

162 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

ISO New England Inc.

Docket No. ER18-264-000

ORDER ACCEPTING INFORMATIONAL FILING

(Issued January 19, 2018)

1. On November 7, 2017, pursuant to section III.13.8.1 of the ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff), ISO-NE submitted an informational filing providing information relating to the twelfth Forward Capacity Auction (FCA)¹ for the 2021-2022 Capacity Commitment Period (Informational Filing), including the qualification of capacity resources to participate in FCA 12. As discussed below, the Commission accepts ISO-NE's Informational Filing.

I. Background

2. As part of its Forward Capacity Market (FCM), ISO-NE administers an annual FCA in which capacity resources compete to provide capacity to New England three years later, during the relevant one-year Capacity Commitment Period. The FCM rules require ISO-NE to submit to the Commission an informational filing no later than 90 days prior to each FCA that includes, *inter alia*, the details of the resources accepted or rejected in the qualification process for participation in the FCA and the capacity zones to be modeled for the FCA.² Under Tariff section III.13.8.1(b), the determinations in the informational filing will be used in the relevant FCA, unless the Commission issues an order within 75 days of the filing directing otherwise.

¹ The twelfth FCA (FCA 12) is scheduled to begin on February 5, 2018.

² ISO-NE Tariff, § III.13.8.1(a) (18.0.0).

3. As part of the process for qualifying resources to participate in the FCA, ISO-NE's Internal Market Monitor (IMM) reviews the prices at which certain resources propose to offer their capacity into the auction so as to prevent the exercise of buyer-side market power that could inappropriately suppress capacity prices. The IMM develops a benchmark price, the Offer Review Trigger Price (ORTP), for each resource type for new resources that seek to participate in the auction, set at a level that approximates that resource's cost of new entry.³ Each new resource that seeks to submit an offer in the FCA at a price below the relevant ORTP must include in its qualification package the New Resource Offer Floor Price (Offer Floor Price)⁴ and supporting documentation justifying that Offer Floor Price as competitive in light of the resource's costs, as well as relevant financial assumptions and cost projections for the resource. The IMM may consult with the resource sponsor to gather further information to complete its analysis.⁵ The IMM then issues a Qualification Determination Notification to each resource, informing it whether it has qualified to participate in the FCA and at what price or, if applicable, an explanation as to why the resource was not accepted.

II. Filing

4. On November 7, 2017, ISO-NE, as required by the Tariff, made the instant Informational Filing with the Commission for the 2021-2022 Capacity Commitment Period.⁶ The Informational Filing provides as follows:

5. ISO-NE will model three Capacity Zones in FCA 12: the Southeastern New England Capacity Zone (Southeastern Massachusetts, Rhode Island, and Northeastern Massachusetts/Boston, which will be modeled as an import-constrained zone), the Northern New England Capacity Zone (Maine, New Hampshire, and Vermont), and the Rest of Pool Capacity Zone (Connecticut and Western/Central Massachusetts).

³ *ISO New England Inc.*, 146 FERC ¶ 61,084, at P 3 (2014).

⁴ The New Resource Offer Floor Price is a value submitted by new resources that reflects the lowest price at which the resource requests to offer capacity in the FCA. ISO-NE Tariff, § III.13.1.1.2.2.3(a) (50.0.0).

⁵ ISO-NE Tariff, § III.13.1.1.2.2.3(a), III.A.21.2(iv) (50.0.0).

⁶ ISO-NE filed both a public version of its Informational Filing and a version for which it seeks privileged treatment. All citations from the Informational Filing are to the public version.

6. The Installed Capacity Requirement (ICR) is 34,683 MW. After accounting for 958 MW per month of Hydro Quebec Interconnection Capability Credits (HQICCs), a net ICR of 33,725 MW remains to be procured in FCA 12.
7. Qualified Existing Capacity Resources consist of 30,702 MW from Existing Generating Capacity Resources (intermittent and non-intermittent); 82 MW from Existing Import Capacity Resources; and 3,224 MW from Existing Demand Resources.
8. A total of 2,309 MW of Static De-list Bids were submitted for FCA 12.⁷
9. Overall, the qualification process for FCA 12 resulted in 5,605 MW of new resources and 35,007 MW of existing resources competing to meet the net ICR of 33,725 MW for the New England Control Area for the 2021-2022 Capacity Commitment Period.⁸
10. Regarding requests to offer below the relevant ORTP for new resources, ISO-NE explains that the IMM's capacity price estimate for qualifying new resources is derived by entering all relevant resource costs and non-capacity revenue data, as well as assumptions regarding depreciation, taxes, and discount rate, into the capital budgeting model used to develop the relevant ORTP and calculating the break-even contribution required from the FCM to yield a discounted cash flow with a net present value of zero for the project.⁹
11. ISO-NE states that, "[i]f the IMM determines that the requested offer price is inconsistent with the IMM's capacity price estimate, then the resource's [Offer Floor Price] will be set to a level that is consistent with the capacity price estimate, as determined by the IMM."¹⁰ ISO-NE further states that market participants were notified of the IMM's final determinations in their Qualification Determination Notifications, which ISO-NE provided to them on September 29, 2017.¹¹

⁷ A Static De-List Bid is a bid that may be submitted by a capacity supplier in an FCA to remove itself from the FCM for a one year period. ISO-NE Tariff, § I.2 (106.0.0).

⁸ Transmittal at 4-5.

⁹ Transmittal at 19.

¹⁰ Transmittal at 19.

