

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

Richard Blumenthal, Attorney General for	:	Docket No. EL09-047
The State of Connecticut	:	
	:	
v.	:	
	:	
ISO-New England, Inc.,	:	
Certain Unidentified Market Participant	:	
Importer(s) of Installed Capacity	:	

**RICHARD BLUMENTHAL, ATTORNEY GENERAL FOR THE STATE OF
CONNECTICUT’S FIRST SET OF DATA AND DOCUMENT REQUESTS TO
ISO NEW ENGLAND INC.**

Pursuant to Rules 401¹ and 406 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.401 and 385.406, Richard Blumenthal, Attorney General for the State of Connecticut (“CTAG”), hereby submits the following data requests and document production requests (collectively, “Discovery Requests”) to ISO New England, Inc. (“ISO-NE”).

Please provide all written and documentary responses as they become available, and in any case, within ten business days from receipt of Discovery Requests. Pursuant to Rules 385.406(b)(5) and 385.410(a) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.406(b)(5) and 410(a), notice of any objections to full compliance with these Discovery Requests should be given in writing as soon as reasonably possible and in advance of the response date.

¹ While this matter has not yet been set for hearing, the CTAG has requested “fast track” processing of this matter and the CTAG respectfully requests that the Commission order that discovery commence immediately. See Rule 401(a) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.401.

The CTAG requests that ISO-NE produce the documents and other information described in these Discovery Requests to:

Michael C. Wertheimer
John S. Wright
Assistant Attorneys General,
Attorney General's Office
10 Franklin Square
New Britain, CT 06051
Phone: 860-827-2620
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I.
DEFINITIONS

As used herein, the following terms are defined as set forth below:

(A) "You," "your," or "your company" shall mean the addressee of this set of Discovery Requests, including its domestic and foreign parents, each and every local or regional office, subsidiary, division, partnership, joint venture, affiliate or related company or entity thereof, all past and present officers, directors, partners, employees, agents, predecessors, successors, assigns and all other persons or entities, acting on behalf of said addressee. The terms "subsidiary", "affiliate" and "joint venture" refer to any entity in which there is a partial (25 percent or more) or total control between your company and any other person.

(B) "Agreement" means any written or oral understanding, promise or condition, or any document containing any such understanding, promise or condition, including any amendment or modification thereto.

(C) The terms "and" and "or" are terms of inclusion and not of exclusion and shall be construed either disjunctively or conjunctively as necessary to bring within the

scope of these Discovery Requests any document or information that might otherwise be construed to be outside its scope.

(D) The term “any” means each and every and one or more.

(E) “Communicate” or “communication” means every manner or means of disclosure, transfer or exchange, and every disclosure, transfer or exchange of ideas or information, whether orally, by document, or electronically, or whether face-to-face, by telephone, mail, personal delivery, electronic transmission or otherwise.

(F) The term “concerning”, “relate to” or “relating to” means in whole or in part constituting, evidencing, containing, discussing, commenting upon, describing, analyzing, identifying, stating, pertaining to, referring to, or forming the basis of.

(G) The term “documentary material” or “document” shall mean all written or graphic matter, whether in final or draft form, however produced, or reproduced, of every kind and description in your actual or constructive possession, custody, care or control, including without limitation, all writings, account letters, account recommendations, appointment books, books, books of accounts, calendars, CD-ROMs, charts, computer or electronic files stored on file servers, e-mail servers, hard drives or other electronic media within your control, computer printouts, contracts, cost sheets, data compilations from which information can be obtained or can be translated through detection devices into reasonably usable form, diaries, drafts, drawings, e-mail, faxes, graphs, hotel charges, invoices, ledgers, magnetic discs, magnetic strips, magnetic tape, memoranda, microfiche, microfilm, minutes, notes, optical characters, papers, photographs, punched cards, punched paper tapes, receipts, recognition characters, reports, sound tapes or recordings, statements, statistical records, stenographer notebooks, studies, telegraphs,

time sheets or logs, video tapes or recordings, vouchers, weigh tickets, working papers, or any other tangible thing.

