

To: NEPOOL Markets Committee (“MC”)
NEPOOL Budget & Finance Subcommittee

From: ISO New England, Inc.

Date: January 7, 2022

Subject: Concerns with Competitive Power Ventures’ Proposed Financial Assurance Modifications

Competitive Power Ventures (CPV) is proposing changes to the Tariff to support changes in financial assurance associated with non-commercial capacity. The proposed changes are intended to address CPV’s conclusions, summarized below:

- CPV has concluded that the existing financial assurance requirements *“are insufficient to deter non-commercial capacity from participating in subsequent capacity auctions for highly unlikely projects.”*¹
- CPV also concludes that terminating a non-commercial capacity resource (thus preventing its further participation in subsequent capacity auctions) is *“further evidence that the existing financial/markets consequences remain insufficient to appropriately self-discipline behavior of a failed project participating in the market.”*²

This memo summarizes the ISO’s feedback, which it has been providing to the sponsor, on the current state of this proposal. The ISO is in general agreement that the deposits made by sponsors of new capacity resources under the financial assurance policy, along with other design elements, should provide the right set of incentives for a non-commercial resource to be in service on a timely basis. However, it is also important to ensure that a design proposal addresses the root cause or problem it is seeking to remedy. The memo identifies several areas where additional information is still needed – particularly as it relates to the identification of the root cause of the problems/conclusions and the objectives this proposal is intended to satisfy to address the root cause – as well as the ISO’s concerns with the specific design proposed. Unfortunately, given the ISO’s and the region’s planned priority work projects for the near future the ISO cannot devote further resources to this matter unless this work and its attendant priority are incorporated into the work plan.

Root causes. It is unclear from CPV’s conclusions whether the root issue relates to the initial clearing of new resources, or whether instead it relates to how a non-commercial resource is treated in the capacity

¹ CPV Proposed Non-Commercial Financial Assurance Provisions, December 9, 2021 Markets Committee presentation, slide 3.

² *Ibid*, slide 2.

market once it is cleared as new. Further elaboration and discussion of these conclusions by CPV would be highly informative when contemplating possible conceptual solutions. Identification of the root cause(s) underpinning CPV's conclusions would provide a useful backdrop when contemplating potential conceptual design changes. For example:

- What specific behavior is to be deterred?
- For which resources is the specific behavior to be deterred?
- How are the current termination provisions and/or FA requirements enabling this behavior?

Conceptual design objectives. CPV's proposal, at a conceptual level, is to apply additional financial assurance to non-commercial resources. Here too, further elaboration regarding the rationale for this particular approach would be highly informative, not only when contemplating a detailed design but also in evaluating the effectiveness of the approach. Specifically, what are the design objectives that the proposal seeks to achieve? For example:

- What objective criteria would be used to identify a project that requires CPV's proposed deterrence?
- For such projects, what specific behavior is preferred, what is causing it not to occur, and will this new behavior address the root cause/concern?

Outstanding design questions. In addition to a number of implementation-type questions, there are a number of open design details/questions within CPV's proposal. For example:

- A rationale explaining why (up to) six months of additional financial assurance is sufficient to incent the desired behavior.
- A rationale explaining why the proposed allocation of these new and replaced forfeited amounts (to market participants with Capacity Supply Obligations) is and should be different from the current forfeited financial assurance mechanism.
- A rationale/defense of the proposed changes to the critical path schedule. It is the ISO's experience that these proposed 'hard' milestones - with attendant financial consequences - are not known in advance so precisely and are not so clear-cut and objective (*e.g.*, financing, 'notice to proceed' language, etc.).
- Direction as to how CPV intends these new provisions to apply to projects that achieve partial commercial operation, and projects that are new incremental capacity.

Review of the proposed Tariff changes. The ISO has iterated with the sponsor as their proposal has evolved and has sought to understand CPV's objectives, design, and how the design is to be reflected in proposed Tariff revisions. In reviewing CPV's proposed Tariff changes, the ISO has explained that some of the proposed changes would need further development and refinement, and has provided guidance on

areas for further development. The ISO has also identified several remaining open design questions (*e.g.*, implications to the critical path schedule, inconsistency to existing rules that CPV proposed to retain in the Financial Assurance Policy, and the time at which CSOs will be measured to determine pro rata allocation under CPV's proposed allocation scheme), and the need for further Tariff revisions once those design questions are resolved.

Of particular note are the additional proposed Tariff changes to Sections III.13.1.1.2.2 Critical Path Schedule and III.13.3.2.2 Documentation of Milestones Achieved, the design of which and the redlines for which have not been presented to stakeholders at previous committee meetings. Here, the ISO provided feedback to the sponsor on those draft redlines, but did so without the benefit of the sponsor's explanation to, and discussion with, the committee regarding the intent of the proposed changes to those sections.

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The ISO has provided significant feedback to CPV regarding its proposal, including feedback about the need for greater clarity in defining the root cause, feedback on concerns and questions the ISO has about CPV's proposed design and several areas where the design needs further development, and feedback on the proposed Tariff redlines to memorialize the proposal. At this time, the ISO does not believe CPV's proposed design is complete and does not believe the Tariff revisions shared to date to memorialize that design are workable. Given the ISO's and the region's priority work projects already planned for the near future, coupled with the need for further development and discussion by CPV regarding the nature and cause of their issue and their proposed design for addressing the issue, the ISO unfortunately cannot devote further resources to this matter without incorporating this work, and its attendant priority, into the work plan.