

155 FERC ¶ 61,273
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

ISO New England Inc.

Docket No. ER16-1041-000

ORDER ACCEPTING FORWARD CAPACITY AUCTION RESULTS FILING

(Issued June 16, 2016)

1. In this order, the Commission accepts ISO New England Inc.'s (ISO-NE) filing detailing the results of its tenth Forward Capacity Auction (FCA) (FCA 10 Results Filing), to become effective June 28, 2016, as requested.

I. Background

A. Forward Capacity Market

2. ISO-NE administers a Forward Capacity Market (FCM), in which capacity resources compete in an annual FCA to provide capacity for a one-year Capacity Commitment Period three years in the future.¹ Pursuant to its Transmission, Markets and Services Tariff (Tariff), ISO-NE is required to submit a filing with the Commission detailing the FCA results,² including the final set of capacity zones resulting from the auction, the capacity clearing price in each capacity zone, the capacity clearing price

¹ 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).

² ISO-NE Tariff, § III.13.8.2 (Filing of Forward Capacity Auction Results and Challenges Thereto) (14.0.0).

associated with certain imports,³ a list of resources that received capacity supply obligations in each capacity zone, and the amount of those capacity supply obligations.

3. ISO-NE conducted FCA 10 on February 8, 2016, for the June 1, 2019 - May 31, 2020 Capacity Commitment Period. ISO-NE submitted the FCA 10 Results Filing to the Commission under section 205 of the Federal Power Act (FPA)⁴ on February 29, 2016.

B. The FCA 10 Results Filing

4. ISO-NE states that two capacity zones were modeled for FCA 10: the Southeastern New England (SENE) Capacity Zone and Rest-of-Pool.⁵ ISO-NE states that the auction concluded for the SENE and Rest-of-Pool Capacity Zones after four rounds and resulted in a capacity clearing price set pursuant to the system-wide sloped demand curve of \$7.030/kW-month for both capacity zones.⁶

5. With respect to New England's interfaces, ISO-NE states that the clearing price for imports over the Phase I/II HQ Excess external interface and the Hydro-Quebec Highgate external interface was \$7.030/kW-month. ISO-NE states that the clearing price over the New York AC Ties external interface was \$6.260/kW-month, and \$4.00/kW-month over the New Brunswick external interface, respectively.⁷

³ ISO-NE Tariff, § III.13.2.3.3(d) (Treatment of Import Capacity) (32.0.0).

⁴ 16 U.S.C. § 824d (2012).

⁵ Transmittal at 2. The SENE Capacity Zone is a combination of the Northeastern Massachusetts/Boston, Southeastern Massachusetts, and Rhode Island Load Zones, while the Rest-of-Pool Capacity Zone includes the Connecticut, Maine, Western/Central Massachusetts, New Hampshire, and Vermont Load Zones.

⁶ *Id.* at 4. As ISO-NE's witness Dr. Robert Ethier explains, a non-rationable offer of \$7.029/kW-month cleared the auction, which prevented the auction from clearing the exact amount of quantity demanded at the capacity clearing price. Transmittal, Attachment C, Testimony of Robert G. Ethier at 5-7 (Ethier Testimony).

⁷*Id.*

6. As required by the Tariff,⁸ ISO-NE specifies the resources that received Capacity Supply Obligations in each Capacity Zone, provided in Attachment A to the FCA 10 Results Filing. The Tariff also requires ISO-NE to list which resources cleared as Conditional Qualified New Generating Capacity Resources and to provide certain information relating to Long Lead Time Generating Facilities.⁹ ISO-NE states that no resources cleared as Conditional Qualified Capacity Resources in FCA 10.¹⁰ Additionally, ISO-NE reports that no Long Lead Time Generating Facilities secured a Queue Position to participate as a New Generating Capacity in FCA 10, nor were resources with a lower queue priority selected in the FCA subject to a Long Lead Time Generating Facility with a higher queue priority.

