

152 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

GenOn Energy Management, LLC

Docket No. EL15-57-000

v.

ISO New England Inc.

ORDER DENYING COMPLAINT

(Issued July 16, 2015)

1. On April 6, 2015, GenOn Energy Management, LLC (GEM) filed a complaint (Complaint) against ISO New England Inc. (ISO-NE) alleging that ISO-NE violated its Transmission, Markets and Services Tariff (Tariff) by submitting a demand bid into the March 2015 Annual Reconfiguration Auction (ARA) on GEM's behalf, thereby compelling GEM to purchase capacity,¹ despite ISO-NE's knowledge that GEM did not need to purchase capacity. Alternately, if the Commission finds that ISO-NE did not violate its Tariff, GEM seeks waiver of the relevant Tariff provisions to enable ISO-NE to rescind its submission of the demand bid into the March 2015 ARA. The Commission denies the Complaint as well as the request for waiver.

I. Background

2. ISO-NE operates a Forward Capacity Market (FCM), in which capacity resources compete in an annual Forward Capacity Auction (FCA) to provide capacity. Providers

¹ A Demand Bid is a request to shed a Capacity Supply Obligation in an ARA. Tariff § III.13.4.

whose capacity clears the FCA acquire Capacity Supply Obligations, which they must fulfill three years later during the relevant one-year Capacity Commitment Period.²

3. Through the FCM, ISO-NE seeks to procure its full Installed Capacity Requirement (ICR), the amount of capacity necessary to meet reliability targets. In addition to conducting an FCA for each Capacity Commitment Period, ISO-NE conducts three ARAs between the date of each FCA and the beginning of the associated Capacity Commitment Period.³ The ARAs allow participants to buy and sell capacity obligations and adjust their positions, and also allow ISO-NE to procure sufficient capacity to meet reliability requirements during the relevant Capacity Commitment Period.⁴

4. In an ARA, a supplier that already has a Capacity Supply Obligation associated with the relevant Capacity Commitment Period and is seeking to sell capacity will submit a supply offer, and a supplier that is seeking to purchase capacity will submit a demand bid. The ARA clears at the intersection of the supply and demand curves. Under certain circumstances, ISO-NE will take action on behalf of a market participant in the ARA.⁵ When these circumstances arise and ISO-NE participates in an ARA, it enters either supply offers or demand bids, which clear the auction in the same manner as if offered by any other resource. For example, if, prior to any ARA, the total amount of capacity obligated for the Capacity Commitment Period is less than the net ICR, ISO-NE must enter demand bids for the difference between that total amount of obligated capacity and the net ICR.⁶

5. The Tariff provides that, as ISO-NE approaches the third and final ARA for any Capacity Commitment Period, ISO-NE must determine whether each resource is able to provide the level of capacity associated with its Capacity Supply Obligation. Specifically, ISO-NE compares each resource's available capacity against its Capacity

² The Capacity Commitment Period begins on June 1 of each year and ends on May 31 of the following year. Thus, the 2015-2016 Capacity Commitment Period runs from June 1, 2015 to May 31, 2016.

³ See Tariff § III.13.4. ARAs are held approximately two years before, one year before, and just before the Capacity Commitment Period begins. The Tariff also provides for monthly reconfiguration auctions.

⁴ Tariff § III.13.4.3(a).

⁵ Tariff § III.13.4.2.1.3 (b).

⁶ Tariff § III.13.4.3(a).

Supply Obligation to determine whether a resource has a capacity shortfall.⁷ If a resource's capacity shortfall exceeds either 20 percent of that resource's Capacity Supply Obligation or 40 MW, then one of the following occurs:

- a) The resource can submit a written plan ("restoration plan") demonstrating that it will be able to provide its full Capacity Supply Obligation for that Capacity Commitment Period. Such a plan must be received by ISO-NE "no later than 10 Business Days after the ISO has notified the Lead Market Participant" of its available capacity prior to the third ARA.⁸
- b) If no such plan is timely submitted, or ISO-NE determines that the plan does not show that the resource will be able to provide the necessary amount of capacity, ISO-NE must then enter a demand bid into the third ARA on behalf of that resource, as if the resource itself had submitted the bid, to procure the amount of capacity by which this resource is deficient.⁹

II. Complaint

6. GEM alleges that ISO-NE violated its Tariff with regard to the March 2015 ARA, the third and final ARA to procure capacity for the 2015-16 Capacity Commitment Period. According to GEM, ISO-NE submitted a demand bid into the March 2015 ARA on GEM's behalf to replace capacity lost due to a July 2013 de-rating of Unit 2 at the Canal Generating Plant (Canal 2), despite the fact that ISO-NE was aware that the full capability of Canal 2 had been restored. GEM requests that the Commission order ISO-NE to correct its error and the results of the March 2015 ARA. GEM asserts that correcting the error by including the full capacity of Canal 2 in the March 2015 ARA will have no impact on that auction's clearing price because after reversing the 242 MW

⁷ Tariff § III.13.4.2.1.3. ISO-NE makes this determination by looking at each month of the Capacity Commitment Period for which the resource is obligated, and subtracting the resource's Summer ARA Qualified Capacity or Winter ARA Qualified Capacity, as applicable, from the amount of capacity from the resource that is subject to a Capacity Supply Obligation for the month. It then looks at the month for which this amount is greatest, and bases the determination as to a resource's deficiency on that month.

