

152 FERC ¶ 61,175
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northeast Energy Associates, A Limited Partnership Docket No. ER15-1934-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued September 1, 2015)

1. On June 17, 2015, Northeast Energy Associates, A Limited Partnership (NEA) filed a request for a one-time waiver of the timing requirements of section III.13.1.1.2.1 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The waiver would allow consideration of NEA's New Capacity Show of Interest Form (Show of Interest Form) for a 25 MW incremental increase of capacity at NEA's Bellingham Energy Center (Bellingham), even though NEA submitted the requisite interconnection deposit the morning after the deadline set forth in the rules governing ISO-NE's Forward Capacity Market (FCM). As discussed below, the Commission grants the request for waiver.

I. Background

2. ISO-NE implements the FCM, through which capacity resources compete to provide capacity to New England on a three-year-forward basis, using an annual Forward Capacity Auction (FCA).¹

3. Bellingham is a dual-fuel combined cycle plant located in Bellingham, Massachusetts that is owned by NEA, which is jointly owned by indirect, wholly-owned

¹ See, e.g., *ISO New England Inc.*, 130 FERC ¶ 61,145 (2010); *ISO New England Inc.*, 127 FERC ¶ 61,040 (2009); *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008); see generally *Devon Power LLC*, 115 FERC ¶ 61,340, order on reh'g and clarification, 117 FERC ¶ 61,133 (2006), *aff'd in relevant part sub nom. Maine Public Utilities Comm'n v. FERC*, 520 F.3d 464 (2008), order on remand, 126 FERC ¶ 61,027 (2009), order on remand, 134 FERC ¶ 61,208 (2011), *reh'g denied*, 137 FERC ¶ 61,073 (2011).

subsidiaries of NextEra Energy, Inc. and GDF Suez Energy NA. For the upcoming tenth FCA, NEA sought to increase the qualified capacity at Bellingham by 25 MW.

4. Bellingham is interconnected to the ISO-NE network pursuant to a grandfathered agreement that does not conform to ISO-NE's Large Generator Interconnection Procedures (LGIP). As a grandfathered resource, pursuant to section 5.2.3 of the LGIP, Bellingham's capacity interconnection rights are defined by the resource's Capacity Network Resource Capability.² Because Bellingham's incremental amount of capacity seeking to participate in the FCA as a New Generating Capacity Resource would cause it to exceed its Capacity Network Resource Capability, ISO-NE's Tariff requires it to submit a Show of Interest Form during a specific submission window in order to qualify for participation in the FCA.³ The ISO-NE Tariff states that the Show of Interest Form must specify a queue position pursuant to section 4.1 of the LGIP,⁴ and this queue position requires an interconnection deposit for a valid Interconnection Request.⁵ The Tariff also requires that the Interconnection Request and its associated deposit must be submitted by the close of the Show of Interest submission window for the FCA.⁶ The window for these submissions for FCA 10 opened on February 17, 2015, and closed on March 3, 2015.⁷

II. Request for Waiver

5. NEA states that, as part of its Show of Interest Form, it submitted its Interconnection Request by the March 3, 2015 deadline and that its Interconnection Request met all informational requirements of the LGIP but erroneously omitted the

² For grandfathered resources such as Bellingham, the previous summer output is the Capacity Network Resource Capability.

³ ISO-NE Tariff, section III.13.1 Forward Capacity Auction Qualification (35.0.0), § III.13.1.1.2.

⁴ ISO-NE Tariff section II, Schedule 22 Large Generator Interconnection Procedures (8.0.0), § 4.1.

⁵ ISO-NE Tariff § III.13.1.1.2.1(a); Schedule 22 §§ 3.3.1, 3.3.3, 4.1.

⁶ ISO-NE Tariff § III.13.1.1.2.

⁷ *Id.* § III.13.1.10. *See also*, http://www.iso-ne.com/static-assets/documents/markets/othrmkts_data/fcm/auction_cal/2019_2020_master_fwrd_cap_auction_10.pdf.