¹¹ Transmittal at 10.

III. Notice of the Filing and Responsive Pleadings

12. Notice of the filing was published in the *Federal Register*, with interventions and protests due on or before November 22, 2017.¹² Timely motions to intervene were filed by the New England States Committee on Electricity, Dominion Energy Services, Inc., NRG Power Marketing LLC and GenOn Energy Management LLC, and Eversource Energy Service Company.

13. On November 22, 2017, Enerwise Global Technologies, Inc. (CPower) and Tesla, Inc. (together, Renewable Providers) and Efficiency Maine Trust (Efficiency Maine) submitted timely motions to intervene and protests.

14. On December 7, 2017, ISO-NE submitted an answer (ISO-NE First Answer). On December 13, 2017, CPower submitted an answer. On December 20, 2017, ISO-NE submitted an answer to CPower's answer (ISO-NE Second Answer) and Efficiency Maine submitted an answer.

IV. Commission Determination

A. Procedural Issues

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ISO-NE's, CPower's, and Efficiency Maine's answers because they have provided information that has assisted us in our decision-making process.

B. Substantive Issues

17. We accept ISO-NE's filing because we find that ISO-NE has complied with its obligations under Tariff section III.13.8.1 to submit information related to its qualification determinations and to provide sufficient supporting documentation. ISO-NE's filing meets these requirements by discussing, *inter alia*, the capacity zones to be modeled for FCA 12 and the details of the resources accepted or rejected in the qualification process for participation in the FCA. ISO-NE has provided evidence that it has appropriately reviewed all resources requesting to participate in FCA 12.

¹² 82 Fed. Reg. 53,496 (2017).

We discuss protested issues below.

1. Capacity Qualification for Demand Resources

a. Background

18. For each FCA, ISO-NE calculates the qualified capacity of existing Demand Resources, including resources comprised of energy efficiency measures. Data on each Demand Resource is submitted to ISO-NE's Energy Efficiency Measures Database, and each energy efficiency measure of a given resource is assigned a Measure Life.¹³ Pursuant to the Tariff, "[a] Demand Resource may continue to offer capacity in [FCAs] and reconfiguration auctions for Capacity Commitment Periods in an amount less than or equal to its remaining Measure Life."¹⁴ As ISO-NE explains in its answer, for existing Demand Resources, ISO-NE determines how many existing measures will reach the end of their Measure Life by the start of the Capacity Commitment Period and subtracts any newly expired measures from the Demand Resource's prior existing summer and winter qualified capacity (Demand Resource Methodology).¹⁵ Accordingly, an existing Demand Resource's qualified capacity, which is the amount the resource is allowed to bid into the auction, is equal to the sum of its prior existing qualified capacity (plus any new capacity that cleared in the previous FCA) minus the capacity of any newly expired measures and any other retirements, terminations, or de-list bids.

b. Protest

19. Efficiency Maine protests the Demand Resource Methodology used by ISO-NE to calculate existing capacity qualification values.¹⁶ Efficiency Maine states that the methodology inappropriately subtracts the amount of expiring measures from a Demand Resource's qualified capacity from a prior FCA, rather than from the Demand Resource's

¹³ The Measure Life is the estimated time a Demand Response measure will remain in place, or the estimated time period over which the facility, structure equipment, or system in which a measure is installed continues to exist, whichever is shorter. ISO-NE Tariff, § I.2 (106.0.0). ISO-NE states that, on average, the Measure Life of energy efficiency measures is approximately seven years. ISO-NE Answer at 10.

¹⁴ ISO-NE Tariff, § III.13.1.4.1 (50.0.0)

¹⁵ ISO-NE Answer at 11-12.

¹⁶ Efficiency Maine Protest at 6.

actual and known performance capacity that is reported in ISO-NE's Energy Efficiency Measure Database.¹⁷

20. Efficiency Maine states that the current Demand Resource Methodology exaggerates the impacts of expirations on three of its energy efficiency resources (Efficiency Maine Projects) and has led ISO-NE to assign qualification values for these resources that far understate their ability to provide capacity in the future. Efficiency Maine argues that the Demand Resource Methodology results in very little to zero capacity for these resources qualifying for the auction, does not account for actual performance of these resources, and thus is patently unreasonable, and effectively amounts to ISO-NE getting capacity for free. Moreover, Efficiency Maine argues that the Demand Resource Methodology not only results in depressed qualified capacity for energy efficiency owners, but it punishes them for delivering excess capacity by lowering the qualified capacity level for future FCAs as well.¹⁸

21. Efficiency Maine argues that ISO-NE should use performance capacity as reported in the Energy Efficiency Measures Database to define a Demand Resource's qualified capacity.¹⁹ It explains that, unlike with generation resources, energy efficiency capacity is known well in advance of the capacity commitment period and should be taken into account in the capacity qualification for FCA 12.²⁰ Efficiency Maine states that, under ISO-NE's methodology, Efficiency Maine stands to suffer a loss of up to \$3.7 million during FCA 12.²¹ However, Efficiency Maine states that it has been able to mitigate this

¹⁷ All owners of energy efficiency resources are required to use the Energy Efficiency Measure Database to report to ISO-NE all individual energy efficiency measures that have been installed, measured, and verified to provide capacity in the FCM. Each measure recorded in the database contains a description of the measure, the FCM resource to which it is assigned, the amount of capacity being provided in both summer and winter seasons, the date of the installation of the measure, and the life of the measure.

