

135 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northeast Utilities Service Company

Docket No. ER11-3119-000

ORDER DENYING LIMITED WAIVER

(Issued May 9, 2011)

1. This order addresses Northeast Utilities Service Company's (NUSCO) March 16, 2011 request for a limited waiver of a deadline prescribed in ISO New England Inc.'s (ISO-NE) Forward Capacity Market (FCM) Metering and Resettlement Deadlines Calendar, as provided for in ISO-NE's Transmission, Markets and Services Tariff, to allow NUSCO to resubmit interval meter data for eight demand response assets for the June 2010 obligation month. The Commission herein denies the request for limited waiver.

I. Waiver Request

2. In its waiver request, NUSCO contends that, on November 13, 2010, NUSCO received a Resettlement Statement from ISO-NE for the June 2010 obligation month, which, unexpectedly, did not reflect validated and corrected interval meter data for eight demand response customer assets. NUSCO states that its demand response meter reader, Conservation Resource Solutions, Inc. (CRS), initially had submitted five-minute interval meter data for the eight demand response assets to ISO-NE in real-time during ISO-NE's June 2010 demand response events, using the Remote Terminal Unit (RTU) interface with ISO-NE. However, NUSCO subsequently determined through its regular validation processes that, due to technical metering issues at the assets' locations, such as malfunctioning utility pulse output boards and electrical noise from equipment installed by end-use customers, the data needed to be corrected and resubmitted to ISO-NE.

3. According to NUSCO, pursuant to ISO-NE's new FCM infrastructure and processes, implemented on June 1, 2010, CRS resubmitted the corrected data, not via the RTU, but through ISO-NE's internet-based Demand Response Market User Interface (MUI). NUSCO states that CRS informed NUSCO that, between October 2-4, 2010,

CRS transmitted the corrected interval data using the MUI, in accordance with ISO-NE's internet-based data communication protocols and prior to ISO-NE's 101-day deadline of 5:00 p.m. Eastern Time on October 9, 2010. NUSCO asserts that it and CRS did not learn of the lack of incorporation of the corrected interval meter data for the eight demand response assets into ISO-NE's settlement system until NUSCO received the November 13, 2010 Resettlement Statement, after ISO-NE's October 9, 2010 deadline for submission of corrected data had expired. NUSCO asserts that the absence of the corrected data in the November 13, 2010 Resettlement Statement can only be attributed to factors beyond the knowledge or control of NUSCO or CRS, such as, for example, a temporary failure of the internet which affected the transmission of the corrected meter data to ISO-NE.

4. NUSCO states that, in conjunction with CRS, it submitted a request to ISO-NE for a billing adjustment. NUSCO requested that ISO-NE accept for resubmission the validated and corrected interval meter data to reflect the actual performance of these eight demand response assets during the June 2010 obligation month. On February 16, 2011, ISO-NE denied NUSCO's request for a billing adjustment.

5. In support of its waiver request here, NUSCO states that it and CRS acted in good faith in attempting to transmit corrected meter data through the MUI prior to the deadline. NUSCO further claims that the waiver is of limited scope, because it seeks a one-time waiver only for NUSCO and only from the October 9, 2010 deadline for submitting corrected meter data for June 2010. NUSCO opines that, absent waiver, the eight affected demand response assets will be deprived of capacity payments totaling 10.096 MW of demand reduction performance during June 2010 and that allowing resubmission of the data will not harm third parties, who would only be required to return any windfall funds they received that should have been allocated to the eight demand response resources.

II. Notice of the Filing and Responsive Pleadings

6. Notice of NUSCO's request for limited waiver was published in the *Federal Register*, 76 Fed. Reg. 17,118 (2011), with interventions and protests due on or before April 6, 2011. New England Power Pool Participants Committee filed a timely motion to intervene. ISO-NE filed a timely motion to intervene and protest. On April 8, 2011, CRS filed a motion to intervene out-of-time.

