156 FERC ¶ 61,144
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. ER16-2126-000

ORDER ACCEPTING COMPLIANCE FILING, SUBJECT TO CONDITION

(Issued August 30, 2016)

1. On May 2, 2016, the Commission granted, in part, and denied, in part, a complaint filed by Dominion Resources Services, Inc., on behalf of Dominion Energy Marketing, Inc. and Dominion Energy Manchester Street, Inc., (together, Dominion) against ISO New England Inc. (ISO-NE).[1] In the Complaint Order, the Commission directed ISO-NE to revise its Transmission, Markets and Services Tariff (Tariff) to clarify whether new incremental and existing capacity at the same resource must submit a composite offer. The Complaint Order also required ISO-NE to revise its Tariff to either allow an existing generating resource to lock-in the price for the new incremental capacity or show cause why it should not be required to do so.

2. This order addresses ISO-NE's compliance filing submitted in response to the Complaint Order. As discussed below, we accept, subject to condition, ISO-NE's compliance filing, effective August 30, 2016, as requested. We direct ISO-NE to file, within 60 days of the date of this order, a further compliance filing with the proposed revisions to its Tariff, as discussed below.

I. <u>Background</u>

3. Section III.13.1 of ISO-NE's Tariff addresses qualification for participation in the Forward Capacity Auction (FCA). As relevant here, that section provides that each

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[1] *Dominion Energy Marketing, Inc. v. ISO New England, Inc.*, 155 FERC ¶ 61,121 (2016) (Complaint Order).

resource, or portion thereof, must qualify as either a New Generating Capacity Resource[2] or an Existing Generating Capacity Resource.[3] An Existing Capacity Resource may elect to have the incremental amount of capacity above the summer qualified capacity participate in the FCA as a New Generating Capacity Resource but must submit a New Capacity Qualification Package for the incremental increase in capacity.[4] In addition, section III.13.1.1.2.5.1 of the Tariff provides that the FCA Qualified Capacity for a New Generating Capacity Resource shall be the lesser of the resource's summer Qualified Capacity and winter Qualified Capacity. Thus, according to ISO-NE's interpretation of the Tariff, new incremental summer capacity would have to be submitted as part of a composite offer with a matching amount of existing excess winter capacity[5] so as to avoid being reduced to the lesser of the winter and summer Qualified Capacity.

4. ISO-NE's new entrant pricing provision allows a new entrant to lock-in the first auction clearing price for up to six additional auctions.[6] If a new resource elects the price lock-in, the resource may not submit any type of de-list or export bid in subsequent FCAs for Capacity Commitment Periods for which the resource owner elected to have the price lock-in apply. As a result, Forward Capacity Market (FCM) revenues for the new entrant are guaranteed during the price lock-in period regardless of changes in capacity clearing prices in subsequent FCAs.

II. <u>Complaint Order</u>

5. In its February 5, 2016 complaint, Dominion alleged that ISO-NE violated its Tariff when it disqualified Dominion's new summer incremental capacity from participating in the tenth FCA (FCA 10). Dominion contended that ISO-NE's Tariff

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[2] The Tariff defines a New Generating Capacity Resource as a resource, or a portion of a resource, that has not cleared in any previous FCA. Tariff §§ III.13.1.1.1–III.13.1.1.1.1(a).

[3] Tariff § III.13.1.

[4] *Id.* § III.13.1.1.1.3.

[5] Excess winter capacity refers to the amount by which a resource's winter qualified capacity exceeds its summer qualified capacity.

