122 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc. Docket No. ER07-547-002

ORDER DENYING REHEARING

(Issued February 22, 2008)

1. In this order, the Commission denies rehearing of an earlier ruling finding that ISO New England Inc. (ISO-NE) could, in its market rules implementing New England's Forward Capacity Market (FCM), prohibit an Intermittent Power Resource from backing a capacity export to an external control area.

I. BACKGROUND

A. The FCM and the June 5 Order

2. ISO-NE and its stakeholders are in the process of implementing New England's FCM, under which capacity resources will make offers into a capacity market operated by ISO-NE to provide capacity three years ahead, and ISO-NE will conduct an auction through which sufficient resources are selected to ensure system-wide reliability.[1] ISO-NE initiated its first auction in the FCM on February 4, 2008. On March 1, 2004, the ISO submitted a filing seeking to implement a forward capacity market in New England by June 1, 2004. After a hearing before an administrative law judge and extensive further proceedings, the parties arrived at a settlement with regard to that filing (Settlement Agreement), which the Commission substantially approved in the FCM Order and FCM Rehearing Order.

3. On February 15, 2007, ISO-NE filed revisions to its market rules to implement the FCM. The Commission accepted some of the market rules on April 16, 2007,[2] and the

[1] *See generally Devon Power LLC*, 115 FERC ¶ 61,340 (FCM Settlement Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006) (FCM Rehearing Order).

[2] *ISO New England Inc.* 119 FERC ¶ 61,045 (2007) (April 16 Order).

remainder on June 5, 2007.[3] In its June 5 Order, the Commission accepted market rules which outline the rights and obligations of listed and de-listed capacity resources.

4. In the June 5 Order, the Commission addressed the question of whether intermittent capacity resources should be permitted to back (i.e., guarantee)[4] capacity exports to external control areas.[5] Brookfield Energy Marketing, Inc. (Brookfield) protested proposed section III.13.6.2.2 of the market rules, under which Intermittent Resources are prohibited from backing a capacity export to an external control area.[6] Brookfield claimed that the FCM Settlement did not contemplate limiting Intermittent Resources from backing a capacity export, and that this limitation would create a new seam with neighboring control areas.

5. In response to this argument, ISO-NE stated:

> By their nature, intermittent resources differ from conventional resources. Their output fluctuates considerably and can go from zero to full output in a very short period, by definition, outside the control of the owner. Additionally, the level of their output is not easily predictable on a day ahead basis. Recognizing this, the rules contain an exemption from the requirement to offer into the day ahead energy market imposed on all other capacity resources. This exemption is important for a true intermittent resource to prevent exposing the resource to energy market penalties.
>
> If a resource is truly intermittent the lack of control over it makes it inappropriate to permit them to back capacity export transactions. By definition, the resources in this category are resources whose output is uncontrollable and unpredictable. Given this definition, it is difficult to imagine how such a resource can commit to support any particular level of output weeks or months ahead. The market rules in both New York and New England require that units backing

[3] *ISO New England Inc.*, 119 FERC ¶ 61,239 (2007) (June 5 Order).

[4] Backing a capacity export means that a capacity resource will export its capacity or a portion of its capacity to another control area in lieu of offering its capacity in New England.

[5] June 5 Order, 119 FERC ¶ 61,239 at P 64-66.

[6] Section III.13.6.2.2 states, "Intermittent Power Resources, Settlement Only Resources, and Demand Resources are not permitted to back a capacity export to an external Control Area."

> capacity exports be committed at the level of the capacity transaction each month, and that energy contracts supporting that capacity export be offered to both the day-ahead and realtime energy markets for the entire month. However, since intermittent resources are properly exempted from the day ahead offer requirement, it is not sensible to permit them to back exports which require a day ahead offer.[7]

6. The Commission accepted the proposed market rule and denied Brookfield's protest. In the June 5 Order it stated:

> The Commission will accept ISO-NE's proposal to prohibit Intermittent Resources from backing capacity exports to external control areas. In order to back a capacity export, a resource must be able to commit weeks or months ahead of time; however, Intermittent Resources characteristically have uncontrollable and unpredictable output. As such, it would be inappropriate to allow Intermittent Resources to back capacity exports. As ISO-NE notes, because of their unpredictable and uncontrollable output, Intermittent Resources are exempt from the requirement imposed on all other capacity resources to offer into the day ahead energy market. Thus, exempting Intermittent Resources from the ability to back capacity exports would treat intermittent resources consistently, according to their physical characteristics: Intermittent Resources would be exempt from certain requirements imposed on units with more predictable and controllable output, but would also not be able to fulfill all the functions of such units.[8]

