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March 17, 2008

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
The Honorable Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
Room 1A-East, First Floor
888 First Street, N.E.
Washington, D.C. 20426

Re: TransCanada Power Marketing Ltd. v. ISO New England Inc.
Docket No. EL08-43-000

Dear Secretary Bose and Deputy Secretary Davis:

Attached for electronic filing in the above-referenced docket is the *Answer of ISO New England Inc. to the Complaint of TransCanada Power Marketing Ltd.* A copy of the foregoing has been served upon all parties included in the Commission's service list.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Sherry A. Quirk
Sherry A. Quirk, Esq.
Robin E. Remis, Esq.

Counsel for ISO New England Inc.

Attachment

cc: Official Service List

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

TransCanada Power Marketing Ltd.,)		
)		
Complainant,)		
)		
v.)	Docket No.	EL08-43-000
)		
ISO New England Inc.,)		
)		
)		
)		
Respondent)		

**ANSWER OF ISO NEW ENGLAND INC.
TO THE
COMPLAINT OF TRANSCANADA POWER MARKETING LTD.**

Pursuant to Rules 206(f) and 213 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. §§ 385.206(f) and 385.213 (2007) and the Commission’s Notice of Complaint issued on March 3, 2008 in this docket, ISO New England Inc. (the “ISO”) hereby provides its Answer to the Complaint Requesting Fast Track Processing of TransCanada Power Marketing Ltd. (“TransCanada”) filed on February 26, 2008 (“Complaint”).

I. INTRODUCTION

This Complaint is predicated on TransCanada’s position that the ISO did not comply with the Commission directives¹ when the ISO disqualified the offer composed of separate resources² submitted

¹ *TransCanada Power Marketing Ltd v. ISO New England Inc.*, 122 FERC ¶ 61,010 (2008) (“*January 4 Order*”), *Order Granting Reh’g in Part and Dismissing Reh’g in Part as Moot*, 122 FERC ¶ 61,049 (2008) (“*January 22 Order*”) (collectively, “*January 2008 Orders*”).

² The Forward Capacity Market (“FCM”) rules enable resources having seasonal capacity to combine their capacity in different months to create a single, annual offer. These offers composed of separate resources (commonly referred to as “composite offers”) are governed by Section III.13.1.5 of the ISO New England Transmission, Markets and Services Tariff (the “Tariff”).

by TransCanada on January 10, 2008 (“New Composite Offers”). As demonstrated below, the ISO fully complied with the Commission directives to review the New Composite Offers under the same qualification process as other composite offers. Accordingly, TransCanada’s Complaint is without merit and should be dismissed.

The ISO did not qualify the New Composite Offers because the winter capacity associated with those offers was already irrevocably committed to participate in the upcoming Forward Capacity Auction (“FCA”)³ as part of composite offers submitted by TransCanada and H.Q. Energy Services (U.S.) Inc. (“HQ”) on July 2, 2007 (“Initial Composite Offers”). The Initial Composite Offers were submitted prior to the New Composite Offers, were approved by the ISO and the Commission, and were never withdrawn.

Nonetheless, in the instant Complaint, TransCanada argues that the New Composite Offers should have been qualified since the ISO “unambiguously knew” that the Initial Composite Offers could not clear in the FCA because there was no capacity available over the Hydro-Quebec Phase I/II Interface (“HQ Interconnection”) to use in connection with the Initial Composite Offers. TransCanada’s argument is without merit.

As explained in detail below, to maintain its argument, TransCanada infers provisions that do not exist in the rules governing the FCM. Crucial to TransCanada’s argument is the non-existent provision in the FCM rules requiring rejection of an import capacity resource because it is unlikely to or will not clear. While it is the case that proposed generating resources may be rejected in the qualification process because the ISO determines that they will be unable to provide incremental capacity to the system⁴, the treatment of import capacity resources is entirely different. Imports, such as the Initial Composite Offers, are not evaluated in the same manner as generating resources. Where more capacity seeks to import over

³ Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the Tariff.

⁴ Tariff Section I3.1.1.2.3.

an interface than the interface can accommodate, those resources compete – in the FCA – on the basis of price.⁵ This is true whether the amount of capacity that the interface can accommodate is ample, little, or zero. There are no rules by which the ISO may or must reject properly-submitted and qualified Import Capacity Resources upon learning that the relevant interface has limited or no excess space. In other words, there is no justification for rejection of the Initial Composite Offers, as TransCanada claims, and hence no basis for qualification of the New Composite Offers.

Therefore, the ISO did in fact review the New Composite Offers under the same qualification process as other composite offers, and the ISO fully complied with the Commission directives.

