UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Northern Maine Independent System Administrator, Inc.	))	Docket No. ER07-1251-001

COMMENTS OF
THE MAINE PUBLIC UTILITIES COMMISSION
ON AMENDMENT TO FILING

The Maine Public Utilities Commission ("MPUC"), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, Lisa S. Gast and Joshua E. Adrian, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully files these Comments in the above-captioned proceedings regarding Northern Maine Independent System Administrator Inc.'s ("NMISA") August 31, 2007 filing ("August 31 Filing") of amendments to certain of the Northern Maine Market Rules filed by the NMISA on August 3, 2007. In support of its Comments, the MPUC states as follows:

I. BACKGROUND

On April 13, 2007, NMISA submitted for filing and acceptance proposed revisions to the NMISA Tariff and to its Market Rules ("April 13 Filing") in Docket No. ER07-744-000. On May 4, 2007, the MPUC filed a Notice of Intervention and Protest in that Docket, requesting that that the Commission reject the filing or, in the alternative, suspend the rate to the full extent of the statutory suspension period and set the matter for

hearing.[1] On June 4, 2007, the Commission issued its Order Rejecting Proposed Tariff Revisions Without Prejudice.[2] In its June 4 Order, the Commission agreed with the MPUC that NMISA had not met its burden of proving that its proposed revisions are just and reasonable, and it rejected the April 13 Filing without prejudice.

On August 3, 2007, NMISA again filed rules providing for a capacity obligation. However, the new filing was based on discussions among stakeholders, the NMISA, the MPUC and a facilitator hired by the NMISA. The NMISA stated that the discussion process was driven by (1) the need to continue to ensure the reliability of the Northern Maine system and (2) to achieve this purpose at the lowest reasonable cost by avoiding unduly burdensome capacity requirements.[3]

On August 24, 2007, the MPUC timely filed a Notice of Intervention and Comments. In these comments, the MPUC stated it was in general agreement with the intent of the new rules but that certain provisions needed clarification which the NMISA had agreed to provide. One of the areas needing clarification was whether a Competitive Energy Provider's ("CEP") capacity obligation, as determined in advance, was subject to expansion based on events taking place subsequent to the determination by the NMISA that the CEP had met its capacity obligation. Specifically, the MPUC stated:

> The MPUC understands from communications with NMISA that the intent of the proposed Market Rule is not to impose any other capacity obligation on CEPs. For example, if during the capability period a previously approved capacity resource experiences a forced outage, a CEP will not be required to secure replacement capacity (assuming that the resource continues to qualify as a capacity resource under the Market Rule).

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1 *See* Notice of Intervention and Protest of the Maine Public Utilities Commission, Docket No. ER07-744-000, filed May 4, 2007, at 10-12.

2 *N. Me. Indep. Sys. Adm'r,* Inc., 119 FERC ¶ 61,231 (2007) ("June 4 Order").

3 *See id.* at 1-2.

MPUC August 24 filing at. 5.

On August 31, 2007, the NMISA submitted amendments to certain of the Northern Maine Market Rules filed by the NMISA on August 3, 2007 (the "August 31 Filing"). The NMISA states that the amendments are made "to accommodate the concerns of the MPUC and have been agreed to by the MPUC." Transmittal Letter at 1.

On September 7, 2007, the Commission issued its Combined Notice of Filings #1, in which it set September 21, 2007 as the date by which comments on the NMISA's August 31, 2007 amendments to its August 3, 2007 filing are due. The MPUC's Comments are timely filed in accordance with the Commission's Notice.

II. COMMENTS

The MPUC generally is in agreement with the changes made by the NMISA in its August 31 Filing; however, one aspect of these changes requires further clarification. The MPUC requests that the Commission, in any Order respecting the August 31 Filing, clarify the meaning of "Firm Energy" as it is used generally in the rule, and specifically as it is used in Market Rule 10.3.8, to be consistent with the understanding of the parties as agreed to prior to NMISA's August 31 Filing in this docket.