[6] *Id.* § III 13.1.1.2.2.4

does not require composite offers[7] between incremental new capacity and existing capacity at the same resource in order for the new incremental capacity to participate in an FCA.[8] Dominion also stated that, since it selected to lock-in the price for its new capacity for the next six capacity commitment periods, its new incremental capacity is ineligible to participate as a composite offer.[9]

6. In the Complaint Order, the Commission found that ISO-NE's Tariff is unjust and unreasonable due to the lack of clarity regarding the process for new incremental generating capacity and existing generating capacity at the same resource to participate in an FCA.[10] Further, the Commission found that ISO-NE's Tariff does not allow an existing generating resource with new incremental capacity to be able to lock-in the price for the new incremental capacity.[11] Therefore, the Commission required ISO-NE to: (1) revise its Tariff to address whether new incremental and existing capacity at the same resource must submit a composite offer; and (2) either allow an existing generating resource to lock-in the price for the new incremental capacity or show cause why it should not be required to do so.[12]

III. ISO-NE's Compliance Filing

7. On July 1, 2016, in compliance with the Complaint Order, ISO-NE filed proposed revisions to its Tariff to: (1) automatically match new incremental summer generating capacity or a significant increase in summer capacity with excess existing winter generating capacity at the same generating resource; and (2) allow new summer

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[7] The Tariff defines a Composite FCM Transaction as "a transaction for separate resources seeking to participate as a single composite resource in a Forward Capacity Auction in which multiple designated FCM Participants provide capacity. . . ." Tariff, § III.13.2.2.

[8] Complaint Order, 155 FERC ¶ 61,121 at P 6 (citing Complaint at 6).

[9] The Tariff prohibits a resource that elects the price lock-in provision from participating in an offer composed of separate resources as the resource providing capacity in the summer period in the FCA in which the resource is a New Generating Capacity Resource. Tariff, § III.13.1.5(b).

[10] Complaint Order, 155 FERC ¶ 61,121 at P 21.

[11] *Id.* P 22.

[12] *Id.* PP 21, 22.

incremental generating capacity that is matched with excess existing winter generating capacity at the same generating resource to elect the price lock-in provision. ISO-NE states that the amount of capacity matched will not exceed the winter qualified capacity of the existing generating resource. ISO-NE further states that, as a result of the automatic matching, composite offers will not be required between new summer incremental generating capacity and excess existing winter generating capacity at the same generating resource, giving market participants one less requirement to comply with during the FCA qualification process.[13] In addition, ISO-NE proposes similar language to address Significant Increases, i.e. the treatment of incremental summer capacity that does not meet the thresholds for new auction treatment under section III.13.1.1.1.3 of the Tariff.

8. ISO-NE notes that new summer incremental generating capacity that meets the thresholds in section III.13.1.1.1.3 and Significant Increases qualified under section III.13.2.2.5 that are above the amount of excess existing winter qualified capacity at the same generating resource will still be required to enter into a composite offer with winter generating capacity at a separate resource if that new summer incremental generating capacity wishes to participate in an FCA.[14]

9. ISO-NE states that its proposed revisions to extend the price lock-in solely to new incremental capacity and not to existing capacity is consistent with the intent of the price lock-in provision, which is to incent new entry and provide investor assurance.[15] ISO-NE states that "the multi-year lock-in is tied to investment in the resource, which is made for the new summer incremental generating capacity, and not for the existing winter generating capacity."[16] ISO-NE states that new incremental summer generating capacity and excess existing winter generating capacity that are automatically matched and clear in an FCA will be paid the same price in the first Capacity Commitment Period, but different prices in subsequent Capacity Commitment Periods during the duration of the price lock-in.

10. ISO-NE proposes an effective date of August 30, 2016, to allow ISO-NE to implement the proposed Tariff revisions in time for FCA 11.

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[13] Compliance Filing at 6.

[14] *Id.*

[15] *Id.* at 7.

[16] *Id.*

IV. Notice of Filings and Responsive Pleadings

11. Notice of ISO-NE's filing was published in the *Federal Register*, 81 Fed. Reg. 44,859 (2016), with interventions and protests due on or before July 22, 2016. National Grid; Entergy Nuclear Power Marketing, LLC; Eversource Energy Service Company; NRG Power Marketing LLC and GenOn Energy Management, LLC; Calpine Corporation; and Emera Energy Services filed timely motions to intervene.

12. New England Power Pool Participants Committee (NEPOOL) submitted timely comments discussing the stakeholder process involving ISO-NE's proposal. Dominion and New England Power Generators Association (NEPGA) submitted timely motions to intervene and protests. On August 8, 2016, ISO-NE filed an answer.

V. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016) the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

15. We accept, subject to condition, ISO-NE's compliance filing, as discussed below. We direct ISO-NE to file, within 60 days of the date of this order, a further compliance filing with the revisions to its Tariff discussed below.

1. Composite Offer Requirement Between New Incremental and Existing Capacity

a. Protests

16. Dominion claims that composite offers should not be required between any new incremental generating capacity and excess existing generating capacity at the same generating resource. Dominion states that it is unclear why ISO-NE's proposed Tariff changes only apply in the case of new summer capacity and that ISO-NE offers no rationale as to why new winter capacity matched with excess summer capacity at the

same resource would be treated differently. Dominion asserts that, while excess summer capacity is not typical, ISO-NE should account for the possibility.[17]

b. Answer

17. In response, ISO-NE asserts that, in the Complaint Order, the Commission did not direct ISO-NE to match new incremental winter capacity with excess existing summer qualified capacity. As such, ISO-NE argues that it has fully complied with the Commission's directive and requests that the Commission reject Dominion's proposal.[18]

c. Commission Determination

18. We accept, subject to condition, ISO-NE's proposal to automatically match new summer incremental generating capacity with excess existing winter qualified capacity at the same resource. We find that ISO-NE's proposal provides clarity regarding the process for new summer incremental capacity and existing excess winter capacity at the same resource to participate in the FCA.

19. However, we are persuaded by Dominion's protest that ISO-NE should treat new winter incremental capacity in the same manner as new summer incremental capacity. ISO-NE points to the Complaint Order as allowing it to limit its proposed Tariff language to only automatically match new summer incremental capacity with excess existing winter qualified capacity at the same resource. The Commission directed ISO-NE to revise its Tariff to address whether new incremental and existing capacity at the same resource must submit a composite offer, and the Commission's directive did not specify the seasonal designation of new incremental and existing capacity. However, we find that, even with the revisions proposed here, ISO-NE's Tariff remains unjust and unreasonable as to whether new winter incremental capacity and excess existing summer capacity at the same resource are required to submit a composite offer in order for the new winter incremental capacity to be eligible to participate in the FCA. We find that there is no reason to limit, based on season, the automatic matching of new capacity with excess existing capacity. Accordingly, we direct ISO-NE to submit a further compliance filing within 60 days of the date of this order with Tariff language requiring ISO-NE to automatically match new winter incremental capacity with excess existing summer qualified capacity at the same resource.

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[17] Dominion Protest at 11.

[18] ISO-NE Answer at 6.

2. Price Lock-In for New Incremental Capacity

a. Protests

20. Dominion argues that ISO-NE's proposal to limit the price lock-in to new incremental summer capacity is unjust and unreasonable because capacity in ISO-NE's FCM is an annual product, not a seasonal product, and there is no basis on which to apply pricing differences to new summer and existing excess winter capacity for a single annual product.[19] Dominion cites a previous ISO-NE filing in which ISO-NE calls the FCM an annual product and claims that ISO-NE's arguments in its compliance filing are undermined by ISO-NE's statements in the previous filing.[20]

21. Dominion disagrees with ISO-NE's statement that its proposal "is consistent with the intent of the multi-year lock-in which, as the Commission recognized, is to incent new entry and provide investor assurance" and Dominion contends that ISO-NE's proposal to extend the lock-in solely to new incremental capacity and not to excess existing capacity is unsupported.[21] Dominion further claims that ISO-NE's proposed Tariff changes undermine the principle that the price lock-in period "not only addresses specific issues unique to the New England region, such as the real risk of lack of investment when new capacity is needed and a high reliance on merchant entry, but it is also closely linked to the design of the sloped demand curve and the parameters chosen."[22] Dominion argues that the Tariff should be revised so that new incremental capacity and excess existing capacity at the same resource may elect to lock-in the FCA clearing price for the annual Capacity Commitment Periods.[23]

22. NEPGA also protests ISO-NE's proposal to allow only the new incremental summer capacity, in an offer composed of incremental summer and excess existing winter capacity at the same resource, to elect the price lock-in. NEPGA states that ISO-NE's proposal allows the price lock-in only for that part of its annual Capacity Supply Obligation that covers the four summer months. NEPGA contends that ISO-NE's

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[19] Dominion Protest at 6-7.

