122 FERC ¶ 61,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

TransCanada Power Marketing Ltd. Docket No. EL08-11-001

v.

ISO New England Inc.

ORDER GRANTING REQUEST FOR REHEARING, IN PART
AND DISMISSING REQUEST FOR REHEARING IN PART AS MOOT

(Issued January 22, 2008)

1. On January 11, 2008, ISO-New England Inc. (ISO-NE) filed a request for rehearing[1] of the Commission's January 4, 2008 order issued in this docket.[2] As discussed below, we grant the request for rehearing in part, and dismiss the request for rehearing in part as moot.

I. Background

2. The January 4 Order granted TransCanada Power Marketing Ltd.'s (TransCanada) complaint in which it requested that ISO-NE accept TransCanada's composite designation of 6.222 MW of qualified capacity as a Self-Supplied Forward Capacity Auction (FCA) Resource for participation in the first FCA of the New England Forward Capacity Market (FCM).

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[1] While the pleading is labeled "Request for Clarification and/or Request for Rehearing," based on its content and the relief sought, we regard it as presenting only a request for rehearing.

[2] *TransCanada Power Marketing Ltd*. v. *ISO New England Inc*., 122 FERC ¶ 61,010 (2008) (January 4 Order).

3. In its complaint, TransCanada alleged that ISO-NE inappropriately de-listed a portion of TransCanada's proposed self-supplied capacity that was designated in the form of a composite offer.[3] ISO-NE took the position that the self-supply designation did not meet the market rule requirements, since the composite offer was submitted after the July 2, 2007 composite offer deadline for the first FCA and the relevant tariff sections did not contemplate a resource being designated as self-supply for only part of a Capacity Commitment Period. TransCanada argued that the procedures for designating capacity as a Self-Supplied FCA Resource overrode the qualification procedures (including the composite offer deadline) that otherwise would apply to an offer composed of different types of resources.

4. Finding the relevant tariff language ambiguous, the Commission instructed ISO-NE to accept TransCanada's composite designation of 6.222 MW of qualified capacity as a Self-Supplied FCA Resource for participation in the first FCA. The Commission instructed TransCanada to submit composite offer forms to ISO-NE within seven days of the date of the Order, or January 11, 2008 (January 11 Composite Offers). The Commission also directed ISO-NE to amend the tariff language to clearly indicate that in the event that a party seeks to self-schedule composite resources, the party must comply with the provisions of both the composite offer and self-schedule sections of the tariff.[4]

II. ISO-NE's Request for Rehearing

5. ISO-NE states that when it attempted to enter the January 11 Composite Offers into the FCA software in order to comply with the January 4 Order, it discovered, for the first time, that TransCanada did not have winter capacity available for use in the proposed composite offers. ISO-NE explains that all of the summer and winter capacity from the Ocean State Power resources (which are designated to provide the winter

[3] The self-supply forms indicated that for the winter period, TransCanada wished to designate 4.437 MW of existing Qualified Capacity from Ocean State Power 2 (Asset ID 529) and 1.785 MW of existing Qualified Capacity from Ocean State Power 1 (Asset ID 528) for a total of 6.222 MW as self-supply resources. For the summer period, TransCanada wished to designate 4.437 MW of existing Qualified Capacity from Moore (Asset ID 496) and 1.785 MW of existing Qualified Capacity from Harriman (Asset ID 435) as self-supply resources, for a total of 6.222 MW.

[4] Sections III.13.1.5 and III.13.1.6 of the ISO-NE Tariff, respectively.

capacity for the composite offers) is already fully committed to participate in the upcoming FCA through other offers (July 2 Composite Offers).[5]

6. In light of these new facts, ISO-NE seeks direction from the Commission regarding its directive that ISO-NE include TransCanada's January 11 Composite Offers "for participation in the first FCA."[6] ISO-NE requests that the Commission indicate whether "participation in the first FCA" is to include the same qualification review of the January 11 Composite Offers that ISO-NE applied to all other composite offers. ISO-NE notes that during the qualification process, composite offer forms are reviewed to ensure, among other things, that all of the component resources have capacity available to form the composite offer. ISO-NE avers that there is no basis for exempting TransCanada's January 11 Composite Offers from the same review that it had applied to all other composite offers. Further, ISO-NE states that, assuming that it does subject the January 11 Composite Offers to the qualification process, because the Ocean State Power winter resources have no available capacity to use in the composite offers, it will reject these composite offers on that basis.

7. ISO-NE states that, in the event that the Commission was to indicate that it intended in the January 4 Order that ISO-NE include the January 11 Composite Offers in the first FCA without undergoing qualification, it seeks rehearing of that ruling.

8. In support thereof, ISO-NE contends that in order to comply with the January 4 Order, it would have to either: (i) leave the July 2 Composite Offers intact, double-counting some of the winter capacity from the Ocean State Power resources in violation of the fundamental FCM design; or (ii) unilaterally eliminate or adjust the properly-submitted and qualified July 2 Composite Offers for these resources, in violation of explicit FCM rules, potentially harming other parties to those July 2 Composite Offers, and indirectly harming other entities that will be given no similar opportunity to withdraw or change offers after the Commission-approved deadlines.

