

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Constellation Energy Commodities Group, Inc.

Docket No. IN12-7-000

ORDER APPROVING NEW ENGLAND PARTIES' ALLOCATION AND
DISTRIBUTION PROPOSAL

(Issued October 18, 2012)

1. On September 10, 2012, New England Parties¹ filed a *Joint Stipulation Agreement Regarding Allocation and Distribution of the \$20 Million Portion of the ISO-New England Disgorgement Fund* (Joint Stipulation). Because the Joint Stipulation is transparent, non-discriminatory, appears fair and reasonable, and benefits consumers in the ISO-New England (ISO-NE) footprint, the Joint Stipulation is approved.

I. BACKGROUND

2. On March 8, 2012, the FERC's Office of Enforcement (OE) and Constellation Energy Commodities Group (CCG) entered into a Stipulation and Consent Agreement (Consent Agreement) which resolved an investigation conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011).² The Commission approved the Consent Agreement on March 9, 2012.³

3. The Consent Agreement created a disgorgement fund for the benefit of electric energy consumers in the affected states of the NYISO, ISO-NE, and PJM markets. Pursuant to the April 2, 2012 *Order Confirming Rulings from Prehearing Conference*,

¹ The New England Parties are the Connecticut Public Utilities Regulatory Authority; the Connecticut Office of Consumer Counsel; George Jepsen, Attorney General for the State of Connecticut; the State of Maine Public Utilities Commission; the Massachusetts Department of Public Utilities; Martha Coakley, Attorney General of the Commonwealth of Massachusetts; the New Hampshire Public Utilities Commission; Peter F. Kilmartin, Attorney General of the State of Rhode Island; the Rhode Island Division of Public Utilities and Carriers; the Vermont Department of Public Service; the Massachusetts Municipal Wholesale Electric Company; the Eastern Massachusetts Consumer-Owned Systems; Groveland Municipal Light Department; and Merrimac Municipal Light Department.

² *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 (2012).

³ *Id.*

parties were directed to file Motions for Determination of Eligibility to participate in the requests for apportionment of the fund.

4. On June 7, 2012, an *Order Granting Unopposed Motions for Determination of Eligibility* was issued. The order granted eligibility status to a number of designated state agencies, including the Vermont Department of Public Service; the Massachusetts Municipal Wholesale Electric Company; the Eastern Massachusetts Consumer-Owned Systems,⁴ Groveland Municipal Light Department and Merrimac Municipal Light Department; and the New England State Agencies.⁵

5. On July 11, 2012, an *Order Denying Opposed Motions for Eligibility Determination and Directing Parties to File Joint Stipulations* (July 11 Order) was issued. The July 11 Order directed the designated eligible state agency parties in the ISO-NE footprint to file a joint stipulation within sixty (60) days of the order regarding a proposed allocation and distribution method of the \$20 million portion of the ISO-NE disgorgement fund. If the parties could not come to an agreement, they were to inform the presiding judge, and oral argument would be held.

II. NEW ENGLAND PARTIES' ALLOCATION AND DISTRIBUTION PLAN

A. Standard of Review

6. The Consent Agreement, approved by the Commission on March 9, 2012, created a fund "for the benefit of electric energy consumers in the affected states within ... ISO-NE."⁶ As indicated at the March 29, 2012 Prehearing Conference, a proposal for the allocation and distribution of the disgorged funds would be evaluated based on whether the proposal is transparent, fair, reasonable, and not discriminatory.

⁴ The Eastern Massachusetts Consumer-Owned Systems are Braintree Electric Light Department, Concord Municipal Light Plant, Hingham Municipal Lighting Plant, Middleton Electric Light Department, Reading Municipal Light Department, Wellesley Municipal Light Plant, and Taunton Municipal Lighting Plant.

⁵ The New England State Agencies are the Connecticut Public Utilities Regulatory Authority (CTPURA); the Connecticut Office of Consumer Counsel (CT OCC); the Attorney General for the State of Connecticut (CTAG); the Maine Public Utilities Commission (MPUC); the Massachusetts Department of Public Utilities (Mass DPU); the Massachusetts Attorney General; the New Hampshire Public Utilities Commission (NHPUC); the Rhode Island Division of Public Utilities and Carriers (RIDPUC) and the Attorney General of the State of Rhode Island (RI Attorney General); and the Vermont Department of Public Service (VDPS).

⁶ *Constellation Energy Commodities Group, Inc.*, 138 FERC ¶ 61,168 (2012).

7. AARP filed comments requesting that the presiding judge consider additional factors in approving proposed allocation and distribution plans.⁷ Because AARP is not an eligible state agency designated by the Commission to petition for the allocation and distribution of the disgorged funds on behalf of energy consumers within their respective jurisdictions, and because the designated eligible state agencies have submitted a joint stipulation that is transparent, fair, reasonable, non-discriminatory, and beneficial to consumers which may not necessarily meet AARP's unilaterally proposed factors, imposition of those additional factors as a prerequisite to approval of the joint proposal would effectively permit AARP to supplant the proposal submitted by the designated eligible state agencies. Such a result would undermine the express provisions of the Consent Agreement as well as the standard for approval of such proposals laid out by the presiding judge at the March 29, 2012 Prehearing Conference. Therefore, AARP's request for imposition of its additional factors must be **DENIED**.

B. New England Parties' Proposed Allocation and Distribution Plan

8. On September 10, 2012, New England Parties filed the Joint Stipulation in accordance with the June 11 Order. The Joint Stipulation proposes a methodology for allocating the \$20 million portion of the disgorgement fund among the states within the ISO-NE footprint. The Joint Stipulation also proposes intrastate allocation and distribution methods. AARP filed comments in response to New England Parties' proposal. New England Parties filed reply comments.

