

140 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER12-1678-000

ORDER ACCEPTING FORWARD CAPACITY AUCTION RESULTS FILING

(Issued August 27, 2012)

1. In this order, the Commission accepts a filing by ISO New England Inc. (ISO-NE) detailing the results of its sixth Forward Capacity Auction (FCA) (the Sixth FCA Results Filing), to become effective August 28, 2012, as requested.

I. Background

2. As discussed in prior orders,¹ on March 6, 2006, ISO-NE filed a Settlement Agreement establishing the framework for New England's Forward Capacity Market (FCM). Under the FCM mechanism, ISO-NE provides capacity payments to resources that provide capacity to the New England region, and capacity resources compete, through the annual FCA, to be selected to provide capacity on a three-year forward basis. Pursuant to section III.13.8.2 of its Transmission, Markets, and Services Tariff (Tariff), ISO-NE is required to submit a filing with the Commission detailing FCA results, including the final set of Capacity Zones resulting from the auction, the Capacity Clearing Price in each of those Capacity Zones and the Capacity Clearing Price associated with certain imports pursuant to section III.13.2.3.3(d), a list of resources that

¹ See, e.g., *ISO New England Inc.*, 137 FERC ¶ 61,056 (2011); *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 (FCM Settlement Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006) (FCM Rehearing Order), *aff'd in relevant part sub nom. Maine Public Utilities Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008), *order on remand, Devon Power LLC*, 126 FERC ¶ 61,027 (2009).

received Capacity Supply Obligations in each Capacity Zone, and the amount of those Capacity Supply Obligations.

3. ISO-NE conducted its sixth FCA on April 2 and 3, 2012 for the June 1, 2015 through May 31, 2016 Capacity Commitment Period. ISO-NE submitted the Sixth FCA Results Filing at issue here on April 30, 2012.

II. The Sixth FCA Results Filing

4. As set forth in the Sixth FCA Results Filing, pursuant to ISO-NE's Tariff, the auction was required to procure capacity equal to the Net Installed Capacity Requirement (NICR) of 33,456 MW.² Additionally, ISO-NE states that the cost of new entry (CONE) for the sixth FCA was set at \$5.723/kW-month for the Maine and Rest-of-Pool Capacity Zones. Accordingly, the sixth FCA starting price was \$11.446/kW-month, or two times CONE, in accordance with the Tariff.

5. ISO-NE states that, when the auction reached the price floor of \$3.434/kW-month, 2,853 MW of excess capacity remained in the auction.³ ISO-NE states that the auction resulted in one Capacity Zone for the entire New England region. In accordance with the Tariff, the auction concluded when the auction floor price was reached, with load expected to pay only NICR times the floor price.

6. Because the auction cleared at the floor price with capacity remaining in excess of the NICR and because the Tariff specifies that load will pay no more than NICR times the floor price, resources will choose between receiving a Capacity Supply Obligation of their full cleared capacity at a pro-rated payment rate, or receiving the floor price of \$3.343/kW-month and prorating their Capacity Supply Obligation by the same ratio.

² The NICR is the quantity of supply necessary to meet the reliability requirements for the New England Control Area and is here used interchangeably with the term ICR, or installed capacity requirement. The "net" in NICR refers to the deduction of Hydro Quebec Interconnection Capability Credits. The Commission approved the NICR of 33,456 MW for the 2015-2016 Commitment Period in *ISO New England, Inc.*, 138 FERC ¶ 61,196 (2012) (accepting ISO-NE's proposed installed capacity requirement, Hydro Quebec interconnection capability credits, and related values).

³ The price floor is administratively determined by ISO-NE and is the product of 0.6 times CONE. For FCA 6, the Price Floor is equal to 0.6 times \$5.723/kW-Month (the CONE for FCA 6), or \$3.434/kW-Month.

