

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

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

Green Mountain Power Corporation

Docket No. ER20-1755-000

ORDER DENYING WAIVER

(Issued September 17, 2020)

1. On May 1, 2020, Green Mountain Power Corporation (Green Mountain) submitted a request for limited waiver of the ISO New England Inc. (ISO-NE) Open Access Transmission Tariff (Tariff). Specifically, Green Mountain requests a waiver of the revised definition of Settlement Only Resources under Tariff section I.2.2 that will become effective January 1, 2021,¹ as applied to Green Mountain's Searsburg wind power facility located in southern Vermont (Searsburg facility). As discussed below, we deny the waiver request.

I. Background

2. The Searsburg facility is comprised of 11 Zond Z-40 turbines, each rated at 550 kW. The overall project has a nameplate rating of 6 MW. Due to the age and physical characteristics of the turbines, the Searsburg facility has a 20-25% capacity factor and produces an average of 1.2 to 1.5 MW.² According to Green Mountain, the facility went online in July 1997 and reached its projected design lifetime of 20 years in July 2017.

3. According to Green Mountain, the Searsburg facility cannot be operated remotely because it was designed and installed before the availability of wind Supervisory Control and Data Acquisition technology, and Green Mountain states that it is unable to acquire hardware or software to set up an active power limit because the facility's Zond Z-40 turbines are among the last turbines of this model still in operation. Furthermore, Green Mountain explains that updated or modified control systems or spare parts for the

¹ On April 16, 2020, ISO-NE submitted a filing to defer the effective date from June 1, 2020, to January 1, 2021, in Docket No. ER20-1582-000. On May 8, 2020, ISO-NE's Filing was accepted via delegated letter order. *ISO New England Inc.*, Docket No. ER20-1582-000 (May 8, 2020) (delegated order).

² Waiver Request at 3.

Searsburg facility's legacy Zond Z-40 turbines are not available.³ As such, the power output of the Searsburg facility can only be limited manually by taking individual turbines offline or shutting down the entire facility remotely by tripping the substation, which could damage the turbines. Green Mountain expects to decommission the turbines over the coming years as each turbine becomes inoperable.⁴

4. On December 9, 2016, the Commission accepted certain Tariff revisions to broaden the range of resources that must be capable of responding to ISO-NE's electronic dispatch instructions, which will become effective on January 1, 2021.⁵ One of those revisions modified the definition of Settlement Only Resource in Tariff section I.2.2, so that the definition will not allow for any exemptions or grandfathering.⁶ Green Mountain explains that ISO-NE advocated for the removal of the grandfathering provision because it results in a "de facto" exemption from the Settlement Only Resource Criteria.⁷

II. Waiver Request

5. Green Mountain requests a waiver of the revised definition of Settlement Only Resources under Tariff section I.2.2, which defines resources that must be capable of responding to ISO-NE's electronic dispatch instructions and was modified to eliminate exemptions and restricted which facilities qualify as Settlement Only Resources by enforcing a MW threshold. Green Mountain states that, without the waiver, the Searsburg facility will no longer satisfy the definition of a Settlement Only Resource

³ *Id.* Enron Wind Corp. acquired the original manufacturer of the turbines, which was later acquired by General Electric Co. (GE) after Enron Corp. filed for bankruptcy. GE does not have the ability to manufacture parts and equipment for the turbines.

⁴ *Id.* at 4.

⁵ *ISO New England Inc.*, 157 FERC ¶ 61,189, at PP 1, 24 (2016).

⁶ Waiver Request at 4. The new definition of Settlement Only Resource will be:

[s]ettlement Only Resources are: generators of less than 5 MW of maximum net output when operating at any temperature at or above zero degrees Fahrenheit, that meet the metering, interconnection and other requirements in or otherwise eligible for Settlement Only Resource treatment as described in ISO New England Operating Procedure No. 14 and that have elected Settlement Only Resource treatment as described in the ISO New England Manual for Registration and Performance Auditing.

