

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Footprint Power LLC

Docket No. ER13-____-000

REQUEST FOR WAIVER OF FOOTPRINT POWER LLC

Footprint Power LLC (“Footprint”) hereby files this request for waiver of the capacity qualification and financial assurance deadlines in the ISO-NE Transmission, Markets and Services Tariff (“Tariff”), Market Rule 1, Sections III.13.1.1.2, III.13.1.1.2.8, III.13.1.9, and III.13.1.10, to permit 674 MW of new capacity to participate in the Seventh Forward Capacity Auction (“FCA 7”). On November 21, 2012, Footprint filed a motion to intervene and protest of ISO New England Inc.’s (“ISO-NE”) Informational Filing regarding the qualification of capacity resources to participate in FCA 7 (Docket No. ER13-335-000). In that protest, Footprint sought the same waivers of the qualification deadlines so that this new project can participate in FCA 7 at a FCA Qualified Capacity of 674 MW.¹ Out of an abundance of caution, Footprint now seeks the same relief via this separate request for waiver.

Footprint is developing a new quick-start, gas-fired combined cycle facility in the NEMA/Boston load pocket(the “Facility”). Footprint is developing the only new “outside-the-fence” generator in the ISO-NE interconnection queue in the NEMA/Boston capacity zone and therefore the only large generator that can participate in FCA 7.² It recently

¹ Qualification in the FCA is limited to the lesser of summer and winter ratings. ISO-NE Tariff, Market Rule 1 § III.13.1.1.2.5.1. The project has an aggregate summer capacity of 692 MW and winter capacity of 674 MW, yielding a FCA Qualified Capacity of 674 MW.

² The only other NEMA/Boston resources in the interconnection queue are (1) an uprate of an existing unit of no more than 15MW (to a total of 28.5 MW) and (2) a 12.5 MW gas turbine being developed by
(cont’d)

acquired the existing coal- and oil-fired Salem Harbor Station for the express purpose of demolishing that facility and addressing environmental conditions at the site to make way for a new, clean, efficient, quick-start natural gas-fired generating solution. This demolition and redevelopment effort enjoys broad support from local residents, interest groups, and elected officials.

Footprint sought to qualify its capacity in FCA 7. It has met every qualification deadline and information request and has worked diligently with ISO-NE and the host transmission utility, New England Power Company d/b/a National Grid (“National Grid”), to ensure that any transmission work necessary to interconnect the Facility to the ISO-NE system could be completed by June 1, 2016. At the time that ISO-NE was required to issue its Qualification Determination Notices (“QDN”) on September 28, 2012, however, Footprint, National Grid, and ISO-NE were still working through the relevant technical analysis to ensure that the needed transmission upgrades could be in service by June 2016. With the results of that transmission analysis not yet complete, ISO-NE issued a QDN to Footprint that qualified only approximately 85% of the output of the Facility (570 MW of the Facility’s 674 MW winter rating).

Despite the QDN deadline, the parties continued to work together to complete the technical analysis needed to qualify the Facility as expeditiously as possible. Footprint now understands, through discussions with both National Grid and ISO-NE, that—after receipt of an updated Officer’s Statement from National Grid pursuant to Market Rule 1, Section III.13.1.1.2.3—ISO-NE has determined that the upgrades are reasonably expected to be in

(cont’d from previous page)

MATEP, the Boston area consortium of hospitals. November 1, 2012, Generator Interconnection Queue, http://www.iso-ne.com/genrtion_resrcs/nwgen_inter/status/index.html.

place prior to June 1, 2016. If the QDN were issued today, ISO-NE thus would qualify the full 674 MW of output of the Facility for participation in FCA 7. As a result, a waiver of the qualification deadlines now is necessary to permit the Facility to participate in FCA 7 at its full rating of 674 MW.

