155 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Energy Marketing, Inc. — Docket No. EL16-38-000
Dominion Energy Manchester Street, Inc.
v.
ISO New England, Inc.

ORDER ON COMPLAINT

(Issued May 2, 2016)

1. On February 5, 2016, Dominion Resources Services, Inc., on behalf of Dominion Energy Marketing, Inc. and Dominion Energy Manchester Street, Inc., (together, Dominion), filed a complaint against ISO New England Inc. (ISO-NE) pursuant to sections 206 and 306 of the Federal Power Act (FPA)[1] and Rule 206 of the Commission regulations.[2] Dominion alleges that ISO-NE acted contrary to its Transmission, Markets and Services Tariff (Tariff) when it disqualified new incremental capacity at Dominion's Manchester Street Station from participating in ISO-NE's Forward Capacity Auction (FCA) for the 2019-2020 capacity commitment period (FCA 10). As discussed below, the Commission grants, in part, and denies, in part, Dominion's complaint and directs ISO-NE to make a further compliance filing.

I. Background

2. Dominion's Manchester Street Station, located in Providence, Rhode Island, consists of three gas-fired combined cycle units (Units) with a net maximum capability of 477 MW summer and 510 MW winter.[3] Dominion recently added incremental

[1] 16 U.S.C. §§ 824e, 825e (2012).

[2] 18 C.F.R. § 385.206 (2015).

[3] Dominion Complaint at 3-4.

summer capacity to the Manchester Street Station Units 9-11 and sought to have the incremental capacity participate in FCA 10 as New Generating Capacity Resources.[4]

3. Section III.13.1 of ISO-NE's Tariff addresses qualification for participation in the FCA. As relevant here, that section provides that each resource, or portion thereof, must qualify as either a New Generating Capacity Resource[5] or an Existing Generating Capacity Resource.[6] An Existing Capacity Resource may elect to have the incremental amount of capacity above the summer qualified capacity participate in the FCA as a New Generating Capacity Resource but must submit a New Capacity Qualification Package for the incremental increase in capacity.[7]

II. <u>Complaint</u>

4. Dominion states that on September 25, 2015, ISO-NE provided Qualification Determination Notifications for the Units confirming that Dominion's new incremental summer capacity of 21 MW was qualified to participate in FCA 10.[8] However, according to Dominion, when it attempted to access ISO-NE's FCA auction portal on January 28, 2016, it discovered that the qualified incremental capacity was not available to be offered into FCA 10.

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[4] Prior to adding the new incremental capacity, Dominion's Manchester Street Station has participated in previous FCAs. *ISO-NE Forward Capacity Market, Participation Guide*, http://www.iso-ne.com/markets-operations /markets/forward -capacity-market/?document-type=FCM%20Supporting%20Documents&document-type=FCM%20Reports& document-type=FCM%20Qualifications&document-type=FCM%20Certification%20 Tracker&document-type=FCA%20Results.

[5] The Tariff defines a New Generating Capacity Resource as a resource, or a portion of a resource, that has not cleared in any previous FCA. Tariff §§ III.13.1.1.1–III.13.1.1.1.1(a).

[6] Tariff § III.13.1.

[7] *Id.* § III.13.1.1.1.3.

[8] Dominion states that upgrades to Units 9-11 of its Manchester Street Station added 21 MW of incremental summer capacity, bringing the total existing and new summer qualified capacity to 468 MW. The existing winter qualified capacity is 492 MW. Dominion Complaint, Attachment A, LaRochelle Affidavit at 2 n.2.

5. Dominion states that ISO-NE subsequently informed Dominion that a composite offer consisting of the new incremental summer capacity and the existing winter capacity at the Manchester station was required in order for the new incremental capacity to be eligible to participate in FCA 10.[9] Dominion asserts that it was aware that a capacity resource's summer capability must be matched with an equal amount of winter capability and that it "ensured that the existing excess winter capability at the Units would fully cover the new incremental summer Qualified Capacity."[10] Dominion adds that it was not made aware that it needed to submit a composite offer, notwithstanding the fact that it had been working for several years with ISO-NE to qualify the incremental summer capacity and "had made it clear throughout the process that the incremental summer capacity would be adequately covered by the existing excess winter capability at the same units."[11]

