

140 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER12-1914-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS
SUBJECT TO CONDITIONS

(Issued July 31, 2012)

1. In this order, the Commission accepts subject to condition proposed revisions to ISO New England's Transmission, Markets and Services Tariff (Tariff) submitted by ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (collectively, the Filing Parties), pertaining to: (i) Attachment K regional planning process provisions, and (ii) Section 13 of Market Rule 1¹ (collectively, the Tariff Revisions), to become effective August 1, 2012, as requested, and directs ISO-NE to submit a compliance filing.

I. Background

2. The regional system planning process in New England includes preparation of an annual Regional System Plan (RSP) and reflects advisory input from regional stakeholders, such as the Planning Advisory Committee.² The RSP identifies transmission facilities necessary to meet the relevant reliability criteria set forth by the North American Electric Reliability Corporation, the Northeast Power Coordinating Council, and ISO-NE. The RSP also includes, among other things, information about the

¹ Market Rule 1 is Section III of the Tariff. Capitalized terms used but not defined herein have the meaning given in the Tariff.

² The Planning Advisory Committee, which is established pursuant to section 2 of Attachment K, may provide input and feedback to ISO-NE concerning the regional system planning process, including the development of and review of Needs Assessments.

amounts, locations, and characteristics of generation, demand resources and merchant transmission facilities, that can be used to reliably meet electric demand system-wide, as well as in specific areas. An integral part of the regional system planning process is an evaluation of the results of the Forward Capacity Market (FCM).

3. ISO-NE operates the FCM, under which resources offer their capacity into the Forward Capacity Auction (FCA) each year. Existing resources that clear the FCA receive capacity obligations, under which they commit to supply capacity, and receive capacity payments, for a one-year Capacity Commitment Period three years in advance. Existing capacity resources are included in the FCA unless they choose to exit the capacity market by submitting a form of de-list bid or a Non-Price Retirement Request.

4. A de-list bid represents the lowest price a resource is willing to take. A one-year de-list bid is either a Static De-List Bid, which is submitted well before the FCA takes place and is reviewed by the Internal Market Monitor (IMM),³ or a Dynamic De-List Bid, which is submitted during the auction at a price below 0.8 times the cost of new entry.⁴ If ISO-NE determines that a resource is needed for reliability, that resource is not allowed to de-list and is paid its de-list bid rather than the lower market clearing price. In addition, a resource with a one-year de-list bid is automatically entered into the next FCA and must de-list again to remove itself.

5. A Permanent De-List Bid also is submitted well before the auction and reviewed by the IMM; this type of bid, however, removes a resource from the FCM permanently.⁵ When needed for reliability, a resource with a Permanent De-List Bid is paid pursuant to one of the Commission-approved options that the resource selects.⁶ Once the reliability issue is resolved, the resource's bid clears and its capacity obligations are removed. Resources with an accepted Permanent De-List Bid still may participate in the energy markets.

6. A Non-Price Retirement Request removes a resource permanently from the FCM and requires the resource to retire.⁷ ISO-NE reviews the submission for reliability and, if needed, the resource may elect to continue in operation under a cost-of-service agreement

³ Section III.13.1.2.3.1.1 of the Tariff.

⁴ Section III.13.2.3.2(d) of the Tariff.

⁵ Section III.13.1.2.3.1.2 of the Tariff.

⁶ Section III.13.2.5.2.5.1(b)(i) of the Tariff.

⁷ Section III.13.1.2.3.1.5 of the Tariff.

until the reliability issue is addressed. The resource owner also may elect to retire the resource despite the identified reliability need for the resource.

