

**NECPUC's Comments on Draft  
Term Sheet for Improvements in the  
Interconnection Process**<sup>1</sup>

**Introduction**

Throughout this interconnection queue stakeholder process, NECPUC has encouraged ISO-NE and the other participants to consider enhancements to the interconnection queue process that would (1) coordinate queue procedures with the Forward Capacity Market (“FCM”) qualification process, (2) streamline the queue to ensure that viable projects can proceed expeditiously, and (3) promote competition to the maximum extent feasible so that interconnections are allotted to the most economic projects. While it has become apparent that some of these objectives will require more time and experience before they can be implemented fully, NECPUC appreciates the stakeholders’ willingness to consider significant short-term improvements. Some of the proposed alternatives in the Term Sheet can help to reduce impediments to participation in the FCM. Thus, NECPUC supports development of tariff revisions to implement those Term Sheet options that we describe in these comments.

The term sheet is necessarily conceptual at this stage, and additional details will need to be addressed as the stakeholders convert broad principles into specific rules. For this reason, NECPUC remains flexible as we develop the particulars. It is important, however, for stakeholders to coalesce around a fundamental framework for how we will proceed in reforming the queue. We urge all the parties to support reasonable

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<sup>1</sup> Reference to the “Term Sheet” throughout these comments is to the “Draft, Forward Capacity Market Generator Interconnection Process Stakeholder Group Conditional Qualified Capacity Resources & Interconnection Queue Process Issues Term Sheet, Version 2.0” (May 1, 2008), available at [http://www.iso-ne.com/committees/comm\\_wkgrps/othr/fcm\\_gen/mtrls/may22008/a\\_term\\_sheet\\_5-1-08.pdf](http://www.iso-ne.com/committees/comm_wkgrps/othr/fcm_gen/mtrls/may22008/a_term_sheet_5-1-08.pdf).

compromises that will produce a much-improved structure going forward and that will promote a fair, effective FCM.

### **Requirements for Maintaining Queue Position**

NECPUC agrees that the stakeholders' objective in modifying the Large Generator Interconnection Procedure ("LGIP") should be "to increase the likelihood that generating projects that are maintaining queue positions and consuming study effort are viable projects with a demonstrated ability and willingness to proceed to completion."<sup>2</sup> While it is important to give prospective new projects sufficient flexibility to remain in the queue so long as they are likely to be built, there should be objective tests of commitment that will remove projects from the queue when – for whatever reason – they are blocking access to interconnections and are not progressing adequately toward completion. NECPUC does not agree with proposals that a project be permitted to maintain its queue position for several years without construction progress or other concrete steps toward completion while ostensibly waiting for more attractive market conditions. The LGIP procedures should permit a willing project with an overlapping interconnection application to bypass a reluctant project that has not shown a firm commitment to proceed.

NECPUC supports the Term Sheet's Milestones/Financial Requirements Option<sup>4</sup> because it permits a project to maintain its queue position, but only so long as it remains viable by committing ever-increasing "at-risk project expenditures." Rather than

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<sup>2</sup> Term Sheet at 2, § (2).

<sup>3</sup> *Id.* at 4.

focusing on selected project milestones or the costs for interconnection studies,<sup>4</sup> this approach evaluates the total amount of non-refundable costs that an investor has spent to obtain and hold its queue position. For this purpose, any at-risk expenditure – whether for an interconnection study or for actual development of the site – would count toward establishing the project’s bona fides. ISO-NE should be able to identify categories of “at-risk project expenditures” that will minimize any administrative burden. In order to differentiate projects based on their size, the amount of required at-risk expenditures may be set either as a percentage of the overall estimated project costs or as a cost per megawatt. For example, to maintain its queue position, a project might be required to show at-risk expenditures of a base amount<sup>5</sup> plus X% of total estimated project costs in the first year, X+Y% in the second year, and X+Z% in the third year, etc. These successively greater, objectively measured commitments will be sufficient to show that the project is progressing toward eventual completion. Using at-risk expenditures as the indicia of progress will be more flexible than using major permit applications, permit approvals, or FCM Critical Path Schedule milestones, as proposed in Option 3.