7. ISO-NE states that the Tariff requires ISO-NE to identify in its FCA 10 Results Filing any de-list bids rejected for reliability reasons.¹¹ ISO-NE states that no de-list bids were rejected for reliability reasons in FCA 10.¹²

8. Finally, as required by the Tariff,¹³ ISO-NE included in its FCA 10 Results Filing documentation regarding the competitiveness of the auction. Included in this documentation is an affidavit by the Internal Market Monitor, Jeffrey McDonald, certifying the results of FCA 10. Dr. McDonald reviewed de-list bids from existing resources and offers from new resources in accordance with the Tariff and certified that the outcome of FCA 10 was the result of a competitive auction.¹⁴

⁸ ISO-NE Tariff, § III.13.8.2(a) (Filing of Forward Capacity Auction Results and Challenges Thereto) (14.0.0).

⁹ *Id.*

¹⁰ Transmittal at 4.

¹¹ ISO-NE Tariff, § III.13.8.2(a) (Filing of Forward Capacity Auction Results and Challenges Thereto) (14.0.0).

¹² Transmittal at 4.

¹³ ISO-NE Tariff, § III.13.8.2(b) (Filing of Forward Capacity Auction Results and Challenges Thereto) (14.0.0).

¹⁴ Transmittal at 5; Transmittal, Attachment D, Testimony of Dr. Jeffrey McDonald at 2-3 (McDonald Testimony).

C. Notice, Interventions, Comments and Protests

9. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 11,787 (2016), with interventions and protests due on or before April 14, 2016.¹⁵ Exelon Corporation; New England States Committee on Electricity; Entergy Nuclear Power Marketing, LLC; New England Power Generators Association, Inc. (NEPGA); New England Power Pool Participants Committee (NEPOOL); National Grid, Calpine Corporation; Emera Energy Services Inc.; NRG Power Marketing LLC and GenOn Energy Management, LLC; Public Citizen, Inc.; PSEG Companies; Eversource Energy Service Company; Dominion Energy Marketing, Inc. (Dominion); and Utility Workers Union of America Local 464 and Robert Clark (Utility Workers Union) filed timely motions to intervene. Northeast Energy Associates filed a motion to intervene out of time.

10. On April 14, 2016, Utility Workers Union and Dominion each submitted protests. On April 19, 2016, Northeast Energy Associates filed comments.

11. On April 25, 2016, NEPGA submitted an answer to Utility Workers Union's protest and on April 29, 2016, ISO-NE submitted an answer to comments and protests. On May 13, 2016, Utility Workers Union submitted an answer to NEPGA's and ISO-NE's answers.

II. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we will grant Northeast Energy Associates' late-filed motion to intervene given its interests in this proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by NEPGA, ISO-NE and Utility Workers

¹⁵ 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.

Union because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

14. Based on the evidence presented, we find that ISO-NE has demonstrated that the results of FCA 10 are just and reasonable, and therefore we will accept the FCA 10 Results Filing, effective June 28, 2016, as requested.

1. Issues Regarding Incremental Capacity Offers

a. Protests and Answers

15. Dominion argues that ISO-NE improperly prevented new incremental capacity from the Manchester Street Station Units 9-11 from participating in ISO-NE's FCA 10. Specifically, Dominion argues that ISO-NE improperly rejected its offer on the basis that Dominion would have had to submit a composite offer consisting of its new incremental summer capacity and the existing winter capacity at its unit.¹⁶ Dominion states that an appropriate remedy to ISO-NE's improper action is to provide Dominion's incremental capacity with a Capacity Supply Obligation for the 2019-2020 Capacity Commitment Period at the FCA 10 Capacity Clearing price for the SENE Capacity Zone.¹⁷ Dominion notes that it raised this concern in a complaint filed against ISO-NE, in Docket No. EL16-38-000,¹⁸ but that it is protesting the instant filing to ensure that, if the Commission grants its complaint, the FCA 10 Results reflect the award of a Capacity Supply Obligation to the incremental capacity at the Manchester Street Station Units.