6. Dominion first contends that ISO-NE's Tariff does not require composite offers[12] between incremental new capacity and existing capacity at the same resource in order for the new incremental capacity to participate in an FCA.[13] Instead, Dominion asserts that section III.13.1.5 of the Tariff, which addresses composite offer requirements, pertains to "**separate resources** seeking to participate together in a Forward Capacity Auction" and the Tariff states that they "may together participate . . . as a single resource" if specific conditions are met.[14] Dominion further states that this section of the Tariff provides that resources like Manchester Street Station are not "eligible" to submit composite offers if they elected to lock-in the Capacity Clearing Price of a New Capacity Offer. Dominion states that it selected to lock-in the price for its new capacity for the next six capacity commitment periods and, therefore, is ineligible to participate in a composite offer.[15]

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[9] Dominion Complaint at 7

[10] *Id.* at 5-6.

[11] *Id.* at 5.

[12] The Tariff defines a Composite FCM Transaction as "a transaction for separate resources seeking to participate as a single composite resource in a Forward Capacity Auction in which multiple designated FCM Participants provide capacity. . . ." Tariff, § III.13.2.2.

[13] Dominion Complaint. at 6.

[14] *Id* at 7 (citing Tariff § III.13.1.5) (emphasis added by Dominion).

[15] *Id.* (citing Tariff §§ III 13.1.1.2.2.4 and III.13.1.5(b)). ("A resource electing to *(continued ...)*

7. Dominion next argues that the Tariff's treatment of Existing Generating Capacity Resources further evidences the inconsistency in ISO-NE's interpretation of its Tariff. According to Dominion, the Tariff specifically requires an Existing Generating Capacity Resource whose summer qualified capacity exceeds its winter qualified capacity to offer its summer capacity as part of an offer composed of separate resources or have ISO-NE establish the FCA qualified capacity to the lesser of its summer qualified capacity and winter capacity.[16] Dominion argues that there is no comparable provision for New Generating Capacity Resources, and that if ISO-NE intended to have such a requirement for New Generating Capacity Resources, it should have mirrored the language for Existing Generating Capacity Resources. Dominion thus concludes that the Tariff permits, but does not require, a composite offer for New Generating Capacity Resources.

8. Dominion also contends that Commission precedent requires clear market rules as necessary to provide notice to market participants.[17] Dominion argues that, since ISO-NE's Tariff does not require new incremental capacity and existing capacity at the same resource to submit a composite offer in order for the new incremental capacity to be eligible to participate in the FCA, Dominion did not have adequate notice that it was required to submit a composite offer.

9. Dominion asserts that ISO-NE violated its Tariff by preventing Dominion from offering its new incremental capacity into FCA 10, and that therefore resettlement is appropriate.[18] Dominion argues that ISO-NE has the authority and is required to correct any price that does not reflect the filed rate. Hence, Dominion requests that the Commission direct ISO-NE to resettle the auction results to allow Dominion's new incremental capacity to be treated as if it had participated in FCA 10.

III. Notice of Filings and Responsive Pleadings

10. Notice of Dominion's filing was published in the *Federal Register*, 81 Fed. Reg. 7534 (2016), with interventions and protests due on or before February 25, 2016. New England Power Pool Participants Committee, New England States Committee on Electricity, National Grid, NRG Power Marketing LLC and GenOn Energy

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have [the lock-in] shall not be eligible to participate in an offer composed of separate resources. . . .").

[16] *Id.* at 8 (citing Tariff § III. 13.1.2.2.5.2).

[17] *Id.* at 9 (citing *New England Power Pool*, 87 FERC ¶ 61,045, at 61,198 (1999)).

[18] *Id.* at 10.

Management, LLC, and Entergy Nuclear Power Marketing, LLC filed motions to intervene. ISO-NE and Dominion filed answers.