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[5] The Ocean State Power units are each rated at approximately 270 MW (Summer) and 317 MW (Winter). ISO-NE states that the Ocean State Power resources are currently slated to participate in the FCA as existing resources at their full summer Qualified Capacity. ISO-NE notes that because that capacity is committed to participate in the FCA as an annual product, none of the approximately 270 MW of summer Qualified Capacity from either Ocean State Power resource is available to participate in a composite offer. Similarly, ISO-NE states that the "excess" winter Qualified Capacity from these resources is already committed to composite offers with other parties.

[6] January 4 Order at P 27.

9. ISO-NE argues that modifying or eliminating the July 2 Composite Offers for these resources would violate the requirement in section III.13.1.1.2 of the FCM rules that the July 2 Composite Offers be included in the FCA at the starting price.[7] ISO-NE argues that this approach could impose significant unintended consequences on other parties, as the entity representing the summer portion of the original composite offers would suddenly be without the winter capacity that it had included in an already-qualified composite offer.

10. ISO-NE requests Commission action no later than January 22, 2008, which is the date by which section III.13.8.1(b) of the FCM rules requires finality of the auction inputs generally, either by Commission order or by default.

III. TransCanada's Answer

11. In its answer, TransCanada states that it had no knowledge that ISO-NE improperly qualified the July 2 Composite Offer until it was apprised of the fact in a telephone call last week.[8] TransCanada argues that ISO-NE's discussion leaves out critical facts that demonstrate that TransCanada is not offering the same capacity twice in the FCA, as ISO-NE alleges.

12. TransCanada states that on July 2, 2007, TransCanada and HQ Energy Services (US) Inc. (HQUS) entered into a letter agreement (July 2 Agreement) that authorized HQUS to act as the lead participant to submit a composite offer on behalf of TransCanada solely for the purpose of qualifying each party's capacity in the first FCA. HQUS was to supply the summer capacity for the July 2 Composite Offers, and TransCanada was to provide the winter capacity from Ocean State Power 1 and 2. TransCanada states that, while the July 2 Agreement was not finalized, time constraints forced execution of the agreement to meet the July 2 Composite Offers deadline under the FCM rules. TransCanada notes that the July 2 Agreement provided that if a binding agreement was not reached by October 12, 2007, the July 2 Agreement would terminate.

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[7] ISO-NE states that while a resource may be withdrawn by written notice to ISO-NE no later than three days before the financial assurance deposit is due, these July 2 Composite offers were not withdrawn, and so must be included in the auction.

[8] TransCanada does not explain why the November 6, 2007 Informational Qualification Filing in Docket No. ER08-190-000, which included the qualification status of all of the resources for the FCA, including the Ocean State Power resources from the July 2 Composite Offers and the de-listed capacity from the Moore and Harriman resources that was part of the January 11 Composite Offers, was insufficient notice.

13. TransCanada states that the July 2 Composite Offers negotiation process was contingent upon the possibility of HQUS importing capacity for the FCM over the Hydro-Quebec Phase I/II interface (HQ Interconnection).[9] HQUS designated to ISO-NE in its Show of Interest form that the HQ Interconnection would be the transmission path for the summer capacity.

14. Subsequent to the submission of the July 2 Composite Offers, on July 25, 2007, the Commission denied HQUS's request for rehearing of its April 16 Order,[10] and on November 6, 2007, ISO-NE submitted its Informational Filing for Qualification in the FCM,[11] which provided that, as anticipated, no capacity would be available for import over the HQ Interconnection. Thus, TransCanada claims that HQUS's performance under the July 2 Agreement and the July 2 Composite Offers was an impossibility.

15. TransCanada states that ISO-NE nevertheless informed TransCanada that it had qualified the July 2 Composite Offers, and HQUS subsequently submitted the requisite financial assurance. TransCanada states that it was unaware either the July 2 Composite Offers had been qualified, or that HQUS had submitted the financial assurance, until it was informed of these facts in ISO-NE's instant request for clarification.

16. TransCanada states that, because HQUS cannot provide the summer capacity for the July 2 Composite Offers due to the 0 MW of availability for import contracts over the

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[9] On April 16, 2007, the Commission issued an order requiring ISO-NE to amend the FCM market rules to ensure that only that amount of capacity on the HQ Interconnection that was in excess of the capacity reserved to certain rights holders (the HQ Excess) would be available for import contracts for the FCM (*ISO New England Inc.*, 119 FERC ¶ 61,045 at P 167-68 (2007) (April 16 Order)). On May 16, 2007, HQUS filed a request for rehearing, stating that ISO-NE was expected to revise its technical evaluation of the HQ Interconnection to eliminate the HQ Excess. HQUS argued that, if ISO-NE did take this action, the Commission's ruling in the April 16 Order would prevent any import contracts for capacity over the HQ Interconnection from participating in the FCM. This request for rehearing, as well as ISO-NE's technical re-evaluation, were still pending on July 2, 2007, when TransCanada and HQUS submitted the July 2 Composite Offers.