¹⁸ Efficiency Maine Protest at 21.

¹⁹ Efficiency Maine Protest at 21.

²⁰ Efficiency Maine Protest at 22.

²¹ Efficiency Maine Protest at 17.

loss down to \$1.5 million by, among other things, entering into Composite Offers that will allow it to receive FCA revenues for the entirety of its qualified summer capacity.²²

22. Efficiency Maine also argues that ISO-NE's Demand Resource Methodology is inconsistent with other resources' capacity qualification processes.²³ Efficiency Maine asserts that existing capacity qualification for generation appears to be based on audit values, while existing capacity qualification for intermittent resources appears to be based on recent performance during specific hours. Efficiency Maine asserts that using performance capacity as reported in the Energy Efficiency Measures Database to define a Demand Resource's qualified capacity would be consistent with how ISO-NE determines qualified capacity for other resources.

23. Efficiency Maine requests that the Commission direct ISO-NE to modify the qualified capacity determinations in the Informational Filing to match the Efficiency Maine Projects' summer performance without altering the Composite Offers already submitted and accepted.²⁴ It requests that the Commission ensure that no changes are made to the Composite Offers submitted by Efficiency Maine in FCA 12. Lastly, Efficiency Maine requests that the Commission direct ISO-NE to: (1) continue to work cooperatively with Efficiency Maine on this issue; and (2) correct the current methodology so that it accounts for resources performance for FCA 13.²⁵ Efficiency Maine argues that *NRG Power Mktg.*²⁶ did not change the Commission's authority under the Tariff to modify the determinations in the Informational Filing and that, in any case, its requested relief does not involve a significant rate change.²⁷

24. To the extent the Commission determines that a waiver of the Tariff is required to enable ISO-NE to make the requested modification described above, Efficiency Maine

²² The Tariff allows capacity resources that have different summer and winter capacity qualification values to enter into a single capacity supply offer composed of separate resources for participation in the FCA (Composite Offer).

²³ Efficiency Maine Protest at 22.

²⁴ Efficiency Maine Protest at 25-26. Specifically, Efficiency Maine requests that the Efficiency Maine Projects qualified capacity values be revised to 62.324 MW Summer Qualified Capacity and 79.003 MW Winter Qualified Capacity, cumulatively.

²⁵ Efficiency Maine Protest at 27.

²⁶ *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (2017) (*NRG Power Mktg.*).

²⁷ Efficiency Maine Protest at 28.

argues that granting waiver is appropriate in this instance because it meets the criteria on which the Commission has previously relied to grant such waivers. Efficiency Maine asserts: (1) both it and ISO-NE have acted in good faith in continuing discussions of this issue since implementation of the expiring measures methodology in 2011; (2) the waiver would be of limited scope in allowing the modification of only Efficiency Maine's qualification values for FCA 12; (3) Efficiency Maine faces a concrete problem that must be remedied, namely, it will deliver significant amounts of capacity to ISO-NE for which it will receive no revenue; and (4) this modification will in no way delay FCA 12, affect third parties, or impact ISO-NE's administration of its Tariff requirements.²⁸

c. Answers

25. ISO-NE states that Efficiency Maine's requested relief is outside the scope of this proceeding.²⁹ It states that although the ISO-NE Tariff allows market participants to file comments or challenges to the determinations contained in ISO-NE's Informational Filing,³⁰ Efficiency Maine does not dispute that ISO-NE correctly applied the Demand Resource Methodology to evaluate the expiring measures of its three energy efficiency resources. Rather, ISO-NE asserts, Efficiency Maine is contesting the Demand Resource Methodology underlying ISO-NE's determinations, and its filing constitutes a complaint fashioned as a protest. ISO-NE states that the Commission has long required that a complaint not be included as part of another pleading such as a protest.³¹

26. With respect to Efficiency Maine's request for waiver, ISO-NE states that the Demand Resource Methodology is not contained in the Tariff and, therefore, a request to waive the Tariff is inapplicable.³² However, even assuming *arguendo* that a request for waiver is applicable, ISO-NE states that Efficiency Maine's request does not meet the Commission's waiver requirements. With respect to the requirement that a waiver must resolve an error made in good faith and address a concrete problem, ISO-NE argues that no error or concrete problem has been demonstrated in this case. ISO-NE states that it has applied the Demand Resource Methodology correctly, and the specific results produced by that methodology are the result of Efficiency Maine's business decisions.

²⁸ Efficiency Maine Protest at 28-29.

²⁹ ISO-NE Answer at 14.

³⁰ ISO-NE Answer at 14 (citing ISO-NE Tariff, § III.13.8.1(d) (18.0.0)).

³¹ ISO-NE Answer at 14 n.32 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 at 10 (D.C. Cir. 2002)).

³² ISO-NE First Answer at 15.

ISO-NE also argues that such a waiver could result in unfavorable treatment to similarly-situated market participants. Accordingly, it argues that the waiver would neither be limited in scope nor hold third parties harmless.

27. In response to Efficiency Maine's assertions that the qualified capacity of the Efficiency Maine Projects has been unjustly decreased, ISO-NE argues this decrease is the result of Efficiency Maine's business decisions in creating and managing the Efficiency Maine Projects.³³ ISO-NE explains that qualified capacity for a resource is the lower of the resource's summer or winter qualified capacity. While Efficiency Maine could have submitted a Composite Offer with another resource for the Efficiency Maine Projects' qualified capacity to be equal to its higher winter value, Efficiency Maine decided not to do so. ISO-NE explains that its business decision resulted in a lower qualified capacity in subsequent FCAs because, once a new resource clears in an FCA, it is thereafter an existing resource and its qualified capacity equals the amount of capacity that cleared when the resource participated as new.