Granting the limited waivers sought here is just and reasonable and fully consistent with similar waivers granted in the past,³ including waivers sought by market participants of ISO-NE tariff provisions.⁴ The Facility will be an important resource for maintaining reliability in the Boston load pocket in 2016, as it is the only generator in the ISO-NE interconnection queue in the NEMA/Boston load pocket that is large enough to significantly improve reliability. Moreover, Footprint has not sought “Out of Market” treatment in FCA 7 that would permit it to bid below the auction floor price and therefore negatively affect the auction price. It will either clear in the market because the NEMA/Boston load zone requires new generating capacity—thus fulfilling the very purpose of the ISO-NE forward capacity market—or it will fail to clear because additional capacity will not be required in the NEMA/Boston load zone. The failure to qualify the entire 674 MW output of the project in FCA 7 makes it uneconomic to develop the Facility and could lead to the perverse result of FCA 7 failing to procure capacity needed for reliability in the largest load pocket in New England in the first auction where new capacity may actually be needed.⁵ This could occur

³ *ISO New England Inc.*, 135 FERC ¶ 61,147 (2011); *WM Renewable Energy, L.L.C.*, 134 FERC ¶ 61,022 (2011); *Comverge, Inc.*, 133 FERC ¶ 61,250 (2010); *CPower, Inc.*, 133 FERC ¶ 61,127 (2010); *Pittsfield Generation Co.*, 130 FERC ¶ 61,182 (2010); *Vt. Elec. Coop., Inc.*, 130 FERC ¶ 61,106 (2010); *Nat’l Grid USA*, 129 FERC ¶ 61,212 (2009); *Conn. Light & Power Co.*, 126 FERC ¶ 61,186 (2009); *PSEG Power Conn. LLC*, 126 FERC ¶ 61,062 (2009); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Univ. of N.H.*, 121 FERC ¶ 61,185 (2007).

⁴ *See infra* note 12.

⁵ We leave aside, as beyond the scope of this limited pleading, whether the existing FCM market design can, in its current state, support sustained investment. *See generally New England Power Generators Ass’n*, (cont’d)

simply because, despite the best efforts and cooperation of the project sponsor, the local utility and ISO-NE, additional technical work needed to be completed—and actually has been completed—just days after the ISO-NE Information Filing and over 12 weeks prior to the auction.

Finally, Footprint also notes that it has fully consulted with ISO-NE throughout the qualification process, in filing its protest, and in seeking this separate waiver. Our understanding is that ISO-NE has no objection to this waiver request.

REQUEST FOR WAIVER

I. BACKGROUND

A. The Facility

The existing Salem Harbor Power Station has been used for power generation since 1951. It is comprised of four separate units, which were owned and operated by a subsidiary of Dominion Resources, Inc. from 2005 until August 3, 2012, when an affiliate of Footprint became the owner of the facility.⁶ Units 1 and 2, both coal-fired, were removed from service on December 31, 2011. The two remaining units—one coal-fired and one oil-fired—will be shut down on June 1, 2014. Until that time, they have been determined by ISO-NE to be needed for reliability purposes in the Northeastern Massachusetts/Boston (“NEMA/Boston”) Capacity Zone. After units 3 and 4 are shut down, Footprint will demolish the existing Salem Harbor Power Station consistent with state and local requirements and the site reuse plan. In advance of that process, Footprint has already commenced a comprehensive site

(cont'd from previous page)

Inc. v. FERC, No. 12-1060, Opening Brief of Petitioners New England Power Generators Association, Inc., *et al.* (D.C. Cir. filed Oct. 9, 2012).

⁶ See *Dominion Energy Salem Harbor, LLC*, 140 FERC ¶ 62,085 (2012).

characterization and assessment program to gather environmental data necessary to determine the scope of activities that may be required to address any environmental issues found in the course of that site characterization.

Footprint (through Footprint Salem Harbor) is proposing to construct its new Facility on the northwest 16-acre portion of the 65-acre Salem Harbor Power Station site. The Facility is planned to be in commercial operation on or before June 1, 2016, the start of the 2016-2017 Capacity Commitment Period for which FCA 7 is being conducted.

The proposed Facility will include two state-of-the-art, efficient, low emission, quick-start natural gas turbine generators; two steam turbine generators; and two heat recovery steam generators, including pollution control equipment. The Facility's design will be unique in New England as it will have substantial quick start capability along with a state of the art heat rate of approximately 6,000BTU/kWh when operating at full load. Approximately half of the output of the Facility will be available in 10 minutes, and the entire output of the Facility will be available within one hour, providing ISO-NE with much needed highly efficient quick-start units that will provide reliability service, as well as facilitate the integration of additional renewable resources onto the ISO-NE system. Natural gas will be delivered to the Facility via a new 16-inch pipeline lateral off the Algonquin Hubline interstate pipeline, to be owned and operated by a subsidiary of Spectra Energy ("Spectra"). Spectra also will construct an on-site metering and control station.

