

154 FERC ¶ 61,041
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.

Docket No. ER16-308-000

ORDER ACCEPTING INFORMATIONAL FILING

(Issued January 21, 2016)

1. On November 10, 2015, pursuant to section III.13.8.1 of the ISO New England Inc. (ISO-NE) Transmission, Markets, and Services Tariff (Tariff), ISO-NE submitted an informational filing providing information relating to the tenth Forward Capacity Auction (FCA)¹ for the 2019-2020 Capacity Commitment Period (Informational Filing), including the qualification of capacity resources to participate in FCA 10. As discussed below, the Commission accepts ISO-NE's Informational Filing.

I. Background of the Forward Capacity Market

2. ISO-NE operates a Forward Capacity Market (FCM) in which capacity resources compete in an annual FCA to provide capacity to New England three years in advance of the relevant Capacity Commitment Period. Providers whose capacity clears the FCA acquire capacity supply obligations which they must fulfill three years later. The FCM rules require ISO-NE to submit to the Commission an informational filing no later than 90 days prior to each FCA that includes, *inter alia*, the details of the resources accepted or rejected in the qualification process for participation in the FCA and the capacity zones to be modeled for the FCA.² Under Tariff section III.13.8.1(b), the determinations in the informational filing will be used in the relevant FCA, unless the Commission issues an order within 75 days of the filing directing otherwise.

¹ The tenth FCA (FCA 10) is scheduled to begin on February 8, 2016.

² Tariff section III.13.8.1(a) (12.0.0).

3. As part of the process for qualifying resources to participate in the FCA, ISO-NE's Internal Market Monitor (IMM) reviews the prices at which resources propose to offer their capacity into the auction so as to prevent the exercise of buyer-side market power that could inappropriately suppress capacity prices. The IMM develops a benchmark price, the Offer Review Trigger Price, for each resource type that seeks to participate in the auction, set at a level that approximates that resource type's cost of new entry.³ Each new resource that seeks to submit an offer in the FCA at a price below the relevant Offer Review Trigger Price must include in its qualification package the New Resource Offer Floor Price (Offer Floor Price),⁴ and supporting documentation justifying that price as competitive in light of the resource's costs, as well as relevant financial assumptions and cost projections for the resource. The IMM may consult with the resource sponsor to gather further information to complete its analysis.⁵ The IMM then issues a Qualification Determination Notification to each resource, informing it whether it has or has not qualified to participate in the FCA and at what price and, if applicable, an explanation as to why the resource was not accepted.

II. ISO-NE's Informational Filing

4. On November 10, 2015, ISO-NE, as required by the Tariff,⁶ made the instant Informational Filing with the Commission for the 2019-2020 Capacity Commitment

³ *ISO New England Inc.*, 146 FERC ¶ 61,084, at P 3 (2014).

⁴ The New Resource Offer Floor Price is a value submitted by new resources that reflects the lowest price at which the resource requests to offer capacity in the FCA. Tariff section III.13.1.1.2.2.3(a).

⁵ Tariff sections III.13.1.1.2.2.3(a), III.A.21.2(iv).

⁶ ISO-NE is required to provide the following: the locational capacity requirements of the tenth FCA based upon the topology of the transmission system, and specifically which Capacity Zones are to be modeled in the auction; the multipliers applied in determining the appropriate Capacity Values for Demand Resources; the results of the IMM's review of Existing Capacity Resources that seek to permanently or statically de-list above the Dynamic De-List Bid Thresholds; the transmission interface limits used in the process of selecting which Capacity Zones will be modeled in FCA 10; which existing and proposed transmission lines ISO-NE determines will be in service by the start of the 2019-2020 Capacity Commitment Period; the expected amount of installed capacity in each modeled Capacity Zone during the 2019-2020 Capacity Commitment Period; the Local Sourcing Requirement for each modeled import-constrained Capacity Zone; and the Maximum Capacity Limit for each modeled export-

(continued...)