\$50,000 interconnection deposit. NEA states that this omission was an administrative error that was discovered late in the afternoon of March 3, 2015, such that NEA could not wire the interconnection deposit before the Federal Reserve's 5:30 p.m. deadline. NEA adds that ISO-NE received the \$50,000 interconnection deposit at 8:47 am on March 4, 2015.⁸

6. NEA argues that the LGIP distinguishes between different types of deficiencies when establishing a queue position for a valid Interconnection Request. NEA states that the LGIP allows a resource owner to cure information deficiencies within specified time periods while retaining the queue position associated with the initial submission. NEA states, however, that ISO-NE's Tariff does not address queue position assignments when an interconnection deposit is delayed and that the flexibility built into the Tariff for information deficiencies was not applied to NEA's late submission of its interconnection deposit. Therefore, according to NEA, with no cure period to correct the lack of interconnection deposit, ISO-NE assigned a queue position number for Bellingham as of March 4, 2015, after the deadline, and the proposed 25 MW increase in summer qualified capacity cannot be considered in the qualification process for FCA 10. NEA states that its mistake did not impede ISO-NE's ability to review the Interconnection Request or process the Show of Interest Form, and when ISO-NE reviewed the Interconnection Request, it determined that a full study was not required in order to conclude that no network upgrades would be required for the additional capacity.⁹

7. NEA asserts that its request for waiver should be granted because it meets the Commission's criteria for waiver.¹⁰ First, NEA states that it attempted to comply in good faith with all applicable Tariff requirements. NEA states that its failure to submit the interconnection deposit by the deadline was an administrative error that was quickly addressed the morning following the deadline. Second, NEA argues that the request for waiver is limited in scope because it is only applicable to one Tariff requirement and would not be applicable to other resources because NEA is in a unique position. NEA states it is in a unique position as its Capacity Show of Interest Form and interconnection request involve a grandfathered interconnection agreement, timely compliance with all informational requirements and an interconnection deposit that is less than one day late.¹¹

⁸ NEA Request for Waiver at 6-7.

⁹ *Id.* at 7-8.

¹⁰ *Id.* at 9 (citing *Portsmouth Genco, LLC*, 151 FERC ¶ 61,064 (2015); *Conservation Services Group Inc.*, 145 FERC ¶ 61,284 (2013); *Blue Sky West, LLC*, 145 FERC ¶ 61,285 (2013)).

¹¹ *Id.* at 10-11.

Third, NEA argues that the request for waiver would remedy the concrete problem of NEA's slight delay in submitting the interconnection deposit.¹² Finally, NEA argues that granting the request for waiver will not have undesirable consequences, and will instead support NEA's attempts to address a capacity shortfall in the import capacity constrained Southeastern Massachusetts/Rhode Island zone (SEMA/RI zone) in which it is located. NEA states that the SEMA/RI zone had a 250 MW shortfall of capacity in FCA 9, which triggered administrative pricing resulting in \$161 million of additional capacity payments. NEA argues that the 25 MW at issue here would help to address the undersupply and that denying waiver would impede the attempt to address the shortfall and undermine the purpose of administrative pricing.¹³

III. Notice of Filing and Responsive Pleadings

8. Notice of the request for waiver was published in the *Federal Register*, 80 Fed. Reg. 36,334 (2015), with interventions and protests due on July 8, 2015. ISO-NE filed a timely motion to intervene and protest. New England Power Pool Participants Committee, Entergy Nuclear Power Marketing, LLC, NRG Companies, and New England States Committee on Electricity filed timely motions to intervene. NEA filed an answer to ISO-NE's protest.

9. In its protest, ISO-NE requests that the Commission deny NEA's request for waiver. ISO-NE asserts that NEA fails to satisfy the Commission's evaluation criteria for granting waivers. ISO-NE argues that the Commission has repeatedly held that administrative oversight is not a sufficient reason to waive a clearly communicated FCM deadline.¹⁴ ISO-NE further states that other project sponsors failed to submit valid Interconnection Requests in FCA 10 as well as earlier FCAs, and therefore granting the request for waiver would result in unfavorable treatment to participants in similar situations. ISO-NE argues that there is no concrete problem that the request for waiver would address as market participants should be well aware of FCM deadlines because nine FCAs have been conducted. ISO-NE states that granting the request for waiver could have undesirable consequences by putting NEA in a more favorable position

¹² *Id.* at 10-11.

