

158 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

ISO New England Inc.

Docket No. ER16-1904-001

ORDER DENYING REHEARING

(Issued January 19, 2017)

1. Enerwise Global Technologies, Inc. (CPower) seeks rehearing of the Commission's August 8, 2016 order granting ISO New England Inc. (ISO-NE) a limited waiver of sections III.13.1.4.2.5.2, III.13.1.4.3.1.2, and III.13.1.2.3.1.1 of its Transmission, Markets and Services Tariff (Tariff). This waiver allows Real-Time Emergency Generation (RT Emergency Generation) Resources to change their resource type to Real-Time Demand Response (RT Demand Response) Resources within a timeframe that otherwise would not be possible.¹ In this order, we deny CPower's request for rehearing of the August 8 Order.

I. Background

2. ISO-NE submitted its waiver request in response to the May 1, 2015 decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) reversing the U.S. Environmental Protection Agency's (EPA) rules containing a 100-hour exemption for operation of emergency engines for purposes of emergency demand response under the National Emissions Standards, and EPA's decision not to develop an alternative to these rules.

3. ISO-NE's Tariff defines an RT Emergency Generation Resource as distributed generation that is limited by federal, state, and/or local air quality permits, rules, or regulations to operating in response to ISO-NE requests to those times when ISO-NE implements voltage reductions of five percent of normal operating voltage that require

¹ *ISO New England Inc.*, 156 FERC ¶ 61,096 (2016) (August 8 Order).

more than 10 minutes to implement.² Because the court vacated the EPA rules that allowed emergency generators to respond to a five percent voltage reduction, RT Emergency Generation Resources can no longer operate when ISO-NE implements voltage reductions and can only operate when their host facilities lose off-site power, unless they are retrofitted to comply with the EPA's National Emissions Standards.

4. ISO-NE described its waiver request as serving three goals. The first was to waive restrictions on the conversion of RT Emergency Generation Resources into RT Demand Response Resources and to permit them to participate as such resources in the February 2017 Forward Capacity Auction. The second goal was to waive requirements for changing the Demand Resource type for resources that have acquired Capacity Supply Obligations and to waive the requirements for modifications in the updated measurement and verification plan of a resource's Demand Resource type for the duration of the Capacity Commitment Period. This would allow existing RT Emergency Generation Resources that have acquired Capacity Supply Obligations in the eighth, ninth, and tenth Forward Capacity Auctions to change their Demand Resource type to RT Demand Response Resources and thus keep their Capacity Supply Obligations for the 2017-2018, 2018-2019, and 2019-2020 Capacity Commitment Periods, provided they can comply with the Tariff requirements for RT Demand Response Resources. The third goal was to allow affected market participants time to evaluate their options, as well as to provide time for the ISO-NE Internal Market Monitor to work with market participants during summer 2016 and finalize determinations regarding Static De-List Bids by the Static De-List Bid determination deadline of September 30, 2016. This is accomplished by modifying the deadline for submitting Static De-List Bids, which is a market participant's means of removing a resource from the next auction.

5. CPower argued that ISO-NE's proposed waiver did not fully address the problems resulting from the D.C. Circuit's decision and thus submitted what it termed a "proposed

² The full definition of a RT Emergency Generation Resource set forth in section I.2.2 of the Tariff is as follows:

Real-Time Emergency Generation Resource is Distributed Generation whose federal, state and/or local air quality permits, rules or regulations limit operation in response to requests from the ISO to the times when the ISO implements voltage reductions of five percent of normal operating voltage that require more than 10 minutes to implement. A Real-Time Emergency Generation Resource must be capable of: (i) curtailing its end-use electric consumption from the New England grid within 30 minutes of receiving a Dispatch Instruction; and (ii) continuing that curtailment until receiving a Dispatch Instruction to restore consumption.

modification.”³ CPower contended that RT Emergency Generation holders of Capacity Supply Obligations will not be able to convert all of their assets to RT Demand Response Resources or otherwise shed their Capacity Supply Obligations based on current market conditions for the 2017-2018 Capacity Commitment Period and thus will be subject to financial penalties that are beyond their control. CPower proposed that Tariff requirements be waived so that demand bids entered in the Third Annual Reconfiguration Auction for remaining RT Emergency Generation Capacity Supply Obligations will be at the original Forward Capacity Auction Payment Rate and not at the currently-required Forward Capacity Auction Starting Price. This waiver would apply only for the Capacity Commitment Period 2017-2018, and it also would apply only in the limited circumstance where a RT Emergency Generation Resource Capacity Supply Obligation holder cannot convert or shed some or all of its Capacity Supply Obligations due to market conditions. CPower argued that, to the extent it is unable to reassign its Capacity Supply Obligations, it should be able to buy out of its position at the Forward Capacity Auction Payment Rate in Forward Capacity Auction 11 and not be subject to what it described as a punitive rate equal to the Forward Capacity Auction Starting Price for the Third Annual Reconfiguration Auction.

