

157 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Energy Marketing, Inc.
Dominion Energy Manchester Street, Inc.

Docket No. EL16-38-001

v.
ISO New England Inc.

ORDER DENYING REHEARING

(Issued October 20, 2016)

1. On May 2, 2016, the Commission issued an order granting, in part, and denying, in part, a complaint filed by Dominion Resources Services, Inc., on behalf of Dominion Energy Marketing, Inc. and Dominion Energy Manchester Street, Inc. (together, Dominion) against ISO New England Inc. (ISO-NE) and directing ISO-NE to make a further compliance filing.¹ The complaint alleged that ISO-NE violated its Transmission, Markets and Services Tariff (Tariff) when it disqualified new incremental capacity at Dominion's Manchester Street Station from participating in ISO-NE's Forward Capacity Auction (FCA) for the 2019-2020 capacity commitment period (FCA 10). In the May 2 Order, the Commission found that ISO-NE's Tariff was unclear regarding the requirements for new incremental generating capacity and existing capacity at the same generating station to participate in the FCA.² The Commission directed ISO-NE to revise its Tariff, but denied Dominion's request that it require ISO-NE to resettle the auction results to treat Dominion's new incremental capacity as if it had participated in FCA 10.³

¹ *Dominion Energy Marketing, Inc. v. ISO New England, Inc.*, 155 FERC ¶ 61,121 (2016) (May 2 Order).

² *Id.* PP 17, 21-22.

³ *Id.* PP 22-23.

2. In its June 1, 2016 request for rehearing, Dominion asserts that the Commission erred in finding that ISO-NE did not violate its Tariff in preventing the Manchester Street Station's incremental megawatts (MW) of capacity from participating in FCA 10. Dominion argues that ISO-NE violated its filed rate by imposing a requirement on Dominion that is not supported by its Tariff.⁴ Dominion further alleges that the Commission relied on two mistaken assumptions in denying Dominion's requested relief: (1) that granting Dominion's request would require resettling FCA 10 and (2) that Dominion failed to timely challenge its disqualification.⁵ For the reasons discussed below, we deny Dominion's request for rehearing.

I. Commission Determination

3. First, we are not persuaded by Dominion's assertion that the Commission erred in determining that ISO-NE did not violate its Tariff and was therefore mistaken in finding that resettlement was not required.⁶ In the May 2 Order, the Commission examined sections III.13.1.1.15, III.13.1.1.2.5.1, and III.13.1.5 of ISO-NE's Tariff and concluded that these provisions were "unclear regarding the process for new incremental generating capacity and existing generating capacity at the same resource to participate in the FCA" – in particular, whether a composite offer was required to create a link between new incremental capacity and existing capacity at the same resource.⁷ The Commission found that, due to this lack of clarity, the Tariff did not provide market participants with sufficient notice and was therefore unjust and unreasonable.⁸

4. Dominion argues that, having found that ISO-NE's Tariff did not clearly require a composite offer, the Commission also should have found that ISO-NE violated its Tariff when it excluded Dominion's incremental capacity from FCA 10 for failure to submit a composite offer.⁹ Dominion misinterprets our findings in the May 2 Order. The Commission found that the ISO-NE Tariff's description of the process for incremental capacity to participate in the FCA was so unclear as to render these Tariff provisions

⁴ Rehearing Request at 4, 6-8.

⁵ *Id.* at 4-5, 8-13.

⁶ *Id.* at 6-8.

⁷ May 2 Order, 155 FERC ¶ 61,121 at P 21.

⁸ *Id.*

⁹ Rehearing Request at 7.

unjust and unreasonable.¹⁰ In doing so, however, the Commission did not find that the Tariff's process for offering incremental generating capacity clearly did *not* require a composite offer, such that ISO-NE violated its Tariff by attempting to enforce its interpretation of the provisions.¹¹ Put differently, while the Tariff failed to provide reasonable notice to market participants of the requirements applicable to incremental capacity offers, the pertinent language did not foreclose ISO-NE's interpretation. In these circumstances, it would be contradictory to find that ISO-NE's Tariff was unjust and unreasonable because it failed to provide notice of the filed rate, while also finding that ISO-NE violated the filed rate. We therefore affirm the finding in the May 2 Order regarding ISO-NE's Tariff. And, as a result, we affirm that the Commission was not obligated to direct ISO-NE to resettle Dominion's FCA 10 results as a violation of the filed rate.

