

148 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Massachusetts Municipal Wholesale
Electric Company

Docket No. ER14-2771-000

ORDER DENYING REQUEST FOR WAIVER

(Issued September 24, 2014)

1. On September 4, 2014, Massachusetts Municipal Wholesale Electric Company (MMWEC) filed a request for waiver of the New Capacity Qualification Deadline in section III.13.1.1.2.2 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The waiver would allow MMWEC to submit the New Capacity Qualification Package for the Ipswich Wind Independence Project to ISO-NE after the deadline set forth in the rules implementing ISO-NE's Forward Capacity Market (FCM). As discussed below, the Commission denies the request for waiver.

Background

2. MMWEC states that Ipswich Municipal Light Department, an MMWEC member, has entered into a contract with the owner of Ipswich Wind 2, a 2 MW wind turbine, for its capacity and energy output. MMWEC states that Ipswich Wind 2 has been providing capacity benefits to the Northeast Massachusetts portion of the New England region since the unit entered commercial operation on January 9, 2013, but is not receiving an FCM payment because it has not yet been offered into an auction in the FCM.¹

3. ISO-NE implements the FCM, through which capacity resources compete to provide capacity to New England on a three-year-forward basis, using an annual Forward Capacity Auction (FCA).² Section III.13.1.1.2 of ISO-NE's Tariff requires project

¹ MMWEC Request for Waiver at 2-3.

² See, e.g., *ISO New England Inc.*, 130 FERC ¶ 61,145 (2010); *ISO New England Inc.*, 127 FERC ¶ 61,040 (2009); *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008); see generally *Devon Power LLC*, 115 FERC ¶ 61,340, *order on reh'g and clarification*,

(continued...)

sponsors of capacity resources to submit to ISO-NE a Show of Interest form during a specified submission window as a condition of participation in the FCA. MMWEC states that, acting on Ipswich's behalf, MMWEC timely submitted the requisite form on February 28, 2014.³ Section III.13.1.1.2.2 of the Tariff requires project sponsors of capacity resources to subsequently submit to ISO-NE a New Capacity Qualification Package no later than the New Capacity Qualification Deadline. The deadline for the New Capacity Qualification Package is described in section III.13.1.10(d), which states that the New Capacity Qualification Deadline will be in June or July of 2014.⁴ The New Capacity Qualification Deadline for the ninth FCA (FCA 9) was June 17, 2014.

Request for Waiver

4. MMWEC states that, although not obligated to do so under the FCM rules, ISO-NE has in the past sent out email reminders regarding the New Capacity Qualification Deadline. MMWEC states that no such email was sent this year. MMWEC states that subsequently, due to an unintentional administrative oversight,⁵ it failed to meet the June 17, 2014, deadline to submit the New Capacity Qualification Package for FCA 9, and ISO-NE deemed the Ipswich Wind 2 project as withdrawn from potential qualification for failure to provide the requisite information. According to MMWEC, it learned of its failure to meet the deadline in mid-July. MMWEC avers that ISO-NE stated that, absent Commission waiver of the deadline, MMWEC could not submit the New Capacity Qualification Package after the deadline.⁶

5. MMWEC requests that the Commission issue an order by September 26, 2014, so that MMWEC may provide the New Capacity Qualification Package to ISO-NE before ISO-NE posts the qualification determination notification on September 26, 2014.⁷

117 FERC ¶ 61,133 (2006), *aff'd in relevant part sub nom. Maine Public Utilities Comm'n v. FERC*, 520 F.3d 464 (2008), *order on remand*, 126 FERC ¶ 61,027 (2009), *order on remand*, 134 FERC ¶ 61,208 (2011), *reh'g denied*, 137 FERC ¶ 61,073 (2011).

³ MMWEC Request for Waiver at 3.

⁴ ISO-NE Tariff sections III.13.1.1.2.2, III.13.1.10(d)(26.0.0).

⁵ MMWEC Request for Waiver at 4.

⁶ *Id.*

⁷ *Id.* at 6.

6. MMWEC argues that the failure to submit the necessary information resulted from an unintentional error. Moreover, MMWEC contends that it did file the Show of Interest paperwork for Ipswich Wind 2 on time and that this timely submission demonstrates that the failure to submit a New Capacity Qualification Package was the result of an oversight. MMWEC avers that the waiver is limited in scope involving a single, 2 MW wind turbine, and granting the waiver will have no adverse consequences for any third party or on the FCM. Finally, it is MMWEC's contention that granting the waiver will positively benefit the market and customers. Specifically, granting the waiver will permit a renewable resource located in a resource-constrained portion of the New England grid to facilitate meeting the zone's local sourcing requirement.⁸

Notice of the Filing and Responsive Pleading

7. Notice of MMWEC's September 4, 2014, filing was published in the *Federal Register*, 79 Fed. Reg. 54,701 (2014), with protests and interventions due on or before September 15, 2014. On September 12, 2014, ISO-NE timely filed a motion to intervene and comments in opposition to MMWEC's waiver request.

