



**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

TransCanada Power Marketing Ltd.,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. EL08-11-000
	)	
ISO New England Inc.,	)	
	)	
Respondent.	)	

**ANSWER OF ISO NEW ENGLAND INC.**

Pursuant to Rules 206(f) and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> ISO New England Inc. (the “ISO”) hereby provides its Answer to the Complaint Requesting Fast Track Processing of TransCanada Power Marketing Ltd. (“TransCanada”) filed in this proceeding on November 19, 2007.<sup>2</sup>

**I. INTRODUCTION**

The Commission should dismiss TransCanada’s Complaint for failure to meet the requirements of Section 206 of the Federal Power Act (“FPA”).<sup>3</sup> Under Section 206, TransCanada bears the burden of proving that the ISO’s actions are “unjust, unreasonable, unduly discriminatory, or preferential.” For all of the reasons cited below, TransCanada has failed to carry this burden.

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<sup>1</sup> See 18 C.F.R. §§ 385.206(f) and 385.213 (2007).

<sup>2</sup> Complaint Requesting Fast Track Processing of TransCanada Power Marketing Ltd., *TransCanada Power Marketing Ltd. v ISO New England Inc.*, Docket No. EL08-11-000 (filed Nov. 19, 2007) (“TransCanada Complaint”).

<sup>3</sup> 16 U.S.C. § 824e (2000).

TransCanada's complaint alleges that the ISO has improperly rejected TransCanada's submission of offers composed of separate resources for the first Forward Capacity Auction.<sup>4</sup> However, as shown herein, TransCanada simply failed to take any of the steps required to submit an offer composed of separate resources, and then, months later, tried to effectuate such an offer using the completely distinct self-supply designation process. TransCanada's actions in the qualification process did not suffice to create valid offers composed of separate resources, and TransCanada's request for relief should be rejected.

TransCanada's complaint relies on conflating two distinct elements of the FCA rules: submission of an offer composed of separate resources, and designation of a resource as a Self-Supplied FCA Resource. TransCanada does not assert that it has met the requirements set forth in the FCM rules for offers composed of separate resources. Rather, TransCanada argues that its submission of self-supply designation forms "supersedes" the requirements associated with submitting offers composed of separate resources, and hence was sufficient to create valid offers composed of separate resources. At bottom, TransCanada argues that where a resource is designated as a Self-Supplied FCA Resource, the qualification deadlines applicable to the underlying resource type are "superseded" by the deadline for submission of the self-supply designation forms.

TransCanada's argument is incorrect for various reasons. TransCanada's interpretation is at odds with the plain language of the Forward Capacity Market ("FCM") rules. Simply designating a resource as self-supplied does not obviate or supersede the qualification requirements otherwise applicable to the resource.

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<sup>4</sup> Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO's Transmission, Markets and Services Tariff (FERC Electric Tariff No. 3) (the "Tariff").

Importantly, the self-supply provisions do not provide an alternative date for submission of offers composed of separate resources. Furthermore, even if TransCanada were correct that a self-supply designation allowed an offer composed of separate resources to be submitted months after the deadline specified in the rules, TransCanada has still not met other important requirements associated with offers composed of separate resources. Each of these points is discussed in more detail below.

## **II. COMMUNICATIONS**

The ISO is the private, non-profit entity that serves as the regional transmission organization (“RTO”) for New England. The ISO operates the New England bulk power system and administers the New England energy markets pursuant to the ISO Tariff and the Transmission Operating Agreement with the New England transmission owners. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the control area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council and the North American Electric Reliability Council.

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### III. BACKGROUND

As required by the market rules governing the ISO's administration of the FCM, in the qualification process for the first Forward Capacity Auction (to be held in February 2008 for the Capacity Commitment Period beginning June 1, 2010) the ISO determined that it must submit Static De-List Bids on behalf of two resources for which TransCanada is Lead Market Participant. The two resources in question have a higher summer Qualified Capacity than winter Qualified Capacity, a point that is not in dispute here.