5. We also reject Dominion's contention that the Commission's decision to exercise its discretion to deny Dominion's request for relief was not supported by "substantial evidence."¹² Contrary to Dominion's assertions, the Commission was not mistaken in noting that granting the relief requested by Dominion could require resettling the market by rerunning FCA 10, nor in considering Dominion's failure to timely challenge its disqualification using the process in ISO-NE's Tariff.

6. Dominion argues that there would be no need to rerun the auction to provide its requested relief and that Dominion's incremental capacity "would simply receive the clearing price from FCA 10, resulting in 21 additional MWs being procured in the auction."¹³ But that is not the relief Dominion originally requested in the complaint, and which the Commission addressed in the May 2 Order. In its complaint, Dominion requested that the incremental capacity receive "the higher of the New Capacity Offer approved for the incremental MWs or the FCA 10 Capacity Clearing Price for the

¹⁰ May 2 Order, 155 FERC ¶ 61,121 at P 21 ("While the Tariff expressly provides that a resource with existing and new generating capacity 'may' submit a composite offer, the Tariff does not specify that a resource owner *must* submit a composite offer to create a link between new incremental capacity and existing capacity at the same resource.") (emphasis in original).

¹¹ *Id.* P 23 ("we emphasize our finding here is that ISO-NE's Tariff is unjust and unreasonable, not that ISO-NE violated its Tariff").

¹² Rehearing Request at 4-5, 8-11.

¹³ *Id.* at 11.

[Southeastern New England] Capacity Zone, if it is apparent that the incremental capacity would have cleared the auction.”¹⁴ While, as ISO-NE noted in its answer to the complaint, it is not clear what Dominion meant by “New Capacity Offer approved for the incremental MWs,”¹⁵ presumably Dominion’s requested relief was intended to capture the possibility that the incremental capacity from the Manchester Street Station could have set the clearing price for the Southeastern New England Capacity Zone. Additionally, as Dominion’s complaint was filed just prior to the auction, Dominion requested that ISO-NE either allow the capacity to participate in FCA 10 “*or put ISO-NE on notice that resettlement of the auction[] results will be required.*”¹⁶ Accordingly, the Commission reasonably interpreted Dominion’s request for relief to involve a request for resettlement, including potentially rerunning FCA 10.

7. Dominion points to language from ISO-NE’s responses to Dominion’s complaint in this proceeding and to Dominion’s protest in the FCA 10 results proceeding in Docket No. ER16-1041-000 as purported proof that Dominion’s requested relief would not require rerunning the auction.¹⁷ However, in neither proceeding did ISO-NE endorse the idea that granting Dominion’s requested relief would not require rerunning FCA 10. Rather, ISO-NE urged that the complaint and protest be denied but, should they be granted, that the Commission limit relief as narrowly as possible to award the incremental capacity the clearing price as if it had cleared in the auction and only for the 2019-2010 capacity commitment period.¹⁸ This does not, as Dominion insists, constitute an admission by ISO-NE that “neither resettlement nor rerunning FCA 10 would be necessary.”¹⁹

8. Indeed, it is not clear from the record whether inclusion of Dominion’s incremental capacity would have affected the clearing price or otherwise affected the

¹⁴ Dominion February 5, 2016 Complaint at 12.

¹⁵ ISO-NE February 25, 2016 Answer at 2 n.4.

¹⁶ Dominion February 5, 2016 Complaint at 10 (emphasis added).

¹⁷ Rehearing Request at 5, 9, 11.

¹⁸ ISO-NE February 25, 2016 Answer at 9; ISO-NE Answer, Docket No. ER16-1041-00, at 4 (filed April 29, 2016).