Accordingly, TransCanada's Complaint is without merit and should be dismissed.

II. COMMUNICATIONS

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III. BACKGROUND

In the January 4 Order, the Commission granted a complaint filed by TransCanada seeking to require the ISO to accept 6.222 MW of resources as offers composed of separate resources for the first

⁵ Tariff Section 13.2.3.3.(d).

FCA (“Initial Complaint”). TransCanada’s offer was composed of resources which included winter resources from Ocean State Power 1 and Ocean State Power 2 (collectively, “Ocean State Power resources”). The January 4 Order directed the ISO to include TransCanada’s composite offers “for participation in the first FCA.”⁶ On January 10, 2008, TransCanada submitted the New Composite Offers to the ISO.

On January 11, 2008, the ISO filed a request for clarification, or, in the alternative, rehearing of the Commission’s January 4 Order (“Rehearing Request”).⁷ In the Rehearing Request, the ISO stated that, in an effort to comply with the January 4 Order, the ISO discovered for the first time that TransCanada had no available winter capacity for the New Composite Offers. The ISO explained that on July 2, 2007, the ISO received the Initial Composite Offer winter resource forms signed by TransCanada committing the entire winter excess capacity from the Ocean State Power resources, thereby leaving no capacity from these resources to be used as part of the New Composite Offers.⁸ The ISO also explained that the Initial Composite Offers were qualified by the ISO on October 2, 2007 to participate in the FCA and were never withdrawn.⁹

Therefore, in its Rehearing Request, the ISO asked the Commission to clarify that “participation in the first FCA” includes the ISO qualification review of composite offers that normally takes place in the qualification process for the FCA.¹⁰ The ISO explained in the Rehearing Request that in accordance with the qualification process set forth in the FCM rules, the ISO reviews composite offer forms to ensure

⁶ January 4 Order at P 27.

⁷ *Request for Clarification, or in the Alternative, Request for Rehearing of ISO New England, Inc.* filed in EL08-11-001 (January 11, 2008).

⁸ Rehearing Request at 4.

⁹ *Id.*

¹⁰ *Id.* at 6.

that the component resources have the capacity available to form the composite offer.¹¹ Further, in the Rehearing Request, the ISO stated that subjecting the New Composite Offers to the normal qualification process would result in disqualifying the composite offers for participation in the first FCA because all of the capacity associated with the Ocean State Power resources was already committed in the FCA.¹²

In the January 22 Order, the Commission granted in part the ISO's Rehearing Request. While not addressing directly the qualification of the New Composite Offers,¹³ the January 22 Order held that the ISO should subject TransCanada's composite offers "to the same review process as it applied to other composite offers to ensure that the component resources have available capacity."¹⁴ As such, the Commission directed the ISO "to apply the appropriate FCM Rules" to the New Composite Offers.¹⁵

Based upon this qualification review process, the ISO notified TransCanada that the New Composite Offers were not qualified to participate in the FCA because the winter capacity from the Ocean State Power resources was already irrevocably committed to the Initial Composite Offers. HQ, the Project Sponsor, actively offered the Initial Capacity Offers in multiple rounds of the first FCA, which was held on February 4-6, 2008, although the resource was withdrawn before the auction reached the floor price. However, even if HQ had not withdrawn the resource, the Initial Composite Offers would not have cleared the auction. Section III.13.2.2.3.3(d) of the FCM rules provides the mechanism for rationing capacity offers that exceed the available space over an interface. Because the HQ Interconnection did not

¹¹ *Id.*

¹² *Id.* at 7.

¹³ Although the pleadings in Docket No. EL08-11-001 included an extensive discussion regarding the qualification of both the Initial Composite Offers and the New Composite Offers, the Commission declined to rule on the issues because the Commission found that the issues were outside those raised in TransCanada's Initial Complaint.

¹⁴ January 22 Order at P 19.

¹⁵ *Id.*

have excess space available in the FCA, the HQ component would have been rationed to zero and the Initial Composite Offers would not have cleared the auction.

