

129 FERC ¶ 61,212  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

National Grid USA  
Laidlaw Berlin BioPower, LLC

Docket Nos. ER10-278-000  
ER10-280-000  
(Not Consolidated)

ORDER GRANTING WAIVERS

(Issued December 10, 2009)

1. On November 17, 2009, in Docket No. ER10-278-000, National Grid USA (National Grid) filed a request for waiver of ISO New England Inc.'s (ISO-NE) Qualification Process Cost Reimbursement Deposit (Deposit) deadline. Additionally, in Docket No. ER10-280-000, Laidlaw Berlin BioPower, LLC (Laidlaw) also filed a request for waiver of ISO-NE England's Deposit deadline. Both parties explain that a waiver is necessary for them to continue to participate in the qualification process for ISO-NE's fourth Forward Capacity Auction (FCA) in August 2010. As discussed below, the Commission grants both waiver requests.

**I. Background**

2. As detailed in numerous proceedings before this Commission, ISO-NE has recently implemented the Forward Capacity Market (FCM), pursuant to 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 FCA. ISO-NE conducted its first FCA in February 2008, a second FCA in December 2008, a third FCA in October 2009, and its fourth FCA is scheduled for August 2010.

3. ISO-NE's tariff requires interested parties to submit a "Show of Interest" form that provides information that ISO-NE uses to determine whether a given capacity resource is qualified to participate in the relevant FCA.<sup>1</sup> According to section III.13.1.9.3 of ISO-NE's tariff, ISO-NE issues an invoice for a Deposit that ISO-NE must receive no later

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<sup>1</sup> ISO New England Inc., FERC Electric Tariff No. 3, 2nd Rev. Sheet 7308A.

than ten business days after the date ISO-NE issued the invoice.<sup>2</sup> If the Deposit is not received within the ten business days, then ISO-NE considers the project to be withdrawn.

## II. Requests for Waiver

4. In Docket No. ER10-278-000, National Grid, on behalf of its wholly owned subsidiary the Narragansett Electric Company, requests a three-day waiver of ISO-NE's Deposit requirement.<sup>3</sup> National Grid states that ISO-NE did not receive its \$500 wire transfer until September 4, 2009, three days past the September 1, 2009 deadline. National Grid states that absent a Commission waiver of the September 1, 2009 deadline, its Rhode Island Demand Response Project (Rhode Island Project), totaling 12.9 MW of new capacity, will be ineligible to participate in the FCA. National Grid requests expedited consideration of its request so that it will be able to submit its Qualification Package to ISO-NE by December 15, 2009, which is the next deadline it must meet in order to qualify for the fourth FCA.

5. National Grid states that it timely submitted its Show of Interest form for the Rhode Island Project in July. In August, ISO-NE issued a \$500 invoice for the required Deposit, which was due on September 1, 2009. National Grid states that it submitted a \$500 wire transfer but that because of a system processing error ISO-NE did not receive the transfer until September 4, 2009, three days past the due date. Thus, National Grid requests this waiver to maintain its eligibility to participate in ISO-NE's fourth FCA.

6. National Grid states that it attempted in good faith to have its Deposit wire transferred to ISO-NE by the September 1, 2009 deadline. National Grid states that ISO-NE received the Deposits for other projects it submitted at the same time and that only the Rhode Island Project's Deposit was delayed. National Grid states that in the future it will confirm that ISO-NE has received each Deposit it submits for wire transfer. National Grid asserts that this waiver is limited in scope and relates to a single incident. Finally, National Grid argues that this waiver request will have no adverse consequences on the FCA process or any third parties.

7. In Docket No. ER10-280-000, Laidlaw, which owns the Berlin BioPower Project (Berlin Project), a planned 65 MW biomass energy power plant, also requests waiver of ISO-NE's Deposit requirement deadline in order to participate in ISO-NE's fourth FCA scheduled for August 2010. The Berlin Project is a paper mill in Berlin, New Hampshire,

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<sup>2</sup> *Id.* at 2nd Rev. Sheet No. 7313B.

<sup>3</sup> ISO-NE's Market Rule 1, section III 1.3.1.9.3, Transmission, Markets and Services Tariff (Tariff).

that is being converted and upgraded to a biomass energy production facility that will use low-grade wood for fuel. Laidlaw states that the Project will invest approximately 25 million dollars per year into the regional economy for biomass fuel purchases, thus helping the region. Laidlaw also requests expedited treatment of its request so that it will be able to participate in ISO-NE's fourth FCA.