16. Similarly, Northeast Energy Associates requests that the FCA 10 Results Filing be modified to reflect a Capacity Supply Obligation for incremental capacity at Northeast

¹⁶ Dominion Protest at 3-4 (citing Dominion, Complaint, Docket No. EL16-38-000, at 5-6 (filed Feb. 5, 2016)).

¹⁷ *Id.* at 4.

¹⁸ Dominion filed its complaint on February 5, 2016. Subsequently, the Commission ruled on Dominion's complaint on May 2, 2016. *Dominion Energy Marketing, Inc. v. ISO New England Inc.*, 155 FERC ¶ 61,121 (2016).

Energy Associates' Bellingham Energy Center, if the Commission grants its complaint in Docket No. EL16-48-000.¹⁹

17. ISO-NE states in its answer that the qualification issues that Dominion and Northeast Energy Associates raise should have been addressed prior to FCA 10. ISO-NE references section III.13.8.1(b) of the Tariff, which requires challenges to qualification determinations to be made no later than 15 days after the submission of an informational filing providing information relating to FCA 10 (Informational Filing). ISO-NE states that neither Dominion nor Northeast Energy Associates challenged the determination in the Informational Filing.²⁰ ISO-NE also states that neither Dominion nor Northeast Energy Associates is challenging the FCA 10 capacity clearing price. Thus, ISO-NE states that the Commission should accept the FCA 10 Results Filing, even if it grants the complaints of Dominion and Northeast Energy Associates.²¹

b. Commission Determination

18. As noted above, Dominion and Northeast Energy each filed separate complaints raising the same allegations contained in their protests here. By order issued May 2, 2016, the Commission denied Dominion's requested relief to reset the auction,²² and by order issued concurrently with the instant order, the Commission denies Northeast Energy Associates' complaint.²³ Accordingly, we reject Dominion's and Northeast Energy Associates' assertions that they should be granted Capacity Supply Obligations for FCA 10.

¹⁹ Northeast Energy Associates filed its complaint on March 18, 2016. The Commission is ruling on that complaint in an order being issued concurrently with the instant order. *NextEra Energy Power Marketing, LLC and Northeast Energy Associates, a Limited Partnership v. ISO New England Inc.*, 155 FERC ¶ 61,270 (2016).

²⁰ ISO-NE April 29, 2016 Answer at 3.

²¹ *Id.* at 4.

²² *Dominion Energy Marketing, Inc. v. ISO New England Inc.*, 155 FERC ¶ 61,121 (2016).

²³ *NextEra Energy Power Marketing, LLC and Northeast Energy Associates, a Limited Partnership v. ISO New England Inc.*, 155 FERC ¶ 61,270 (2016).

2. Allegations of Market Manipulation

a. Protest and Answers

19. Utility Workers Union states that the Commission should reject the FCA 10 Results Filing, asserting that the results are the product of illegal market manipulation and the exercise of market power by Energy Capital Partners, the former owner of the Brayton Point Power Station (Brayton Point) in the eighth and ninth FCA (FCA 8 and FCA 9). According to Utility Workers Union, Energy Capital Partners withdrew Brayton Point's capacity from FCA 8 by retiring the plant in order to increase capacity payments to Energy Capital Partners' other assets. Utility Workers Union states that the current owner of Brayton Point, Dynegy Inc., has continued to violate the ISO-NE Tariff in this manner by not submitting Brayton Point's capacity into FCA 10.²⁴ Furthermore, Utility Workers Union argues that the Commission's recent approval of ISO-NE's changes to the rules governing resource retirements²⁵ demonstrates that omitting the Brayton Point capacity, or a proxy price that represents the Brayton Point capacity, from the FCA has resulted in the auction being non-competitive, and the resulting prices unjust and unreasonable.²⁶