Thus, the auction will purchase between 33,456 MW, which is the NICR, and 36,326 MW, depending on the proration elections of the auction participants.⁴

7. Section III.13.8.2 of ISO-NE's Tariff also requires ISO-NE to identify in its FCA results filings any form of de-list bids it rejects for reliability reasons. FCM rules allow an existing resource to opt out of the market by submitting a dynamic de-list bid. Dynamic de-list bids must be submitted during the auction, below the price of 0.8 times CONE, and are not subject to review by the Internal Market Monitor.⁵ Unless ISO-NE finds that the relevant resource is needed for reliability,⁶ that resource will withdraw from the auction when the auction clearing price drops below its dynamic de-list bid.

8. In its Sixth FCA Results Filing, ISO-NE reports that it reviewed 191 de-list bids⁷ to determine if those resources were needed for reliability. Approximately 1,868 MW of de-list bids were reviewed for reliability and, of that total, 1,789 MW of de-list bids were not needed for reliability and were cleared to leave the auction. ISO-NE rejected the remaining six dynamic de-list bids, totaling 79 MW of capacity, all located in the Northeast Massachusetts/Boston (NEMA/Boston) Load Zone.

9. Most relevant here, one of the dynamic de-list bids rejected for reliability reasons was for 27 MW of capacity submitted by the GenOn Parties for the GenOn Kendall station, a 226 MW cogeneration facility located in Cambridge, Massachusetts. In the testimony of Mr. Stephen Rourke (Rourke Testimony), ISO-NE explains that it rejected the bid for reliability reasons, because allowing the resource to leave the market would have resulted in a violation of North American Electric Reliability Corporation (NERC) standards, Northeast Power Coordinating Council (NPCC) requirements, or ISO-NE

⁴ According to ISO-NE, the preliminary results show that 30,757 MW of generating resources, 3,628 MW of demand resources, and 1,924 MW of imports cleared the auction. See ISO-NE press release, April 6, 2012, http://www.iso-ne.com/nwsiss/pr/2012/final_fca6_initial_release_04062012.pdf.

⁵ Existing resources [that are not seeking to retire permanently from the FCM](#) may also submit a static de-list bid, which must be at or above the price of 0.8 times CONE and is subject to review by the Internal Market Monitor (ISO-NE Tariff, section III.13.1.2.3.1.1).

⁶ ISO-NE Tariff, section III.13.2.5.2.5.

⁷ This number includes two Permanent, one Administrative Export, 38 Static bids and 150 dynamic de-list bids.

reliability-related criteria.⁸ However, as explained in the Rourke Testimony, a de-list bid rejected for reliability reasons may be accepted at a later date as long as ISO-NE notifies the resource that it is no longer needed for reliability by June 1 of the year preceding the Capacity Commitment Period for which the de-list bid was accepted. For the sixth FCA, that notification date is prior to June 1, 2014.⁹

10. Finally, as required by section III.13.8.2(b) of the Tariff, ISO-NE included in its Sixth FCA Results Filing documentation regarding the competitiveness of the auction, including certification that all entities offering and bidding in the auction were properly qualified in accordance with Tariff section III.13.1 and that the auction was conducted in accordance with Tariff section III.13.

III. Notice of the Filing

11. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 27,223 (2012), with interventions and protests due on or before June 14, 2012.¹⁰ New England Power Pool Participants Committee (NEPOOL); Exelon Corporation; GenOn Energy Management and GenOn Kendall, LLC (GenOn Kendall) (collectively, the GenOn Parties); and Northeast Utilities Service Company filed timely motions to intervene.

12. The United States Environmental Protection Agency, Region 1 (EPA) and the GenOn Parties each filed comments.

13. On June 29, 2012, ISO-NE filed an answer.

IV. Responsive Pleadings

14. EPA states that the GenOn Kendall station is a cogeneration facility in Cambridge, Massachusetts that was originally constructed to cool its turbines using “open-cycle cooling.” EPA states that use of open-cycle cooling has negative consequences for the Charles River ecosystem and violates the federal Clean Water Act.¹¹ EPA explains that, over the past decade, EPA Region 1 and GenOn, in

⁸ Rourke Testimony at 5.

⁹ *Id.* at 19.

