

150 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER14-2440-001

ORDER DENYING REHEARING

(Issued February 23, 2015)

1. On September 12, 2014, the Commission accepted ISO New England Inc.'s (ISO-NE) proposed revisions¹ to its Transmission, Markets and Services Tariff (Tariff) to allow a non-commercial capacity resource to file with the Commission a request for a one-year deferral of its Capacity Supply Obligation² under certain circumstances.³ The PSEG Companies⁴ and the NRG Companies⁵ seek rehearing of the September 12, 2014 Order. As discussed below, we deny rehearing.

¹ ISO New England Inc., ISO New England Inc. Transmission, Markets and Services Tariff, [Exhibit IA, Exhibit IA ISO-NE Financial Assurance Policy, 34.0.0](#) and [III.13.3, III.13.3 Critical Path Schedule Monitoring, 8.0.0](#).

² A Capacity Supply Obligation is an obligation to provide capacity from a resource, or a portion thereof, to satisfy a portion of the Installed Capacity Requirement. A Capacity Supply Obligation is acquired through a Forward Capacity Auction (FCA), a reconfiguration auction, or a Capacity Supply Obligation Bilateral. Tariff section I.2.

³ *ISO New England, Inc.*, 148 FERC ¶ 61,185 (2014) (September 12, 2014 Order).

⁴ The PSEG Companies are PSEG Power LLC, PSEG Energy Resources & Trade LLC and PSEG Power Connecticut LLC.

⁵ The NRG Companies are NRG Power Marketing, LLC, GenOn Energy Management, LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, NRG Canal LLC, and Energy Curtailment Specialists Inc.

I. Background

2. In the September 12, 2014 Order, the Commission accepted ISO-NE's proposed Tariff revisions to allow a new capacity resource that will not be operational by the commencement of the Capacity Commitment Period for which it has a Capacity Supply Obligation to seek a one-year deferral of its Capacity Supply Obligation under certain limited circumstances. The resource must first request and receive from ISO-NE a written reliability determination indicating that the absence of the resource's capacity would result in a transmission system reliability issue⁶ in both the associated Capacity Commitment Period and the subsequent Capacity Commitment Period. If ISO-NE makes such a determination, then the resource may file with the Commission for a one-year deferral of its Capacity Supply Obligation. The resource must include in its filing to the Commission (1) the reliability determination from ISO-NE; (2) a demonstration that the deferral is critical to the resource's ability to achieve commercial operation; and (3) a demonstration that the project's development delay is due to factors beyond the control of the resource.

3. If the Commission approves a resource's deferral request, all of the rights, obligations, payments, and charges associated with the Capacity Supply Obligation will apply one year later than they otherwise would have applied without the deferral. This includes the five- or seven-year new entry capacity price lock-in if the resource opted for such a lock-in at the time it first cleared the Forward Capacity Auction (FCA).⁷ During the deferral period, the resource may not seek to buy or trade out of its Capacity Supply Obligation,⁸ and ISO-NE retains the right to seek termination of the Capacity Supply Obligation if the resource appears incapable of meeting its deferred commercial operation date. A resource that receives a deferral also must submit within 30 days of the

⁶ Specifically, the reliability assessment will determine whether the absence of the resource's capacity would result in the violation of North American Electric Reliability Corporation or Northeast Power Coordinating Council (NPCC) criteria or ISO-NE System Rules. Tariff section III.13.3.7.

⁷ For FCAs 1-8, the new entry capacity price lock-in was five years. The Commission recently accepted ISO-NE's proposal, as part of a new system-wide sloped demand curve construct, to extend the lock-in period to seven years beginning with FCA 9. *ISO New England Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173 (2014).

⁸ If the resource bought or traded out of any portion of its Capacity Supply Obligation prior to the Commission's approval of the deferral, the resource must forfeit any arbitrage profits gained through that transaction. Alternatively, if the resource covers the Capacity Supply Obligation at a loss and receives a deferral, it will still incur the loss.