Overview of the Tariff Revisions

7. On June 1, 2012, the Filing Parties submitted proposed changes to two sections of the ISO-NE Tariff pursuant to section 205 of the Federal Power Act (FPA).⁸ The first proposed revision adds language to Attachment K of the ISO-NE Open Access Transmission Tariff (OATT)⁹ to provide transparency and clarity with respect to how resources that submit both one-year de-list bids (i.e., Static and Dynamic De-List Bids) and Permanent De-List Bids, and Non-Price Retirement Requests, but that are found to be needed for reliability, are treated in the regional system planning process. The second proposed revision would change Section 13.2.5.2.5(g) of Market Rule 1 and is intended to ensure that Market Rule 1 does not impose on ISO-NE obligations that it cannot satisfy, and requires ISO-NE to provide the Reliability Committee¹⁰ with information regarding de-list bids or Non-Price Retirement Requests that are rejected for reliability reasons.

8. The Filing Parties state that NEPOOL voted to support the proposed revisions at the May 4, 2012 Participants Committee meeting, with a vote of 99.02 percent in favor. ISO-NE states that it believes that the proposed revisions strike a reasonable balance between the needs of the interested parties,¹¹ and the Filing Parties urge the Commission to accept them in their entirety.

⁸ 16 U.S.C. § 824d (2006).

⁹ The OATT is Section II of the Tariff.

¹⁰ The Reliability Committee is established pursuant to the Restated NEPOOL Agreement and its responsibilities are detailed in section 8.2.3 of the Participants Agreement. Those responsibilities are to provide input and advice to ISO-NE and the Participants Committee with regard to multiple matters regarding reliability, including, *inter alia*, the collection and exchange of necessary system data and future plans related to reliability for use in ISO planning and to meet requirements of regulatory agencies (section 8.2.3(c)); Non-Price Retirement Requests (section 8.2.3(o)) and ISO-NE determinations regarding Capacity Resources submitting de-list bids that were determined to be needed for reliability (section 8.2.3(p)).

¹¹ The NEPOOL Transmission Committee, at its July 26-27, 2011 meeting, approved a motion to recommend that the Participants Committee support the Attachment K revisions. The NEPOOL Markets Committee, at its April 10-11, 2012

(continued...)

II. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 34,375 (2012), with interventions and protests due on or before June 22, 2012. Northeast Utilities Service Company and Exelon Corporation filed timely motions to intervene. The Massachusetts Municipal Wholesale Electric Company (MMWEC) and New Hampshire Electric Cooperative, Inc. (NHEC) (together, Public Systems) jointly and individually filed a timely motion to intervene and protest. On July 9, 2012, ISO-NE filed an answer to the protest.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and an answer to an answer 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. Revisions to Attachment K

12. ISO-NE states that it currently reviews all de-list bids and Non-Price Retirement Requests for reliability impacts pursuant to section III.13.2.5.2.5 of the Tariff. With regard to one-year de-list bids--i.e., Static and Dynamic De-List Bids--that are rejected for reliability reasons, ISO-NE generally treats the relevant resources as continuing to operate for purposes of regional system planning, looking forward ten years. Although ISO-NE looks at the potential retirement of such a resource as a sensitivity (or a consideration) in a planning study, ISO-NE does not develop a regulated transmission solution to address issues that might arise if the plant was no longer available to operate, because the resource is not permitted to retire.¹²

meeting approved a motion to recommend that the Participants Committee support the Market Rule 1 revisions.

¹² See Transmittal Letter at 6, Rourke Testimony at 5-6.

13. ISO-NE states that the Attachment K revisions introduce a new subsection (c) to section 4.1 of Attachment K, which addresses Needs Assessments.¹³ ISO-NE states that new subsection (c) clarifies how resources that have submitted de-list bids and Non-Price Retirement Requests—but are needed for reliability—are treated in the regional system planning process. Proposed subsection (c) itself consists of four sections. Proposed subsection 4.1(c)(i) specifies that Permanent De-List Bids and Non-Price Retirement Requests for resources that are needed for reliability reasons will be treated in the regional system planning process as unavailable in the base-case assumption for a Needs Assessment.