6. The Commission found CPower’s proposal to be, in effect, a separate request for waiver of an additional Tariff provision and thus dismissed it as beyond the scope ISO-NE’s proposal. The Commission also stated that CPower’s proposal would decrease incentives for RT Emergency Generation market participants to exhaust existing remedies. It rejected as speculative CPower’s argument that applying the Forward Capacity Auction Starting Price to the Third Annual Reconfiguration Auction, rather than the Forward Capacity Auction Payment Rate, would essentially cause a penalty. The Commission noted that ISO-NE would enter demand bids in the Third Annual Reconfiguration Auction at the Forward Capacity Auction Starting Price, but the auction could clear at a lower price, including at a price that could result in a payment for RT Emergency Generation Resources instead of a charge.⁴

7. The Commission granted ISO-NE’s waiver request based on a finding that it met the Commission’s criteria for waivers. These criteria are: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁵

³ Enerwise Global Technologies Inc., Comments and Request for Modification of Waiver, ER16-1904-000, at 1 (filed June 30, 2016) (Comments and Request).

⁴ August 8 Order, 156 FERC ¶ 61,096 at P 19.

⁵ *Id.* P 17.

II. Rehearing Request

8. CPower maintains that the Commission made five errors in the August 8 Order. First, CPower states that the Commission erred when it dismissed CPower's request as outside the scope of ISO-NE's proposal. CPower states that the Commission did not address its arguments that ISO-NE's proposal placed CPower's request before the Commission and that unique circumstances, as well as the interests of administrative efficiency, support addressing CPower's request.⁶

9. Second, CPower states that the Commission erred because it did not address CPower's alternative proposal that ISO-NE should relieve holders of RT Emergency Generation Capacity Supply Obligations of any remaining unconverted and unshed Obligations for the 2017-2018 Capacity Commitment Period given the exhaustion of all available remedies.⁷

10. Third, CPower states that the Commission erred in stating that no party argued that granting ISO-NE's waiver request will have undesirable consequences and also erred in finding that the waiver does not have such consequences. CPower also states that the Commission did not address CPower's arguments that the waiver would create serious financial penalties for holders of RT Emergency Generation Capacity Supply Obligations.⁸

11. Fourth, CPower states that the Commission failed to support adequately its finding that CPower's concerns about financial harm are speculative. CPower states that it provided reasoning and market data to support its argument, but the Commission failed to address it.⁹

12. Fifth, CPower states that the Commission erred in stating that CPower's proposal would decrease incentives for RT Emergency Generation market participants to exhaust existing remedies for avoiding possible financial harm. CPower states that its proposal maintained all incentives by requiring a RT Emergency Generation market participant to exhaust its remedies under the Tariff in order to avoid significant financial penalties.¹⁰

⁶ Rehearing Request at 4, 7-8.

⁷ *Id.* at 4, 9.

⁸ *Id.* at 3, 5-6.

⁹ *Id.* at 3, 6-7.

¹⁰ *Id.* at 4, 8-9.

13. Finally, CPower requests clarification that the Commission did not dismiss CPower's proposal with prejudice and that CPower may pursue the matter through a complaint or other separate request to the Commission.¹¹

III. Discussion

14. We deny rehearing. We begin with CPower's claim that the Commission erred in finding that CPower's proposal is outside the scope of ISO-NE's proposal. While CPower styled its proposal as a modification to ISO-NE's proposal, CPower did not propose to modify any element of that latter proposal. Instead, CPower's proposal amounted to "a separate request for waiver of an additional provision of the Tariff."¹² As such, it is beyond the scope of ISO-NE's proposal and also beyond the scope of this proceeding.

15. On rehearing, CPower does not argue that its proposal is within the scope of ISO-NE's proposal. Instead it argues that the record here demonstrates that ISO-NE's proposal is too limited, and it requires not simply a modification, but rather an expansion to include an additional waiver request. CPower states that ISO-NE's pleadings referred to the additional Tariff provision for which CPower seeks a waiver, and the pleadings did so in a way that "places the issues CPower raises squarely before the Commission."¹³ Specifically, CPower's points to ISO-NE's June 3, 2016 letter to market participants discussing the D.C. Circuit's decision and ISO-NE's proposed waiver request. According to CPower, this letter, which was attached to ISO-NE's waiver request, refers to potential adverse consequences that could be caused by the Tariff provision for

¹¹ *Id.* at 4, 9-10.

¹² August 8 Order, 156 FERC ¶ 61,096 at P 19. *See Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001, at 61,002 n.3 (1984) (*Stowers*) (stating "[n]or does the style in which a petitioner frames a document necessarily dictate how the Commission must treat it").

¹³ Rehearing Request at 4, 8, n.33.

which CPower seeks a waiver.¹⁴ CPower argues that the Commission erred by not addressing the issue that had been placed before it in this way.

