

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England, Inc.

Docket Nos. ER10-2477-000

**MOTION TO INTERVENE AND PROTEST OF
CONSERVATION LAW FOUNDATION**

Pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212, 385.214 and Section III.13.8.2(c) of the ISO New England Transmission Markets and Services Tariff (the “Tariff”), the Conservation Law Foundation, (“CLF”) (1) moves to intervene in the above captioned proceeding with full rights as a party; and (2) protests and states its objection to the portions of the August 30, 2010 submission by ISO New England, Inc., (“ISO-NE”) of its “Forward Capacity Auction Results Filing” (“ISO-NE Fourth FCA Filing”) related to reliability determinations for Salem Harbor Station because this determination will result in rates that are unjust and unreasonable and cause harm to the public interest by prolonging the life of aging, inefficient coal and oil-fired generating units that impose great costs on public health and the environment.

I. SUMMARY

One of the primary purposes of the creation of the Forward Capacity Market (“FCM”) was the elimination—“to the greatest extent possible”—of the need for reliability-must-run (“RMR”) contracts.¹ With the advent of the FCM, the planning

¹ See *Motion for Leave to Answer and Answer of ISO New England Inc.* at 15, ER10-186 (January 7, 2010) ([T]he purposes of a locational capacity market include setting the appropriate value for capacity on a

process for ISO-NE changed dramatically and incorporated opportunities to address reliability issues far earlier in advance of the capacity commitment period. One of the mechanisms designed to end the need for RMR payments requires ISO-NE to take specific actions whenever it rejects a De-List Bid for reliability reasons. *See* Section III.13.2.5.2.5. Among these requirements is the obligation to review the status of the specific reliability need, identify alternatives to resolve that reliability need and the time to implement those solutions with the Reliability Committee *before* the start of the New Capacity qualification period for the FCA for that subsequent Commitment Period. *See* III.13.2.5.2.5(g). ISO-NE's failure to meet that requirement after rejecting Salem Harbor Station's Static De-List Bid in the third FCA has resulted in the retention of Salem Harbor Station Units 3 & 4 again in the fourth FCA and continued out-of-market payments to an almost 60-year old facility that, in addition to unjust rates, causes significant damage to public health and the environment and where there is no indication that any potentially acceptable alternatives to meet the perceived need have been explored.² Salem Harbor Station threatens to impose even higher costs on ratepayers if it is retained for reliability in future auctions because of increasing operating costs and capital needs resulting from public policy requirements in the form of environmental limitations.³ Such requirements are accelerating the environmental and economic

locational basis and to the greatest extent possible, elimination of out-of-market-reliability compensation.”); *ISO New England*, Docket No. ER10-787, Motion to Intervene and Protest of the New England Power Generators Association, at 58 (Mar. 15, 2010) (“Out of market, reliability-must-run-style payments are exactly what the Commission thought it was acting to eliminate by accepting the FCM market design.”).

² A recent report by the Clean Air Task Force estimated that each year Salem Harbor Station causes 20 deaths, 36 heart attacks and 310 asthma attacks. *See* Clean Air Task Force, *The Toll From Coal: An Updated Assessment of Death and Disease from America's Dirtiest Energy Source* (September 2010), available at http://www.catf.us/resources/publications/files/The_Toll_from_Coal.pdf.

³ As discussed *infra*, no fewer than 12 new, major environmental regulations have been recently finalized, are in the process of review, or will become effective over the course of the next 5 years.

obsolescence of Salem Harbor Station and unless an alternative reliability solution is implemented, ratepayers will increasingly be burdened with the cost of trying to bring a 60-year old generating facility into conformance with modern environmental standards.

As a result of ISO-NE's failure to address the reliability need for Salem Harbor Station, ratepayers will incur out-of-market costs as high as \$36.9 million (\$18.49 million above market rate) for the capacity period from June 2012 – May 2013, and as high as \$34.65 million (\$16.95 million above market rate) for the capacity period from June 2013 – May 2014.⁴ These are costs that can and should have been avoided by proper transmission planning. ISO-NE was required to conduct a Salem Harbor-specific planning process after it rejected Dominion's De-List Bid in the third FCA, but it has done no more than promise to continue its on-going area-wide assessment.⁵ As a result, the rates established under the fourth FCA are not just and reasonable and the Commission should take action to remedy the results. CLF proposes that the Commission direct ISO-NE to present a compliance filing that (1) includes an expedited timeline for developing a transmission or non-transmission alternative to meet the specific need created by retirement of the Salem Harbor Units, (2) sets forth milestones for the planning process, and (3) requires ISO-NE to file an analysis explaining the most cost-effective measures to relieve the need for Salem Harbor Station and a timeline for completion.⁶ If the Commission decides to allow the out-of-market payments, then the approval should be conditioned upon the completion of an expedited study and a

⁴ Affidavit of Douglas Hurley at 5, 7, attached as Exhibit 1.

