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FERC Addresses Fuel Obligations of Capacity Resources in ISO New England

A capacity resource may not take economic outages, but a resource may be considered physically unavailable if it cannot obtain natural gas or transportation.

On August 27, the Federal Energy Regulatory Commission (FERC) issued an order¹ addressing the fuel obligations of capacity resources in ISO New England Inc. (ISO-NE). FERC concluded that ISO-NE's Transmission, Markets, and Services Tariff (ISO-NE Tariff) imposes a strict performance obligation on capacity resources. Capacity resources thus may not take economic outages, including outages based on economic decisions not to procure fuel or transportation. However, if a capacity resource is not able to obtain natural gas or transportation, then that resource may be considered physically unavailable and thus excused from its performance obligations.

The ISO-NE Tariff does not include a specific firm fuel requirement for capacity resources. However, as relevant here, a capacity resource that is physically available must (a) offer into the day-ahead and real-time energy markets a MW amount equal to or greater than its "Capacity Supply Obligation," (b) respond to ISO-NE's directives to start, shutdown or change output levels, and (c) keep supply offers open throughout the operating day. The issue addressed by FERC was whether a capacity resource's failure to comply with these requirements due to fuel procurement violates the ISO-NE Tariff.

FERC concluded that a plain reading of the ISO-NE Tariff establishes that nonperformance by a capacity resource is excused only in limited circumstances and that "merely exercising Good Utility Practice in an effort to procure fuel is not one of them." FERC stated that the tariff imposes a strict performance obligation on capacity resources unless a capacity resource is unable to follow dispatch instructions due to Forced Outages, Force Majeure events, or other events that result in a capacity resource not being physically available. FERC stated that the price of fuel or an unwillingness to procure fuel at the prevailing price does not "qualify as a 'Forced Outage' or 'Force Majeure' event based upon a reasonable interpretation of those terms." A capacity resource thus may not make an economic determination not to procure fuel or transportation, but its failure to perform due to a "demonstrated inability" to procure fuel or transportation for a resource to run beyond its day-ahead commitment "may" legitimately affect whether a resource is physically available. Whether a capacity resource can show that it was unable to procure fuel or transportation will be determined on a case-by-case basis. Note that, while FERC stated that a demonstrated inability "may" provide an excuse for nonperformance, FERC did not indicate when such a demonstration may not provide such an excuse.

FERC also stated that, under the circumstances present in ISO-NE, FERC will not pursue any pending enforcement referrals that are based solely on a capacity resource's alleged inability to procure natural gas. FERC stated that, going forward, it expects ISO-NE and its market monitor to refer suspected violations to FERC. Further, ISO-NE, through its market monitor, must develop a written explanation of the factors it expects to examine to determine whether there is a reason to believe a violation has occurred. ISO-NE must submit an information filing within 30 days of FERC's order.

1. View the order at <http://www.ferc.gov/CalendarFiles/20130827174659-EL13-66-000a.pdf>.

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Implications

FERC's order is based on specific language in the ISO-NE Tariff. Thus, on its face, the order is limited to capacity resources in ISO-NE. However, to the extent the tariff of another Regional Transmission Organization or Independent System Operator that operates capacity markets does not specifically address fuel requirements of capacity resources and includes requirements like those in the ISO-NE Tariff, FERC may apply similar reasoning if the issue arises in other regions.

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