28. ISO-NE states that, when the Efficiency Maine Projects were initially created, Efficiency Maine installed additional efficiency measures beyond the established qualified capacity values for these resources and without regard to the deadlines associated with qualifying new or incremental capacity. Specifically, ISO-NE states that, pursuant to the Tariff, efficiency measures that have been in service prior to the applicable Existing Capacity Qualification Deadline cannot qualify as new.³⁴ ISO-NE argues that Efficiency Maine's decision to install additional measures before this deadline eliminated Efficiency Maine's ability to qualify the MW installed above the resources' original qualified capacity values in the FCM in subsequent years.³⁵

29. With respect to Efficiency Maine's arguments that the Demand Resource Methodology is inconsistent with other resources' capacity qualification processes and therefore unduly discriminatory against the Efficiency Maine Projects, ISO-NE argues that differences in the qualification rules for different resources types are not in and of themselves unduly discriminatory and, in fact, reflect the stark physical difference between the various resource types.³⁶ In contrast to generators, ISO-NE notes that Demand Resources reduce energy consumption rather than produce energy, and such reduction in consumption cannot be measured directly but must be established using a

³³ ISO-NE First Answer at 17.

³⁴ ISO-NE Tariff, § III.13.1.4.1.20 (50.0.0).

³⁵ ISO-NE First Answer at 18 (citing ISO-NE Tariff, § III.13.1.4.1.2).

³⁶ ISO-NE First Answer at 19.

measurement and verification plan. Additionally, ISO-NE argues that the requested relief would result in undue preferential treatment for the Efficiency Maine Projects.³⁷ For instance, ISO-NE notes that a generator would not be able to clear a new 100 MW generator only to build a larger 115 MW resource and qualify the 15 MW discrepancy as existing capacity. Instead, that resource would need to use one of the qualification processes for incremental generation in order to bring this additional 15 MW to the FCM. ISO-NE argues that to grant Efficiency Maine's requested relief would allow the Efficiency Maine Projects to do what a generator could not, that is, circumvent the rules for qualifying increments to existing resources.

30. Lastly, ISO-NE asserts that it would be unfair for the Commission to require ISO-NE to change the Demand Resource Methodology for a subset of market participants (i.e., the Efficiency Maine Projects) without prior notice of the change to all other market participants that have relied on the methodology to make their business decisions.³⁸

31. In its answer, Efficiency Maine states that, contrary to ISO-NE's arguments, Efficiency Maine does not seek to apply a methodology based solely on actual delivered performance and that its requested relief will not bring about existing qualification values that are greater than the values granted to Efficiency Maine's resources in prior qualification processes. Efficiency Maine states that a closer analogy would be if Efficiency Maine had built a 115 MW resource that slowly degraded over time and was now requesting qualification of only 65 MW for Capacity Period 2021-2022, even less than the original 100 MW qualified amount; thus, Efficiency Maine argues, it is not seeking to circumvent the market rule for qualifying new capacity. Efficiency Maine argues that there is no basis for allowing generating resources to account for and get the benefit of the performance capacity that they deliver to ISO-NE, while energy efficiency resources cannot get the benefit of the equivalent performance capacity when determining capacity qualification for an upcoming FCA.³⁹

32. Efficiency Maine disputes ISO-NE's argument that Efficiency Maine's business decisions in Capacity Commitment Periods 1 through 5 are the cause of its difficulties now.⁴⁰ Efficiency Maine states that, while market participants knew from the Tariff that

³⁷ ISO-NE First Answer at 20.

³⁸ ISO-NE First Answer at 21-22.

³⁹ Efficiency Maine Answer at 4-5.

⁴⁰ Efficiency Maine states that ISO-NE did not notify market participants of how it would evaluate expiring measures of energy efficiency resources until the qualification process for FCA 6, and until that time, energy efficiency resources were not required to report expiring measures to ISO-NE. The Capacity Commitment Period associated with
(continued ...)

expiring measures would be taken into account, there was no way for them to know what methodology ISO-NE would use. Further, Efficiency Maine states that it has not failed to distinguish between over-installing measures and requesting a new increment to an existing resource. Rather, Efficiency Maine argues, ISO-NE does not recognize that resources deliver excess capacity out of an abundance of caution to ensure they deliver upon capacity obligations, especially where there are major differences between summer and winter capacity performance. Efficiency Maine states that, at the time of FCAs 1 through 5, Efficiency Maine had no ability to take into account any methodology for expiring measures, let alone one that would discourage responsible delivery of capacity, because none existed and no discussion of one had occurred. Thus, Efficiency Maine states, ISO-NE's argument based on Efficiency Maine's business decisions for that period is unreasonable. Moreover, Efficiency Maine argues that it would not have been able to resolve its problems through a Composite Offer, since Efficiency Maine would have had difficulty finding Composite Offers for its excess winter capacity since there is generally more winter than summer capacity on the system.⁴¹ In response to ISO-NE's argument that permitting the requested relief would grant unduly preferential treatment to Efficiency Maine's resources, Efficiency Maine states that its three resources are the only resources that are materially harmed by the current methodology, thus there are no similarly-situated parties that could be harmed.⁴²

33. Finally, Efficiency Maine states that its protest is not, as ISO-NE asserts, a complaint fashioned as a protest, but rather is an appropriate challenge to the determinations in ISO-NE's Informational Filing. Efficiency Maine further states that it is not asking the Commission to direct ISO-NE to change its methodology for FCA 12, but rather "is simply challenging ISO-NE's application of its current methodology to the unique situation" of Efficiency Maine's resources.⁴³ Efficiency Maine restates that, if the Commission determines that a Tariff waiver is necessary to grant the relief it requests, Efficiency Maine has met the requirements for a waiver.

