

153 FERC ¶ 61,163
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc. and Participating Transmission Owners Administrative Committee Docket No. ER11-2216-001

ORDER DENYING REHEARING

(Issued November 12, 2015)

1. On February 24, 2011, Massachusetts Municipal Wholesale Electric Company (MMWEC) filed a request for rehearing of the Commission's order¹ accepting ISO New England Inc.'s (ISO-NE) revisions to its Transmission, Markets and Services Tariff (Tariff) that clarify the hierarchy of data and documents that ISO-NE utilizes to determine the Capacity Network Resources (CNR) Capability² ratings of existing generating resources. In this order, we deny rehearing.

I. Background

2. ISO-NE conducts an annual Forward Capacity Auction (FCA) as part of its Forward Capacity Market (FCM) to procure capacity equal to the Installed Capacity Requirement for New England. Capacity providers compete in this auction to supply capacity approximately three years later and, if selected, are compensated by a clearing price set by the highest accepted offer.³

¹ *ISO New England Inc.*, 134 FERC ¶ 61,057 (2011) (January 2011 Order).

² The CNR Capability rating (expressed in MW) determines: (i) the CNR Interconnection Service rights that must be maintained for a generating resource; (ii) whether a new Interconnection Request is required for an increase in CNR Capability; and (iii) whether an Initial Interconnection Analysis is required under Forward Capacity Market qualification for a proposed increase in output from an existing generating capacity resource. *Id.* n.2.

³ *See* section III.13.1 of ISO-NE's Tariff (Market Rule 1). Section 13.1 addresses the rules and procedures associated with qualifying resources for participation in the FCM.

3. In 2009, the Commission accepted for filing revisions to the Tariff which integrated the FCM and the generator interconnection process and allocated interconnection rights and responsibilities (FCM/Queue Amendments).⁴ The FCM/Queue Amendments revised Schedules 22 and 23⁵ to provide that resources that qualify as Existing Generating Capacity Resources in the fourth FCA, held in August 2010, would receive grandfathered treatment, be treated as CNRs and receive CNR Interconnection Service⁶ up to the generating resources' previously approved level of interconnection service.

4. The FCM/Queue Amendments specified the approval documents ISO-NE would utilize to identify the previously-approved level of interconnection service. CNR Capability was identified as the summer and winter MW quantities expressed in the interconnection agreement, the generating resource's approval under section I.3.9 (or its predecessor provisions),⁷ or the historical capabilities of the generating resource as recorded in a summer and winter Claimed Capability Audit, or an ISO Forecast Report of Capacity, Energy, Loads, and Transmission (CELT Report).⁸

⁴ See *ISO New England Inc.*, 126 FERC ¶ 61,080 (2009) (accepting FCM/Queue Amendments).

⁵ Schedules 22 and 23 set forth in the Standard Large Generator Interconnection Procedures (LGIP and the Standard Small Generator Interconnection Procedures (SGIP)), respectively, in section II of the ISO-NE Tariff.

⁶ CNR Interconnection Service is defined as the Interconnection Service selected by the Interconnection Customer to interconnect its Large Generating Facility with the Administered Transmission System in accordance with the Capacity Capability Interconnection Standard. An Interconnection Customer's CNR Interconnection Service does not, in and of itself, convey transmission service. ISO-NE Tariff, Schedule 22, section I.

⁷ Section I.3.9 of the Tariff relates to Proposed Plan Applications (PPA) from market participants and transmission owners. PPAs detail any new or materially changed plans for additions or changes to any generation or demand response facilities. Within 60 to 90 days of receiving the section I.3.9 PPA, ISO-NE must respond in writing as to whether the proposed plan will have significant adverse effects on the reliability of the transmission owner's facilities, on another transmission owner's facilities, or on the system of a market participant. If ISO-NE finds that the PPA will not have adverse effects, the market participant or transmission owner may proceed.

⁸ Section 5.2.3 of Schedule 22 and section I.6.4.3 of Schedule 23.

