

134 FERC ¶ 61,116  
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.

Massachusetts Electric Company  
The Narragansett Electric Company

Docket No. ER11-2729-000

ORDER DENYING REQUEST FOR WAIVER

(Issued February 15, 2011)

1. On January 21, 2011, the Massachusetts Electric Company and Narragansett Electric Company (collectively, National Grid) filed a request for a limited waiver of section III.13.4.2.1.3 of ISO-New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The waiver would allow National Grid to submit untimely restoration plans for Qualifying Facilities (QFs) under the Public Utility Regulatory Policies Act of 1978<sup>1</sup> in order to demonstrate that the QFs will be able to provide capacity in ISO-NE's Forward Capacity Market (FCM), consistent with their Capacity Supply Obligations for the 2011-12 Capacity Commitment Period. As discussed below, the Commission denies the request for limited waiver.

**Background**

2. ISO-NE implements the FCM, through which capacity resources (both generators and demand resources) compete to provide capacity to New England on a three-year-forward basis, by participating in an annual forward capacity auction (FCA).<sup>2</sup> Prior to the delivery year, a capacity resource can adjust its Capacity Supply Obligation (and ISO-

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<sup>1</sup> 16 U.S.C. § 2601, *et seq.* (2006 and Supp. II 2009).

<sup>2</sup> *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).

NE can increase or decrease the amount of capacity it anticipates needing) in periodic reconfiguration auctions.

3. Section III.13.4.2.1.3 of ISO-NE's Tariff sets forth the procedures for resources to qualify for reconfiguration auctions, such as the Annual Reconfiguration Auction (ARA),<sup>3</sup> including procedures for ISO-NE to address a significant decrease in capacity experienced by a resource prior to the capacity commitment period (Significant Decrease). Most relevant here, these procedures permit a resource to submit a restoration plan for its qualified capacity if the resource experiences a Significant Decrease in capacity. ISO-NE may find a Significant Decrease in capacity where the difference between a resource's Summer Annual Reconfiguration Auction Qualified Capacity or Winter Annual Reconfiguration Auction Qualified Capacity (as applicable) and its Capacity Supply Obligation established in the FCA is more than 20 percent of that obligation or 40 MW (whichever is less). Section III.13.4.2.1.3(a) of ISO-NE's Tariff states:

The Lead Market Participant may submit a written plan to the ISO with any necessary supporting documentation describing the measures that will be taken and demonstrating that the resources will be able to provide an amount of capacity consistent with its total Capacity Supply Obligation for the Capacity Commitment Period by the start of all months in that Capacity Commitment Period in which the resource has a Capacity Supply Obligation. If submitted, such a plan must be received by the ISO no later than 10 Business Days after the ISO has notified the Lead Market Participant of its Summer ARA Qualified Capacity and Winter ARA Qualified Capacity for the third annual reconfiguration auction.

If a Lead Market Participant Fails to submit a restoration plan or ISO-NE fails to approve it, ISO-NE will submit a demand bid at two times the Cost of New Entry to cover the expected capacity shortfall in the third ARA.<sup>4</sup>

### **National Grid's Filing**

4. Noting that ISO-NE is preparing for the third ARA to be held on March 1-3, 2011, National Grid seeks a waiver of the 10-day deadline set forth in section III.13.4.2.1.3(a) of the Tariff, to allow National Grid to submit untimely restoration plans for two QFs in the National Grid service territories. The deadline at issue passed on November 5, 2010.

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<sup>3</sup> See *ISO New England Inc.*, 126 FERC ¶ 61,115 (2009).

<sup>4</sup> See ISO-NE Tariff, section III.13.4.2.1.3(b).