(H) “Identify,” “identity,” or “identification,” when used in reference to a natural person, means to state his or her full name and present or last-known address, present or last-known position and business affiliation and each position with you, social security numbers, and telephone numbers for residence and business; when used in reference to any other person means to state its full name, present or last-known address, and telephone number; when used in reference to a document means to state the type of document (i.e., letter, memoranda, chart, handwritten notes, calendar (electronic or paper), spreadsheet, sound reproduction, report, computer inputs or outputs, etc.) , the location where maintained, your identifying marks and code, the subsidiary, division, or department where prepared and sent, the document date, the author and persons to whom copies were sent or persons initialing or reading or approving the document, and the name and address of each of the present custodians of the document; when used in reference to an event or instance means to identify each natural person involved in the event, to state when and where the event occurred, to state a description of the nature and substance of the event, and to identify any document related to the event; when used in reference to a communication means to state each communication, the persons involved in the communication, where the communication took place, and a brief description of the substance of the communication, and to identify any document related to the communication.

(I) The term “person” includes any natural person, corporate entity, partnership, association, joint venture, government entity or trust, and any other business or legal entity.

(J) The present tense shall be construed to include the past tense and the past tense shall be construed to include the present tense.

(K) All references to the singular include the plural and vice versa.

(L) “ISO-NE” means ISO-New England Inc., and/or any affiliate or subsidiary.

(M) “ICAP Import Seller” means each entity receiving ICAP transition payments from ISO-NE with respect to generating capacity located outside the ISO-NE control area during the Period.

(N) “Import Seller Generating Unit” means each electric generating unit located outside the ISO-NE control area which was treated as qualifying for ICAP transition payments by ISO-NE during the Period.

(O) “Period” means the time commencing on January 1, 2005 to the date of service of this Subpoena.

II. INSTRUCTIONS

1. Answer each data request separately, in writing and under oath, and otherwise in compliance with the requirements of Rules 403 and 406 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.403, 385.406).

2. Where an objection is made to any Discovery Request or part thereof, the objection shall state with specificity all grounds for such objection.

3. No part of a Discovery Request shall be left unanswered simply because an objection is interposed to another part of the Discovery Request.

4. To the extent that ISO-NE asserts a claim of privilege or protection from discovery with respect to a particular Discovery Request or part thereof, please provide:

- a. A statement of the particular privilege or protection asserted;
- b. A description of the general subject matter of each document, communication or other fact as to which the claim of privilege or protection from discovery is asserted;
- c. The date of the document, and each author, addressee and recipient of the document;
- d. The name of the person making the communication, the persons present when the communication was made, the relationship between or among the person making the communication and the other persons present (unless otherwise apparent) and the date and place of the communication;
- e. Where not otherwise apparent from the description of the document, the relationship between or among the author(s), the addressee(s) and the recipient(s); and
- f. Such other and further information as will, without revealing information itself privileged or protected, enable the CTAG and, if necessary, the Presiding Judge or the Commission, to assess the applicability of the claimed privilege or protection.

5. ISO-NE is requested seasonably to supplement or amend their answers to these Discovery Requests in accordance with the requirements of Rule 403(d)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.403(d)(2)).

III. **REQUESTS**

CTAG/ISO-1. Identify the "Market Participants" with ICAP Import Contracts that failed to perform when dispatched as described in ER09-873, *ISO New England and New England Power Pool, Tariff Revisions Regarding Competitive Offer Requirement for Capacity Imports* ("March 20, 2009 Filing").

CTAG/ISO-2. Identify all payments from ISO-NE or effected by ISO-NE administered settlement to each of the Market Participants identified in response to CTAG/ISO-1 for all energy and capacity products by date.

CTAG/ISO-3. Describe in detail each request (time, type of product, duration and volume) for energy and capacity issued by the ISO-NE to each Market Participant identified in response to CTAG/ISO-1. Describe in detail the Market Participant's response. If this information is compiled in excel format, please provide in that format.

CTAG/ISO-4. Describe in detail any and all communications between ISO-NE and the Market Participants identified in response to CTAG/ISO-1 concerning the latter's failure to perform when dispatched. Describe the ISO-NE attempts to contact those Market Participants in order to secure their performance or to improve their performance when next dispatched by ISO-NE.

CTAG/ISO-5. If not already provided in response to the previous interrogatories, provide the following with respect to all capacity and energy sales, bids or energy dispatch instructions, as applicable, by, affected by or affecting ICAP Import Sellers with respect to the ISO-NE control area during the Period.

