

145 FERC ¶ 61,023  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER13-2266-000

ORDER CONDITIONALLY ACCEPTING BID RESULTS

(Issued October 7, 2013)

1. On August 26, 2013, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Appendix K of its Transmission, Markets and Services Tariff (Tariff), ISO New England Inc. (ISO-NE) submitted the results of its Winter Reliability Program (Winter Reliability Program or Program) bid selection process (Bid Results). In this order, we conditionally accept the Bid Results, to become effective September 20, 2013, as requested, subject to ISO-NE submitting a compliance filing.

**I. Background**

2. By order issued September 16, 2013, the Commission conditionally accepted ISO-NE's Winter Reliability Program, contained in Appendix K, effective for an interim period from September 6, 2013 through February 28, 2014, as ISO-NE requested.<sup>2</sup> The Winter Reliability Program set forth a competitive bidding process for ISO-NE to procure energy for winter 2013-2014 from a combination of select oil-fired generators, dual-fuel

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<sup>1</sup> 16 U.S.C. § 824(d) (2006).

<sup>2</sup> *ISO New England Inc.*, 144 FERC ¶ 61,204 (2013) (September 16, 2013 Order). The Commission also conditionally accepted for an indefinite period ISO-NE's proposed Tariff provisions regarding market monitoring (contained in Appendices A and K of the Tariff) to become effective September 6, 2013.

generators, and demand response resources. ISO-NE submitted the Bid Results pursuant to Section III.K.2 of Appendix K, which requires ISO-NE to make a section 205 filing setting forth a “list of the selected Market Participants and the prices that they will be paid, and . . . a description of the evaluation process” in selecting the winning bids.

## II. Bid Results

3. As detailed in the September 16, 2013 Order, ISO-NE intended to procure a target of 2.4 million MWh of energy from the Winter Reliability Program’s demand response and oil inventory services. In the Bid Results, ISO-NE states that market participants submitted bids totaling 2.29 million MWh, or 96 percent of the target, at a total offer price of \$114.3 million. ISO-NE proposes to accept 1.995 million MWh, or 83.1 percent of the target, at a total price of \$78.8 million.<sup>3</sup> ISO-NE explains that after this cut-off point—\$31 per MWh-month—the supply curve becomes steeper which would have resulted in increased costs.

4. The selected bids include 3,780 MWh of demand response with the remaining MWh provided by the oil inventory service. The oil inventory service includes 907,144 MWh provided by dual-fuel units.

5. In explaining its evaluation process for selecting the winning bids, ISO-NE states that it first reviewed all bids to ensure they were eligible based on the rules of the Winter Reliability Program and then assessed the bids in accordance with the criteria outlined in proposed Tariff section III.K.6: cost; historical availability and performance; ability to respond to contingencies and other changed conditions; diversity of location and sensitivity to locational constraints; dual-fuel capability; and replenishment capability. ISO-NE asserts that it “was not required to pick and choose from different points on the bid stack to meet these criteria.”<sup>4</sup>

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<sup>3</sup> The 2.29 million MWh and 1.995 million MWh figures in ISO-NE’s Bid Results Filing are overstated by .045 million MWh due to errors in the bid sheets of Essential Power Massachusetts and Exelon. As discussed below, we direct ISO-NE to correct these errors.

<sup>4</sup> ISO-NE August 26, 2013 Filing at 3.

### **III. Notice of Filing and Responsive Pleadings**

6. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 54,883 (2013) on September 6, 2013, with interventions and comments due on or before September 9, 2013.

7. Numerous parties filed timely motions to intervene and some of those parties filed comments.<sup>5</sup> The Massachusetts DPU and Vermont PSB filed notices of intervention, and the Maine PUC filed a notice of intervention and protest. H.Q. Energy Services (U.S.) Inc. (H.Q. Energy) filed a motion to intervene out of time.

8. On September 12, 2013, ISO-NE filed an answer to the comments and protests.

### **IV. Discussion**

#### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant H.Q. Energy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer because it has provided information that assisted us in our decision-making process.

#### **B. Comments and Protests**

12. Exelon, Algonquin and NESCOE either generally support or have no express objection to the Bid Results under the circumstances.<sup>6</sup> NESCOE asserts that the Bid Results are acceptable, stating that ISO-NE properly utilized its discretion to save costs for consumers by purchasing less than the targeted 2.4 million MWh.

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<sup>5</sup> See Appendix A to this order.

<sup>6</sup> Exelon at 3; Algonquin at 10; NESCOE at 1 and 5.