A waiver would allow those QFs to attempt to qualify 165 kW of additional capacity for two small hydroelectric facilities in the ARA.<sup>5</sup>

5. National Grid states that it previously was notified by ISO-NE that twelve QFs, for which National Grid is the Lead Market Participant,<sup>6</sup> had experienced a Significant Decrease in qualified capacity pursuant to section III.13.4.2.1.3. National Grid states that when the notice was received, its employees “administering the arrangements did not appreciate the significance of the notice because administrative duties of this type in connection with these small QFs were never historically a part of their responsibilities.”<sup>7</sup> As a result, the notices were not forwarded to the twelve QFs. Consequently, the QFs had no knowledge that their capacity value might be lost if restoration plans were not submitted and no restoration plans were submitted for the twelve QFs by the November 5, 2010 deadline.<sup>8</sup>

6. In support of its waiver request, National Grid asserts the following: (1) there was no bad faith on the part of National Grid or the QFs to evade the deadline set forth by the ISO-NE for submittal of any restoration plans; (2) the waiver is of limited scope, because it applies only to the 2011-2012 Capacity Commitment Period and impacts, at most, twelve QF customers of National Grid; (3) the waiver would solve a concrete problem, because, otherwise, ISO-NE would submit a demand bid in the third ARA on behalf of these QFs, which effectively decreases their Capacity Supply Obligation for the 2011-2012 and their resulting capacity payment; and (4) the waiver would not harm any third parties or otherwise have any undesirable consequences, as it will not impose any costs or other burdens on any other market participant in the FCM and will not delay, disrupt or

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<sup>5</sup> National Grid originally sought waiver to submit restoration plans for up to twelve QFs, *see* National Grid Request for Limited Waiver (Jan. 21, 2011), but later informed the Commission that only two plans were delivered to ISO-NE. *See* National Grid Informational Filing, at 1 (Jan. 31, 2011).

<sup>6</sup> National Grid states that, pursuant to terms of its power purchase rate agreements on file with the Massachusetts Department of Public Utilities and the Rhode Island Public Utilities Commission, it purchases the electrical output from the QFs and passes along to the QFs any payment it receives from ISO-NE relating to QF participation in certain ISO-NE administered markets, including the FCM. National Grid states that these agreements do not otherwise obligate National Grid to participate in the FCM, and that National Grid is listed as the Lead Market Participant for these QFs in the Forward Capacity Tracking System administered by ISO-NE.

<sup>7</sup> National Grid Request for Limited Waiver at 5.

<sup>8</sup> *Id.*

otherwise have any negative impact on the third ARA or any other reconfiguration auction scheduled for the 2011-2012 Capacity Commitment Period.

7. Given that the ARA is scheduled for March 1-3, 2011, National Grid seeks expedited consideration of its waiver request by February 15, 2011. National Grid states that ISO-NE would need to approve any restoration plans submitted by National Grid by that date, in order to allow ISO-NE to publish the Qualified Capacity for the third ARA on February 16, 2011.

### **Notice of the Filing and Responsive Pleadings**

8. Notice of National Grid's filing was published in the *Federal Register* with interventions, protests, or comments due on or before January 31, 2011.<sup>9</sup> New England Power Pool Participants Committee filed a motion to intervene and ISO-NE filed a motion to intervene and protest.

9. Also on January 31, 2011, National Grid submitted supplemental information to its waiver request, in which National Grid asserts that on January 28, 2011, it provided restoration plans for two QFs to ISO-NE.<sup>10</sup>

10. ISO-NE argues that the Commission should deny National Grid's waiver request, because, otherwise, the importance of deadlines in ISO-NE's FCM would be undermined.<sup>11</sup> ISO-NE details that, in addition to the notification required by its Tariff, it sent two additional communications to affected parties, including National Grid, prior to the November 5, 2010 deadline for submitting restoration plans. These communications consisted of: (1) an October 22, 2010 notice to all resources experiencing a significant decrease in capacity, through ISO-NE's Forward Capacity Tracking System; and (2) an October 28, 2010 email to all Lead Market Participants with resources affected by a significant decrease, which included an explanation of the need for a restoration plan and the consequences of failing to address the capacity decrease.<sup>12</sup> Further, ISO-NE states

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<sup>9</sup> 76 Fed. Reg. 5574 (2011).