20. Referencing its previously filed protests in the FCA 8 and FCA 9 proceedings, Utility Workers Union contends that Brayton Point would have been capable of running economically in 2017 and beyond.²⁷ Utility Workers Union states that, by withholding capacity, Brayton Point's owner increased market prices and the profits of its other generating units within ISO-NE.²⁸ Utility Workers Union also states that, because uneconomic withholding is not permitted and illegal, the FCA 10 auction results should have included Brayton Point's capacity.²⁹ Utility Workers Union requests that, at a

²⁴ Utility Workers Union Protest at 3.

²⁵ *ISO New England Inc.*, 155 FERC ¶ 61,029 (2016).

²⁶ Utility Workers Union Protest at 3-4.

²⁷ Utility Workers Union Pleadings, Docket No. ER14-1409-000, et al. (filed Apr. 14, 2014, June 11, 2014, and Feb. 10, 2015); and Utility Workers Union Protest, Docket No. ER15-1137-000 (filed Apr. 13, 2015).

²⁸ Utility Workers Union Protest at 9-10.

²⁹ *Id.* at 15-16.

minimum, the FCA 10 results be stayed while the parties conduct discovery and adjudicate the legality of Energy Capital Partners' actions.³⁰

21. NEPGA responds that Utility Workers Union's allegation of market manipulation in FCA 8 has previously been considered and rejected by the Commission.³¹ NEPGA further asserts that even if those allegations were found to be true, Utility Workers Union has provided no evidence that alleged market behavior in FCA 8 is relevant to the FCA 10 results, and points to the Internal Market Monitor's certification that FCA 10 was a competitive auction.³²

22. NEPGA alleges that Utility Workers Union is seeking to renew its allegation of market manipulation here by asserting that Brayton Point plant owners continued to withhold capacity from FCA 10. NEPGA argues, however, that the ISO-NE Tariff prohibited Brayton Point's owners from offering its capacity into FCA 10, because once a resource has retired, it may not offer capacity into any subsequent FCA.³³ NEPGA further states that the owners of Brayton Point were not required to provide an economic justification for its retirement decision. In response to Utility Workers Union's argument that the retirement of the Brayton Point plant was not "permitted by applicable law," namely, the anti-manipulation provisions of the FPA, NEPGA states that this allegation of market manipulation relates to events in FCA 8, and the instant proceeding is limited to a review of the FCA 10 results.³⁴ NEPGA further asserts that Utility Workers Union's

³⁰ Utility Workers Union seeks adjudication of (a) whether Energy Capital Partners' retirement of the Brayton Point plant was "permitted by law", i.e., not in violation of the anti-manipulation provisions of the FPA, and (b) the actual costs going forward of Brayton Point, so that an appropriate proxy bid may be submitted to assure that the results of the auction are workably competitive and just and reasonable. *Id.* at 8.

³¹ NEPGA April 25, 2016 Answer at 2-3, 3 n.8 (citing *ISO New England Inc.*, 151 FERC ¶ 61,226 (2015)).

³² *Id.* at 3 (citing McDonald Testimony at 3).

³³ NEPGA April 25, 2016 Answer at 4 n.13 (citing ISO-NE Tariff at §§ III.13.1.2.3.1.5.4 and III.1.2.3.1.5.1).

³⁴ NEPGA April 25, 2016 Answer at 5 (citing *ISO New England Inc.*, 153 FERC ¶ 61,378, at P 15 (2016); *ISO New England Inc.*, 149 FERC ¶ 61,227, at P 67 (2014)). NEPGA notes that Utility Workers Union's appeal of the question of whether the owners of Brayton Point improperly withdrew the plant from the FCM in FCA 8 is currently pending before the Court of Appeals for the D.C. Circuit (*Public Citizen, Inc., and George Jepsen, Attorney General of Conn. v. FERC*, Nos. 14-1244 and 14-1246 (D.C.