7. Brookfield filed a timely request for rehearing.

B. Brookfield's Request for Rehearing

8. First, Brookfield asserts that the Commission's reliance on "consistency" – i.e., Intermittent Resources are not required to bid into the day ahead energy market because of their uncontrollable and unpredictable nature, and for the same reason Intermittent Resources are not allowed to back capacity exports – is flawed, because the physical characteristics of Intermittent Resources that concern the Commission are already addressed in ISO-NE's Market Rules. Second, Brookfield states that there is, in fact, no

[7] ISO-NE answer, Docket No. ER07-546-000 at 57 (March 23, 2007).

[8] June 5 Order, 119 FERC ¶ 61,239 at P 66.

consistency between the treatment of Intermittent Resources bidding in the ISO-NE markets and the treatment of Intermittent Resources with regard to backing capacity.

9. Brookfield argues that the unpredictable nature of Intermittent Resources has already been taken into consideration in such a way as to allow individual Intermittent Resources to participate in ISO-NE's markets, to the extent that such resources individually can meet market rule requirements. Brookfield states:

> Prior to the FCM, an Intermittent Power Resource could qualify as a [capacity] resource under Market Rule III.8.3.4.21 . . . .
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> Under the new Market Rules, an Intermittent Power Resource may be "Qualified Capacity," but its Qualified Capacity is based upon ISO-NE's calculation set out in Market Rule III.13.1.2.2.2.22. When so qualified, an Intermittent Power Resource is treated just as any other Resource, with the exception that it still has no mandatory obligation to bid into the day-ahead market. However, such an Intermittent Power Resource will have the obligation to bid into the real-time market "consistent with the characteristics of the resource."
>
> An Intermittent Power Resource, if it is "Qualified Capacity," can bid into the day-ahead market under Market Rule III.13.6.1.3.1 as long as its "Day-Ahead projects of output [are] submitted as detailed in the ISO New England Manuals." As long as an Intermittent Power Resource can meet the requirements for Day-Ahead bidding, it can participate in that market.[9]

Brookfield argues that this provision demonstrates that the market rules thus "already take into account the variable operating characteristics of individual Intermittent Power Resources, and do so in such a way as to allow such individual generators to participate in the ISO-NE's markets to the extent they can meaningfully do so."[10]

10. Brookfield next argues that the Commission improperly found that ISO-NE could prohibit an Intermittent Resource from backing a capacity export on the grounds that such treatment would be consistent with the treatment of Intermittent Resources within the ISO-NE markets. But because ISO-NE has developed protocols to deal with

[9] Brookfield rehearing request at 6.

[10] *Id*.

Intermittent Resources' particular characteristics, Brookfield claims that the prohibition on backing capacity exports is, in fact, inconsistent with those protocols.

11. Brookfield adds that other markets address the problems of imports from Intermittent Resources in New England through the penalties assessed against all resources bidding into those markets. Brookfield states that "[f]or example, the New York Independent System Operator (NYISO) penalty provisions will be imposed on any capacity supplier who fails to deliver energy regardless of the resource type. Such neighboring Control Area market mechanisms – essentially an additional market risk to a supplier – will adequately penalize any Intermittent Power Resource that fails to meet its import commitment."[11] As a result of this penalty provision, Brookfield states that those Intermittent Resources lacking the ability to back a capacity import into a neighboring control area will refrain from seeking to do so, in order to avoid such penalties.

