

133 FERC ¶ 61,250  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Comverge, Inc.

Docket No. ER11-2164-000

ORDER GRANTING LIMITED WAIVER

(Issued December 22, 2010)

1. On November 19, 2010, Comverge, Inc. (Comverge) filed a request for limited waiver of section III.13.1.4.8.1 of ISO New England Inc.'s (ISO-NE) Market Rule 1<sup>1</sup> to allow Comverge to timely submit to ISO-NE an updated measurement and verification plan (M&V plan) required by the rules implementing ISO-NE's forward capacity market (FCM). The Commission grants the requested waiver, as discussed below.<sup>2</sup>

**I. Background**

2. As detailed in numerous proceedings before the Commission,<sup>3</sup> ISO-NE has implemented the FCM, in which capacity resources (both generators and demand resources) compete to provide capacity to New England, on a three-year-forward basis, by participating in an annual forward capacity auction (FCA).

3. On October 29, 2008, the Commission accepted proposed changes to the FCM rules and made the new tariff provisions effective December 1, 2008.<sup>4</sup> Section

---

<sup>1</sup> ISO-NE, Transmission, Markets, and Services Tariff, section III.

<sup>2</sup> On November 8, 2010, the Commission granted the same waiver to another ISO-NE market participant, CPower, Inc. *See CPower, Inc.*, 133 FERC ¶ 61,127 (2010) (*CPower*).

<sup>3</sup> *See, e.g., ISO New England Inc.*, 130 FERC ¶ 61,145 (2010); *ISO New England Inc.*, 127 FERC ¶ 61,040 (2009); *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008). *See generally Devon Power LLC*, 115 FERC ¶ 61,340, *order on reh'g*, 117 FERC ¶ 61,133 (2006), *aff'd in relevant part sub nom. Maine Public Utilities Comm'n v. FERC*, 520 F.3d 464 (2008), *order on remand*, 126 FERC ¶ 61,027 (2009).

<sup>4</sup> *ISO New England Inc.*, Docket No. ER09-5-000 (Oct. 29, 2008) (unpublished letter order).

III.13.1.4.8.1 of ISO-NE's Market Rule 1 requires demand response resources to submit an updated M&V plan to ISO-NE no later than five business days after receipt of the qualified capacity notification. The purpose of this provision is to ensure that each resource is capable of performing at its qualified capacity rating under its current M&V plan based on the results of ISO-NE's most recent demand response operable capacity analysis. Failure to submit the updated M&V plan results in a permanent de-list bid for the demand resource.<sup>5</sup>

4. Comverge states that the deadline for submitting its updated M&V plan was September 17, 2010, which it inadvertently failed to meet. On September 20, 2010, ISO-NE informed Comverge that a permanent de-list bid would be entered for its demand response resources in the fifth FCA. On October 7, 2010, Comverge contacted ISO-NE in an attempt to remedy the situation. ISO-NE suggested that Comverge provide an affirmation that its existing M&V plan (already on file with ISO-NE) is consistent with ISO-NE's current operable capacity analysis for the 2014-2015 capacity commitment period, and that Comverge obtain a waiver from the Commission. Comverge states that it twice provided to ISO-NE on October 18 and November 18, 2010, the requested affirmation and is now petitioning the Commission for a waiver.

## II. Request for Limited Waiver

### A. Description

5. Comverge requests waiver of section III.13.1.4.8.1 of ISO-NE's Market Rule 1 to allow ISO-NE to accept Comverge's belated submittal (made after September 17, 2010) of its updated M&V plan. Comverge is a market participant with existing demand response resources in the ISO-NE market. Comverge states that the relief it requests is consistent with the waiver standards set forth in *Acushnet Co.*<sup>6</sup> Comverge argues that the relief it requests is necessary to prevent the permanent de-listing of 160 MW of demand response resources.

