

157 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER16-1041-001

ORDER DENYING REHEARING

(Issued October 27, 2016)

1. On June 16, 2016, the Commission issued an order accepting ISO New England Inc.'s (ISO-NE) filing detailing the results of its tenth Forward Capacity Auction (FCA 10).¹ Dominion Resources Service, Inc. (Dominion)² and the Utility Workers Union of America Local 464 and Robert Clark (Utility Workers Union) seek rehearing of the June 16 Order. For the reasons discussed below, we deny the rehearing requests.

I. Commission Determination

A. Dominion Rehearing Request

2. In the June 16 Order, the Commission found the results of FCA 10 to be just and reasonable and rejected a protest by Dominion containing arguments also raised in a complaint filed against ISO-NE in Docket No. EL16-38-000 regarding the disqualification of incremental capacity from Dominion Energy Manchester Street, Inc.'s Manchester Street Station.³ Dominion explained that it was protesting ISO-NE's FCA 10 results filing in this proceeding to ensure that, should the Commission grant its complaint in Docket No. EL16-38-000, the FCA 10 results could reflect the inclusion of the

¹ *ISO New England Inc.*, 155 FERC ¶ 61,273 (2016) (June 16 Order).

² Dominion submits its request for rehearing on behalf of Dominion Energy Marketing, Inc. and Dominion Energy Manchester Street, Inc.

³ June 16 Order, 155 FERC ¶ 61,273 at P 18.

incremental capacity.⁴ The June 16 Order noted that the Commission had denied Dominion's complaint and request to reset the auction results, and accordingly rejected Dominion's request that the FCA 10 results reflect the award of a capacity supply obligation to the incremental capacity from the Manchester Street Station.⁵

3. On rehearing, Dominion again seeks relief in this proceeding, based on the same arguments raised in its June 1, 2016 request for rehearing in Docket No. EL16-38-001, to preserve its rights while rehearing of the Commission's determination to deny the relief requested in its complaint is pending.⁶ The Commission denied Dominion's request for rehearing in Docket No. EL16-38-001 on October 20, 2016.⁷ Dominion's instant rehearing request does not raise any issues that are new to this proceeding or that were not already addressed in the order denying rehearing in Docket No. EL16-38-001. Accordingly, we deny Dominion's request for rehearing for the reasons stated in the June 16 Order and the orders issued in Docket No. EL16-38.

B. Utility Workers Union Rehearing Request

4. In the June 16 Order, the Commission also rejected allegations by Utility Workers Union that the results of FCA 10 are the result of market manipulation and the exercise of market power in the eighth and ninth Forward Capacity Auctions (FCA 8 and FCA 9) in connection with the withdrawal of Brayton Point Power Station's (Brayton Point) capacity.⁸ On rehearing, Utility Workers Union seeks to incorporate by reference the five specifications of error and related arguments that it previously raised in its request for rehearing in Docket No. ER15-1137-001, the proceeding on ISO-NE's FCA 9 results

⁴ See *id.* P 15; Dominion April 14, 2016 Protest at 1-2 (“Because Dominion’s Complaint remains pending before the Commission, Dominion files this limited Protest in an abundance of caution to ensure that should the Commission grant the Complaint, the results of FCA 10 appropriately reflect the award of Capacity Supply Obligations associated with the incremental capacity at the Manchester Street Station Units.”).

⁵ June 16 Order, 155 FERC ¶ 61,273 at P 18 (citing *Dominion Energy Mktg., Inc. v. ISO New England Inc.*, 155 FERC ¶ 61,121 (2016)).

⁶ Dominion Rehearing Request at 3.

⁷ *Dominion Energy Mktg., Inc. v. ISO New England Inc.*, 157 FERC ¶ 61,041 (2016).

⁸ June 16 Order, 155 FERC ¶ 61,273 at PP 26-27.

filing, regarding the withdrawal of Brayton Point from FCA 8.⁹ Section 313(a) of the Federal Power Act (FPA) requires an application for rehearing to “set forth specifically the ground or grounds upon which such application is based,”¹⁰ and the Commission has rejected attempts to incorporate by reference grounds for rehearing from prior pleadings.¹¹ The Commission already rejected these arguments by order issued December 30, 2015,¹² and we find that they warrant no further comment. Moreover, in responding to Utility Workers Union’s reiteration of the same substantive arguments in its protest of the FCA 10 results filing, the Commission confirmed that Brayton Point could not have participated in FCA 10.¹³

5. Additionally, we are unpersuaded by Utility Workers Union’s additional arguments based on ISO-NE’s revisions to the retirement process in its Tariff in Docket No. ER16-551-000 to require independent review of the costs of a retiring facility, as well as inclusion of the facility’s capacity in the calculation of the auction price at the appropriate measurement of cost.¹⁴ Utility Workers Union recites the rationales presented by ISO-NE for proposing the revisions, and interprets the fact that ISO-NE

⁹ Utility Workers Union Rehearing Request at 2.

¹⁰ 16 U.S.C. § 8251 (2012); *see also* 18 C.F.R. § 385.203(a)(7) (2016) (pleadings must articulate the position taken by the filing party, including the basis in fact and law for such position).

