

155 FERC ¶ 61,270
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NextEra Energy Power Marketing, LLC and
Northeast Energy Associates, a Limited Partnership

Docket No. EL16-48-000

v.

ISO New England Inc.

ORDER ON COMPLAINT

(Issued June 16, 2016)

1. On March 18, 2016, as amended on March 21, 2016, NextEra Energy Power Marketing, LLC and Northeast Energy Associates, a Limited Partnership (NEA) (together, NextEra), filed a complaint against ISO New England Inc., (ISO-NE) pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission regulations.² NextEra alleges that ISO-NE acted contrary to its Transmission, Markets and Services Tariff (Tariff) when it disqualified an incremental capacity increase at NextEra's Bellingham Energy Center (Bellingham) from participating in ISO-NE's Forward Capacity Auction (FCA) for the 2019-2020 capacity commitment period (FCA 10). As discussed below, the Commission denies NextEra's amended complaint.

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 18 C.F.R. § 385.206 (2015).

I. Background

2. Bellingham is a dual-fuel combined cycle plant that is owned by NEA and located in Bellingham, Massachusetts.³ For FCA 10, NEA sought to increase the summer Qualified Capacity at Bellingham by 25 MW.⁴ NextEra states that Bellingham's existing summer Qualified Capacity rating is 277.6 MW and its existing winter Qualified Capacity rating is 336.5 MW.⁵ NEA submitted an interconnection request and a Show of Interest for the Bellingham capacity increase on the March 3, 2015 submission deadline for FCA 10; however, NEA did not submit the required deposit until the following morning. NextEra states that, as a result of the deposit being late, ISO-NE denied NEA's Show of Interest for FCA 10. NEA subsequently filed a request for a one-time waiver of the timing requirements of section III.13.1.1.2.1 of ISO-NE's Tariff, which the Commission granted.⁶

3. Section III.13.1 of ISO-NE's Tariff addresses qualification for participation in the FCA. As relevant here, that section provides that each resource, or portion thereof, must qualify as either a New Generating Capacity Resource or an Existing Generating Capacity Resource.⁷ An Existing Generating Capacity Resource may elect to have an incremental amount of capacity above the summer Qualified Capacity participate in the FCA as a New Generating Capacity Resource, but it must submit a New Capacity Qualification package for the incremental increase in capacity, and the investment in the resource must pass two thresholds.⁸ The investment must result in an increase in output greater than 2 percent of the summer Qualified Capacity, but less than or equal to the greater of 20 percent of the summer Qualified Capacity or 40 MW, and the investment must be equal to or greater than \$200 per kilowatt of the amount of the increase in summer Qualified Capacity resulting from the investment.⁹

³ NextEra states that NEA is jointly owned by indirect, wholly-owned subsidiaries of NextEra Energy, Inc. and GDF Suez Energy NA.

⁴ NextEra Complaint at 5.

⁵ *Id.*

⁶ *Northeast Energy Assoc.*, 152 FERC ¶ 61,175 (2015) (NEA Waiver Order).

⁷ Tariff § III.13.1.

⁸ *Id.* § III.13.1.1.1.3.

⁹ *Id.*

4. Separately, section III.13.1.2.2.5 of the Tariff provides for an “adjustment for certain significant increases in capacity” that do not meet the required thresholds to participate as a New Generating Capacity Resource (Significant Increase). That section, in relevant part, reads as follows:

Section III.13.1.2.2.5 Adjustment for Certain Significant Increases in Capacity

Where an Existing Generating Capacity Resource . . . meets the requirements of Section III.13.1.1.1.3(a) but not the requirements of Section III.13.1.1.1.3.(b), the Lead Market Participant may elect to have the Existing Generating Capacity Resource’s summer Qualified Capacity be the sum of [the median of that Existing Generating Capacity Resource’s positive summer Seasonal Claimed Capability ratings . . .] plus [the amount of incremental capacity as described in Section III.13.1.1.1.3(a)]; provided, however, that the Lead Market Participant must abide by all other provisions of this Section III.13 applicable to a resource that is a New Generating Capacity Resource pursuant to Section III.13.1.1.1.3.¹⁰

5. The parties in the instant case agree that NEA’s Bellingham facility did not meet one of the thresholds for a New Generating Capacity Resource and thus, the incremental capacity would be treated under section III.13.1.2.2.5 as a Significant Increase. The dispute centers primarily on the proper treatment of a Significant Increase, in particular, on whether it may be combined with existing capacity and thus, not required to link its summer Qualified Capacity with winter Qualified Capacity via a composite offer, or whether it is considered a New Generating Capacity Resource, and thus, required to submit a composite offer linking incremental summer Qualified Capacity to existing winter Qualified Capacity.