¹⁰ Pursuant to Section III.13.8.2(c) of the Tariff, any objection to the FCA results must be filed with the Commission within 45 days from the date of the FCA Results Filing.

¹¹ Clean Water Act § 101(a), 33 U.S.C. § 1251(a) (2006).

coordination with nonprofit environmental groups and citizens, have engaged in a lengthy process to issue the GenOn Kendall station a modified National Pollutant Discharge Elimination System permit (the Permit).¹² EPA explains that the Permit requires GenOn to “install and operate as necessary an air cooled condenser and back pressure steam turbine”¹³ which will permanently reduce the GenOn Kendall station’s generation capacity by approximately 27 MW.

15. EPA states that its sole interest is in ensuring the GenOn Kendall station’s compliance with the Permit. EPA states that, as far as it is aware, the GenOn Kendall station cannot meet the Clean Water Act requirements specified in the Permit without curtailing its operations. Thus, EPA believes that ISO-NE’s rejection of the de-list bid will likely complicate GenOn’s efforts to meet the requirements, which will apply regardless of the outcome of this proceeding.

16. However, EPA recognizes that ISO-NE’s Tariff provides other mechanisms by which GenOn could avoid violating the Clean Water Act, despite the rejection of its de-list bid.¹⁴ EPA states that it expresses no opinion regarding these other options; rather, its comments are to advise the Commission that EPA is not aware of a means by which the GenOn Kendall station can itself generate the 27 MW of capacity at issue without violating the Clean Water Act.¹⁵

17. GenOn Parties state that, while they respect ISO-NE’s concerns about maintaining reliability in the NEMA/Boston Load Zone, the GenOn Kendall station may not be able to supply the 27 MW of capacity due to a reconfiguration of the GenOn Kendall station to comply with EPA requirements. GenOn Parties state that ISO-NE’s rejection of the GenOn Kendall de-list bid will force the GenOn Parties to choose between compliance with an EPA Administrative Order, and the risk of significant penalties and other financial consequences associated with a failure to satisfy its capacity supply

¹² Section 301 of the Clean Water Act prohibits discharge of a pollutant except in compliance with a National Pollutant Discharge Elimination System permit.

¹³ EPA Comments at 3.

¹⁴ For example, EPA explains that GenOn could enter into bilateral contracts with other capacity supply resources (subject to ISO-NE approval), or it could pay an availability penalty to ISO-NE. *Id.* at 5. *See* ISO-NE Tariff at section III.13.5 (Bilateral Contracts in the Forward Capacity Market) and section III.13.7.2.7.1.2 (Availability Penalties).

¹⁵ EPA Comments at 4-5.

obligations.¹⁶ GenOn Parties state that should the de-list bid not be accepted by June 1, 2014, the GenOn Kendall station would be penalized for its good faith efforts to comply with EPA requirements, which result would be contrary to sound public policy and would discourage other generators from undertaking similar efforts in the future. Additionally, GenOn Parties state that there is an injustice to generators that are increasingly being forced to choose between conflicting regulatory regimes administered by the Commission and EPA.¹⁷ GenOn Parties add that they are hopeful that the de-list bid for the GenOn Kendall station will be accepted at a later date, as the Tariff allows. Therefore, the GenOn Parties ask that the Commission encourage ISO-NE to inform the GenOn Parties of such an acceptance earlier than the June 1, 2014 deadline, if possible.¹⁸

18. Additionally, the GenOn Parties state that they have been engaged in discussions with ISO-NE regarding the appropriate treatment of capacity being lost due to environmental permit restrictions on existing resources. The GenOn Parties state that the lack of such rules in ISO-NE exposes the owners of such facilities to unacceptable risks of being held responsible for reliability that they cannot provide.¹⁹ The GenOn Parties recognize ISO-NE's efforts to address these issues, by circulating a proposal to modify the Tariff provision relating to Non-Price Retirement Requests in time for the seventh FCA,²⁰ but respectfully ask that the Commission encourage ISO-NE to work with its stakeholders so that the necessary Tariff reforms can be in place by the seventh FCA

¹⁶ Along with citing the options provided in EPA's Comments, GenOn Parties also state that the GenOn Kendall station could be exposed to penalties of up to two times CONE (cost of new entry) applied to the amount it is deficient from its Capacity Supply Obligation. *See* Tariff, sections III.13.4.2.1.3(d) and III.13.7.2.7.1.2. GenOn Parties Comments at 8.

