

123 FERC ¶ 61,149  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

TransCanada Power Marketing Ltd.

Docket No. EL08-43-000

v.

ISO New England Inc.

ORDER ON COMPLAINT

(Issued May 15, 2008)

1. On February 26, 2008, TransCanada Power Marketing Ltd. (TransCanada) filed a complaint requesting fast track processing<sup>1</sup> to require ISO New England Inc. (ISO-NE) to accept TransCanada's January 10, 2008 composite offers into the Forward Capacity Auction (FCA) of the New England Forward Capacity Market (FCM) at the floor price that was established in the first FCA.<sup>2</sup> In this order, we deny TransCanada's complaint.

**I. Summary**

2. On January 10, 2008, in compliance with the Commission's orders in Docket Nos. EL08-11-000 and EL08-11-001<sup>3</sup> (discussed below), TransCanada filed composite offers

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<sup>1</sup> 18 C.F.R. § 385.206(h) (2007) provides that a complainant may request fast track processing.

<sup>2</sup> The first FCA was held February 4 through February 6, 2008.

<sup>3</sup> *TransCanada Power Marketing Ltd. v. ISO New England Inc.*, 122 FERC ¶ 61,010 (2008) (*TransCanada I*), *Order Granting Reh'g in Part and Dismissing Reh'g in Part as Moot*, 122 FERC ¶ 61,049 (2008) (*TransCanada II*).

for inclusion in the first FCA (January 10 Composite Offers). ISO-NE subsequently disqualified those resources from participation in the FCA. TransCanada argues that the disqualification of the January 10 Composite Offers violated the Commission's directive that those resources were to be subjected to the same review process as was applied to other composite offers to "ensure that the component resources have available capacity."<sup>4</sup>

3. TransCanada also argues that ISO-NE knew before it disqualified the January 10 Composite Offers that the associated capacity was in fact available.<sup>5</sup> TransCanada submits that ISO-NE's disqualification of the January 10 Composite Offers therefore contradicts the Commission's orders in *TransCanada I* and *TransCanada II* and the "bedrock principle" that ISO-NE claims to have applied to all other resources that offered to provide capacity in the FCA. Accordingly, TransCanada asks the Commission to order ISO-NE to accept the January 10 Composite Offers into the FCA at the floor price that was established in the auction.

#### A. Background

4. On November 19, 2007, TransCanada filed a complaint in Docket No. EL08-11-000 in which it requested that ISO-NE be required to include 6.222 MW of capacity designated by TransCanada as a Self-Supplied FCA Resource in the first FCA. ISO-NE opposed the complaint on numerous grounds, in part, including the reasoning that there was no mechanism in the FCM rules by which a Self-Supplied FCA Resource designation could be used to create an offer of separate resources.<sup>6</sup>

5. On January 4, 2008, in *TransCanada I*, the Commission granted TransCanada's complaint and directed TransCanada to file composite forms in compliance with section III.13.1.5 of the FCM rules within seven days of the date of the order. TransCanada complied with that directive by filing the January 10 Composite Offers.

6. On January 11, 2008, ISO-NE filed a rehearing request in which it stated that when it attempted to qualify the January 10 Composite Offers it discovered that the associated winter capacity already had been committed as part of other composite offers that previously had been submitted and qualified. It then argued, *inter alia*, that if the January 10 Composite Offers were included in the FCA without any modification of the

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<sup>4</sup> *TransCanada II* at P 19.

<sup>5</sup> TransCanada's February 26, 2008 Complaint at 2 (Complaint).