14. Proposed subsection 4.1(c)(ii) provides that if a Needs Assessment is not already underway for an area affected by a rejected Permanent De-List Bid or Non-Price Retirement Request, then ISO-NE will initiate one. One-year de-list bids are to be treated as sensitivities in the Needs Assessment unless the facts and circumstances warrant that a resource be represented as unavailable in the base case assumptions of the Needs Assessment.

15. Proposed subsection 4.1(c)(iii), which addresses one-year de-list bids, includes two requirements to obtain advisory input from the Reliability Committee regarding: (1) whether and how to examine a one-year de-list bid in the Needs Assessment process; and (2) whether to start a new Needs Assessment when there is none for the area in question, on account of a rejected de-list bid. ISO-NE states that subsection 4.1(c)(iii) allows for flexibility regarding whether de-list bids are studied as sensitivities, in case a large number of de-list bids are submitted in an auction. ISO-NE adds that the Planning Advisory Committee is the Commission-approved forum for the regional system planning process, and the consultation with the Reliability Committee is in addition to the ongoing work of the Planning Advisory Committee and ensures that information is widely available. ISO-NE further notes that the advisory feedback from the Reliability Committee is to be in the form of a dialogue regarding how system planners are examining the need for various studies related to one-year de-list bids; there are no votes in the regional system planning process as set out in Attachment K, and ISO-NE states that it does not seek any revisions in that regard.

16. Proposed subsection 4.1(c)(iv) provides that, prior to the start of each new capacity qualification period, ISO-NE will present the Reliability Committee with the

¹³ ISO-NE, in coordination with the Participating Transmission Owners and the Planning Advisory Committee, conducts regular and ongoing assessments (i.e., Needs Assessments) of the adequacy of the Pool Transmission Facilities system, as a whole or in part, to maintain the reliability of such facilities while promoting the operation of efficient wholesale electric markets in New England. Attachment K, section 4.1.

status of any prior rejected de-list bids or Non-Price Retirement Requests being studied in the regional system planning process.

17. ISO-NE states that, in its entirety, proposed subsection (c) provides for transparency in the regional system planning process without interfering with the ability of the regional process to quickly address near-term, critical reliability needs. ISO-NE states that it has been utilizing the proposed approach in practice and has found that it allows for prioritization of near-term needs, so that “targeted solutions can move ahead of other components of larger system projects that address much more than the reliability needs related to the de-list bid or Non-Price Retirement Request.”¹⁴

C. Revisions to Market Rule 1

18. ISO-NE states that the proposed changes to Section III.13.2.5.2.5(g) of Market Rule 1 are intended to achieve two main goals: (1) ensure that the Market Rule does not impose on ISO-NE requirements that it cannot satisfy; and (2) provide market participants with sufficient information on a timely basis to allow them to make adjustments in their capacity resources and bids in future FCM auctions.

19. ISO-NE states that where a particular reliability need leading to rejection of a de-list bid or Non-Price Retirement request might not be resolved before the subsequent Commitment Period,¹⁵ Section III.13.2.5.2.5(g) currently requires ISO-NE to “review the status of the specific reliability need, identify alternatives to resolve that reliability need and the time to implement those solutions” and present the information to the Reliability Committee “prior to the start of the New Capacity qualification period for the FCA for that subsequent Commitment Period.” According to ISO-NE, this requirement is impracticable, requiring ISO-NE to make a solutions briefing four months before it is even possible to know which de-list bids have been rejected, because the FCM Capacity Commitment Period for the subsequent auction begins well before the current FCA begins, and de-list bids are not accepted until after the FCA is conducted. ISO-NE states that to date, it has simply briefed the Reliability Committee with regard to on-going system planning activity occurring in the Planning Advisory Committee.

20. ISO-NE states that the proposed revisions to Section III.13.2.5.2.5(g) adjust the timing of ISO-NE’s review with the Reliability Committee to correlate with the point at

¹⁴ Transmittal Letter at 10.