II. Complaint

6. NextEra states that, after the NEA Waiver Order was issued on September 15, 2015, NEA contacted ISO-NE to ensure that the Bellingham capacity increase was treated as a Significant Increase and to decrease the size of the increase from 25 MW to 10 MW.¹¹ NextEra adds that, in September 2015, ISO-NE issued its Qualification Determination Notice finding that the Bellingham capacity increase qualified as a Significant Increase for 10 MW of summer Qualified Capacity.¹² NextEra further states

¹⁰ Tariff § III.13.1.2.2.5.

¹¹ NextEra Complaint at 14 (referencing Tariff § III.13.1.2.2.5).

¹² *Id.* at 9.

that, on October 19, 2015, and on a number of subsequent occasions, ISO-NE's Forward Capacity Tracking System (FCTS) showed the Bellingham capacity increase to be qualified as a 10 MW Significant Increase. However, according to NextEra, in its January 28, 2016 review of resources to be included in FCA 10, it did not see the Significant Increase listed, and the 10 MW Significant Increase was unavailable when NextEra attempted to delist it during ISO-NE's February 3, 2016 mock auction.¹³

7. NextEra states that it was subsequently informed by ISO-NE that the Significant Increase was disqualified because NextEra had not submitted a composite offer¹⁴ consisting of the new incremental summer Qualified Capacity and the existing winter Qualified Capacity at Bellingham. NextEra states that ISO-NE stated that a composite offer was required in order for the new incremental summer Qualified Capacity to be eligible to participate in FCA 10.¹⁵ Next Era asserts that, under the Tariff, a composite offer is only required when the new combined summer Qualified Capacity exceeds the winter Qualified Capacity.¹⁶ NextEra states that, since its existing winter Qualified Capacity exceeded its combined existing and new incremental summer Qualified Capacity, a composite offer is not required.¹⁷

8. NextEra contends that it properly established the 10 MW Bellingham capacity increase as a Significant Increase under section III.13.1.2.2. which states:

if (i) an Existing Generating Capacity Resource qualifies and elects to treat an upgrade as a Significant Increase and (ii) the Lead Market Participant abides by all provisions of Section III.13 applicable to a resource that is a New Generating Capacity Resource pursuant to Section III.13.1.1.3, the summer Qualified Capacity of such resource for the auction will be the

¹³ *Id.* at 10. According to NextEra, the ISO-NE mock auction took place five days before FCA 10 and allows Market Participants an opportunity to practice dynamically delisting their assets. *Id.*

¹⁴ The Tariff defines a Composite Forward Capacity Market (FCM) Transaction as “a transaction for separate resources seeking to participate as a single composite resource in a Forward Capacity Auction in which multiple designated FCM Participants provide capacity. . . .” Tariff § III.13.2.2.

¹⁵ NextEra Complaint at 16.

¹⁶ *Id.* (referencing Tariff § III.13.1.2.2.5.2).

¹⁷ *Id.*

sum of its existing summer Qualified Capacity plus the incremental capacity amount.¹⁸

9. NextEra argues that two thresholds must be met for an Existing Generating Capacity Resource to treat incremental capacity as a New Generating Capacity Resource, and the Bellingham capacity increase did not qualify because it failed to meet one of them in that its upgrade was less than the required \$200 kilowatt investment threshold.¹⁹ Therefore, NextEra argues, the Bellingham capacity increase is a Significant Increase and the 10 MW should have been added to the existing summer Qualified Capacity and available for FCA 10 even without a composite offer.

10. NextEra states that ISO-NE informed NextEra that the composite offer deadline was included in the Qualification Determination Notice. NextEra contends that, while the notice included a reminder of the composite offer deadline in the Qualification Determination Notice, it did not state that NextEra needed to submit a composite offer for the Significant Increase capacity for which it had qualified. According to NextEra, it did not request or review the informational filing ISO-NE made with the Commission because it had already reviewed the Qualification Determination Notice and ISO-NE's FCTS, which showed the Bellingham capacity increase qualified as a Significant Increase.

