

126 FERC ¶ 61,186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

The Connecticut Light and Power Company
Western Massachusetts Electric Company
Ameresco CT LLC
Unitil Energy Systems, Inc.
Fitchburg Gas and Electric Light Company

Docket No. ER09-652-000

ORDER GRANTING LIMITED WAIVER

(Issued February 27, 2009)

1. The Connecticut Light and Power Company (Connecticut Light) and Western Massachusetts Electric Company (Western Mass) (collectively, the Northeast Utilities Companies); Ameresco CT LLC (Ameresco); Unitil Energy Systems, Inc. (Unitil); and Fitchburg Gas and Electric Light Company (Fitchburg) (collectively the Applicants) request limited waiver of the “true up” deposit deadline for Qualification Process Cost Reimbursement for certain energy efficiency demand resource expansion projects (Demand Resource Projects) under section III.13.1.9.3 of ISO New England Inc’s (ISO-NE) Tariff Market Rule 1 (Market Rule 1). In this order, the Commission grants the requested waiver.

I. Background

2. Under ISO-NE’s Forward Capacity Market, ISO-NE provides capacity payments to resources that provide capacity into the New England region, including demand resources. Capacity resources compete to provide capacity and accepted resources receive capacity payments, through a Forward Capacity Auction that procures capacity several years ahead of the commitment period. ISO-NE conducted its first Forward Capacity Auction on February 4, 2008, a second Forward Capacity Auction in December 2008, and will conduct a third Forward Capacity Auction in October 2009.

3. Under the Forward Capacity Market rules, new capacity resources wishing to participate in the Forward Capacity Auction must provide ISO-NE with certain information through a Show of Interest form. The form enables ISO-NE to determine whether the resource is qualified to participate in the auction. Capacity resources wishing to qualify in the Forward Capacity Auction also are required to provide ISO-NE with an initial deposit and “true up” for Qualification Process Cost Reimbursement pursuant to section III.13.1.9.3 of ISO-NE’s Market Rule 1.¹ That section states that, for projects that have incurred costs equal to or greater than 90 percent of the initial deposit, ISO-NE will issue an invoice for the greater of the initial Qualification Process Cost Reimbursement Deposit or the amount of costs associated with the qualification process and critical path schedule monitoring that have been incurred by ISO-NE and its consultants. Payment must be received by ISO-NE no later than ten business days after the date of the invoice.

4. The Applicants state that on December 4, 2008, Unitil and Fitchburg received invoices from ISO-NE in the amount of \$493.43 for Unitil and \$509.94 for Fitchburg, and on December 5, 2008, Connecticut Light, Western Mass and Ameresco CT respectively received invoices from ISO-NE in the amounts of \$570.96, \$541.28 and \$611.80. Applicants explain that due to an administrative oversight none of the invoices were paid until after the December 18, 2008 deadline had passed. They indicate that on January 16, 2009, ISO-NE notified them that, while the Projects were otherwise qualified for the second Forward Capacity Auction, they were nonetheless deemed withdrawn from the second auction 2011-2012 Commitment Period because they had missed the December 18, 2008 deadline.

5. Applicants state that ISO-NE has authorized them to state that ISO-NE is not opposed to the request for waiver and that it is reviewing its invoicing procedures to see how they might be improved to avoid similar situations in the future.

6. Applicants request that the Commission grant limited waiver of section III.13.9.1.3 and permit reinstatement of the Applicants’ respective Financial Assurance Payments to prevent the Projects from being withdrawn as Demand Resources for the 2011-2012 Commitment Period and to permit the Projects to participate in the third Forward Capacity Auction as “existing resources.” Applicants also request waiver of the

¹ *ISO New England Inc.*, 119 FERC ¶ 61,045 (2007) and 119 FERC ¶ 61,239 (2007) (FCM Rules Orders). The Applicants state that since the issuance of these orders, ISO-NE has submitted additional modifications to the Forward Capacity Market Rules, but none of these changes are relevant to the waiver request.

notice requirement in order to obtain an expedited Commission decision on the waiver request.

7. The Applicants submit that limited waiver of section III.13.1.9.3 is consistent with prior Commission orders that granted similar waiver requests on the following grounds: (1) the underlying errors were 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.

8. Applicants further submit that granting the requested waivers would be in the public interest because the invoices were for *de minimis* amounts and to deny waiver would result in the loss of million of dollars used to fund demand resource projects for energy efficiency programs created under Connecticut, Massachusetts, and New Hampshire statutes to help reduce retail customers' energy costs and offset the need for incremental supply resources.

9. ISO-NE, in its comments, states that it would not oppose the grant of a waiver, and acknowledges that its invoicing procedures with respect to the qualification deposit true up might be improved to help avoid similar situations in the future. ISO-NE states that it is undertaking a review of those procedures. ISO-NE requests, however, that any Order granting the waiver request explicitly state that the waiver is limited to the specific and unique facts presented here and does not constitute established precedent.

II. Procedural Matters

10. The Commission issued a notice of this filing, with interventions, comments and protests due on or before February 20, 2009. ISO-NE filed a timely motion to intervene and comments.

11. Pursuant to Rule 214, of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), timely unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

III. Discussion

12. Due to the specific and unique facts presented above, the Commission will grant Applicant's request for limited waiver of the section III.13.1.9.3 of ISO-NE's Market Rule 1. We emphasize the importance of enforcing the Forward Capacity Market rules in order to effectively administer the markets in New England, and note that we will not automatically grant such waiver requests in the future. However, for the reasons explained below, and the fact that ISO-NE does not oppose this request for waiver and

can restore Applicant's status for the second Forward Capacity Commitment Period, we find that granting of waiver is appropriate.

13. We note that the Commission previously has granted waiver requests for parties that failed to follow established procedures for participation in earlier Forward Capacity Auctions.² Specifically, the Commission has granted relief 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.³

14. The Commission believes that Applicants acted in good faith to follow the Forward Capacity Market rules. Moreover, ISO-NE has authorized Applicants to state that it does not oppose the waiver and that it recognizes that its invoicing procedures may need to be revised so as to avoid similar situations in the future.

15. We also note that Applicants met all prior deadlines applicable to qualifying their Projects for the 2011-2012 Commitment Period and ISO-NE has accepted the Projects for the second Forward Capacity Commitment Period.

16. Moreover, the waiver in these circumstances is of limited scope and the problem is concrete. We also find that the waiver involves isolated incidents caused by Applicants' administrative oversights. In addition, the Northeast Utilities Companies state that they have revised their procedures for processing ISO-NE's invoicing related to these projects to avoid any more delinquent payments.⁴

17. The Commission concludes that granting waiver is in the public interest and will have no adverse impact on other New England participants. In this regard we believe that granting waiver would be in the public interest because good faith errors in meeting a payment deadline for *de minimis* amounts will otherwise result in the loss of significant funding for demand resource projects used for energy efficiency programs under

² See, e.g., *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (*EnerNOC*); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007) (*Central Vermont*); *University of New Hampshire*, 121 FERC ¶ 61,185 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007) (*Waterbury*); and *Acushnet Co.*, 122 FERC ¶ 61,045 (2008) (*Acushnet*).

³ See *EnerNOC*, 122 FERC ¶ 61,297; *Central Vermont*, 121 FERC ¶ 61,225; *Waterbury*, 120 FERC ¶ 61,007; *Acushnet*, 122 FERC ¶ 61,045.

⁴ Transmittal at 7 n.8.

Connecticut, Massachusetts and New Hampshire statutes that help reduce retail customers' energy costs and offset the need for incremental supply resources.

The Commission orders:

The request for waiver is hereby granted, as discussed above.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.