

134 FERC ¶ 61,182
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. ER11-2661-000

ORDER GRANTING LIMITED WAIVER

(Issued March 11, 2011)

1. On January 10, 2011, ISO New England Inc. (ISO-NE) filed a request for a limited waiver of a provision in its Transmission, Markets and Services Tariff (Tariff) that requires ISO-NE to file an amendment to section IV.A of the Tariff if ISO-NE determines that its collections will exceed 105 percent of its revenue requirement. As discussed below, the Commission grants the requested waiver.

I. Background

2. ISO-NE annually files with the Commission stated rates to collect ISO-NE's revenue requirement from its participants for each upcoming calendar year. Deviations between tariff collections and ISO-NE's actual expenses are reconciled through a year-to-year, general true-up set forth in section IV.A.2.2(2) of ISO-NE's Tariff. Section IV.A.2.1 of ISO-NE's Tariff states that if ISO-NE determines that its collections will exceed 105 percent of its revenue requirement, it must file an amendment to section IV.A.

II. Request for Limited Waiver

3. As set forth in its request for limited waiver, ISO-NE anticipates that it will exceed the 105 percent threshold for 2010. While the actual overcollection amount will be calculated in 2011 when collections are fully received, ISO-NE expects to collect approximately \$7.7 million more than the 2010 revenue requirement, which equates to collections equal to 105.59 percent of its 2010 revenue requirement. However, due to a true-up already built into the 2011 revenue requirement, the resulting overcollection is expected to be approximately \$3.3 million or approximately 102.41 percent.¹

¹ Based on a 2010 revenue requirement of \$137.2 in ISO-NE Docket ER10-154-000, at 2, filed October 29, 2009 ($(\$137.2 + \$3.3) / \$137.2 = 102.41$ percent).

4. Rather than file an amendment as required in section IV.A.2.1 of the Tariff, ISO-NE requests waiver of section IV.A.2.1 to allow it to reduce its 2012 revenue requirement by the actual overcollection amount as part of a budget filing to be made in October 2011. ISO-NE asserts that reducing the year 2012 revenue requirement by the overcollection amount, as opposed to filing an amendment, is appropriate given the limited amount of money involved and the time and resources required to pursue a change in rates through the stakeholder process.

5. ISO-NE states this is the first time it has exceeded the 105 percent threshold. ISO-NE explains that it believes section IV.A.2.1 was not intended to remedy circumstances like these where, late in the year, ISO-NE will collect slightly more than the threshold. Rather, ISO-NE believes the intent of the provision was to require it to revise its rates on a going-forward basis if it became apparent earlier in the year that the established rates would lead to an ongoing overcollection.

III. Notice of Filing

6. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 3,622 (2011), with interventions and protests due on or before January 31, 2011. Timely motions to intervene were filed by Northeast Utilities Service Company and New England Power Pool Participants Committee (NEPOOL). No comments or protests were filed.

IV. Discussion

A. Procedural Matters

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

B. Commission Determination

8. We will grant ISO-NE's request for limited waiver. The Commission has granted requests for waiver from ISO-NE's Tariff requirements where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.²

² See, e.g., *ISO New England Inc.*, 127 FERC ¶ 61,242 at P 13 (2009) (citing *ISO New England Inc.*, 122 FERC ¶ 61,297 (2008)); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *University of New Hampshire*, 121 FERC ¶ 61,185 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

9. As an initial matter, we find that ISO-NE has acted in good faith. Once it had knowledge of the overcollection, ISO-NE acted swiftly to address the issue. ISO-NE has provided persuasive evidence that, in December, as soon as ISO-NE became aware that collections were higher than expected, ISO-NE notified its primary stakeholder body, NEPOOL, and then promptly filed the request for limited waiver at issue here. Moreover, ISO-NE included a true-up in its 2011 budget filing that reduces the 2011 revenue requirement by the amount of the expected 2010 over-collection.

10. We further find that the request for waiver is of limited scope, because ISO-NE seeks a one-time waiver of a discrete provision affecting no other part of the Tariff. We are further persuaded by ISO-NE's statements that the circumstances that contributed to this situation are unusual. As ISO-NE states, the overcollection is due to higher load in the region, related at least in part to periods of unexpectedly warm weather during the fall months.

11. We additionally find that granting the waiver remedies a concrete problem. Absent waiver, ISO-NE would be required to amend its Tariff in order to return money to participants, which, as ISO-NE explains, would require restating the rates, creating a massive resettlement, and creating separate rates for December 2010. ISO-NE also states that the rates for 2011 may be implicated if it is forced to return the entire overcollection, including the 2010 true-up amount incorporated into the 2011 revenue requirement.

12. Finally, we find that granting the waiver will not lead to undesirable consequences such as harming third parties. As ISO-NE notes, participants will be refunded the amount of the overcollection through the true-up mechanism over the next two years.

13. For the foregoing reasons, the Commission will grant ISO-NE's request for limited waiver of section IV.A.2.1 of the ISO-NE Tariff.

The Commission orders:

ISO-NE's request for limited waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.