9. The Joint Stipulation proposes to allocate funds among the New England States⁸ based upon each state's proportion of monthly energy use over the period of September 1, 2007 to December 31, 2008. New England Parties state that ISO-NE will calculate the final interstate allocation using energy consumption data from its billing system. New England Parties assert that this methodology (1) meets the criteria expressed by the

⁷ Specifically, AARP requests the following factors be considered: (1) the disgorged funds should benefit electric energy *consumers*, not utilities or other market participants; (2) the proposed use of disgorgement funds should not supplant funding that otherwise would be available to fund a project or activity; (3) the proposal should enhance protection of consumers and therefore help reduce the possibility of future abuse, malfunction, or manipulation of wholesale electricity markets; (4) the proposed allocation should alleviate hardship for consumers likely to have suffered most from higher bills for electric service caused by the manipulation, i.e., low income customers; (5) the proposed use should have lasting or long term beneficial impact for electric energy consumers.

⁸ The New England States are Maine, New Hampshire, Vermont, Connecticut, Rhode Island and Massachusetts.

presiding judge at the Prehearing Conference; (2) is transparent because the data utilized is from reports posted on the ISO-NE website; and (3) is fair and reasonable.

10. Similar to the interstate allocation, each individual state proposes to refund customers within the ISO-NE footprint based on the loads reported at the various metering domains within their state over the time period of September 1, 2007 to December 31, 2008. Each state has also proposed an administrative process that ensures electricity customers receive their refund in a timely manner.

11. Acknowledging that refunds to consumers are the typical remedy for excessive rates, AARP states that a broader range of remedies may be necessary and appropriate in this proceeding. AARP further states that in this case, it is particularly difficult to identify the persons harmed or the amount of economic harm they suffered from the alleged market manipulation. Moreover, AARP argues that the Commission must independently evaluate the proposed plans and not delegate decisional responsibility to state agencies.

12. AARP also notes that ISO-NE is the only affected region which has not recommended using a portion of the funds for consumer advocacy. AARP argues that enhancement of independent consumer advocacy and fuller participation of residential consumers in decisions regarding wholesale markets will provide long term benefits to consumers.

13. In response, New England Parties state that the question before the Commission is if the designated eligible state agencies have filed a stipulation that demonstrates that the funds will be used for the benefit of electric energy consumers. New England Parties argue that providing a refund to consumers clearly meets the standard and that even if there are other reasonable approaches, New England Parties' proposed allocation and distribution should be approved.

14. New England Parties' proposed allocation and distribution plan is transparent, non-discriminatory, appears fair and reasonable and would benefit consumers within the ISO-NE footprint. New England Parties' proposal uses information from the ISO-NE website to allocate funds based on actual electricity consumption. Further, the refund provides a direct benefit to consumers. Lastly, all of the designated eligible state agencies in the ISO-NE footprint support the proposal.

15. As previously indicated, AARP argues that the Commission should consider a broader range of remedies and notes that no money was allocated to consumer advocacy. However, it would undermine the express provisions of the Consent Agreement to allow AARP to effectively supplant the joint proposal of all the designated eligible state agencies by imposition of AARP's unilaterally imposed additional standards. This is particularly true where no eligible state agency has opposed the proposal. Thus, although there may be other uses that also meet the standards for approval, as described above,

New England Parties' proposal is fair, reasonable, transparent, non-discriminatory, and beneficial to electricity consumers within the ISO-NE. Therefore, the proposed allocation and distribution plan is **APPROVED**.

III. DISBURSEMENT PROCESS

16. New England Parties may now file Requests for Disbursement in this docket. The Parties requesting disbursement are strongly encouraged to make this administrative process as simple as possible to facilitate timely and efficient distribution on the funds. The Request for Disbursement should cite to this order granting approval of the proposed plan, indicate the amount of money to be disbursed, and provide all other necessary information required, with the exception of account wiring instructions, to effect distribution to the designated eligible state agency or agencies that will actually receive the disbursement, or their designee if necessary,⁹ either in the primary filing or under separate cover if appropriate. Parties will have fifteen (15) days from the date of filing the Request for Disbursement to file comments if it becomes necessary to do so.

17. If no party has opposed the Request for Disbursement within fifteen (15) days from the date of filing, the eligible state agency or agencies that will actually receive the disbursement, or their designee if necessary, may proceed to contact Tegan Flynn, Federal Energy Regulatory Commission, Office of Enforcement at (202) 502-6585 or Tegan.Flynn@ferc.gov to provide wiring instructions for the state agency or agencies, or their designee, and to otherwise coordinate the final distribution of funds. If objections to the Request for Disbursement are timely filed, the presiding judge must first issue an order ruling on the objections before the distribution process may move forward.

IV. SUMMARY AND CONCLUSION

18. Because New England Parties' proposal is fair, reasonable, transparent, non-discriminatory, and beneficial to electricity consumers within the ISO-NE, and because all of the designated eligible state agencies in the ISO-NE footprint support the proposal, New England Parties' allocation and distribution plan is **APPROVED**.

SO ORDERED.

Bobbie J. McCartney
Deputy Chief Administrative Law Judge

⁹ It is recognized that some state agencies may be prevented from directly receiving funds. However, those state agencies are directed to limit the number of designees to one designee per eligible state agency and to provide the relevant information concerning the designee in the Request for Disbursement.