

135 FERC ¶ 61,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

ISO New England Inc.

Docket No. ER10-2477-001

ORDER ON COMPLIANCE FILING

(Issued April 20, 2011)

1. On December 22, 2010, ISO New England Inc. (ISO-NE) submitted a compliance filing, pursuant to the Commission's December 16, 2010¹ order addressing ISO-NE's Forward Capacity Auction (FCA) Results Filing for the fourth FCA (FCA Results Filing). The December 16, 2010 Order directed ISO-NE to submit a compliance filing identifying alternatives to resolve the reliability need for Salem Harbor Units 3 and 4 and the timeframe to implement those solutions. The Commission will accept ISO-NE's December 22, 2010 filing as in compliance with the December 16, 2010 Order.

I. Background

2. Submitted for filing by ISO-NE on August 30, 2010, the FCA Results Filing reflected the results of the fourth FCA, held in August 2010.² Of relevance to this order, ISO-NE stated in the FCA Results Filing that, in the fourth FCA it rejected, for reliability reasons, the static de-list bids submitted by Dominion Resources Services, Inc. (Dominion) for Salem Harbor Units 3 and 4. Conservation Law Foundation protested the Results Filing, arguing that ISO-NE failed to meet certain requirements of its Transmission, Markets, and Services Tariff (Tariff) that were triggered by its rejection of the Salem Harbor static de-list bids.

3. Specifically, Conservation Law Foundation argued that pursuant to section III.13.2.5.2.5(g) of the Tariff, ISO-NE was required to "identify alternatives to resolve" the reliability need for a rejected de-list bid and identify "the time to implement

¹ *ISO New England Inc.*, 133 FERC ¶ 61,230 (2010) (December 16, 2010 Order).

² ISO-NE, FCA Results Filing, Docket No. ER10-2477-000 (supplemented on Sept. 17, 2010).

those solutions” with the Reliability Committee “prior to the start of the New Capacity qualification period” for the next FCA. Conservation Law Foundation argued that, because ISO-NE had rejected de-list bids for Salem Harbor Units 3 and 4 in the third FCA, ISO-NE had a Tariff-imposed obligation to review the status of the specific reliability need and identify alternatives prior to the start of the New Capacity qualification period for the fourth FCA, which was December 15, 2009.

4. In the December 16, 2010 Order, the Commission accepted the FCA Results Filing, subject to ISO-NE submitting compliance filing that either identified alternatives to resolve the reliability need for Salem Harbor Units 3 and 4 and the time to implement those solutions, or included an expedited timeline for identifying and implementing alternatives in accordance with section III.13.2.5.2.5(g) of ISO-NE’s Tariff.

5. ISO-NE’s December 22, 2010 filing is intended to comply with the December 16, 2010 Order.

II. Notice of Filing, Interventions, Comments, Protests, and Answers

6. Notice of ISO-NE’s December 22, 2010 filing was published in the *Federal Register*, with motions to intervene, notices of intervention, comments, and protests due on or before February 25, 2011.³ The Attorney General of the Commonwealth of Massachusetts (MA Attorney General) and the Massachusetts Municipal Wholesale Electric Company in conjunction with New Hampshire Electric Cooperative, Inc. (MMWEC & NHEC) filed timely motions to intervene and protests. The Conservation Law Foundation filed a timely protest.

7. On January 26, 2011, ISO-NE submitted an answer to the Conservation Law Foundation’s protest. On February 18, 2011, the Conservation Law Foundation submitted a reply to ISO-NE’s answer, and, on March 7, 2011, ISO-NE submitted an answer to the Conservation Law Foundation’s reply.

III. Discussion

A. Procedural Issues

8. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely-filed, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

³ 76 Fed. Reg. 545 (2011).

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the January 26, 2011 answer filed by ISO-NE in response to the Conservation Law Foundation's protest, because it has provided information that assisted us in our decision-making process.

10. We will not, however, accept the Conservation Law Foundation's February 18, 2011 reply or ISO-NE's March 2, 2011 answer. The Conservation Law Foundation's reply and ISO-NE's answer to it address an issue not considered in the December 16, 2010 Order and beyond the scope of this proceeding. Specifically, they discuss information regarding Dominion's February 2011 filing of a Non-Price Retirement Request for the Salem Harbor Station with ISO-NE for the fifth FCA, which is not relevant to our decision-making process regarding ISO-NE's compliance with section III.13.2.5.2.5(g) of ISO-NE's Tariff concerning the fourth FCA.

B. ISO-NE's Compliance Filing

11. In the December 22, 2010 filing, ISO-NE states that it has studied a regulated transmission alternative to the identified reliability need for the Salem Harbor Station for over a year through the Greater Boston Needs Assessment (Needs Assessment). According to ISO-NE, the results were presented to the Planning Advisory Committee (PAC)⁴ on March 18, 2010, and a finalized study report was posted to the ISO-NE website on July 9, 2010.

