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601 13th Street, NW  
Suite 1000 South  
Washington, DC 20005-3807  
TEL 202.661.2200  
FAX 202.661.2299  
www.ballardspahr.com

Howard H. Shafferman  
Direct: 202.661.2205  
Fax: 202.626.9036  
hhs@ballardspahr.com

February 12, 2010

**VIA ELECTRONIC FILING**

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

**Re: ISO New England Inc.,  
Docket No. ER08-830-000**

Dear Ms. Bose:

Transmitted electronically for filing in the referenced docket is the Answer of ISO New England Inc. to the Request of the Consumer Demand Response Initiative for Commission Policy Guidance.

If there are any questions concerning this filing, please call me at (202) 661-2205.

Very truly yours,

/s/

Howard H. Shafferman  
Counsel for  
ISO New England Inc.

Enclosure

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

ISO New England Inc.

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Docket No. ER08-830-000

**ANSWER OF ISO NEW ENGLAND INC. TO THE  
REQUEST OF THE CONSUMER DEMAND RESPONSE INITIATIVE  
FOR COMMISSION POLICY GUIDANCE**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213 (2009), ISO New England Inc. (“ISO”) hereby submits its Answer to the “Request of the Consumer Demand Response Initiative for Commission Policy Guidance” submitted in this proceeding on January 28, 2010 (the “Request”).

For the legal, procedural and other reasons set forth herein, the Commission should reject the Request. Instead, the Commission should await the “Phase 1” PRD market rule filing that the ISO intends to submit on April 30, 2010, following the receipt of stakeholder input. The April 30 filing will provide a proper procedural vehicle and an appropriate context for the Commission to make a legally valid decision.

**I. INTRODUCTION AND SUMMARY OF ANSWER**

As noted above, the Request has been filed in the midst of an ongoing stakeholder process regarding the future of Price Responsive Demand (“PRD”) in New England. To facilitate full consideration of the options for PRD, the ISO and New England Power Pool (“NEPOOL”) made a filing, accepted by the Commission in October 2009, extending the expiration date of the Real-Time Price Response Program (“RTPRP”) and the Day-Ahead Load Response Program (“DALRP”) from May 31, 2010 to May 31, 2012 and modifying the DALRP eligibility requirements

to allow Real-Time Demand Response Assets (a type of Demand Resource participating in the Forward Capacity Market<sup>1</sup>) to participate in the program starting June 1, 2010.<sup>2</sup>

As explained in the December 18, 2009 report of the ISO and NEPOOL regarding the stakeholder process in this proceeding, the process has produced a design basis document (“DBD”), which:

outlined two options available for market participants with demand resources to participate in the region’s wholesale energy market, a “Supply-Side Option” and a “Demand-Side Option.” As described in the PRD DBD, under the Demand-Side Option, Market Participants could purchase a voluntary wholesale product in which the energy component is priced on an hourly, real-time basis. Under the Supply-Side Option, Market Participants could offer load reductions into the wholesale energy markets in a manner similar to supply offers of generation resources, which would be integrated into the market-clearing, price-setting, and resource-scheduling algorithm. In stakeholder deliberations, the major area of disagreement regarding the Demand-Side Option concerned the pricing of capacity in the voluntary wholesale product. Some of the major areas of disagreement regarding the Supply-Side Option concerned the payment levels for demand resources, the thresholds for participation, and allocation of costs resulting from payments to suppliers of demand resources.<sup>3</sup>

Although the ISO and NEPOOL did not seek any action by the Commission on this latest update report, CDRI has chosen at this juncture to request “Commission guidance” regarding four questions devised by CDRI relating to the Supply-Side Option.

In addition, CDRI expresses reservations about the rules that the ISO would develop if consensus cannot be reached in the stakeholder process.<sup>4</sup>

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<sup>1</sup> The first Capacity Commitment Period of the Forward Capacity Market commences on June 1, 2010.

<sup>2</sup> See delegated letter order issued in Docket No. ER09-1737-000 (October 29, 2009).

<sup>3</sup> See *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. ER08-830-000 (filed December 18, 2009).

<sup>4</sup> See, e.g., Request at 10-11.