¹⁷ GenOn Parties Comments at 8-9.

¹⁸ *Id.* at 2.

¹⁹ The GenOn Parties note that other capacity markets have measures designed to address these issues. For example, PJM has provisions in its Tariff – Attachment DD, section 6.1(g) – that may grant an exception to the must-offer requirement when “[s]ignificant physical operational restrictions cause long term or permanent changes” to a resource's installed capacity value. GenOn Parties Comments at 6, fn. 26.

²⁰ *See*, ISO-NE Presentation, Partial Non-Price Retirements (June 7, 2012), available at http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2012/jun12132012/index.html, Agenda Item A-09.

which will ensure both sound public policy and the planning and operation of a reliable transmission system.²¹

19. In its answer, ISO-NE states that it recognizes the concerns of both EPA and the GenOn Parties, but affirms that, under the facts and circumstances known when the de-list bid was submitted, ISO-NE properly rejected the GenOn Kendall station's de-list bid. However, ISO-NE also confirms that the reliability determination for the GenOn Kendall station is not final until June 1, 2014. ISO-NE states that it did not know that the capacity associated with GenOn Kendall's de-list bid may not exist during the 2015/2016 Capacity Commitment Period as the GenOn Parties stated in its comments. ISO-NE states that it is currently re-evaluating the need for all rejected de-list bids based on the most recent load forecast, new resources that cleared in the NEMA/Boston Load Zone in the sixth FCA, and changes in transmission topology. Consistent with GenOn's request, ISO-NE commits to notifying GenOn as soon as possible, if ISO-NE subsequently determines that the GenOn Kendall station's 27 MW is no longer needed for reliability reasons.²²

20. Also, ISO-NE states that the New England stakeholders are currently evaluating Tariff changes that would allow a resource to remove part of its capacity from future auctions, without a requirement to retire an entire facility or submit a de-list bid. ISO-NE states that, at its June 2012 Markets Committee meeting, it presented to its stakeholders a proposal to develop Tariff provisions to allow for the submission of partial retirement requests. ISO-NE states that it may be able to implement the Tariff changes before the close of the Non-Price Retirement window on October 7, 2012, allowing for resources to submit partial retirement requests for the seventh FCA.²³

V. Discussion

A. Procedural Issues

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding.

²¹ GenOn Parties Comments at 11.

²² ISO-NE Answer at 3-4.

²³ *Id.* at 5. Subsequently, ISO-NE made a filing on August 3, 2012 in ISO New England Inc., Docket No. ER12-2393-000, proposing to allow a resource to submit a Non-Price Retirement Request for all or part of that resource. ISO-NE seeks an effective date of October 2, 2012 for this filing.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed by ISO-NE because it has provided information that has assisted us in our decision-making process.

B. Determination

23. As the Commission has stated in prior orders, ISO-NE is required to file the results of each FCA with the Commission, and we must evaluate the filing to determine whether ISO-NE conducted the FCA in accordance with its FCM rules.²⁴ The sixth FCA acquired the NICR of 33,456 MW, clearing one capacity zone for all of New England, with an excess supply of 2,853 MW at the floor price of \$3.434/kW-month. The Commission finds that ISO-NE has demonstrated that the sixth FCA was conducted according to the FCM rules, and we accept the filing, effective August 28, 2012, as requested.

