

149 FERC ¶ 61,165  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

GDF SUEZ Energy Marketing NA, Inc.

Docket No. ER14-2886-000

ORDER DENYING REQUEST FOR WAIVER

(Issued November 25, 2014)

1. On September 15, 2014, GDF SUEZ Energy Marketing NA, Inc. (GSEMNA) filed a request for a limited waiver of section III.13.1.2.3 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The requested waiver would allow GSEMNA to challenge the winter Qualified Capacity<sup>1</sup> of its Northfield Mountain 2 generating facility (Northfield Facility) for the ninth Forward Capacity Auction (FCA 9), in order to reflect an additional 22 megawatts of capacity. As discussed below, the Commission denies the request for waiver.

**Background**

2. GSEMNA owns and operates the Northfield Facility, located in Northfield and Erving, Massachusetts. GSEMNA states that the Northfield Facility is an ISO-NE generation resource and has participated in all of ISO-NE's previous Forward Capacity Auctions (FCAs).<sup>2</sup> GSEMNA further states that, in the spring of 2012, it conducted upgrades that increased the Northfield Facility's capacity from 270 megawatts to 292 megawatts, a total increase of 22 megawatts. GSEMNA adds that the Northfield

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<sup>1</sup> Qualified Capacity is the amount of capacity a resource may provide in the summer or winter in a Capacity Commitment Period as determined in the Forward Capacity Market qualification processes. Capacity Commitment Period is the one-year period from June 1 through May 31 for which obligations are assumed and payments are made in the Forward Capacity Market. ISO-NE Tariff section I.2.2 (50.0.0).

<sup>2</sup> The Forward Capacity Auction is the annual descending clock auction in the Forward Capacity Market, as described in section III.13.2 of Market Rule 1. ISO-NE Tariff section I.2.2.

Facility underwent ISO-NE's summer and winter Establish Claimed Capability Audits<sup>3</sup> on June 5, 2012, and September 9, 2013, respectively and these audits resulted in increased capacity ratings.<sup>4</sup>

3. ISO-NE's Tariff provides requirements and deadlines for resources to qualify and participate in Forward Capacity Auctions. Section III.13.1.2.3 of the Tariff requires ISO-NE to notify each resource's Lead Market Participant<sup>5</sup> of ISO-NE's determination of the summer and winter Qualified Capacity values no later than 15 business days prior to the Existing Capacity Qualification Deadline.<sup>6</sup> If the Lead Market Participant believes that the values are inaccurate, it must notify ISO-NE within five business days of receipt of ISO-NE's determination.<sup>7</sup>

### **Request for Waiver**

4. GSEMNA states that it received its Qualified Capacity determination on May 9, 2014. It asserts that the determination correctly reflected the summer Qualified Capacity for the Northfield Facility of 292 megawatts. However, the winter Qualified Capacity reflected 270 megawatts, which according to GSEMNA, is 22 megawatts short of the existing capability of the Northfield Facility.<sup>8</sup> GSEMNA requests a waiver of section III.13.1.2.3 in order to challenge the winter Qualified Capacity of the Northfield Facility. Noting that the deadline to challenge the values was May 16, 2014, GSEMNA claims that it inadvertently failed to catch the inaccuracy in the Qualified Capacity

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<sup>3</sup> An Establish Claimed Capability Audit establishes the generator asset's ability to respond to ISO-NE's dispatch instructions and to maintain performance at a specified output level for a specified duration. ISO-NE Tariff section III.1.5.1.1 (2.0.0).

<sup>4</sup> GSEMNA Request for Waiver at 2.

<sup>5</sup> For purposes of the Forward Capacity Market, the Lead Market Participant is the entity designated to participate in that market on behalf of an Existing Capacity Resource or a New Capacity Resource. ISO-NE Tariff section I.2.2

<sup>6</sup> Existing Capacity Qualification Deadline is a deadline, specified in section III.13.1.10 of Market Rule 1, for submission of certain qualification materials for the Forward Capacity Auction, as discussed in section III.13.1 of Market Rule 1. ISO-NE Tariff section I.2.2.

<sup>7</sup> ISO-NE Tariff section III.13.1.2.3 (27.0.0).

<sup>8</sup> GSEMNA Request for Waiver at 3-4.

determination until several days prior to filing this request for waiver with the Commission.<sup>9</sup>

5. GSEMNA states that the Commission has granted waiver and allowed market participants an opportunity to qualify a facility's upgraded capacity for a FCA 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.<sup>10</sup> GSEMNA claims that all four of the criteria are satisfied here.

6. GSEMNA claims that the good faith requirement is fulfilled because the oversight was not intentional. GSEMNA states that the waiver would be of limited scope because it would not be applicable to any future FCA, nor to any other capacity resource. GSEMNA states that a concrete problem would be remedied because absent a waiver, GSEMNA would not be able to commit the Northfield Facility's full, existing capacity for FCA 9. Finally, GSEMNA explains that the waiver does not have undesirable consequences because it would not delay FCA 9 or ISO-NE's informational filing with the Commission regarding the qualification results.<sup>11</sup>

#### **Notice of the Filing and Responsive Pleading**

7. Notice of GSEMNA's filing was published in the *Federal Register*, 79 Fed. Reg. 56,796 (2014), with interventions and protests due on or before October 6, 2014. ISO-NE timely filed a motion to intervene and opposition to GSEMNA's requested waiver.