Some stakeholders suggest that requiring investors to incur significant costs before they have a capacity obligation could exclude projects that have completed interconnection studies and perhaps obtained permits but that are waiting to proceed until market conditions dictate the need for the project. If this view were accepted, however, there would be no way to distinguish between projects that may eventually offer in the

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<sup>4</sup> Of course, a project would still be required to put up deposits and make payments to cover the costs of interconnection studies, and those costs would be counted as “at-risk expenditures” for purposes of assessing the project’s viability to retain its queue position.

<sup>5</sup> NECPUC agrees that small projects should still be required to show a minimum amount of at-risk expenditures that may not be based on the percentage of estimated project costs.

FCA when their investors consider the time to be ripe and phantom projects that are blocking more competitive projects that would offer in the FCA if they could do so. Investors have different degrees of willingness to accept risk, and while one investor may judge that market conditions are not ripe, another investor looking at the same objective conditions may see a market opportunity that can be exploited by a more efficient competitor. The queue procedures should not block the investor willing to accept a higher degree of risk or the more efficient investor that wishes to proceed ahead of a more timid queue holder who threatens to block the way.

The FCM provides an unambiguous method for determining which project is real and willing to assume capacity obligations at the competitively determined price. A legitimate long-lead time project should have no difficulty maintaining its queue position based on the criteria proposed in Option 4 because it will have to make substantial at-risk investment well before the FCA in which it expects to compete. For projects that have not met the minimum at-risk expenditures requirements, however, a lower queued project should be permitted to participate in the FCA and effectively demonstrate that new capacity can be selected at the available capacity clearing price. NECPUC proposes, therefore, that a project will lose its queue position if all of the following conditions exist: (1) the project does not satisfy the at-risk expenditure requirements, (2) the project does not offer in a particular FCA, and (3) a different resource seeking an overlapping interconnection but having a lower queue position offers in the FCA and is selected as a capacity resource at the Capacity Clearing Price. This approach will permit a project to remain in the queue without showing the requisite progress toward eventual completion but only if there is no competitor that is willing to go forward at that location. By not

demonstrating its intention to move forward with the project, however, the higher queued project risks losing its queue position to a more aggressive competitor.

### **Energy and Capacity Interconnections**

NECPUC supports the Term Sheet proposal that would essentially create separate Energy and Capacity queues. NECPUC is willing to consider, however, modified treatment of a project that changes from an Energy interconnection to a Capacity interconnection. Under current procedures, it is true that such a change would be considered a material modification and would put the resource at the bottom of the queue. Nevertheless, in structuring a new procedure, it may be reasonable for a resource changing from an Energy interconnection to a Capacity interconnection to be placed in the queue below the last project seeking a Capacity interconnection. In that way, the switching resource will move down in the queue to a position at the end of the Capacity interconnection queue but may still remain ahead of some energy-only resources that are even lower in the queue.<sup>6</sup> This is a modification that NECPUC is willing to consider.

### **Conditional Resources (Alternative A) versus Single Queue (Alternative B)**

The distinctions between the Conditional Resources and Single Queue alternatives affect FCA qualification, auction mechanics, and long-lead time projects across the board, and we will address them first. NECPUC strongly supports the proposed Conditional Resources approach over the Single Queue option. While the

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<sup>6</sup> The switching project could not leapfrog any competing energy-only resource but would always be put further down in the queue. For instance, assume resource A with queue position 10 switches from energy-only to capacity. It would have its queue position reduced to below the lowest capacity project in the queue, *e.g.*, position 15. That means that resource A will be pushed below any energy-only resources in positions 11-14 and will remain ahead of any energy-only projects in positions 16 or higher. Resource A has not improved its position vis-à-vis any other energy-only resource and, in fact, may now be below some energy-only resources that it was ahead of before the switch.

Conditional Resources alternative does not fully address state regulators' concerns with the current queue procedures, it makes material improvements that will permit limited competition. Under this alternative, a more efficient project can at least participate conditionally in the FCA and may be selected over the higher-queued project if that "priority" project does not clear in the auction. When coupled with a commitment to study and consider further steps toward a market-based solution,<sup>7</sup> the Conditional Resources option will at least partially address NECPUC's concerns.