8. Laidlaw states that it timely submitted its Show of Interest form to ISO-NE on June 19, 2009, to qualify for participation in the fourth FCA. According to Laidlaw, on August 18, 2009, ISO-NE issued an invoice for the required Deposit in the amount of \$15,000. Laidlaw states that the invoice was transmitted via email to Michael B. Bartoszek, President and CEO, with payment due by September 1, 2009. Laidlaw states that the invoice was flagged as spam by Laidlaw's security software. Furthermore, Mr. Bartoszek was on vacation and had limited ability to check emails. Additionally, Laidlaw states that since this is its first project with ISO-NE, it was unfamiliar with ISO-NE's practice of emailing invoices to customers and did not take additional precautions to ensure that emails were monitored for the Deposit invoice. Laidlaw states that on September 2, 2009, ISO-NE informed Laidlaw that the Berlin Project would be withdrawn since the Deposit had not been paid. Laidlaw states that it was prepared to wire the funds within an hour of ISO-NE's notification.

9. Laidlaw states that it has diligently followed ISO-NE's process to qualify the Berlin Project and the failure to remit the Deposit by the required deadline was inadvertent and unintentional. Laidlaw also states that the waiver is of limited scope, as the waiver would be applied only to a single project sponsor for the fourth FCA. Finally, Laidlaw asserts that the waiver does not have undesirable consequences; it would simply allow Laidlaw to submit the required Deposit to ISO-NE, which is only the first of several steps that would be required for the Project to participate in the FCA. Laidlaw states that if the Commission grants its waiver request, it will pay the Deposit within five business days of such order.

### **III. Notice**

10. Notices of National Grid's and Laidlaw's filings were published in the *Federal Register*, 74 Fed Reg. 61669 (2009), with interventions or comments due on or before November 25, 2009. In each docket ISO-NE filed a motion to intervene and comments and New England Power Pool Participants Committee filed a motion to intervene out-of-time.

11. ISO-NE filed similar comments in both dockets stating that it takes no position on the waiver requests. However, ISO-NE asks that any order granting the waiver request explicitly provide that the waiver is limited to the specific and unique facts presented here and does not constitute established precedent that would allow other Market Participants to avoid these or other terms and conditions set forth in ISO-NE's tariff. ISO-NE also states that strict enforcement of the FCM deadline is critical to the orderly administration

of the Forward Capacity Market. ISO-NE states that if the Commission grants these waiver requests by December 10, 2009, ISO-NE will be able to reinstate both projects for the 2013-2014 Capacity Commitment Period.

#### **IV. Commission Determination**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2009), the Commission will grant New England Power Pool Participants Committee's late-filed motions to intervene in both dockets given its interest in the proceedings, the early state of the proceedings, and the absence of undue prejudice or delay.

13. As discussed below, the Commission will grant the requested waivers.

14. We note, however, that the waivers granted here are of limited scope. The Commission has previously granted waiver requests for parties that failed to follow proper procedures for participation in earlier FCAs.<sup>4</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>5</sup>

15. The Commission finds that the requests for waivers here satisfy these conditions. The requesters have stated that their failure to comply with the deadline was inadvertent. These waivers will relate solely to the Deposit deadline for the fourth FCA to be conducted in August 2010 and address a concrete problem: the failure to make timely payments on ISO-NE's invoices. As to whether the waiver could have undesirable consequences, we conclude that no third parties will be harmed by granting these limited waivers of the ISO-NE market rules. Moreover, as evidenced by ISO-NE's comments, granting these waivers will not adversely affect ISO-NE's preparation for the FCA for the 2013-2014 Capacity Commitment Period.

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<sup>4</sup> See, e.g., *Connecticut Light & Power Co.*, 126 FERC ¶ 61,186 (2009); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (*EnerNOC*); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008) (*Acushnet*); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007) (*Central Vermont*); *University of New Hampshire*, 121 FERC ¶ 61,185 (2007); and *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007) (*Waterbury*).

<sup>5</sup> See *EnerNOC*, 122 FERC ¶ 61,297; *Acushnet*, 122 FERC ¶ 61,045; *Central Vermont*, 121 FERC ¶ 61,225; and *Waterbury*, 120 FERC ¶ 61,007.

16. Due to the specific and unique facts presented above, the Commission will grant National Grid's and Laidlaw's requests for limited waiver of the ISO-NE market rules for the 2013-2014 Capacity Commitment Period. We emphasize the importance of enforcing the FCM rules in order to effectively administer the markets in New England and we will not automatically grant such waiver requests in the future. However, for the reasons discussed above, and the fact that ISO-NE does not oppose these requests for waivers, we find that granting the requested waivers is appropriate.

The Commission orders:

(A) National Grid's request for waiver in Docket No. ER10-278-000 is hereby granted, as discussed in the body of this order.

(B) Laidlaw's request for waiver in Docket No. ER10-280-000 is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.