⁸ Tariff § III.13.4.2.1.3(a).

⁹ Tariff § III.13.4.2.1.3(b). The Tariff further provides that if such a bid is submitted, "all payments, charges, rights, obligations, and other results associated with such bid" will apply "as if the resource itself had submitted the bid." *Id.*

demand bid for Canal 2, the March 2015 ARA results will still reflect substantial excess demand.

7. GEM states that it is a power marketer, and the lead market participant for the Canal 2 Generating Plant, a 565 MW (summer rating) oil and natural gas-fired steam turbine. According to GEM, in July 2013, one of Canal 2's step-up transformers failed, so that Canal 2 was de-rated to approximately 300 MW. GEM states that it replaced the transformer and Canal 2's full capability was restored in May 2014.¹⁰

8. GEM states that it demonstrated to ISO-NE on multiple occasions that Canal 2 is able to fulfill its Capacity Supply Obligation for the 2015-2016 Capacity Commitment Period. GEM asserts that:

- a) Canal 2 has been fulfilling its entire capacity obligation for the 2014-2015 Capacity Commitment Period (June 1, 2014 through May 31, 2015), and has offered its full capacity for the ninth FCA (which will procure capacity for the 2018-2019 Capacity Commitment Period);¹¹
- b) In October 2013, prior to the third ARA for the 2014-2015 Capacity Commitment Period, GEM submitted a restoration plan for Canal 2, demonstrating that the failed transformer would be replaced and the full capability of the unit restored in time for the 2014-2015 Capacity Commitment Period, which began on June 1, 2014. GEM alleges that ISO-NE accepted this restoration plan and did not enter a demand bid into the third ARA for Canal 2, and instead, Canal 2's Summer ARA Qualified Capacity was set at approximately 541 MW and its Winter ARA Qualified Capacity was set at approximately 547 MW;¹²
- c) In response to a June 2014 request from ISO-NE for a restoration plan to ensure that the full qualified capacity of Canal 2 was reflected in FCA 9, GEM re-submitted the same restoration plan it had submitted in October 2013, which was accepted by ISO-NE;¹³ and

¹⁰ Complaint at 4-5.

¹¹ *Id.* at 4-5.

¹² *Id.* at 6-7 (footnotes omitted).

¹³ *Id.* at 7.

- d) On July 7, 2014, ISO-NE approved both an Establish Claimed Capability Audit¹⁴ and a summer Seasonal Claimed Capability Audit¹⁵ for Canal 2 based on the same test, and on January 29, 2015, ISO-NE approved GEM's winter Seasonal Claimed Capability Audit for Canal 2.¹⁶

9. GEM states that ISO-NE has informed it that, due to an October 22, 2014 posting showing a Winter ARA Qualified Capacity value of 303 MW for Canal 2, ISO-NE was required to use this value unless GEM submitted a restoration plan within 10 business days after ISO-NE's October 22 notification.¹⁷ GEM further states that ISO-NE submitted a 242 MW demand bid for Canal 2 into the March 2015 ARA on GEM's behalf. GEM states that ISO-NE did so despite ISO-NE's "constructive and actual" knowledge that the full generating capability of Canal 2 has been restored, because ISO-NE "deemed that unit to have suffered a significant decrease in capacity."¹⁸

10. GEM further states that, because the quantity of demand bids in the March 2015 ARA exceeded the amount of available supply, ISO-NE pro-rated the demand bids, so that only a portion of the demand bid that represents Canal 2's capacity cleared.

¹⁴ ISO-NE may perform an Establish Claimed Capability Audit to "establish[] a Generator Asset's ability to respond to ISO dispatch instructions and to maintain performance at a specified output level for a specified duration." Tariff § III.1.5.1.1(a)(i). GEM asserts that this audit established summer and winter ratings for Canal 2 of approximately 559 MW.

¹⁵ ISO-NE may perform a Seasonal Claimed Capability Audit to "determine a Generator Asset's capability to perform under specified summer and winter conditions for a specified duration." Tariff § III.1.5.1.1(a)(ii). GEM asserts that this audit established Canal 2's summer Seasonal Claimed Capability at approximately 563 MW, effective July 17, 2014.

¹⁶ Complaint at 8-9 nn.26-28. GEM asserts that Canal 2's winter Seasonal Claimed Capability was established at approximately 557 MW, effective February 9, 2015.

¹⁷ *Id.* at 11.

¹⁸ *Id.* at 10.

However, GEM states that it is liable for a charge of \$11.446/kW-month (the March 2015 ARA clearing price) times 12 months, for each MW that cleared the March 2015 ARA.¹⁹

11. GEM argues that ISO-NE violated its Tariff by failing to use Canal 2's actual generating capability in conducting the March 2015 ARA. GEM alleges that ISO-NE was aware that Canal 2 was back to full capacity, and therefore ISO-NE should not have entered a demand bid on GEM's behalf for the difference between Canal 2's actual Capacity Supply Obligation for the 2015-2016 Capacity Commitment Period (545 MW) and ISO-NE's erroneous determination of that obligation (303 MW). GEM states that, for a resource such as Canal 2 that has already achieved commercial operation:

the Winter ARA Qualified Capacity is supposed to be “the resource’s winter Seasonal Claimed Capability value in effect after the most recently completed winter period.”^[20] When the March 2015 ARA was conducted, the “most recently completed winter period” was that which ended May 31, 2014. As discussed above, ISO-NE approved a winter Seasonal Claimed Capability Audit increasing Canal 2’s winter Seasonal Claimed Capability from 303 MW to 556.5 MW on January 29, 2015, and that winter Seasonal Claimed Capability went into effect on February 9, 2015, which is indisputably “after the most recently completed winter period.”²¹

GEM argues that the Tariff thus required ISO-NE to use the 556.5 MW value, rather than the 303 MW value, as Canal 2's Winter ARA Qualified Capacity for the March 2015 ARA.