7. In its protest, ISO-NE states that it denied NUSCO's request for a billing adjustment because neither NUSCO nor CRS provided any evidence that it had attempted to upload the corrected data. ISO-NE states that the 101-day data reconciliation process in Section III.3.6 of Market Rule 1 provides a lengthy data correction period to ensure that participants have sufficient time to verify the accuracy of their data following the issuance of an initial invoice, minimize risk of settlement error, and provide for finality of

the settlement process within a reasonable period of time. ISO-NE emphasizes that adhering to the established settlement timeline is critical for proper market settlement. ISO-NE adds that it encourages market participants to verify data submissions using its MUI and argues that granting the waiver request would send the wrong signal to participants on performing data checks.

8. ISO-NE also argues that granting the waiver could adversely impact the administration of the third Annual Reconfiguration Auction (ARA) for the 2011/2012 Capacity Commitment Period.¹ The third ARA was conducted on March 1-3, 2011. ISO-NE explains that some of the resources listed in the waiver request participated in the ARA. ISO-NE also states that those resources' Demand Reduction Values derived from the June 2010 settlement, and thus were important determinants for establishing Demand Resource positions in the ARA. On March 17, 2011, ISO-NE provided notice to participants that the results of the third ARA had been approved and provided the updated Capacity Supply Obligation positions resulting from the auction. The third ARA is the final ARA before the start of the 2011/2012 Capacity Commitment Period. As such, ISO-NE explains, the results of the third ARA are an important input into monthly bilateral transactions and reconfiguration auctions for the 2011/2012 Capacity Commitment Period. ISO-NE states that granting the waiver would require a change in the amount of capacity that cleared in the auction, and, therefore, would be disruptive to the FCM and unfair to other participants.

III. Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant CRS's motion to intervene out-of-time, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

Commission Determination

10. The Commission will deny NUSCO's limited waiver request. The Commission has granted waiver from ISO-NE's Tariff requirements in limited situations 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

¹ *Devon Power, LLC*, 115 FERC ¶ 61,340, at P 18 (2006) ("These reconfiguration auctions provide for the buying, selling and exchange of capacity obligations and maintenance of liquidity.").

consequences, such as harming third parties.² The Commission finds that the circumstances here do not justify waiver.

11. While NUSCO and CRS claim that they acted in good faith in attempting to timely resubmit corrected data, they did not provide the Commission with supporting documentation of such a resubmission. Indeed, ISO-NE notes in its answer that it denied NUSCO's request for a billing adjustment for the very same reason. Rather than properly evidencing its claim, NUSCO offers unsubstantiated statements as well as unsubstantiated conjecture, specifically, the possibility of an internet failure, as a reason the alleged resubmission of data failed.

12. Moreover, we find that the requested waiver is not of limited scope and would have undesirable consequences; it would require a re-running of market settlements, something the Commission has been reticent to require,³ and a change in the results of the third ARA, which would adversely impact other market participants. Considering that the 2011/2012 ARA has already been conducted and that NUSCO has failed to submit any persuasive evidence in support of its waiver request, the Commission will not disrupt the FCM by granting the waiver.

13. The Commission emphasizes that it is important to abide by the FCM rules, including established deadlines, in order to enable ISO-NE to effectively administer the markets in New England. Therefore, we will not grant requests for waiver of ISO-NE's Tariff requirements absent good cause shown.⁴

² See, e.g., *ISO New England Inc.*, 134 FERC ¶ 61,182 at P 8 (2011); *ISO New England Inc.*, 127 FERC ¶ 61,242 at P 13 (2009); *ISO New England Inc.*, 122 FERC ¶ 61,297 at P 13 (2008).

³ *Maryland Public Service Comm'n v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, at P 49 (2008) (citing *Mirant Energy Trading, LLC v. PJM Interconnection, LLC*, 122 FERC ¶ 61,007 (2008); *Bangor Hydro-Electric Company v. ISO New England Inc.*, 87 FERC ¶ 61,339 (2001) (finding that re-running markets even when an error was made would do more harm to electric markets than is justifiable)), reh'g denied, 125 FERC ¶ 61,340 (2008). See also *California Indep. Sys. Operator*, 120 FERC ¶ 61,271, at P 25 (2007) (identifying market reruns as the exception, not the rule).

⁴ See *Massachusetts Elec. Co.*, 134 FERC ¶ 61,116 (2011).

The Commission orders:

NUSCO's request for limited waiver is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.