

133 FERC ¶ 61,127
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CPower, Inc.

Docket No. ER11-81-000

ORDER GRANTING LIMITED WAIVER

(Issued November 8, 2010)

1. On October 8, 2010, CPower, Inc. (CPower) filed a request for limited waiver of section III.13.1.4.8.1 of ISO New England Inc.'s (ISO-NE) Market Rule 1¹ to allow CPower to timely submit to ISO-NE an updated Measurement and Verification Plan (M&V Plan) required by the rules implementing ISO-NE's Forward Capacity Market (FCM). The Commission grants the requested waiver, as discussed below.

I. Background

2. As detailed in numerous proceedings before this Commission, ISO-NE has recently implemented the FCM, pursuant to which capacity resources (both generators and demand resources) compete to provide capacity to New England, on a three-year-forward basis, by participating in an annual Forward Capacity Auction (FCA).

3. On October 29, 2008, the Commission accepted proposed changes to the FCM rules and made the new tariff provisions effective December 1, 2008.² Section III.13.1.4.8.1 of ISO-NE's Market Rule 1 requires demand response resources to submit an updated M&V Plan to ISO-NE no later than five business days after receipt of the Qualified Capacity notification. The purpose of this provision is to ensure that each resource is capable of performing at its Qualified Capacity rating under its current M&V Plan based on the results of ISO-NE's most recent Demand Response Operable Capacity Analysis. Failure to submit the updated M&V Plan results in a Permanent De-List Bid

¹ Section III of ISO-NE's Transmission, Markets, and Services Tariff.

² *ISO New England Inc.*, Docket No. ER09-5-000 (Oct. 29, 2008) (unpublished letter order).

for the Demand Resource.³ CPower states that, in the event that market participants determine a resource is still capable of performing at its Qualified Capacity under its current M&V Plan based on the most recent Operable Capacity Analysis, ISO-NE allows market participants to keep, or effectively resubmit, their respective M&V Plans in lieu of submitting an updated document. To do so, participants must make an active election through ISO-NE's web-based Forward Capacity Tracking System.

4. CPower states that it was aware of the Market Rule, the deadline to submit its election form (September 17, 2010), and the implications of missing the deadline. CPower further states that it was aware of ISO-NE's provision allowing it to keep its current M&V Plan in effect, and fully intended to do so. CPower states that, through a series of communications with ISO-NE, CPower mistakenly concluded that making this election did not require any action on its part. As CPower notes, CPower thus inadvertently failed to timely take action and thereby confirm its intent to keep the current M&V Plan in effect.

II. Request for Limited Waiver

A. Description

5. CPower requests waiver of section III.13.1.4.8.1 of ISO-NE's Market Rule 1 to allow ISO-NE to accept CPower's belated election (made after September 17, 2010), as timely submitted. CPower is a market participant with existing demand response resources in New England. CPower states that the relief it requests is consistent with the waiver standards set forth in *Acushnet Company*.⁴ CPower argues that the relief it requests is necessary to prevent the permanent de-listing of a significant amount of real-time demand response and emergency generation resources. CPower states that the requested waiver is justified and is limited in its scope. CPower argues that the waiver request does not affect the substantive requirement to submit an updated M&V Plan and simply allows ISO-NE to carry forward the existing plans that have previously been reviewed and approved by ISO-NE. CPower states that its failure to timely submit an updated plan was in good faith as it had expressly inquired of ISO-NE prior to the deadline about the ability to keep current M&V Plans in effect for existing resources, but mistakenly understood that no additional submissions were required in this event. CPower argues that the waiver resolves a concrete problem that must be remedied because, absent a waiver of the deadline in section III.13.1.4.8.1, ISO-NE will be required to permanently de-list the associated resources. Finally, CPower states that the

³ See Market Rule 1, § III.13.1.4.8.1 of ISO-NE's Transmission, Markets, and Services Tariff.

⁴ 122 FERC ¶ 61,045 (2008) (*Acushnet*).

waiver would not have undesirable consequences and will not harm third parties because the waiver would not impose any burden or cost on ISO-NE or any market participant and will not delay or disrupt the fifth Forward Capacity Auction.

6. Additionally, CPower requests that the Commission act on this request no later than November 8, 2010 to allow ISO-NE adequate time to prepare its qualification filing for the Commission, which must be filed no later than March 8, 2011.

B. Notice

7. Notice of the filing was published in the *Federal Register*, 74 Fed. Reg. 65,312 (2010), with answers, interventions and protests due on or before October 21, 2010.⁵ No interventions or protests were filed.

III. Discussion

8. The Commission will grant the requested waiver.

9. The Commission has previously granted waiver requests for parties that failed to follow proper procedures for participation in earlier FCAs.⁶ The Commission has granted relief where: (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.⁷

10. The Commission finds that the request for waiver here satisfies the aforementioned conditions. CPower states that its failure to submit the updated M&V Plans by the deadline specified in the FCM rules was an inadvertent oversight, caused by miscommunication with ISO-NE and a misinterpretation of section III.13.1.4.8.1. CPower explains that it directly inquired with ISO-NE and expressed its desire to keep its current M&V Plan in effect. This waiver is also of limited scope in that it will apply

⁵ An errata notice was issued on October 14, 2010, shortening the comment period to October 21, 2010.

⁶ See, e.g., *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (*EnerNOC*); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007) (*Central Vermont*); *University of New Hampshire*, 121 FERC ¶ 61,185 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007) (*Waterbury*); *Acushnet*, 122 FERC ¶ 61,045.

⁷ See *EnerNOC*, 122 FERC ¶ 61,297; *Central Vermont*, 121 FERC ¶ 61,225; *Waterbury*, 120 FERC ¶ 61,007; *Acushnet*, 122 FERC ¶ 61,045.

solely to the submission of CPower's M&V Plan for the fifth FCA. The waiver addresses a single concrete problem. As to the question of whether the waiver could have undesirable consequences, we conclude that no third parties will be harmed by granting this limited waiver of the New England market rules, and no entity protested to the contrary.

11. In light of the facts presented above, the Commission will grant CPower's request for limited waiver of the ISO-NE market rules. We expect, however, that similar errors will not be made in the future and that no similar requests for waiver will be necessary for the sixth and future FCAs.

The Commission orders:

The request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.