[10] *ISO New England Inc.*, 120 FERC ¶ 61,087 (2007) (July 25 Order).

[11] The Commission accepted that filing on January 11, 2008 (*ISO New England Inc.*, 122 FERC ¶ 61,018 (2008)).

HQ Interconnection, and because the July 2 Agreement has terminated, TransCanada has no obligation or ability to offer the winter capacity associated with the July 2 Composite Offers. Further, TransCanada asserts that HQUS has no contractual right to bid TransCanada's capacity in the first FCA. Thus, TransCanada states that the only way for the 6.222 MW of capacity to participate in the FCA is as a self-supplied capacity resource as set forth in TransCanada's October 12 complaint.

IV. ISO-NE's Answer to TransCanada's Answer

17. ISO-NE submitted a brief answer to TransCanada's answer. ISO-NE states that TransCanada and HQUS never notified it of their contractual relationship or any limitations on their July 2 Composite Offers, and that it would be unworkable to require ISO-NE to take the initiative in making itself aware of parties' contractual relationships and restrictions on offers submitted into the FCM. ISO-NE further asserts that TransCanada's position that ISO-NE improperly qualified the July 2 Composite Offers is in error. In this regard, ISO-NE states that TransCanada seeks, in essence, a rolling qualification process, under which any resource would be considered qualified to participate in the FCM, which would keep the qualification process open until the auction. ISO-NE states that this is not the market design that was agreed to by market participants, codified in the FCM rules, and approved by the Commission, and the qualification process must have an end point in order for ISO-NE to successfully run the FCA.

V. TransCanada's Answer to ISO-NE's Answer

18. TransCanada's answer further addresses its argument that ISO-NE was at fault in qualifying the July 2 Composite Offers.

VI. Discussion

19. We grant ISO-NE's request for rehearing in part. We intended ISO-NE to subject TransCanada's January 11 Composite Offers to the same review process as it applied to other composite offers to ensure that the component resources have available capacity. In the January 4 Order, we found that, notwithstanding the timing of the offer, TransCanada's submission is a composite offer and is consequently subject to the FCM Rules regarding composite offers. We therefore direct ISO-NE to apply the appropriate

FCM Rules to the January 11 Composite Offers. The remainder of ISO-NE's request for rehearing is dismissed as moot.[12]

20. As to TransCanada's answer (and all subsequent answers filed by the parties), Rule 713 of our Rules of Practice and Procedures does not permit answers to requests for rehearing.[13] In addition, TransCanada's answer (and all subsequent answers filed by the parties) raise issues that fall outside the scope of the January 4 Order and that TransCanada should have raised in its initial complaint or, alternatively, in an amended complaint. By introducing facts and allegations that were not considered by the Commission in reaching its determinations in the January 4 Order, TransCanada improperly seeks to enlarge the scope of this proceeding, which is inappropriate at the rehearing stage of this proceeding.[14]

21. In short, we will not allow TransCanada to introduce new facts and allegations at this stage in the proceeding. As the Commission has made clear, allowing new evidence on rehearing presents a moving target and frustrates needed finality.[15] The Supreme Court has stated:

> If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance

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[12] According to ISO-NE, it was only when it started to comply with the January 4 Order that it discovered that the 6.222 MW of capacity at issue in the complaint had already been submitted as part of the July 2 Composite Offers.

[13] 18 C.F.R. § 385.713(d) (2007).

[14] For example, TransCanada's answer raises issues involving the qualification process for a composite offer itself, which was not at issue in its initial complaint. Whatever the validity of those issues, they are not properly brought before the Commission in an answer to a narrow request for rehearing when they were not raised in the initial complaint.

[15] *New York Independent System Operator*, 112 FERC ¶ 61,283 at P 35 n.20 ("[P]arties are not permitted to raise new evidence on rehearing. To allow such evidence would allow impermissible moving targets"), *citing Entergy Nuclear Operations, Inc., v. Consolidated Edison Co. of New York, Inc.*, 112 FERC ¶ 61,117, at P 39 (2005)); *accord Ocean State Power II*, 69 FERC ¶ 61,146 at 61,548 n.64 (1994) ("The Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target.").

> has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.[16]

22. Furthermore, to consider expanding the record now would amount to amending TransCanada's complaint after the close of the record and would result in a determination that would go beyond the scope of the January 4 Order. We will not permit this for the same reason that we do not permit a party to submit a complaint as part of a protest and motion to intervene in an ongoing proceeding. Such a submission "does not allow interested parties sufficient notice of the complaint because it is not formally docketed and protested."[17]

The Commission orders:

ISO-NE's request for rehearing is granted in part and dismissed as moot in part, to the extent set forth herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[16] *ICC v. Jersey City*, 322 U.S. 503, 514 (1944).

[17] *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040 at 61,062-63 (1990).