FCA 5 began in June 2014, eight years after the first eligible measures were installed in June 2006, and Efficiency Maine asserts that at the time of qualification for FCA 5 in spring 2010, a large portion of installed efficiency energy measures were compact fluorescent light bulbs with measure lives shorter than eight years, such that they would have expired by CCP 2014-2015. Efficiency Maine states that, absent communication from ISO-NE, it had already made plans to account for the expiration of these measures. Efficiency Maine answer at 6-7.

⁴¹ Efficiency Maine Answer at 8, 8 n.8.

⁴² Efficiency Maine Answer at 9.

⁴³ Efficiency Maine Answer at 9.

d. Determination

34. Efficiency Maine does not dispute that ISO-NE has applied its existing Demand Resources Methodology consistently with its Tariff. We agree with ISO-NE that Efficiency Maine's loss with respect to its FCA 12 qualification is the result of its business decisions. As ISO-NE explains, qualified capacity—that is, the quantity of capacity for which a capacity supplier is compensated in the FCM—is the lower of the resource's summer or winter qualified capacity. Therefore, in instances where a capacity supplier's summer and winter qualified capacity is significantly different, such as is the case with the Efficiency Maine Projects, a capacity supplier may be unable to receive compensation for some amount of unmatched seasonal capacity unless it enters into a Composite Offer. This limitation is true for all resource types. Indeed, as Efficiency Maine acknowledges, it has mitigated a significant portion of its unmatched capacity in FCA 12 by entering into Composite Offers.

35. Furthermore, according to section III.13.1.4.1.2 of the Tariff, measures that have been in service prior to the applicable Existing Capacity Qualification Deadline cannot qualify as new. Efficiency Maine Projects' performed above its qualified capacity due to measures installed *after* the initial clearing of these resources.⁴⁴ We agree with ISO-NE that Efficiency Maine should have sought to qualify any additional capacity prior to such additional measures being in service. Accordingly, to the extent that the Efficiency Maine Projects' over-performance is the result of Efficiency Maine's failure to seek to clear new incremental capacity in the FCA, we find it inappropriate to now mitigate the consequences of that action (or inaction) through changes to the Demand Resource Methodology.

36. Lastly, we agree with ISO-NE that it would be inappropriate for the Commission to require ISO-NE to use Efficiency Maine's proposed methodology for the Efficiency Maine Projects while still using the current Demand Response Methodology for all other energy efficiency resources with expiring measures. Although Efficiency Maine argues that its requested relief is limited in scope in that only the Efficiency Maine Projects are materially affected by the Demand Resource Methodology, this does not justify granting relief in this instance. Indeed, the very characteristics identified by Efficiency Maine which, it argues, makes the Efficiency Maine Projects uniquely situated—e.g., no new incremental capacity has been qualified for the Efficiency Maine Projects since FCA 5—are the result of its own business decisions.⁴⁵ Accordingly, we find Efficiency Maine's request that the Commission direct ISO-NE to employ a different methodology to evaluate the Efficiency Maine Projects would grant unduly preferential treatment to

⁴⁴ ISO-NE First Answer at 18.

⁴⁵ Efficiency Maine Protest at 24.

Efficiency Maine as compared to other Demand Resources that, despite having the same information as Efficiency Maine regarding the rules governing the qualification of Demand Resources, declined to add additional energy efficiency measures in the same manner as Efficiency Maine.

2. Renewable Technology Resource Exemption

a. Background

37. New resources seeking to participate in the FCM may request an exemption from the IMM's ORTP by electing to be designated as a Renewable Technology Resource (RTR). Only the portion of the resource's qualified capacity that meets the requirements of section III.13.1.1.1.7 is eligible for RTR designation. Specifically, under section III.13.1.1.1.7, a resource seeking to be designated as an RTR resource must demonstrate that it:

(a) receive[s] an out-of-market revenue source supported by a state- or federally-regulated rate, charge or other regulated cost recovery mechanism;

(b) qualif[ies] as a renewable or alternative energy generating resource under any New England state's mandated (either by statute or regulation) renewable or alternative energy portfolio standards as in effect on January 1, 2014, or, in states without a standard, qualif[ies] under that state's renewable energy goals as a renewable resource (either by statute or regulation) as in effect on January 1, 2014. . . . [and];

(d) has been designated for treatment as a Renewable Technology Resource pursuant to Section III.13.1.1.2.9.

38. Section III.13.1.1.2.9 governs the process of applying for an RTR designation. It provides that:

A Project Sponsor or Market Participant electing Renewable Technology Resource treatment . . . shall submit a Renewable Technology Resource election form no later than five Business Days after the date on which the ISO provides qualification determination notifications.

b. Protest

39. Renewable Providers request that the Commission require ISO-NE to reevaluate the RTR designation application for six new on-peak demand resources comprised of renewable technologies, with five solar projects and one solar and fuel cell project (together, Renewable Projects) for FCA 12 with the understanding that new renewable resources are eligible to receive in the future an out-of-market revenue source supported

by a Renewable Portfolio Standard (RPS) program.⁴⁶ Renewable Providers argue that new on-peak demand resources that are to be operational by the Capacity Commitment Period and eligible to receive revenue under current RPS standards should receive RTR designation for FCA 12.