Section III.13.1.2.2.5.2 of the Tariff requires that where a resource's summer Qualified Capacity exceeds its winter Qualified Capacity by specified thresholds, the resource must either:

- (i) offer its summer Qualified Capacity as part of an offer composed of separate resources, as discussed in Section III.13.1.5; or (ii) submit a Static De-List Bid or a Permanent De-List Bid in an Existing Capacity Qualification Package for at least the difference between the summer Qualified Capacity and the winter Qualified Capacity, at a price of 2.0 times CONE.<sup>5</sup>

Section III.13.1.2.2.5.2 then provides the following default provision: "If the Lead Market Participant makes no election, the ISO shall submit a Static De-List Bid on behalf of the resource at a price of 2.0 times CONE."<sup>6</sup>

For its two resources having a higher summer than winter Qualified Capacity, TransCanada failed to either submit a valid offer composed of separate resources or submit a de-list bid for the excess summer Qualified Capacity. Hence the ISO is following the default provision in Section III.13.1.2.2.5.2 and submitting a Static De-List Bid at a price of 2.0 times CONE for each of the two resources at issue here.

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<sup>5</sup> Tariff Section III.13.1.2.2.5.2.

<sup>6</sup> *Id.*

TransCanada states that its complaint is “necessitated by ISO’s unilateral and inexplicable decision to de-list a portion of TransCanada’s capacity,” and that that ISO’s de-listing of TransCanada’s capacity “is in contradiction of” the rules governing the FCM and “inconsistent with the underlying need for capacity that served as the basis for implementing the FCM in the first place.”<sup>7</sup> TransCanada asserts that its actions in the qualification process satisfied the first option described in Section III.13.1.2.2.5.2, namely, the submission of an offer composed of separate resources, and that as a result the ISO is erroneously applying the default provision. TransCanada requests that the Commission “order ISO-NE to accept TransCanada’s composite designation of 6.222 MW of existing Qualified Capacity as a Self-Supplied FCA Resource for participation in the first [Forward Capacity Auction].”<sup>8</sup>

TransCanada’s arguments are without merit. TransCanada failed to properly submit an offer composed of separate resources, and did not itself submit a de-list bid for the excess summer Qualified Capacity. The ISO’s determination to submit a Static De-List Bid at a price of 2.0 times CONE for each of the two resources at issue here is consistent with – and required by – the FCM rules.

TransCanada met none of the procedural requirements in the FCM rules that expressly provide for the submission of offers composed of separate resources. TransCanada instead argues that its submission of self-supply designation forms created valid offers composed of separate resources. This is not the case.

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<sup>7</sup> TransCanada Complaint at 1.

<sup>8</sup> *Id.* at 4.

## **A. FCM Rule Provisions at Issue**

The FCM rules contain specific provisions regarding the submission of an offer composed of separate resources (also commonly known as a “composite offer”). These provisions are found in Section III.13.1.5 of the Tariff, and include two specific requirements that are critical in this case: (i) the requirement that all offers composed of separate resources be detailed in a composite offer form; and (ii) the requirement that the composite offer form must have been submitted to the ISO no later than July 2, 2007 for the first Forward Capacity Auction. Specifically, Section III.13.1.5 states, in relevant part, that:

[s]eparate resources seeking to participate together in a Forward Capacity Auction shall submit a composite offer form by the New Capacity Qualification Deadline, except that for the first Forward Capacity Auction only, the deadline for submission of the composite offer form shall be July 2, 2007.<sup>9</sup>

The FCM rules also contain specific provisions regarding the designation of a resource as a Self-Supplied FCA Resource. These provisions are found in Section III.13.1.6 of the FCM rules. These provisions state clearly that where a Project Sponsor chooses to designate a resource as a Self-Supplied FCA Resource, that designation must be made in writing to the ISO “no later than the date by which the Project Sponsor is required to submit the financial assurance deposit.”<sup>10</sup> For the first Forward Capacity Auction, at issue here, that deadline was October 17, 2007. As discussed at length below, there is no mechanism in the rules by which the Self-Supplied FCA Resource designations can be used to create an offer composed of separate resources. And the

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<sup>9</sup> Tariff at Section III.13.1.5.