<sup>6</sup> See *TransCanada I* at P 18.

earlier composite offers, the same capacity would be counted twice in the auction.<sup>7</sup> ISO-NE further argued that all resources in the auction must be able to provide the capacity offered.<sup>8</sup>

7. In *TransCanada II* (the rehearing determination of *TransCanada I*), the Commission directed ISO-NE to subject the January 10 Composite Offers to the same review process as it applied to other composite offers to ensure that the component resources have available capacity.<sup>9</sup> The Commission also dismissed, on procedural grounds, an answer filed by TransCanada on January 15, 2008. TransCanada claims here that the Commission's order in *TransCanada II* did not address the numerous arguments raised in its answer in that proceeding.<sup>10</sup>

### **B. Complaint**

8. TransCanada explains that following the issuance of *TransCanada II*, TransCanada and ISO-NE (the Parties) engaged in extensive discussions regarding the treatment of the January 10 Composite Offers, during which ISO-NE expressed concern about the impact of a disqualification of TransCanada's capacity and the potential for a complaint to interfere with the FCA going forward as scheduled on February 4, 2008. TransCanada explains that on January 23, 2008, TransCanada sent ISO-NE a formal withdrawal of July 2, 2007 composite offers (July 2 Composite Offers).<sup>11</sup> TransCanada states that it promised ISO-NE that it would defer filing a complaint until after the FCA. TransCanada states that the Parties could not come to agreement, and on January 30, 2008, ISO-NE sent TransCanada a formal notice that the January 10 Composite Offers had been disqualified such that the capacity they represent would not be permitted to bid in the February 4, 2008 auction.

9. TransCanada argues that pursuant to *TransCanada I* and *TransCanada II*, ISO-NE was required to determine, based upon the information it knew at the time it reviewed the January 10 Composite Offers, whether the resources offered had available capacity by

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<sup>7</sup> *Id.* at 8.

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

<sup>9</sup> Complaint at 3 (*citing TransCanada II* at P 19).

<sup>10</sup> *Id.* at 11-16 (*citing TransCanada II* at P 20 and 22).

<sup>11</sup> See *id.* at Exhibit 5.

applying the same review process it applied to other composite offers, i.e., just as ISO-NE did in reviewing other composite offers. Because ISO-NE previously had qualified the July 2 Composite Offers as part of an offering made by H.Q. Energy Services (U.S.) Inc. (HQ) on behalf of itself and TransCanada, ISO-NE took the position that it could not qualify the January 10 Composite Offers because the capacity associated with those component resources previously had been offered into the FCA and that to include the capacity as part of the January 10 Composite Offers would result in double counting of TransCanada's capacity.

10. TransCanada also argues that when undertaking its review of the January 10 Composite Offers, ISO-NE knew that, because of the Commission's December 10, 2007 order in Docket No. ER08-41-000, capacity on HQ Phase I/II was set at 1400 MW and Hydro Quebec Interconnection Capability Credits (HQICCs) also were set at 1400 MW.<sup>12</sup> Thus, ISO-NE knew that there was no capacity available to HQ to provide the summer component of the July 2 Composite Offers and that ISO-NE would violate the July 25 Order if it were to accept capacity from HQ over HQ Phase I/II in the auction.

11. TransCanada argues that ISO-NE knew that TransCanada formally had withdrawn the July 2 Composite Offer by an e-mail on January 23, 2008. TransCanada further argues that ISO-NE also knew based upon pleadings and exhibits TransCanada filed with the Commission in Docket No. EL08-11 that there was no exact contract between TransCanada and HQ that would have enabled TransCanada's capacity to be provided in the FCA via the July 2 Composite Offers.

12. TransCanada argues that at the time ISO-NE received the January 10 Composite Offers, there was no ambiguity concerning the availability of TransCanada's capacity, and any question ISO-NE previously may have had concerning the double-counting of capacity in the FCA had been answered.

13. TransCanada argues, therefore, that ISO-NE violated the Commission's directive in *TransCanada II* when it disqualified TransCanada's January 10 Composite Offers. TransCanada acknowledges that it is aware that HQ did in fact bid the July 2 Composite Offers into the FCA, albeit at a price that was not accepted. However, HQ's bidding of the capacity was unauthorized as it had no contractual right to bid TransCanada's capacity given that a July 2 letter agreement between TransCanada and HQ had terminated. TransCanada argues that therefore, HQ's bidding is irrelevant to the issues in this complaint.

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<sup>12</sup> See *ISO New England Inc.*, 120 FERC ¶ 61,087, at P 90 (2007) (July 25 Order).

