

130 FERC ¶ 61,106  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Vermont Electric Cooperative, Inc.

Docket No. ER10-503-000

ORDER GRANTING WAIVER

(Issued February 18, 2010)

1. On December 23, 2009, Vermont Electric Cooperative, Inc. (Vermont Electric) filed a request for waiver of ISO New England Inc.'s (ISO-NE) Updated Measurement and Verification Plan (Updated Plan) submission deadline.<sup>1</sup> Vermont Electric states that a waiver is necessary for it to continue to participate in the qualification process of existing Demand Resources for ISO-NE's Forward Capacity Auction (FCA) for the 2013-2014 Capacity Commitment Period (2013-2014 FCA). As discussed below, the Commission hereby grants Vermont Electric's request for waiver.

**I. Background**

2. On October 29, 2008, the Commission accepted proposed changes to ISO-NE's Forward Capacity Market (FCM) rules, effective December 1, 2008.<sup>2</sup> One of the revisions required market participants with certain existing active demand resources<sup>3</sup> to submit Updated Plans no later than five business days after receipt of the Qualified Capacity notification from ISO-NE to establish the summer and winter Qualified

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<sup>1</sup> Market Rule 1, § III.13.1.4.8.1 of ISO-NE's Transmission, Markets, and Services Tariff.

<sup>2</sup> *ISO New England Inc.*, Docket No. ER09-5-000 (October 29, 2008) (unpublished letter order).

<sup>3</sup> Critical Peak, Real-Time Demand Response, and Real-Time Emergency Generation Demand Resources.

Capacity amounts of their resources. The Updated Plans are determined based on the results of ISO-NE's most recent Demand Resource Operable Capacity Analysis, which estimates, prior to each FCA, the expected dispatch hours of active demand resources given different assumed levels of demand resources clearing in the primary FCA. For the fourth FCA, market participants were required to submit the Updated Plans by Friday no later than 5 business days after receiving a Qualified Capacity notification from ISO-NE,<sup>4</sup> which made the deadline November 13, 2009. In addition, for new active demand resources, market participants are required to submit a Qualification Package to qualify the resources for the next FCA.<sup>5</sup> The window for submission of Measurement and Verification Plans for new active demand resources for the 2013-2014 FCA was from December 1, 2009 to December 15, 2009.

3. Vermont Electric describes itself as a small, rural distribution cooperative providing distribution and local transmission services in northern Vermont. It has a single existing real-time demand response resource -- a retail industrial customer whose nominal load is 7 MW.

## II. Request for Waiver

### A. Description

4. Vermont Electric explains that it inadvertently missed ISO-NE's deadline for submission of its Updated Plan, because it confused the due date for submitting plans for Demand Resource (DR) Operable Capacity for existing resources with the different deadline for submitting plans for new resources. Vermont Electric states that it believed the submission deadline was the same, i.e., December 1, 2009, for both existing and new resources, and was preparing its Updated Plan accordingly. Vermont Electric requests a one-business day waiver to allow ISO-NE to consider its Updated Plan and thereby enable it to participate in the 2013-2014 FCA. Vermont Electric states that absent a waiver ISO-NE is required to enter a Permanent De-list Bid at 2.0 times the Cost of New Entry for the Demand Resource.<sup>6</sup>

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<sup>4</sup> Market Rule 1, § III.13.1.4.8.1 of ISO-NE's Transmission, Markets, and Services Tariff.

<sup>5</sup> *Id.* § III.13.1.4.8.2.

<sup>6</sup> *Id.* § III.13.1.4.8.

