

156 FERC ¶ 61,067
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

ISO New England Inc.

Docket No. ER16-551-002

ORDER ACCEPTING COMPLIANCE FILING

(Issued July 27, 2016)

1. On May 12, 2016, ISO New England Inc. (ISO-NE) submitted a compliance filing revising the ISO-NE Transmission, Markets and Services Tariff (ISO-NE Tariff) to establish a 10 percent materiality threshold for the mitigation of Retirement De-List Bids and Permanent De-List Bids (Compliance Filing).¹ In this order, we accept the Compliance Filing, effective March 1, 2016, as requested.

I. Background

2. On December 17, 2015, ISO-NE submitted revisions to the ISO-NE Tariff that, among other things, established market rules to address the potential for a supplier to exercise market power to increase capacity prices by prematurely retiring an economic resource. ISO-NE proposed a new Retirement De-List Bid option that allows suppliers to price an existing resource's retirement from all ISO-NE markets (i.e., to indicate the price that they must receive for their capacity to remain in ISO-NE markets). ISO-NE also proposed to apply a discounted cash flow approach to reflect the net present value of a resource for both Retirement De-List Bids and Permanent De-List Bids (collectively, Retirement Bids).

3. To address the potential exercise of market power through uneconomic retirement, ISO-NE proposed that the Internal Market Monitor (IMM) review all proposed Retirement Bids. As part of this review, the IMM will consult with the supplier on the

¹ Permanent De-List Bids permanently retire a resource from only the capacity market; Retirement De-List Bids permanently retire the resource from all markets. See ISO-NE, Filing, Docket No. ER16-551-000, at 6 (filed Dec. 17, 2015).

reasonableness of its cost assumptions during the bid review process. Within 90 days of receiving a Retirement Bid, the IMM will issue a determination on the appropriateness of the proposed bid, and may determine that mitigation is necessary. In those instances, the IMM will only substitute its own estimates for the specific inputs that it finds the supplier has failed to substantiate.² Following the IMM's review, ISO-NE will file with the Commission either the supplier's original Retirement Bid or a mitigated bid, and the bid that the Commission subsequently approves will be used in the Forward Capacity Auction.

4. On April 12, 2016, the Commission accepted ISO-NE's proposal, subject to condition.³ In the April 12 Order, the Commission noted that, although ISO-NE's proposal requires the IMM to review all supplemental information a supplier provides in support of its Retirement Bid, the proposed revisions did not explain the degree to which the IMM will accept differences in expectations, risk tolerances, and methodologies that may result in a Retirement Bid that is greater than what the IMM would calculate for that unit.⁴ The Commission further stated that, as proposed, "the IMM's broad discretion in determining whether to mitigate a Retirement Bid, based on the IMM's own assumptions and methodologies, could result in inaccurate mitigation."⁵ The Commission found that the use of a materiality threshold for mitigation would be a reasonable limit on any spread between the IMM's mitigated bid and the supplier's Retirement Bid due to differences in assumptions and methodologies, while still allowing mitigation in instances where an exercise of market power is likely. Accordingly, the Commission accepted ISO-NE's proposal subject to the condition that ISO-NE submit tariff revisions establishing a mitigation materiality threshold.⁶

II. Compliance Filing

5. On May 12, 2016, ISO-NE submitted revisions to comply with the April 12 Order. ISO-NE proposes a mitigation materiality threshold of 10 percent of the IMM-determined

² ISO-NE, Deficiency Letter Response, Attachment A, Docket No. ER16-551-001, at 2 (filed Feb. 29, 2016).

³ *ISO New England Inc.*, 155 FERC ¶ 61,029 (2016) (April 12 Order).

⁴ *Id.* P 62.