¹¹ *See W. Area Power Admin.*, 153 FERC ¶ 61,213, at P 20 (2015) (“in the context of rehearing requests, the Commission has rejected attempts to incorporate by reference arguments from a prior pleading in another proceeding”) (citations omitted); *Alcoa Power Generating Inc.*, 144 FERC ¶ 61,218, at P 10 (2013) (“The Commission, however, expects all grounds to be set forth in the rehearing request, and will dismiss any ground only incorporated by reference.”) (citations omitted); *ISO New England Inc.*, 119 FERC ¶ 61,161, at P 16 (2007); *Mirant Americas Energy Mktg., LP*, 117 FERC ¶ 61,040, at P 22 (2006).

¹² *ISO New England Inc.*, 153 FERC ¶ 61,378 (2015) (denying Utility Workers Union request for rehearing of the June 2015 order accepting the results of FCA 9).

¹³ June 16 Order, 155 FERC ¶ 61,273 at P 26 (“We further emphasize that once a resource submits a Non-Price Retirement Request, as Brayton Point did prior to FCA 8, the resource is precluded from offering capacity into subsequent auctions. Thus, contrary to Utility Workers Union’s assertion, Brayton Point could not have participated in FCA 10.”) (citation omitted).

¹⁴ Utility Workers Union Rehearing Request at 2-8.

requested these changes as an admission that the results of FCA 8, 9, and 10 could not have been sufficiently competitive as to have been found just and reasonable.¹⁵ We disagree.

6. As the Commission noted in the June 16 Order, ISO-NE proposed the retirement reforms as prospective revisions under section 205 of the FPA,¹⁶ and requested that they become effective March 1, 2016, so that the new rules could be applied starting with FCA 11.¹⁷ The Commission found the proposed reforms to be just and reasonable, subject to condition, and granted ISO-NE's requested effective date.¹⁸ Accordingly, we confirm that these new requirements were not yet in effect in February 2016 when FCA 10 was conducted, and affirm that the Commission's subsequent acceptance of the revisions "does not render previous auctions, held without these reforms in place, to be unjust and unreasonable."¹⁹ Utility Workers Union's attempt to convert the Commission's acceptance of tariff revisions as just and reasonable under section 205 of the FPA into a finding that the results of past auctions were unjust and unreasonable under section 206 of the FPA²⁰ conflicts with the FPA and Commission precedent. Specifically, there is no requirement under section 205 of the FPA that the Commission must find an existing tariff provision to be unjust and unreasonable prior to accepting a just and reasonable revision.

¹⁵ *Id.* at 2-6.

¹⁶ 16 U.S.C. § 824d (2012).

¹⁷ June 16 Order, 155 FERC ¶ 61,273 at P 27.

¹⁸ *ISO New England Inc.*, 155 FERC ¶ 61,029 (2016). Utility Workers Union did not seek rehearing of this order.

¹⁹ June 16 Order, 155 FERC ¶ 61,273 at P 27 (citing *ISO New England Inc.*, 132 FERC ¶ 61,122, at P 58 (2010) ("the filing of tariff changes pursuant to section 205 of the FPA does not establish that the previous tariff provisions are unjust and unreasonable"))).

²⁰ 16 U.S.C. § 824e (2012).

7. Finally, we find that Utility Workers Union’s allegations regarding the Internal Market Monitor’s statements lack merit.²¹ First, the Internal Market Monitor certified that the outcome of FCA 10 was the result of a competitive auction.²² While Utility Workers Union dismisses the Internal Market Monitor’s certification as “simply a general hearsay statement,”²³ the certification was based on the Internal Market Monitor’s review of de-list bids from existing resources and offers from new resources. Second, as explained above, ISO-NE’s statements in Docket No. ER16-551-000 regarding its reasons for proposing the retirement reforms do not contradict the Internal Market Monitor’s certification of the FCA 10 results. We also reject Utility Workers Union’s contention that the Commission “delegated” its duty to determine whether the results of FCA 10 were just and reasonable.²⁴ While the June 16 Order cites to the Internal Market Monitor’s certification of the FCA 10 results as competitive,²⁵ the Commission did not “defer to a witness’s broad general conclusion.”²⁶ Rather, the Commission reviewed the record – including testimony from the Internal Market Monitor and auctioneer regarding the competitiveness of the auction²⁷ – and found, “[b]ased on the evidence presented,” that ISO-NE had demonstrated that the results of FCA 10 were just and reasonable.²⁸ Utility Workers Union has presented no arguments on rehearing that detract from this finding, and we therefore affirm the June 16 Order.

²¹ Utility Workers Union Rehearing Request at 6-7.

²² See June 16 Order, 155 FERC ¶ 61,273 at P 8.

²³ Utility Workers Union Rehearing Request at 6.

²⁴ *Id.* at 6-7.

²⁵ See June 16 Order, 155 FERC ¶ 61,273 at P 27 (citing ISO-NE February 29, 2016 Forward Capacity Auction Results Filing, Attachment D, Testimony of Dr. Jeffrey McDonald at 2-3, and Attachment E, Testimony of Lawrence M. Ausubel at 3).

²⁶ Utility Workers Union Rehearing Request at 7.

²⁷ Section III.13.8.2(b) of ISO-NE’s Tariff requires that ISO-NE include in its results filing “documentation regarding the competitiveness of the Forward Capacity Auction, which may include a certification from the auctioneer and the ISO that: (i) all entities offering and bidding in the Forward Capacity Auction were properly qualified in accordance with the provisions of Section III.13.1; and (ii) the Forward Capacity Auction was conducted in accordance with the provisions of Section III.13.”

²⁸ June 16 Order, 155 FERC ¶ 61,273 at P 14.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.