14. TransCanada argues that when the January 10 Composite Offers were submitted, ISO-NE knew that HQ, as the lead participant in the July 2 Composite Offers, had no contractual right to bid TransCanada's capacity into the FCA and there was no capacity available to HQ over the HQ Phase I/II for HQ to use in connection with its portion of the capacity commitment under the July 2 Composite Offers. TransCanada argues that ISO-NE therefore knew that to accept the HQ capacity into the auction would be a violation of the Commission's July 25 Order. TransCanada argues that consequently the same review process was not applied to the January 10 Composite Offers as was applied to other composite offers where ISO-NE made its determination based on the facts and circumstances available to it at the time it made its review (i.e., whether the capacity offered "can reasonably be expected to be available").<sup>13</sup>

15. TransCanada also argues that there is no merit in the other arguments suggested by ISO-NE in Docket No. EL08-11-001: TransCanada is urging establishment of a rolling or interactive qualification process that would keep the qualification process in flux up to the running of an auction;<sup>14</sup> TransCanada is ignoring the FCM rules;<sup>15</sup> and a concern that if ISO-NE were to have qualified the January 10 Composite Offers, that would have been an invitation to other market participants whose offers were disqualified to submit new offers that ISO-NE would have had to accept.

16. TransCanada explains that because the FCA settled at the floor price, there is no need to rerun the auction, nor will a grant of this complaint disrupt the FCA because all resources that remain were bid at the floor price. TransCanada argues if the January 10 Composite Offers are now qualified, the result would be that a total of 34,083 MW of capacity will be included as having successfully bid in the FCA rather than 34,077 MW (a difference of 6.222 MW). TransCanada argues that the effect will be that the total amount paid for capacity in New England will not change, but the total payment will be spread across a total of 6.222 MW greater than the MW that successfully bid in the FCA. TransCanada argues that the impact on other resources that successfully bid in the FCA will be virtually non-existent.<sup>16</sup>

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<sup>13</sup> *ISO New England Inc. Filing Containing Revisions to Market Rules Implementing FCM Settlement*, filed February 15, 2007, in Docket Nos. ER07-546-000 and ER07-547-000, at 25.

<sup>14</sup> ISO NE January 16, 2008 Answer at 5-6.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> Complaint at 21-22.

### C. ISO-NE's Answer

17. ISO-NE answers that it has fully complied with the Commission's directive to review the January 10 Composite Offers under the same qualification process as other composite offers, because the complaint is without merit and should be dismissed.<sup>17</sup>

18. ISO-NE explains that it did not qualify the January 10 Composite Offers because at that point the associated winter capacity was already irrevocably committed to participate in the FCA, as part of the July 2 Composite Offers submitted by TransCanada and HQ.<sup>18</sup> ISO-NE argues that the July 2 Composite Offers were submitted prior to the January 10 Composite Offers, were approved by ISO-NE and the Commission, qualified on October 2, 2007 by ISO-NE, and were never withdrawn.<sup>19</sup>

19. ISO-NE claims that the arguments in support of the complaint are without merit and infer FCM rules that do not exist, including a provision that requires rejection of an import capacity resource because it is unlikely to, or will not, clear. According to ISO-NE, treatment of import capacity resources, such as those that make up the July 2 Composite Offers, is entirely different from the treatment of generating resources. ISO-NE argues that there are no rules by which properly-submitted and qualified Import Capacity Resources must or may be rejected upon learning that the relevant interface has limited or no excess space. In other words, there is no justification for rejection of the July Composite Offer, as TransCanada claims, and hence no basis for qualification if the January 10 Composite Offers.

## II. Discussion

### A. Procedural Matters

20. Notice of the complaint was published in the *Federal Register*, 73 Fed. Reg. 12981 (2008), with the answer and interventions due on or before March 17, 2008. ISO-

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<sup>17</sup> Answer at 6-7.

<sup>18</sup> ISO-NE March 17, 2008 Answer to Complaint of TransCanada Power Marketing Ltd. at 2 (Answer).