(continued ...)

attempt to effectively apply the Commission's recent approval of prospective changes to the FCM rules governing resource retirements to FCA 10 must fail, since the Commission accepted those rule changes effective March 1, 2016,³⁵ and prior to those changes (i.e., during the conduct of FCA 10 in February 2016), the ISO-NE Tariff did not require a resource owner to justify its decision to retire its resource. NEPGA also asserts that the Commission's Office of Enforcement reviewed the Brayton Point retirement and found that Brayton Point's owners had a credible economic justification for its decision to retire the resource regardless of the FCA clearing price.³⁶

23. ISO-NE states that Utility Workers Union's claims of market manipulation are similar to the arguments Utility Workers Union made against Energy Capital Partners in FCA 8 and FCA 9. Consequently, ISO-NE argues that the Commission should dismiss Utility Workers Union's protest for the same reasons that the Commission previously rejected those arguments in the Order approving FCA 9.³⁷

24. In its response, Utility Workers Union asserts that ISO-NE and NEPGA acknowledge that, to ensure that an auction is competitive, the actual costs of a retiring facility must be determined and included as a proxy bid in the calculation of the auction price. Utility Workers Union states that this did not occur with regard to the Brayton Point plant in FCA 10, and, therefore, there can be no assurance that the auction was workably competitive and that the resulting prices are just and reasonable. Utility Workers Union states that the Office of Enforcement's finding as to the credible economic justification for Brayton Point's retirement does not address those questions.³⁸ Utility Workers Union further argues that, contrary to NEPGA's position, it is undisputed that the retirement of Brayton Point has caused material increases in market-wide clearing prices in FCA 10. According to Utility Workers Union, ignoring the impact of Brayton Point's retirement on FCA 10 would leave market-distorting retirements

Cir., filed Nov. 14, 2014)) and Utility Workers Union has filed an appeal of the same question with regard to FCA 9 (*Utility Workers Union of America Local 454, and Robert Clark v. FERC*, Case No. 16-1068 (D.C. Cir., filed Feb. 23, 2016)). NEPGA Answer at 7 nn. 28-29.

³⁵ NEPGA April 25, 2016 Answer at 8 (citing *ISO New England Inc.*, 155 FERC ¶ 61,029 (2016)).

³⁶ *Id.*

³⁷ ISO-NE April 29, 2016 Answer at 5.

³⁸ Utility Workers Union Answer at 3-4.

unmitigated and would result in unjust and unreasonable prices, not only in the auction year in which the retirement takes place, but in subsequent auctions as well. Utility Workers Union asserts that by limiting its review in this fashion, the Commission would in effect reward a fleet owner for using the retirement of a unit to cause multiple future years of artificial price increases.³⁹

25. Utility Workers Union further asserts that it would be error for the Commission to summarily find that there was no market manipulation (i.e., that there was no withholding of supply which could have been economically provided in FCA 8, FCA 9 and FCA 10, with the intention of causing higher prices) without allowing discovery and holding a hearing so as to determine whether the retirement of Brayton Point constituted market manipulation in violation of section 222 of the FPA⁴⁰ before the auction results can be approved.⁴¹

b. Commission Determination

26. We reject Utility Workers Union's arguments on this issue. Utility Workers Union largely reiterates the same allegations it raised with regard to FCA 9, and we reject those allegations for the same reasons articulated in the Commission's order accepting those results.⁴² We emphasize, as the Commission has stated in previous orders, that the

³⁹ *Id.* at 5.

⁴⁰ 16 U.S.C. § 824v (2012) ("It shall be unlawful for any entity (including an entity described in section 824(f) of this title), directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 78j(b) of Title 15), in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of electric ratepayers").

⁴¹ Utility Workers Union Answer at 7-8.