⁵ Notably, the Massachusetts Municipal Wholesale Electric Company ("MMWEC") filed a protest of the reliability determination for FCA-3 calling attention to the high cost of retaining Salem Harbor Station; however, the grounds for this protest are distinct due to the obligation imposed on ISO-NE subsequent to its rejection of Dominion's De-List Bid in FCA-3.

⁶ The Commission required PJM to take a similar action in a case involving conflict between environmental compliance and maintaining reliability. *See* 114 FERC ¶ 61,017, 61,043.

revisiting of the determination to evaluate whether an acceptable alternative has been identified prior to the June 1, 2012 deadline for notification to Dominion of whether or not it will be required to operate during the Commitment Period from June 1, 2013 – May 31, 2014.

II. MOTION TO INTERVENE

CLF is a non-profit member supported environmental advocacy organization. CLF and its members share a concern about the air emissions and overall environmental and health impacts of meeting the region's energy needs, as well as opposition to ratepayer subsidies for obsolete power plants. CLF is a voting NEPOOL participant and member within NEPOOL's "End Use Sector." CLF is particularly concerned about the implementation of the Forward Capacity Market ("FCM") and the opportunities it provides to enhance environmental protection and system reliability in a manner that benefits the environment, the people, and the businesses of New England. Effective implementation of the FCM, with proper planning to allow for the retirement of aging fossil units, will provide a model for capacity markets elsewhere in the country and allow for safer, more diverse and more cost effective means to meet our energy needs.

CLF objects to ISO-NE's implementation of the FCM in relation to its determination regarding the Static De-List Bids submitted by Dominion Energy. Dominion Energy submitted Static De-List Bids for the third and fourth Forward Capacity Auctions ("FCA") and, in its filings, essentially acknowledged that the four units at its Salem Harbor power plant (three of which were built more than 58 years ago) are unable to cover going forward costs from energy and capacity market revenues.⁷ In

⁷ See *Motion to Intervene and Protest of Dominion Resources Services, Inc.*, at 8, 11, 13, ER09-1424 (July 22, 2009).

its filings, Dominion sought to recover, through reliability contracts, going forward costs which include substantial future capital investments in emissions control technology necessary to comply with current and expected regulatory requirements. ISO-NE rejected the De-List Bids for two units at Salem Harbor based on reliability analysis concluding that the units are necessary only for second contingency coverage due to the potential for thermal overloading of existing transmission lines in the NEMA/Boston-area. Because the De-List Bids were rejected, ratepayers will incur millions of dollars in above market costs to maintain the units and to fund emissions control investment at an old, inefficient fossil fuel-fired facility with continually diminishing economic prospects in the market.

Under the FERC-approved Tariff, ISO-NE is required to review the status of the specific reliability need, identify alternatives to resolve that reliability need and the appropriate timeline to implement those solutions prior to the start of the qualification period for the next FCA. ISO-NE failed to properly address the reliability need for Salem Harbor Station in the NEMA area and failed to consider alternatives to Salem's outmoded and environmentally damaging Boiler Units 3 and 4, thereby subjecting ratepayers to the costs of unjust and unreasonable capacity payments.

No other party can adequately represent the interests of CLF in this proceeding. Unless permitted to intervene and participate fully in this proceeding, CLF and its members' interests may be adversely affected by the actions and outcomes of this proceeding. It is critical, therefore, that CLF have an opportunity for its interests and concerns to be heard and considered by the Commission. CLF's intervention and participation in this proceeding is in the public interest.