12. Brookfield also argues that the prohibition on capacity exports is a new limitation on such resources not contemplated by the FCM settlement, which provides that any resource may be deemed Export Capacity:

> Any Resource within the New England Control Area seeking to submit a bid to export all or part of its capacity in the FCA or selling its De-listed Capacity to a buyer outside the Control Area following the FCA shall be Export Capacity.[12]

Brookfield asserts that the Settlement Agreement does not contemplate prohibiting certain resources from backing capacity exports outside of New England, "if such Resources are otherwise able to meet the qualification requirements for exports."[13] Thus, Brookfield asserts, the proposal to prohibit Intermittent Resources from backing external capacity exports contradicts the intent of the Settlement Agreement "to allow capacity exports," and the Settlement Agreement's provision that the market rules be consistent with, and further, all of the terms of the Settlement Agreement.[14] Brookfield further states that the Commission has committed to accept all of the terms of the Settlement Agreement, and should, therefore, do so here.

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[11] *Id*. at 7 (footnotes omitted).

[12] *Id*. at 8 (*citing* Attachment A of the FCM Settlement Agreement, Docket Nos. ER03-563-000, -030, and -055).

[13] *Id*. at 8.

[14] *Id*. at 8.

13. Brookfield also argues that, in the June 5 Order, the Commission failed to explain why ISO-NE should be allowed to deviate from Commission policy regarding de-listing and exports. It states that the prohibition on Intermittent Resources backing capacity exports creates a new seam with neighboring control areas, in contravention of ISO-NE's long-term efforts to work with neighboring control areas to eliminate or reduce seams that create barriers to trading between the two control areas. In support of its argument that prohibiting Intermittent Resources from backing capacity exports will cause seams with NYISO, Brookfield asserts that NYISO does not exclude intermittent capacity imports, but rather requires assurances that:

> the External Control Area in which the Resource is located either:
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> (a) Will not recall or curtail, for the purposes of satisfying its own Control Area Loads, exports from that External Control Area to the NYCA of an amount of Energy equal to the Installed Capacity Equivalent of the amount of Unforced Capacity that Resource is supplying to the NYCA; or
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> (b) In the case of Control Area System Resources, will afford NYCA Load the same pro-rata curtailment priority that it affords its own Control Area Load.[15]

14. Finally, Brookfield states that the Commission did not explain why Intermittent Resources that are capable of meeting ISO-NE's de-listing standards and export requirements applicable to all capacity resources should be placed at a competitive disadvantage to other capacity resources that are free to sell their capacity both within New England and elsewhere.

II. <u>DISCUSSION</u>

15. The Commission denies Brookfield's request for rehearing. While the Commission acknowledges that ISO-NE’s markets in other respects account for the unpredictable nature of Intermittent Resources, that fact does not warrant a different outcome. Disallowing Intermittent Resources from backing capacity exports is consistent with ISO-NE’s treatment of Intermittent Resources. To illustrate, Brookfield asserts that ISO-NE’s market rules allow an Intermittent Resources to participate in the Day-Ahead market, so long as the Intermittent Resource meets the requirements for such participation, and we agree that this market provision recognizes that it is indeed possible for an Intermittent Resource to participate in Day-Ahead markets in certain

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[15] *Id.* at 10-11 (*citing* NYISO Installed Capacity Manual at section 4.9.1).

circumstances. However, Intermittent Resources are not required to participate in Day-Ahead markets in the same way as other qualified capacity resources are required to participate, in that they are not required to bid their capacity into the Day-Ahead market every day. In this way, ISO-NE recognizes the difficulty, and the limits, of predicting the reliability of Intermittent Resources by exempting them from an otherwise market-wide requirement that would expose Intermittent Resources to non-performance penalties.[16]

16. The Day-Ahead market requires that a capacity resource be available one day in advance; in that market, as explained above, however, ISO-NE exempts Intermittent Resources from the requirement to participate in the Day-Ahead market because of the unpredictability of such a resource's output – which is completely outside the control of the owner/operator. In contrast, backing a capacity export requires forecasting the availability of a capacity resource weeks or even months in advance. While it may occasionally be possible for an Intermittent Resource to meet the requirements of bidding Day-Ahead, it is unlikely that an Intermittent Resource can commit to provide a certain level of capacity weeks or months in advance. ISO-NE's market rules thus appropriately and consistently prohibit Intermittent Resources from backing capacity exports to recognize that unlikelihood.[17]

17. Regarding Brookfield's argument that the FCM Settlement did not contemplate any limitation on capacity exports, the Commission disagrees; Intermittent Resources do not meet the qualification requirements for exports. As explained above, Intermittent Resources' unpredictable output prevents such resources from being relied upon to meet the capacity requirements for export – which requires committing to provide capacity weeks or months in advance. ISO-NE's market rules thus are consistent with the FCM Settlement; they allow capacity resources to back capacity exports as long as those capacity resources are able to meet the qualification requirements for exports.