<sup>19</sup> Answer at 4 (*citing Request for Clarification, or in the Alternative, Request for Rehearing of ISO New England, Inc.*, filed in EL08-11-001 (January 11, 2008) (Rehearing Request)).

NE filed an answer, and motions to intervene were filed by H.Q. Energy Services (U.S.), Inc. and NEPOOL.

**B. Determination**

21. We deny TransCanada's complaint on both procedural and substantive grounds. Procedurally, TransCanada asks us to address issues here that were more properly raised in Docket No. EL08-11 either in its initial complaint or alternatively, in an amended complaint. By introducing facts and allegations now that were not considered by the Commission in reaching its determinations in the January 4 Order, TransCanada improperly seeks to enlarge the scope of this proceeding and get another "bite at the apple," both of which are inappropriate.

22. In short, we will not allow TransCanada to introduce new facts and allegations in this proceeding that amount to a rehearing of the rehearing in Docket No. EL08-11. As the Commission has made clear, allowing new evidence on rehearing, or under the guise of a "new" complaint, presents a moving target and frustrates needed finality.<sup>20</sup> The Supreme Court has stated that finality is necessary in the administrative process:

If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.<sup>21</sup>

23. Further, even if we did not deny TransCanada's complaint on procedural grounds, TransCanada's requested relief is unsubstantiated on its merits. ISO-NE complied with our directive in *TransCanada I* and clarified in *TransCanada II* to apply the same review process to the January 10 Composite Offers as it had to other composite offers in preparation for the FCA. That review process discovered the fact that the winter portion

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<sup>20</sup> *New York Independent System Operator*, 112 FERC ¶ 61,283, at P 35 n.20 ("[P]arties are not permitted to raise new evidence on rehearing. To allow such evidence would allow impermissible moving targets" (citing *Entergy Nuclear Operations, Inc., v. Consolidated Edison Co. of New York, Inc.*, 112 FERC ¶ 61,117, at P 39 (2005)); accord *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 n.64 (1994) ("The Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target.")).

<sup>21</sup> *ICC v. Jersey City*, 322 U.S. 503, 514 (1944).

of the January 10 Composite Offers had already been part of the July 2 Composite Offers. According to FCM rules, the July 2 Composite Offers could have been withdrawn prior to ISO-NE's qualification of the July 2 Composite Offers on October 2, 2007; however, TransCanada did not withdraw those offers. Furthermore TransCanada acknowledges that the capacity was bid into the FCA by HQ. As such, the winter capacity in question remained committed to the July 2 Composite Offer and could not be used in another capacity offer.

24. As ISO-NE points out in its answer, TransCanada appears to infer that the FCM rules include a provision that requires rejection of an import capacity resource because it is unlikely to, or will not, clear. The ISO-NE tariff contains no such rule. ISO-NE is required to treat import capacity resources, such as those that make up the July 2 Composite Offers, in a different manner than generating resources. When a surplus of import capacity resources exists at an interface, those resources compete on the basis of price.<sup>22</sup> The FCM rules do not allow ISO-NE to reject qualified import capacity resources given knowledge that the relevant interface has insufficient space. The FCM rules provide no justification for rejection of the July 2 Composite Offers. ISO-NE, therefore, followed the FCM rules and the Commission's directive in rejecting the January 10 Composite Offers, as the winter capacity associated with the January 10 Composite Offers was already committed to a separate composite offer (that could not be rejected).

25. TransCanada's arguments about whether the capacity associated with the July 2 Composite Offers would actually clear in the auction, as well as what ISO-NE knew about the contractual relationship between TransCanada and HQ are irrelevant. Again, the FCM rules do not provide for rejection of qualified composite offers based on whether or not the offers are expected to clear in the auction. Further, regardless of what ISO-NE knew about contractual relationships between TransCanada and HQ, and when they did or did not know it, has no impact or effect on the FCM process or status of the July 2 Composite Offers.

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<sup>22</sup> ISO-NE Market Rule 1 section 13.2.3.3(d).

The Commission orders:

TransCanada's complaint is hereby denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.