⁷ *Id.* at 5.

under the ISO-NE Tariff in January 2021. Green Mountain explains that, absent the waiver, in January 2021, the Searsburg facility will have to register as a non-Settlement Only Resource and a Dispatchable Resource and comply with ISO-NE's dispatchability requirements.⁸

6. First, Green Mountain argues that the requested waiver is limited in scope because it would involve only the Settlement Only Resource Tariff provisions and would only apply to its Searsburg facility. Green Mountain states that it expects to decommission individual turbines within the coming years; therefore, the facility will once again qualify as a Settlement Only Resource under the revised definition.⁹

7. Second, Green Mountain argues that the requested waiver would address a concrete problem because, absent the waiver, the Searsburg facility is not able to meet the technical requirements for a Dispatchable Resource and would instead be required to register as a generator. Green Mountain asserts that this is not possible because the turbine models are the last of their kind and upgrades are not available. Green Mountain contends that, as a result, it would be forced to prematurely decommission two of the 11 wind turbines or otherwise reduce the output capability in order to remain under the Settlement Only Resource size threshold.

8. Third, Green Mountain argues that the requested waiver would not have undesirable consequences because (1) it would merely allow the Searsburg facility to maintain its current registration as a Settlement Only Resource and (2) there is minimal harm in allowing the resource to remain a Settlement Only Resource for a limited period of time until it reaches the 5 MW cut-off through decommissioning. Green Mountain adds that ISO-NE does not oppose the waiver request.

III. Notice and Responsive Pleadings

9. Notice of Green Mountain's filing was published in the *Federal Register*, 85 Fed. Reg. 27,410 (May 8, 2020), with interventions and protests due on or before May 22, 2020. New England Power Pool Participants Committee (NEPOOL) filed a timely motion to intervene.

⁸ *Id.* at 6.

⁹ *Id.* at 8.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), NEPOOL's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

11. We deny Green Mountain's waiver request, as discussed below. The Commission has granted waiver of tariff provisions where: (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.¹⁰ We find that the circumstances of Green Mountain's waiver request do not satisfy these criteria.

12. Specifically, we find that Green Mountain has failed to demonstrate that its waiver request is limited in scope. The Commission has previously stated that requested waivers are limited in scope when they span a specific and limited period of time.¹¹ Here, while Green Mountain states that it expects to decommission individual turbines "within the coming years,"¹² it does not provide the expected date of decommissioning. Accordingly, we find that the circumstances here do not justify granting a waiver.

13. We also find that Green Mountain has failed to demonstrate that its waiver request would not have undesirable consequences. Green Mountain concedes that its wind turbines cannot meet the requirements for Settlement Only Resources.¹³ Granting the waiver request therefore would grant Green Mountain the "de facto exemption" from such requirements that ISO-NE's tariff amendment was intended to eliminate. Green

¹⁰ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016) (*MISO*).

¹¹ See *Cal. Indep. Sys. Operator Corp.*, 156 FERC ¶ 61,153, at P 13 (2016) (explaining that petitioner's request for waiver was limited in scope because the waiver was set to last for four months); *MISO*, 154 FERC ¶ 61,059 at P 14 (finding a waiver to be of limited scope because it spanned only a specific, limited time period); cf. *Gaelectric, LLC v. NorthWestern Corp.*, 148 FERC ¶ 61,107, at P 35 (2014) (finding that petitioner's request for waiver was not of limited scope because, *inter alia*, the proposed waiver would last for an uncertain period of time).

¹² Waiver Request at 8.

¹³ *Id.*

Mountain concedes that this would result in harm.¹⁴ Green Mountain claims, without further explanation, that any harm would be minor due to the small size of its facility, but the fact that a facility is small does not alone sufficiently demonstrate that a waiver would have no undesirable consequences.

The Commission orders:

Green Mountain's waiver request is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ *Id.*