12. ISO-NE explains that it is working with a study group to develop a regulated transmission solutions study (Solutions Study) to meet the needs identified in the Needs Assessment. ISO-NE states that both the Needs Assessment and the Solutions Study are requirements of ISO-NE's Commission-approved regional system planning process. According to ISO-NE, on December 16, 2010, it presented a preliminary analysis of the Solutions Study to the PAC. The Solutions Study presentation, included as Attachment A to ISO-NE's December 22, 2010 filing, identifies alternatives to address the reliability needs associated with the retirement of Salem Harbor.⁵ ISO-NE states that it expects to

⁴ The PAC is a stakeholder committee that provides input to ISO-NE concerning the assessment and development of the Regional System Plan, ISO-NE's annual planning report that determines resources and transmission facilities needed to maintain reliable and economic operation of New England's bulk electric power system.

⁵ ISO-NE December 22, 2010 Filing at Attachment A (December 16, 2010 Presentation).

present a finalized solution addressing all the needs identified in the Greater Boston area, including the need for Salem Harbor, by the end of 2011, after which the transmission upgrades will be submitted to the appropriate state agencies for siting approval. ISO-NE states that, historically, it has taken approximately four to seven years from the beginning of the siting process for a project of this magnitude to be placed in service. ISO-NE does not expect this project to exceed this timeframe, assuming state siting is not delayed and other transmission projects are constructed as planned.

Protests

13. The Protestors argue that ISO-NE improperly failed to consider non-transmission alternatives before selecting transmission solutions to resolve the reliability need for Salem Harbor Units 3 and 4. The MA Attorney General asserts that Attachment K of ISO-NE's Tariff, which describes the regional system planning process, requires ISO-NE to undertake the Needs Assessment of the transmission system by first incorporating market responses.⁶ The MA Attorney General asserts that the Tariff unequivocally requires ISO-NE to first consider "alternative market solutions" to address identified reliability needs.⁷ The MA Attorney General also cites Commission language explaining that "[u]nder ISO-NE's planning process, regulated transmission solutions . . . are implemented only after alternative market solutions, whether in transmission, generation or demand response, have been given first consideration."⁸ The MA Attorney General further argues that, without consideration of non-transmission alternatives, ISO-NE cannot demonstrate that the preferred solution will be a least cost solution, which the MA Attorney General asserts is a requirement of the Massachusetts Energy Facilities Board.⁹

14. Similarly, MMWEC & NHEC argue that ISO-NE fails to explain why regulated transmission solutions were the only options analyzed, adding that section III.13.2.5.2.5(g) does not limit the scope ISO-NE's identification of alternatives to the identification and assessment of "regulated transmission solutions," or to the identification of alternatives through the vehicle of a study group consisting of ISO-NE and certain of the region's transmission owners. MMWEC & NHEC argue that ISO-

⁶ FERC Electric Tariff No. 3, § II, Attachment K § 4.2(a); *ISO New England Inc.*, 123 FERC ¶ 61,161, at P 42 (2008).

⁷ FERC Electric Tariff No. 3, § II, Attachment K § 3.5.

⁸ *ISO New England Inc.*, 127 FERC ¶ 61,170, at P 10-11 (2009) (citing Attachment K).

⁹ MASS. GEN. LAWS c. 164, §§ 69H, 69J.

NE's failure to address non-transmission alternatives is "out-of-step" with ISO-NE's mission statement, which stipulates that ISO-NE shall strive to perform all of its functions and services in a cost-effective manner. MMWEC & NHEC further assert that it is possible that construction of new generation, demand response, or energy efficiency measures, or some combination of these initiatives, could be implemented to resolve all or part of the reliability needs currently met through Salem Harbor Units 3 and 4, at a lower cost and in a more timely manner than the pursuit of new transmission facilities. MMWEC & NHEC assert that ISO-NE's compliance filing fails to consider the "wide-ranging analysis of alternatives required" by the Tariff.¹⁰

15. The Conservation Law Foundation argues that ISO-NE failed to prioritize resolution of the Salem Harbor reliability needs, instead relying upon the Needs Assessment that was previously rejected as inadequate, according to the Conservation Law Foundation, in the December 16, 2010 Order.

16. Finally, all of the protestors assert that the December 22, 2010 filing fails to set forth the required timeline for implementation, since the plans are not yet finalized. Moreover, according to the protestors, a four- to seven-year timeline is neither concrete and specific, nor expedited.

Answer

17. ISO-NE disputes arguments that it should have developed non-transmission alternatives, asserting that such alternatives are not required under either the December 16, 2010 Order or the Tariff. ISO-NE asserts that, while the Tariff directs it to incorporate market responses that are brought forward by stakeholders, to date, no stakeholders have proposed any alternatives for ISO-NE to consider as potentially displacing part or all of the need for Salem Harbor Units 3 and 4. ISO-NE further asserts that, while the MA Attorney General is correct that Attachment K requires ISO-NE to incorporate market solutions in the planning process, this requirement does not obligate ISO-NE to perform an analysis of non-transmission alternatives. Instead, ISO-NE states that section 4.2(a) of Attachment K requires it to incorporate market responses that meet specific criteria (i.e., resources that cleared in the FCA, that are contractually bound by a state request for proposals, or that have a financially binding obligation pursuant to a contract) and that ISO-NE had in fact incorporated such resources; however, such market responses were not sufficient to alleviate the reliability need.¹¹

¹⁰ MMWEC & NHEC Jan. 12, 2011 Protest at 7.