12. GEM states that ISO-NE's assertion that it was required to submit a demand bid into the March 2015 ARA because GEM did not submit a restoration plan in response to ISO-NE's October 22, 2014 posting of Canal 2's Winter ARA Qualified Capacity is a *post hoc* rationalization, in that GEM had already twice submitted its restoration plan for Canal 2, and in both cases the plan had been accepted by ISO-NE. GEM further notes that it had no reason to imagine that ISO-NE would use the wrong value for Canal 2's

¹⁹ *Id.* GEM submitted the number of MWs of the demand bid that cleared in the privileged version of its complaint.

²⁰ Tariff § III.13.4.2.1.2.2.1.2(a).

²¹ Complaint at 11 (footnotes omitted).

capacity in the March 2015 ARA, given this prior history, and GEM did not expect to be a buyer or a seller in the March 2015 ARA.

13. Additionally, GEM argues that ISO-NE abused its discretion by, on one hand, recognizing that Canal 2 was back to its full capacity for purposes of the 2014-2015 Capacity Commitment Period and the 2018-2019 Capacity Commitment Period, but refusing to recognize that fact for purposes of the 2015-2016 Capacity Commitment Period.²² GEM further asserts that it is unreasonable and unduly discriminatory for ISO-NE to take steps to ensure that Canal 2's full capability is reflected in one auction, when doing so will lower prices, and then to use a lower value for Canal's capacity that it knows to be inaccurate in the next auction.²³

14. GEM requests that the Commission find that ISO-NE violated its Tariff by submitting a demand bid to replace Canal 2's allegedly lost capacity into the March 2015 ARA on GEM's behalf, because, according to GEM, ISO-NE was aware that GEM would be able to deliver its full Capacity Supply Obligation from Canal 2.²⁴ It asks the Commission to order ISO-NE to correct its error and the results of the March 2015 ARA.²⁵

15. Alternately, if the Commission finds that ISO-NE acted in accordance with its Tariff, GEM asks the Commission to grant a waiver of the Tariff, so that ISO-NE would accept the restoration plan submitted on June 16, 2014 for purposes of the March 2015 ARA and rescind the demand bid submitted on GEM's behalf into that auction.²⁶ GEM

²² *Id.* at 13.

²³ GEM notes that correcting the error of including Canal 2 in the March 2015 ARA will have no impact on the auction clearing price, because approximately 320 MW of capacity cleared the March 2015 ARA at the effective price cap of \$11.446/kW-month, with approximately 632 MW of excess demand that did not clear. GEM asserts that, even after removing the 242 MW demand bid for Canal 2, there will still be substantial excess demand remaining in the auction, and the clearing price for the March 2015 ARA will, therefore, be unchanged. GEM further alleges that if the 242 MW demand bid is removed, other parties that submitted demand bids will have additional portions of their demand bids cleared, thus "improving the outcome of the auction." *Id.* at 13-14.

²⁴ *Id.* at 2.

²⁵ *Id.* at 13.

²⁶ *Id.* at 14.

states, based on prior waiver orders,²⁷ that the Commission will grant waiver of tariff provisions where (1) the underlying error was committed, or the applicant's inability to comply with the tariff was, in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied by granting the waiver; and (4) the waiver would not have undesirable consequences, such as harming third parties. GEM argues that any error on its part was committed in good faith, in that it had no reason to believe that ISO-NE would not recognize Canal 2's full capability for the March 2015 ARA. GEM states that it is seeking a waiver of limited scope, solely for the demand bid entered into the March 2015 ARA, and that the waiver would address a concrete problem – namely, the fact that GEM is being charged to buy additional capacity to meet Canal 2's Capacity Supply Obligation when Canal 2 is fully capable of fulfilling its entire Capacity Supply Auction. Finally, GEM alleges that no adverse consequences will result from granting the waiver, in that the clearing price in the March 2015 ARA will remain unchanged, and in fact, because there was more demand than supply in the auction, removing the demand bid for Canal 2 will allow remaining purchasers to obtain a larger share of the available supply.²⁸

16. GEM asks the Commission to act on this Complaint on or before May 25, 2015, so that ISO-NE can ensure that the appropriate Capacity Supply Obligations are in place prior to the commencement of the 2015-2016 Capacity Commitment Period on June 1, 2015.

III. Notice of the Filing and Responsive Pleadings

17. Notice of GEM's filing was published in the *Federal Register*, with interventions, answers and protests due on or before May 6, 2015.²⁹ Timely motions to intervene were filed by Consolidated Edison Energy, Inc.; New England Power Pool Participants Committee (NEPOOL); Entergy Nuclear Power Marketing, LLC; New England States Committee on Electricity; Exelon Corporation; Calpine Corporation; and Emera Energy Services. ISO-NE filed a timely answer, and the PSEG Companies (PSEG) filed a timely motion to intervene and comments. On May 19, 2015, GEM filed an answer to ISO-NE's answer.