⁵ *Id.*

⁶ *Id.*

price.⁷ The Tariff revisions approved in the April 12 Order provide that, during its review of a submitted Retirement Bid for a particular resource, the IMM will calculate a Retirement Bid for that resource.⁸ The IMM-calculated Retirement Bid will reflect the assumptions used by the resource owner that the IMM can support; it may also include one or more values that the IMM substituted for the resource owner's values if the IMM could not support the resource owner's assumptions underlying the submitted values.⁹ As proposed in the instant filing, if the resource owner's Retirement Bid exceeds the IMM's figure by more than 10 percent, ISO-NE must file with the Commission the IMM's figure as the IMM-accepted Retirement Bid, which is the mitigated bid for that resource to be used in the Forward Capacity Auction. If, however, the difference between the resource owner's submitted Retirement Bid and the IMM's figure does not exceed 10 percent, then the IMM will accept the submitted Retirement Bid, and ISO-NE will file the submitted Retirement Bid with the Commission.¹⁰

6. ISO-NE states that there are two means by which the IMM can account for reasonable differences in estimates, assumptions, and resource circumstances during the Retirement Bid mitigation process: (1) by allowing flexibility in price forecasts, risk factors, and other inputs, and (2) by applying a materiality threshold to the output of the mitigation calculation.¹¹ With respect to the Commission's directive to establish a mitigation threshold, ISO-NE contends that such a threshold requires balancing the potential harm to the market of permitting an exercise of market power to go unchecked and the potential harm that would come from mitigation where there is no exercise of market power.¹² ISO-NE states that the IMM's review process already reduces the potential for over-mitigation by accommodating differences between a market participant's and the IMM's estimates in resource-specific circumstances, views of future market conditions, and risk factors in the consultation phase prior to making a

⁷ Compliance Filing at 2. “[W]here the submitted bid price is above the 10 percent materiality threshold, the IMM will calculate the [IMM]-accepted retirement bid just as it calculates the [IMM]-approved retirement bid under the existing language.” *Id.* at 4.

⁸ ISO-NE Tariff § III.13.1.2.3.2.1.1.2 (44.0.0).

⁹ ISO-NE, Deficiency Response, Docket No. ER16-551-001, Attachment A at 1-2 (filed Feb. 29, 2016).

¹⁰ ISO-NE Tariff § III.13.1.2.3.2.1.1.2 (44.0.0).

¹¹ Compliance Filing at 3.

¹² *Id.*

determination on a Retirement Bid. In light of this existing flexibility, ISO-NE argues that its proposed 10 percent materiality threshold is appropriately limited.

7. ISO-NE also proposes other ministerial revisions to the ISO-NE Tariff to align the current description of Retirement Bids more closely with the definition of de-list bids.¹³ ISO-NE requests an effective date of March 1, 2016, which is the effective date of the revisions accepted in the April 12 Order.

III. Notice of Filing and Responsive Pleadings

8. Notice of the Compliance Filing was published in the *Federal Register*, 81 Fed. Reg. 31,231 (2016), with interventions and protests due on or before June 2, 2016. Dominion Resources Services, Inc.; and NRG Power Marketing, LLC and GenOn Energy Management, LLC, filed timely motions to intervene.¹⁴

9. NextEra Energy Resources, LLC (NextEra) and New England Power Generators Association, Inc. (NEPGA) submitted timely protests. The New England States Committee on Electricity (NESCOE) submitted timely comments.

IV. Responsive Pleadings

10. According to NextEra, the Commission's acceptance of the proposal in the April 12 Order relied on ISO-NE's commitment to "permit flexibility in the submitted forecasts and inputs of a Retirement Bid,"¹⁵ a commitment that NextEra claims ISO-NE now proposes to eliminate.¹⁶ NextEra argues that the Compliance Filing deviates from this previous commitment by only permitting Retirement Bids to be within a 10 percent threshold of the IMM-determined discounted cash flow analysis. Rather than having the IMM use its own estimates only for specific cost items as a "fallback" input for unsubstantiated values, NextEra states that ISO-NE's proposal allows the IMM to use its own estimates for any supplier-calculated value greater than 10 percent above its own.¹⁷

¹³ *Id.* at 4.

¹⁴ Dominion Resource Services, Inc. submits its motion to intervene on behalf of Dominion Energy Marketing, Inc.; Dominion Nuclear Connecticut, Inc.; and Dominion Manchester Street, Inc.

¹⁵ NextEra Protest at 3 (citing April 12 Order, 155 FERC ¶ 61,029 at P 58).

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

It argues that the IMM lacks sufficient expertise in capital investment analysis and risk assessment of generation assets to determine whether a Retirement Bid is truly uneconomic, and that the IMM's sole reliance on the discounted cash flow analysis plus a 10 percent materiality threshold, is unreasonable.