¹⁵ We assume the references to “Commitment Period,” as used in the Transmittal Letter and Rourke Testimony, refer to “Capacity Commitment Period, which is the one-year period from June 1 through May 31 for which obligations are assumed and payments are made in the Forward Capacity Market. Tariff section I.2.2.

which such information actually is available or is otherwise required by the ISO-NE Operating Documents.¹⁶ Specifically, the proposed revision provides that ISO-NE shall review with the Reliability Committee (i) the status of any prior rejected de-list bids reported to the Commission in an FCA results filing; and (ii) the status of any Non-Price Retirement Request that has been rejected for reliability reasons and has elected to continue to operate, prior to the New Capacity Qualification Deadline.¹⁷ Where an identified reliability need results in rejection of a Non-Price Retirement Request or delist bid, ISO-NE shall (i) review each specific reliability need with the Reliability Committee pursuant to the timing guidelines in ISO-NE's Operating Documents; and (ii) update the current system Needs Assessments pursuant to section 4.1(c) of Attachment K. For de-list bids, this review and update will follow the filing of the FCA results with the Commission. System needs associated with Non-Price Retirement Requests rejected for reliability reasons will be reviewed with the Reliability Committee prior to notification of the Lead Market Participant that submitted the relevant request.

D. Protest

21. Public Systems request that the Commission reject the Tariff Revisions, arguing that the proposed changes are unjust and unreasonable because they would limit the timely flow of information to market participants concerning how best to address reliability issues, and could hinder the process of identifying cost-effective alternative market solutions to address reliability needs in a timely way. Public Systems disagree with the Filing Parties' assertion that the proposed revisions are necessary because the current Tariff imposes timing obligations that ISO-NE is unable to meet. Public Systems argue that ISO-NE does not claim that it cannot conduct the analyses required by the current Tariff, only that the provision imposes deadlines ISO-NE states that it cannot meet. Public Systems suggest that ISO-NE could have proposed language clarifying the due dates but leaving the remaining language intact.

22. Public Systems are concerned that the proposed Tariff Revisions would substitute the requirement to conduct specific analyses detailed in the current Section III.13.2.5.2.5(g) with discretionary analyses being performed as part of the Attachment K regional planning process. Public Systems state that the two processes have important differences with respect to content, focus, timing, and audience, and that the proposed revisions limit ISO-NE's obligations substantially. Public Systems

¹⁶ The ISO New England Operating Documents are the Tariff and the ISO New England Operating Procedures. Tariff section I.2.2.

¹⁷ The New Capacity Qualification Deadline is a deadline, specified in Section III.13.1.10 of Market Rule 1, for submission of certain qualification materials for the FCA, as discussed in Section III.13.1 of Market Rule 1. Tariff section I.2.2.

additionally state that, under the proposed changes, ISO-NE would shed its obligation to identify alternatives and provide estimates of the amount of time needed to implement them, as well as its responsibility to make a related filing with the Commission. According to Public Systems, the proposed Tariff Revisions would replace these obligations with the requirement that ISO-NE conduct an unspecified “review [of] each specific reliability need” associated with the rejection of any de-list bid, and “update the current system Needs Assessment.”¹⁸

23. Public Systems request that, if the Commission does not reject the Tariff Revisions, the Commission condition acceptance on ISO-NE revising Attachment K to provide that ISO-NE must examine the unavailability of the resource(s) with the rejected bid either as a sensitivity or in the base representation in a Needs Assessment.

E. Answer

24. ISO-NE states that, contrary to Public Systems’ assertion, ISO-NE’s concerns regarding the timing of its obligations under the current Tariff provision are well-founded and that the current Tariff does direct ISO-NE to make the solutions briefing four months before it is even possible to know which de-list bids have been rejected in an auction that has not yet been conducted.