11. NextEra requests that, since ISO-NE violated its Tariff, the Commission direct ISO-NE to include the Bellingham capacity increase as if it had cleared FCA 10. NextEra requests that compensation be set at the FCA 10 clearing price of \$7.03/kW-month. NextEra asserts that section 309 of the FPA gives the Commission broad authority to remedy tariff violations.²⁰

12. Alternatively, NextEra states that it could enter the Bellingham capacity increase in the first Annual Reconfiguration Auction for the 2019-2020 Capacity Year, in June 2017. NextEra states that, to date, reconfiguration auctions have cleared at about half the price of the FCA. NextEra argues that it should then receive the positive difference between the clearing price of the first Annual Reconfiguration Auction and the FCA 10 clearing price. However, NextEra states that, if the Bellingham capacity increase

¹⁸ Next Era Complaint at 11-12 (summarizing Tariff § III.13.1.2.2.5).

¹⁹ *Id.* at 17.

²⁰ *Id.* at 20-21 (citing *Pub. Util. Comm'n of the State of Cal. v. FERC*, 462 F.3d 1027, 1048 (9th Cir. 2006); *Xcel Energy Serv. v. FERC*, No. 14-1282, slip op. at 13 (D.C. Cir. 2016)).

does not clear the first Annual Reconfiguration Auction, it should still receive the FCA 10 clearing price since ISO-NE violated its Tariff.²¹

13. NextEra recognizes that the Tariff does not directly provide for cost allocation resulting from ISO-NE's Tariff violations. Next Era argues that the Commission could direct that costs be allocated "in a manner consistent with other capacity resources in Section III.13 of the Tariff."²² Alternatively, NextEra asserts that section IV.A of the Tariff, which provides for allocating costs and expenses, could be utilized. NextEra argues that ISO-NE used this provision to allocate costs to market participants following a NERC reliability penalty.²³

III. Notice of Filings and Responsive Pleadings

14. Notice of NextEra's complaint was published in the *Federal Register*, 81 Fed. Reg. 16,164 (2016), and notice of NextEra's amended complaint was published in the *Federal Register*, 81 Fed. Reg. 18,619 (2016), with interventions and protests due on or before April 7, 2016. New England Power Pool Participants Committee; New England States Committee on Electricity; Entergy Nuclear Power Marketing, LLC; National Grid; NRG Power Marketing, LLC and GenOn Energy Management, LLC; and Dominion Resources Services, Inc. filed motions to intervene. ISO-NE and NextEra filed answers.

15. ISO-NE responds that NextEra failed to comply with the FCM rules that apply to New Generating Capacity Resources, as required by section III.13.1.2.2.5. ISO-NE states that the Tariff requires an Existing Generating Capacity Resource that qualifies and elects to treat an upgrade as a Significant Increase to abide by *all* provisions of section III.13 of the Tariff that apply to a New Generating Capacity Resource.²⁴ ISO-NE further states that, because capacity is an annual product, the FCA Qualified Capacity for a New Generating Capacity Resource (such as the Significant Increase at Bellingham) takes into account both the resource's summer Qualified Capacity and its winter Qualified Capacity and "shall be the lesser of the two, as adjusted to account for applicable offers composed of separate resources."²⁵ Thus, according to ISO-NE, Bellingham needed to link, via a composite offer, its 10 MW of incremental summer Qualified Capacity to 10 MW of

²¹ NextEra Complaint at 23.

²² *Id.* at 22.

²³ *Id.*

²⁴ ISO-NE April 7, 2016 Answer at 4.

²⁵ Tariff § III.13.1.1.2.5.1.

winter Qualified Capacity in order to ultimately add 10 MW to its FCA Qualified Capacity.²⁶ ISO-NE adds that two separate resources at the same station can submit a composite offer to participate together in an FCA pursuant to section III.13.1.5 of the Tariff or, as an alternative, NextEra could have linked the 10 MW of incremental summer Qualified Capacity with 10 MW of winter Qualified Capacity from another qualified resource, including another NextEra resource, or a resource owned by another Market Participant.²⁷ ISO-NE contends that it cannot assume a Market Participant's business decisions; rather, it has to wait for the Market Participant to take the actions it sees fit (as allowed by the FCM rules) with respect to its resources.