<sup>10</sup> Tariff at Section III.13.1.6.

rules regarding Self-Supplied FCA Resources do not obviate (or “supersede” as TransCanada puts it) the requirements associated with offers composed of separate resources.

**B. TransCanada’s Actions in the Qualification Process**

During the qualification process for the first Forward Capacity Auction, the July 2, 2007 deadline for submission of offers composed of separate resources came and went without any indication from TransCanada that it intended to submit offers composed of separate resources for the resources at issue in this case. Notably, TransCanada did not submit composite offer forms for these resources to the ISO by July 2, 2007 (or ever), as required by Section III.13.1.5 of the FCM rules. TransCanada does not assert, nor could it reasonably assert, that it was unaware of the requirements of Section III.13.1.5.<sup>11</sup>

On October 12, 2007, TransCanada submitted to the ISO self-supply designation forms for four of its resources. As mentioned above, the deadline for submission of the self-supply designation forms was October 17, 2007. So these forms were timely filed to effectuate TransCanada’s self-supply designations.

However, in its cover email submitting those four forms on October 12, 2007, TransCanada indicated that it wanted to use those resources to designate just two self-supplied resources, each comprised of one summer resource and one winter resource. The two “summer” resources were resources that each had a summer Qualified Capacity that exceeded its winter Qualified Capacity, and each was “paired” with like amounts of

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<sup>11</sup> The ISO worked closely with stakeholders prior to the deadline for submission of composite offers to ensure that interested parties had the necessary information and training to successfully submit composite offers. In addition to the NEPOOL stakeholder process and numerous informal discussions with market participants, the ISO conducted four workshops to provide interested parties with information and training regarding composite offers. Specifically, the ISO held informational and training workshops on May 1, 2007; May 15, 2007; June 13, 2007; and June 19, 2007.

winter capacity from the two other resources submitted. Hence, although the total amount of capacity indicated in the self-supply designation forms for the four resources was 12.444 MW, TransCanada indicated in the email that it sought to create just two *composite* Self-Supplied FCA Resources for a total of 6.222 MW.

As discussed in detail below, the submission by TransCanada on October 12, 2007 was deficient with respect to the requirements for creating an offer composed of separate resources found in Section III.13.1.5. Indeed, TransCanada does not even attempt to argue that it has met those requirements. Instead, TransCanada has tortured the language found in Section III.13.1.6 regarding self-supply designations in the hope that it would offer up some exemption from the composite offer requirements. It does not.

#### **IV. ARGUMENT**

##### **A. Provisions Regarding the Designation of Self-Supplied FCA Resources Do Not “Supersede” Requirements Applicable to Offers Composed of Separate Resources**

At the heart of its assertion that the ISO has erroneously rejected its offers composed of separate resources, TransCanada argues that the language of Section III.13.1.6.1 allows a composite offer that is associated with a self-supply designation to be submitted at the later self-supply designation deadline (October 17, 2007), rather than at the earlier composite offer deadline (July 2, 2007). TransCanada hangs this argument on the following language from Section III.13.1.6.1:

*Except as otherwise stated in this Section III.13.1.6, a Self-Supplied FCA Resource must satisfy the same Forward Capacity Auction qualification process requirements applicable to the type of resource that is designated as a Self-Supplied FCA Resource.*<sup>12</sup>

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<sup>12</sup> TransCanada Complaint at 10-11 (emphasis by TransCanada)

TransCanada argues that:

because Section III.13.1.6 expressly sets forth a deadline for submitting to the ISO a designation as a Self-Supplied FCA Resource, the deadline provided by Section III.13.1.6 supersedes any other deadline that otherwise would apply to the particular type of resource. Accordingly, a designation of a Self-Supplied FCA Resource composed of separate resources was due on October 17, 2007 under Section III.13.1.6, not on the superseded date of July 2, 2007 that otherwise would have applied under Section III.13.1.5.<sup>13</sup>

This conclusion attempts to turn the meaning of Section III.13.1.6.1 on its head, and is inaccurate for various reasons.