⁴² *ISO New England Inc.*, 151 FERC ¶ 61,226, *order denying reh'g*, 153 FERC ¶ 61,378, at PP 16, 19 (2015) (finding that even if Brayton Point could profitably run in the future, that is not dispositive of whether market manipulation occurred or whether that issue should be set for hearing. The Commission found that neither the FPA nor the Tariff require a resource to demonstrate that it is uneconomic as a condition of retiring, and neither ISO-NE nor the Commission can, under the Tariff, compel a resource to stay in the FCM).

Commission's Office of Enforcement reviewed Brayton Point's bidding behavior in FCA 8 to determine whether further investigation of Brayton Point was warranted, and "found credible justifications for the owners' retirement decision and elected not to widen its investigation to include Brayton Point."⁴³ We are not persuaded by Utility Workers Union's allegations that market manipulation affected FCA 10 as the record is devoid of any evidence to that effect, and we similarly reject Utility Workers Union's request for a stay pending discovery and further adjudication of that allegation. Indeed, the Internal Market Monitor has certified that the outcome of the auction was competitive, a finding based on rigorous qualification requirements including the application of mitigation rules and the competitive bidding and offering of resources.⁴⁴ We further emphasize that once a resource submits a Non-Price Retirement Request, as Brayton Point did prior to FCA 8, the resource is precluded from offering capacity into subsequent auctions.⁴⁵ Thus, contrary to Utility Workers Union's assertion, Brayton Point could not have participated in FCA 10.

27. Finally, we disagree with Utility Workers Union's argument that ISO-NE's new retirement reforms required it to establish a proxy bid for the Brayton Point capacity in FCA 10 and its failure to do so resulted in a non-competitive auction with a price that is not just and reasonable. When ISO-NE proposed its retirement reforms, it specified that those reforms would go into effect beginning with FCA 11, three years after it received a Non-Price Retirement Request for Brayton Point.⁴⁶ The Commission found the retirement reform revisions to be just and reasonable, but that acceptance does not render

⁴³ *ISO New England Inc.*, 148 FERC ¶ 61,201, at P 11 (2014); *see also*, *ISO New England Inc.* 153 FERC ¶ 61,378, at P 15 (citing *ISO New England Inc.* 151 FERC ¶ 61,226, at P 22 n.35 (2015)); *ISO New England Inc.* 149 FERC ¶ 61,227, at P 67 (2014), *reh'g denied*, 153 FERC 61,096, at P 5 (2015).

⁴⁴ McDonald Testimony at 4.

⁴⁵ *See* ISO-NE Tariff, § III.13.1.2.3.1.5. ("A Non-Price Retirement Request is a binding request to retire all or part of a Generating Capacity Resource. . . . Once submitted, a Non-Price Retirement Request may not be withdrawn"). *See also* *ISO New England Inc.*, 125 FERC ¶ 61,102, at P 41 (2008) ("[I]t is not accurate to state that resources are compelled to remain in the market against their will. Under ISO-NE's proposal, any resource that wishes to retire can do so by submitting a non-price retirement request, and the resource is allowed to retire even if ISO-NE concludes that it is needed for reliability").

⁴⁶ *ISO New England Inc.*, 155 FERC ¶ 61,029 (2016).

previous auctions, held without these reforms in place, to be unjust and unreasonable.⁴⁷ As the Internal Market Monitor certified, the FCA 10 was conducted in accordance with the Tariff and resulted in a competitive auction.⁴⁸

The Commission orders:

ISO-NE's FCA 10 Results Filing is hereby accepted for filing, to become effective June 28, 2016, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁷ *ISO New England Inc.*, 132 FERC ¶ 61,122, at P 58 (2010) (“the filing of tariff changes pursuant to section 205 of the FPA does not establish that the previous tariff provisions are unjust and unreasonable”).

⁴⁸ McDonald Testimony at 2-3 and Transmittal, Attachment E, Testimony of Lawrence M. Ausubel (Ausubel Testimony) at 3.