[20] *Id*. at 7-8 (citing ISO-NE, Filing, Docket No. ER07-1338, at 7 (filed August 31, 2007)).

[21] *Id*. at 9 (citing ISO-NE, July 1, 2016 Compliance Filing at 7).

[22] *Id*. at 9-10 (citing *ISO New England Inc.*, 147 FERC ¶ 61,173, at P 59 (2014)).

[23] *Id*. at 10.

proposed treatment of Capacity Supply Obligations procured through a composite offer is unduly discriminatory as there will be disparate treatment between a new resource with newly-qualified winter and summer capacity that can lock in the price for all months compared to a resource made up of a composite offer that can only lock in the price for four summer months. NEPGA asserts that ISO-NE's proposal will discourage competition in the FCM in that it weakens the incentive for owners of existing generation to further develop the resource to provide new capacity to the FCM.[24]

23. NEPGA requests that the Commission reject ISO-NE's proposal to limit the price lock-in to the summer months of a Capacity Supply Obligation and direct ISO-NE to file Tariff changes that would allow a Market Participant that clears a composite offer of new summer and excess winter capacity at the same resource to elect the price lock-in for the entire annual Capacity Supply Obligation.[25]

b. Answer

24. In response, ISO-NE asserts that its proposed revisions fully comply with the Commission's directives in the Complaint Order. ISO-NE argues that Dominion and NEPGA's request to allow the excess existing winter capacity to be eligible for the price lock-in is outside the scope of the Complaint Order.[26]

c. Commission Determination

25. We accept, subject to condition, ISO-NE's proposal to allow new incremental summer capacity that is matched to excess existing winter capacity at the same resource to be able to elect the price lock-in. As discussed below, we direct ISO-NE to revise its Tariff to also allow the matched existing excess winter capacity to elect the price lock-in.

26. We agree with Dominion and NEPGA that ISO-NE's proposal, which only locks in the price for the summer months, undermines the intent of the price lock-in. ISO-NE's proposal would require a resource owner to assume the obligations of a price lock-in without the benefit of revenue certainty. As ISO-NE itself recognizes, its proposal would result in different prices being paid to new incremental summer capacity and the matched excess existing winter capacity over the price lock-in period. As a result, ISO-NE's proposal would reduce the incentives for resource owners to invest in new incremental

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[24] NEPGA Protest at 1, 4-11.

[25] *Id*. at 11.

[26] ISO-NE Answer at 4-5.

summer capacity at an existing resource and is therefore at odds with the intent of the price lock-in.

27. We disagree with the assertions in ISO-NE's answer. As discussed in the underlying order, the FCM procures an annual capacity product; thus, ISO-NE must allow both new incremental summer (or winter) capacity and the matching excess existing winter (or summer) capacity in a composite resource to elect the price lock-in and receive a Capacity Supply Obligation for the entire price lock-in period. Extending the price lock-in to a composite offer for a resource consisting of new incremental capacity and matching excess existing capacity in different seasons for the same resource would avoid seasonal imbalance issues while providing revenue certainty. Furthermore, as explained above, the new incremental capacity allows excess existing capacity that previously did not qualify in the FCA to now qualify and be eligible to receive a Capacity Supply Obligation.[27]

28. Accordingly, we direct ISO-NE to submit a further compliance filing, within 60 days of the date of this order, with Tariff language allowing new incremental capacity and the corresponding matched excess existing capacity at the same resource to elect the price lock-in.

<u>The Commission orders</u>:

(A) ISO-NE's compliance filing is hereby accepted, subject to condition, effective August 30, 2016, as requested, as discussed in the body of this order.

(B) ISO-NE is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[27] Tariff § III.13.1.1.2.5.1 ("The FCA Qualified Capacity for such a resource shall be the lesser of the resource's summer Qualified Capacity and winter Qualified Capacity, as adjusted to account for applicable offers composed of separate resources.").