



January 8, 2020

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: ISO New England Inc. Request for Limited Conditional Waiver of Section III.13.1.10(b) of the ISO New England Inc. Transmission, Markets and Services Tariff re Deadline for Submittal of Retirement and Permanent De-List Bids in FCA 15; Docket No. ER20- -000

Dear Secretary Bose:

ISO New England Inc. (the “ISO”) hereby requests a limited waiver of Section III.13.1.10(b) of the ISO New England Inc. Transmission, Markets and Services Tariff (the “ISO Tariff”) to allow Market Participants to adjust or withdraw their Retirement De-List Bids or Permanent De-List Bids under certain limited conditions for the fifteenth Forward Capacity Auction (“FCA 15”).¹

As described below, the ISO requests that Market Participants who submit Retirement De-List Bids or Permanent De-List Bids before the March 13, 2020 de-list bid submittal deadline for FCA 15 be allowed to modify or withdraw those de-list bids if the ISO makes a subsequent non-clerical change to certain ISO Tariff revisions that are currently under development before the revisions are filed with the Federal Energy Regulatory Commission (“Commission”). Those tariff revisions are a long-term market solution for addressing the region’s energy security needs and will be filed with the Commission on or before April 15, 2020 for compliance with the Commission’s July 2, 2018 order on New England’s fuel security needs.²

The ISO respectfully requests an order on this waiver request on or before March 8, 2020, which is 60 days from the date of this filing, so that Market Participants can factor the

¹ Capitalized terms used but not defined in this Request for Limited Waiver have the meanings ascribed to them in the ISO Tariff. Market Rule 1 is Section III of the ISO Tariff.

² *Order Denying Waiver Request, Instituting Section 206, and Extending Deadlines, ISO New England Inc.*, 164 FERC ¶ 61,003 (2018) (the “July 2 Order”).

Commission's decision on the waiver request into their determinations on submitting Retirement De-List Bids or Permanent De-List Bids for FCA 15.

I. DESCRIPTION OF THE FILING PARTY AND COMMUNICATIONS

The ISO is the private, non-profit entity that serves as the Regional Transmission Organization for New England. The ISO plans and operates the New England bulk power system and administers New England's organized wholesale electricity market pursuant to the ISO Tariff and the Transmission Operating Agreement with the New England Participating Transmission Owners. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council and the North American Electric Reliability Corporation.

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II. BACKGROUND

Over the last year and a half, the ISO and New England stakeholders have been working intently on developing a long-term market solution for addressing the region's energy security needs. The immediate efforts of the ISO and the region's stakeholders are focused on developing new products that procure energy call options to satisfy three categories of operational need, referred to as the "Energy Security Improvements."³ The deadline for the submission of a long-term market-based mechanism is April 15, 2020, at which time the ISO will file the Energy Security Improvements.⁴ This will allow the ISO to meet the Commission's directives in its July 2 Order on New England's fuel security needs.⁵

As the ISO and New England stakeholders prepare to finalize the Energy Security Improvements for filing in mid-April 2020, the New England region will also begin the

³ This long-term, market-based solution is described in detail in pages 19-30 of the ISO's presentation at the Commission's Technical Conference held July 15th, 2019. See Speaker materials of Matt White and Chris Parent, ISO New England, at the ISO New England Fuel Security Noticed meeting, July 15, 2019, Docket No. EL18-182-000 (submitted July 15, 2019).

⁴ See Notice of Extension of Time, Docket No. EL18-182-000, issued August 30, 2019.

⁵ July 2 Order at 2.

qualification process for FCA 15, to be held in February 2021. The FCA 15 qualification process will commence in early March 2020; the first significant milestone for the process will be the submittal of Retirement De-List Bids and Permanent De-List Bids on March 13, 2020, for capacity resources that wish to retire or permanently remove themselves from the Forward Capacity Market.

The final market design for the Energy Security Improvements will have an impact—potentially a substantial one—on Retirement De-List Bids and Permanent De-List Bids submitted for FCA 15. To submit a Retirement De-List Bid or Permanent De-List Bid, a Market Participant must assess what revenues it will receive and costs it will incur in the ISO-administered markets, in order to justify the amount of “missing money” it would need to receive through the Forward Capacity Market to economically operate with a Capacity Supply Obligation.⁶ Relevant to this evaluation is the question of the impact that the Energy Security Improvements will have on market revenues and costs. Specifically, the ISO currently intends to implement the Energy Security Improvements in June 2024, coincident with the start of the Capacity Commitment Period for FCA 15. Thus, Market Participants developing Retirement De-List Bids or Permanent De-List Bids for FCA 15 will want to account for revenues they will earn and costs they will incur once the Energy Security Improvements are implemented.