¹¹ ISO-NE states that it provided this information to stakeholders in slides 17 and 18 of the December 16, 2010 Presentation.

18. ISO-NE further asserts that it precisely followed the Commission's direction in the December 16, 2010 Order to identify alternatives and the time to implement the alternatives. With respect to timing, ISO-NE states that, while it expects to present a finalized solution to stakeholders by the end of this year, it is the transmission owners who are responsible for seeking state siting and other regulatory approvals and permits. According to ISO-NE, because it has no jurisdiction over state agencies and no control over the length of the proceedings, its historical experience is the best indicator of when a solution may come to fruition. ISO-NE also asserts that the Commission did not intend to "craft a special process" in the December 16, 2010 Order to address the reliability need for Salem Harbor outside of the existing regional system planning process.

Commission Determination

19. In the December 16, 2010 Order, the Commission found that previous ISO-NE presentations to stakeholders had identified neither alternatives to resolve the reliability need for Salem Harbor Units 3 and 4, nor the time to implement those solutions, as was required under section III.13.2.5.2.5(g) of the ISO-NE Tariff. The Commission therefore instructed ISO-NE to submit a compliance filing "that either identifies alternatives to resolve the reliability need for Salem Harbor Units 3 and 4 and the time to implement those solutions, or includes an expedited timeline for identifying and implementing alternatives."¹²

20. In the December 22, 2010 filing, ISO-NE chose to submit the first option, an identification of alternatives to resolve the reliability need for Salem Harbor Units 3 and 4 and the time to implement those solutions. As discussed above, the December 16, 2010 Presentation identifies two alternative transmission solutions to relieve each of the two identified concerns arising from Salem Harbor's retirement, as well as a preliminary preferred solution for each. ISO-NE proffers as a timeline a four- to seven-year estimate, based on its experience with projects of similar magnitude. We find that ISO-NE has complied with the December 16, 2010 Order and accept ISO-NE's December 22, 2010 compliance filing.

21. We reject arguments that ISO-NE failed to comply with the December 16, 2010 Order and section III.13.2.5.2.5(g) of the Tariff by not considering non-transmission alternatives in the December 16, 2010 Presentation.

22. Attachment K instructs that ISO-NE must incorporate certain market responses, including certain non-transmission alternatives, into its Needs Assessments or Regional

¹² December 16, 2010 Order, 133 FERC ¶ 61,230 at P 30.

System Plans.¹³ Section 4.2 of Attachment K directs that ISO-NE shall incorporate into its Needs Assessment resources that have cleared the FCA, that are contractually bound by a state request for proposals, or that have a financially binding obligation pursuant to a contract. Where such non-transmission solutions do not eliminate or address the needs identified by ISO-NE, Attachment K instructs ISO-NE to develop or evaluate, pursuant to section 4.2(b), regulated transmission solutions in response to the identified needs.

23. In this case, ISO-NE states that it incorporated such non-transmission market solutions, and that such solutions were not sufficient to meet the reliability need for Salem Harbor 3 and 4. As per Attachment K, ISO-NE then considered regulated transmission solutions. While section III.13.2.5.2.5(g) stipulates a date certain by which ISO-NE was to present to stakeholders such solutions, it does not charge ISO-NE with developing or considering non-transmission alternatives in a manner not required under the regional system planning process. As ISO-NE notes, the December 22, 2010 filing contains two alternative transmission solutions that relieve the loading on the Boston area 345 kV ties and two alternative options for the North Shore area that would address the reliability need for the Salem Harbor Station.

24. As to Conservation Law Foundation's concerns regarding use of the Needs Assessment, we note that Conservation Law Foundation mischaracterizes our determination in the December 16, 2010 Order concerning those presentations. The Commission did not reject ISO-NE's reliance, *per se*, on the Needs Assessment presentations. Rather, the Commission rejected the presentations because they did not identify alternatives to resolve the reliability need for Salem Harbor Units 3 and 4 or the time to implement those solutions. We find that the December 16, 2010 Presentation coupled with ISO-NE's December 22, 2010 filing here satisfy the requirements of the December 16, 2010 Order.

25. Finally, we need not address protestors' arguments concerning the appropriate role of non-transmission alternatives and least-cost planning in the ISO-NE regional system planning process. These issues are beyond the scope of this proceeding, which is limited to determining whether ISO-NE's December 22, 2010 filing complies with the

¹³ Attachment K states that “[m]arket responses shall include investments in resources (*e.g.*, demand-side projects, generation and distributed generation)” and merchant transmission facilities. Attachment K section 3.5.

requirements in the December 16, 2010 Order.¹⁴ For the reasons set forth above, we find that it does.

The Commission orders:

The Commission hereby accepts for filing ISO-NE's December 22, 2010 compliance filing.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ Additionally, whether ISO-NE has complied with any least cost solution requirements of the Massachusetts Energy Facilities Board, an issue raised by the MA Attorney General, is beyond the Commission's jurisdiction.