The Commission should decline to issue the requested “guidance” because the request is procedurally defective. Moreover, as discussed in this Answer, it is not clear that provision of answers to CDRI’s four questions would truly assist resolution of the interrelated issues being considered in the stakeholder review process. Finally, the ISO intends to submit a procedurally valid filing of PRD market rules that will provide a vehicle for the Commission to exercise its authority under the Federal Power Act to make decisions about the future structure of PRD in New England.

By way of additional context on the current role of demand response in New England, the Forward Capacity Market procured almost 2,300 MW of capacity from Demand Resources in the first Forward Capacity Auction. By the third auction, the amount of Demand Resource capacity procured exceeded 2,800 MW. Based on the results of the first three auctions, Demand Resources will be paid over \$300 million across the first three years of Forward Capacity Market operation for providing capacity in New England.<sup>5</sup>

## **II. ANSWER**

### **A. The Request is Procedurally Defective**

The Commission should reject the Request due to its procedural defects, including a lack of specification of the authority under which the Commission could act to provide guidance. Indeed, none of the Commission’s statutory authorities lend themselves to granting the relief sought in the Request.

First, although the Request seeks policy declarations by the Commission, the Request does not conform to the Commission’s regulatory requirements for a petition for declaratory order. For example, it is not accompanied by the fee required by 18 C.F.R. § 381.302(b). Nor would the

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<sup>5</sup> This assumes that the Demand Resources clearing in these auctions reach Commercial Operation and perform as expected. Also, these figures do not consider trading of Capacity Supply Obligations among different types of capacity resources, which may take place either bilaterally or through reconfiguration auctions.

provision of answers to CDRI's questions – as discussed in greater detail in Section II.C. below – “terminate a controversy or remove uncertainty,” the prerequisites for a declaratory order as specified in 18 C.F.R. § 385.207(a)(2).

Even if the Request met the standards for a declaratory order petition, Commission precedent addressing similar contexts militates for rejection of such a petition. Specifically, the Commission has on more than one occasion declined to short-circuit or disrupt the New England stakeholder process in response to a petition for declaratory order. For example, in *Rumford Power Associates, L.P., et al.*, the Commission declined to “circumvent...the stakeholder process” by ordering the ISO to file a monthly (versus hourly) netting rule in connection with station power supplied to generators, as advocated in a petition by a group of generators.<sup>6</sup> In *Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont*, the Commission deferred consideration of a petition for declaratory order to form a New England Regional State Committee in favor of continued vetting of issues of scope and structure through the stakeholder process.<sup>7</sup>

Second, the Request seeks a “general policy determination”<sup>8</sup> of a type appropriate for a rulemaking process, because the PRD-related questions, as formulated, “are broad” and rulings would “affect the industry as a whole.”<sup>9</sup> However, the Request does not ask for rulemaking, and the Commission is not conducting a rulemaking regarding the topics selected by CDRI.

Third, by calling into question the rules that the ISO would develop and file after completion of the stakeholder process, the Request is apparently intended as some sort of

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<sup>6</sup> 97 FERC ¶ 61,173, at p.61,814 (2001).

<sup>7</sup> 112 FERC ¶ 61,049, at P 26 (2005).

<sup>8</sup> See Request at 2.

<sup>9</sup> See *Southern Natural Gas Company*, 34 FERC ¶61,410, at p.61,790 (1986).

preemptive complaint under Section 206 of the Federal Power Act. However, there is no provision in Section 206, or in the Commission’s other governing statutes, rules or authorities, for a complaint challenging – as unjust and/or unreasonable – rules that have not even been filed.<sup>10</sup> As discussed in Section II.C., though, a market rule filing will occur in the near future.

**B. It Is Not Clear That Provision of Answers to CDRI’s Four Questions Would Assist Resolution of the Interrelated Issues Being Considered in the Stakeholder Review Process**

Practical considerations also support a denial of the Request. The implicit premise of the Request is that if the Commission will just answer the four rifle-shot questions formulated by CDRI (which were developed without notice to or input from the NEPOOL stakeholder process or the ISO), there will be an urgently needed breakthrough in the PRD stakeholder process.

