

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Massachusetts Electric Company  
The Narragansett Electric Company

Docket No. ER11-2729-000

(Issued February 23, 2011)

Attached is the statement by Chairman Wellinghoff dissenting to an order issued on February 15, 2011, in the above referenced proceeding, *Massachusetts Electric Company and the Narragansett Electric Company*, 134 FERC ¶ 61,116 (2011).

Kimberly D. Bose,  
Secretary.

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WELLINGHOFF, Chairman, *dissenting*:

The majority today denies a request for waiver submitted by the Massachusetts Electric Company and Narragansett Electric Company (collectively, National Grid). Specifically, National Grid sought a limited waiver of a provision in ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff) related to the administration of ISO-NE's Forward Capacity Market (FCM). I dissent from the order because I conclude that there is insufficient information in the record to conclude whether to grant or deny the waiver.

As explained in the majority opinion, National Grid serves as Lead Market Participant for a dozen qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA) operating in the ISO-NE control area. The two small QFs at issue have Capacity Supply Obligations under ISO-NE's FCM for capability year 2011-2012. Upon review of the QFs' demonstrated capabilities in prior winter and summer periods, ISO-NE determined that the QFs may not be able to meet their Capacity Supply Obligations for the 2011-12 commitment period. Through a notice and other communications, ISO-NE repeatedly informed National Grid of the QFs' apparent lack of capacity and the opportunity to submit restoration plans to the ISO-NE to address the deficiency. The restoration plans would allow the QFs to offer evidence to ISO-NE that, despite their apparent capacity deficiency, they had the ability to restore their qualified capacity back to their total capacity supply obligations in time for the annual reconfiguration auction scheduled for March 1, 2011, the third such auction for the 2011-2012 commitment period. As an explanation, National Grid offers that its employees "administering" the relationship between National Grid and the small QFs "did not appreciate the significance of the notice because administrative duties of this type . . . were never historically a part of their responsibilities."<sup>1</sup> It was these employees who, after receipt of a written notice and other communications, failed to inform the QFs of the deadline for submitting restoration plans.

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<sup>1</sup> National Grid Request for Limited Waiver at 5.

Two-and-a-half months after the November 5, 2010 deadline for submitting restoration plans under ISO-NE's Tariff, on January 21, 2010, National Grid filed the waiver request before the Commission in this proceeding. The request seeks waiver of the tariff provision establishing the November 5, 2010 deadline for submitting restoration plans. The waiver would allow ISO-NE to evaluate the two restoration plans that were submitted to ISO-NE on January 28, 2011. For its part, ISO-NE submitted a protest opposing the request. The protest represents the first time ISO-NE has formally opposed a request for waiver of its FCM qualification rules to extend a deadline. ISO-NE argues that, in light of National Grid's failure to heed the notice and other communications, good cause does not exist to grant the requested waiver.

In an otherwise well-reasoned order, the majority, like ISO-NE in its Protest, focuses on the fault of National Grid as the chief basis for denying the waiver. As Lead Market Participant for the two QFs, the record shows that National Grid indeed failed to respond with appropriate celerity when informed of the QFs' apparent capacity deficiency and the opportunity to submit restoration plans to address it. The order paraphrases statements from National Grid explaining that the notices received by National Grid were not forwarded to the QFs and, as a result, the QFs did not know their qualified capacity would be decreased if restoration plans were not submitted.<sup>2</sup> No one disputes that National Grid is at fault. And if the fault of National Grid was the sole issue before us in determining whether good cause existed to grant the waiver, the decision to deny the requested waiver no doubt would be as clear-cut as the majority suggests it is. But because the harm from denial of the waiver would be suffered not by National Grid, but by the two small QFs,<sup>3</sup> it is this harm that, I believe, must be the focus of whether good cause exists to grant the waiver.

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<sup>2</sup> Order at P 5. Although no one disputes National Grid's assertion, ISO-NE offered a statement that may be contrary to the conclusion that the QFs did not know that their capacity would be decreased. ISO-NE states that it sent a notice to "all resources" with significant decreases on October 22, 2010, before e-mail notification was sent to Lead Market Participants on October 28, 2010. ISO-NE Protest at 2. But it is unclear from the record whether the notice sent to "all resources" was sent to the QFs or just to Lead Market Participant.

<sup>3</sup> According to National Grid, the amount of capacity associated with these QFs prior to any restoration is equal to 0 MW in the summer and 0.074 MW in the winter for one and 0 MW in the summer and 0.241 MW in the winter for the second. Assuming they submit successful restoration plans to ISO-NE, the total capacity for these two QFs would be increased to 0.063 MW and 0.083, respectively, in the summer, and to 0.130 MW and 0.350 MW, respectively, in the winter. National Grid Informational Filing at 1-2 (Jan. 31, 2011).

Since the record does not contain much information regarding the financial effect of National Grid's administrative shortcomings on the two small QFs, the following additional information would help determine whether good cause exists to grant the waiver: (1) whether the QFs had reason to know of the capacity deficiency notice or other related communications from ISO-NE and the opportunity to submit restoration plans; (2) what role, if any, the QFs played in the failure to timely submit restoration plans; (3) how much capacity revenue would be lost by the QFs as a result of their reduced capacity supply obligation; (4) how much would the QFs be required to pay in fines to ISO-NE for failing to meet their capacity supply obligations; (5) whether National Grid has a contractual obligation under the power purchase rate agreements that would allow recourse for the QFs under these circumstances; and (6) how many other similarly situated entities (i.e., entities that learned of their capacity deficiency and opportunity to cure by their Lead Market Participant only after the relevant deadline had passed) exist that might have submitted restoration plans if given more time. Without these additional facts, I believe that the record lacks the information necessary to fairly evaluate whether good cause exists to grant the waiver.

For these reasons, I respectfully dissent from today's order.

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Jon Wellinghoff  
Chairman