Period.⁷ ISO-NE states as follows:

- ISO-NE will model two Capacity Zones in FCA 10: the Southeastern New England Capacity Zone (Southeastern Massachusetts, Rhode Island, and Northeastern Massachusetts/Boston, which will be modeled as an import-constrained zone) and the Rest of Pool Capacity Zone (Connecticut, Maine, Western/Central Massachusetts, New Hampshire, and Vermont).
- The Installed Capacity Requirement (ICR) is 35,126 MW. After accounting for 975 MW per month of Hydro Quebec Interconnection Capability Credits (HQICCs), a net ICR of 34,151 MW remains to be procured in FCA 10.
- Qualified Existing Capacity Resources consist of 30,711 MW from Existing Generating Capacity Resources (intermittent and non-intermittent); 89 MW from Existing Import Capacity Resources; and 2,611 MW from Existing Demand Resources.
- A total of 1,382 MW of Static De-list Bids were submitted for FCA 10. No Permanent De-list Bids were submitted. Subsequently, 97 MW of these de-list bids were converted into Non-Price Retirement Requests. In total, 17 existing resources submitted Non-Price Retirement Requests.
- Overall, the qualification process for FCA 10 resulted in 6,720 MW of new resources (147 projects) and 33,411 MW of existing resources competing to meet the net ICR of 34,151 MW for the New England Control Area for the 2019-2020 Capacity Commitment Period.⁸

5. ISO-NE explains that the IMM's capacity price estimate for qualifying new resources is derived by entering all relevant resource costs and non-capacity revenue data, as well as assumptions regarding depreciation, taxes, and discount rate, into the capital budgeting model used to develop the relevant Offer Review Trigger Price and

constrained Capacity Zone. Transmittal, November 10, 2015 Filing (Transmittal) at 3 (citing Tariff section III.13.8.1(a)).

⁷ ISO-NE filed both a public version of its Informational Filing and a version for which it seeks privileged treatment. All citations from the Informational Filing are to the public version.

⁸ Transmittal at 4-5.

calculating the break-even contribution required from the FCM to yield a discounted cash flow with a net present value of zero for the project.⁹

6. ISO-NE states in its Informational Filing that “[i]f the IMM determines that the requested offer price is inconsistent with the IMM’s capacity price estimate, then the resource’s [Offer Floor Price] will be set to a level that is consistent with the capacity price estimate, as determined by the IMM.”¹⁰ ISO-NE further states that Lead Market Participants were notified of the IMM’s final determinations in their Qualification Determination Notifications, which were provided to them on September 25, 2015.¹¹

III. Notice of the Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, with interventions and protests due on or before November 25, 2015.¹² Timely motions to intervene were filed by the New England Power Pool Participants Committee (NEPOOL); Lotus Energy Group, LLC (Lotus); the United Illuminating Company; Eversource Energy Service Company; Dominion Resources Services, Inc.; NRG Power Marketing LLC and GenOn Energy Management, LLC; Entergy Nuclear Power Marketing, LLC; Exelon Corporation; and the New England States Committee on Electricity. Lotus additionally filed a protest.¹³ On December 10, 2015, ISO-NE filed an answer to Lotus’s protest.

A. Protest

8. Lotus explains that it is developing two 109 MW merchant combustion turbine generating facilities in Connecticut (the Projects). According to Lotus, the IMM overlooked the correct cost of equity figure underlying Lotus’s proposed Offer Floor Price¹⁴ and, as a result, the cost of equity figure ISO-NE used for the Projects is

⁹ Transmittal at 16.

¹⁰ Transmittal at 16.

¹¹ Transmittal at 2.

¹² 80 Fed. Reg. 72,430 (2015).

¹³ Lotus filed both a public version of its protest and a version for which it seeks privileged treatment. All citations from Lotus’s protest are to the public version.

¹⁴ Lotus Protest at 3.

unreasonably high, an error which, if left uncorrected, threatens the economic viability of the Projects.¹⁵

9. According to Lotus, on June 16, 2015, it filed its New Capacity Qualification Package, which included its initial estimated cost of equity figure. Lotus states that, on July 21, 2015, it responded to the IMM's requests for additional documentation on Lotus's financial assumptions by submitting a report prepared by a consulting firm retained by Lotus that indicated a different, correct cost of equity figure. According to Lotus, in its evaluation of the consultant's report, the IMM noted the difference between the cost of equity figure provided by Lotus in its June 16 and its July 21 submissions to the IMM, but the IMM failed to adopt the correct cost of equity figure in its models. On September 25, 2015, the IMM issued its Qualification Determination Notices on the Offer Floor Price for the Projects, which denied Lotus's requested Offer Floor Price and substituted an IMM-determined Offer Floor Price above that submitted by Lotus in its June 16, 2015 New Capacity Qualification Package. Lotus asserts that the IMM used the incorrect estimated cost of equity figure (i.e., the figure listed in Lotus's June 16 New Capacity Qualification Package), rather than the correct estimated cost of equity figure (the figure listed in Lotus's July 21 submission) to develop the Offer Floor Price for the Projects.¹⁶ Lotus states that this has substantially increased the Offer Floor Price for the Projects, and significantly reduces the likelihood that they can clear in FCA 10.¹⁷

