

126 FERC ¶ 61,062  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

PSEG Power Connecticut LLC

Docket No. ER09-329-000

ORDER GRANTING WAIVER

(Issued January 22, 2009)

1. ISO New England Inc. (ISO-NE) is currently preparing to conduct its third Forward Capacity Auction. PSEG Power Connecticut LLC (PSEG Power CT) has asked for a limited waiver of ISO-NE's market rules regarding the requirements to participate in that auction, in order to correct an inadvertent error. The Commission hereby grants the requested waiver.

**I. Background**

2. Under the Forward Capacity Market, ISO-NE will provide capacity payments to resources that provide capacity to the New England region. Capacity resources compete to be selected to provide capacity, and receive 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, and the second Forward Capacity Auction in December 2008. It proposes to conduct the third Forward Capacity Auction in October 2009.

3. Under the Forward Capacity Market rules, ISO-NE requires new resources wishing to participate in the Forward Capacity Auction to provide ISO-NE with certain information, through a Show of Interest form that each resource must submit, that enables ISO-NE to determine whether that capacity resource is qualified to participate in the auction. Projects wishing to be entered in the October 2009 auction were required to submit their Show of Interest forms to ISO-NE by September 16, 2008.

4. PSEG Power CT states that, pursuant to its award of a contract by the Connecticut legislature, it intends to construct a new peaking generation facility with a net summer

plant rating of 129.6 MW in New Haven, Connecticut (the New Haven facility). That contract requires PSEG Power CT to submit the capacity of that facility into the Forward Capacity Market. PSEG Power CT further states that it timely completed the submission of its Show of Interest package for the New Haven facility to ISO-NE on September 15, 2008, but that it inadvertently understated the capacity of that facility. Instead of listing the total capacity as 129.6 MW, PSEG Power CT listed the amount as 129 MW. PSEG Power CT states that it has sought to correct this error administratively with ISO-NE, but that it has been advised that ISO-NE has no authority under its tariff to make such an administrative correction.

5. Therefore, PSEG Power CT asks the Commission to grant a limited waiver to allow it to revise the quantity level set forth in its Show of Interest submission so that it correctly states the facility's capacity as 129.6 MW. PSEG Power CT states that this revision would allow it to ensure that the full capacity of the project participates in the Forward Capacity Auction, consistent with PSEG Power CT's obligation under its contract with the State of Connecticut. It further states that it is simply seeking to correct a good-faith error, the requested waiver is of limited scope that seeks to address a narrow, concrete problem, and granting the waiver will not harm other parties.

6. PSEG Power CT also asks the Commission to rule on this waiver request within 60 days of the date of filing of the waiver request, so as to enable PSEG Power CT to take the next step necessary for participation in the October 2009 Forward Capacity Auction (the filing of a New Capacity Qualification Package) in timely fashion.

7. Notice of PSEG Power CT's request for waiver was published in the *Federal Register*, with answers, motions to intervene and comments due on or before December 15, 2008.<sup>1</sup> The New England Power Pool Participants Committee (NEPOOL) filed a motion to intervene, and ISO-NE filed comments.

8. ISO-NE states that it takes no position as to whether the Commission should grant or deny the request for waiver. ISO-NE asks, however, that if the Commission decides to grant the Request, any such order explicitly provide that the waiver is limited to the specific and unique facts presented here, on the basis that, as a general matter, strict enforcement of the Forward Capacity Market rules is critical to the orderly administration of the Forward Capacity Market.

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<sup>1</sup> 73 Fed. Reg. 75,424 (2008).

## II. Discussion

9. The Commission will grant the requested waiver.

10. We note that the waiver granted here is of limited scope. Previously, the Commission has granted waiver requests for parties that failed to follow proper procedures for participation in earlier Forward Capacity Auctions.<sup>2</sup> The Commission has granted relief in situations 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>3</sup>

11. The Commission finds that the request for waiver here satisfies the aforementioned conditions. PSEG Power CT has stated that its failure to accurately state the capacity of its New Haven facility was inadvertent. This waiver will relate solely to deadlines for the Forward Capacity Auction to be conducted in October 2009. The waiver addresses a single concrete problem. As to the question of whether the waiver could have undesirable consequences, we conclude that no third parties will be harmed by granting this limited waiver of the New England market rules.

12. Due to the specific and unique facts presented above, the Commission will grant the party's request for limited waiver of the ISO-NE market rules. 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, given that ISO-NE does not expect the requested waivers to have an effect on the Forward Capacity Auction, the Commission finds that granting of the waivers is appropriate.

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<sup>2</sup> 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*).

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

The Commission orders:

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.