On February 26, 2008, TransCanada filed the instant Complaint in which it alleges that the ISO violated the January 22 Order by disqualifying the New Composite Offers. Specifically, TransCanada claims that because the ISO “unambiguously knew” that there was no capacity available over the HQ Interconnection to use in connection with the Initial Composite Offers, the ISO was required to qualify the New Composite Offers for participation in the first FCA. As a remedy, TransCanada requests that the Commission direct the ISO to accept its New Composite Offers into the FCA at the price floor of \$4.50/kW-month established in the auction. According to the Complaint, by doing so, a total of 34,083 MW of capacity would be included as having cleared the FCA instead of 34,077 MW.¹⁶

IV. ANSWER

A. Contrary to TransCanada’s Claims, The ISO Fully Complied with the Commission’s Directives In The January 22 Order

In the Complaint, TransCanada alleges that the ISO’s disqualification of the New Composite Offers violates the Commission directives in the January 22 Order. To the contrary -- the ISO did precisely what the Commission ordered. In determining whether to accept TransCanada’s New Composite Offer without the winter capacity, the Commission required the ISO to apply “the same review process [to the New Composite Offers] as it applied to other composite offers to ensure that the component resources have available capacity,”¹⁷ notwithstanding the fact that the ISO informed the Commission that applying the same qualification review to the New Composite Offers as it applied to other composite offers would result in the disqualification of the New Composite Offers.¹⁸

¹⁶ Complaint at 5-6.

¹⁷ January 22 Order at P 19.

¹⁸ *Id.* at P 6.

The New Composite Offers submitted by TransCanada attempted to use 6.222 MW of winter capacity from Ocean State Power resources even though the winter capacity from those resources was already committed to participate in the FCA as part of the Initial Composite Offers. Qualifying the New Composite Offer submitted by TransCanada would have resulted in the double counting of TransCanada's capacity. Therefore, in compliance with the January 22 Order's directive to apply the same criteria, the ISO properly rejected the New Composite Offers.

B. The ISO Was Required To Disqualify The New Composite Offers Because The Capacity Associated With The Initial Composite Offers Was Irrevocably Committed To Participate In The FCA

According to TransCanada, at the time the ISO reviewed the New Composite Offers, the ISO "knew a host of facts that demonstrated that the capacity that previously had been offered through the [Initial Composite Offers] was not available under those offers and that the capacity that was offered under the [New Composite Offers] was available."¹⁹ Specifically, TransCanada claims that the ISO knew when it disqualified the New Composite Offers that there was no space available to HQ over the HQ Interconnection to use in connection with its portion of the capacity commitment under the Initial Composite Offers.²⁰ Additionally, TransCanada argues that the ISO knew when it disqualified the New Composite Offers that the contractual arrangements between TransCanada and HQ for the Initial Composite Offers had terminated.²¹ Thus, TransCanada states that the ISO violated the January 22 Order because the ISO knew that the capacity associated with the Initial Composite Offers was not available and hence, the New Composite Offers should have been qualified.²²

¹⁹ Complaint at 18.

²⁰ *Id.* 18-19.

²¹ *Id.*

²² *Id.* at 19-20.

Section III.13.1.1.2 of the FCM rules states that “[u]pon submission of the financial assurance deposit by the Project Sponsor...the resource is obligated to participate in the Forward Capacity Auction... .” As explained in the Rehearing Request, the Initial Composite Offers were qualified by the ISO, and were covered by the appropriate amount of financial assurance as required under Section III.13.1.1.2 of the FCM rules. While a resource may be withdrawn before the financial assurance deposit is due, the Initial Composite Offers were not withdrawn. In this case, the FCM rules clearly required the Initial Composite Offers to participate in the FCA. The Initial Composite Offers were also reflected in the November 6, 2007 Informational Filing for Qualification in the Forward Capacity Market,²³ which was approved by the Commission on January 11, 2008.²⁴ Hence, at the time the ISO reviewed the New Composite Offers, the Initial Composite Offers were irrevocably obligated under the FCM rules to participate in the auction.²⁵ Thus, TransCanada’s arguments about whether the capacity associated with the Initial Composite Offers would clear in the auction and what the ISO knew about the contractual relationship between TransCanada and HQ are irrelevant and should be rejected.

C. The FCM Rules Explicitly Provide Different Mechanisms for Addressing Qualification of New Generating Capacity Resources and New Import Capacity Resources

TransCanada claims that because the ISO “unambiguously knew” that the HQ component of the Initial Composite Offers would not clear in the FCA, the January 22 Order’s directive that the ISO subject the New Composite Offers to the “same review process” as applied to other composite offers required the ISO to qualify the New Composite Offers. TransCanada appears to be confused as to the meaning of the “same review process.” As the ISO explained in the Rehearing Request, the review process for

²³ Filed in Docket No. ER08-190-000.

²⁴ *ISO New England, Inc., Order Accepting Informational Filing*, 122 FERC ¶ 61,018 (2008).