40. Renewable Providers explain that the Renewable Projects, which CPower submitted for qualification in FCA 12, are typical renewable technologies and projects that routinely meet the state definitions as “renewable” and are accepted under state RPSs as eligible for out-of-market revenue streams associated with renewable energy certificates.⁴⁷ Renewable Providers state that the Renewable Projects passed the qualification process and were assigned the default ORTP of \$12.864/kW-month.⁴⁸ They state that CPower did not submit a challenge to the ORTP at that time because the Tariff allows, under the RTR exemption, up to 200 MW in each auction to receive an Offer Floor Price of \$0.00/kW-month, provided that the RTR election is made five days after the qualification notice and that the project meets the relevant criteria in the Tariff. Renewable Providers state that CPower timely sought to elect RTR designation for the qualified Renewable Projects and submitted the required materials.

41. Renewable Providers state that on October 12, 2017, ISO-NE notified CPower that its request for the RTR designation was denied because the information provided was incomplete. Renewable Providers state that CPower responded to ISO-NE that same day requesting more detail on the reason for this denial. Renewable Providers state that, on October 15, 2017, ISO-NE gave the following explanation (October 15 Response):

The supporting documentation submitted as part of [CPower’s] RTR election lacks specific project detail to meet the requirements of Tariff Section III.13.1.1.1.7 (a) and (b). In other words, given the information [CPower] provided, [ISO-NE] could not make the determination that [CPower’s] resources were receiving an out of market revenue and qualify as a renewable or alternative energy resource.⁴⁹

42. Renewable Providers note that the October 15 Response also communicated that acceptable supporting documentation for RTR designation would include: (1) the name of the specific state renewable or alternative energy project that the relevant resource is

⁴⁶ Renewable Providers Protest at 19.

⁴⁷ CPower Protest at 10.

⁴⁸ Renewable Providers Protest at 11.

⁴⁹ Renewable Providers Protest at 12 (citing October 15 Response, Attachment A).

participating in; (2) an internet link to more information on that program; (3) and the paperwork showing that the resource has been accepted into that program and is receiving revenue from the program.⁵⁰ Based on the October 15 Response, Renewable Providers argue that ISO-NE requires that new resources must already be accepted into a state program and actually receiving revenue from that program in order to qualify for RTR designation.

43. Renewable Providers argue that such an interpretation is at odds with later clarification by ISO-NE. Specifically, Renewable Providers state that, on November 17, 2017, ISO-NE provided clarification that approved RTR projects have “furnished documentation indicating those project[s] received or *were eligible* to receive out-of-market revenue and *would be qualified* as eligible resource[s] by state regulators under a specific renewable resource statute, or regulation.”⁵¹ Accordingly, Renewable Providers argue that ISO-NE equivocates between a requirement that RTR resources “are receiving” revenue and a requirement that those resources “would” qualify and “were eligible to receive” revenues.

44. Renewable Providers state that, as part of its qualification package and its RTR designation documentation, CPower provided a comprehensive list of relevant state regulations for each of its resources to be considered for RTR designation.⁵² They argue that at the time that ISO-NE made its RTR designations, ISO-NE was in possession of all the information required by the Tariff and specified in the November 17 Response. They explain that ISO-NE accepted CPower’s submittals detailing the generating technology, capacity size, location, and proposed or actual commercial start date. Renewable Providers also state that CPower submitted a summary providing reference to specific state regulations that each proposed project requesting RTR designation would qualify for and documentation indicating those projects received or were eligible to receive out-of-market revenue and would be qualified as renewable resources.

45. Renewable Providers argue that ISO-NE’s position that RTR designation requires a new resource to be accepted into an RPS program and to be already receiving revenue from that program is contrary to section III.13.1.1.7.⁵³ They argue that the ISO-NE Tariff does not require that candidate RTR resources must be receiving out-of-market revenues,

⁵⁰ Renewable Providers Protest at 12-13.

⁵¹ Renewable Providers Protest at 13 (citing Attachment A) (November 17 Response).

⁵² Renewable Providers Protest at 14.

⁵³ Renewable Providers Protest at 15.

but rather requires that such resources must be able or eligible to receive such revenues. Renewable Providers state that the Renewable Projects, as new resources, are planned for commercial operation in the 2020-2021 Delivery Year. The logical consequence of the commercial operation date is that new resources are not yet in service and thus cannot yet receive revenue from an out-of-market source. Likewise, these specific resources have not yet formally qualified as a renewable or alternative energy generating resource, although, under current rules, these project and resource types have previously qualified under the relevant state RPS programs. Renewable Providers find it inconsistent that ISO-NE is able to judge, through the qualification process, that a resource can be delivered more than three years in the future, but cannot determine whether a resource would be eligible for an RPS program.