11. Additionally, NextEra and NEPGA argue that ISO-NE provides no analytical or qualitative support that its proposal is reasonable in addressing forecast values and risks.¹⁸ Accordingly, NEPGA states that the Commission does not have before it substantial evidence upon which it can make a reasoned decision. NEPGA also disputes ISO-NE's argument that the materiality threshold should be limited because there is already input flexibility during the IMM's review process.¹⁹ NEPGA asserts that the Commission gave no indication the materiality threshold should create any change in the input flexibility afforded to market participants, nor that this flexibility should affect the reasonableness of a materiality threshold.

12. NEPGA asks that the Commission approve at least a 15 percent materiality threshold, which it argues would better protect against the mitigation of economic offers while still allowing mitigation in instances where an exercise of market power is likely.²⁰ However, NEPGA also argues that a 15 percent materiality threshold alone might not protect against undue mitigation when the absolute dollar difference between the IMM's mitigated bid and a supplier's Retirement Bid is small. Accordingly, NEPGA proposes that the materiality threshold include a concurrent absolute dollar threshold so that differences between the IMM's and market participant's price of less than one dollar would not result in mitigation.²¹

13. NESCOE does not oppose ISO-NE's proposed materiality threshold, though it views the 10 percent threshold as the top end of an acceptable range.²²

¹⁸ *Id.*; NEPGA Protest at 4.

¹⁹ NEPGA Protest at 7.

²⁰ *Id.* at 9.

²¹ *Id.* at 10.

²² NESCOE Comments at 2.

V. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

15. We accept ISO-NE's Compliance Filing, effective March 1, 2016, as requested. As ISO-NE explains, calculating a Retirement Bid involves estimates, assumptions, differences in resource circumstances, and variations in expectations, which can be accommodated in the mitigation process both by (1) allowing flexibility in price forecasts, risk factors, and other inputs, and (2) applying a materiality threshold to the output of the mitigation calculation. In the April 12 Order, the Commission directed ISO-NE to propose a materiality threshold *in addition* to the input flexibility that the IMM permits in the calculation of a Retirement Bid.²³ We find that ISO-NE's proposed 10 percent mitigation threshold, in addition to the flexibility in price forecasts, risk factors, and other inputs already permitted by the IMM, complies with the April 12 Order.

16. With respect to ISO-NE's support of its proposed 10 percent materiality threshold, protesters' arguments may misinterpret the objective of the threshold, which is to accommodate reasonable differences between the assumptions of the IMM and those of suppliers. The question before us, therefore, is how much leeway the IMM ought to allow when balancing prevention of an exercise of market power against the over-mitigation of suppliers whose assumptions may differ, legitimately, from the IMM's. In the April 12 Order, we found that constructing a competitive Retirement Bid is complex and includes several subjective factors that determine a resource's economics. We further found that the IMM's broad discretion in determining whether to mitigate a Retirement Bid, based on the IMM's own assumptions and methodologies, could result in inaccurate mitigation. We conclude that this proposal strikes an appropriate balance by ensuring that the IMM is able to prevent the exercise of market power that could cause significant harm to market participants, while protecting suppliers from potential over-mitigation of their retirement bids.

17. We are not persuaded by NextEra's arguments that the Compliance Filing deviates from ISO-NE's previous commitments to permit flexibility in the submitted forecasts and

²³ April 12 Order, 155 FERC ¶ 61,029 at P 62.

inputs of a Retirement Bid. ISO-NE has not proposed any revisions that might remove this flexibility. We disagree with NextEra's characterization of ISO-NE's proposal as allowing the IMM to substitute its own estimates for any supplier-calculated value greater than 10 percent above the IMM's value. We still expect that the IMM, when calculating the mitigated bid, will replace a specific input in a supplier's Retirement Bid with its own estimate only when the supplier fails to demonstrate the reasonableness of that particular input. The IMM will file with the Commission the mitigated bid only if the supplier's Retirement Bid exceeds the mitigated bid by more than 10 percent.

18. We decline to require ISO-NE to adopt an absolute dollar materiality threshold. We find that the IMM's permitted flexibility in price forecasts, risk factors, and other inputs used to calculate a supplier's Retirement Bid, in addition to the proposed materiality threshold, sufficiently guard against over-mitigation, even in instances where the absolute dollar difference between the IMM's mitigated bid and the supplier's submitted Retirement Bid is relatively small.

The Commission orders:

ISO-NE's Compliance Filing is hereby accepted, effective March 1, 2016, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.