10. According to Lotus, the IMM did not exclude Lotus's proposed cost of equity figure because it did not agree that that figure was correct. Rather, Lotus argues that the IMM's determination was due to an inadvertent oversight amid a flurry of emails and discussions concerning numerous components used to calculate the Offer Floor Price for the Projects. Lotus states it was unaware that the correct cost of equity figure was not included in the IMM's determination due to Lotus's limited visibility into the IMM's internal models. According to Lotus, ISO-NE's qualification process is daunting for a developer new to its markets, like Lotus, and is made more difficult due to the project sponsor's limited visibility into the values that the IMM has used in its internal models for the calculations of the Offer Floor Price.¹⁸

¹⁵ Lotus Protest at 1.

¹⁶ Lotus Protest at 5-6.

¹⁷ Lotus Protest at 2.

¹⁸ Lotus Protest at 8-9.

11. According to Lotus, upon being notified of the IMM-determined Offer Floor Price, it worked diligently and made several inquiries of the IMM and now understands which assumptions and variables are driving the different Offer Floor Price calculations by Lotus and the IMM. Lotus states that, while it does not fully agree with all of the IMM's determinations regarding certain components of its Offer Floor Price, Lotus is limiting its protest to the cost of equity figure because that figure is incorrect and unreasonable.¹⁹ Lotus requests that the Commission direct ISO-NE to amend the Offer Floor Price for the Projects to reflect what Lotus states is the correct and reasonable cost of equity figure.²⁰

12. Lotus further states that this outcome (namely, that Lotus's Projects will be entered into FCA 10 at the IMM-determined price, significantly decreasing the likelihood that the Projects clear) is unreasonable because the Projects are merchant facilities that will depend entirely on market revenues and will receive no subsidies from load-serving or government entities.²¹ Lotus argues that there is no justification for subjecting merchant projects with no ability or intent to artificially suppress capacity prices to such an outcome.²² Lotus states that the Commission has recognized in orders involving other Independent System Operator (ISO) and Regional Transmission Organization (RTO) markets that the rules relating to the offer floor mitigation regime should not be applied to "competitive buyer-side merchant resources because these resources do not have the incentive to exercise buyer-side market power" and "[s]ubjecting such resources to an offer floor serves no competitive objective or market efficiency, regardless of whether the resources are judged uneconomic according to [an ISO's or RTO's] existing buyer-side market power mitigation exemption test, because customers do not bear the risk or costs of uneconomic entry of such resources."²³ Lotus states that it recognizes that ISO-NE does not currently have a competitive entry exemption from offer floor mitigation and that proposing one would be outside the scope of this proceeding, but Lotus asserts that the same policy considerations that justified the exemption in other markets

¹⁹ Lotus Protest at 8-9.

²⁰ Lotus Protest at 2.

²¹ Lotus Protest at 7.

²² Lotus Protest at 2.

²³ Lotus Protest at 7-8 (citing to *Consolidated Edison Company of New York Inc. v. New York Independent System Operator Inc.*, 152 FERC ¶ 61,110, at P 11 (2015)).

unquestionably support correcting the “outdated and erroneous” cost of equity figure used for Lotus’s Projects here.²⁴

13. As an alternative, Lotus asks the Commission to grant a limited waiver or waivers of ISO-NE’s Tariff requirements to enable ISO-NE to correct the Offer Floor Price for the Projects.²⁵ Lotus states that the Commission has granted such waivers where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties. Lotus states that the underlying error was made in good faith, in that both ISO-NE and Lotus acted in good faith in evaluating the requested Offer Floor Price, and the failure to adopt the correct cost of equity figure was the result of an inadvertent oversight by ISO-NE. Lotus also states that the waiver is of limited scope, since it simply allows ISO-NE to correct an inadvertent error well before the date when FCA 10 will be held, and will not delay the FCA, affect third parties or impact ISO-NE’s administration of its Tariff requirements. Lotus states that the waiver remedies a concrete problem, since absent the correction of the error, ISO-NE will impose an Offer Floor Price for the Projects that will likely exceed the clearing price for FCA 10. Finally, Lotus states that the waiver will not have undesirable consequences or affect third parties, because it will not delay ISO-NE’s implementation of FCA 10 or impact any of the qualification determinations of the other project sponsors.²⁶

B. ISO-NE Answer

14. In its answer, ISO-NE states that the Commission should reject Lotus’s protest²⁷ and that it opposes Lotus’s alternative request for waiver.²⁸

²⁴ Lotus Protest at 8. In addition to the protest submitted here, Lotus submitted a complaint with the Commission (*Lotus Energy Group, LLC v. ISO New England Inc.*, Docket No. EL16-22-000) in which it makes similar arguments regarding competitive entry. That complaint is currently pending before the Commission.