16. ISO-NE asserts that NextEra could have addressed its error sooner but failed to do so. ISO-NE claims that NextEra's Qualification Determination Notice demonstrated that NextEra's summer Qualified Capacity for the Significant Increase was set to 10 MW, its winter Qualified Capacity was set at 0 MW, and the FCA Qualified Capacity was set to 0 MW. ISO-NE contends that NextEra should have either known that ISO-NE was required to set the FCA Qualified Capacity of the Significant Increase to 0 MW as required by section III.13.1.1.2.5.1 of the Tariff or at least attempted to determine whether a composite offer was required under the FCM rules. ISO-NE also contends that, by October 19, 2015, NextEra was able to view that the FCA Qualified Capacity for the Significant Increase had been set to 0 MW through FCTS and had the opportunity to file for a waiver.²⁸ Finally, ISO-NE states that NextEra had an opportunity to protest the November 10, 2015 informational filing for FCA 10, given that it included the qualification values provided to NextEra in its Qualification Determination Notice. ISO-NE states that it is the Market Participant's responsibility to manage the qualification of its resources and abide by the FCM rules.²⁹

17. ISO-NE requests that the Commission deny the amended complaint. ISO-NE states that, if the Commission decides to award Bellingham a Capacity Supply Obligation for the 10 MW as if they had cleared in FCA 10, then the payment should be the Capacity Clearing Price.³⁰

²⁶ ISO-NE April 7, 2016 Answer at 6 (citing ISO-NE Tariff § III.13.1.1.2.5.1 (FCA Qualified Capacity for a New Generating Capacity Resource))

²⁷ *Id.* at 7.

²⁸ *Id.* at 7-8.

²⁹ *Id.* at 9 (citing *GenOn Energy Management, LLC v. ISO New England Inc.*, 152 FERC ¶ 61,044, at P 50 (2015)).

³⁰ *Id.* at 10.

18. NextEra reiterates its arguments that, since the Bellingham capacity increase was classified as a Significant Increase, it could not be considered a New Generating Capacity Resource. Therefore, according to NextEra, it was not required to submit a composite offer in order to fully participate in FCA 10.³¹ NextEra argues that since the Significant Increase could not be considered a New Generating Capacity Resource under the Tariff, the Significant Increase should have been considered as part of the existing Bellingham capacity and not as if it were a separate project, i.e. new incremental capacity.³² NextEra further contends that section III.13.1.2.1 confirms its Tariff interpretation.³³ NextEra asserts that ISO-NE should have added the 10 MW capacity increase to Bellingham's existing summer Qualified Capacity allowing it to participate in FCA 10.

19. NextEra argues that, contrary to ISO-NE's arguments, NextEra was not notified that the FCA Qualified Capacity for its Significant Increase was set at 0 MW.³⁴ NextEra also contends that ISO-NE's informational filing contained the same information as the Qualification Determination Notice, which indicated that the Significant Increase of 10 MW was included in Bellingham's summer Qualified Capacity.

20. In response to NextEra's argument that a Significant Increase is not required to comply with the rules that apply to New Generating Capacity Resources, ISO-NE points to section III.13.1.2.2.5 of the Tariff which, provides that, a Lead Market Participant electing to have its resource treated as a Significant Increase must comply with all the provisions that apply to New Generating Capacity Resources.³⁵ Further, ISO-NE argues that section III.13.1.2.2.5 is consistent with section III.13.1.1.1 of the Tariff, under which any new MWs entering the FCM that have never before participated and cleared in an FCA are considered a new resource in the qualification process.³⁶

³¹ NextEra Answer at 4.

³² *Id.* at 5 (referencing Tariff §§ III.13.1.2.1, III.13.1.2.2.5 and III.13.1.1.1.3).

³³ *Id.* (quoting Tariff § III.13.2.1 "Any resource that does not satisfy the criteria for participating in the [FCA] as a New Generating Capacity Resource. . . , as an Existing Import Capacity Resource or new Import Capacity Resource. . . , or as a New Demand Resource or Existing Demand Resource . . . shall be an Existing Generating Capacity Resource.").

³⁴ *Id.* at 8.

³⁵ ISO-NE April 27, 2016 Answer at 3.

³⁶ *Id.* at 3-4.

21. In response to NextEra's argument that it did not receive notice that the FCA Qualified Capacity for its Significant Increase was set to 0 MW, ISO-NE reiterates that all resources qualified to participate in FCA 10 were notified that they could view their FCA Qualified Capacity through FCTS. ISO-NE submits a copy of the e-mail notification that representatives of each market participant, including representatives for NextEra, received.³⁷ ISO-NE notes that the NextEra representative admits to reviewing FCTS on the same day ISO-NE provided Lead Market Participants with the ability to confirm the qualification status for resources through FCTS.³⁸

IV. Commission Determination

22. 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. 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 or an answer unless otherwise ordered by the decisional authority. We will accept NextEra's and ISO-NE's answers because they have provided information that assisted us in our decision-making process.