Commission's acceptance of its deferral request any financial assurance that would apply – pursuant to the financial assurance rules applicable to the FCA in which the resource cleared – to a resource that has not achieved commercial operation one year after the start of a Capacity Commitment Period in which it has a Capacity Supply Obligation.⁹

4. As relevant here, the Commission rejected certain challenges to the deferral provisions, including requests that the deferral provisions be modified such that a deferral would only be considered if the 1 day-in-5 years Loss of Load Expectation (LOLE) standard would not be met due to the loss of a non-commercial resource's capacity. NRG also requested that if the Commission accepted the deferral provisions, it require resources seeking a deferral to meet more stringent financial assurance requirements. The Commission declined to impose such additional requirements, finding that the deferral provisions, as proposed by ISO-NE, contained sufficient safeguards to limit their applicability and ensure that they do not serve as a means for resources to avoid their obligations.¹⁰

5. NRG also argued that the Commission has previously stated that it will apply *Mobile-Sierra*¹¹ protection to capacity auction results and that ISO-NE must satisfy the "public interest" burden necessary to revisit the rates, terms, or conditions of an FCA that has already been run. In response, the Commission explained that *Mobile-Sierra* protection extends only to FCA and reconfiguration auction clearing prices, with clearing prices becoming "finalized" after the Commission approves ISO-NE's FCA results filing, and not to other FCM rules. The Commission found that the FCM rules, terms, and conditions implicated in this proceeding do not change FCA clearing prices and therefore, consistent with Commission precedent, are not subject to analysis under *Mobile-Sierra*.¹²

II. Request for Rehearing

6. On rehearing, PSEG and NRG state that the Commission erroneously rejected or ignored their arguments that the deferral provisions conflict with the recently-accepted

⁹ Tariff Section I, Exhibit IA, Section VII.B.2.c.

¹⁰ September 12, 2014 Order, 148 FERC ¶ 61,185 at P 25.

¹¹ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 350 (1956) (*Mobile-Sierra*).

¹² September 12, 2014 Order, 148 FERC ¶ 61,185 at P 30.

sloped demand curve Forward Capacity Market design.¹³ They argue that the sloped demand curve design allows ISO-NE to achieve its reliability target of a 1 day-in-10 years LOLE (1-in-10 LOLE) on an average basis and, according to PSEG and NRG, ISO-NE has stated that it will not consider intervening in market outcomes unless reserve margins fall below a 1 day-in-5 years LOLE (1-in-5 LOLE).¹⁴ PSEG and NRG state that a similar standard should apply to the reliability determination supporting a deferral request, to wit: a deferral should only be considered where the 1-in-5 LOLE will not be met due to the loss of the relevant non-commercial resource's capacity.¹⁵

7. PSEG and NRG further argue that the Commission erred in finding that the benefits of the Tariff revisions outweighed any disruption to the settled expectations of market participants relying on the existing Tariff, and that the Commission provided no evidence as to whether consumers will be better off because of the rule changes or if they will suffer a multi-year capacity shortfall. PSEG and NRG assert that while load may pay less in the first year of a resource's deferred obligation, that payment is deferred only because load must pay the full value, adjusted for inflation, in the sixth year. PSEG and NRG also state that the Commission should have considered the impact of a deferral on the cost to load in the years beyond the lock-in period, which according to PSEG and NRG could subject load to an additional \$30 million in costs based on the escalation of the payment using the Handy Whitman Index. They further state that the Commission should have acknowledged that the Tariff rules provide an opportunity for the resource to mitigate its exposure by covering its Capacity Supply Obligation through bilateral arrangements or through reconfiguration auctions.¹⁶

8. PSEG and NRG also challenge the Commission's balancing of equities in weighing the settled expectations of market participants against the benefits of the deferral provisions. They assert that Commission precedent does not support disrupting settled expectations when a rule change is unnecessary or without any demonstrated

¹³ *ISO New England Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173 (2014).

¹⁴ The Tariff defines Loss of Load Expectation as "the probability of disconnecting non-interruptible customers due to a resource deficiency." Tariff section I.2. The 1-in-10 and 1-in-5 LOLE standard refers to the level of resource adequacy that is expected to result in one day of customer disconnection over the course of a ten-year and five-year period, respectively.

¹⁵ PSEG and NRG Rehearing Request at 8-11.