5. In support of its request for waiver, Vermont Electric states that the error was made in good faith, since it immediately submitted the Updated Plan upon notification from ISO-NE on November 16, 2009, that it had failed to meet the deadline.<sup>7</sup> Vermont Electric states that the waiver is of limited scope, as it is seeking only a limited, one-time waiver, and that the request is solely to allow ISO-NE to treat submissions made after November 13, 2009 as timely in its qualification determinations for the fourth FCA. Vermont Electric commits to comply with and properly distinguish between the deadlines in the future. Further, the waiver resolves a concrete problem by allowing Vermont Electric to have its DR Operable Capacity considered in the 2013-2014 FCA. Finally, Vermont Electric asserts that the waiver does not have undesirable consequences.

### **B. Notice**

6. Notice of Vermont Electric's filing was published in the *Federal Register*, 75 Fed. Reg. 354 (2010), with interventions, protests, or comments due on or before January 13, 2010. No comments, protests, or interventions were filed.

### **III. Commission Determination**

7. As discussed below, the Commission will grant Vermont Electric's request for waiver.

8. We note, however, that the waiver granted here is of limited scope. The Commission has previously granted waiver requests for parties that failed to follow proper procedures for participation in earlier FCAs.<sup>8</sup> The Commission has granted relief

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<sup>7</sup> Vermont Electric was a member of the group of Demand Resource Market Participants in Docket No. ER09-1029-000, where a request for waiver of the same market rule (i.e., the deadline in section III.13.1.4.8.1) was granted. *ISO New England Inc.*, 127 FERC ¶ 61,242 (2009). Vermont Electric asserts that the circumstances here involve "a nuance of the rules not present in the earlier proceeding." Vermont Electric filing at 6-7. In the prior proceeding, Demand Resource Market Participants claimed that they mistakenly assumed that no new submissions related to qualification would be necessary for resources that had already attained qualification. Here, Vermont Electric states that it mistook the later deadline for submitting plans for new resources in section III.13.1.4.8.2 as the deadline for submitting plans for existing resources in section III.13.1.4.8.1.

<sup>8</sup> See, e.g., *ISO New England Inc.*, 127 FERC ¶ 61,242 (2009); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (*EnerNOC*); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007) (*Central Vermont*);

(continued...)

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>9</sup>

9. The Commission finds that the request for waiver here satisfies the aforementioned conditions. Vermont Electric states that its failure to comply with the deadline was inadvertent and a misunderstanding of the FCM rules and that it corrected its effort as soon as it was notified. This waiver will apply solely to the submission of the Updated Plan for the fourth FCA to be conducted in August 2010. The waiver addresses a single concrete problem. As to whether the waiver could have undesirable consequences, we conclude that no third parties will be harmed by granting this limited waiver of the ISO-NE market rules.

10. However, since Vermont Electric missed this same deadline last year for which we granted a waiver,<sup>10</sup> Vermont Electric should have been aware that the Updated Plan for existing resources was due to ISO-NE five business days after receipt of the Qualified Capacity notification and not during the timeframe from December 1, 2009 through December 15, 2009, when the Measurement and Verification Plan for new Demand Resource Operable Capacity was due to ISO-NE.

11. Due to the specific and unique facts presented above, the Commission will grant Vermont Electric's request for limited waiver of the ISO-NE market rules for the 2013-2014 Capacity Commitment Period. In the past we have emphasized the importance of enforcing the FCM rules in order to effectively administer the markets in New England, and we have warned that we will not automatically grant such waiver requests in the future. While we find that granting the requested waiver is appropriate here for the reasons discussed above, we note that, but for the speed with which Vermont Electric corrected its error, the circumstances suggest that relief might not have otherwise been justified. We strongly encourage participants to pay closer attention to the FCM rules and deadlines.

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*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>9</sup> See, e.g., *EnerNOC*, 122 FERC ¶ 61,297; *Central Vermont*, 121 FERC ¶ 61,225; *Waterbury*, 120 FERC ¶ 61,007; *Acushnet*, 122 FERC ¶ 61,045.

<sup>10</sup> *ISO New England Inc.*, 127 FERC ¶ 61,242 (2009).

The Commission orders:

Vermont Electric's request for waiver is hereby granted, as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.