²⁵ Lotus does not specify the Tariff provision or provisions for which it seeks waiver.

²⁶ Lotus Protest at 10-11 (citing *Blue Sky West, LLC*, 145 FERC ¶ 61,285, at P 8 (2013) (*Blue Sky West*) and *ISO New England Inc. - EnerNOC, Inc.*, 122 FERC ¶ 61,297, at P 13 (2008).

²⁷ ISO-NE Answer at 1.

²⁸ ISO-NE Answer at 9.

15. ISO-NE contends that Lotus's assertion that the correct cost of equity figure was inadvertently overlooked by ISO-NE is incorrect.²⁹ ISO-NE states that, when a resource wishes to offer below the relevant Offer Review Trigger Price, the information to support the lower Offer Floor Price is provided by the market participant in a Microsoft Excel cost workbook developed by the IMM.³⁰ ISO-NE explains that this cost workbook uses the same capital budgeting methodology utilized to develop the relevant Offer Review Trigger Price.³¹ ISO-NE states that Lotus sought to qualify its Projects with an Offer Floor Price below the Offer Review Trigger Price of \$13.82/kW-month, and to do so, submitted a cost workbook on June 16, 2015, which included a cost of equity figure input by Lotus. According to ISO-NE, this figure was used by the IMM in its evaluation of the Projects and Lotus fails to justify why, at this point, it should be allowed to change the figure, particularly given the fact that Lotus repeatedly submitted that same figure for cost of equity in its cost workbook throughout the qualification process.³²

16. ISO-NE notes that Lotus claims in its protest that Lotus's consultant's report, submitted to the IMM on July 21, 2015, contained the correct cost of equity figure. However, according to ISO-NE, that report was roughly 100 pages long, contained a vast amount of data regarding the Projects, and, in fact, contains two figures for the cost of equity. ISO-NE states that Lotus never identified for the IMM that it wanted to use a figure for the cost of equity contained in this consultant's report rather than the cost of equity figure repeatedly submitted by Lotus to the IMM in the cost workbook. ISO-NE further states that the IMM contacted Lotus on August 11, 2015, pointing out that the financial assumptions in the consultant's report did not match the figures in the cost workbook and requesting that Lotus reconcile the figures. During that contact, ISO-NE states the IMM specifically pointed out that the consultant's report included a different figure for the cost of equity than Lotus utilized in its cost workbook. According to ISO-NE, Lotus responded to the IMM's inquiry on August 18, 2015, when it submitted a revised cost workbook with the same cost of equity figure, and the body of Lotus's e-mail was non-responsive on the question of the discrepancy between the cost of equity figures. ISO-NE argues that, given Lotus's continued lack of clarity despite the IMM's efforts to resolve the "confusion," given that the consultant's report included large amounts of data and two different cost of equity figures, and given that Lotus repeatedly submitted a cost workbook with the same cost of equity figure, including less than a week before the

²⁹ ISO-NE Answer at 2.

³⁰ ISO-NE Answer at 4.

³¹ ISO-NE Answer at 4. *See also* Tariff, Appendix A, section III.A.21.1.1.

³² ISO-NE Answer at 4-5.

issuance of the Qualification Determination Notices, the IMM made the appropriate determination.³³

17. ISO-NE also opposes Lotus's request for waivers of Tariff requirements in order to correct the Offer Floor Price for the Projects. According to ISO-NE, Lotus's request does not meet the Commission's requirements for granting waivers. ISO-NE states that Lotus was given multiple opportunities to clarify its request, but failed to do so. According to ISO-NE, to the extent there is a concrete problem, it is of Lotus's own making, despite the IMM's attempt to clarify the confusion underlying the problem. ISO-NE also contends that the waiver is not of limited scope, because granting the requested waiver of the FCM qualification deadline sends the message to future participants that deadlines are not final. Further, according to ISO-NE, other participants would be harmed by putting Lotus in a more favorable position than those that adhered to the Tariff-based requirements and deadlines to explain their submissions.³⁴

18. Finally, ISO-NE states that "[w]hile Lotus asserts in its Protest" what it believes the correct cost of equity figure should be, "it fails to substantiate this claim in its Protest and did not do so during the qualification process."³⁵

IV. Commission Determination

A. Procedural Issues

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ISO-NE's answer because it has provided information that has assisted us in our decision-making process.