²⁷ *Id.* at 15, 15 nn.45-46 (citing, *inter alia*, *Southwestern Pub. Serv. Co.*, 150 FERC ¶ 61,128, at P 33 (2015) (citations omitted); *Appalachian Power Co.*, 150 FERC ¶ 61,154, at P 13 (2015); *Future Power PA LLC*, 150 FERC ¶ 61,089, at P 9 (2015); *Brookfield Energy Mktg., LP*, 150 FERC ¶ 61,018, at P 10 (2015)).

²⁸ Complaint at 17-18.

²⁹ 80 Fed. Reg. 19,658 (2015).

IV. ISO-NE Answer and PSEG Comments

18. ISO-NE responds that it complied with its Tariff in submitting a demand bid on GEM's behalf, and the Commission should therefore deny the Complaint.

19. ISO-NE states that GEM concedes that it took "little interest" in ISO-NE's posting of the capacity value of Canal 2 on October 22, 2014, and failed to submit a restoration plan prior to the March 2015 ARA.³⁰ ISO-NE argues that GEM was aware, based on its submission of restoration plans in prior years, "of the requirements, processes, and consequences associated with the submission of a restoration plan."³¹ With regard to GEM's argument that, because of the prior submission of a restoration plan for Canal 2, ISO-NE was aware that the unit could provide its full level of capacity, ISO-NE states that it is unable to discern the reasoning behind the actions or inactions of active and sophisticated market participants such as GEM, and GEM's own failure to submit a restoration plan for Canal 2 for the March 2015 ARA is the cause of GEM's injury. ISO-NE further states that granting the requested relief would undermine important principles of auction finality and erode certainty and confidence in the markets, and could disrupt the monthly bilateral arrangements and monthly reconfiguration auctions for which the March 2015 ARA results are inputs.³²

20. ISO-NE also asserts that GEM's prior submission of restoration plans should not apply to the March 2015 ARA. It states that GEM does not dispute that it was on notice that ISO-NE intended to use the 303 MW rating for Canal 2 in the March 2015 ARA, given that the capacity values to be used in that auction were posted on ISO-NE's Forward Capacity Tracking System on October 22, 2014, and on that date ISO-NE sent a

³⁰ ISO-NE Answer at 8 (citing GEM's statement in its Complaint at 12 ("Indeed, GEM had little interest in the October 22, 2014 posting or the March 2015 ARA more generally, because its resources' actual generating capabilities, as well as their audited and approved Establish and Seasonal Claimed Capabilities, were sufficient to fulfill their Capacity Supply Obligations for the 2015-2016 Capacity Commitment"))).

³¹ ISO-NE Answer at 2 ("Without a properly submitted restoration plan for the March 2015 ARA, ISO-NE was required by the Tariff to use the reduced winter Seasonal Claimed Capability Value for Canal 2 in effect at the end of the 2013-2014 winter season").

³² *Id.* at 2-3.

notice to all market participants that their capacity values were available on that posting.³³

21. In response to GEM's argument that "[w]hile the Tariff sets a deadline of 'no later than 10 Business Days after' the restoration plan window opens for submitting a restoration plan, it does not require that the restoration plan be submitted during the window or otherwise suggest that ISO-NE should ignore a restoration plan submitted before the window opens,"³⁴ ISO-NE states that the Tariff provides that a restoration plan "must be received by the ISO no later than 10 Business Days *after the ISO has notified* [a resource] of its Summer ARA Qualified Capacity and Winter ARA Qualified Capacity for the third annual reconfiguration auction."³⁵ Thus, ISO-NE asserts, this provision clearly contemplates a filing in response to, meaning after, ISO-NE's notification to a resource of its qualified capacity, which as relevant here, occurred on October 22, 2014.

22. ISO-NE further states that the requirement that a restoration plan be submitted for each separate ARA is an important feature of the market design that ensures accuracy and transparency. It states:

[T]here are circumstances in which market participants have affirmatively chosen not to submit a restoration plan pursuant to Section III.13.4.2.1.3(a), knowing that the result will be an automatic demand bid submitted by the ISO on their behalf. This may be done for practical reasons related to the physical disposition of the resource, or for financial reasons, or for company-specific or strategic reasons that are beyond the ISO's purview. In any case, it is not necessarily true that any market participant that could submit a restoration plan would in all cases want or choose to do so, even if it had done so in the past.³⁶

23. ISO-NE states that it should not be required to second-guess the actions of market participants to save them from potential adverse consequences.

³³ *Id.* at 7.

³⁴ *Id.* at 8, 8 n.10 (citing Complaint at 12 and Tariff § III.13.4.2.1.3(a)).

³⁵ ISO-NE Answer at 8 (emphasis in original).

³⁶ *Id.* at 9.