5. Prior to the fourth FCA, PSEG Power Connecticut LLC (PSEG) filed a complaint with the Commission alleging that ISO-NE was violating its Tariff by effectively applying a cap on the CNR Capability ratings of its Bridgeport Harbor Unit Nos. 3 and 4, limiting those units' available qualified capacity eligible to participate in the FCM to the MW values specified in the interconnection agreements for these units rather than the higher historical MW values identified in certain CELT Reports. PSEG argued that, based on section 5.2.3 of Schedule 22, resources are provided with three, equally-available, alternative methods to establish the CNR Capability ratings. ISO-NE disagreed, contending that section 5.2.3 of Schedule 22 and section I.6.4.3 of Schedule 23 established a hierarchy of documentation, or methods, to establish CNR Capability ratings and that an entity could not choose which one of the three methods it wished to utilize to establish its CNR Capability ratings. The Commission granted PSEG's complaint, finding that section 5.2.3 was ambiguous.⁹ The Commission also noted that ISO-NE could make a section 205 filing to modify its Tariff language and establish a hierarchy procedure.¹⁰

6. On November 30, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹¹ ISO-NE and the Participating Transmission Owners Administrative Committee filed on behalf of the Participating Transmission Owners (collectively, Original Filing Parties) proposed revisions in this proceeding which they stated were necessary to clarify that a hierarchy exists among the data and documents listed in section 5.2.3 of Schedule 22 and section I.6.4.3 of Schedule 23 in determining the CNR Capability of an existing generation resource.¹² ISO-NE proposed to use the following hierarchical order: first, the MW amount specified in the existing generator resource's interconnection agreement, either executed or filed in unexecuted form with the Commission; second, in the absence of an interconnection agreement with a specified MW amount, the MW amount specified in a section I.3.9 (or its predecessor provision) approval; and third, in the absence of both an interconnection agreement and a section I.3.9 approval, the MW amount determined by ISO-NE based on the documented historical capability of the generating facility, for example as listed in the CELT Report. Further, where a resource has both an interconnection agreement and a section I.3.9 approval, the lower MW amount will govern. Finally, in the absence of an interconnection agreement or an approval pursuant to section I.3.9 (or its predecessor provision) that specifies a MW amount, the MW

⁹ *PSEG Power Connecticut LLC v. ISO New England Inc.*, 132 FERC ¶ 61,022 (2010).

¹⁰ *Id.* PP 35-40 & n.46.

¹¹ 16 U.S.C. §§ 824d and 824e (2012).

¹² January 2011 Order, 134 FERC ¶ 61,057 at P 6.

amount must be confirmed by an affidavit executed by a corporate officer of the resource attesting that the resource does not have an interconnection agreement or approval pursuant to section I.3.9 of the Tariff (or its predecessor provision) specifying a MW amount.¹³ Original Filing Parties asserted that these proposed revisions will clarify for owners of existing generating capacity resources the mechanisms that ISO-NE will utilize to determine the CNR Capability ratings.

7. MMWEC protested the filing, arguing that ISO-NE failed to justify utilizing the older approximation of MW values in the interconnection agreement over the more recent, proven values in ISO-NE's CELT Report. Specifically, MMWEC stated that the 1979 Interconnection Agreement (Interconnection Agreement) for its Stony Brook facility explicitly stated an *approximate* total of 511 MW. However, ISO-NE's 2010 CELT Report rated MMWEC's at 526.7 MW for winter Seasonal Claimed Capability for CNR purposes. MMWEC contended that its Interconnection Agreement provided that "the uses by MMWEC of the Substation and Electrical Interconnection provided for by this Agreement are limited to the delivery of the output from the Station" without reference to a specific number of megawatts.¹⁴ MMWEC further argued that regardless of the approximated value contained in the Interconnection Agreement, a CNR Capability rating at 526.7 MW is consistent with the three components of the proposed hierarchical structure. MMWEC asserted that, despite several discussions with ISO-NE, ISO-NE has so far been unwilling to agree to establish a capacity rating for the Stony Brook facility that is higher than 511 MW.

8. In response, ISO-NE stated that a "fair and consistent outcome can be achieved by MMWEC's filing of an updated Section I.3.9 application reflecting the temperature levels utilized currently in the section I.3.9 process," after which MMWEC would submit an interconnection request to convert the updated section I.3.9 output levels into CNR Interconnection Service levels to be reflected in a standard Large Generator Interconnection Agreement (LGIA).¹⁵

9. In the January 2011 Order, the Commission accepted the Original Filing Parties' proposed revisions finding that ISO-NE demonstrated that the proposed Tariff revisions protect reliable operations by ensuring the appropriate studies are completed to protect reliability and provide equal treatment for resources seeking to change capacity limits and obtain access to the New England transmission system.¹⁶ The Commission stated that

¹³ *Id.* (referencing Filing Parties' Transmittal Letter at 9).