¹³ *Id.* at 13.

¹⁴ ISO-NE Protest at 5 (citing *GDF SUEZ Energy Marketing, NA*, 149 FERC ¶ 61,165 (2014); *Mass. Municipal Wholesale Elec. Co.*, 148 FERC ¶ 61,227 (2014); *Seneca Energy II, LLC*, 138 FERC ¶ 61,226 (2012); and *Vermont Elec. Power Co., Inc.*, 132 FERC ¶ 61,068 (2010)).

compared to other market participants who abided by the Tariff requirements and deadlines.¹⁵

10. Finally, ISO-NE argues that NEA has not demonstrated that new resources will be needed in the newly proposed Southeastern New England Capacity Zone.¹⁶ ISO-NE states that NEA cannot demonstrate that new resources will be needed in the new zonal configuration of the system as the configuration will not be the same in FCA 10 as it was in FCA 9.¹⁷

11. In its answer, NEA asserts that ISO-NE has not disclosed enough information regarding other resources that did not qualify for participation in FCA 10. NEA argues that by not providing this information, ISO-NE does not address the unique circumstances surrounding the request for waiver for the Bellingham resource. Therefore, NEA contends, there is no basis to determine that other resources would receive unfavorable treatment. NEA acknowledges that it cannot determine the future outcome of FCA 10 in light of the newly created Southeastern New England zone but further argues that the Commission should consider the fact that ISO-NE presented the Southeastern New England Capacity Zone as an import constrained zone to stakeholders in June 2015.¹⁸

IV. Discussion

A. Procedural Matters

12. 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.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* at 6 (citing *ISO New England Inc.*, 151 FERC ¶ 61,183 (2015)). The Commission approved ISO-NE's consolidation of the Northeastern Massachusetts/Boston Capacity Zone and the Southeastern Massachusetts/Rhode Island to form a new Southeastern New England Capacity Zone for FCA 10.

¹⁷ *Id.* at 5.

¹⁸ NEA Answer at 2.

decisional authority. We will accept NEA's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

14. Based on our review of NEA's request for waiver, the Commission finds good cause to grant the requested waiver. The Commission has previously granted waiver from ISO-NE's Tariff requirements when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) granting the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁹

15. We find that these conditions have been satisfied here. First, we find that NEA acted in good faith by submitting its interconnection deposit as soon as possible after it discovered the omission – early on the business day immediately following the deadline. Moreover, NEA timely satisfied all other requirements for its Interconnection Request and Show of Interest Form. Second, the request for waiver is limited in scope, because it allows a one-time, finite waiver of a procedural deadline under the narrow circumstances of this case, where NEA timely submitted an Interconnection Request, promptly discovered the omission of the associated deposit, and remedied that administrative error early on the next business day following the deadline. Moreover, granting the waiver does not guarantee NEA any particular outcome as to the qualification results. Third, granting the waiver remedies a concrete problem. Absent a waiver, Bellingham's full capacity would not be allowed to qualify for participation in FCA 10.

16. Finally, we find that granting the request for waiver will not lead to undesirable consequences. NEA's delay in submitting its interconnection deposit did not delay the qualification process for FCA 10, and the request for waiver will be granted well before ISO-NE's deadline to notify resource owners of their qualification results. Accordingly, granting waiver will not harm participants who timely submitted complete Show of Interest Forms. While ISO-NE also argues that granting the request for waiver will result in unfavorable treatment of other project sponsors who submitted invalid Interconnection Requests, we note that NEA submitted an otherwise valid Interconnection Request but without the interconnection deposit, an error it promptly remedied.

17. Based upon the foregoing, we grant NEA's request for a one-time waiver of the deadlines set forth in section III.13.1.1.2.1 of ISO-NE's Tariff.

¹⁹ See, e.g., *Portsmouth Genco, LLC*, 151 FERC ¶ 61,064 (2015); *Conservation Services Group Inc.*, 145FERC ¶ 61,284 (2013); *Blue Sky West, LLC*, 145 FERC ¶ 61,285 (2013); *ISO New England Inc.*, 142 FERC ¶ 61051 (2013).