24. ISO-NE further states that it used the correct Seasonal Claimed Capacity Value of 303 MW for Canal 2. It notes that to support its argument, GEM relies on Tariff language stating that “[f]or the third annual reconfiguration auction associated with a Capacity Commitment Period, the Winter ARA Qualified Capacity of a Generating Capacity Resource . . . shall be . . . the resource’s winter Seasonal Claimed Capability value in effect after the most recently completed winter period.”³⁷ ISO-NE states that GEM incorrectly interprets this provision as requiring ISO-NE to use the most recent winter Seasonal Claimed Capacity Value of a resource, so that ISO-NE should have used the 556.5 MW value established on January 29, 2015. Rather, ISO-NE states, that section III.13.4.2.1.2.2.1.2 requires that ISO-NE must use the resource’s winter Seasonal Claimed Capability value in effect after “the most recently *completed* winter period” (emphasis added), not simply the most recent winter period. ISO-NE states that the phrase “the most recently completed winter period”:

. . . necessarily captures the winter Seasonal Claimed Capability Value that is in effect as of or very shortly after the end of the most recently completed winter period, because the process for determining capacity values for the third annual reconfiguration auction takes place in the October to November timeframe. That timeframe is months before the third annual reconfiguration auction is actually run in March of the following year. This lead time is necessary to allow market participants to make bilateral arrangements and to submit them to the ISO during the bilateral submission window that opens in early December.³⁸

On this basis, ISO-NE claims that it could not have used the January 29, 2015 winter Seasonal Claimed Capability value to determine the capacity of Canal 2 for purposes of the March 2015 ARA.

25. Further, ISO-NE disputes GEM’s argument that ISO-NE should have used the July 7, 2014 Establish Claimed Capability Audit, which established a winter rating for Canal 2 of approximately 559 MW. ISO-NE points out that pursuant to Tariff section III.1.7.11(c)(iv), Canal 2’s winter Seasonal Claimed Capability is the minimum of its current Establish Claimed Capability Audit and its current winter Seasonal Claimed

³⁷ Tariff § III.13.4.2.1.2.2.1.2.

³⁸ ISO-NE Answer at 6.

Capability Audit value, and as already discussed, Canal 2's winter Seasonal Claimed Capability Audit value at the time was 303 MW.³⁹

26. ISO-NE also responds to GEM's assertion that granting its Complaint would not require the March 2015 ARA to be re-run because there would be no impact on the auction clearing price. ISO-NE agrees with GEM that, because there were many more MWs of demand bids in the auction than MWs of supply offers, granting the complaint (and, in essence, removing the demand bid that ISO-NE submitted for 242 MW of Canal 2's capacity) would not affect the clearing price of the auction.⁴⁰ It states:

To the extent that . . . other participants hoped to clear as much as possible of their submitted demand bids, an increase in their cleared amounts (as a result of removing the demand bid for Canal 2) may indeed be welcome.⁴¹

27. ISO-NE additionally states, however, that other participants in the March 2015 ARA may have made business decisions based on the auction results, which might be adversely affected if those auction results changed. ISO-NE notes that monthly bilateral and reconfiguration auction processes for the Capacity Commitment Period beginning on June 1, 2015 have already begun, and some of the assumptions and inputs used in those bilateral arrangements or monthly reconfiguration auctions may be affected by revising the amounts of other demand bids that cleared the March 2015 ARA. Thus, ISO-NE asserts, making the changes that GEM seeks here could require nullifying or changing those bilateral transactions, or re-running the monthly reconfiguration auctions that have already been completed.⁴² For this reason, ISO-NE stresses that the finality of the ARA should not be disturbed.

28. ISO-NE urges the Commission not to grant GEM's alternate request for relief of granting waiver of the relevant Tariff provisions. ISO-NE states that GEM has not demonstrated that its error was made in good faith, given that GEM does not dispute that it was on notice that ISO-NE intended to use the lower 303 MW rating for Canal 2 in the

³⁹ *Id.* at 6.

⁴⁰ In other words, granting the complaint will not affect the clearing price of the auction because, with or without GEM's demand bid, the auction would still be significantly short of the capacity supply necessary to meet the capacity demanded.

⁴¹ ISO-NE Answer at 11.

⁴² *Id.* at 12.

March 2015 ARA, but instead states only that it had “little interest” in ISO-NE’s October 22, 2014 posting and notice or in the March 2015 ARA generally. ISO-NE argues that GEM’s actions and inactions appear to reflect a lapse of attention and administrative oversight, and therefore do not demonstrate good faith.⁴³ ISO-NE further states that the scope of this waiver would not be limited, since it would involve close to 250 MW of capacity, and that the waiver would not resolve any problem other than GEM’s failure to recognize the consequences of its position. ISO-NE also states that adverse consequences could, in fact, occur to other market participants.

29. In support of its position, ISO-NE cites *Massachusetts Electric Company and the Narragansett Electric Company (Mass Electric)*,⁴⁴ which, as here, involved a request for a waiver of section III.13.4.2.1.3. ISO-NE states that in *Mass Electric*, the Commission denied waiver based on the finding that the entity failed to show why it did not timely submit the restoration plan, and because granting waiver would give favorable treatment to the entity in question and unduly discriminate against other similarly-situated market participants.⁴⁵

30. PSEG, in its comments, states that ISO-NE was well aware of the capability of GEM’s units before the March 2015 ARA and therefore unnecessarily submitted a demand bid on GEM’s behalf.⁴⁶ PSEG states that ISO-NE should use the last known rating available to itself and market participants ahead of the March 2015 ARA and that using an outdated rating when there is ample opportunity to have updated the rating is not a reasonable interpretation of the Tariff.⁴⁷

⁴³ *Id.* at 13. ISO-NE further states that section III.13.4.2.1.3 of the Tariff clearly sets forth the consequences to a market participant of having a Winter ARA Qualified Capacity significantly below the level of its Capacity Supply Obligation, and section III.13.4.2.1.2.2.1.2 clearly states how the Winter ARA Qualified Capacity is determined. ISO-NE also asserts that GEM is a sophisticated market participant and earlier demonstrated its understanding of those provisions by timely submitting previous restoration plans, all of which shows, according to ISO-NE, that GEM did not err in good faith. *Id.*

⁴⁴ 134 FERC ¶ 61,116 (2011).

