generation and the natural gas industry;
- circumstances in which Economic Outages are allowed during Cold Weather Conditions;
- scheduling during Cold Weather Conditions that will allow natural gas units to receive their commitment status in sufficient time to purchase gas by the gas nomination deadline;

- processes that will enable the ISO to forecast and operate with greater certainty and facilitate higher unit availability during Cold Weather Conditions;¹ and
- responsibilities of the ISO and Participants during Cold Weather Conditions and procedures for outage evaluation and reporting.

Appendix H, section 1 to Market Rule 1.

The Cold Weather Event Procedures carefully balance the need to ensure reliability during extreme cold weather with generator concerns, as explained in the Joint Filing:

During the stakeholder review process, both generators and load raised conflicting concerns related to the Cold Weather Event Procedures as filed herein. The Cold Weather Event Procedures balance conflicting concerns of load and generators and pragmatically account for ongoing long-term market improvement efforts. NEPOOL did not accept the strenuous arguments by some interested parties to deny ICAP payment to generators that fail to secure firm fuel supply. They also did not accept arguments that generators receiving ICAP credit should be penalized for failing to perform when needed. Nor did NEPOOL accept the arguments by ANP and others to make more sweeping pricing or dispatch changes. Rather, they opted for Operating Reserve pricing improvements, which have already been filed and approved, and modest interim special scheduling and dispatch procedures while more comprehensive improvements are being discussed and finalized.

Joint Filing at 8.

Appendix H is consistent with Commission policy recognizing the ISO's need to ensure reliability while recognizing generation owners need "to manage their assets efficiently and according to their business plans." *Midwest Independent System*

¹ Cold Weather Conditions exist when Effective Temperatures are equal to or less than zero degrees Fahrenheit. Appendix H also contains definitions for a "Cold Weather Watch," a "Cold Weather Warning," and a "Cold Weather Event." Additional definitions exist for circumstances in which cold weather conditions are forecast to be of longer duration and capacity becomes tighter, and Appendix H describes ISO and Participant responsibilities that are applicable during these extreme cold weather conditions.

Operator, Inc. 109 FERC ¶ 61,157 at P 288 (2004). Moreover, Appendix H is an improvement over the former OP 5 because it specifies those limited circumstances when Economic Outages will not be permitted. Thus, Appendix H provides greater transparency, which has been a feature missing in other “must offer” requirements. *See, e.g., California Independent System Operator Corporation*, 108 FERC ¶ 61,022 at P 45 (requiring ISO to define what would constitute “all reasonable efforts” to revoke the waivers of must offer requirements for non-RMR units before dispatching RMR units to prevent a system emergency).

NECPUC further notes that Appendix H is not inconsistent with Appendix B. Appendix B specifically relates to sanctions for failing to perform in a manner consistent with an ISO directive.² It does not in any way *give* or *take away* authority for granting or recalling Economic Outages. In fact, the title of the provision discussed in the Commission’s January 21 Order, “Certain Economic Decisions Excused,” confirms that this rule relates to consequences for actions taken or not taken by Participants, not the authority to take such actions. In other words, under the specific provisions of Appendix

² Appendix B specifies that its purpose is to set forth the procedures and standards under which the ISO may impose sanctions for certain violations (“Sanctionable Behavior” as delineated in Section III.B.3 of this *Appendix B*) of Market Participants’ obligations under the ISO New England Filed Documents and other ISO New England System Rules (collectively, “Market Participant Obligations”). The ISO New England System Rules embody procedures and standards of conduct that are intended to assure short-term reliability and the competitiveness and efficiency of the markets. The ISO’s ability to impose sanctions under this *Appendix B* is intended to deter noncompliance by Market Participants with Market Participant Obligations that: (i) materially impairs or threatens to materially impair short-term reliability, (ii) materially impairs or threatens to materially impair the competitiveness or efficiency of the markets, (iii) involves unexcused failure to follow certain ISO instructions, or (iv) involves unexcused failure to provide to the ISO in certain circumstances accurate and timely information required and requested by the ISO.

Appendix B, Section 3.B.1.

H, the ISO may (consistent with the current OP 5) recall or prohibit an Economic Outage if the unit for which the Economic Outage is sought is needed to avoid a capacity deficiency. However, if the ISO does recall or prohibits an Economic Outage consistent with the provisions of Appendix H, and the generator fails to comply with this directive because of valid economic reasons as discussed in Appendix B, the generator will not be subject to the Appendix B sanctions.

III. CONCLUSION

For the reasons stated above, NECPUC respectfully requests leave to intervene out of time in this proceeding. Further, NECPUC requests that the Commission approve Appendix H to Market Rule 1.

Respectfully submitted,

NEW ENGLAND CONFERENCE OF
PUBLIC UTILITIES COMMISSIONERS

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Dated: February 14, 2005

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document by first class mail upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 14th day of February, 2005.

John E. McCaffrey
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