**1. The III.13.1.6 Self-Supply Provisions Do Not “Otherwise State” A Deadline For Submitting Composite Offers**

Section III.13.1.6.1 clearly states, and clearly intends, that all of the qualification provisions applicable to a resource (outside of Section III.13.1.6) shall continue to apply where that resource is designated as a Self-Supplied FCA Resource, unless III.13.1.6 otherwise states. Section III.13.1.6 does not provide an alternative date for the submission of an offer composed of separate resources where such an offer is designated as self-supply. The only date mentioned in Section III.13.1.6 is the deadline for submissions of self-supply designations itself. The opening phrase of Section III.13.1.6.1 (which TransCanada emphasizes in boldface, as above), then, is in itself insufficient to support TransCanada’s argument.

TransCanada then must go to even greater lengths in its attempt to make the self-supply deadline that appears in Section III.13.1.6 apply to composite offers under the “[e]xcept as otherwise stated in this Section III.13.1.6” provision. TransCanada’s statement that “because Section III.13.1.6 expressly sets forth a deadline for submitting to

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<sup>13</sup> TransCanada Complaint at 11.

the ISO a designation as a Self-Supplied FCA Resource, the deadline provided by Section III.13.1.6 supersedes any other deadline that otherwise would apply to the particular type of resource” disregards the plain meaning of the term “type of resource.” Resource type is well-understood to describe the category of a resource based on physical characteristics, such as generation, demand response, or import. A plain reading of the text of the sentence in III.13.1.6 supports this fact – that section makes it clear that “Self-Supplied FCA Resource” is itself not among the “type[s] of resource[s]” referenced.<sup>14</sup> If it were, the sentence would be turned into a tautology that could be used to render any other qualification deadline meaningless.

Put another way, TransCanada reasons that by submitting a self-supply designation, the affected resource becomes a Self-Supplied FCA Resource and ceases to be any other type of resource. This is not the case. Designation of, say, a new generating capacity resource as a self-supplied resource does not mean that the resource is no longer a new generating capacity resource. Even where an offer composed of separate resources is designated as a self-supply resource, it does not cease to be an offer composed of separate resources. Read as TransCanada hopes, Section III.13.1.6 would relieve any resource designated as self-supply of the other qualification requirements imposed on the underlying resource type – this is clearly the opposite of that provision’s intent.

Following TransCanada’s logic to its absurd conclusion, the self-supply designation would also “supersede” every other qualification deadline provided in the FCM rules, regardless of the underlying resource type. In other words, if TransCanada’s

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<sup>14</sup> Section III.13.1.6.1 mentions the “requirements applicable to the type of resource designated as a Self-Supplied FCA Resource.” “[T]ype of resource,” then, encompasses those resources that might be designated as a Self-Supplied FCA Resource. This plainly refers to resources other than Self-Supplied FCA Resources.

reading is correct, a new generating resource could have skipped the deadline for submission of the New Capacity Show of Interest Form, as well as the New Capacity Qualification Deadline, and never have mentioned its existence to the ISO in the qualification process, so long as it merely appeared by October 17, 2007 designating itself as a Self-Supplied FCA Resource. This is in no way hyperbole. Section III.13.1.6 does not specify an alternative date for submission of composite offers, and it does not specify alternative deadlines for any other qualification steps. It only provides a deadline for making the self-supply designation itself. If that self-supply deadline “supersedes” the composite offer deadline, as TransCanada claims, it just as surely supersedes every other qualification deadline. This is of course not the case.

**2. Even If TransCanada Is Correct About the Deadlines, It Failed To Properly Submit an Offer Composed of Separate Resources**

Even assuming *arguendo* that TransCanada’s reading of Section III.13.1.6.1 is accurate, it would only dispose of the deadline issue. Indeed, TransCanada’s discussion of the FCM rules is confined to an attempt to show that the *deadline* for submitting composite offers contained in Section III.13.1.5 is “superseded” by the *deadline* contained in Section III.13.1.6.<sup>15</sup> As discussed at the outset of this Answer, however, Section III.13.1.5 includes numerous requirements for submitting a valid offer composed of separate resources. Of critical importance to the instant case, Section III.13.1.5 specifies not only when, *but also how*, a composite offer must be submitted. The composite offer provisions expressly require that the composite offer be submitted using the composite offer form. Even if the deadline in Section III.13.1.5 were superseded by the deadline in Section III.13.1.6, TransCanada would be required to submit the

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<sup>15</sup> TransCanada Complaint at 10-12.

composite offer form, which it has never done and has not claimed to have done.