11. ISO-NE argues that Dominion has failed to demonstrate that either the Tariff or ISO-NE's disqualification of the incremental capacity is unjust and unreasonable. ISO-NE argues that section III.13.1.1.1.5 of the Tariff provides that, where only a portion of a single resource is treated as a New Generating Capacity Resource, the other portion of the resource is treated as a separate resource.[19] As such, ISO-NE asserts, "two separate resources at the same station can submit an offer composed of separate resources to participate together in the FCA."[20] Finally, according to ISO-NE, the Tariff provides that the FCA Qualified Capacity for such a New Generating Capacity Resource shall be the lesser of the resource's summer qualified capacity and winter qualified capacity, as adjusted to account for applicable offers composed of separate resources, [21] and thus, because Dominion did not submit an offer of its winter capacity associated with its incremental summer capacity, the FCA Qualified Capacity for Dominion was set at zero, the lesser of its summer and winter Qualified Capacity.

12. ISO-NE disputes Dominion's claim that, because it elected the multi-year lock-in for the New Generating Capacity Resources, the requirement to submit composite offers should not apply. ISO-NE responds that the election to lock-in the price has no bearing on ISO-NE's determinations regarding the resources' FCA Qualified Capacity. ISO-NE states that a resource that elects the lock-in is not eligible to participate in a composite offer as the resource providing capacity in the summer period. ISO-NE adds that, had Dominion attempted to enter composite offers after its election of the lock-in, such offers would have been rejected by the ISO-NE's automated system, and Dominion would have had to undo the lock-in election in order to enter the composite offers that were required under the Tariff.

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[19] ISO-NE Answer at 5 (quoting Tariff section III.13.1.1.1.5 ("[f]or purposes of this Section III.13.1, where only a portion of a single resource is treated as a New Generating Capacity Resource, either as a result of partial clearing in a previous Forward Capacity Auction or pursuant to Section III.13.1.1.1.3 or Section III.13.1.1.1.4, then except as otherwise indicated in this Section III.13.1, that portion of the resource shall be treated as a New Generating Capacity Resource, and the remainder of the resource shall be treated as an Existing Generating Capacity Resource.")).

[20] *Id.* referencing Tariff § III.13.1.5 (emphasis added).

[21] *Id*. referencing Tariff § III.13.1.1.2.5.1

13. ISO-NE states that, while it sent the Qualification Determination Notifications on September 25, 2015, which specified that the new incremental capacity for the Manchester Street Station units was set at the combined 21 MW, it subsequently provided notice to Dominion on October 19, 2015, that the FCA qualified capacities for the New Generating Capacity Resources were set at 0 MW because Dominion did not submit composite offers for the resources.[22] Moreover, according to ISO-NE, Dominion could have reviewed ISO-NE's notices, checked the Forward Capacity Tracking System, or protested ISO-NE's informational filing to the Commission (filed November 10, 2015), which allows for challenges of this type.[23] ISO-NE states that the Tariff requires challenges to any determinations contained in the informational filing to be made no later than 15 days after its submission.[24] ISO-NE further states that it is the market participant's responsibility to manage the qualification of its resources.[25] Therefore, ISO-NE argues, Dominion's complaint should be considered an "out-of-time" challenge to ISO-NE's determination of FCA qualification.

14. ISO-NE also argues that Dominion's claim that it did not know about the applicable bidding rules for existing capacity resources with new incremental capacity is contradicted by Dominion's actions with regard to the third FCA (FCA 3). ISO-NE explains that Dominion in FCA 3 submitted a composite offer between a New Generating Capacity Resource and an Existing Generating Capacity Resource at the Manchester Street Station so that they could participate together in FCA 3.

15. In response, Dominion reiterates its arguments that, while new incremental capacity can submit a composite offer with its existing capacity, it is not a mandatory requirement. Dominion argues that its previous experience in FCA 3 is inapposite. Dominion states that, after repairing temporary de-rates and accounting for planned outages in 2006, it successfully challenged its lower qualified ratings in the first two FCAs. In FCA 3, Dominion explains, ISO-NE directed Dominion to submit a new capacity Show of Interest form for Unit 11 to resolve the issue for that unit, and ISO-NE

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[22] ISO-NE Answer at 3.

[23] ISO-NE Answer at 8. Although ISO-NE recognizes that Dominion did not have access to the confidential portions of the information filing, ISO-NE states that Dominion could have checked the values for its new incremental capacity resource and protested the filing. *Id.*

[24] *Id.* (citing Tariff § III.13.8.1(b)).