5. 1. The name of each ICAP Import Seller during the Period and, if applicable, the name and location of each Import Seller Generating Unit owned/operated or controlled by such ICAP Import Seller. If the ICAP Import Seller during the Period has not committed (a) specific generating resource(s) for qualification for ICAP Transition Payments, please so identify that fact.

5.2. The megawatts of UCAP capacity of each Import Seller Generating Unit or unit "undifferentiated" capacity for each ICAP Import Seller, if no Import Seller Generating Unit capacity is identified for such seller, described in response to 12.1, which ISO-NE has qualified for ICAP transition payments.

- 5.3. Any other unit-specific information in ISO-NE's possession regarding each of the Import Seller Generating Units (e.g., heat rate, start-up, no-load, fuel consumption characteristics, type of fuel, fuel costs, bilateral contract obligations).
- 5.4. The amount of settlement payments (by month) paid with respect to each Import Seller Generating Unit or ICAP Import Seller (if no specific generating resources identified for such ICAP Import Seller).
- 5.5. The EFORD calculation for each Import Seller Generating Unit or ICAP Import Seller (if no specific generating resources identified for such ICAP Import Seller).
- 5.6. Transmission arrangements in place to allow each Import Seller Generating Unit and/or ICAP Import Seller to qualify for transitional ICAP payments.
- 5.7. The energy bids (both price and volume stated separately) during the Period with respect to output available for sale within the ISO-NE control area from each such Import Seller Generating Unit (in Excel format) and/or ICAP Import Seller, as applicable.
- 5.8. The time, volume and duration of each request for dispatch by ISO-NE to each such Import Seller Generating Unit and/or ICAP Import Seller, as applicable.
- 5.9. The time, duration and volume of output delivered by each Import Seller Generating Unit and/or ICAP Import Seller, as applicable, to the ISO-NE control area in response to ISO-NE dispatch instructions.
- 5.10. Identify, if any, each instance (period, duration, price impact, node(s) affected, volume) during which the failure to perform by an ICAP Import Seller in response to ISO-NE dispatch instructions affected the locational marginal price at one or more pricing nodes.

CTAG/ISO-6. Reference the March 20, 2009 Filing. In the March 20, 2009 Filing, ISO-NE states:

The ISO has found that, with the commencement of the ICAP Transition Period in December 2006 and the payment structure associated with that period, Market Participants with ICAP Import Contracts typically submit high-priced (over \$660/MWh) Supply Offers over the Northern New York AC Interface, with most approaching the energy offer cap. March 20, 2009 Filing, p. 1.

The ISO has observed persistent performance problems when it has sought to dispatch high-priced energy associated with these ICAP Import Contracts. During the period from January 2005 to January 2009, every Market Participant that submitted a Supply Offer in excess of \$660/MWh over the Northern New York AC Interface failed to perform when dispatched every time (a total of 108 instances). *Id.*, pp1-2.

See also, Joint Testimony, pp. 9-13.

- 6.1. Please provide all Documents relating to the statements in CTAG/ISO-6 above.
- 6.2. Identify all persons at ISO-NE who were involved in the preparation or review of the March 20, 2009 Filing.
- 6.3. Provide all drafts, workpapers and supporting materials used in the preparation of the “Joint Testimony of David La Plante and John P. O’Connor” filed with the March 20, 2009 Filing.
- 6.4. Describe the process for review and approval of the March 20, 2009 before its filing with FERC.

CTAG/ISO-7. Reference the ISO-NE press release entitled “ISO New England Issues Statement Concerning Capacity Transactions” dated April 21, 2009 (the “Press Release”).

In the Press Release, ISO-NE states the following:

...data concerning energy delivery from these transactions was not fully understood by the ISO and led to unintentionally misleading statements in ISO’s earlier filing that suppliers had received \$85 million and never delivered energy during 108 hours. Although data from a software tool that assists operators in managing imports show that energy delivery from these external resources was potentially required during 108 hours, upon closer examination by the market monitor of actual, real-time market and system conditions, it has become evident that delivery of this energy was not required because it was not needed for economic or reliability reasons. The data originally analyzed by the market monitor were incomplete since it only consisted of forecast system conditions and did not take into account the actual resources available to supply energy in real time, which the control room operators actually used to dispatch the system. Upon review of real-time system conditions, the market monitor has concluded that these external transactions were not needed since less expensive energy was available within New England to meet the region’s needs. Although ISO New England stated in a filing to FERC in March that energy wasn’t delivered 108 times, delivery of energy from external transactions was actually not called during these hours, and, therefore, these resources were not paid for something they didn’t deliver.