<sup>10</sup> National Grid states that, of the twelve QFs that ISO-NE identified as having experienced a Significant Decrease in qualified capacity pursuant to section III.13.4.2.1.3, two requested that National Grid submit restoration plans on their behalf to ISO-NE. See National Grid Informational Filing at 1.

<sup>11</sup> See ISO-NE Protest at 4-5.

<sup>12</sup> ISO-NE's Protest, Attachment A, provides the October 28, 2010 communication, including a training presentation addressing decreases in qualified capacity and restoration plans.

that it discussed the November 5, 2010 deadline with National Grid through telephone conversations.<sup>13</sup> ISO-NE states that National Grid did not submit this waiver request and did not know what resources it was requesting waiver for until well after the November 5, 2010 deadline and little more than a month before the March 1, 2011 commencement date for the third ARA.

11. ISO-NE also argues that National Grid's waiver request does not meet the Commission's requirements for waiver requests.<sup>14</sup> First, ISO-NE argues that National Grid's error was not made in good faith, stating that National Grid's failure to satisfy a clearly-communicated Tariff requirement does not satisfy this criterion for granting a waiver. Second, ISO-NE argues that the waiver is not of limited scope. ISO-NE states that other Lead Market Participants with significant decreases in qualified capacity that did not submit restoration plans by November 5, 2010 will have their Capacity Supply Obligations decreased pursuant to the Tariff, and that granting National Grid's waiver would result in favorable treatment to National Grid and be discriminatory to the other similarly-situated Lead Market Participants. Third, ISO-NE asserts that there is no concrete problem to be remedied, as the only error is National Grid's failure to recognize the consequences of its position. Fourth, ISO-NE disputes National Grid's assertion that the waiver will not have undesirable consequences, such as harming third parties. ISO-NE states that, if the waiver request is granted, it will allow National Grid to change its position on a clearly-communicated Tariff requirement, even though other similarly-situated Market Participants do not have the same opportunity.

## **Discussion**

### **Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>15</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **Determination**

13. The Commission denies National Grid's request for limited waiver. The Commission previously has 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) a concrete problem will be remedied by granting the waiver; and (4) the waiver does not

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<sup>13</sup> See ISO-NE Protest at 5 n.8.

<sup>14</sup> See *id.* at 5-7.

<sup>15</sup> 18 C.F.R. § 385.214 (2010).

have undesirable consequences, such as harming third parties.<sup>16</sup> However, the Commission finds that the particular circumstances of this case do not justify waiver. ISO-NE states that it communicated to National Grid the importance of submitting restoration plans on more than one occasion as the November 5, 2010 deadline approached. At the same time, there is no evidence that National Grid attempted to meet that deadline or satisfy the relevant requirements of ISO-NE's Tariff until more than two and one half months after the deadline passed – when National Grid submitted the waiver request at issue here. Indeed, other than stating it failed to realize the significance of the deadline – an assertion we find unpersuasive – National Grid offers no explanation for the extensive delay. Moreover, we find that granting the waiver to National Grid, without good cause, would result in favorable treatment to National Grid and unduly discriminate against other similarly-situated Lead Market Participants with Significant Decreases in qualified capacity. For these reasons, we deny National Grid's request for waiver.

14. It is important to abide by the FCM rules, including deadlines, in order to enable ISO-NE to effectively administer its capacity market, and therefore, we will not automatically grant waiver of ISO-NE's Tariff requirements absent good cause. National Grid has failed to persuade us to allow its request for waiver of the ISO-NE Tariff requirements and thus, its request is denied.

The Commission orders:

National Grid's request for waiver is hereby denied, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff dissenting with a separate statement to be issued at a later date.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>16</sup> See, e.g., *Comverge, Inc.*, 133 FERC ¶ 61,250 (2010); *CPower, Inc.*, 133 FERC ¶ 61,127 (2010). We further note that, in these cases, unlike here, ISO-NE did not oppose the waiver requests.