

130 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ampersand Energy Partners, LLC

Docket No. ER10-600-000

ORDER DENYING WAIVER

(Issued March 15, 2010)

1. On January 14, 2010, Ampersand Energy Partners, LLC (Ampersand) filed a request for waiver of section III.13.1.10, Forward Capacity Auction Qualification Schedule, of ISO New England Inc.'s (ISO-NE) Market Rule 1.¹ Ampersand states that a waiver is necessary for it to correct an error in a statement submitted to ISO-NE in connection with the Forward Capacity Market (FCM) auction for the 2013/2014 commitment period. As discussed below, the Commission denies Ampersand's request for waiver.

I. Background

2. As detailed in numerous proceedings before this Commission, ISO-NE has recently implemented the FCM, pursuant to which capacity resources (both generators and demand resources) compete in an annual Forward Capacity Auction (FCA) to provide capacity to New England on a three-year-forward basis. ISO-NE conducted its first FCA in February 2008, a second FCA in December 2008, a third FCA in October 2009, and its fourth FCA is scheduled for August 2010.

3. Market Rule 1 of ISO-NE's Transmission, Markets and Services Tariff (ISO-NE Tariff) contains the FCM Rules. Section III.13.1.1.2.2 of the FCM Rules provides that the New Capacity Qualification Package must contain sufficient information to assess the viability of the project and its reliability, and must be consistent with the "Show-of-Interest" form. Specifically, the New Capacity Qualification Package contains: (1) site

¹ ISO-NE Tariff, Market Rule 1, § III.13.1.10.

control; (2) critical path schedule; (3) offer information, including intention to offer below 75 percent of the Cost of New Entry (CONE); and (4) capacity commitment period election.

4. Section III.13.2.4 of the FCM Rules describes the Starting Price and Determination of CONE. CONE is set by the ISO-NE prior to each qualification process for each auction.² CONE for the 2013/2014 commitment period auction was set at \$4.918/kW-month.

5. Ampersand describes itself as a manager of a series of private equity funds focused on the acquisition and development of power generating plants with a focus on renewable energy resources. It owns and operates a biomass-fueled power generation facility located at the former Dirigo Paper Mill in Gilman, Vermont. Ampersand is currently in the process of expanding the facility's output from 4.0 MW to 12.5 MW. Ampersand states it is a registered Market Participant at the ISO-NE and seeks to qualify its entire output for the 2013/14 FCM Auction.

6. Ampersand states that on or before December 15, 2009, it submitted to ISO-NE the Qualification Package for New Resources in connection with Ampersand's application to participate in the ISO-NE's FCA for the 2013/2014 commitment period, containing information to assess the economic and technical viability of the project.

II. Request for Waiver

A. Description

7. Ampersand explains that it became aware of an error in the information that was submitted to the ISO-NE in connection with the FCA for the 2013/2014 commitment period. Ampersand states that, as part of the Qualification Package, it was required to submit offers below 0.75 times CONE in order to remain in the FCA in case the auction price falls below 0.75 times CONE. Ampersand contends it submitted all relevant financial data required by the Internal Market Monitoring Unit to determine that Ampersand is able to make offers below 0.75 times CONE.

8. In addition, Ampersand maintains it was given the opportunity to submit one or more price/quantity segments for auction prices below 0.75 times CONE (\$3.688/kW-

² ISO-NE Tariff, Market Rule 1, section III.13.2.4(b) states that CONE, after three successful FCAs have been conducted for a Capacity Zone, shall be the sum of 70 percent of the Capacity Zone's CONE from the previous Forward Capacity Auction and 30 percent of the Capacity Zone's Capacity Clearing Price from the previous Forward Capacity Auction.

month). Ampersand asserts it intended to offer all of its capacity into the auction if the price falls below 0.75 times CONE, without setting a bottom limit for all or a share of its qualified capacity. Instead, Ampersand states it mistakenly indicated that it wants to offer 5.0 MW (of its total capacity of 10.370 MW) if the auction price falls below \$3.190/kW-month, while excluding the remaining 5.370 MW of capacity from clearing in the auction if the auction price falls below \$3.190/kW-month.

B. Notice

9. Notice of Ampersand's filing was published in the *Federal Register*, 75 Fed Reg. 4369 (2010), with interventions or protests due on or before February 4, 2010. None was filed.

III. Discussion

10. The Commission has previously granted waiver requests for parties that failed to follow proper procedures for participation in earlier FCAs.³ The Commission has granted relief 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.⁴

11. In support of Ampersand's request for waiver, it offers only a statement that "Ampersand mistakenly indicated that it wants to offer 5.0 MW of its total capacity of 10.370 MW if the auction price falls [below] [\$3.190/kW-month], while excluding the remaining 5.370 MW of capacity from clearing in the auction if the auction price falls below \$3.190/kW-month."⁵

12. The Commission concludes that the request for waiver does not contain sufficient explanation regarding the underlying error for us to conclude that Ampersand satisfies the

³ See, e.g., *National Grid USA*, 129 FERC ¶ 61,212 (2009); *Connecticut Light & Power Co.*, 126 FERC ¶ 61,186 (2009); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (*EnerNOC*); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008) (*Acushnet*); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007) (*Central Vermont*); *University of New Hampshire*, 121 FERC ¶ 61,185 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007) (*Waterbury*).

⁴ See *EnerNOC*, 122 FERC ¶ 61,297 at P 13; *Acushnet*, 122 FERC ¶ 61,045 at P 14; *Central Vermont*, 121 FERC ¶ 61,225 at P 14; *Waterbury*, 120 FERC ¶ 61,007 at P 31.

⁵ Ampersand Motion for Limited Waiver at 3.

aforementioned conditions for granting a waiver. Because Ampersand has not justified granting the waiver requested herein, we deny its request.

13. We emphasize the importance of enforcing the FCM rules in order to effectively administer the markets in New England, and we will not automatically grant waiver requests that do not satisfy the stipulated conditions. Parties requesting waivers should support their arguments with sufficient detail to allow the Commission to determine if a waiver is truly justified.

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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