Footprint's redevelopment of the Salem Harbor power site has been generally well-received by various stakeholders in the surrounding community, including the Mayor and other local elected officials, the Salem Alliance for the Environment, and the union that represents the existing Salem Harbor employees in consideration of the prospects for

demolition and redevelopment of the site, jobs and tax revenues, and a clean, energy efficient replacement to the existing old and inefficient coal and oil-burning facilities.⁷ This support has translated into a positive environment in the proceedings that are being held with respect to the necessary permitting of the Facility.

The Facility will interconnect with the National Grid electric transmission system at two locations within the existing National Grid switchyard located on the site. In order to interconnect with National Grid, Footprint will construct its own ancillary facilities, including a new facility switchyard and generator step-up transformers. As discussed further below, National Grid also will replace two existing underground transmission cables (an upgrade also needed for system reliability irrespective of the development of the Footprint's new Facility), reconductor two overhead 115 kV transmission lines, construct a new bay at the existing Salem Harbor substation and change out existing 115 kV breakers in order to reliably connect the new Facility to the grid and enable the entire 674 MW winter capability of the Facility to qualify in FCA 7.

B. Qualification

Footprint followed all of the rules and procedures to qualify the full output of the Facility in FCA 7, providing all requested information and meeting all deadlines. This process included extensive consultation with ISO-NE and National Grid. On September 28, 2012, ISO-NE notified Footprint that only 570 MW had qualified for FCA 7, substantially less than full 674 MW winter capacity of the facility.

⁷ See <http://www.salemnews.com/opinion/x691118448/Our-view-Footprint-power-plant-purchase-a-step-forward-for-Sal-em>; <http://www.bostonglobe.com/business/2012/08/06/deal-sell-salem-power-plant-closes-new-gas-plant-and-development-planned/2QXaYxH8CEQ9pvciaNISuN/story.html>; <http://www.salemnews.com/local/x1052806158/Power-plant-public-hearing-attracts-crowd-in-Salem>; <http://marblehead.patch.com/articles/how-much-will-footprint-power-pay-salem-in-taxes>.

Two underground cables, the S-145E and T-146E cables, run from the existing Salem Harbor Power Station to the Canal Street switching station in downtown Salem. One of these cables dates to the 1950s and the other to the 1970s. National Grid identified the cables as needing to be replaced to maintain reliability at least five years ago. Over the course of the past five years, however, the uncertainty surrounding the continued operation of the existing Salem Harbor Station caused National Grid—and ISO-NE—to delay plans to replace the cables until the situation surrounding the retirement—and more recently potential replacement—of the existing facility became more clear. In November 2011—prior to Footprint’s entering the Interconnection Queue—National Grid made a presentation to the Planning Advisory Committee indicating the ratings of the cables that it had determined to be needed to replace the S-145E and T-146E cables. Over the course of the past year, National Grid, ISO-NE and Footprint have worked together to determine whether the cables that National Grid proposed as replacements before it knew of Footprint’s redevelopment plans for Salem Harbor would be sufficient to accommodate the output of the new Facility. At the time that ISO-NE’s QDN letters were due on September 28, 2012, National Grid and ISO-NE had not yet completed their analysis of the sizing of the cables preventing a decision as to whether they could be in service by June 2016 though they did conclude that other needed upgrades identified would be in service by June 2016. As a result, ISO-NE’s QDN reflects the ratings of the existing 40- and 60- year old cables.

National Grid, ISO-NE and Footprint have continued to work together and ISO-NE has now determined that the cables that National Grid originally proposed—in 2008 and most recently presented to the NEPOOL Planning Advisory Committee in November 2011—will have sufficient capability for the entire 674 MW capability of Footprint’s new Facility to

qualify for FCA 7. Footprint now understands that ISO-NE has determined, after receiving an updated Officer's Statement from National Grid pursuant to Market Rule 1, Section III.13.1.1.2.3, that the upgrades are reasonably expected to be in place prior June 1, 2016. As a result, if the QDN were issued today, ISO-NE would qualify the full 674 MW output of the Facility.