III. CORRESPONDENCE & COMMUNICATIONS

Conservation Law Foundation is a Massachusetts non-profit corporation and member of the New England Power Pool (NEPOOL). The name and principal business address of CLF is:

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All notices and other communications with respect to this proceeding should be addressed to the following:

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IV. PROTEST AND STATEMENT OF OBJECTION

A. ISO-NE Failed to Meet its Planning Obligations after Rejecting Dominion's De-List Bid in the Third FCA

Ending the need for out-of-market payments due to reliability constraints was one of the motivating factors behind the creation of the Forward Capacity Market. The Market Rule approved by the Commission contains explicit instructions for ISO-NE to follow in the event that it rejects a De-List Bid for reliability reasons, in part, to ensure that once a reliability need is identified, it can be addressed by the planning process and met through the most cost-effective means. The language of the Market Rule is clear:

In instances where there is the possibility that the reliability need leading to the rejection of a . . . Static De-List Bid . . . for a Commitment Period may not be resolved before the subsequent Commitment Period, prior to the start of the New Capacity qualification period for the FCA for that

subsequent Commitment Period, the ISO shall (i) review the status of the specific reliability need, identify alternatives to resolve that reliability need and the time to implement those solutions with the Reliability Committee.

Section III.13.2.5.2.5(g). Adherence to this rule would have required ISO-NE to initiate review of the “specific reliability need” and identify alternatives and a timeline for implementation prior to the start of the December 15, 2009 New Capacity qualification period for the fourth FCA. ISO-NE did not engage in this analysis.

Instead, ISO-NE appears to assert that its Greater Boston Area Transmission Needs Assessment (the “GBATNA”) is sufficient to meet its reliability planning obligation. The GBATNA, however, does not satisfy the requirements of the aforementioned provision of ISO’s FERC-approved tariff. The GBATNA is part of the Regional System Planning process (“RSP”) and is conducted on a system-wide or area basis over a ten year planning horizon. *See ISO-NE Fourth FCA Filing, Rourke Affidavit* at 23. Although the GBATNA includes an analysis of transmission issues that would arise from the retirement of all units at the Salem Harbor Station, it is not directed at obviating the need for Salem Harbor Station as is required by Section III.13.2.5.2.5. That is, the GBATNA does not: (1) focus on the review of the Salem Harbor need; (2) identify the solutions necessary to retire Salem Harbor Station prior to the Capacity Commitment period for the fourth (or any) FCA; or (3) identify the appropriate timeline for implementation of the solution in order to avoid the need for out-of-market payments.

The inadequacy of an area-wide assessment for the purpose of addressing a specific reliability need is highlighted by ISO-NE’s past attempts to accurately assess the

necessary transmission upgrades.⁸ As MMWEC noted in its protest of the reliability determination in the third FCA, ISO-NE concluded in 2008 that Salem Harbor Station was no longer necessary to support the North Shore Area. *See* Motion to Intervene, Limited Protest and Statement of Objection of Massachusetts Municipal Wholesale Electric Company, *ISO New England, Inc.*, Docket No. ER10-186-000, at 9 (filed Dec. 14, 2009). According to ISO-NE’s quarterly reports, the North Shore Upgrades described in the reports were intended “to maintain the North Shore Area’s reliability by increasing the area’s import capability and *eliminating dependency* on Salem Harbor generation.” *See* Status Report on Projects and Factors that Impact the Continued Operation of the Salem Harbor Units, 2 (February 2, 2005 Update) (emphasis added). Nonetheless, after 3 years of planned system upgrades, the final quarterly report determined that although Salem was essentially only required to meet operating reserves requirements, the reliability need would not be obviated by the completion of the upgrades. *See* Status Report on Projects and Factors that Impact the Continued Operation of the Salem Harbor Units, 2 (July 23, 2008 Update). Indeed, in the final quarterly report, ISO-NE explained that the North Shore Upgrades would not have an impact on Boston Import capability and therefore could not relieve the need for some portion of the Salem Harbor Units. *See id.* at 2-3 n. 3. Clearly, the level of detailed assessment required to fully and finally resolve the reliability concerns with respect to Salem Harbor Station require a far more fine-grained analysis and planning than the kind contemplated in the GBATNA. CLF urges the Commission to require ISO-NE to meet the terms of the Tariff and complete an analysis that will provide a solution to the Salem Harbor reliability need.

⁸ All of the quarterly status reports issued by ISO-NE regarding upgrades intended to relieve the need for Salem Harbor are available at www.iso-ne.com/genrtion/rescvcs/reports/rmr/dominion.xls.

