

142 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Brookfield Energy Marketing LP

v.

Docket No. EL13-23-000

ISO New England Inc.

ORDER ON COMPLAINT

(Issued January 18, 2013)

1. On November 21, 2012, Brookfield Energy Marketing LP (Brookfield) filed a complaint, pursuant to section 206 of the Federal Power Act,¹ challenging ISO New England Inc.'s (ISO-NE) decision to disqualify certain of Brookfield's capacity resources from participating in ISO-NE's seventh Forward Capacity Auction (FCA 7). In this order, we will dismiss Brookfield's complaint as moot.

I. Background and Complaint

2. Pursuant to its Transmission, Markets and Services Tariff (Tariff), ISO-NE operates a Forward Capacity Market (FCM), in which capacity resources compete in an annual FCA to provide capacity to New England three years in advance of the relevant Capacity Commitment Period; providers whose capacity clears the FCA acquire Capacity Supply Obligations, which they must fulfill three years later.² Prior to each FCA, ISO-NE conducts a qualification process for determining which resources may participate in the FCA and then issues Qualification Determination Notices (QDNs) notifying resources as to whether they were accepted or rejected. ISO-NE must also submit an informational filing with the Commission, reflecting, among other things, the qualification results.

¹ 16 U.S.C. § 824e (2006).

² FCA 7 for the 2016-2017 Capacity Commitment Period will begin on February 4, 2013.

3. As stated in the complaint, on June 12, 2012, Brookfield requested that ISO-NE qualify for FCA 7 the capacity from certain Brookfield generation resources—Resource IDs 38079 and 38080—located in the New York Control Area. In response to Brookfield’s request, ISO-NE sought additional information regarding internal transmission constraints in the area in which Brookfield’s resources are located, and whether the capacity from these resources would be deliverable during a capacity shortage in that area. Brookfield responded to the information requests by providing information similar to the information submitted for these resources in prior FCAs. However, Brookfield also noted that it was not in a position to conduct comprehensive transmission studies for the New York Control Area. In addition, Brookfield explained that New York Independent System Operator, through a Memorandum of Understanding with ISO-NE, has backed the deliverability of Brookfield’s capacity exports to New England.

4. On September 28, 2012, ISO-NE issued the QDNs for FCA 7, partially disqualifying the capacity from Resource ID 38079 and entirely disqualifying the capacity from Resource ID 38080. In its November 6, 2012 Informational Filing for FCA 7, submitted in Docket No. ER13-335-000, ISO-NE explained that certain import resources were disqualified because they did not sufficiently explain how they would ensure deliverability given internal transmission constraints within New York.

5. Both here and in its protest submitted in Docket No. ER13-335-000, Brookfield alleges that ISO-NE improperly disqualified Brookfield’s capacity, and that ISO-NE’s Tariff provisions governing these import resources are unjust and unreasonable.³ Brookfield requests that the Commission require ISO-NE to qualify Brookfield’s capacity and revise the Tariff to clarify deliverability criteria for future FCAs.⁴

II. Notice of Filing and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 71,585 (2012), with interventions and protests due on or before December 21, 2012. Timely filed motions to intervene were filed by H.Q. Energy Services (U.S.), Inc., Exelon Corporation, and New England Power Pool Participants Committee (NEPOOL).

³ Brookfield November 21, 2012 Complaint at 15.

⁴ *Id.* at 33.

7. On December 6, 2012, ISO-NE filed its answer.⁵ On December 21, 2012, NEPOOL filed an answer and Brookfield filed an “Answer and Notice of Conditional Partial Withdrawal of Complaint” in response to ISO-NE’s answer.

8. Both here and in response to Brookfield’s protest submitted in Docket No. ER13-335-000, ISO-NE explains that, based on the additional information received since the QDNs were issued, it is now possible to qualify certain resources that were previously disqualified, including all import resources from the New York Control Area.⁶ Accordingly, ISO-NE requests that the Commission waive the QDN deadline to give these resources the opportunity to participate in FCA 7.⁷ ISO-NE states that, if the Commission waives the QDN deadline, ISO-NE will qualify any of the identified resources that properly submit a financial assurance deposit within five days of the Commission’s order.⁸

9. NEPOOL asserts that any modifications to ISO-NE’s Tariff should be made only through the stakeholder process, or else New England stakeholders will be denied the opportunity to participate in the modification process.

10. In light of ISO-NE’s answer, Brookfield states that if the Commission waives the QDN deadline, section V.A of Brookfield’s complaint, alleging that ISO-NE’s qualification determinations violated the Tariff, will become moot. Brookfield further states that, if the Commission grants the requested waiver and Brookfield’s capacity is fully qualified for FCA 7, Brookfield will withdraw the remainder of its complaint. However, Brookfield asserts that it does not agree with all of the assertions in ISO-NE’s answer and that the conditional withdrawal of Brookfield’s complaint should not prejudice its arguments in future proceedings.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

⁵ ISO-NE combined its answer here with comments in its answer to protests submitted in Docket No. ER13-335-000.

⁶ *Id.* at 10.

⁷ *Id.* at 11.

⁸ *Id.*

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answer filed by Brookfield because it assisted us in our decision-making process.

B. Commission Determination

13. We will dismiss as moot Brookfield's complaint. Concurrently with this order, the Commission, in Docket No. ER13-335-000, grants waiver of the QDN deadline and allows Brookfield the opportunity to qualify for FCA 7 by promptly submitting the requisite financial assurance deposit to ISO-NE.⁹ Accordingly, we need not address Brookfield's request for compulsory qualification in the instant proceeding and will dismiss Brookfield's complaint.¹⁰

The Commission orders:

Brookfield's complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ *ISO New England, Inc.*, 142 FERC ¶ 61,051 (2013).

¹⁰ To the extent Brookfield expresses concern that, even with a waiver of the QDN deadline, ISO-NE might not qualify its resources for participation in FCA 7, we find those concerns to be premature. Similarly, we note that, as stated in its answer, ISO-NE intends to pursue revisions and clarifications to the FCA qualification process through the stakeholder process. Brookfield can raise any concerns at that time, and we will not prejudge potential revisions here.