The reality is, though, that the four questions are intertwined with many other critical and contextual issues being considered in the stakeholder process and which will need to be decided by the Commission, such as: (i) the appropriate payment levels for demand response resources, (ii) the market barriers that demand response faces and how and where those barriers can best be addressed, and what form payments to address those barriers should take; (iii) the conditions that should be met in order for demand response resources to be paid at a particular payment level; (iv) to which set of market participants should costs associated with payments to demand response resources be allocated and in what amounts; and (v) whether a specific overall structure for demand response is comparable to how generators are treated. Moreover, the four questions were not specifically presented by CDRI in a public forum with input from stakeholders or the ISO. The answers to the four questions are not, therefore, a “silver bullet,” and for this reason it would be

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<sup>10</sup> The complaint provisions of Section 206(a) are designed to address a “rate, charge, or classification, [currently] demanded, observed, charged, or collected by any public utility.” Future market rules that have not been developed, much less filed, are not currently “observed” in the ISO markets and do not fall within any of the other “present tense” verbs of Section 206(a).

inadvisable for the Commission to answer these questions in isolation from the context of the other interrelated issues that remain open in the stakeholder process.

Finally, the acceptance of the filing by the ISO and NEPOOL to extend existing New England demand response programs beyond May 31, 2010<sup>11</sup> has ensured a continuing mechanism for PRD to participate in the energy markets until new approaches can be developed, vetted through the stakeholder process, and implemented by the ISO. This extension, coupled with the impending market rule filing described in Section II.C., below, means that Commission intervention in the stakeholder process is not necessary at this time.

**C. The Commission Should Await the April 30, 2010 Filing of “Phase 1” Market Rules for PRD, Which Will Provide a Proper Procedural Vehicle and an Integrated Context for the Provision of An Appropriate Commission Decision**

As discussed with NEPOOL and other stakeholders, the ISO plans to prepare an initial set of market rules for PRD (the “Phase 1” rules), vet them through the stakeholder process, and file them with the Commission under Section 205 of the Federal Power Act on or before April 30, 2010. The initial set of rules will address product definition, eligibility, payment rate and cost allocation. This will provide a proper procedural vehicle (unlike the Request) for the provision by the Commission of an appropriate decision. Moreover, unlike the Request’s selective questions, the more comprehensive scope of the initial set of rules will provide an appropriately integrated context for the Commission to make a reasoned decision.

A second set of rules (the “Phase 2” rules) will be developed reflecting the Commission’s rulings on the Phase 1 rules. The Phase 2 rules will be vetted through the stakeholder process. This second set of rules will build upon the Phase 1 rules and will complete the set of market rules needed to enable price-responsive demand assets to participate directly in the New England energy

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<sup>11</sup> See fn. 2, *supra*.

markets. Subjects addressed in the Phase 2 rules include: demand reduction offer parameters, real-time scheduling and dispatch of demand resources, asset enrollment requirements, measurement and verification of demand reductions, rights and obligations of demand resources, and internal market monitoring review of demand reduction offers. The ISO will collaborate with NEPOOL regarding the content and timing of rules to implement a revised methodology for the allocation of capacity costs applicable to all loads for the Demand-Side Option.

### III. CONCLUSION

For the reasons stated herein, the Commission should reject the Request.

Respectfully submitted,

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James H. Douglass  
ISO New England Inc.  
One Sullivan Road  
Holyoke, MA 01040  
413-535-4000  
[jdouglass@iso-ne.com](mailto:jdouglass@iso-ne.com)

\_\_\_\_\_/s/  
Howard H. Shafferman  
Daniel R. Simon  
Ballard Spahr LLP  
601 13<sup>th</sup> Street, NW, Suite 1000 South  
Washington, DC 20005  
202-661-2200  
[hhs@ballardspahr.com](mailto:hhs@ballardspahr.com)  
[simond@ballardspahr.com](mailto:simond@ballardspahr.com)

Counsel for  
ISO New England Inc.

February 12, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 12<sup>th</sup> day of February, 2010.

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel R. Simon  
Ballard Spahr LLP  
601 13<sup>th</sup> Street, NW, Suite 1000 South  
Washington, DC 20005  
202-661-2212