25. Additionally, ISO-NE states that, contrary to Public Systems’ argument, the proposed Tariff Revisions do not provide for a deficient level of dissemination of information to the Reliability Committee, the Commission or stakeholders. ISO-NE states that it currently makes an informational filing with the Commission prior to each FCM auction, which identifies one-year and permanent de-list bids that are submitted and provides information regarding the IMM’s review of those bids. Further, ISO-NE indicates that it currently presents the Reliability Committee with information regarding reliability issues ISO-NE and the Transmission Owners identified during the auction screening process for one-year Dynamic De-list bids, information ISO-NE also provides to the Commission in the auction results filing. ISO-NE states that the proposed Tariff Revisions also provide for submitting information to, and dialogue with, the Reliability Committee.

26. ISO-NE asserts that Public Systems’ protest fails to provide any examples of information that currently is developed, supplied to stakeholders, or filed with the Commission that will not be developed or filed under the Attachment K revisions. Moreover, according to ISO-NE, Public Systems’ “generalized assertions of the value and rigor of existing Section III.13.2.5.2.5(g) do not align with the actual language of the

¹⁸ Public Systems’ Protest at 6.

existing market rule, which requires no specific studies and specified no level of detail.”¹⁹

27. ISO-NE states that it generally addresses rejected one-year de-list bids as sensitivities in Needs Assessments conducted pursuant to Attachment K, and for Permanent De-list bids and Non-Price Retirement Requests that create reliability concerns, it develops information regarding solutions utilizing the regional planning solution study process detailed in Attachment K. ISO-NE states that the proposed Tariff Revisions do not remove any of these steps and, in fact, the Attachment K revisions affirmatively add these steps as Tariff obligations. ISO-NE states that the heart of Public Systems’ protest appears to be that the Attachment K revisions permit ISO-NE to exercise judgment as to when to perform informational sensitivity studies for one-year de-list bids. ISO-NE argues that because a large number of de-lists could be submitted in an FCA, flexibility is necessary and appropriate in order to prioritize finite system planning resources. However, ISO-NE points out that exercising such flexibility would be informed by stakeholder input that is required under the Attachment K revisions. In particular, the Attachment K revisions require advisory input from the Reliability Committee regarding whether and how to examine a one-year de-list bid in the Needs Assessment process, and whether to start a new Needs Assessment where one is not otherwise underway for the area in question on account of a rejected one-year de-list bid.

F. Commission Determination

28. The Commission finds that ISO-NE has supported the proposed Tariff Revisions as just and reasonable and therefore we will accept them, subject to the condition discussed below, to become effective August 1, 2012, as requested. The Commission finds that the proposed Tariff Revisions properly strike a balance between ensuring that Market Rule 1 does not unduly burden ISO-NE, providing an appropriate amount of flexibility with regard to conducting sensitivity studies in the event that ISO-NE receives a large number of de-list submissions in an auction, while providing market participants with sufficient information on a timely basis to allow them to adjust their capacity resources and bids in future FCM auctions and comply with FCM planning arrangements and timelines. The proposed Attachment K revisions also clarify how the regional planning process considers de-list bids while providing flexibility should the volume of such bids increase such that they could over-burden ISO-NE’s regional planning resources, allowing system planners to focus on the de-list bids that would have more significant reliability impacts.

29. The Commission is not persuaded by Public Systems’ arguments that the proposed Tariff Revisions vest ISO-NE with too much discretion and inappropriately reduce its

¹⁹ ISO-NE Answer at 7.

obligations. The proposed Tariff Revisions provide for ISO-NE to make information available to, and engage in dialogue with, the Reliability Committee. Additionally, ISO-NE will continue to provide information to stakeholders and the Commission both before and after each FCM auction. The Commission notes that ISO-NE has many existing obligations under Attachment K of the Tariff that require extensive analysis of resources, alternatives to meet identified needs, and timing of proposed transmission projects, which should effectively provide information to stakeholders regarding Needs Assessments and evaluation of alternatives to address reliability needs.²⁰