In discussions with the NMISA through Gordon Weil, the facilitator, the MPUC agreed to specific language that the NMISA was to use in its Transmittal Letter with respect to the definition of firm energy, and how the definition of firm energy would be applied. Specifically, the MPUC requested that the cover letter state as follows:

> One change has been to include a definition of "Firm Energy." The definition provides that energy backed by any capacity is Firm Energy. Here as elsewhere in the rules, the capacity used is the capacity already provided to meet the Capacity Obligation under Market Rule 10 and not an additional capacity purchase (except where the capacity fails to meet the 70% availability standard in the rules). Thus energy from a generator

> listed in ISO-NE or energy from the ISO-NE market can count as Firm Energy assuming the CEP has met its Capacity Obligation under Market Rule 10.

This language, drafted by the MPUC, was based on language provided by the facilitator, which stated, in relevant part:

> The changes also address the Firm Energy issue we discussed. The definition essentially provides that energy backed by any capacity is Firm Energy. Here as elsewhere in the rules, the capacity used is the capacity already provided to meet the Capacity Obligation under Market Rule 10 and not an additional capacity purchase (except where the capacity fails to meet the 70% availability standard in the rules). Thus energy from a generator listed in ISO-NE can count as Firm Energy assuming the CEP has met its Capacity Obligation under Market Rule 10.

The nearly identical formulations from the MPUC and the facilitator (describing the position of the NMISA) both relate to the requirements of NMISA Market Rule 10.3.8 (as amended) which states:

> **10.3.8** Subject to NMMR #5, Monitoring and Auditing, a CEP meeting the above Capacity Obligation requirements will be deemed to have met its Capacity Obligation for the Capability Period. In the event of Forced and/or Scheduled Outages and the outages do not cause a deficiency for the Balancing Area, ~~firm energy only~~Firm Energy purchases will be accepted as part of the CEP's Balanced Schedule during the period of the outages~~, provided, however~~. If the outages cause a deficiency for the Balancing Area, the CEP will be required to meet the any control action listed in Appendix 10-A required by the ISA.

NMISA August 31 Filing at 8.

The key issue of concern to the MPUC (as articulated by the MPUC in its August 24 Comments), is that once a CEP meets its capacity obligation in advance, a forced or scheduled outage of the capacity procured by the CEP will not impose any additional obligation on the CEP (unless the forced outage causes a deficiency for the Balancing Area).

The Transmittal Letter accompanying the NMISA's August 31 Filing, however, did not contain the full text of the clarification agreed to by the MPUC and NMISA. Instead, it states, "As requested by the MPUC, the NMISA clarifies that the intent of Market Rules generally and the definition of 'Firm energy' in particular do not create any additional capacity requirements once a CEP has complied with the requirements of Market Rule 10, which states that '[n]o other market rule provisions impose additional or reduced Capacity Obligations.'" NMISA Transmittal Letter at 7.

The MPUC believes that the clarification provided in the Transmittal Letter which accompanied NMISA's August 31 Filing is intended to clarify that the term "firm energy" as used in Market Rule 10 does not impose any additional capacity requirement; however, the NMISA clarification could be read to suggest that as long as the CEP complies with section 10.3.8 (which may contain an additional capacity obligation because of the definition of "firm energy"), it is not subject to any additional capacity obligation *above and beyond 10.3.8*. While the MPUC understands that this is not the result that the NMISA intends, the MPUC seeks to resolve any ambiguity surrounding a CEP's capacity obligation.

Accordingly, the MPUC requests that the Commission, in any order it issues respecting the NMISA's August 31 Filing, clarify that the reference to capacity in the definition firm energy, in the context of section 10.3.8. and elsewhere, means the capacity already provided to meet the Capacity Obligation under Market Rule 10 and not an additional capacity purchase (except where the capacity fails to meet the 70% availability standard in the rules). This clarification would be helpful to avoid future disputes if a

CEP relies on energy from a bilateral contract with a generator listed in ISO-NE or from the ISO-NE market to fulfill its obligation under Market Rule 10.3.8.

III. CONCLUSION

WHEREFORE, the Maine Public Utilities Commission respectfully requests that the Commission accept its Comments as stated hereinabove.

Dated: September 21, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 21st day of September, 2007.

/s/ Harry A. Dupre
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