¹⁴ *Id.* P 19 n.18 (referencing Section 12, MMWEC Interconnection Agreement).

¹⁵ *Id.* P 26 (referencing ISO-NE Answer at 8 n.23).

¹⁶ *Id.* PP 30-31.

placing interconnection agreements first in the hierarchy provided for equal treatment of resources, since any new generating unit or existing generating unit that seeks to increase its output must submit an interconnection request or section I.3.9 application to assess whether there would be any adverse impacts on the system that would necessitate system upgrades. If a generator owner asserts a higher output via documented historical capability (as opposed to, first, an interconnection agreement or, second, an approval under section I.3.9), then capacity on the transmission system available to new or expanding generating units is reduced, because MW amounts listed in interconnection agreements and section I.3.9 approvals are used in planning studies and real-time operating guides. The Commission found that using the interconnection agreements first in the hierarchy to determine CNR Capability ratings provided equal footing for all resources.

10. In response to MMWEC's protests that the MW ratings listed in the CELT Report should be used for the CNR Capability rating for its Stony Brook facility rather than the value listed in its Interconnection Agreement, the Commission stated that ISO-NE had persuasively explained that interconnection agreements are a more reliable means of determining the CNR Capability ratings. In any event, ISO-NE committed to updating the CELT Report to reflect not only the generating facility's approved levels of interconnection service that result from the hierarchy, but also the governing or controlling document used to establish the ratings.

11. Lastly, the Commission declined to establish hearing procedures concerning the CNR Capability rating for MMWEC's Stony Brook facility. Aside from finding that the MW ratings listed in the CELT Report, rather than the value listed in the MMWEC Interconnection Agreement, should be used for determining the CNR Capability rating for its Stony Brook facility, the Commission found that MMWEC raised no disputed issues of material fact that were appropriate for a trial-type evidentiary hearing.¹⁷ The Commission found that MMWEC merely asserted that the higher rating should be used over the lower rating, a result that is not precluded by the Commission's acceptance of the Tariff revisions proposed here but, nevertheless, must be determined using the LGIA procedures set forth in ISO-NE's Tariff.¹⁸

II. Rehearing Request

12. In its request for rehearing, MMWEC reiterates that it does not object to the proposed hierarchy of data and documents for establishing the CNR ratings for generating resources. MMWEC argues that it objects to the application of the hierarchy

¹⁷ January 2011 Order, 134 FERC ¶ 61,057 at P 35.

¹⁸ *Id.*

to its Stony Brook facility.¹⁹ MMWEC requests rehearing of the Commission's determination that the Interconnection Agreement, which contained a 511 MW CNR rating, was the appropriate document to establish the Stony Brook facility's CNR rating. MMWEC argues that the CELT Report, which contained a 526.7 MW level, was a more appropriate document under the proposed hierarchy and should have been utilized to set the Stony Brook facility's CNR rating.

13. MMWEC argues that the Interconnection Agreement provides that "[t]he uses by MMWEC of the Substation and Electrical Interconnection provided for by this Agreement are limited to (i) the delivery of the output from the station..."²⁰ MMWEC argues that this provision establishes no specific megawatt limit on Stony Brook facility's delivery rights. MMWEC argues that a "whereas" clause in the Interconnection Agreement, which established that Stony Brook facility had approximately 341 MW of combined cycle capacity and 170 MW of gas turbine capacity, was what the Commission erroneously relied upon in establishing the 511 MW CNR rating for the Stony Brook facility. MMWEC argues that the 511 MW capability is only an approximation provision contained in a "whereas" clause and contrary to the Interconnection Agreement's operative language. MMWEC argues that the MW value contained in the "whereas" clause of the Interconnection Agreement has never limited MMWEC's ability to dispatch and deliver the output of the Stony Brook facility and should not be utilized to determine the rights and obligations of the parties.²¹

14. MMWEC argues that since the Interconnection Agreement set no specific limit on the Stony Brook facility's delivery rights, then the annual CELT Report should be utilized to determine the output of the Stony Brook facility. MMWEC argues that, contrary to the Commission's statements, MMWEC does not support utilizing CELT Report ratings over interconnection agreements. MMWEC argues that the Commission misread the Stony Brook Interconnection Agreement.