In contrast, NECPUC has serious concerns about the Single Queue proposal and cannot support its adoption. Most importantly, this suggestion will strengthen the dominance of queue position in deciding which project moves forward and will further discourage competition in the FCA. As proposed, the Single Queue would fix responsibility for interconnection costs regardless of whether or when resources clear in the FCA.<sup>8</sup> Although later-queued projects may participate in and clear in the FCA, they have "subordinate status" to earlier-queued resources, and will assume substantial risks that they could be displaced as capacity resources but will retain capacity obligations.<sup>9</sup> For instance, even when the "subordinate" resource clears in the FCA, it may not be able to choose a multi-year commitment like other new capacity resources, may be displaced in any subsequent FCA in which the higher-queued resource clears, and may even be required to requalify each year like an import resource. NECPUC believes this proposal will create very significant additional uncertainty that will likely dissuade "subordinate" projects from participating in the FCA at all.

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<sup>7</sup> See Term Sheet at 7, § (6)(a)(v).

<sup>8</sup> *Id.* at 6, § (5)(b)(iii).

<sup>9</sup> *Id.* at 6, § (5)(b)(vi)-(vii).

Supporters of the Single Queue alternative have argued that it derives from their belief that a queue position conveys a “property right” to the queue holder that cannot be displaced without full compensation for the “value” of the queue position. NECPUC does not agree with this analysis because FERC has made it clear that the queue position itself has no separate property status and cannot be transferred separately from the underlying generating facility.<sup>10</sup> Moreover, as it has in many contexts, FERC may modify the rules for the interconnection queue without a property right attaching to any one set of rules. So long as subsequent interconnection procedures meet the just and reasonable test, there can be no “property right” in an existing queue position.

NECPUC believes the Single Queue approach will be a step backward and will do nothing to foster competition within the FCA – the original motivation for seeking modifications to the existing FCM and queue procedures. Indeed, if adopted, the Single Queue option will likely stifle competition and create further unnecessary barriers to new entry. NECPUC supports the Conditional Resources alternative as a reasonable compromise.

### **Qualification**

With regard to the provision of information, NECPUC agrees that resources with overlapping transmission impacts should be notified as early as possible.<sup>11</sup> This transparency will permit the parties to adjust their positions and will foster competition. NECPUC believes that the disclosure should include as much information as possible without jeopardizing legitimate confidentiality.

### **Auction Mechanics**

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<sup>10</sup> See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 app. C at § 4.3 (2003).

<sup>11</sup> Term Sheet at 6, § (5)(a)(iv).

NECPUC supports the Term Sheet for Alternative A but suggests two modifications. First, the last sentence in Section (6)(a)(i) appears to be unnecessary. By definition, if the Primary Resource clears in the FCA, it must be willing to sell at the Capacity Clearing Price. Unless we have overlooked the purpose of that sentence, it can be deleted. Second, if the clearing algorithm must be invoked to establish the Capacity Clearing Price, the decision whether to accept the Primary or Conditional Resource should be based on economics, not queue position.<sup>12</sup> In these circumstances – which are expected to occur only rarely – load should not have to pay more simply because one resource has been designated as Primary and one as Conditional.

### **Long-Lead Time Projects**

NECPUC supports Alternative A in the Term Sheet.<sup>13</sup> Despite some aberrant examples like the Cape Wind project, long-lead time projects will usually be base load plants with high capital costs. NECPUC believes the interconnection process should encourage the development of such projects and permit them to “secure” an interconnection before the FCA in which they plan to participate as a capacity resource. The proposed procedures – coupled with strengthened financial requirements to ensure that projects are making real progress toward becoming capacity resources – will provide greater certainty for both the long-lead time project and any project with overlapping interconnection impacts.

With regard to the question in Section (7)(a)(ii)(4), if the long-lead time project has been removed from the capacity interconnection queue, the lower-queued resource

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<sup>12</sup> *Id.*, § (6)(a)(ii).

<sup>13</sup> There are a few typographical mistakes that should be corrected: (1) in section (7)(a)(ii)(2), “specific” should be “specify” and (2) in section (7)(a)(ii)(3), the last line should read “that auction” instead of “the at auction.”

that cleared in a previous FCA *will* continue as an existing capacity resource for all purposes. Under those circumstances, there will no longer be any possibility that the now defunct long-lead time project will have any priority for the interconnection, and the successful lower-queued resource should be treated as an Existing Capacity resource.