30. Moreover, as indicated above, the Attachment K Revisions codify in the Tariff the process that ISO-NE currently undertakes in assessing de-list bids, requiring ISO-NE to obtain advisory input from the Reliability Committee regarding whether and how to examine a one year de-list bid in the Needs Assessment process and whether to start a new Needs Assessment where one is not otherwise underway for the area in question on account of a rejected one-year de-list bid. The Commission agrees with ISO-NE that the proposed Tariff Revisions provide a reasonable level of discretion regarding which one-year de-list bids are included in the Needs Assessments, while providing for appropriate release and evaluation of information. While it currently is possible to study every de-list bid, this may not be the case in the future if more de-list bids are submitted than what is manageable; as an independent administrator, ISO-NE is a neutral party with the

²⁰ See, e.g., Attachment K, Section 1 Overview (explains how Needs Assessments are part of the preparation of ISO-NE's Regional System Plan (RSP)); Section 2.2 Role of Planning Advisory Committee (PAC) (requires that the PAC identify and prioritize requests for Economic Studies, and provide input and feedback, including the criteria and assumptions for such studies); Section 3.1 Description of RSP (requires RSP to describe for a five-to ten-year horizon, the needs for resources over this period and how such resources are expected to be provided); Section 3.5 Market Responses in RSP (requires the RSP to account for market responses and any critical time constraints for addressing such needs identified in a RSP or Needs Assessment; states that market responses determined to be sufficient to alleviate a particular need, and that ISO-NE determines are achievable within the required time period, will be reflected in the next RSP and/or in a new or updated Needs Assessment); Section 3.6 The RSP Project List (states that a proposed regulated transmission solution should have significant analysis supporting a determination that it would likely meet the need identified by the ISO in a Needs Assessment or the RSP).

expertise, information, and tools best positioned to evaluate when studies should occur and prioritize accordingly. Additionally, we expect that, in accordance with its commitment to make pertinent information widely available, ISO-NE will make a reasonable effort to provide its stakeholders, in as timely a manner as reasonably possible, information on, *inter alia*, the criteria used and basis for determining whether or not to conduct studies for de-list bids.

31. Further, we emphasize that nothing in the proposed Tariff Revisions affects market participants' ability to avail themselves of the existing dispute resolution process in Attachment K, which specifically addresses disputes regarding the results of a Needs Assessment, removal or revision of regulated transmission solutions, results of Solutions Studies, consideration of market responses in Needs Assessments, content of Economic Studies to be conducted, and prioritization of Economic Studies.²¹

32. We note that proposed section 4.1(c)(iv) of Attachment K provides that ISO-NE will present the status of prior rejected de-list bids and Non-Price Retirement Requests "prior to the start of each new capacity qualification period." In rendering our determination herein, we interpret the referenced period, which most recently began on January 3, 2012,²² as referring to the "show of interest (start)" date included in the "Master Forward Capacity Market Schedule" outlined in the FCM Manual.²³ However, because "the start of each new capacity qualification period" is not specifically defined in ISO-NE's Tariff, we accept the proposed Tariff Revisions subject to the condition that ISO-NE submit, within 30 days of the date of this order, revised Tariff sheets that expressly reflect our understanding of this term.

The Commission orders:

(A) The Filing Parties' proposed Tariff Revisions are hereby accepted, effective August 1, 2012, as discussed in the body of this order.

²¹ Attachment K, section 12.

²² See Transmittal Letter at 12 ("As an example, the New Capacity qualification period for the next FCM Capacity Commitment Period began on January 3, 2012..."); Rourke Testimony at 14 (same).

²³ See http://www.iso-ne.com/rules_proceeds/isone_mnls/m_20_forward_capacity_market_revision_8_06_01_12.doc.

(B) ISO-NE is hereby directed to submit a compliance filing within thirty (30) days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.