B. ISO-NE's Failure to Abide by the Tariff Requirements Has Resulted in Unjust and Unreasonable Rates

The obligation to conduct a planning process to address the specific reliability need identified in the rejection of a De-List Bid is critical to ensuring just and reasonable rates. During the course of the design of the FCM and litigation over its tariff provisions, multiple parties, including ISO-NE, expressed concern about the danger of over-recovery by generators through the use of a Static De-List Bid to “toggle” between market rates and cost-of-service compensation.⁹ Section III.13.2.5.2.5 of the Tariff protects against this danger by requiring ISO to act quickly to resolve reliability issues prior to the next FCA; therefore, when ISO fails to abide by this provision, it invites toggling by existing generators. Further, the situation presented here by the aging Salem Harbor Station units is not an isolated instance that is unlikely to be repeated. Rather, this scenario represents a trend that is more pronounced as less efficient, aging coal- and oil-fired units are displaced on the supply curve due to (1) the greater efficiency and lower costs of natural gas-fired units, and (2) the need for significant capital investment to meet new, more stringent environmental requirements. Unless the Commission acts to enforce the requirements of Section III.13.2.5.2.5, generators like Dominion will have an increased incentive to game the FCA, and the retention of Salem Harbor (and other facilities like it) for reliability purposes will simultaneously frustrate the achievement of important public policy objectives embodied in environmental regulatory requirements.

⁹ See, e.g., Tariff Revisions Relating to Resources Needed for Reliability in the Forward Capacity Market, *ISO New England Inc. and New England Power Pool*, Docket No. ER08-1209-000, at 3-4 (filed July 1, 2008); Motion to Intervene and Protest of the New England Power Generators Association, Inc., *ISO New England Inc. and New England Power Pool*, Docket No. ER08-1209-000, at 16 (filed Aug. 1, 2008).

1. ISO-NE's Non-Compliance Has Allowed Dominion to Game the FCA

A generator that is reasonably sure that it will be found necessary for reliability has an incentive to shift between either participating in the capacity market or opting to receive an administrative reliability payment in order to secure the higher of the market clearing price or an out-of-market payment. The Commission has recognized the potential for generators, specifically Dominion, to take advantage of this strategy, known as toggling.¹⁰ ISO-NE has also explained the threat of toggling in a forward capacity market:

Dr. Ethier states that it is inevitable that some generators will know with certainty that they are required for reliability reasons regardless of the efforts made in the Market Rules to limit the availability of this information. Under the FCM a resource's reliability need is determined during the auction, and a generator can be assured that if the clearing price is higher than its de-list bid, the de-list bid will be rejected and it will receive the market clearing price. If the clearing price is lower than the de-list bid price, then the resource is assured of the higher going forward cost payment.

See Motion for Leave to Answer Out of Time and Answer of ISO New England Inc., ISO New England Inc. and New England Power Pool, Docket No. ER08-1209-000, at 51 (filed Aug. 29, 2008). Despite its understanding of the likelihood of toggling and its ability to distort the market, ISO-NE has not taken the measure required by its FERC-approved tariff that could cure this problem—timely and accurate planning to replace the reliability need. In fact, the Salem Harbor scenario presents just the situation Dr. Ethier predicted, and here, Dominion's "certainty" about its need for reliability has been created by ISO-NE itself. For as long as ISO-NE fails to address the specific reliability need met

¹⁰ *See ISO New England, Inc.*, 130 FERC ¶ 61,266 at P. 50 (2009) (citing its Reliability Compensation Order in *ISO New England, Inc. and New England Power Pool*, 125 FERC ¶ 61,102 at P. 46 (2008).); *ISO New England Inc.*, 130 FERC ¶ 61,108 at P 11 (2010).

by Salem Harbor, Dominion will be able to confidently engage in toggling to ensure that it receives the highest price possible for its capacity regardless of whether a more cost-effective solution exists. It is impossible to justify these continued out-of-market payments to Dominion when ratepayers have already been saddled with approximately \$233 million in transmission investments over a period of ten years that was explicitly designed to, among other things, eliminate the reliability need for Salem Harbor.¹¹ ISO-NE cannot reasonably claim that its generic GBATNA somehow satisfies the requirements of its market rules to resolve the Salem Harbor reliability conundrum, particularly after costly targeted transmission upgrades failed to do so. The Commission should require ISO to meet the requirements of Section III.13.2.5.2.5(g) by conditioning any approval of the reliability determination on an expedited study to resolve the perceived need for Salem Harbor Station.