8. ISO-NE requests that the Commission deny GSEMNA's waiver request. ISO-NE states that Qualified Capacity is based on the median of the Claimed Capability ratings over the most recent five years, as of the fifth business day in June each year. ISO-NE states that the winter Claimed Capability audit conducted on September 9, 2013, was months after the June deadline, and therefore, was not included in the median

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4 (citing *Brookfield Energy Marketing LP*, 145 FERC ¶ 61,286 (2013); *ISO New England Inc.*, 135 FERC ¶ 61,147, at P 33 (2011); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182 (2010); *PSEG Power Connecticut LLC*, 126 FERC ¶ 61,062 (2009); *NextEra Energy Power Marketing, LLC*, Docket No. ER09-1344-000 (July 14, 2009) (delegated letter order); *Exelon New England Holdings, LLC*, Docket No. ER09-1022-000 (May 28, 2009) (delegated letter order)).

<sup>11</sup> *Id.* at 4-6.

calculation.<sup>12</sup> ISO-NE asserts that the Lead Market Participant may challenge ISO-NE's determination of a resource's Qualified Capacity. The deadline for GSEMNA to challenge the values stated in the determination, in this case, was May 16, 2014. ISO-NE states that the deadline is established in the Tariff and additionally was posted on ISO-NE's website. Furthermore, ISO-NE avers that it sent an email to the Forward Capacity Market (FCM)<sup>13</sup> distribution list with a notification of the capacity challenge deadline and that the deadline also was included in an April 3, 2014 training session on the qualification process.<sup>14</sup>

9. ISO-NE states that GSEMNA's claim that its error was the result of inadvertent oversight is not a sufficient reason to waive the deadline. ISO-NE states that the Commission has upheld that "oversight" is not a justification to grant waiver.<sup>15</sup> In addition, ISO-NE contends that the requested waiver is not of limited scope because it puts Northfield Facility in a different position from other similarly-situated resources. ISO-NE explains that there are other project sponsors that missed the challenge deadline, as well as other qualification deadlines for FCA 9. Further, ISO-NE argues that the Commission has denied previous requests to waive Tariff deadlines where doing so would result in unfavorable treatment to similarly-situated parties.<sup>16</sup> ISO-NE asserts that there is no concrete problem to be remedied and that after eight FCAs GSEMNA should be well aware of the relevant deadlines.

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<sup>12</sup> ISO-NE comments at 3 (citing ISO-NE Tariff sections III.13.1.2.2.1.2).

<sup>13</sup> The Forward Capacity Market is the forward market for procuring capacity in the New England Control Area, as described in section III.13 of Market Rule 1. ISO-NE Tariff section I.2.2.

<sup>14</sup> ISO-NE comments at 3.

<sup>15</sup> *Id.* at 5 (citing *Mass. Mun. Wholesale Elec. Co.*, 148 FERC ¶ 61,227 at P 13 (2014); *Seneca Energy II, LLC*, 138 FERC ¶ 61,226, at P 9 (2012)).

<sup>16</sup> *Id.* (citing *Mass. Mun. Wholesale Elec. Co.*, 148 FERC ¶ 61,227 at P 14; *Seneca Energy II, LLC*, 138 FERC ¶ 61,226 at P 10).

## **Discussion**

### **Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), ISO-NE's timely, unopposed motion to intervene serves to make it a party to this proceeding.

### **Determination**

11. The Commission denies GSEMNA's request for waiver. In an effort to support its request for waiver, GSEMNA primarily argues that its failure to timely challenge ISO-NE's determination of the Northfield Facility's Qualified Capacity is the result of an inadvertent oversight. We find GSEMNA's statement that its underlying error was made in good faith to be unpersuasive. Administrative oversight is not a sufficient basis to justify waiving an express deadline.<sup>17</sup> As the Commission previously has stated, it is important to abide by the FCM rules, including deadlines, in order to enable ISO-NE to effectively administer the FCM.<sup>18</sup> Therefore, we will not automatically grant waiver of ISO-NE's Tariff requirements merely because we are asked to do so<sup>19</sup> – especially given ISO-NE's objection to waiver of its tariff.

12. ISO-NE explains that the deadline to challenge its determination was communicated to all market participants, including GSEMNA, in several ways, notably in the Tariff, on ISO-NE's website, and via e-mail, as well as in training materials. GSEMNA does not claim that it failed to receive or have access to these notifications. Additionally, GSMENA acknowledges that it has participated in all prior FCAs,<sup>20</sup> so it should have been fully aware of the requirements and timeframes associated with FCA participation.

13. Furthermore, while GSEMNA argues that its waiver request is of limited scope, we disagree. Granting its request here could result in unfavorable treatment of similarly situated parties, including the other project sponsors that missed the challenge deadline

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<sup>17</sup> *Mass. Mun. Wholesale Elec. Co.*, 148 FERC ¶ 61,227 at P 14; *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).

<sup>18</sup> *Massachusetts Electric Company*, 134 FERC ¶ 61,116, at P 14 (2011).

<sup>19</sup> *Mass. Mun. Wholesale Elec. Co.*, 148 FERC ¶ 61,227 at P 13.

<sup>20</sup> GSEMNA Request for Waiver at 2.

and other qualification deadlines for FCA 9. Additionally, granting GSEMNA's 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. Moreover, we find that granting the waiver would result in unduly favorable treatment to GSEMNA, while other market participants abided by ISO-NE's Tariff requirements and deadlines. For these reasons, we deny GSEMNA's request for waiver.

The Commission orders:

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.