TransCanada does not argue, nor could it, that all of the other requirements of Section III.13.1.5, including the required composite offer form submission as well as the specific provisions of Sections III.13.1.5(a) through III.13.1.5(e) are also “superseded” by the provisions of Section III.13.1.6. Hence, even if TransCanada prevails on the deadline issue, it has failed to submit a valid offer composed of separate resources.

**B. There is No Inconsistency Between the Rationales Provided to TransCanada by Various ISO Representatives**

In its complaint, TransCanada places great emphasis on what it perceives to be different explanations for the rejection of its submission from different ISO personnel. TransCanada at one point states that “[t]he ISO’s written explanations show that the ISO cannot decide internally how to interpret its own rules and did not carefully analyze what rules apply.”<sup>16</sup> At another point, TransCanada states that “ISO-NE’s communications with TransCanada concerning this matter show that ISO-NE personnel cannot agree among themselves as to the reason for rejecting TransCanada’s designation.”<sup>17</sup> TransCanada attempts to create the illusion of ambiguity where none exists, and suggests that because it received more than one explanation for its failure, those explanations must be invalid. TransCanada overlooks another possibility – that both explanations are accurate and consistent.

In fact, as described below, ISO personnel simply focused on different facets of TransCanada’s failure. The first explanation describes why TransCanada’s October 12, 2007 submission did not meet the requirements of the self-supply provisions. The second

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<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 3-4.

describes why TransCanada's October 12, 2007 submission did not meet the requirements of the composite offer provisions. In short, by trying to accomplish both at once, TransCanada failed to do either properly.

Mr. Scott Hodgdon, Senior Engineer for the ISO, explained to TransCanada the deficiencies of its October 12, 2007 submission from the perspective of the self-supply provisions. All resources in the FCA (except intermittent resources) must be annual resources. That is, they must be able to provide capacity for the entire one-year Capacity Commitment Period. On its face, TransCanada's October 12, 2007 submission requested that each of four resources be designated as a Self-Supplied FCA Resource for part of a year. TransCanada wanted two resources designated as self-supplied resources for the summer, and two other resources to be self-supplied resources for the winter. For the many reasons described above, TransCanada's apparent desire to create composite offers through the self-supply forms on October 12, 2007 did not make it so. In the absence of valid composite offers, Mr. Hodgdon's analysis is entirely correct that to effectuate TransCanada's self-supply designations as requested would have required (depending on a matter of perspective) either: (i) four partial-year Self-Supplied FCA Resources, or (ii) two full-year Self-Supplied FCA Resources with the self-supplied capacity to be transferred among resources during the year. Mr. Hodgdon correctly indicated that neither is permitted under the FCM rules.

With respect to the first alternative ((i), above), Mr. Hodgdon stated that "Self-Supply MW cannot be assigned to the incremental portion of a resource with a summer Qualified Capacity value that is greater than the winter, or a resource with a winter

Qualified Capacity value that is greater than summer.”<sup>18</sup> With respect to the second alternative ((ii), above), Mr. Hodgdon stated that “[a]s the Forward Capacity Market is an annual market, the transfer of Self-Supply designations mid-year is not allowed and is inconsistent with the current rules.”<sup>19</sup> Both of these alternatives are indeed precluded by the FCM rules. Section III.13.1.6 requires Self-Supplied FCA Resources to meet the same qualification requirements applicable to the underlying resource type, and perhaps the most fundamental FCA qualification requirement – applicable to all resource types other than intermittent resources – is that a resource be able to take on a Capacity Supply Obligation for the entire one-year Capacity Commitment Period. This requirement is found in the very first sentences of the FCM rules.<sup>20</sup>