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[16] Brookfield challenged the limits imposed in Intermittent Resources (ISO-NE defines Intermittent Power Resources as "resources whose output amount and availability are not subject to the control of the ISO or the plant operator," Market Rule 1, Section III.1). No party on rehearing challenged the limit imposed on Demand Resources (ISO-NE defines Demand Resources as "installed measures (i.e., products, equipment, systems, services, practices and/or strategies) that result in additional and verifiable reductions in end-use demand on the electricity network in the New England Control Area," Market Rule 1, Section III.1).

[17] Regarding Brookfield's argument that NYISO's market rules contain penalties for non-performance that apply to all capacity resources, the Commission notes that NYISO's penalty provisions have no bearing or influence on the justness and reasonableness of ISO-NE's market rules.

Intermittent Resources' physical limitations prevent such resources from meeting this requirement.

18. The Commission also disagrees with Brookfield that preventing Intermittent Resources from backing capacity exports creates a seam with NYISO. While NYISO does not prohibit imports from Intermittent Resources, this has no impact on the justness and reasonableness of ISO-NE's market rules. Brookfield appears to suggest that, since NYISO is able to accept Intermittent Resources as capacity importers, it will create a seam if ISO-NE refuses to permit those same resources to be capacity exporters. But Brookfield does not show that NYISO categorically accepts Intermittent Resources as capacity importers – rather, Brookfield simply states that NYISO will impose penalties on a supplier that fails to deliver as promised, and that then claims that this additional risk of being charged a penalty is NYISO's way of permitting Intermittent Resources to be capacity importers. The two are not equivalent, however. Further, market rules in both New England and New York require that resources backing export capacity be committed at the level of the capacity transaction each month, and that energy contracts supporting that capacity be offered into the day-ahead and real-time market.[18] Intermittent Resources are exempted from this requirement in New England, and are therefore not subject to the energy penalties that other capacity resources would face if they failed to bid into the Day-Ahead market. If Intermittent Resources were allowed to back exports into NYISO, they would be forced to offer into the Day-Ahead market in NYISO, a requirement that would be inconsistent with ISO-NE's market rules.

19. Finally, the Commission rejects Brookfield's assertion that the Commission did not explain why Intermittent Resources that are capable of meeting ISO-NE's de-listing standards and export requirements applicable to all capacity resources should be prohibited from backing capacity exports. As explained above, Intermittent Resources are unable to meet export requirements by their nature, and it is therefore appropriate to prohibit them from backing capacity exports.

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[18] For New England, see section 3.8.7 of ISO-NE's Installed Capacity Manual. For New York, see section 4.8 of NYISO's Installed Capacity Manual.

<u>The Commission orders</u>:

Brookfield's request for rehearing is hereby denied.

By the Commission. Commissioners Kelly and Wellinghoff dissenting with separate statements.

(S E A L)

Kimberly D. Bose,
Secretary.

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FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc. Docket No. ER07-547-002

(Issued February 22, 2008)

KELLY, Commissioner, *dissenting:*

This order addresses a request for rehearing filed by Brookfield Energy Marketing Inc. (Brookfield) in response to Commission approval of a certain provision within ISO New England's (ISO-NE) market rules implementing the Forward Capacity Market (FCM). In its initial protest, Brookfield asked that the Commission revise Section III.13.6.2.2 Market Rule 1 to eliminate the proposed restriction on Intermittent Power Resources from backing capacity exports to external control areas.

It appears that the fundamental issue in this proceeding is whether Brookfield's hydro facilities are capable of meeting all of the requirements—in ISO-NE and in an external control area—applicable to resources backing capacity exports. I am not certain that Brookfield has made that demonstration. However, I do believe that the market rules should allow any resource, regardless of type, to back capacity exports, provided it is capable of meeting all necessary requirements in both ISO-NE and the external control area. I note that I supported the Commission order approving this provision but upon further reflection reconsider that position.[1] While I do not support terminating the restriction as proposed by Brookfield, I would support revising it such that any resource, regardless of type, is able to back capacity exports, provided it is capable of meeting all necessary requirements in both ISO-NE and the external control area.