13. PSEG disputes the Bid Results, asserting that ISO-NE selected resources solely on price without considering operating characteristics, geographical location, historical availability, or dual-fuel capability. PSEG therefore asserts that ISO-NE should be directed to utilize a uniform clearing process for the Program.<sup>7</sup> PSEG also states that the bid solicitation process revealed the value of fuel diversity and firm fuel supply in New England and that the market fails to send the proper price signals. Similarly, Algonquin states that while it does not oppose the Winter Reliability Program, the Bid Results reveal market design flaws that the Commission should consider in its exploration of centralized capacity markets in Docket No. AD13-7-000.

14. NESCOE, Maine PUC, and TransCanada state that ISO-NE underestimated the costs of the Program, noting that the cost estimate in ISO-NE's Winter Reliability Program filing was between \$16 to \$43 million, while the proposed actual costs are \$79 million. NESCOE states that many stakeholders voted for the Program based upon the cost estimate initially provided by ISO-NE and, going forward, ISO-NE must provide more accurate estimates.<sup>8</sup>

15. TransCanada states that the Program requires more scrutiny given that actual costs were nearly twice as much as the estimate. Further, TransCanada contends that the Commission does not have enough information to determine whether the Bid Results are just and reasonable because, according to TransCanada, ISO-NE did not submit the complete bid results due to confidentiality concerns.<sup>9</sup> Maine PUC similarly states that ISO-NE has not shown the resulting rates to be just and reasonable. Maine PUC argues that ISO-NE has not provided metrics for the Commission to determine whether \$31 per MWh-month was a reasonable cut-off point in the supply curve. Further, Maine PUC states that it might have been unreasonable for ISO-NE to purchase more than the 43 percent of bids that were less than \$10 per MWh-month.<sup>10</sup>

16. Maine PUC also reiterates its previous arguments against the Winter Reliability Program, stating that ISO-NE failed to properly analyze a need for the Program in the first place. Maine PUC asserts that a different needs assessment would have significantly reduced the cost of the Program, and that the lack of transparent bid selection criteria

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<sup>7</sup> PSEG Comments at 6.

<sup>8</sup> NESCO Comments at 6-7.

<sup>9</sup> TransCanada Comments at 7.

<sup>10</sup> Maine PUC Protest at 7.

allows ISO-NE to adjust its need based on an ad hoc determination of what price is too high.<sup>11</sup>

17. Maine PUC further argues that ISO-NE should reconsider how much energy is needed from the Program, and whether the Program is even necessary, in light of the Commission's recent finding that the Tariff imposes a strict performance obligation on capacity resources.<sup>12</sup>

18. Essential Power Massachusetts states that there was an overstatement in its Program obligation that needs to be corrected. According to Essential Power Massachusetts, a miscommunication occurred between it and ISO-NE resulting in its oil tank capacity for West Springfield Units 1 & 2 being overstated. Essential Power Massachusetts explains that West Springfield Units 1 & 2 share a common liquid fuel tank, but it listed the full tank capacity on the bid sheet for each unit rather than reflecting a 50 percent share for each unit. As a result, Essential Power Massachusetts states that its initial oil inventory obligation should be corrected and reduced by 1,117 MWh, to a total of 7,307 MWh. Essential Power Massachusetts states that it contacted ISO-NE and that ISO-NE is in agreement regarding the corrected oil inventory obligation.<sup>13</sup>

19. Exelon filed supplemental comments explaining that it inadvertently miscalculated the usable portion of its oil storage tanks and therefore requests that the Commission reduce the amount shown in the total MWh column on ISO-NE's bid results filing. Exelon states that its offers from two generating facilities, Kleen Energy and Mystic 7, should be reduced so that the total MWh offered from Exelon Generating Company LLC are adjusted to 505,900.305 and that the anticipated dollars are revised accordingly. Exelon states that it has discussed the need to make this correction with ISO-NE and ISO-NE supports the correction.<sup>14</sup>

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<sup>11</sup> Maine PUC Protest at 6-7.

<sup>12</sup> Maine PUC Protest at 8 (citing *New England Power Generators Assoc., Inc. v. ISO New England Inc.*, 144 FERC ¶ 61,157 (2013) (NEPGA Complaint Order)).

<sup>13</sup> Essential Power Comments at 3-4.

<sup>14</sup> This represents a 43,569 MWh reduction in Exelon's obligation of 549,469 MWh. Exelon Supplemental Comments at 2-4.

**C. Answer**

20. ISO-NE states that its cost estimate was merely an indication of costs to participants providing the Winter Reliability Program services and it did not include several factors, such as the difficult-to-predict risk premiums and profit margins that would be added by participants themselves. ISO-NE acknowledges that the level of misunderstanding among participants indicates that ISO-NE could have more explicitly stated what its cost estimate included – and excluded – but ISO-NE cautions that estimates by nature are often wrong and there can be no guarantees that outcomes will mirror estimates.<sup>15</sup>

21. ISO-NE concurs with Maine PUC's interpretation of the NEPGA Complaint Order as imposing a strict performance obligation on capacity resources. However, ISO-NE notes that that proceeding remains open, with the possibility of rehearing and pending compliance obligations, and thus ISO-NE feels the region should continue pursuing the Winter Reliability Program.

