

145 FERC ¶ 61,286
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 27, 2013

In Reply Refer To:
Brookfield Energy Marketing LP
Docket No. ER14-442-000

Cadwalader, Wickersham & Taft LLP
700 Sixth Street, NW
Washington, DC 20001

Attn: Joseph B. Williams
Attorney for Brookfield Energy Marketing LP

Dear Mr. Williams:

1. On November 20, 2013, Brookfield Energy Marketing LP (BEMLP) filed a request for a limited, one-time waiver of the capacity qualification deadlines in ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The waiver would permit ISO-NE to reevaluate its qualification of capacity for the Erie Boulevard Hydro facility (Erie Boulevard) in ISO-NE's Eighth Forward Capacity Auction (FCA 8). As discussed below, the Commission grants the requested waiver.
2. BEMLP is a power marketer and engages in capacity and energy transactions in the markets administered by ISO-NE and other Independent System Operators and Regional Transmission Organizations throughout the United States. BEMLP is party to an agreement under which it is responsible for, among other things, the sale of capacity made available by Erie Boulevard. BEMLP states that it has previously qualified capacity backed by Erie Boulevard in each prior Forward Capacity Auction administered by ISO-NE.¹
3. BEMLP states that on June 17, 2013, seeking to qualify capacity backed by Erie Boulevard for participation in FCA 8, BEMLP submitted a New Import Capacity Resource Qualification Information Form and supporting documentation to ISO-NE. BEMLP states that ISO-NE submitted requests for additional information to BEMLP, to

¹ Petition at 2.

which BEMLP timely responded. On the basis of the information provided, ISO-NE qualified Erie Boulevard for participation in FCA 8 at levels specified in ISO-NE's September 27, 2013 qualification determination notification (QDN) to BEMLP. BEMLP explains that, upon review of the QDN, it identified additional information that it believes would allow ISO-NE to qualify an additional 35 MW of summer capacity and 18 MW of winter capacity for Erie Boulevard for FCA 8.² BEMLP explains that ISO-NE cannot reevaluate its FCA 8 qualification determination for Erie Boulevard absent a waiver of certain ISO-NE Tariff provisions by this Commission. BEMLP therefore requests a limited, one-time waiver of the capacity qualification deadlines in ISO-NE's Tariff, Market Rule 1, sections III.13.1.3.5.7 and III.13.1.10 to permit ISO-NE to revise its QDN for Erie Boulevard and to allow BEMLP to supply any additional financial assurance deposit required as a result of any capacity qualification increases for Erie Boulevard.³

4. In support of its request, BEMLP contends that its request for waiver is consistent with prior situation in which the Commission has granted a waiver. BEMLP asserts that it has acted in good faith throughout the qualification process, and notes that it has cooperated with the IMM to provide the information related to Erie Boulevard's qualification determination. BEMLP states that the initial qualification application was complete and provided to ISO-NE within the Tariff-specified timeframe, and that BEMLP timely responded to requests for additional information. BEMLP asserts that the waiver is a one-time event that is limited in scope. BEMLP asserts that the waiver would remedy a concrete problem by allowing ISO-NE to consider information it has already deemed relevant as related to the Third Annual Reconfiguration Auction. BEMLP notes that granting the requested waiver would also allow ISO-NE to resolve the problem of excluding potential capacity from FCA 8. In addition, BEMLP asserts that granting the waiver request will have no undesirable effects, nor will it delay FCA 8 or negatively impact the FCA 8 qualification determinations for other market participants.⁴

5. Notice of BEMLP's filing was published in the *Federal Register*, 78 Fed. Reg. 72,669 (2013), with interventions and protests due on or before December 12, 2013.

² *Id.* at 2-3. BEMLP states that it provided this additional information to ISO-NE as part of a separate but similar qualification process for the Third Annual Reconfiguration Auction for FCA 5 which occurred after the FCA 8 QDN deadline. BEMLP states that ISO-NE has indicated that the additional information would allow it to qualify Erie Boulevard for the additional capacity for the Third Annual Reconfiguration Auction for FCA 5. *Id.*

³ *Id.* at 3.

⁴ *Id.* at 4-5.

ISO-NE filed a motion to intervene and comments explaining that it does not oppose BEMLP's waiver request.⁵ ISO-NE believes BEMLP's errors were inadvertent and made in good faith. The New England Power Pool Participants Committee submitted an out-of-time motion to intervene on December 13, 2013. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

6. The Commission has granted one-time waivers of tariff provisions in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) granting waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁷

7. We find that BEMLP has demonstrated good cause to grant the request for waiver of the capacity qualification deadlines because BEMLP's requested waiver satisfies the aforementioned conditions. First, we find that BEMLP acted in good faith in seeking to work with and supply ISO-NE with the appropriate information related to Erie Boulevard's qualification determination for FCA 8. Second, the requested waiver is a one-time waiver, and is limited in scope. Third, the waiver will remedy a concrete problem because the additional information supplied would allow ISO-NE to consider data that may allow ISO-NE to qualify additional capacity for participation in FCA 8. Fourth, we find that granting the requested waiver will not lead to undesirable consequences, such as harm to third parties. Further, ISO-NE does not oppose the request.⁸

8. Accordingly, we grant BEMLP's request for a limited, one-time waiver of the capacity qualification deadlines in ISO-NE's Tariff, Market Rule 1, sections III.13.1.3.5.7 and III.13.1.10 to permit ISO-NE to reevaluate its qualification of capacity backed by Erie Boulevard for participation in FCA 8, and as necessary to allow BEMLP to timely supply any additional financial assurance. The Commission notes that this

⁵ See ISO-NE Comments.

⁶ 18 C.F.R. § 385.214 (2013).

⁷ See, e.g., *ISO New England Inc.*, 142 FERC ¶ 61,051, at P 20 (2013); *N.Y. Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *ISO New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011).

⁸ See ISO-NE Comments at 1, 3.

waiver is limited to the specific and unique facts presented here and does not constitute established precedent that would allow market participants to avoid these or other terms and conditions set forth in the Tariff.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.