After receiving notice of a partial qualification, and after consultation with ISO-NE, Footprint voluntarily withdrew from the qualification process while reserving its right to make this request for waiver once the uncertainty regarding the timing of the transmission upgrades—which was imminent—had been resolved. This was necessary because financing for the project would be significantly jeopardized if only part of the unit qualified to participate in FCA 7. Through this procedure, the uncertainty about the timing of transmission upgrades could be resolved and the Facility's full output qualified to permit the Facility to participate in FCA 7. As detailed below, Footprint seeks waiver of the Financial Assurance deadlines to permit it to make its required Financial Assurance payment immediately upon granting of the requested waiver.

In order to secure necessary financing and to be a commercially viable project, it is critical that the Facility qualify its full capacity to participate in the capacity market. Although ISO-NE would have been able to qualify 570 MW to participate in FCA 7 without the underground transmission cables being upgraded, the substantial fixed project costs can only be recovered if the full capacity is qualified to participate; nor can the Facility be scaled down and remain commercially viable. The Facility is exactly the type of new generation resource that the FCM market is intended to encourage. Disqualification of the participation of the Facility in FCA 7 at this juncture, caused by a slight delay (now resolved) in finalizing

the transmission planning, would not only be an error, as discussed below, but also would be antithetical to the goals and *raison-d'être* of the FCM market.

II. ARGUMENT

A. *The Facility's Full Output Should Be Qualified in FCA 7*

The initial determination that the replacement of the S-145E and T-146E cables could not reasonably be expected to be completed by June 1, 2016, was based on the assumption that there was insufficient time for determination of the capability, permitting and construction of the necessary cables. ISO-NE was forced to make that assumption because at the QDN deadline ISO-NE and National Grid had not yet reached a final conclusion as to whether the replacement cables that National Grid had been proposing prior to Footprint's Interconnection Request would have sufficient capability in light of the construction of the new Facility. The uncertainty surrounding the sizing of these cables resulted in National Grid informing ISO-NE that it could not state at that time that the cables would be in place on June 1, 2016.

The parties continued to work together to finally resolve the issue of the sizing of the cables and ISO-NE has now concluded that the cables previously proposed by National Grid will be sufficient. ISO-NE has reviewed National Grid's analysis and our understanding is that ISO-NE is satisfied that there is sufficient certainty that the transmission upgrades will be completed by June 1, 2016. Thus there is no reason to disqualify any portion of the Facility's full 674 MW output. Indeed, had this conclusion been reached prior to the QDN deadline, ISO-NE would have qualified the entire output of the Facility and this waiver request would have been unnecessary.

B. The Qualification Deadlines Should Be Waived

Given the circumstances described above and the likely need for timely development of the Facility to meet the NEMA/Boston reliability requirement in FCA 7, Footprint requests that the Commission grant a waiver of the qualification deadlines to allow the qualification of Footprint's full capacity from the new Facility.⁸ The Commission has previously waived Tariff deadlines in similar circumstances. In a protest to an ISO-NE informational filing for FCA 5, for example, certain capacity providers developing demand resources claimed that the ISO-NE's internal market monitor ("IMM") had erred in determining the market status of certain of their resources due to misunderstandings as to the information that the IMM required to conduct his analysis.⁹ The Commission responded that "[i]t appears that there was inaccurate, misunderstood, or insufficient communication between the IMM and certain resources, which may have affected the nature of the information provided by the resources to the IMM."¹⁰ The Commission granted a one-time waiver of the qualifications deadline on the basis that: "(1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) it would address a concrete problem; and (4) it would not have undesirable consequences, such as harming third parties."¹¹

The instant situation is comparable. *First*, the underlying "error," the disqualification of 104 MW of the output of the Facility, was made in good faith. Despite their best efforts, National Grid and ISO-NE simply had not completed all of the required analysis to reach the

⁸ ISO-NE Tariff, Market Rule 1 §§ III.13.1.1.2, III.13.1.1.2.8, III.13.1.9, III.13.1.10.

⁹ *ISO New England Inc.*, 135 FERC ¶ 61,147 (2011).

¹⁰ *Id.* at P 30.

¹¹ *Id.* at P 33.

conclusion that the previously proposed replacement cables would be sufficient to serve the new Facility. The parties continued to work together to complete the technical analysis and to ensure that the right result was reached.

Second, the waiver applies only to this very specific factual situation and only to FCA 7. In this case, there was a discrete issue regarding the ratings of the previously proposed cables and the configuration of the new facility that took several layers of analysis and discussions among ISO-NE, Footprint, and National Grid to resolve. The parties cooperated fully and worked diligently to complete the analysis well in advance of FCA 7, reaching the correct result that will ensure continued reliable operation of the ISO-NE system.