⁴⁵ ISO-NE Answer at 12-14 (citing *Mass Electric*, 134 FERC ¶ 61,116 at PP 11, 13).

⁴⁶ PSEG Comments at 3-4.

⁴⁷ *Id.* at 4-6.

31. PSEG states that the outdated capacity rating used by ISO-NE is illogical from a commercial perspective and it would be unjust and unreasonable to allow ISO-NE's Tariff interpretation when there is another alternative interpretation that is not only permissible, but results in more plausible and reasonable outcomes. According to PSEG, the purpose of ISO-NE's participation in a reconfiguration auction is to replace a capacity supplier's deficiency, but the GEM units were fully capable of satisfying their capacity obligations. PSEG states that because there was demand in the ARA that went unsatisfied, certain suppliers unable to deliver their promised capacity were relieved of a pro-rata share of their purchase obligation. However, according to PSEG, had ISO-NE interpreted its Tariff differently, the quantity of uncovered capacity entering the Capacity Commitment Period would have been reduced significantly and the purpose of the reconfiguration auction would have been more appropriately fulfilled.⁴⁸

32. PSEG states that the outcome of the 2015 March ARA is illogical because it requires a resource fully capable of supplying its Capacity Supply Obligation to pay an additional \$8.02 kW-month above the rate it was paid in the primary FCA. PSEG argues that GEM is not attempting to arbitrage the price difference between the 2015 March ARA and the primary FCA. PSEG further points out that GEM expended significant resources to bring its units back into service on a timely basis after a major equipment failure in order to provide the service for which it committed. PSEG submits that ISO-NE's interpretation is inconsistent with a fair and consistent reading of the Tariff.⁴⁹

33. PSEG states that, given the complexity of these markets, it would be advisable for ISO-NE to implement market rules that inform market participants that it intends to act on their behalf, because it should never come as a surprise to a market participant that it could be subject to costs associated with ISO-NE stepping into the markets on its behalf. PSEG states that the Commission should correct the March 2015 ARA market outcome and direct ISO-NE to update its notification procedures so that these types of outcomes do not occur in the future.⁵⁰

V. GEM Answer

34. In its answer to ISO-NE's answer, GEM states that the Commission should reject ISO-NE's efforts to shirk responsibility for its erroneously-submitted demand bid.⁵¹

⁴⁸ *Id.* at 7-8.

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* at 9-10.

⁵¹ GEM Answer at 1.

According to GEM, ISO-NE presses a “hyper-technical” reading of its Tariff to require submission of a separate restoration plan for each and every auction rather than relying on previously-submitted restoration plans.⁵² GEM argues that, contrary to ISO-NE’s answer, the plain language of the Tariff does not preclude GEM from relying on a previously-submitted restoration plan for purposes of the March 2015 ARA.⁵³ GEM reiterates its position that Tariff section III.13.4.2.1.3(a) specifies only a deadline, not a window, for submitting restoration plans.⁵⁴

35. GEM also cites to an ISO-NE filing which, according to GEM, explains that the intent of the Tariff provisions in section III.13.4.2.1.3(a) was “to trigger ISO[-NE] intervention should it appear that, as the Capacity Commitment Period nears, a resource will be unable to meet its Capacity Supply Obligation.”⁵⁵ GEM argues there was clearly no such risk in this case, so “neither the letter nor the spirit” of the Tariff justifies ISO-NE’s intervention.⁵⁶

36. GEM further disagrees with ISO-NE’s assertion that granting GEM’s requested relief will have undesirable consequences for market participants and market finality. GEM states that even if certain participants would not be pleased with changed auction results, that does not mean they would suffer any legally cognizable harm. GEM further argues that, with regard to resources that cannot fulfill their Capacity Supply Obligations, it is appropriate for ISO-NE to clear a greater portion of such resources’ demand bids if possible, so as to enable them to meet their obligations. GEM asserts that, from a market finality perspective, the instant case is distinguishable from others where the Commission has refrained from granting relief after an auction has already been run, because here, according to GEM, the auction clearing price would not change and there would be no legally cognizable harm.⁵⁷

⁵² *Id.* at 2.

⁵³ *Id.* at 3.

⁵⁴ *Id.*

⁵⁵ *Id.* at 3-4, 4 n.14 (citing *ISO New England Inc. and New England Power Pool, Various Revisions to FCM Rules Relating to Bilateral Contracts and Reconfiguration Auctions*, Transmittal Letter at 10, Docket No. ER09-356-000 (filed Dec. 1, 2008)).

⁵⁶ GEM Answer at 4.

⁵⁷ *Id.* at 4.

VI. Commission Determination

A. Procedural Matters

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵⁹ prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept GEM's May 19, 2015 answer, because it provided information that assisted us in our decision-making process.

B. Analysis

39. The Commission denies GEM's Complaint and request for waiver.

40. Both parties agree on the salient facts here – namely, that on October 22, 2014, ISO-NE notified GEM that it intended to use the 303 MW rating for Canal 2 in the March 2015 ARA, and GEM did not respond to this notification by submitting a restoration plan to correct this rating. The Complaint turns on two issues of Tariff interpretation, first, whether Tariff section III.13.4.2.1.3 provides a defined 10-day window rather than a deadline for submitting restoration plans, and second, whether in determining a resource's capacity rating for the third ARA, the Tariff provides for ISO-NE to use the resource's winter Seasonal Claimed Capability value in effect after the most recently *completed* winter period, as ISO-NE did here, rather than a resource's most recent capacity rating, as GEM argues.