2. Rising Costs of Environmental Compliance Will Make Out-of-Market Payments Even More Unreasonable

In addition, the out-of-market payments necessary to compensate Salem Harbor for reliability are likely to increase over time as the cost of compliance with increasingly stringent public policy requirements is magnified.¹² Dominion itself has claimed that declining FCA prices and the high costs of installing environmental control technologies are diminishing the remaining useful life of Salem Harbor Station, such that its continued operation may be un-economic in as little as three years from now.¹³ Continuing to

¹¹ Presentation by Stephen J. Rourke at Transmission Cost Allocation Stakeholder Meeting, available at http://www.iso-ne.com/pubs/pubcomm/forums/2009/tca_stakeholder_mtg_jan292009/1_iso_tca_overview_final.ppt.

¹² See M.J. Bradley and The Analysis Group, *Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability* (August 2010).

¹³ See *Motion to Intervene and Protest of Dominion Resources Services, Inc.*, at 8, 11, 13, ER09-1424 (July 22, 2009).

provide of out-of-market payments to Salem Harbor Station rather than confronting and resolving the transmission issues facing NEMA/Boston will result in even higher above market costs in the near future as new, more protective pollution standards take effect. Recently adopted and pending standards include tougher limits on cooling water systems, ambient ozone, sulfur dioxide and nitrogen oxides concentrations, particulate matter, greenhouse gas emissions, mercury and hazardous air pollutant emissions, and coal ash disposal. As the reliability need determined by ISO-NE extends into future capacity periods, the costs to operate the facility, including the costs of complying with current and forthcoming new environmental standards, will be borne by ratepayers. As noted above, the ratepayers will pay as much as \$16.95 million above market rates to keep Units 3 & 4 running from June 2012 – May 2013.¹⁴ A large portion of this above market rate is attributable to the installation of pollution control technologies for regulations that will go into effect in 2012.¹⁵ Within the next few years, the additional regulations identified below will require the installation of more costly pollution control equipment, and Dominion is likely to continue filing De-List Bids to ensure that ratepayers cover those costs.

An upgrade of Salem Harbor Station’s cooling water intake system (“CWIS”) is among the most costly environmental upgrades that is likely to be required in the near future. The plant’s discharge of cooling water using its outdated once through cooling system is currently regulated by an EPA-issued National Pollutant Discharge Elimination System permit that expired in 1999. The Clean Water Act requires that the “location, design, construction, and capacity of cooling water intake structures reflect the best

¹⁴ See Affidavit of Douglas Hurley at 7.

¹⁵ See *ISO New England, Inc.*, 128 FERC ¶ 61,266.

technology available for minimizing adverse environmental impact.” 33 U.S.C. § 1326(b). The Clean Water Act permitting authority in Massachusetts, EPA Region 1, interprets this provision to require the installation of technologies that achieve the same protections as a “closed-cycle” cooling system, or cooling towers.¹⁶ Salem Harbor Station is long overdue for its permit renewal, and at the time of renewal, EPA must consider whether the plant is using the best technology available.¹⁷ In August of 2007, in anticipation of this determination, EPA issued a formal information request to Dominion and specifically asked Dominion to describe the engineering aspects of installing cooling towers at the plant.¹⁸ Dominion’s report estimated that the installation of cooling towers would cost between \$292 million and \$590 million.¹⁹

In addition, an entire suite of new air emissions regulations are pending or recently finalized. On July 6, 2010, the EPA issued its proposed “Transport Rule” requiring substantial reductions of nitrogen oxides (NOx) and sulfur dioxide (SO₂) from states within the area known as the ozone transport region.²⁰ When finalized, the Transport Rule will have a direct financial impact on Salem Harbor Station because it will require Dominion to install additional pollution controls such as selective catalytic reduction (SCR) or flue gas desulfurization units (scrubbers) to reach compliance.

Installation of scrubbers for removal of SO₂ has been estimated to cost roughly \$2000

¹⁶ *In re Dominion Energy Brayton Point, L.L.C.*, NPDES Appeal 03-12, 2006 WL 3361084, slip op. at 19 (E.A.B. Feb. 1, 2006).

¹⁷ “With any NPDES permit reissuance, EPA evaluates a facility’s current compliance with applicable standards, including the requirements of CWA § 316(b) governing CWISs [best technology available].” Letter from Stephen Perkins, EPA to Pamela Faggert, Dominion at 1 (August 30, 2007), attached as Exhibit 2.

¹⁸ See Letter from Pamela Faggert, Dominion, to Stephen Perkins, EPA (October 30, 2008), attached as Exhibit 2.