For these reasons, I respectfully dissent from this order.

Suedeen G. Kelly

[1] *ISO New England Inc.*, 119 FERC ¶ 61,239 (2007).

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WELLINGHOFF, Commissioner, dissenting:

The Commission previously accepted a proposal of ISO New England Inc. (ISO-NE), as part of the market rules for its Forward Capacity Market (FCM), to prohibit an Intermittent Power Resource from backing a capacity export to an external control area.[1] In today's order, the majority denies Brookfield Energy Marketing, Inc.'s (Brookfield) request for rehearing on that issue. I respectfully dissent because I would have granted Brookfield's rehearing request.

Intermittent Resources may qualify as capacity in the FCM. Generally, resources that qualify as capacity resources in the FCM are required to bid into ISO-NE's Day-Ahead Energy Market. In the June 5 Order, however, the Commission approved a provision of the FCM rules that exempts Intermittent Resources from that requirement. This provision was intended to recognize both that the output of an intermittent resource may vary as a function of factors that are beyond the control of the resource operator (*e.g.*, water levels, wind, or sunlight conditions), and that such a resource may prefer not to participate in the Day-Ahead Market because it would incur penalties if its bid was accepted in the Day Ahead Market and then it could not provide the corresponding amount of energy. I continue to support this exemption because it accounts appropriately for the distinctive characteristics of Intermittent Resources.

As a result of the above-noted exemption, Intermittent Resources are not required to bid into ISO-NE's Day Ahead Market, but they retain the option of doing so. Indeed, the majority recognizes in today's order that it is possible for an Intermittent Resource to participate in the Day-Ahead Market in certain circumstances. Thus, ISO-NE's approach allows an Intermittent Resource, that is otherwise qualified by the ISO-NE, to determine whether or not to bid into the Day-Ahead Market. If the Intermittent Resource chooses to do so, then ISO-NE

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[1] *ISO New England Inc.*, 119 FERC ¶ 61,239 at P 64-66 (2007) (June 5 Order).

may accept that bid and the Intermittent Resource runs the risk of incurring a penalty for non-performance.

By contrast, ISO-NE argues that no discretion for Intermittent Resources is appropriate with regard to backing capacity exports to an external control area and, therefore, prohibits all such activity. The underlying support for this position is ISO-NE's assumption that intermittent resources would not meet the technical requirements of an external region. In today's order, the majority accepts ISO-NE's argument and prohibition, stating, "Intermittent Resources are unable to meet export requirements by their nature, and it is therefore appropriate to prohibit them from backing capacity exports."

Although I supported that outcome in the June 5 Order, I believe that Brookfield has raised important issues, and I would now grant its rehearing request. I disagree with the majority's statement that Intermittent Resources are unable to meet export requirements by their nature. If an Intermittent Resource believes that it is capable of meeting all technical requirements established by an external control area, and the Intermittent Resource is not needed for reliability of ISO-NE, then it is not reasonable for ISO-NE to categorically preclude the Intermittent Resource from participating in the external control area's markets. Instead, I believe that Intermittent Resources should have the opportunity to assess whether or not they can meet the requirements of an external control area and to seek to be qualified by the operator of that external control area. For these reasons, I would have directed ISO-NE to propose a mechanism to allow an individual Intermittent Resource, which is willing to subject itself to applicable technical requirements and pay penalties for non-performance, to export to an external control area so long as reliability or transmission availability would not bar such export.[2]

In addition, I note that the majority bases its decision in part on a finding that "[d]isallowing intermittent resources from backing capacity exports is consistent with ISO-NE's treatment of intermittent resources" in other contexts. For the reasons discussed above, that statement is incorrect. Consistent treatment

[2] The views I express here also apply to ISO-NE's prohibition on Demand Resources being exported to an external control area. It is technically feasible for demand resources to provide functions to a neighboring balancing area, and they should not be prevented from doing so when they meet the technical requirements of the importing region, and reliability or transmission concerns do not bar such export.

in this instance would provide discretion for Intermittent Resources and would allow the operation of each region's Commission-approved criteria for participation in its markets.

For these reasons, I respectfully dissent.

Jon Wellinghoff
Commissioner