However, with the Energy Security Improvements due to be filed on April 15, 2020, it is very possible that the ISO will not have completed the design and ISO Tariff revisions for the Energy Security Improvements at the time Retirement De-List Bids and Permanent De-List Bids are due on March 13, 2020. The NEPOOL Markets Committee, a technical sub-committee of the full NEPOOL Participants Committee, will likely take an initial vote on the Energy Security Improvements before March 13, 2020. Market Participants submitting de-list bids by this deadline will likely utilize the version of the Energy Security Improvements market rules that are voted on by the NEPOOL Markets Committee in early March for purposes of developing their de-list bids. However, it is also possible that the design will evolve further before a final vote of the full NEPOOL Participants Committee is taken on or around April 2, 2020.⁷ Should this occur, the de-list bids might not accurately reflect the impacts of the Energy

⁶ Pursuant to Section III.13.1.2.3.2.1 of Market Rule 1, the Internal Market Monitor must review Retirement De-List Bids and Permanent De-List Bids to determine whether the bid is consistent with: (1) the net present value of the resource’s expected cash flows; (2) reasonable expectations about the resource’s Capacity Performance Payments; and (3) the resource’s reasonable opportunity costs. This review therefore informs a Market Participant’s development of its de-list bid.

⁷ Under New England’s Regional Transmission Organization (“RTO”) arrangements, NEPOOL, pursuant to the Participants Agreement provides the sole Participant Processes for advisory voting on ISO matters. The NEPOOL Markets Committee has been actively engaged with the ISO in reviewing and evaluating the Energy Security Improvements and will provide a technical committee vote on the proposed ISO Tariff changes sometime in early March. That vote will be followed by a vote of the full NEPOOL Participants Committee at its April 2020 meeting, currently scheduled for April 2. Therefore, the Energy Security Improvements market design could change between the two votes, for example as the result of additional stakeholder feedback received in the lead-up to the NEPOOL Participants Committee meeting on April 2.

Security Improvements market rules, in the form in which the rules are filed with the Commission on April 15, 2020.

The Energy Security Improvements constitute one of the more substantial design changes that the ISO has proposed during the last decade. Therefore, they have the potential to significantly impact revenues and costs for participants in the ISO-administered markets. The timing of the Energy Security Improvements filing and the FCA 15 de-list bid submittal deadline potentially pose a significant risk for participants that are anticipating submitting Retirement De-List Bids or Permanent De-List Bids in March 2020. Under the ISO Tariff, there is no express mechanism for modifying or revoking those bids after submittal. Thus, while the Internal Market Monitor can adjust de-list bid data after the bid is submitted (as part of the Internal Market Monitor's review process), under the ISO Tariff a Market Participant does not have this option, and would thus be forced to maintain the de-list bid even if—due to the final Energy Security Improvements market design—its preference would be to withdraw or modify the bid.⁸

III. REQUEST FOR WAIVER OF ISO TARIFF SECTION

Under Section III.13.1.2.3.1 of the ISO Tariff, Retirement De-List Bids and Permanent De-List Bids for a Forward Capacity Auction are due by the Existing Capacity Retirement Deadline. Pursuant to Section III.13.1.10(b), the Existing Capacity Retirement Deadline is to take place in March, approximately four years and three months before the start of the Capacity Commitment Period for the relevant Forward Capacity Auction. For FCA 15, in accordance with this provision, the ISO has established an Existing Capacity Retirement Deadline of March 13, 2020.

To address the potential for the Energy Security Improvements market design to change after the March 13, 2020 Existing Capacity Retirement Deadline, the ISO is hereby requesting a conditional waiver of this deadline as follows. First, under the proposed waiver, Retirement De-List Bids and Permanent De-List Bids will remain due on March 13, 2020. However, in the event a non-clerical revision is made to the ISO Tariff revisions for the Energy Security Improvements after the March 13, 2020 deadline and in the lead-up to (or as part of) the NEPOOL Participants Committee vote on the market rules, which is scheduled for April 2, 2020, the ISO is requesting waiver of the de-list bid submittal deadline established pursuant to Section III.13.1.10(b) to permit a participant that has submitted a Retirement De-List Bid or Permanent

⁸ Pursuant to Section III.13.1.2.3.2.1.1, the Internal Market Monitor can seek additional information from a Market Participant in reviewing its de-list bid. Pursuant to Section III.13.1.2.3.2.1.1.2, the Internal Market Monitor is to review the submittal and determine whether it must be adjusted downward. These provisions would afford the Internal Market Monitor the ability to adjust a de-list bid downward (but not upward) to reflect any modifications to the Energy Security Improvements design that are not reflected in the Market Participant's de-list bid submittal. However, they do not afford the Market Participant the right to adjust the bid, and would not afford the Internal Market Monitor the ability to adjust the bid upward even if the changes to the Energy Security Improvements design would warrant such an adjustment.