---

<sup>5</sup> See ISO-NE, Transmission, Markets, and Services Tariff, § III.13.1.4.8.1. Generally, an existing generating capacity resource may choose to not participate in a capacity market by submitting a permanent de-list bid in the FCA. See *id.* § III.13.1.2.3.1.2. If the permanent de-list bid clears in the FCA, the resource "is precluded from subsequent participation in the Forward Capacity Market unless it qualifies as a New Generating Capacity Resource." *Id.* If a permanent de-list bid is entered into the fifth FCA for Comverge's demand response resources, then these resources may not participate in the FCM associated with the fifth FCA.

<sup>6</sup> 122 FERC ¶ 61,045 (2008) (*Acushnet*).

6. Comverge states that its missed deadline, as well as its delayed response to ISO-NE's September 20, 2010 notice, was the result of an inadvertent oversight caused by employee turnover and therefore done in good faith. The employee who was responsible for submitting the updated M&V plan left Comverge shortly before the September 17, 2010 deadline.

7. Comverge argues that the waiver resolves a concrete problem that must be remedied because, absent a waiver of the deadline in section III.13.1.4.8.1, ISO-NE will be required to permanently de-list the associated resources.

8. Finally, Comverge states that the waiver will not have undesirable consequences and will not harm third parties because the waiver will not impose any burden or cost on ISO-NE or any market participant and will not delay or disrupt the fifth FCA.

9. Additionally, Comverge requests that the Commission act on this request no later than December 31, 2010, to allow ISO-NE adequate time to consider the updated M&V plan before the fifth FCA (scheduled for June 2011).

### **B. Notice**

10. Notice of the filing was published in the *Federal Register*, 75 Fed. Reg. 74,038 (2010), with answers, interventions, and protests due on or before December 10, 2010. No answers, interventions, or protests were filed.

### **III. Discussion**

11. The Commission will grant the requested waiver.

12. The Commission has previously granted waiver requests for parties that failed to follow proper procedures for participation in earlier FCAs.<sup>7</sup> 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.<sup>8</sup>

---

<sup>7</sup> See, e.g., *CPower*, 133 FERC ¶ 61,127; *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (*EnerNOC*); *Acushnet*, 122 FERC ¶ 61,045; *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*).

<sup>8</sup> See *CPower*, 133 FERC ¶ 61,127; *EnerNOC*, 122 FERC ¶ 61,297; *Acushnet*, 122 FERC ¶ 61,045; *Central Vermont*, 121 FERC ¶ 61,225; *Waterbury*, 120 FERC ¶ 61,007.

13. The Commission finds that the request for waiver here satisfies the aforementioned conditions. Comverge states that its failure to submit the updated M&V plan by the deadline specified in the FCM rules was an inadvertent oversight, caused by turnover in personnel. Comverge directly inquired with ISO-NE as to a remedy and, as per ISO-NE's recommendation, affirmed that its current M&V plan is consistent with ISO-NE's current operable capacity analysis. This waiver is also of limited scope in that it will apply solely to the submission of Comverge's updated M&V plan for the fifth FCA. The waiver addresses a single concrete problem because it will prevent the entering of a permanent de-list bid for Comverge's 160 MW of demand response resources. Finally, we conclude that no third parties will be harmed by granting this limited waiver of the ISO-NE market rules, and no entity protested to the contrary.

14. Furthermore, the Commission finds persuasive Comverge's newly revised submittal procedures. In response to this missed deadline, Comverge revised its administrative procedures by moving responsibility for its compliance with FCM requirements, including the M&V plan, to its newly created strategic markets group. The strategic markets group has implemented systems and procedures that introduce notification and backup protections to ensure timely compliance with FCM requirements. The Commission appreciates Comverge's efforts to prevent any future compliance violations.

15. In light of the facts presented above, the Commission will grant Comverge's request for limited waiver of the ISO-NE market rules. We expect, however, that similar errors will not be made in the future and that no similar requests for waiver will be necessary for the sixth and future FCAs.

The Commission orders:

The 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.