The Commission orders:

NEA's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Moeller is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northeast Energy Associates, A Limited Partnership

Docket No. ER15-1934-000

(Issued September 1, 2015)

MOELLER, Commissioner, *dissenting*:

NEA maintains that it should be granted a tariff waiver because it failed to satisfy a Forward Capacity Market (FCM) deadline due to an administrative oversight. But Commission precedent makes clear that an “[a]dministrative oversight is not a sufficient basis to justify waiving an express deadline.”¹ The majority attempts to differentiate this case by arguing that NEA “remedied that administrative error” by submitting the necessary interconnection deposit after the Show of Interest form deadline. But this consideration is not sufficient to justify granting the waiver, as the Commission has rejected waiver requests where the relevant party could remedy the underlying administrative error in similar circumstances.²

Rather, in rejecting similar waiver requests, the Commission has repeatedly stated that “it is important to abide by the FCM rules, including deadlines, in order to enable ISO-NE to effectively administer the FCM.”³ The majority attempts to argue that waiver is appropriate here because NEA satisfied other relevant deadlines and allowing NEA to submit its Show of Interest form late will not delay the upcoming auction. But this justification ignores the uncertainty introduced into ISO-NE’s administration of its FCM in the future if the Commission continues to refuse enforcing ISO-NE tariff deadlines and to grant tariff waivers over ISO-NE’s objections, as the majority has done here.⁴ Such

¹ See, e.g., *GDF SUEZ Energy Marketing, NA*, 149 FERC ¶ 61,165 (2014); *Mass. Municipal Wholesale Elec. Co.*, 148 FERC ¶ 61,227 (2014); *Seneca Energy II, LLC*, 138 FERC ¶ 61,226 (2012).

² For instance, only two days after the relevant FCM deadline, *Seneca Energy II, LLC* (Seneca) attempted to remedy its administrative error in failing to submit a complete Show of Interest form to ISO-NE; the Commission subsequently denied Seneca’s waiver request. *Seneca Energy II, LLC*, 138 FERC ¶ 61,226.

³ *GDF SUEZ Energy Marketing, NA*, 149 FERC ¶ 61,165 at P 11.

⁴ There is no basis to conclude that granting NEA’s waiver would benefit third parties or would provide capacity needed in the Southeastern New England Capacity Zone.

actions also directly contradict the Commission's reasoning in denying similar tariff waivers.⁵

In its protest to NEA's waiver request, ISO-NE points out that granting the request would result in unfavorable treatment of other project sponsors who submitted invalid Interconnection Requests. The majority responds that NEA promptly remedied the defect in its Interconnection Request, but this argument is simply not responsive. In rejecting similar waiver requests, the Commission has properly recognized that granting such waivers would result in unduly favorable treatment as compared to (1) market participants who abided by ISO-NE's tariff requirements and deadlines and (2) market participants who similarly missed relevant deadlines but failed to receive tariff waivers.⁶ What about the other market participants who have committed similar administrative errors who did not attempt to seek a tariff waiver because they understood such requests to be contrary to relevant Commission precedent? With this decision, the majority has chosen to put market participants who may have committed identical administrative errors, but chose not to burden the Commission and its staff with unjustified tariff waivers, at a disadvantage.

By granting NEA's request for tariff waiver, notwithstanding Commission precedent to the contrary and ISO-NE's well-founded opposition, I fear that today's order will encourage market participants to submit more requests for tariff waivers. Such requests will present the Commission with an enormous challenge to ensure that all market participants are treated similarly after missing an FCM or other deadline.

Accordingly, I respectfully dissent.

Philip D. Moeller
Commissioner

⁵ For instance, in denying a tariff waiver request by Massachusetts Municipal Wholesale Electric Company, the Commission explained that "granting its request here could have broad ramifications, by allowing waiver of Tariff provisions based on nothing more than an applicant's bare claim of administrative oversight, and by granting waiver over the objections of the public utility whose tariff is being waived." *Mass. Municipal Wholesale Elec. Co.*, 148 FERC ¶ 61,227 at P 14.

⁶ *GDF SUEZ Energy Marketing, NA*, 149 FERC ¶ 61,165 at P 13.