¹⁶ *Id.* at 12-14.

benefit.¹⁷ PSEG and NRG argue that the deferral provisions are unnecessary because the Tariff already includes a provision that would require a resource to cover its capacity obligation or allow ISO-NE to terminate the resource's Capacity Supply Obligation.¹⁸ They further argue that the deferral provisions do not have any demonstrated benefit and only defer issues without assurance that the project will achieve commercial operation.¹⁹ Lastly, they state that the Commission failed to consider the disruption to the markets a deferral would cause, such as preventing the market from signaling the need for more viable resources that could be used to cover the delayed resource.²⁰

9. PSEG and NRG additionally argue that the Commission misconstrued precedent in determining that the Tariff revisions are not subject to review under *Mobile-Sierra*. PSEG and NRG state that in the *Devon*²¹ order, the Commission explained that, under the Settlement Agreement at issue in that proceeding, *Mobile-Sierra* protection does not apply to the rates, terms, and conditions of future auctions, and that ISO-NE could change the terms and conditions of future auctions on a prospective basis.²² PSEG and NRG argue that the Commission should, however, apply *Mobile-Sierra* protection to rates, terms, and conditions of previously-run auctions. PSEG and NRG state that, under the Commission's interpretation of *Mobile-Sierra*, as explained in the September 12, 2014 Order, the Commission could retroactively require generators to meet new performance requirements without violating the contractual agreement agreed to by suppliers.

10. Finally, PSEG and NRG state that the Commission erred by accepting ISO-NE's proposed Tariff changes without directing ISO-NE to require incremental financial assurance for all resources with deferred Capacity Supply Obligations. PSEG and NRG note that, beginning with the ninth FCA, more stringent financial assurance requirements will apply to new resources. According to PSEG and NRG, these more stringent financial assurance requirements should also apply to resources accepting a Capacity

¹⁷ *Id.* at 16 (citing *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,095, at P 30 (2013); *ISO New England Inc. and New England Power Pool Participants Committee*, 132 FERC ¶ 61,136 (2010)).

¹⁸ *Id.* at 16-17.

¹⁹ *Id.* at 15.

²⁰ *Id.* at 15-16.

²¹ *Devon Power LLC*, 115 FERC ¶ 61,340 (2006).

²² PSEG and NRG Rehearing Request at 17-18.

Supply Obligation prior to the ninth FCA, that seek a deferral of that Capacity Supply Obligation, in order to ensure that meaningful incremental security is required of resources that are delayed beyond the date they committed to begin delivering capacity to the New England region.

III. Discussion

11. We deny PSEG and NRG's request for rehearing.

12. PSEG and NRG argue that if the system-wide sloped demand curve is permitted to yield less than a 1-in-10 LOLE, and possibly as low as a 1-in-5 LOLE, in any one year, then a deferral of a cleared resource's Capacity Supply Obligation should be impermissible unless the loss of that resource's capacity similarly yields less than a 1-in-5 LOLE. Putting aside whether PSEG and NRG's assumptions regarding the demand curve are correct, we find the comparison to be misplaced. The system-wide sloped demand curve is designed to provide the capacity necessary to meet the 1-in-10 LOLE reliability standard *on average over time*. This purpose is distinct from that of the deferral provisions in this proceeding, which serve as a backstop mechanism for ISO-NE to address discrete transmission system reliability issues -- namely, violation of NERC or NPCC criteria or ISO-NE System Rules -- in the associated Capacity Commitment Period and the subsequent Capacity Commitment Period. Further, as the Commission found in the September 12, 2014 Order, without a deferral option, consumers could be required to either pay for non-existent capacity or bear the risk of a multi-year capacity shortfall.²³ We therefore do not find PSEG and NRG's arguments on this point to be persuasive.

13. We also disagree with PSEG and NRG's contention that the Commission erred in finding that the benefits of the Tariff revisions outweigh any disruption to the settled expectations of market participants. PSEG and NRG argue that consumers may be harmed by allowing a resource to defer its Capacity Supply Obligation, and that the deferral option would disrupt the market by interfering with signals regarding the need for more viable resources. However, as noted here and in the September 12, 2014 Order, the benefits expected to result from the deferral provisions include preventing customers from paying for non-existent capacity or possibly facing a multi-year capacity shortfall due to permanent loss of a resource's capacity.²⁴

14. Contrary to PSEG and NRG's argument, a deferral option will not result in consumers paying for capacity unnecessarily. If a project does not achieve commercial operation by the start of its Capacity Commitment Period in June 2016, for example, and

²³ September 12, 2014 Order, 148 FERC ¶ 61,185 at PP 28-29.

