

138 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Seneca Energy II, LLC

Docket No. ER12-941-000

ORDER DENYING REQUEST FOR WAIVER

(Issued March 29, 2012)

1. On January 30, 2012, Seneca Energy II, LLC (Seneca) filed a request for a limited waiver of section III.13.1.1.2 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The waiver would allow Seneca to submit its Show of Interest form to ISO-NE after the deadline set forth in the rules implementing ISO-NE's Forward Capacity Market (FCM). As discussed below, the Commission denies the request for waiver.

Background

2. ISO-NE implements the FCM, through which capacity resources compete to provide capacity to New England on a three-year-forward basis, using an annual Forward Capacity Auction (FCA).¹ Section III.13.1.1.2 of ISO-NE's Tariff requires project sponsors of capacity resources to submit to ISO-NE a Show of Interest form during a specified submission window as a condition of participation in the FCA. Under section III.13.1.10 of ISO-NE's Tariff, the submission window for the seventh FCA was January 3, 2012 to January 17, 2012.

¹ 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), *order on remand*, 134 FERC ¶ 61,208 (2011), *reh'g denied*, 137 FERC ¶ 61,073 (2011).

Seneca's Filing

3. Seneca requests a waiver of section III.13.1.1.2 to allow it to submit its Show of Interest form out of time.² Seneca explains that its parent company was recently acquired, burdening Seneca employees with additional scheduling, operational, and portfolio management responsibilities.³ Seneca states that, as a result of these additional responsibilities, an operational oversight occurred that caused Seneca to fail to timely submit a Show of Interest form.⁴ Seneca further states that, after discovering the error on January 19, 2012, it discussed the situation with ISO-NE which advised that Seneca's only option was to seek a waiver from the Commission.⁵

4. Seneca asserts that it is appropriate for the Commission to grant its request for waiver because doing so would be consistent with Commission precedent.⁶ Seneca also asserts that it satisfies the criteria the Commission normally applies when evaluating a waiver request.⁷ First, Seneca purports that its failure to timely submit the Show of Interest form was made in good faith because the failure was due to an administrative oversight related to the acquisition of its parent company.⁸ Second, Seneca argues that this request is limited in scope because it would apply to only this occurrence.⁹ Third, Seneca argues that granting the waiver would remedy the concrete problem of its being unable to participate in the seventh FCA.¹⁰ Last, Seneca states that granting the waiver

² While Seneca specifically cites to section III.13.1.1.2 of ISO-NE's Tariff in its request for waiver, the Commission believes that Seneca cited to that section in error. We note that waiver of section III.13.1.10 is required to allow Seneca to submit, and ISO-NE to accept, Seneca's Show of Interest form, and we will treat Seneca's request for waiver as seeking the same.

³ Seneca Request for Waiver at 5-6.

⁴ *Id.* at 6.

⁵ *Id.*

⁶ Seneca cites to *Comverge, Inc.*, 133 FERC ¶ 61,250 (2010); *CPower, Inc.*, 133 FERC ¶ 61,127 (2010); *ISO New England Inc.—EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008).

⁷ Seneca Request for Waiver at 7.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

would not have undesirable consequences because the operational characteristics of Seneca's prior-participating resources remain constant and Seneca notified ISO-NE of its error only two days after the submission window deadline.¹¹

Notice of the Filing and Responsive Pleading

5. Notice of Seneca's filing was published in the *Federal Register*, 77 Fed. Reg. 6103 (2012), with interventions and protests due on or before February 21, 2012. ISO-NE timely filed a motion to intervene and protest.

6. ISO-NE asserts that Seneca failed to satisfy the Commission's evaluation criteria for granting waivers.¹² ISO-NE argues that Seneca's error was not made in good faith because, in its view, Seneca was fully informed of the Show of Interest form requirement and submission window.¹³ ISO-NE states that the requirements associated with the Show of Interest form are set forth in the Tariff, ISO-NE posted the submission window deadline on its website and notified the FCM participants via e-mail, and ISO-NE noted the deadline in training materials presented to attendees of a November 30, 2011 training session.¹⁴ ISO-NE argues that the waiver would not be limited in scope because, to its knowledge, other market participants in addition to Seneca failed to submit a timely Show of Interest form.¹⁵ ISO-NE further argues that no concrete problem exists because, this being the seventh FCA and noting its efforts to inform market participants of the Show of Interest form requirements, market participants are fully aware of their responsibilities with respect to participation in the auction.¹⁶ Last, ISO-NE argues that granting Seneca's waiver request would result in undesirable consequences because, if the Commission grants Seneca's request without permitting all other entities similarly situated to Seneca to do the same, it would result in undue discrimination.¹⁷

¹¹ *Id.*

¹² ISO-NE Protest at 4.

¹³ *Id.*

¹⁴ ISO-NE states that a representative from Seneca attended the November 30 training.

¹⁵ ISO-NE Protest at 5.

¹⁶ *Id.*

¹⁷ *Id.*

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁸ the timely, unopposed motion to intervene serves to make ISO-NE a party to this proceeding.

Determination

8. The Commission denies Seneca's request for 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 have undesirable consequences, such as harming third parties.¹⁹ The Commission, however, finds that the particular circumstances of this case do not justify granting waiver.

9. In an effort to support its request for waiver, Seneca primarily argues that its failure to timely submit a Show of Interest form is the result of an administrative oversight, an argument we find unpersuasive. Administrative oversight is not a sufficient basis to justify waiving an express deadline.²⁰ As the Commission previously has stated, it is important to abide by the FCM rules, including deadlines, in order to enable ISO-NE to effectively administer the FCM, and therefore, we will not automatically grant waiver of ISO-NE's Tariff requirements merely because we are asked to do so.²¹ As ISO-NE explains, the submission deadline for Show of Interest forms was communicated to all market participants, including Seneca, in several ways, notably in the Tariff, on ISO-NE's website, and via e-mail, as well as in training materials. Seneca does not claim that it failed to receive or have access to these notifications. Additionally, Seneca

¹⁸ 18 C.F.R. § 385.214 (2011).

¹⁹ See, e.g., *Massachusetts Electric Company*, 134 FERC ¶ 61,116 (2011); *Comverge, Inc.*, 133 FERC ¶ 61,250; *CPower, Inc.*, 133 FERC ¶ 61,127. We note that, unlike here, the requests for waiver in *Comverge* and *CPower* were unopposed by ISO-NE.

²⁰ Cf., e.g., *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339 (1992), *reh'g denied*, 61 FERC ¶ 61,089, at 61,356 (1992); *Northeast Utilities Service Co.*, 76 FERC ¶ 61,237, at 62,151 (1996); *Illinois Power Co.*, 75 FERC ¶ 61,269, at 61,878 (1996) ("administrative oversight" does not justify prior notice waiver).

²¹ *Massachusetts Electric Company*, 134 FERC ¶ 61,116 at P 14.

acknowledges that it has participated in three prior FCAs,²² so it should have been fully aware of the requirements and timeframes associated with FCA participation.

10. Furthermore, while Seneca argues that its waiver request is of limited scope, we disagree. Granting its request here could have broad ramifications, by allowing waiver of tariff provisions based on nothing more than an applicant's bare claim of administrative oversight. Moreover, we find on the record before us that granting Seneca's request for waiver would result in unduly favorable treatment to Seneca, while other market participants abided by the Tariff requirement to submit a timely Show of Interest form.

11. For these reasons, we deny Seneca's request for waiver.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² Seneca Request for Waiver at 5.