41. We first find that Tariff section III.13.4.2.1.3 is reasonably interpreted as providing a defined 10-day window within which restoration plans must be submitted, and thus, ISO-NE reasonably found that GEM's restoration plans submitted prior to the opening of the window here did not meet that requirement. Section III.13.4.2.1.3 first sets out the measurement that ISO-NE will undertake to determine whether a resource that has a Capacity Supply Obligation will be able to fulfill that obligation, and, if a capacity resource is found to be deficient, what level of deficiency triggers further action. The Tariff then provides that the resource "may submit a written plan to the ISO" demonstrating that the resource will be able to meet its Capacity Supply Obligation, and

⁵⁸ 18 C.F.R. § 385.214 (2014).

⁵⁹ 18 C.F.R. § 385.213(a)(2) (2014).

states that “such a plan must be received by the ISO *no later than 10 Business Days after* the ISO has notified the [resource]” of its qualified capacity for the third annual reconfiguration auction.⁶⁰ Finally, the Tariff states that if no adequate restoration plan “is timely submitted to the ISO . . . then the ISO *shall* enter a demand bid . . . on behalf of the resource . . . in the third annual reconfiguration auction[.]”⁶¹

42. The foregoing language is reasonably interpreted as communicating to resources that, even if they previously submitted restoration plans relevant to previous ARAs or Capacity Commitment Periods, they must submit a restoration plan in response to the notice associated with the third ARA. The provision also makes clear that *after* they receive notification of their qualified capacity from ISO-NE, the onus is on resources to provide a restoration plan, as necessary, and if they do not do so, ISO-NE will procure capacity on their behalf and charge them for it.⁶² The submission of such plans also provides confirmation of market participants’ intentions, because as ISO-NE points out, there may be times when, for a variety of reasons, market participants affirmatively choose not to submit a restoration plan, knowing that a demand bid will be entered on their behalf by ISO-NE. We agree with ISO-NE that it is not ISO-NE’s responsibility to second-guess the market participant’s failure to submit a restoration plan after being notified of its qualified capacity.

43. We further note that the October 22, 2014 notice that ISO-NE sent to holders of Capacity Supply Obligations, expressly defined a window of time in which to submit restoration plans. The notice stated:

In accordance with Market Rule 1 Section III.13, the updated Qualified Capacity for each Resource for Capacity Commitment Period 2015-2016 is available for viewing in the Forward Capacity Tracking System (FCTS) under the Resource Position Summary. The FCTS will also indicate if the Resource has incurred a significant decrease in capacity . . . As part of this qualification process, *the restoration plan window will open tomorrow, October 23, 2014 and close on*

⁶⁰ Tariff § III.13.4.2.1.3(a) (emphasis added).

⁶¹ Tariff § III.13.4.2.1.3(b) (emphasis added).

⁶² While we see no ambiguity in this language, if parties such as GEM and PSEG believe that different or more expansive tariff language could better communicate resources’ responsibilities in this area, we encourage them to work with ISO-NE through the stakeholder process to address this concern.

November 5, 2014. At this time, you may review the Qualified Capacity values for your resources and submit a restoration plan for any resource that has been flagged with a Significant Decrease in capacity.⁶³

44. Thus, consistent with the Tariff, the October 22, 2014 notice made clear that GEM had a defined window within which to submit a restoration plan, confirming its ability to fulfill its Capacity Supply Obligation for the 2015-2016 Capacity Commitment Period.

45. We further find that ISO-NE reasonably interpreted its Tariff as to how to arrive at the capacity rating used in the October 22, 2014 notification. GEM and ISO-NE agree that that rating should be, as defined by Tariff § III.13.4.2.1.2.2.1.2(a), “the resource’s winter Seasonal Claimed Capability value *in effect after the most recently completed winter period*” (emphasis added). Where the parties differ is in their interpretation of the phrase “in effect after the most recently completed winter period.” Both parties agree that the winter period at issue ended on May 31, 2014. ISO-NE asserts that the capacity rating was the winter Seasonal Claimed Capability value of 303 MW that was in effect at the end of the winter period, *i.e.*, May 31, 2014.⁶⁴ GEM asserts that the 556.5 MW figure, which resulted from an ISO-NE audit and went into effect on February 9, 2015, was the rating that was “in effect after” the May 31, 2014 date.⁶⁵ ISO-NE’s value is thus taken from the end of the winter period, while GEM’s value is taken approximately eight months after the end of the winter period. The question before us is whether ISO-NE’s interpretation of the phrase “in effect after the most recently completed winter period” as requiring the use of a figure in effect “as of or very shortly after” the most recently completed winter period is reasonable.

46. We find that ISO-NE’s interpretation of the tariff is reasonable. As ISO-NE states in its answer, the process for determining capacity values for the March 2015 ARA took place in the October to November 2014 timeframe, several months before the auction.⁶⁶ ISO-NE notified the holders of Capacity Supply Obligations of their capacity rating in October 2014 because, as it explained, this lead time was necessary to allow market participants who wished to do so to enter into bilateral contracts regarding their capacity obligations and submit them to ISO-NE during the window that opened in early

⁶³ ISO-NE Answer, Attachment 1 (emphasis added).