³³ ISO-NE Answer at 5-7.

³⁴ ISO-NE Answer at 9-10.

³⁵ ISO-NE Answer at 2 n.7.

B. Analysis**1. Informational Filing**

21. We accept ISO-NE's filing because we find that ISO-NE has complied with its obligations under Tariff section III.13.8.1 to submit information related to its qualification determinations and to provide sufficient supporting documentation. ISO-NE's filing meets these requirements by discussing, *inter alia*, the capacity zones to be modeled for FCA 10 and the details of the resources accepted or rejected in the qualification process for participation in the FCA. The materials provided in both the public and privileged versions of the filing provide evidence that ISO-NE has appropriately reviewed all resources requesting to participate in FCA 10.

2. Lotus's Protest

22. We disagree with Lotus's characterization that ISO-NE inadvertently overlooked the correct cost of equity figure to be used when evaluating the Offer Floor Price for the Projects. To the contrary, ISO-NE correctly evaluated the Offer Floor Price based upon the cost of equity figure that was repeatedly submitted by Lotus in its cost workbooks, including less than a week before the issuance of the Qualification Determination Notices.

23. The parties agree that Lotus first submitted the cost of equity figure as part of its New Capacity Qualification Package on June 16, 2015.³⁶ ISO-NE states that, in response to inquiries from the IMM, Lotus resubmitted multiple cost workbooks in which it made no changes to the cost of equity figure. Lotus resubmitted revisions to the cost workbook on August 18, 2015 and September 19, 2015, but with each resubmission, the cost of equity figure remained unchanged.³⁷ We are unpersuaded by Lotus's assertion that ISO-NE evaluated the Offer Floor Price for the Projects based on an unreasonably high cost of equity figure, given the fact that Lotus itself repeatedly submitted the higher cost of equity figure in its cost workbooks.

24. Lotus cites a specific figure contained in its consultant's report and, in its protest, refers to that figure as the "correct cost of equity."³⁸ However, as ISO-NE states, the consultant's report contained two cost of equity figures and the report was roughly

³⁶ Lotus Protest at 4-5, ISO-NE Answer at 4.

³⁷ ISO-NE Answer at 5 and 7.

³⁸ Lotus Protest at 2, 6, and 8.

100 pages long and contained vast amounts of data related to the Projects.³⁹ We believe it would be unreasonable to expect ISO-NE to know which figure was appropriate given that there were two cost of equity figures in the report. Additionally, evidence in the record indicates that IMM staff noted the difference in the cost of equity figures and specifically requested that Lotus clarify this discrepancy,⁴⁰ but Lotus was non-responsive to this request. Finally, we note ISO-NE's assertion that Lotus has not provided support for the alternative cost of equity figure. We find it was therefore reasonable for ISO-NE to evaluate the Offer Floor Prices based upon the cost of equity figure submitted by Lotus in its initial cost workbook and multiple revisions to the cost workbook.

3. Lotus's Requested Waiver(s)

25. We deny Lotus's waiver request. We disagree with Lotus's characterization of the IMM's use of a specific cost of equity figure, submitted multiple times by Lotus, as an "inadvertent" error. Rather, the IMM staff pointed out the difference in the cost of equity figures submitted by Lotus and asked Lotus to clarify this discrepancy, which Lotus failed to do. Further, as ISO-NE stated, Lotus failed to substantiate its position as to the correct cost of equity figure in its protest and during the qualification process.⁴¹ Thus, the relief requested by Lotus would not be the correction of an inadvertent error. Rather, in granting the requested waiver, the Commission would be overruling ISO-NE's judgment as to whether Lotus had substantiated its position as to the correct cost of equity figure without any evidentiary support. The Commission declines to do so here. In addition, we agree with ISO-NE that granting the requested waiver would be harmful to other participants.

³⁹ ISO-NE Answer at 5.

⁴⁰ Lotus appears to acknowledge this request in its protest when it states, "[i]n its evaluation of the [redacted name of consulting firm] Report, IMM Staff noted the difference between the cost of equity provided by Lotus in its initial submission and the correct value subsequently included in the [redacted name of consulting firm] Report." Lotus Protest at 5.

⁴¹ ISO-NE Answer at 2 n.7.

The Commission orders:

ISO-NE's informational filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.