- 7.1. Provide all Documents relating to the statements in set forth in CTAG/ISO-7 above.
- 7.2. Explain what is meant by “data from a software tool that assists operators in managing imports show that energy delivery from these external resources was potentially required during 108 hours...” What is the software tool that is referenced? What and how does it “assist operators in managing imports”? What is meant by “potentially required?” Please provide in excel format any summary of each of the 108 hours referred to and the basis for concluding that during each such hour the referenced “energy delivery from these external resources was potentially required...”
- 7.3. Specifically, what “closer examination” was conducted and when and by whom (identifying the person and his or her position with ISO-NE? Provide all Documents related to such “closer examination.” Provide an organizational chart, with positions identified and persons filling that position of the Market Monitoring Unit and ISO-NE who were involved in the preparation of the March 20, 2009 filing and the “closer examination” referenced in the Press Release.
- 7.4. Describe why, how and on what basis the ISO-NE concludes that “[t]he data originally analyzed by the market monitor were incomplete since it only consisted of forecast system conditions and did not take into account the actual resources available to supply energy in real-time, which the control room operators actually used to dispatch the system.” Provide the referenced data “originally analyzed.” Provide all analysis and Documents relating to the determination of “actual resources available to supply energy in real-time.” Identify all persons involved in making the original analysis and any subsequent analysis of the referenced data.
- 7.5. Provide all Documents relating to any communications, dispatch instructions or other correspondence with or from any external resources by or to ISO-NE during or relating to the referenced 108 hours.
- 7.6. Specifically describe the “review of real-time system conditions” conducted by the market monitor referenced by the Press Release.
- 7.7. Provide the basis for the statement in the Press Release that “the market monitor has concluded that these external transactions were not needed since less expensive energy was available within New England to meet the region’s needs.” How and when did the market monitor make these conclusions? Please identify each such external transaction so referenced (volume, duration, price, supplier and location of the external resource).

- 7.8. Please provide all correspondence and documents relating to any communications by individuals within the ISO-NE market monitor with any third parties or with other ISO-NE staff relating to the reviews, analysis and conclusions made in the Press Release prior to the issuance by ISO-NE of the Press Release.

CTAG/ISO-8. Reference the document entitled “Revised Capacity Import Competitive Offer Proposal” dated November 12, 2008, prepared by ISO-NE and submitted to the NEPOOL Markets Committee (the “Revised Proposal”).

In the Revised Proposal, the following is stated:

“ISO has called on high priced capacity transactions and energy has not flowed.”
Revised Proposal, p. 2.

In the Revised Proposal, a page is included entitled “Summary of Hours When ICAP Contracts Failed to Deliver High Priced Energy”. *Id.*, p.3.

- 8.1. Provide all Documents related to the Revised Proposal.
- 8.2. Provide all Documents relating to earlier or later versions of the Revised Proposal and other presentations to committees of NEPOOL relating to the subject matter of the Revised Proposal or prior versions.
- 8.3. Please provide the basis for the statement that “ISO has called on high priced transactions and energy has not flowed” set forth in the Revised Proposal.
- 8.4. Provide a time-line, identifying the period during which ISO-NE or the ISO-NE market monitor first became aware of the “problems” identified in the Revised Proposal and initiated and continued its investigation resulting in the preparation and dissemination of the Revised Proposal and ultimately in the March 20, 2009 Filing. Provide all documents and analysis associated with ISO-NE’s identification of the “problems” referenced above.
- 8.5. Provide all Documents and analysis supporting or utilized in the preparation of page 3 of the Revised Proposal.

CTAG/ISO-9. Reference the Minutes of the ISO-NE Markets Committee Meeting held on Tuesday and Wednesday October 21 and 22, 2008 in Springfield, Massachusetts. Refer specifically to item (7) under Agenda Item #5, “PRICED IMPORT CAPACITY TRANSACTIONS,” shown on page 9.