22. ISO-NE agrees with Essential Power Massachusetts's request to reduce its total obligation to 7,307 MWh and states that, if the Commission makes the requested change, Essential Power Massachusetts's payment will be reduced to \$501,449.79.

**D. Substantive Matters**

23. We will conditionally accept the Bid Results, effective September 20, 2013 as requested, subject to ISO-NE submitting a compliance filing further detailing its evaluation process, as discussed below.

24. As provided for in Section III.K.2 of the Tariff, the Bid Results must contain: (1) "a list of the selected Market Participants and the prices that they will be paid," and (2) "a description of the evaluation process[.]"<sup>16</sup> ISO-NE has complied with the first of these two requirements. ISO-NE's Bid Results contain a list of 20 Market Participants selected to participate in the Program and the price that each will be paid. ISO-NE states that the 20 participants will provide up to 1.995 million MWh of energy at a total cost of \$78.8 million. Further, ISO-NE explains that this procurement is "intended to balance fuel security for the region against the costs to consumers."<sup>17</sup>

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<sup>15</sup> ISO-NE September 12, 2013 Answer at 2-3.

<sup>16</sup> ISO-NE, Tariff, Appendix K §§ III.K.2 (3.0.0).

<sup>17</sup> ISO-NE August 26, 2013 Filing at 2.

25. While protestors point to the disparity between the estimated costs and actual costs in challenging the entire Program, we are not persuaded by those arguments. The Winter Reliability Program is a novel approach to addressing reliability concerns that manifested themselves last winter. As such, the Program does not easily lend itself to precise cost predictions. Nevertheless, we note that ISO-NE made a good faith effort to develop an estimate, including hiring an independent consultant to calculate projected costs for the information of market participants.<sup>18</sup>

26. However, we will require ISO-NE to submit a compliance filing further detailing its evaluation process in selecting winning bids. While ISO-NE submitted a brief description of the evaluation process, the Commission envisioned a more detailed filing in conditionally accepting the Winter Reliability Program. Indeed, in the September 16, 2013 Order, the Commission relied in part on the fact that ISO-NE must submit the Bid Results (including a description of the evaluation process), considering the Tariff revisions as a whole and ISO-NE's own record statements regarding what the description would entail.

27. For example, section III.K.6 of Appendix K lays out the specific criteria that ISO-NE is required to follow in selecting the Program participants, after first screening the submitted bids against the eligibility requirements of sections III.K.2 through III.K.5.<sup>19</sup> The criteria include: (1) the cost of providing the oil storage and demand response services; (2) an asset's historical availability and performance; (3) an asset's ability to respond within the Operating Day to contingencies and other changed conditions; (4) diversity of location and sensitivity to North/South and East/West constraints; (5) dual-fuel capability; and (6) replenishment capability. Section III.K.6 also states that ISO-NE shall select bids that establish "a target minimum oil dispatch rate of 4,000 MW per hour[,]"<sup>20</sup> which ISO-NE explained "will ensure that there is sufficient diversity among the units providing service."<sup>21</sup>

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<sup>18</sup> See ISO-NE, Transmittal, Docket No. ER13-1851-000, at n.68 (filed June 28, 2013) (citing "A.3.0 ISO-NE Winter 2013/2014 Reliability Proposal" at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrks\\_comm/mrks/mtrls/2013/may302013/index.html](http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2013/may302013/index.html)).

<sup>19</sup> See ISO-NE, Tariff, Appendix K §§ III.K.2 – III.K.5 (3.0.0).

<sup>20</sup> ISO-NE, Tariff, Appendix K §§ III.K.6 (3.0.0).

<sup>21</sup> ISO-NE, Tariff Filing, Docket No. ER13-1851-000, at 23 (filed June 28, 2013); *see also* Ethier/Brandien Test. at 28.

28. Further, in response to commenters' concerns about how ISO-NE would exercise its discretion in selecting Program participants, ISO-NE provided the following explanation of its bid selection process in its August 6, 2013 answer:

At stakeholder meetings, the ISO provided information about its application of these criteria, along with examples. Specifically, the ISO indicated that it will arrange bid block offers by price (\$/MWh) and initially select the lowest priced resource bid blocks that meet the 2.4 million MWh program maximum. Next, the ISO will consider reliability issues, including resource parameters and performance. At this stage, the ISO will consider replacing inflexible generators at the upper end of the economic bid stack with more flexible generators or demand response that falls just outside of the economic bid stack, and will also consider replacing the highest cost single-fuel generation in the economic bid stack with the lowest cost dual-fuel generation outside of the economic bid stack. Finally, the ISO will ensure that resources meet the target minimum aggregate output capability for oil units of 4,000 MW per hour, and that the geographical distribution of the final selected resources is not problematic (e.g., concentrated in a single zone).<sup>22</sup>