De-List Bid for FCA 15 the option to either (i) update its de-list bid to reflect the impact of the changes to the Energy Security Improvements design or (ii) withdraw the de-list bid altogether. Furthermore, under the requested waiver, either option must be exercised within a week (seven calendar days) following the Participants Committee vote. This short deadline for exercising these options is necessary to accommodate the Internal Market Monitor's review of the de-list bids; under the ISO Tariff the Internal Market Monitor is afforded a relatively short period of time for reviewing Retirement De-List Bids and Permanent De-List Bids, and therefore it is important that any modifications to those bids occur quickly.⁹

D. Standard for Granting Waivers

The Commission has granted waivers where: (1) the party seeking the waiver acted in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.¹⁰ The instant request meets each of these criteria.

First, the ISO is acting in good faith. A waiver of the Retirement De-List Bid and Permanent De-List Bid deadline for FCA 15 is intended to prevent unfair and inefficient market outcomes for participants given the potentially significant impact of the Energy Security Improvements on de-list bids and Market Participant decisions on whether to retire or permanently de-list a resource.

Second, the waiver is of limited scope; it is a one-time waiver that applies only for FCA 15, only if a narrow condition is satisfied (a non-clerical change to the Energy Security Improvements), and would only permit specific, limited actions (adjustment or withdrawal of the de-list bid during a seven-day period).

Third, as explained above, the waiver is necessary to remedy a concrete problem. The ISO considered other alternatives to address the problem—including delaying the implementation of the Energy Security Improvements until FCA 16 and moving up the date of NEPOOL's final vote on the Energy Security Improvements. Delaying the implementation of the Energy Security Improvements for an entire year is not preferred if it can be avoided, given the important issues that these tariff enhancements address. While it is possible to move up the date of NEPOOL's final vote on the ISO Tariff revisions by a month, so that the final vote takes place before the March 13, 2020 de-list bid deadline, this alternative is also suboptimal. The ISO and stakeholders have been working tirelessly on the Energy Security Improvements; the final month will afford the ISO and

⁹ Pursuant to Sections III.13.1.2.4(a) and III.13.1.10(d) of Market Rule 1, the Internal Market Monitor has approximately three months to review Retirement De-List Bids and Permanent De-List Bids. Given the complexity of the bids and the usual need to request additional information from Market Participants (sometimes multiple requests), the Internal Market Monitor utilizes the full three months for the review.

¹⁰ See *ISO New England Inc.*, 127 FERC ¶ 61,242 at P 13 (2009) (citing *ISO New England Inc. - EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008)).

stakeholders necessary time to complete work on the impact analysis for the Energy Security Improvements, which is a critical part of the evaluation of the design. It will also afford stakeholders the opportunity to complete discussions with the ISO on possible modifications or alternatives that might be considered. The requested ISO Tariff waiver avoids these issues with a minor and narrow adjustment to the de-list bid deadline.

Finally, the waiver will not have undesirable consequences. While the Internal Market Monitor has voiced concerns in the past about revocable de-list bids—given the potential for participants to use such bids to “fish” for uncompetitively high de-list bids¹¹—that concern applies only when the bid can be withdrawn or revoked *after* the Internal Market Monitor has completed its review of the bids and informed the participant of the Internal Market Monitor’s determination on whether the bid will be mitigated. For the instant waiver request, any withdrawal would need to take place in April, well before the Internal Market Monitor finalizes its review of the de-list bids.¹²

IV. REQUEST FOR ORDER IN 60 DAYS

As explained above, Retirement De-List Bids and Permanent De-List Bids for FCA 15 will be due on March 13, 2020. To allow affected Market Participants time to decide how to proceed in light of the Commission’s determination on this waiver request, the ISO respectfully requests that the Commission issue an order on this request on or before March 8, 2020, which is 60 days from the date of this filing.

IV. CONCLUSION

For the foregoing reasons, the ISO requests that the Commission grant a one-time limited, conditional waiver of Section III.13.1.10(b) to permit a participant that has submitted a Retirement De-List Bid or Permanent De-List Bid for FCA 15 the option to either (i) update its de-list bid to reflect the impact of the changes to the Energy Security Improvements design or (ii) withdraw the de-list bid altogether, should the ISO make a non-clerical change to the Energy Security Improvements market rules after de-list bids have been submitted, and during the lead-up to or as part of the NEPOOL Participants Committee vote on the rules that is scheduled to take place on April 2, 2020, as described in this Request for Limited Waiver.

¹¹ See, for example, *ISO New England Inc. and New England Power Pool Participants Committee*, Market Monitoring-Related Capacity Market Changes, Docket No. ER15-1650-000 (filed May 1, 2015), transmittal letter at 9 (discussing the Internal Market Monitor’s concerns that rules allowing Market Participants to withdraw or revise de-list bids after the Internal Market Monitor has issued its determination regarding those bids encourages participants to submit bids at prices that “substantially exceed costs”).

¹² As explained above, *see* fn 9, *supra*, the Internal Market Monitor’s determination on Retirement De-List Bids and Permanent De-List Bids for FCA 15 will be due in mid-June 2020, approximately two months after Market Participants would need to act to withdraw or adjust their de-list bids if the waiver request is granted.

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Respectfully submitted,

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