Mr. Kerim May, Senior Regulatory Counsel for the ISO, explained to TransCanada the deficiencies of its October 12, 2007 submission from the perspective of the composite offer provisions. In short, TransCanada ignored two critical elements of a valid composite offer submission: the submission of a composite offer form, and the receipt of that form by July 2, 2007. After quoting those provisions of Section III.13.1.5 to TransCanada, Mr. May explained that “[t]he ISO has received no composite offer forms for the resources at issue here. The submission of self-supply designations for separate resources in October 2007, together with a brief description of your intent to

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<sup>18</sup> October 31, 2007 Hodgdon email to TransCanada (provided as Exhibit 7 to the TransCanada Complaint).

<sup>19</sup> *Id.*

<sup>20</sup> Section III.13 describes “each one year period from June 1 through May 31 . . . for which Capacity Supply Obligations are assumed and payments are made in the Forward Capacity Market...” In discussing composite offers and other possible approaches to allowing seasonal resources to participate in the FCM, the Commission stated that the ISO and stakeholders should “develop solutions without compromising the requirement that the Forward Capacity Auction procure an annual capacity product.” Order Conditionally Accepting Market Rules and Requiring Compliance Filing, 119 FERC ¶ 61,045 at P 144 (issued April 16, 2007).

combine the resources, does not meet the requirements of Section III.13.1.5 and does not suffice to create a valid offer composed of separate resources.”<sup>21</sup>

With respect to Mr. May’s analysis, TransCanada repeatedly states that “the ISO’s legal staff indicated that the ISO rejected TransCanada’s designation of the 6.222 MW as a Self-Supplied Resource [sic] because the designation allegedly was filed with the ISO on an untimely basis.”<sup>22</sup> TransCanada also states that “[i]t also bears noting that Mr. Hodgdon, in contrast to Mr. May, had informed TransCanada that its forms were in fact timely filed.”<sup>23</sup> These descriptions of the ISO’s communications with TransCanada are inaccurate and misleading. Mr. May has never stated to TransCanada that its self-supply designation forms were not submitted before the deadline for submission of those forms. Nor has any other ISO representative. What Mr. May did state, and what should now be abundantly clear from this Answer, is that TransCanada’s October 12, 2007 self-supply forms did not suffice to create valid offers composed of separate resources for several important reasons, one of which was timing.<sup>24</sup>

In sum, there are several ways that TransCanada’s failures in trying to create composite offers through its submission of self-supply forms might be characterized.

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<sup>21</sup> November 8, 2007 May email to TransCanada (provided as Exhibit 8 to the TransCanada Complaint).

<sup>22</sup> TransCanada Complaint at 3. See also *id.* at 13.

<sup>23</sup> TransCanada Complaint at 13.

<sup>24</sup> While the ISO has properly rejected TransCanada’s attempt to create offers composed of separate resources using only its self-supply designations, the ISO has worked to honor the timely-filed but ambiguous self-supply designations themselves. In its November 8, 2007 email to TransCanada (provided as Exhibit 8 to the TransCanada Complaint), the ISO (after explaining that TransCanada’s actions did not suffice to create valid composite offers) stated that “[t]he description submitted with your self-supply designations states that your intent was to self-supply a total amount of 6.222 MW. That description, however, was accompanied by self-supply designations for four separate resource totaling 12.444 MW.” The ISO requested that TransCanada clarify whether it intended to self-supply 6.222 MW or 12.444 MW, and if the former, from which two resources. TransCanada responded with a specific election, subject to the outcome of its complaint.

That Mr. Hodgdon and Mr. May chose different ways to do so is of no importance. The two explanations provided are both accurate and consistent with each other.<sup>25</sup>

**C. TransCanada’s Arguments Regarding the Purpose of the Forward Capacity Market are Not Relevant**

The weakness of TransCanada’s argument on the merits is underscored by TransCanada’s subsequent appeal to the Commission to overturn the ISO’s determination because TransCanada believes that determination is “irrational in view of the reasons that the FCA was established.”<sup>26</sup> TransCanada recalls (at length) that the Forward Capacity Market was established to address projected tight capacity markets, citing statements of Chairman Kelliher and the ISO to prove that “both the Commission and ISO-NE were concerned about having sufficient installed capacity in New England.”<sup>27</sup> While true, this of course has no bearing on the question of whether the ISO faithfully followed the FCM rules in determining that TransCanada’s self-supply designations failed to create a valid offer composed of separate resources.