29. In the Bid Results, ISO-NE states that it first reviewed the submitted bids to determine whether they met the Program's eligibility requirements and then assessed the bids in accordance with the criteria in Tariff section III.K.6. ISO-NE then states that it "was not required to pick and choose from different points on the bid stack to meet these criteria."<sup>23</sup> ISO-NE also explains that the selected bids are all less than \$31 per MWh-month and that the supply curve became steeper above this cut-off point.<sup>24</sup> While we recognize that ISO-NE was trying to contain Program costs, we find ISO-NE's explanation lacks sufficient detail to determine why \$31, or 83.1 percent of the targeted procurement, was the proper cutoff point as opposed to some other point on the supply curve.

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<sup>22</sup> ISO-NE, Answer, Docket No. ER13-1851-000, at 7 (filed August 6, 2013).

<sup>23</sup> ISO-NE August 26, 2013 Filing at 3.

<sup>24</sup> ISO-NE explains that the accepted bids include the 43 percent of bids that were less than \$10 per MWh, the 25 percent of bids that were between \$10 and \$20 per MWh, and the 20 percent of bids that were between \$20 and \$31 per MWh; and these bids total 83.1 percent of the Program's targeted amount of energy. ISO-NE August 26, 2013 Filing at 3.

30. While these statements contain a limited description of the evaluation process, we share commenters' concerns that the Tariff requires a more detailed explanation. Therefore, we direct ISO-NE to submit a compliance filing within 15 days of the date of this order to further describe ISO-NE's evaluation process in a way that (1) demonstrates how each of the Tariff criteria (as further described in the August 6, 2013 Answer) were applied; (2) addresses how the minimum energy output target of 4,000 MW per hour was achieved or, if it was not achieved, how ISO-NE otherwise accomplished its objective of not relying on a small group of resources to provide all of the oil inventory service; (3) explains ISO-NE's statement that it "was not required to pick and choose from different points on the bid stack to meet [the section III.K.6] criteria";<sup>25</sup> and (4) further explains its choice of \$31 per MWh-month (i.e. 1.995 million MWh accepted versus the initial 2.4 million MWh targeted procurement) as the cutoff point beyond which all further bids were rejected.

31. As to Essential Power Massachusetts's and Exelon's requests to adjust the bid results to correct for the errors in their bid sheets, the parties represent that ISO-NE has supported those adjustments and no party has opposed them here.<sup>26</sup> Accordingly, ISO-NE must also update the Bid Results to reflect these corrections in its compliance filing.

32. As to Maine PUC's arguments concerning the need for the Winter Reliability Program, those arguments are more appropriately raised in a request for rehearing of the September 16, 2013 Order accepting the Program. In any case, as detailed in the September 16, 2013 Order, the Winter Reliability Program is a temporary program for the 2013-2014 winter period only and is intended to address resource unavailability caused, in part, by natural gas pipeline constraints in the region. The NEPGA Complaint Order does not eliminate those pipeline constraints. Further, while the NEPGA Complaint Order may affect resource performance in New England, the extent of that impact is yet unknown and we have no basis in this record upon which those impacts can be quantified in advance of the coming winter.

The Commission orders:

(A) The Bid Results are hereby conditionally accepted, effective September 20, 2013, as requested, subject to ISO-NE submitting a compliance filing, as discussed in the body of this order.

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<sup>25</sup> ISO-NE August 26, 2013 Filing at 3.

<sup>26</sup> It appears that ISO-NE's Answer addressed only Essential Power Massachusetts's request for an adjustment, because Exelon submitted its request for an adjustment after the Answer.

(B) ISO-NE is hereby directed to submit a compliance filing within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A**

| <b>Motions to Intervene</b>  | <b>Comments and Protests</b>   |
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| Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C. (Joint) | Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C. (together, Algonquin) |
| Electric Power Supply Association  | Essential Power Massachusetts, LLC (Essential Power Massachusetts)                               |
| Essential Power Massachusetts, LLC   | Exelon Corp. (Exelon)  |
| Exelon Corp.   | New England States Committee on Electricity (NESCOE)   |
| National Grid USA  | Maine Public Utilities Commission (Maine PUC)  |
| New England Power Generators Association Inc.                                      | PSEG Companies (PSEG)  |
| New England Power Pool Participants Committee                                      | TransCanada Power Marketing Ltd. (TransCanada)   |
| New England States Committee on Electricity  |  |
| Northeast Utilities Service Co.  |  |
| NRG Companies  |  |
| PSEG Companies   |  |
| Retail Energy Supply Association   |  |
| TransCanada Power Marketing Ltd.   |  |
| Vitol Inc.   |  |