46. Lastly, Renewable Providers argue that ISO-NE RTR guidance is inadequate and deviates from the ISO-NE Tariff.⁵⁴ They argue that the lack of pertinent examples invariably lead to vague RTR designation review criteria that are inconsistent with the ISO-NE Tariff and contrary to the state purpose of the RTR provisions.

c. Answers

47. ISO-NE clarifies in its first answer that it evaluated CPower's application for RTR designation based on whether the Renewable Projects *would* be eligible to receive an out-of-market subsidy and *would* be eligible to participate in a state RPS (as opposed to whether the Renewable Resources currently receive an out-of-market subsidy and participate in a state RPS).⁵⁵ However, ISO-NE states that it denied the RTR designation to the Renewable Projects because CPower failed to submit sufficient resource-specific information for ISO-NE to make a determination that the resources qualified for such treatment.⁵⁶ It states that, instead of using the RTR election form, CPower submitted documentation highlighting general New England state renewable energy statutes. ISO-NE states that the principal supporting documentation submitted by CPower for the Renewable Projects included a table summarizing sources of potential out-of-market revenues for "all solar projects" represented by CPower and a list of excerpted references to individual state renewable energy statutes for which the Renewable Projects may be eligible. ISO-NE states that no resource specific information related to the amount of summer capacity for each of the resources, including location and proposed or actual commercial start date, was included by CPower in the RTR designation documentation.

⁵⁴ Renewable Providers Protest at 17-18.

⁵⁵ ISO-NE First Answer at 5.

⁵⁶ ISO-NE First Answer at 6.

48. ISO-NE states that, without project-specific information, ISO-NE cannot make an RTR election eligibility determination in conformance with the Tariff.⁵⁷ In particular, without facility-specific information, ISO-NE states that it was not able to determine whether each of the Renewable Projects met the relevant state eligibility requirements, including whether each individual resource receives, or would be eligible to receive, out-of-market revenue and qualifies, or would qualify, as a renewable or alternative energy portfolio standards.

49. ISO-NE states that it was able to conclude from general documentation of state energy statutes and the list of projects seeking RTR treatment provided by CPower that the Renewable Projects would include photovoltaic capacity throughout New England or photovoltaic capacity and fuel cell capacity in Connecticut and that these resources would be eligible for RTR designation under various RPSs in New England.⁵⁸ However, ISO-NE states that it was unable to determine based on the documentation submitted by CPower whether the aggregate capacity for each resource qualified or would qualify under the applicable state RPS because CPower did not provide any individual facility-specific information such as individual facility size (MW), actual or approximate facility location or type (residential, commercial, industrial, or institutional), and actual or estimated commercial operation date and, most critically, the specific state RPS provision under which each resource is seeking to qualify.⁵⁹

50. In response to Renewable Providers' arguments that the information ISO-NE needed to make the determination was actually part of the Renewable Projects' new capacity qualification package, ISO-NE states that this information does not meet the RTR exemption requirements.⁶⁰ First, ISO-NE notes that the burden is on the project sponsor to demonstrate that its resource satisfies the requirements in the Tariff for RTR designation and that nothing in CPower's RTR submittal made in October 2017 referenced the new capacity qualification package as having additional information

⁵⁷ ISO-NE First Answer at 7.

⁵⁸ ISO-NE First Answer at 7.

⁵⁹ ISO-NE First Answer at 7-8. Furthermore, ISO-NE states that CPower did not provide an explanation as to whether the six Renewable Projects were in single or aggregate (multiple sites) locations. ISO-NE explains that for solar photovoltaic projects, state RPSs can have several eligibility categories varying by host location type and capacity size. Accordingly, without detailed facility-specific information, ISO-NE states that it is not possible to make an RTR determination for an aggregated resource without knowing these underlying project details. *Id.*

⁶⁰ ISO-NE First Answer at 8.

needed to meet these requirements. ISO-NE states that it is not reasonable to expect ISO-NE to search for information from project sponsors that may be relevant to RTR designation in other locations beyond the submission of the resource's election of RTR designation.

51. Secondly, ISO-NE states that the information in the new capacity qualification packages for FCA 12, which were filed in June 2017, could have changed by October 2017. When ISO-NE reviews the new capacity qualification package to qualify new demand resources, it does not assume that all projects will become commercial by the relevant Capacity Commitment Period, and, therefore, the information submitted in the new capacity qualification package may be different from the information that is submitted to support an RTR election.⁶¹

52. ISO-NE states that, as part of the response to Renewable Providers' protest, it reviewed the documentation submitted by CPower as part of the new capacity qualification packages for the Renewable Projects. ISO-NE asserts that, although the qualification package was sufficient for purposes of determining an appropriate capacity amount to qualify each resource, it still lacked the specific detail necessary for ISO-NE to determine whether each resource met the requirements for an RTR designation. Specifically, the documentation would have needed sufficient information to allow ISO-NE to determine whether the Renewable Projects were qualified, or would qualify, for out-of-market revenue and under which specific state statute or regulation the individual projects would qualify as renewable resources. ISO-NE maintains that this information was not provided with either the new capacity qualification package or the RTR election submittal.

53. In its answer to ISO-NE, CPower states that ISO-NE agrees with the Renewable Providers that that correct RTR evaluation standard is whether the resource "would be eligible" to receive out-of-market subsidies from a state RPS program, but now argues that there is no need to reevaluate the application for RTR designation under the correct standard because CPower did not use the RTR election form and thus did not provide project- and RPS-specific information.⁶² Renewable Providers argue that ISO-NE applied an incorrect and unfair RTR designation evaluation standard despite having all of the necessary documentation and now is trying to backfill that error. CPower argues that it submitted all necessary project-specific information via the Forward Capacity Tracking System (FCTS) for RTR designation purposes, but ISO-NE simply failed to review it.

⁶¹ ISO-NE First Answer at 9.

⁶² CPower Answer at 2.