¹⁹ Rehearing Request at 9.

results of FCA 10.²⁰ Thus, it is not clear whether it would be just and reasonable to simply award the clearing price to Dominion's incremental capacity, as Dominion now requests, without rerunning the auction. Accordingly, we continue to find that granting the relief sought by Dominion would require resettling the market and we also continue to find that declining to do so is consistent with Commission policy.²¹

9. Dominion's attempt to distinguish the precedent cited in the May 2 Order to this effect is premised on the faulty assertion that ISO-NE has confirmed that resettling the market would not be necessary²² and, thus, misses the mark. Likewise, Dominion's arguments both that the financial settlements related to FCA 10 will occur in the future²³ and that no market participants filed comments opposing (or, for that matter, supporting) Dominion's requested relief,²⁴ are not relevant to whether the Commission properly implemented its policy generally disfavoring rerunning markets in exercising its discretion in this proceeding to decline Dominion's requested relief. We therefore affirm that the Commission properly exercised its broad remedial discretion in the May 2 Order to decline to direct ISO-NE to resettle the market.²⁵

10. Finally, we likewise reject the contention that the Commission erred in determining that Dominion's failure to timely challenge ISO-NE's disqualification of its incremental capacity militated against granting relief.²⁶ Dominion maintains that it did not discover that the incremental capacity was being excluded from FCA 10 until January 28, 2016, and that it "should not be prejudiced simply because it speculatively

²⁰ See Dominion February 5, 2016 Complaint at 12 (acknowledging the possibility that the incremental Manchester Street Station capacity could set the auction clearing price).

²¹ May 2 Order, 155 FERC ¶ 61,121 at P 23.

²² Rehearing Request at 9-10.

²³ *Id.* at 10.

²⁴ *Id.* at 10-11.

²⁵ See May 2 Order, 155 FERC ¶ 61,121 at P 23 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,047, at P 37 (2014) (citing *Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 159 (D.C. Cir. 1967))).

²⁶ Rehearing Request at 5, 11-13.

was possible to discover [ISO-NE's] error earlier.”²⁷ We disagree. The record in this proceeding establishes that Dominion initially received notice in October, 2015,²⁸ and again received notice in November, 2015.²⁹ Thus, Dominion had access to information sufficient for it to determine that its incremental capacity was being excluded from FCA 10.³⁰ Had Dominion acted on the information when it was available, Dominion could have challenged the determination under section III.13.8.1(b) of ISO-NE's Tariff, or submitted a protest of the informational filing in Docket No. ER16-308-000.³¹ Instead, by Dominion's own admission, it did not check ISO-NE's website until January 28, 2016, 10 days prior to FCA 10.³² Given the proximity to FCA 10, Dominion's options were limited due to its own actions.³³ Thus, while Dominion filed its complaint expeditiously after discovery of the issue, the Commission was justified in considering Dominion's delay in uncovering the issue as one factor in weighing the equities. Accordingly, we affirm that the Commission appropriately considered Dominion's failure to take advantage of the opportunities to challenge its disqualification in a timely manner as a factor in the Commission's determination to deny Dominion's requested relief.

²⁷ *Id.* at 12.

²⁸ See May 2 Order, 155 FERC ¶ 61,121 at P 13; ISO-NE February 25, 2016 Answer at 3 n.7, 7-8.

²⁹ See May 2 Order, 155 FERC ¶ 61,121 at P 13; ISO-NE February 25, 2016 Answer at 3, 8; ISO-NE Informational Filing for Qualification in the Forward Capacity Market, Docket No. ER16-308-000 (filed Nov. 10, 2015).

³⁰ Dominion asserts that the qualified capacity information in the filing was included in a confidential attachment. Rehearing Request at 12 n.47. We remind Dominion that the Information Policy in Attachment D of ISO-NE's Tariff contains procedures for seeking access to confidential information.

³¹ See ISO-NE February 25, 2016 Answer at 8.

³² See Rehearing Request at 12.

³³ See *Texaco Puerto Rico, Inc. v. Dep't of Consumer Affairs*, 60 F.3d 867, 879 (1st Cir. 1995) (“equity ministers to the vigilant, not to those who sleep on their rights”); *Di Vito v. Fid. And Deposit Co. of Md.*, 361 F.2d 936, 939 (7th Cir. 1966) (“equity aids the vigilant”).

The Commission orders:

Dominion's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.