Item (7) states:

(7) A Committee member asked how the ISO proposal would deal with a situation where a resource submits an export transaction into the NYISO's market but the NYISO decides to delete that export transactions from its schedule. When ISO New England calls for this export transaction, and it fails to deliver because the NYISO deleted the schedule (because it was not dispatched for 5 hours) will the resource now be penalized for the whole month?

(ISO: Yes.)

The Committee member pointed out that this is a difficult issue for some resources. Can ISO New England discuss this situation with the NYISO?

(ISO: Yes. The ISO stated that those discussions have already started. NYISO will only cut these schedules if they are in-merit in NY for many hours but not in-merit in New England. Resources that are unable to get delivered indicates that they should not be paid for capacity. That said, we are willing to have more specific discussions with the NYISO. We will call them and suggest they should keep all the schedules in their scheduling process.)

- 9.1. Provide all documents concerning communications between NYISO and ISO-NE concerning export transactions from the NY ISO to the New England control area from December, 2006 to date.
- 9.2. Provide all documents concerning any and every instance in which ISO-NE contacted NYISO for an export transaction which was not delivered from December 2006 to date. Specifically identify the time of any such contacts, the contents of the contacts and NYISO's response to ISO-NE.
- 9.3. All documents concerning communications between the NYISO and any generation resources concerning ISO-NE's call for an export transaction

CTAG/ISO-10. Reference to the Minutes of the ISO-NE Market Committee Meeting held on Wednesday and Thursday, November 12 and 13, 2008 in Marlborough, Massachusetts. Refer specifically to Agenda Item #2, "PRICED IMPORT CAPACITY TRANSACTIONS," which states, in part:

Agenda Item #2: **PRICED IMPORT CAPACITY TRANSACTIONS**

Mr. O'Connor presented the INTMMU proposal to the Committee. Mr. O'Connor stated that the ISO proposes, for the ICAP Transition Period only, to require a competitive offer based on fuel-adjusted historic prices for each interface with New England. Mr. O'Connor indicated there have been a number of transactions scheduled and not received over the Roseton tie line with the

NYISO during the ICAP Transition Period. A Committee member commented on this point as follows:

...

- (3) A Committee member asked, in cases where NY is failing to deliver, is it because the Market Participant failed to schedule the transaction or is it due to an action on the part of the NYISO.

(ISO: The ISO stated that there could be a number of reasons why a transaction fails check-out. Some of these delivery failures are due to the NYISO scheduling mechanics which remove schedules that did not clear in New England for a number of hours.)

- (4) A Committee member asked if ISO New England has stopped its attempts to change the scheduling mechanics in NY or is it willing to enter into discussions with NYISO to keep these schedules/transactions in place.

(ISO: The ISO has been having discussions with the NYISO on this subject. The NYISO has been reluctant to keep these transactions in their bid stack because it impacts their commitment of resources.)

The Committee member asked if these discussions will be part of the quarterly seams issue discussions or will they continue to be the previously stated discussion process between the NYISO and ISO New England.

(ISO: The ISO is willing to participate in discussions with the NYISO and interested Market Participants. So far, we have not seen much flexibility in NY on this scheduling subject. We are adjusting to schedules with New Brunswick Power on a 15 minute basis. A Market Participant that transacts business in NY might have more success in getting the NYISO to take another look at these scheduling issues.)

10.1. Provide all documents concerning “NYISO scheduling mechanics” as referred to in item (3) supra.

10.2. Provide all documents concerning any and all discussions between ISO-NE and NYISO concerning scheduling mechanics as referred to in item (4) supra.

ADDITIONAL DOCUMENTARY MATERIAL TO BE PRODUCED

Produce the following:

1. All documents resulting from audits or investigations performed by ISO-NE with respect to each Import Seller Generating Unit and/or ICAP Import Seller during the Period.

CERTIFICATE OF SERVICE

I, John S. Wright, hereby certify that on this day I served the foregoing document by electronic mail upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with Commission Rule 206(c), 18 C.F.R. § 385.206.

_____/s/_____
John S. Wright

Dated: April 23, 2009