54. In response to ISO-NE's statement that CPower did not use the ISO-NE-provided RTR election form, CPower states that it is not aware of a posted document described as an RTR form or template.⁶³ CPower asserts that ISO-NE is likely referring to a document entitled "Renewable Technology Resource Election Directions." CPower states that these directions do not specify that the submittal needs to be provided via that document. Accordingly, CPower states that the logical conclusion, as discussed below, is that the RTR election and documentation should be provided along with all the project-specific qualification information via ISO-NE's FCTS.

55. CPower states that it submitted renewable qualification and RTR information for each of the Renewable Projects via the FCTS. CPower states that each project, as submitted through the qualification process has the option of electing RTR treatment. CPower states that it could not elect RTR treatment for each project unless the project-specific information already had been submitted and accepted by ISO-NE via FCTS. Therefore, it argues that all necessary resource-specific information was available to ISO-NE at the time of the RTR evaluation.

56. CPower states that ISO-NE admits that the Renewable Projects include photovoltaic and fuel cell capacity that are eligible under the relevant RPS programs.⁶⁴ CPower states that, if ISO-NE had looked at the project-specific information in the FCTS under a separate tab, ISO-NE would have seen all of the project-specific information easily correlated with the obvious state RPS rules provided for each of those projects. CPower argues that it is reasonable for market participants to expect that RPS information submitted in a tab as part of approved project-specific qualification information would be reviewed together for RTR designation evaluation.

57. In its second answer, ISO-NE states that the submittals attached in Renewable Providers' protest and CPower's answer are not sufficiently detailed to provide actual or approximate facility location, the *specific* state RPS provisions under which each facility comprising the resource is seeking to qualify; and, most importantly, the individual facility size (MW), since RPS eligibility also varies depending on the size of the capacity being added at an individual facility.⁶⁵ ISO-NE states that, without this detailed information, it cannot match the underlying facility information for each of CPower's projects with the RPS documentation that CPower provided in its RTR designation submittal.

⁶³ CPower Answer at 3.

⁶⁴ CPower Answer at 5 (citing ISO-NE Answer at 10).

⁶⁵ ISO-NE Second Answer at 3-4.

d. Determination

58. We reject Renewable Providers' assertion that ISO-NE improperly refused to grant their resources' RTR designation. As noted above, section III.13.1.1.1.7 of the Tariff, which sets forth the requirements for a resource to obtain RTR designation, states at subsection (d) that a resource must have been designated as an RTR "pursuant to Section III.13.1.1.2.9." Section III.13.1.1.2.9 of the Tariff, in turn, states that a party seeking RTR designation shall provide this information by "submit[ting] a Renewable Technology Resource election form." We understand this form to be the document entitled "Renewable Technology Resource Election Directions."⁶⁶ This document sets forth three criteria for RTR designation and specifies the supporting documentation that is required to meet each criterion. For example, the capacity supplier must "Specify [the] state in which the resource is located and identify the statute or regulation of that state, which is presently in effect, that the resources qualifies under."

59. As an initial matter, we note that CPower, in its answer, acknowledges that it did not submit all of the information specified by the Renewable Technology Resource Election Directions as part of a single RTR submittal, but rather, contends that it did so through other submittals provided as part of the qualification process.⁶⁷ But even separately from the question of whether the Renewable Technology Resource Election Directions do or do not constitute the type of "form" covered by section III.13.1.1.2.9, we agree with ISO-NE that it is unreasonable for capacity suppliers to assume that information from previous submittals would obviate the informational requirements of the RTR designation. Section III.13.1.1.2.9 of the Tariff expressly states that parties "shall submit a Renewable Technology Resource election form" to obtain a designation as Renewable Technology Resources, and parties are required to comply with this directive.

60. Moreover, we agree with ISO-NE, based upon the record here, that the substance of CPower's application for RTR designation is deficient. ISO-NE states that, in addition to the information submitted by CPower as part of its application for RTR designation,

⁶⁶ ISO-NE, "Renewable Technology Resource Election Directions." Available at https://www.iso-ne.com/static-assets/documents/2015/09/renewable_tech_resrc_directions_09_24_15a.doc.

⁶⁷ CPower Answer at 3 ("CPower is not aware of a posted document described as [a Renewable Technology Resource] 'form' or 'template.' The [Renewable Technology Resource] directions do not specify that the submittal needs to be provided via that document . . . [and] the logical conclusion [is that] documentation should be provided along with all the project-specific qualification information via ISO-NE's [forward capacity tracking system]").

ISO-NE has reviewed the information submitted in CPower's qualification package and still finds these submittals jointly insufficient for purposes of meeting the information requirements of the Tariff. As explained above, ISO-NE requires facility- (or site-) specific information, such as the approximate facility location; the specific RPS provision(s) under which the facility comprising the resource is seeking to qualify; and the individual facility size. Although CPower's qualification package contains some location-specific information and that CPower's RTR submittal contains general information on possibly applicable RPS statues and regulations, we agree with ISO-NE that neither sufficiently enable ISO-NE to determine the specific provisions and manner (e.g., on an individual or aggregate basis) in which the Renewable Projects seek RPS qualification. We agree that such specificity is necessary for ISO-NE to have sufficient certainty that the Renewable Projects will still qualify as RTR resources by the time of the relevant Capacity Commitment Period. Thus, we find that CPower failed to comply with the Tariff's requirements to obtain RTR designation.

The Commission orders:

ISO-NE's Informational Filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.