15. MMWEC argues that the Commission erred in rejecting its request for establishing hearing and settlement procedures to establish the appropriate CNR rating for the Stony Brook facility. MMWEC argues that, contrary to the Commission's findings, there were two issues of material fact that could be resolved through hearing procedures: (1) the meaning of the operative language of the Interconnection Agreement; and (2) whether that operative language can be overruled by contrary language contained in a "whereas" clause. While MMWEC states its willingness to work with ISO-NE to

¹⁹ MMWEC Rehearing Request at 1.

²⁰ *Id.* at 6 (referencing Stony Brook Interconnection Agreement section 12).

²¹ *Id.*

resolve this issue, it still wants the Commission to refer the matter for a potential future hearing in case the parties cannot reach an acceptable resolution.

16. Also in its rehearing request, MMWEC stated that it was working with ISO-NE to establish the higher CNR rating; however, according to MMWEC, this process was still pending when the rehearing request was filed. Thus, MMWEC requested that the Commission not act on its rehearing request at that time. MMWEC stated that if it reached a favorable outcome with ISO-NE it would withdraw its request. However, MMWEC stated that if ISO-NE did not agree to the higher CNR rating it would inform the Commission and ask for a ruling on the merits of its rehearing request.

III. Discussion

17. As discussed below, we deny MMWEC's request for rehearing. As an initial matter, we note that, to date, while MMWEC had requested that the commission defer action, MMWEC has since neither withdrawn its request for rehearing nor requested a ruling on the merits. Over four years having passed, and with the request remaining pending before the Commission without apparent resolution of the underlying dispute, we will address the issues here.

18. In its request for rehearing, MMWEC largely reiterates the same arguments it made in its original protest, and we reaffirm the Commission's findings regarding those issues in the January 2011 Order. To resolve a previous ambiguity and provide clarity in establishing CNR ratings, ISO-NE proposed a hierarchy of data and documents listed in section 5.2.3 of Schedule 22 and section I.6.4.3 of Schedule 23 in determining the CNR Capability of an existing generation resource, and the Commission accepted the revisions as just and reasonable.²²

19. In its protest and on rehearing, MMWEC's focus is not on the proposed Tariff revisions clarifying the hierarchy of data and documents, but how this hierarchy was applied to its Stony Brook facility. The Stony Brook Interconnection Agreement indicates the Stony Brook facility had approximately 341 MW of combined cycle capacity and 170 MW of gas turbine capacity. While this statement is contained in a "whereas" clause, it is an actual MW amount provided in the agreement. MMWEC argues that ISO-NE and the Commission should disregard this provision and focus on another provision as the relevant language in determining the appropriate MW for the Stony Brook facility; a provision which does not specify a MW amount and which instead refers to the "delivery of the output from the station." Essentially MMWEC argues that the Interconnection Agreement is silent as to a specific MW amount, and therefore, the CELT Report should be determinative. We disagree.

²²January 2011 Order, 134 FERC ¶ 61,057 at P 6.

20. The Stony Brook Interconnection Agreement approximates the capacity for the Stony Brook facility at 511 MW. ISO-NE created the hierarchy of data and documents to provide more clarity for owners of existing generating capacity resources regarding the factors that ISO-NE will consider to determine the CNR Capability ratings. To require ISO-NE to review each interconnection agreement to determine whether the MW amount listed in the agreement is in a specific clause or section such that it may or may not be applicable would undermine this clarity. Furthermore, allowing MMWEC to utilize a higher historical capability rather than the value approved in its Interconnection Agreement would disrupt reliable operations by introducing unstudied system conditions and risk unequal treatment for resources seeking to change capacity limits.

21. We also affirm the Commission's decision to decline to establish hearing procedures. The parties agree that the Stony Brook Interconnection Agreement approximates the Stony Brook facility at 511 MW while the CELT Report lists 526.7 MW as the historical output of the facility. The Commission, and ISO-NE, disagreed with MMWEC's interpretation of the applicability of the MW listed in the Interconnection Agreement; this does not equate to a disputed issue of material fact appropriate for a trial-type evidentiary hearing.

The Commission orders:

Massachusetts Municipal Wholesale Electric Company's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.