¹⁹ See Cooling Water Intake Structure Information Document: Technology Assessment Information (Items 4 and 5) Salem Harbor Station (NPDES Permit No. MA0005096) Prepared for Dominion Energy (October 31, 2008), attached as Exhibit 3.

²⁰ See Proposed Transport Rule available at www.epa.gov/airtransport.

per ton and would amount to hundreds of millions in new capital costs for Salem Harbor. As for NO_x, Salem Harbor Station already operates low-NO_x burners for some units, but it is likely that implementation of the rule will require the installation of additional low-NO_x burners and/or SCR. The Ozone Transport Commission has estimated that the control measures for NO_x range between \$1,100 – 8,700 per ton.²¹

Section 112 of the Clean Air Act regulates the emissions of hazardous air pollutants including mercury. EPA is required by law to finalize new Maximum Achievable Control Technology standard for coal and oil-fired power plants in 2012.

EPA is also scheduled to finalize a new national ambient air quality standard for ozone, under the Clean Air Act, before the end of 2010. Massachusetts is currently designated as moderate non-attainment for ozone, but under the new standard, Massachusetts' status may be revised upward to serious non-attainment. This would mean that further reductions of nitrogen oxides and volatile organic compounds would be necessary to reach attainment by the 2014 deadline. Regulation of greenhouse gas emissions could also have a significant impact on the cost of operating Salem Harbor Station. Ratepayers should not be forced to bear these costs unless no cost-effective alternatives are available.

Because the Forward Capacity Market compels ISO-NE to look forward to a capacity obligation three years into the future, ISO-NE must take future public policy requirements into account during its planning process. In its Notice of Proposed Rulemaking on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, the Commission made a preliminary finding that “the failure

²¹ See A. Mirzakhali, OTC Stationary & Area Source Committee Recommendations, 14 (presented at Ozone Transport Committee Annual Meeting) (June 3, 2010).

to account explicitly for such public policy requirements in the transmission planning process may result in undue discrimination and rates, terms and conditions of service that are not just and reasonable.” 75 Fed. Reg. 37, 884 at P 37 (June 30, 2010) (“FERC Notice”). CLF urges the Commission to require ISO-NE to include consideration of the impacts of these regulations in its review of the specific reliability need for Salem Harbor and in its calculations regarding the costs of alternatives. Such analysis is imperative not only for this case, but to ensure that planning organizations across the nation consider not only how to maintain reliability, but also “how to enable compliance with relevant public policy requirements established by state or federal laws or regulations in a cost-effective manner.” *See* FERC Notice at P 63. Every year that ISO continues to call upon Salem Harbor to meet the reliability needs in the NEMA/Boston area, ratepayers will be forced to subsidize the going forward costs of a high-emitting, old and inefficient plant.²² The failure of ISO-NE to develop alternative solutions for the reliability role it attributes to Salem Harbor imposes unjust and unreasonable rates, delays necessary and lower cost transmission upgrades and prevents the market from facilitating public policy requirements and goals.

V. CONCLUSION

WHEREFORE, CLF respectfully requests that the Commission grant this Motion to Intervene and set this proceeding for hearing. In the event that the Commission determines not to set this proceeding for hearing, CLF requests that the Commission direct ISO-NE to present a compliance filing that (1) includes an expedited timeline for

²² NRG has explained that older units are “far less efficient and more expensive generating units when compared to the marginal generating units in New England . . . and face substantial environmental compliance costs to keep up with increasingly strict emission standards in coming years.” Protest of FirstLight Companies and NRG Companies, *ISO New England Inc. and New England Power Pool*, Docket No. ER08-1209-000, at 19 (filed Aug. 1, 2008).

developing a transmission or non-transmission alternative to meet the specific need created by retirement of the Salem Harbor Units, (2) sets forth milestones for the planning process, and (3) requires ISO-NE to file an analysis explaining the most cost-effective measures to relieve the need for Salem Harbor Station.²³ If the Commission decides to allow the out-of-market payments, then the approval should be conditioned upon the completion of an expedited study and a revisiting of the determination to evaluate whether an acceptable alternative has been identified prior to the June 1, 2012 deadline for notification to Dominion of whether or not it will be required to operate during the Commitment Period from June 1, 2013 – May 31, 2014.

Respectfully submitted,



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²³ The Commission required PJM to take a similar action in a case involving conflict between environmental compliance and maintaining reliability. See *In re Mirant Potomac*, 114 FERC ¶ 61,017, 61,043.