

134 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

WM Renewable Energy, L.L.C.

Docket No. ER11-2433-000

ORDER GRANTING LIMITED WAIVER

(Issued January 14, 2011)

1. On December 21, 2010, WM Renewable Energy, L.L.C. (WMRE) filed a request for limited waiver of Section III.13.1.1.1.3 of ISO New England Inc.'s (ISO-NE) Market Rule 1¹ to allow WMRE to timely submit to ISO-NE complete New Capacity Qualification Packages for five of WMRE's generating facilities as required by the rules implementing ISO-NE's forward capacity market (FCM). The Commission grants the requested waiver, as discussed below.

I. Background

2. As detailed in numerous proceedings before the Commission, ISO-NE has implemented the FCM, in which capacity resources (both generators and demand response resources) compete to provide capacity to New England, on a three-year-forward basis, by participating in an annual forward capacity auction (FCA).

3. On October 29, 2008, the Commission accepted proposed changes to the FCM rules and made the new tariff provisions effective December 1, 2008.² Section III.13.1.1.1.3 of ISO-NE's Market Rule 1 states that the owner of a resource previously counted as a capacity resource may elect to have the incremental amount of capacity above the summer Qualified Capacity of the resource at the time of the qualification process participate in the Forward Capacity Auction as a New Generating Capacity

¹ ISO-NE, Transmission, Markets, and Services Tariff, Section III.

² *ISO New England Inc.*, Docket No. ER09-5-000 (Oct. 29, 2008) (unpublished letter order).

Resource. Section III.13.1.1.1.3 further provides that the Project Sponsor must submit a New Capacity Qualification Package.³

4. WMRE states that due to an inadvertent administrative error, WMRE failed to submit complete New Capacity Qualification Packages for its Chaffee5, High Acres I-FCA 5, High Acres II-FCA 5, Madison County 5 and Mill Seat 5 generating facilities, each of which is fueled by landfill gas. WMRE states that each generating facility represents an import resource that WMRE intended to offer in the fifth FCA as New Generating Capacity Resources pursuant to section III.13.1.1.1.3 of the ISO-NE Tariff.

5. Although a New Capacity Qualification Package for the resources was prepared and submitted electronically in a timely fashion, each package was inadvertently submitted without certain required information including an Export Contract, Proof of Ownership, External Resource Documentation, and Capacity Obligation Supporting Documentation. WMRE notes that all of the information is contained under a “tab” on the electronic form that was accidentally overlooked. WMRE states it was not aware of its mistake until after the filing deadline of October 15, 2010, when ISO-NE notified WMRE that the five New Import Capacity Resources had been deemed withdrawn from the fifth FCA, to be held in June 2011.

II. Request for Limited Waiver

A. Description

6. WMRE requests waiver of section III.13.1.1.1.3 of ISO-NE’s Market Rule 1 to allow ISO-NE to accept WMRE’s belated submittal (made after October 15, 2010) of its updated New Capacity Qualification Packages. WMRE states that the relief it requests is consistent with the waiver standards set forth in *Acushnet Company*.⁴ WMRE argues that the relief it requests is necessary to allow each of the affected import resources to be offered in the fifth FCA.

7. WMRE states that it acted in good faith when it failed to submit certain provisions of the New Capacity Qualification Packages. WMRE states that its missed deadline was the result of an inadvertent oversight caused by WMRE’s failure to take note of one of the “tabs” on the electronic submission form. WMRE argues that the waiver is of limited scope as it seeks a one-time waiver limited to the five generating facilities noted above and only with respect to the October 15, 2010 deadline for submitting New Capacity Qualification Packages for the fifth FCA. WMRE argues that the requested waiver

³ See ISO-NE, Transmission, Markets, and Services Tariff, § III.13.1.1.1.3.

⁴ 122 FERC ¶ 61,045 (2008) (*Acushnet*).

resolves a concrete problem that must be remedied because, absent a waiver of the deadline in section III.13.1.1.1.3, WMRE will not be able to qualify the five renewable import resources for the fifth FCA, reducing competition in the market and preventing the electricity generated from renewable resources from reaching the market. Finally, WMRE states that the waiver will not have undesirable consequences and will not harm third parties because the waiver will not impose any burden or cost on ISO-NE or any market participant and will not delay or disrupt the fifth FCA.

8. Additionally, WMRE requests that the Commission act on this request no later than January 17, 2010, to allow ISO-NE adequate time to consider the updated New Capacity Qualification Packages for each site before ISO-NE issues Qualification Determination Notifications.

B. Notice

9. Notice of the filing was published in the *Federal Register*, 75 Fed. Reg. 74,038 (2010), with answers, interventions, and protests due on or before January 3, 2011. On January 3, 2011, ISO-NE filed a timely motion to intervene and comments.

III. Pleadings

10. In its comments, ISO-NE states that because WMRE did not submit the required information by the deadline, ISO-NE will not be able to qualify WMRE's New Import Capacity Resources for the fifth FCA. ISO-NE states that it does not oppose the requested waiver and believes WMRE's error to have been in good faith. In order to allow ISO-NE to review the documentation regarding proof of ownership or direct control of the resources as required by section III.13.1.3.5.1 of Market Rule 1, ISO-NE requests that the Commission issue a ruling on WMRE's waiver request no later than January 17, 2011.

IV. Discussion

11. The Commission will grant the requested waiver.

12. The Commission has previously granted waiver requests for parties that failed to follow proper procedures for participation in earlier FCAs.⁵ The Commission has

⁵ See, e.g., *CPower, Inc.*, 133 FERC ¶ 61,127 (*CPower*) (2010); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (*EnerNOC*); *Acushnet*, 122 FERC ¶ 61,045; *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007) (*Central Vermont*); *University of New Hampshire*, 121 FERC ¶ 61,185 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007) (*Waterbury*).

granted relief where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁶

13. The Commission finds that the request for waiver here satisfies the conditions stated above. The Commission finds that the error was made in good faith because WMRE failed to submit the complete New Capacity Qualification Packages by the deadline specified in the FCM rules due to an inadvertent oversight, caused by failing to take note of one of the “tabs” on the electronic form. This waiver is also of limited scope in that it will apply solely to the submission of WMRE’s updated New Capacity Qualification Packages for the fifth FCA. The waiver addresses a single concrete problem because it will prevent the entering of a de-list bid for these renewable import resources. Finally, we conclude that no third parties will be harmed by granting this limited waiver of the ISO-NE market rules, and no entity protested to the contrary.

14. In light of the facts presented above, the Commission will grant WMRE’s request for limited waiver of the ISO-NE market rules. We expect, however, that similar errors will not be made in the future and that no similar requests for waiver will be necessary for the sixth and future FCAs.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶ See *CPower*, 133 FERC ¶ 61,127; *EnerNOC*, 122 FERC ¶ 61,297; *Acushnet*, 122 FERC ¶ 61,045; *Central Vermont*, 121 FERC ¶ 61,225; *Waterbury*, 120 FERC ¶ 61,007.