Although the FCM was established to ensure adequate capacity in New England, it is the FCM rules as filed and approved by the Commission that govern the ISO’s administration of that market. TransCanada states that the ISO is “responsible for . . .

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<sup>25</sup> Two additional points by TransCanada on this issue bear scrutiny. First, TransCanada states that “the ISO’s legal staff subsequently found no problem with TransCanada designating summer and winter increments of Qualified Capacity from different resources as a Self-Supplied FCA Resource.” TransCanada Complaint at 3. This is entirely false. That Mr. May’s explanation did not specifically address the problem of partial-year self-supply designations in no way suggests that the ISO’s legal staff “found no problem” with that aspect of TransCanada’s submission. Second, TransCanada finds it “[i]nteresting[.]” that “ISO counsel never endorsed Mr. Hodgdon’s reasoning.” TransCanada Complaint at 8. Again, the two ISO representatives simply focused on different facets of TransCanada’s failings. ISO counsel agrees with Mr. Hodgdon’s reasoning.

<sup>26</sup> TransCanada Complaint at 14.

<sup>27</sup> *Id.* at 14-15.

assuring that generators are permitted to participate in FCAs”<sup>28</sup> and that the ISO “should be looking for ways to maximize the inclusion of all eligible capacity in FCAs.”<sup>29</sup> These are alarming statements that demonstrate the great extent to which TransCanada misapprehends the ISO’s role in New England. The ISO’s goal is not to maximize capacity at any cost. The ISO’s goal is to administer well-designed and transparent markets that will in turn ensure adequate capacity. This requires that the ISO adhere to the market rules as filed and approved by the Commission. As discussed in detail above, the ISO has properly followed the FCM rules in addressing TransCanada’s submissions.

**D. TransCanada Failed to Address in a Timely Manner the Ambiguities it Perceived**

Finally, the ISO notes that at more than one point in its complaint, TransCanada alludes to the “ambiguity” (at least “[a]t first blush”) between the composite offer requirements of Section III.13.1.5 and the self-supply provisions of Section III.13.1.6.<sup>30</sup> The ISO disagrees that this is the case – the language in those provisions is quite clear – but if TransCanada found the provisions ambiguous or even just confusing, why did it not simply remove all risk by filing the necessary composite offer forms by July 2, 2007? Those forms are short, simple, and in no way onerous. Or more simply still, why did TransCanada not just ask the ISO to explain the requirements to TransCanada prior to July 2, 2007? As described above, the ISO has worked exhaustively with stakeholders on the qualification provisions of the FCM, and specifically on the composite offer deadline and requirements.<sup>31</sup> If TransCanada found these provisions confusing, it had every

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<sup>28</sup> *Id.* at 6.

<sup>29</sup> *Id.* at 16.

<sup>30</sup> *Id.* at 10, 16.

<sup>31</sup> *See* footnote 11, above.

opportunity to avoid this litigation with a simple question. That TransCanada did not do so suggests that, having simply missed the composite offer deadline, TransCanada is now going to great lengths to rectify its error. Such an attempt should not be rewarded.

**V. CONCLUSION**

For the foregoing reasons, the ISO respectfully requests that the Commission find that TransCanada has failed to meet its burden of proof under Section 206 of the FPA, and dismiss TransCanada's Complaint.

Respectfully submitted,

By: \_\_\_\_\_

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Counsel for ISO New England Inc.

Dated: November 30, 2007

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2007), upon each person designated on the official service list in this proceeding as compiled by the Secretary of the Federal Energy Regulatory Commission.

Dated at Washington, DC this 30th day of November, 2007.

\_\_\_\_\_  
/s/  
Montina M. Cole, Esq.