23. For the reasons discussed below, we deny NextEra's complaint.

24. The parties do not dispute that the Bellingham capacity increase failed to meet one of the required thresholds for qualifying as a New Generating Capacity Resource and that it qualified as a "Significant Increase" under the Tariff. They disagree on whether the Tariff requires that a Significant Increase to a resource's summer Qualified Capacity must be included in a composite offer with winter Qualified Capacity to establish the resource's value as FCA Qualified Capacity. The root of that disagreement lies with whether the 10 MW Bellingham Significant Increase should be treated under the Tariff as a New Generating Capacity Resource or as an Existing Generating Capacity Resource. NextEra relies on the fact that the Bellingham Significant Increase failed to meet the threshold for New Generating Capacity to argue that under section III.13.1.2.2.5 a Lead Market Participant could elect to have the summer Qualified Capacity of its Existing Generating Capacity Resource be the sum of the existing and incremental capacity.

25. NextEra argues that, since the Bellingham capacity increase meets the requirements of a Significant Increase, NextEra could "elect to have the Existing Generating Capacity Resource's summer Qualified Capacity be the sum of" the Existing

³⁷ *Id.* Attachment 1.

³⁸ *Id.* at 5 (citing to NextEra Complaint, Attachment A, Loder Affidavit at P 12 (Loder Affidavit)).

Generating Resource capacity plus the new incremental capacity. NextEra contends that its new incremental capacity would be included within its Existing Generating Resource and, under the Tariff rules for Existing Generating Capacity Resources; a composite offer would not be required.³⁹

26. NextEra's argument ignores the limiting clause of section III.13.1.2.2.5, which states, "provided however, that the Lead Market Participant must abide by all other provisions of this Section III.13 applicable to a resource that is a New Generating Capacity Resource pursuant to section III.13.1.1.1.3." In effect, ISO-NE's Tariff provides an "adjustment" to the calculation of an Existing Generating Capacity Resource's summer Qualified Capacity for certain Significant Increases in capacity that do not meet the threshold for New Generating Capacity so that the incremental capacity can elect, nonetheless, to participate in the FCA according to the rules for New Generating Capacity Resources.⁴⁰ Under that "adjustment," ISO-NE notified NextEra that it qualified as a Significant Increase. However, NextEra argues that the requirements associated with a New Generating Capacity Resource do not apply, but rather that its Significant Increase in capacity should be treated as an Existing Capacity Resource. Thus, NextEra elected to utilize section III.13.1.2.2.5 in order to qualify its incremental capacity as a Significant Increase while disregarding the remaining portion of that provision. We agree with ISO-NE that section III.13.1.2.2.5 of the Tariff is clear that a Significant Increase must abide by all the provisions applicable to a New Generating Capacity Resource that met the applicable thresholds. Thus, we deny NextEra's complaint.

27. We note that the Commission recently has found that ISO-NE's Tariff is unclear regarding whether new incremental generating capacity and existing generating capacity at the same resource must submit a composite offer in order to participate in an FCA, and the Commission has directed ISO-NE to clarify its Tariff in this regard.⁴¹ However, NextEra does not make that argument, instead asserting that its Significant Increase should be treated under the rules as an Existing Generating Capacity Resource. Even if NextEra had made such an argument, we would not have granted the requested relief. NextEra received notification from ISO-NE on October 19, 2015 that its FCA Qualified

³⁹ NextEra Complaint at 9 (citing to Loder Affidavit at P 17-18).

⁴⁰ The "adjustment" consists of adding the incremental capacity to the Existing Generating Capacity Resource's positive summer Qualified Capacity.

⁴¹ *Dominion Energy Marketing, Inc. v. ISO-NE*, 155 FERC ¶ 61,121, at P 21 (2016).

Capacity was set at 0 MW and did not act at that time.⁴² Further, it failed to protest ISO-NE's Informational Filing on FCA 10. ISO-NE has a process in place to challenge disqualification in a timely fashion, and NextEra failed to take advantage of the opportunities to challenge its disqualification in a timely manner, a factor that weighs against the requested relief.⁴³

The Commission orders:

NextEra's amended complaint is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴² As noted in P 25 above, the FCM Qualified Capacity "shall be the lesser of the resource's summer Qualified Capacity and winter Qualified Capacity, as adjusted to account for applicable offers composed of separate resources." Tariff § III.13.1.1.2.5.1. Therefore, while the Qualification Determination notification did not specifically state the FCM Qualified Capacity, NextEra should have noted that its Qualified Winter Capacity was set to 0 MW. *See* Exhibit 4 of NextEra Complaint.

⁴³ *Id.* P 23.