Third, the issue underlying the waiver involves a concrete problem: ensuring that the Facility will be able to fully participate in the capacity auction and, if it clears in that auction based on its offer and underlying need for capacity in the NEMA/Boston load zone, to be built in a timely fashion. Once in service, the Facility will address specific environmental and reliability concerns, not only because of its location in the NEMA/Boston load pocket, but also because it is a clean, highly efficient, state-of-the-art quick start facility. If it clears in FCA 7, it will do so because it is filling a reliability need in the NEMA/Boston load pocket. Failure to grant this waiver could result in FCA 7 failing to secure sufficient capacity to reliably serve NEMA/Boston.

Fourth, no party would be harmed by this waiver. ISO-NE has not yet conducted the auction, and granting the waiver will create no delays in the auction timetable.

The Commission also has granted several waivers of various auction deadlines in the ISO-NE tariff in circumstances where the waivers of the ISO-NE tariff were sought by market

participants.¹² This request for waiver is consistent with this precedent.

For all of these reasons, granting waiver of the qualification deadline in this situation is consistent with precedent and fully justified.

C. Financial Assurance Deadlines Should Also Be Waived

Footprint also requests a waiver of the deadlines in Section III.13.1.9 of the FCM rules applicable to the provision of financial assurance upon qualification of a resource for a capacity auction. When ISO-NE rejected the full capacity of the new Facility for qualification in FCA 7, causing Footprint to withdraw from the process (subject to its right to challenge the rejection and to be reinstated), no financial assurance was required by Section III.13.1.9 of ISO-NE's FCM rules because, unless and until this waiver request is granted by the Commission, Footprint would have no qualified capacity in FCA 7 for which it could post financial assurance. In order for Footprint to be fully reinstated for qualification in FCA 7, Footprint requests that the Commission also grant waiver of the financial assurance provisions of III.13.1.9, to provide for a period of five business days after the date of the qualification for Footprint to provide the necessary financial assurances to ISO-NE. This request also meets the legal criteria that the Commission has used in the past to grant waivers of tariff provisions: (1) the underlying omission was made in good faith; (2) the waiver is of limited scope; (3) it would address a concrete problem; and (4) it would not have undesirable consequences.¹³

¹² *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007) (waiver of ISO-NE tariff to allow late qualification deposit for FCA 1) (note that this case also includes a similar waiver granted for Invenergy Thermal LLC); *ISO New England Inc.—EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008) (waiver of ISO-NE tariff to allow late qualification deposit for FCA 2) (note that this case also includes a waiver of the show of interest deadline for Kimberly-Clark Corporation); *ISO New England Inc.*, 127 FERC ¶ 61,242 (2009) (waiver of ISO-NE tariff to permit late updated demand response plans in FCA 3).

¹³ *Id.*

CONCLUSION

Footprint submits that the entire 674 MW capacity of the new Salem Harbor Facility should have qualified for participation in FCA 7. The initial qualification determination of only 570 MWs was based upon incomplete information and uncertainty as to whether the S-145E and T-146E cables could reasonably be projected to be in service by June 1, 2016 that prevented ISO-NE from being able to determine that the cable replacement could be in service for FCA 7. ISO-NE and National Grid have worked diligently and cooperatively with Footprint to complete the technical analysis necessary for ISO-NE to arrive at the determination that the cables can be in service by June 1, 2016. Footprint requests that the Commission grant waiver of the ISO-NE tariff provisions as they relate to the auction qualification process, specifically the deadline for determining qualification of the Facility and the deadline for the provision of the requisite financial assurance to permit Footprint to fully participate in FCA 7.

Respectfully submitted,

Scott G. Silverstein
 President & COO
 FOOTPRINT POWER LLC
 1140 Route 22 East
 Suite 303
 Bridgewater, NJ 08807
 (908) 864-4905
 sslilverstein@footprintpower.com

 /s/
 John N. Estes III
 Andrew R. Corcoran
 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
 1440 New York Avenue, N.W.
 Washington, DC 20005
 (202) 371-7950
 (703) 371-7292
 john.estes@skadden.com
 andrew.corcoran@skadden.com

Counsel for Footprint Power LLC

November 28, 2012

Document Content(s)

Footprint Request for Waiver.PDF.....1-14