

154 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Calpine Energy Services, L.P.

Docket No. ER16-708-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued February 4, 2016)

1. On January 8, 2016, Calpine Energy Services, L.P. (Calpine) requested that the Commission grant waiver of Section III.13.1.1.2.2.4 of the ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff) in order to correct an error in the New Capacity Qualification Package for the Forward Capacity Auction for the 2019/2020 Capacity Commitment Period (FCA 10) with respect to a new project (Project) being developed by Calpine in the ISO-NE footprint. The Commission grants the requested waiver as discussed below.

I. Background

2. Calpine is a power marketer authorized to make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates. Among other things, Calpine markets the output of, and is the lead market participant for, various assets owned by Calpine's subsidiaries in New England. Calpine is currently considering the possibility of constructing the Project, a new capacity resource. Calpine explains that under Section III.13.1.1.2.2.4 of the Tariff, the sponsor of a new capacity resource may elect, in its new Capacity Qualification Package, to lock-in the price at which its resource first clears in a Forward Capacity Auction for up to six subsequent Capacity Commitment Periods.¹ Calpine further explains that if its New Capacity Offer clears in the Forward Capacity Auction, the associated Capacity Supply Obligation and Capacity Clearing Price shall continue to apply for the specified number of Capacity Commitment Periods. Calpine states that the purpose of this mechanism is to encourage investment in new

¹ Calpine Request for Waiver at 3.

capacity, when needed, without increasing the price-cap. In other words, without the lock-in, a new entrant would require a substantially higher single-year price in order to justify the same investment.²

3. Calpine states that the deadline for submitting New Capacity Qualification Packages for FCA 10 was June 16, 2015. Calpine asserts that it timely submitted the New Capacity Qualification Package for the Project, but inadvertently failed to make the lock-in election. Calpine explains that, under the Tariff, where no such election is made, “the Capacity Supply Obligation and Capacity Clearing Price associated with the New Capacity Offer shall apply only for the Capacity Commitment Period associated with the Forward Capacity Auction in which the New Capacity Offer clears.”³

II. Request for Waiver

4. Calpine contends that its request for waiver is consistent with Commission precedent granting tariff waivers in similar circumstances. First, Calpine argues that the underlying error was committed in good faith. Calpine asserts that it fully intended to check the appropriate boxes, indicating its election to lock-in the FCA 10 Capacity Clearing Price for six additional Capacity Commitment Periods, just as it did in the New Capacity Qualification Package for the ninth FCA. Calpine contends that its failure to do so was the result of an inadvertent administrative error.⁴

5. Second, Calpine argues that the requested waiver is limited in scope. Calpine contends that it is only requesting a one-time waiver of Section III.13.1.1.2.2.4 of the Tariff with respect to FCA 10. Calpine explains that it provided all of the technical and other data required as part of the qualification process, and was qualified to participate in FCA 10. Calpine adds that granting the waiver will help ensure that the lock-in mechanism operates as intended, by supporting investment in the Project, a new generating facility that is not supported by State-sponsored contracts or other subsidies.⁵

6. Calpine also argues that granting the waiver will not delay or otherwise impact FCA 10. Calpine contends that granting the waiver will not cause any harm to third

² *Id.* at 4.

³ *Id.* (citing Tariff at § III.13.1.1.2.2.4).

⁴ *Id.* at 5-6.

⁵ *Id.*

parties, and that, indeed, granting the waiver can be expected to benefit consumers by facilitating the participation of the Project in FCA 10.⁶

III. Notice and Filing of Responsive Pleadings

7. Notice of the request for waiver was published in the *Federal Register*, 81 Fed. Reg. 2206 (2016), with interventions and protests due by January 19, 2016. The New England States Committee on Electricity (NESCOE) and PSEG Companies (PSEG)⁷ filed timely motions to intervene and comments. New England Power Pool Committee filed a timely motion to intervene. Westfield Gas & Electric Light Department (Westfield) filed comments.

8. PSEG disputes Calpine's assertion that the waiver would not harm third parties. PSEG asserts that the Tariff rules provide clear guidelines, including deadlines, to ensure that developers and sponsors of new projects in the New England market are competing on a level playing field. PSEG argues that allowing Calpine the benefit of additional time – significantly longer than for any other market participant – to analyze and determine whether to elect to lock-in the price for a new capacity project, particularly given that the change will have occurred only a few weeks before the auction, impacts the competitive landscape of FCA 10. PSEG states that it supports market rule changes to be implemented in the future to “allow market participants increased flexibility in their bids while maintaining a level playing field.”⁸

9. NESCOE supports Calpine's waiver request as a reasonable accommodation that will likely promote competition in FCA 10.⁹ Westfield also supports Calpine's request for waiver, contending that Calpine's proposed project will provide a valuable resource to the region as a whole, and will increase competition in the auction, which will potentially apply downward pressure on clearing prices.¹⁰

⁶ *Id.*

⁷ PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

⁸ PSEG Comments at 4.

⁹ NESCOE Comments at 1.

¹⁰ Westfield Comments at 1-2.

IV. Discussion

A. Procedural Matters

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

B. Substantive Matters

11. We grant Calpine's request for waiver. The Commission has previously granted waiver of ISO-NE's Tariff requirements when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) granting the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹¹

12. We find that the foregoing conditions have been satisfied here. First, we find that Calpine committed the error in good faith, as Calpine's failure to indicate its preference to lock-in the FCA 10 Capacity Clearing Price for six additional Capacity Commitment periods was inadvertent. Moreover, Calpine timely submitted all other information as required when it submitted its New Capacity Qualification Package. Second, we find that the request for waiver is limited in scope. Calpine's request is limited to a one-time waiver of Section III.13.1.1.2.2.4 of the Tariff with respect to FCA 10. Calpine is not seeking waiver of any of the substantive requirements applicable to participation in a Forward Capacity Auction. Third, granting the waiver remedies a concrete problem. Absent a waiver, Calpine's Project will be unable to utilize the price lock-in.

13. Finally, we find that granting the request for waiver will not lead to undesirable consequences. We agree with Calpine that granting the waiver will not delay or otherwise impact ISO-NE's conduct of FCA 10, and will not cause any harm to third parties. PSEG argues that granting the waiver impacts the competitive landscape of FCA 10. We find this argument unpersuasive. Granting waiver will not restrict or negatively affect other market participants from offering into the auction and obtaining a capacity position, if they clear.

¹¹ See, e.g., *Portsmouth Genco, LLC*, 151 FERC ¶ 61,064 (2015); *Conservation Services Group Inc.*, 145 FERC ¶ 61,284 (2013); *Blue Sky West, LLC*, 145 FERC ¶ 61,285 (2013); *ISO New England Inc.*, 142 FERC ¶ 61,051 (2013); *Northeast Energy Associates, A Limited Partnership*, 152 FERC ¶ 61,175 (2015).

14. Based upon the foregoing, we grant Calpine's request for a one-time waiver of the rules set forth in Section III.13.1.1.2.1 of ISO-NE's Tariff.

The Commission orders:

Calpine's request for waiver is hereby granted as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.