²⁵ TransCanada states that on January 23, 2008 it sent an email to the ISO formally withdrawing the Initial Composite Offers. As discussed earlier, pursuant to the FCM rules, a notice of withdrawal must be provided to the ISO prior to the submission of the financial assurance deposit. Section III.13.1.1.2.

composite offers includes, among other things, a review to ensure that all of the component resources have capacity available to form the composite offer. The New Composite Offers failed this review because they had no available winter capacity that was not already irrevocably committed in the FCA as part of the already-qualified and never-withdrawn Initial Composite Offers.

TransCanada's argument is premised entirely on its belief that the ISO should have qualified the New Composite Offers because the ISO "knew that the HQ capacity that formed the summer component of the [Initial Composite Offers] was unavailable and would not be provided."²⁶ TransCanada's argument conflicts with the FCM rules, which explicitly provide different qualification mechanisms for New Generating Capacity Resources and New Import Capacity Resources.

Specifically, the FCM rules provide an overlapping interconnection analysis for New Generating Capacity Resources, whereby a New Generating Capacity Resource will not be qualified to participate in an FCA if it cannot demonstrate that it will be able to deliver capacity at the start of the Capacity Commitment Period.²⁷ The interconnection analysis, however, does not apply to New Import Capacity Resources, such as the HQ component of the Initial Composite Offers.²⁸ Instead, the FCM rules provide an entirely different set of provisions to address the case where more Import Capacity Resources seek to provide capacity than can be accommodated over the relevant interface.²⁹ Import resources compete based on price for available interface space – whether the amount of space available on the interface is ample, limited, or zero.

While the FCM rules require disqualification of New Generating Capacity Resources that cannot provide capacity because of transmission limits, there is no provision in the FCM rules for disqualifying

²⁶ Complaint at 19.

²⁷ Tariff Section III.13.1.1.2.3.

²⁸ Tariff Section III.13.1.3.5.5 states "[t]he provisions regarding initial interconnection analysis (Section III.13.1.1.2.3) shall not apply."

²⁹ Tariff Section III.13.2.3.3.(d).

Import Capacity Resources because the relevant interface will not accommodate all available imports. Instead, the market is designed such that the auction determines which imports clear based on price and other characteristics. For example, in the first FCA, the import limit on the Highgate interface was lower than the existing Qualified Capacity of an import that designated the Highgate interface as its transmission path. Even though the ISO knew that the Highgate interface limit would prevent the entire resource from clearing in the FCA, the Qualified Capacity of the resource was not reduced to the Highgate interface limit. Rather, as required by the FCM rules, the resource's cleared MW were reduced to the transfer capability of the Highgate interface as part of the auction process.³⁰ This is the same process as was used in qualifying the Initial Composite Offers.

The ISO closely followed the applicable FCM rules in qualifying and clearing the Initial Composite Offers, which were never withdrawn and which did in fact participate in the FCA. The ISO is not required or authorized to disqualify a New Import Capacity Resource where it appears likely – or even certain – that the import will not clear in the auction because there is not space available on the relevant interface. Thus, because the ISO's treatment of the Initial Composite Offers was in accordance with the applicable FCM rules, TransCanada's assertion that the New Composite Offers should have been qualified is baseless and should be dismissed.

D. If The Commission Grants The Complaint, The Ruling Should Be Limited To The Instant Circumstances And Should Not Constitute Established Precedent

As discussed above, the Complaint is without merit and should be dismissed. If, however, the Commission determines relief is appropriate, any relief should be limited to the specific and unique facts presented here. As acknowledged by TransCanada, because the auction reached the floor price, TransCanada's New Composite Offers could be accommodated in the FCA by increasing the total amount of cleared capacity by the amount of TransCanada's New Composite Offers (6.222 MW).³¹ The total

³⁰ Tariff Section III.13.2.3.3.(d).

³¹ Complaint at 21-22.

price of purchased capacity in New England would not change. Instead, as stated by TransCanada, “the total pot of dollars to be paid for capacity in New England under the FCA will be spread across 34,083 MW rather than 34,077 MW.”³² This remedy, however, is only possible because the auction reached the floor price of \$4.50/kW-month. If the auction had not settled at the floor, there would be no way to accommodate TransCanada’s New Composite Offers without disrupting the auction.

The ISO is concerned that a Commission ruling granting TransCanada’s Complaint could have an adverse impact on future FCAs. Therefore, if the Commission grants the relief requested by TransCanada, the ISO requests that the Commission’s ruling be limited to the facts and circumstances presented in this proceeding and should not constitute established precedent that would allow Market Participants to disrupt future FCAs.

³² *Id.* at 22.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the ISO respectfully requests that the Commission dismiss TransCanada's Complaint.

Respectfully submitted,

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Dated: March 17, 2008

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, D.C., this 17th day of March, 2008.

/s/ Sherry A. Quirk
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