16. CPower's position in substance is that its separate, additional waiver *should* have been found to be within the scope of this proceeding because of the consequences CPower concluded would result from failure to grant that waiver. CPower argues that ISO-NE's proposal "does not articulate the *entire* problem," and CPower's proposed additional waiver "would 'identify and address fully the concrete problem caused by the EPA 100-hour rule vacatur.'"¹⁵ According to CPower, the Commission's error is that it failed to address CPower's "concerns,"¹⁶ and it maintains that "[t]he August 8 Order neither addresses these concerns nor articulates sufficient reasoned decision-making for the Commission's dismissal of CPower's concerns."¹⁷

17. We reject this argument. The Commission is generally "master of its own calendar and procedures," and "[i]t is within the Commission's purview to determine how best to allocate its resources for the most efficient resolution of matters before it."¹⁸

¹⁴ *Id.* at 8 (citing Enerwise Global Technologies Inc., Answer of Enerwise Global Technologies Inc., ER16-1904-000, at 2 (filed July 22, 2016). CPower stated in its Answer to ISO-NE:

ISO essentially admits that the June 3, 2016 letter attached to the ISO Proposal put front and center before the Commission ISO Market Rule 1, Section III.13.4.2.1.3 . . . and, critically, the application of the punitive Forward Capacity Auction . . . Starting Price to RT [Energy Generation] Capacity Supply Obligations that cannot be converted or shed for [Capacity Commitment Period] 2017-2018 because of illiquid auction and bilateral markets.

¹⁵ *Id.* (quoting Comments and Request at 3, 5) (emphasis in the original).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Stowers*, 27 FERC ¶ 61,001 at 61,001; *see also Mobil Oil Explor. & Prod. SE Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991) (stating that "[a]n agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures ... [such as] where a different proceeding would generate more appropriate information") (citations omitted); *Ten. Gas Pipeline Co. v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) (stating that "[t]he agency is entitled to make reasonable decisions about when and in what type of proceeding it will deal with an actual problem").

Given that CPower's request is a separate request for an additional waiver, the Commission has discretion regarding the process for addressing such a request.¹⁹ CPower's waiver request raised a number of factual issues, which were noted in the August 8 Order,²⁰ and it is within the Commission's discretion to determine that such issues place the request beyond the scope of this proceeding. CPower has not shown that the Commission is required to address its waiver request in this proceeding, and as a result it has not shown that the Commission erred in not doing so.

18. These points apply equally to CPower's argument that the Commission erred when it failed to consider CPower's alternate proposal "that ISO-NE 'simply relieve the [RT Emergency Generation] Capacity Supply Obligation holder of any remaining unconverted and unshed [RT Emergency Generation] Capacity Supply Obligation for the 2017-2018 Capacity Commitment Period given the exhaustion of available remedies.'"²¹ This alternate proposal also is beyond the scope of ISO-NE's proposal and beyond the scope of this proceeding. As a result, the Commission's failure to address it is not error.

19. We reject CPower's contention that the Commission erred in stating that no party argued that granting ISO-NE's waiver request will have undesirable consequences, as well as its contention that the Commission erred in finding that granting ISO-NE's request would not have undesirable consequences. CPower states that it argued that granting ISO-NE's waiver request would have such consequences. While CPower's argument is nominally that "if left unmodified, the [ISO-NE] Proposal would cause significant financial harm to [RT Emergency Generation] Capacity Supply Obligation holders. . . ,"²² CPower identifies the cause of this financial harm as, in fact, the D.C. Circuit's action in vacating the EPA's 100-hour exemption for operation of emergency engines, not the granting of ISO-NE's waiver request.²³

¹⁹ *Nadar v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) (stating "this court has upheld in the strongest terms the discretion of regulatory agencies to control the disposition of their caseload").

²⁰ August 8 Order, 156 FERC ¶ 61,096 at P 19.

²¹ Rehearing Request at 9 (quoting Comments and Request at 3).

²² *Id.* at 5. CPower's argument that financial harm will occur if its separate, additional waiver request is not granted is more an argument that additional relief beyond that sought by ISO-NE is warranted than an argument that granting ISO-NE's request would have undesirable consequences.

²³ *Id.* at 9.

20. In light of these conclusions, it is unnecessary to address CPower's contention that the Commission erred by not adequately supporting its statement that CPower's concerns about financial harm are speculative and that the Commission erred in stating that CPower's proposal would decrease incentives for RT Emergency Generation market participants to exhaust existing remedies for avoiding possible harm. Again, the harm that CPower predicts stems from the failure to grant its separate, additional waiver request, not from the approval of ISO-NE's waiver request. The Commission's statements concerning incentives pertain to effects of granting CPower's request, not the merits of ISO-NE's request. Thus, even if CPower were correct that the Commission did not fully support the assertions in question, this would not represent error that would support a grant of rehearing and a consequent grant of CPower's requested additional relief. CPower's separate, additional waiver request is beyond the scope of ISO-NE's request and thus beyond the scope of this proceeding. Consequently whether the Commission failed to assess the merits of CPower's request correctly does not affect our findings on the matter before us.

21. Finally, the Commission clarifies that it dismissed CPower's proposal without prejudice.

The Commission orders:

CPower's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.