⁶⁴ ISO-NE Answer at 6.

⁶⁵ Complaint at 11.

⁶⁶ ISO-NE Answer at 6.

December 2014.⁶⁷ Thus, the process of determining a resource's capacity rating for the March 2015 auction that began in October 2014 precluded the use of a capacity rating that was not determined until February 2015. Accordingly, we find that ISO-NE's interpretation of the phrase "in effect after the most recently completed winter period" as referring to the capacity rating available immediately after the close of the winter period is reasonable.

47. Based on the foregoing, we deny GEM's complaint.

48. We also reject GEM's alternative request for waiver of section III.13.4.2.1.3. In *Mass Electric*, the Commission denied a similar request for waiver, stating:

[T]here is no evidence that National Grid attempted to meet that deadline or satisfy the relevant requirements of ISO-NE's Tariff until more than two and one half months after the deadline passed Indeed, other than stating it failed to realize the significance of the deadline – an assertion we find unpersuasive – National Grid offers no explanation for the extensive delay. Moreover, we find that granting the waiver to National Grid, without good cause, would result in favorable treatment to National Grid and unduly discriminate against other similarly-situated [resources].⁶⁸

Similarly here, GEM provides no good faith reason for failing to comply with section III.13.4.2.1.3, and states only that it had "little interest" in ISO-NE's October 22, 2014 posting and notice or in the March 2015 ARA generally, because it did not anticipate needing to participate in that ARA.⁶⁹

49. Moreover, granting waiver to GEM could adversely affect parties that engaged in transactions based on the finality of the March 2015 ARA, even if, as GEM and ISO-NE agree, the clearing price would not otherwise be affected. As ISO-NE notes, monthly

⁶⁷ *Id.*; see also Tariff § III.13.5.1.1.1 (a resource "may submit a Capacity Supply Obligation Bilateral to the ISO before or during submittal windows, as defined in the ISO New England Manuals and ISO New England Operating Procedures. The ISO will issue a schedule of the submittal windows for annual and monthly Capacity Supply Obligation Bilaterals as soon as practicable after the issuance of Forward Capacity Auction results").

⁶⁸ *Mass Electric*, 134 FERC ¶ 61,116 at P 13.

⁶⁹ Complaint at 12.

bilateral and reconfiguration auction processes for the 2015-2016 Capacity Commitment Period have already begun. Resources may have entered into transactions or participated in monthly reconfiguration auctions, based on the March 2015 ARA results. The assumptions and inputs used in those bilateral arrangements or monthly reconfiguration auctions may be impacted by granting GEM's requested relief of revising the demand bids that cleared the March 2015 ARA. We see no reason to disrupt market participants' settled expectations under the circumstances presented here. While in rare cases the Commission may allow a market to be resettled post-auction,⁷⁰ as a general matter the Commission will not re-run or resettle the results of auctions:

Re-running past auctions would create market uncertainty for market participants and require resolving complex questions. For example, if any resources that cleared the original auction (and actually provided capacity services) did not clear the re-run auction, the question would arise whether such a resource should be paid, and if so, how much. Conversely, if any resources failing to clear the original auction (and thus, not providing capacity services in that past period) would clear in the re-run auction, the question would arise whether such a resource should be paid (despite not providing capacity services in the past period), and if so, how much. We conclude that it is preferable not to re-run these past auctions, in order to provide greater certainty for market participants, and to avoid the need to resolve these complex issues.⁷¹

50. We further emphasize that, as the Commission stated in *Mass Electric*, “[i]t is important to abide by the FCM rules, including deadlines, in order to enable ISO-NE to

⁷⁰ *ISO New England Inc.*, 151 FERC ¶ 61,196, at P 21 (2015) (providing for briefing regarding possible resettlements in case where ISO-NE did not correctly interpret one of its tariff provisions in conducting a capacity auction).

⁷¹ *Astoria Generating Company L.P. v. New York Independent System Operator Inc.*, 140 FERC ¶ 61,189, at P 141 (2012); see also *PJM Interconnection L.L.C.*, 119 FERC ¶ 61,318, at P 242 (2007) (citing *New York Independent System Operator, Inc.*, 113 FERC ¶ 61,340 at P 17 (2005) (“the Commission has generally disfavored re-determining market outcomes after the fact”)); *ISO New England Inc.*, 132 FERC ¶ 61,136, at P 29 (2010) (Commission refused to implement new tariff provisions shortly prior to an auction because parties “had a reasonable expectation that the current FRM settlement rules would remain in effect for the upcoming [Forward Reserve Market] auction”).

effectively administer its capacity market.”⁷² In order to administer the capacity market, ISO-NE must ensure that the auction results are final, and that, once the auction is concluded, market participants are able to take actions and enter into transactions immediately, based on those auction results.

51. Based upon the foregoing, we deny GEM’s Complaint and request for waiver.

The Commission orders:

GEM’s Complaint and request for waiver are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷² *Mass Electric*, 134 FERC ¶ 61,116 at P 14; *see also Northeast Utilities Serv. Co.*, 135 FERC ¶ 61,123 at P 13 (2011) (Commission denies waiver where requesting entity fails to show good cause, “emphasiz[ing] that it is important to abide by the FCM rules, including established deadlines, in order to enable ISO-NE to effectively administer the markets in New England”).