[25] *Id.* (citing *GenOn Energy Management v. ISO New England*, 152 FERC ¶ 61,044, at P 50 (2015)).

guided Dominion through this "unexpected and unknown process" that led to the submission of the referenced composite offer.[26]

16. Dominion also argues that it did not receive notice that the new incremental capacity was reset at zero until after the composite offer deadline.[27]

IV. Commission Determination

17. As discussed below, we grant, in part, and deny, in part, Dominion's complaint. We find that ISO-NE's existing Tariff is unclear as to whether new incremental capacity and existing capacity at the same generating station must submit a composite offer[28] in order to participate in the FCA. As a result of this lack of clarity, the Tariff fails to provide adequate notice of what the requirement is and, thus, we find the Tariff is unjust and unreasonable. However, we deny Dominion's requested relief.

18. At the crux of the complaint is interpretation of three Tariff provisions:

> **Section III.13.1.1.1.5. Treatment of Resources that are Partially New and Partially Existing**.
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> For purposes of this Section III.13.1, where only a portion of a single resource is treated as a New Generating Capacity Resource, . . .then except as otherwise indicated in this Section III.13.1, that portion of the resource shall be treated as a New Generating Capacity Resource, and the remainder of the resource shall be treated as an Existing Generating Capacity Resource.
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> **Section III.13.1.1.2.5.1 New Generating Capacity Resources Other Than Intermittent Power Resources and Intermittent Settlement Only Resources.**
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> The summer Qualified Capacity and winter Qualified Capacity of a New Generating Capacity Resource. . . shall be based on the data provided to the ISO during the qualification process, subject to ISO review and

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[26] Dominion Answer at 6.

[27] *Id.* at 7.

[28] The Tariff defines Composite FCM Transaction as "a transaction for separate resources seeking to participate as a single composite resource in a Forward Capacity Auction in which multiple designated FCM Participants provide capacity. . . ." Tariff § III.13.2.2.

> verification, and possibly as modified pursuant to Section III.13.1.1.2.3(b). The FCA Qualified Capacity for such a resource shall be the lesser of the resource's summer Qualified Capacity and winter Qualified Capacity, as adjusted to account for applicable offers composed of separate resources.
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> **Section III.13.1.5. Offers Composed of Separate Resources**
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> Separate resources seeking to participate together in a Forward Capacity Auction shall submit a composite offer form. . . . Separate resources may together participate in a Forward Capacity Auction as a single resource if the following conditions are met:
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> (a). . . .
>
> (b). . . . A resource electing . . . to have the Capacity Supply Obligation and Capacity Clearing Price continue to apply after the Capacity Commitment Period associated with the [FCA] in which its New Capacity Offer clears [*i.e.*, the lock-in provision] shall not be eligible to participate in an offer composed of separate resources as the resource providing capacity in the summer period in the [FCA].

19. Citing section III.13.1.5, Dominion argues that it was ineligible to submit a composite offer because it had elected the lock-in. ISO-NE, citing the same section, argues that Dominion was required to submit a composite offer and thus, was ineligible for the lock-in. In further support of its position, Dominion states that section 13.1.5 of the Tariff allows, but does not require, composite offers, in that it states "separate resources *may* together participate in an [FCA] as a single resource." Dominion argues that there is no clear support for requiring incremental new capacity at an existing resource to submit a composite offer with itself, particularly when it is clearly apparent that the existing winter capability more than covers the incremental summer capability.

20. ISO-NE bases its Tariff interpretation on elements of all three provisions above. It argues that section III.13.1.1.1.5 dictates that Dominion's New Generating Capacity and its Existing Generating Capacity be treated as separate resources. ISO-NE agrees that section III.13.1.5 provides that two separate resources at the same station can submit an offer composed of separate resources to participate together in an FCA. However, ISO-NE then looks to section III.13.1.1.2.5.1, which provides that the FCA Qualified Capacity for a New Generating Capacity Resource shall be the lesser of the resource's summer Qualified Capacity and winter Qualified Capacity and concludes that the absence of a composite offer linking Dominion's New Generating Capacity with Existing Generating Capacity available in the winter period results in an FCA Qualified Capacity of zero.