²⁴ *Id.*

it does not receive a deferral, then, to the extent that the project is unable to cover its capacity supply obligation through a reconfiguration auction, load will pay for the non-existent capacity of the project. However, if the project receives a deferral, load would only pay for any replacement capacity for the 2016-2017 Capacity Commitment Period, which presumably would be operational capacity that is capable of serving load. In other words, load will not be required to pay for non-existent capacity.

15. PSEG and NRG argue that under a deferral, load would face relatively higher costs in the final year of the deferral (i.e., the final year of the five- or seven-year new entry price lock-in period). However, assuming the project is completed after receiving a deferral, load would be paying for actual operational capacity in the final year. In addition, PSEG and NRG's argument that such a project will be paid a premium over the clearing price that all other resources receive for a future delivery year is speculative. Even if they are correct that such a project's new entry clearing price will exceed the future clearing price for that delivery year, load will nonetheless have paid the project no more, in real terms, during its new entry price lock-in period than it would have received if it had reached commercial operation by its original target date. In both scenarios, the project would receive the equivalent, in real terms, of its year-one clearing price multiplied by its cleared capacity multiplied by the new entry price lock-in period. Even if load were to pay more for the capacity in the final year of the deferred Capacity Supply Obligation (i.e. the new entry price does actually exceed the future clearing price for the final delivery year), that consideration does not outweigh the prospect of load paying for non-existent capacity in the first year absent a deferral. We therefore continue to believe that the benefits of the Tariff revisions outweigh market participants' settled expectations based on reliance on the prior rules.

16. Similarly, we do not find merit in PSEG and NRG's contention that the rule changes were unnecessary because the Tariff provides an opportunity for a resource to mitigate its exposure by covering its Capacity Supply Obligation through bilateral arrangements or through reconfiguration auctions. We agree that the Tariff provides the opportunity to cover a Capacity Supply Obligation, and that this option may be preferable depending on the circumstances. However, there may be instances where there is limited capacity, particularly in a constrained area, and that an alternative, such as the deferral provisions here, may serve as a just and reasonable mechanism by which ISO-NE can protect against multi-year capacity shortfalls.

17. We disagree with PSEG and NRG regarding the applicability of *Mobile-Sierra* protection to the Tariff revisions. In the September 12, 2014 order, the Commission explained that the FCM settlement agreement provided for the *Mobile-Sierra* "public

interest” analysis to apply only in limited circumstances, i.e., to *final FCA and reconfiguration auction clearing prices*.²⁵ As the Commission stated in the *Devon* order,

Our reading of the provision indicates that, as several reply commenters note, the “public interest” standard will only apply to (1) the final clearing prices in the FCA and any reconfiguration auctions permitted under the market rules, and (2) the transition mechanism. The *Mobile-Sierra* provision does not apply to the market rules that will be developed and filed with the Commission under the Settlement Agreement or to any other aspect of the settlement not specifically mentioned in section 4.C [of the Settlement Agreement].²⁶

18. PSEG and NRG interpret the Commission’s statement in the *Devon* order, that “*Mobile-Sierra* ... does not apply to the market rules that will be developed and filed with the Commission under the Settlement Agreement...” as applying *Mobile-Sierra* protection to all rules governing a prior FCA. This is not the case. As explained in *Devon*, *Mobile-Sierra* protection applies only to the final prices, and PSEG and NRG do not claim that the Capacity Supply Obligation deferral Tariff revisions change the FCA clearing prices. Moreover, the Tariff revisions here, while applicable to a Capacity Supply Obligation assumed in a prior FCA, will apply prospectively and after notice.

19. Finally, we reject PSEG and NRG’s request that any resource granted a deferral be subject to the more stringent financial assurance that will apply beginning with the ninth FCA. We find that requiring a resource to provide financial assurance in excess of what it originally anticipated could further impede development and would not support the objective of the Capacity Supply Obligation deferral Tariff revisions, i.e., allowing a cleared resource that was delayed through no fault of its own to become commercial.

²⁵ The FCM settlement agreement also provided for the *Mobile-Sierra* “public interest” analysis to apply to the FCM transition mechanism. However, since the transition period ended in 2010, it is irrelevant to our discussion.

²⁶ *Devon Power*, 115 FERC ¶ 61,340 at P 182.

The Commission orders:

PSEG and NRG's request for rehearing of the September 12, 2014 Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.