

130 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pittsfield Generating Company, L.P.
Pawtucket Power Associates, L.P.

Docket No. ER10-722-000

ORDER GRANTING WAIVER

(Issued March 18, 2010)

1. On February 4, 2010, Pittsfield Generating Company, L.P. (Pittsfield) and Pawtucket Power Associates, L.P. (Pawtucket) (collectively, the Applicants) filed a request for a limited waiver of ISO New England Inc.'s (ISO-NE) deadline prescribed in the Forward Capacity Market (FCM) Rules¹ for modifying the Summer Qualified Capacity for the Applicants' facilities for the fourth Forward Capacity Auction. The Applicants state that a waiver is necessary so that their full rated capacity can be offered into the fourth Forward Capacity Auction. As discussed below, the Commission grants the request for waiver.

I. Background

2. Pittsfield owns and operates Altresco, a three-unit, dual-fuel, combined cycle generating facility in Pittsfield, Massachusetts with a total capacity of approximately 160 MW. Pawtucket owns and operates Pawtucket Power, a dual-fuel combined cycle generating facility in Pawtucket, Rhode Island with a total capacity of approximately 64 MW. On November 5, 2009, ISO-NE provided Market Participants with the Summer and Winter Qualified Capacity amounts for each of their resources for the fourth Forward Capacity Auction for the Capacity Commitment Period that runs from June 1, 2013 through May 31, 2014.

¹ Market Rule 1, § III.13.1.2.2.5 of ISO-NE's Transmission, Markets, and Services Tariff (ISO-NE Tariff).

II. Request for Waiver

A. Description

3. The Applicants explain that they became aware on November 17, 2009, that ISO-NE had reduced their facilities' Summer and Winter Qualified Capacity amounts from previous years' levels for the fourth Forward Capacity Auction.² Upon becoming aware of the error, the Applicants state that they immediately notified ISO-NE. The Applicants further assert that they learned the reason for the reduction was an administrative discrepancy in ISO-NE's records between the amount of output listed as authorized under the original 1990 Proposed Plan Applications (PPA) for each facility and the higher output amounts authorized under their Commission-approved Interconnection Agreements. Pursuant to section I.3.9 of the ISO-NE Tariff, the Applicants submitted a request to ISO-NE to correct the discrepancy and update the levels of authorized output for their facilities to be consistent with their respective Interconnection Agreements. The Applicants indicate that the ISO-NE Reliability Committee received the request on January 19, 2010, and it was approved by ISO-NE; ISO-NE then informed Pittsfield and Pawtucket that ISO-NE would be able to reflect the full historical rated capacity for Altresco and Pawtucket Power in the fourth Forward Capacity Auction, if the Commission were to grant a waiver of the deadline in ISO-NE Tariff section III.13.1.2.2.5.³

4. In support of their request for waiver, the Applicants state that they acted in good faith, since they were initially unaware of the discrepancy in ISO-NE's records, but immediately notified ISO-NE upon discovery of the error, followed ISO-NE procedures for requesting corrections, and promptly filed this request for waiver with the Commission. The Applicants state that the requested waiver is of limited scope, as no other FCM rules would need to be waived or modified, and the waiver would not be applicable to any other Capacity Resources for the fourth Forward Capacity Auction or to Pittsfield and Pawtucket for future Forward Capacity Auctions. Further, the Applicants assert that the waiver would resolve a concrete problem by allowing Pittsfield and Pawtucket to qualify a combined total of more than 18 MW of existing capacity for the

² Specifically, Summer and Winter Qualified Capacity was understated by 11 MW for Altresco and 7 MW for Pawtucket Power.

³ ISO-NE Tariff Section III.13.1.2.2.5 specifies that a Lead Market Participant may elect to have adjustments made for certain significant increases in capacity, but such an election must be received by ISO-NE no later than ten business days before the Existing Capacity Qualification Deadline. The deadline for the fourth Forward Capacity Auction was November 13, 2009.

fourth Forward Capacity Auction, thereby avoiding a loss of capacity revenue necessary for maintaining the units and ensuring their availability for reliability services. Finally, the Applicants explain that the waiver would in no way delay the auction or adversely affect other Market Participants.

B. Notice

5. Notice of the Applicants' filing was published in the *Federal Register*, 75 Fed. Reg. 7,579 (2010), with interventions, protests, or comments due on or before February 25, 2010. The New England Power Pool Participants Committee filed a motion to intervene and ISO-NE filed a motion to intervene and comments.

6. In its comments, ISO-NE states that it does not oppose the Applicants' request for waiver and that ISO-NE believes that Pittsfield and Pawtucket acted in good faith. In addition, ISO-NE requests that the Commission act by March 19, 2010; ISO-NE will then be able to qualify Altresco and Pawtucket for the fourth Forward Capacity Auction, since both entities corrected the discrepancy between the PPA levels and the Interconnection Agreement amounts. ISO-NE also requests, should the Commission grant waiver, that any such order explicitly provide that the waiver is limited to the specific and unique facts presented in this proceeding and does not constitute established precedent that would allow market participants to avoid these or other terms and conditions set forth in the ISO-NE Tariff.

III. Commission Determination

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. As discussed below, the Commission will grant Pittsfield and Pawtucket's request for waiver, noting, however, that the waiver granted herein is of limited scope.

⁴ 18 C.F.R. § 385.214 (2009).

9. The Commission has previously granted waiver requests for parties that failed to follow proper procedures for participation in earlier Forward Capacity Auctions.⁵ The Commission has granted relief when: (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 consequences, such as harming third parties.⁶

10. The Commission finds that the Applicants' requested waiver satisfies the aforementioned conditions. The Commission accepts the Applicants' representations that the failure to qualify their total capacity was inadvertent and that they, in cooperation with ISO-NE, sought to correct the error as soon as it was discovered. We therefore conclude that the error was made in good faith. We further find that the waiver is of limited scope and addresses a single concrete problem—i.e., the qualification of existing capacity that would be eligible for capacity payments in the fourth Forward Capacity Auction. As to whether the waiver could have undesirable consequences, based upon the reasoning presented by the Applicants, we conclude that no third parties will be harmed by granting this limited waiver of the ISO-NE market rules.

11. Due to the specific and unique facts presented above, the Commission will grant the Applicants' request for limited waiver of the ISO-NE market rules for the 2013-2014 Forward Capacity Auction. This waiver will apply solely to the deadline prescribed in section 13.1.2.2.5 of the ISO-NE Tariff for the fourth Forward Capacity Auction. We emphasize the importance of enforcing the FCM rules in order to effectively administer the markets in New England and note that we will not automatically grant such waiver requests in the future. However, for reasons described above, and the fact that ISO-NE does not oppose this request for waiver, we find that waiver is appropriate.

⁵ See, e.g., *ISO New England Inc.*, 127 FERC ¶ 61,242 (2009); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (*EnerNOC*); *Cent. Vermont Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007) (*Central Vermont*); *Univ. of New Hampshire*, 121 FERC ¶ 61,185 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007) (*Waterbury*); and *Acushnet Co.*, 122 FERC ¶ 61,045 (2008) (*Acushnet*).

⁶ See, e.g., *EnerNOC*, 122 FERC ¶ 61,297; *Central Vermont*, 121 FERC ¶ 61,225; *Waterbury*, 120 FERC ¶ 61,007; *Acushnet*, 122 FERC ¶ 61,045.

The Commission orders:

Pittsfield and Pawtucket's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.