24. In response to the GenOn Parties' concerns, we note that the parties do not dispute ISO-NE's rejection of GenOn Kendall's de-list bid for reliability reasons. According to ISO-NE, it is currently re-evaluating the need for all rejected de-list bids based on the most recent load forecast, new resources that cleared in the NEMA/Boston Load Zone in the sixth FCA, and changes in transmission topology. We further note that ISO-NE has already acknowledged the importance to the GenOn Parties of early notification as to whether its Kendall de-list bid can be accepted.²⁵ Consistent with ISO-NE's commitment (1) we encourage ISO-NE to inform the GenOn Parties of any acceptance of the Kendall de-list bid earlier than the June 1, 2014 deadlines, if possible; and (2) we further encourage ISO-NE's continued effort to cooperate with its stakeholders in developing Tariff changes that would allow a resource to remove part of its capacity from future auctions without retiring its entire facility.

25. Additionally, the tariff provides GenOn Kendall with alternate means of fulfilling its Capacity Supply Obligation for the 27 MW it can no longer generate by seeking to shed the obligation to supply those MWs through submitting a demand bid in

²⁴ See, e.g., *ISO New England Inc.*, 137 FERC ¶ 61,056, at P 15 (2011); *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 33 (2010); *ISO New England Inc.*, 133 FERC ¶ 61,230, at P 28 (2010).

²⁵ See, ISO-NE Answer at 4 ("[i]f the 27 MW from Kendall Station are no longer needed for reliability for the 2015-2016 Capacity Commitment Period, the ISO will notify GenOn as soon as possible after that determination is made").

reconfiguration auctions,²⁶ or by entering into a bilateral contract to supply them.²⁷ We encourage GenOn Kendall to evaluate these options for purposes of meeting its capacity supply obligations, if necessary.

The Commission orders:

ISO-NE's Sixth FCA Results Filing is hereby accepted for filing, to become effective August 28, 2012, as discussed in the body of this order.

By the Commission. Commissioners Moeller and Clark are concurring with separate statements attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ ISO-NE Tariff, section III.13.4.

²⁷ *Id.*, section III.13.5.

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Docket No. ER12-1678-000

(Issued August 27, 2012)

MOELLER, Commissioner *concurring*:

This Order provides a clear example of a circumstance where a power generating facility may find itself faced with making the difficult choice of either violating provisions of the Federal Power Act or the Clean Water Act. While the parties in this particular case appear to have options to avoid having to make this choice, not all generators in the future may be so fortunate.

As I testified before the House Committee on Energy and Commerce earlier this year, the security of this Nation depends on a reliable power grid. However, conflicting federal laws and regulations place at risk the stability and reliability of our electric grid, increasing the chance of events such as blackouts. Ultimately, and hopefully soon, such conflicts should be reconciled by Congress to prevent placing utilities in the position of choosing whether to violate one law or another.

Philip D. Moeller
Commissioner

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ISO New England, Inc.

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CLARK, Commissioner, *concurring*:

In concurring with the Commission's action, I believe it fair to note that this case is illustrative of the highly granular nature of reliability modeling. It is also an example of the difficulty faced by electricity generators that are accountable to both reliability regulators and environmental regulators. Without speaking to the relative merits of the environmental regulations that created the circumstance, it appears that GenOn is being forced to choose between conflicting regulatory regimes administered by the FERC and the Environmental Protection Agency. Flowing from that conflict are significant financial consequences to the generator. What is particularly noteworthy is how relatively small reductions in available capacity can be high consequence actions in terms of risk to reliability. In the instant case, GenOn states that the environmental compliance actions will permanently reduce the Kendall Station's generating capacity by 27 MW. This amount of capacity, while small in the greater scheme of things, has been shown to be critical to reliability within the Northeast Massachusetts/Boston Load Zone. While the FERC alone lacks the authority to resolve all potential conflicts between environmental regulations and reliability requirements, I believe it is important to acknowledge the highly detailed nature of reliability modeling and the challenge created by conflicting regulatory regimes. In testimony before Congress in May of this year, prior to my joining the Commission, Commission Moeller highlighted this concern. I join with the sentiments expressed by my colleagues in that testimony, wherein they urged that as Congress seeks to resolve these issues "erring on the side of reliability is the responsible approach."

Accordingly, I respectfully concur.

Tony T. Clark
Commissioner