8. ISO-NE asserts that MMWEC's request fails to satisfy the Commission's evaluation criteria for granting waivers. ISO-NE states that the Commission has granted waivers for parties that failed to follow proper procedures in the FCM when: (1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.⁹

9. ISO-NE asserts that MMWEC had sufficient notice to be able to comply with the July 17, 2014 deadline for the New Capacity Qualification Package. ISO-NE states that it provided notice of the deadline through the master schedule, which is posted on its website. In addition, ISO-NE avers that market participants were also informed of the deadline in the May 2014 NEPOOL Participants Committee Report, as well as during ISO-NE's FCA 9 qualification trainings held on January 23, 2014, and May 8, 2014. ISO-NE states that the Commission has held that "administrative oversight" is not a justification to grant waiver.¹⁰

⁸ *Id.* at 5.

⁹ ISO-NE Opposition at 3 (citing *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at P 9 (2010)).

¹⁰ *Id.* at 4 (citing *Seneca Energy II, LLC*, 138 FERC ¶ 61,226, at P 9 (2012)).

10. ISO-NE contends that the waiver is not limited in scope because other market participants in addition to MMWEC failed to submit a timely New Capacity Qualification Package. ISO-NE argues that granting MMWEC's request for waiver would result in unfavorable treatment to similarly-situated parties. ISO-NE further argues that no concrete problem exists because the New Capacity Qualification Deadline for FCA 9 is similar to the New Capacity Qualification Deadline for FCA 8, which was on June 17, 2013, and market participants should be well aware of the FCM deadlines.¹¹

Commission Determination

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene serves to make the entity that filed it party to this proceeding.

Determination

12. The Commission denies MMWEC's request for waiver. The Commission previously has granted waiver from ISO-NE's Tariff requirements when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied by granting the waiver; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹²

13. In an effort to support its request for waiver, MMWEC primarily argues that its failure to timely submit a New Capacity Qualification Package by the deadline is the result of an administrative oversight. We find this argument unpersuasive as to MMWEC's statement that its underlying error was made in good faith. Administrative oversight is not a sufficient basis to justify waiving an express deadline.¹³ As the Commission previously has stated, it is important to abide by the FCM rules, including

¹¹ *Id.* at 5.

¹² See, e.g., *Massachusetts Electric Company*, 134 FERC ¶ 61,116 (2011); *Comverge, Inc.*, 133 FERC ¶ 61,250 (2010); *CPower, Inc.*, 133 FERC ¶ 61,127. We note that, unlike here, the requests for waiver in *Comverge* and *CPower* were unopposed by ISO-NE.

¹³ Cf., e.g., *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339 (1992), *reh'g denied*, 61 FERC ¶ 61,089, at 61,356 (1992); *Northeast Utilities Service Co.*, 76 FERC ¶ 61,237, at 62,151 (1996); *Illinois Power Co.*, 75 FERC ¶ 61,269, at 61,878 (1996) ("administrative oversight" does not justify prior notice waiver).

deadlines, in order to enable ISO-NE to effectively administer the FCM, and therefore, we will not automatically grant waiver of ISO-NE's Tariff requirements merely because we are asked to do so¹⁴ – especially given ISO-NE's objection to waiver of its tariff. As ISO-NE explains, the submission deadline for the New Capacity Qualification Package was communicated to all market participants, including MMWEC, in several ways, specifically, on ISO-NE's website, in the May 2014 NEPOOL Participants Committee Report, and in training materials. MMWEC does not claim that it failed to receive or have access to these notifications.

14. Furthermore, while MMWEC argues that its waiver request is of limited scope, we disagree. Granting its request here could result in unfavorable treatment of similarly situated parties. It is also MMWEC's contention that granting the waiver will permit a renewable resource located in a resource-constrained zone to help meet the capacity requirements of that zone. However, our concerns outweigh MMWEC's position. Granting its request here could have broad ramifications, by allowing waiver of Tariff provisions based on nothing more than an applicant's bare claim of administrative oversight, and by granting waiver over the objections of the public utility whose tariff is being waived. We also agree with ISO-NE that, contrary to MMWEC's assertions that the waiver will have no adverse consequences on any third party or the FCM, granting the waiver will result in unduly favorable treatment to MMWEC, while other market participants abided by the Tariff requirement to submit a timely New Capacity Qualification Package. For these reasons, we deny MMWEC's request for waiver.

The Commission orders:

MMWEC's request for waiver is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ *Massachusetts Electric Company*, 134 FERC ¶ 61,116 at P 14.