21. We find that ISO-NE's Tariff is unclear regarding the process for new incremental generating capacity and existing generating capacity at the same resource to participate in the FCA. While the Tariff expressly provides that a resource with existing and new generating capacity "may" submit a composite offer, the Tariff does not specify that a resource owner *must* submit a composite offer to create a link between new incremental capacity and existing capacity at the same resource. In contrast, with respect to existing capacity, the Tariff clearly states that, when the summer Qualified Capacity of an Existing Capacity Resource exceeds its winter Qualified Capacity, that resource *must* either (i) offer its summer Qualified Capacity as part of an offer composed of separate resources or (ii) have its FCA Qualified Capacity administratively set to the lower of the two capacity figures.[29] In addition, the Tariff creates confusion insofar as it states that an Existing Capacity Resource can qualify new incremental capacity and must indicate whether it selects the price lock-in[30] when, according to ISO-NE's interpretation, that new incremental capacity must be included as part of a composite offer and, thus is not eligible for the lock-in. We find that the lack of clarity regarding the process for new incremental capacity and existing capacity at the same resource to participate in the FCA fails to provide reasonable notice to market participants of the requirements, and is therefore, unjust and unreasonable.[31] Accordingly, we direct ISO-NE to submit a compliance filing within 60 days of the date of this order with Tariff language expressly addressing whether new incremental and existing capacity at the same resource must submit a composite offer and to provide the rationale for any such requirement.

22. With respect to the price lock-in, ISO-NE asserts that Dominion was required to submit a composite offer and that, under the Tariff, Dominion could not have also elected the lock-in; however, ISO-NE offers no rationale for why the lock-in is not available to composite resources. Indeed, since the intent of the lock-in provision is to incent new entry and provide investor assurance,[32] we see no reason why an existing generating resource with new incremental capacity should not be able to lock-in the

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[29] *Id*. § III.13.1.2.2.5.2. (emphasis added)

[30] *Id.*

[31] *Cf. Boston Edison Co.*, 98 FERC ¶ 61,292, at P 21 (2002) (the Commission has an interest in ensuring that tariffs clearly, completely and unambiguously identify services, rates and terms and conditions. The Commission thus frequently rejects proposed tariff language as unclear); *see also PJM Interconnection*, 137 FERC ¶ 61,108 (2011); *Entergy Serv. Co.*, 106 FERC 61,039 (2004); *Toledo Edison Co.*, 78 FERC ¶ 61,013 (1997); *Detroit Edison Co.*, 77 FERC ¶ 61,279 (1996).

[32] *See ISO New England Inc.*, 147 FERC ¶ 61,173, at P 56 (2014).

price for the new incremental capacity. Accordingly, we direct ISO-NE to revise its Tariff to either allow an existing generating resource to lock-in the price for the new incremental capacity or show cause why it should not be required to do so.

23. Although we find that ISO-NE's existing tariff is unclear and therefore unjust and unreasonable, we deny Dominion's requested relief. Because FCA 10 occurred in February 2016, granting the relief sought by Dominion would require resettling the market. In exercising its broad discretion in fashioning remedies,[33] the Commission has generally disfavored rerunning markets, explaining that doing so is an extraordinary measure that would create market uncertainty for market participants and require resolving complex questions.[34] The Commission has found that rerunning the markets would do more harm to electric markets than is justifiable.[35] Considering the relevant circumstances in this case, we will not require ISO-NE to rerun FCA 10. As an initial matter, we emphasize our finding here is that ISO-NE's Tariff is unjust and unreasonable, not that ISO-NE violated its Tariff. Thus, Dominion's argument that resettlement is required where a utility violates its tariff is inapt. Additionally, ISO-NE has a process in place to challenge disqualification in a timely fashion so as to avoid being in a position where market resettlement is necessary. We find that Dominion failed to take advantage of the opportunities[36] to challenge its disqualification in a timely manner, a factor that weighs against Dominion's requested relief.

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[33] *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,047, at 37 (2014) (citing *Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (Commission discretion is, if anything at its zenith when fashioning remedies).

[34] *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)).

[35] *Bangor Hydro-Electric Company v. ISO New England Inc.* 97 FERC ¶ 61,339 (2001); *Ameren Services Co.*, 127 FERC ¶ 61,121 at P 157 (2009) (Commission exercising its discretion in not ordering refunds when doing so would require re-running a market).

[36] *See supra* P 13.

<u>The Commission orders</u>:

(A) Dominion’s complaint is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) ISO-NE is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.