



February 15, 2022

VIA E-TARIFF FILING

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

**Re: ISO New England Inc., Docket No. ER22-____-000;
Exigent Circumstances Filing of Revisions to Section III.13 of the Tariff**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ ISO New England Inc. (the “ISO”) hereby electronically submits this transmittal letter and related materials to add language in Section III.13 of the ISO New England Transmission, Markets, and Services Tariff (“Tariff”) to specify that provisions of the Tariff and/or other ISO New England Operating Documents² which establish or prescribe any dates, date ranges, and/or deadlines (collectively “FCA Schedule Dates”) shall not apply for Forward Capacity Auction (“FCA”) 17. Under the proposed Tariff revisions, the ISO will be required to publish the FCA Schedule Dates for FCA 17, and any revisions thereto, as soon as practicable. The proposed Tariff revisions also require the ISO to provide reasonable advance notice of each FCA Schedule Date. As explained below, these changes are necessary to recognize the uncertainty created by the February 4, 2022 order of the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) regarding the status of Killingly Energy Center (“Killingly”).³

The ISO is submitting these proposed revisions to the Tariff as an “Exigent Circumstances” filing under Section 11.2 of the Participants Agreement, for the reasons set forth in Section IV below. The ISO respectfully requests that these revisions become

¹ 16 U.S.C. § 824d (2021).

² Capitalized terms used but not defined in this filing are intended to have the meaning given to such terms in the Tariff.

³ *In re NTE Connecticut, LLC*, No. 22-1011 (D.C. Cir. Feb. 4, 2022) (order granting petition for writ of mandamus and staying Commission order).

effective on February 16, 2022. The ISO requests a waiver of the 60-day notice requirement, a shortened comment period and expedited order.⁴

I. DESCRIPTION OF THE ISO; COMMUNICATIONS

The ISO is the private, non-profit entity that serves as the regional transmission organization (“RTO”) 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 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.

Correspondence and communications in this proceeding should be addressed to:

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II. STANDARD OF REVIEW

This filing is made pursuant to Section 205 of the FPA, which “gives a utility the right to file rates and terms for services rendered with its assets.”⁵ Under Section 205, the Commission “plays ‘an essentially passive and reactive’ role”⁶ whereby it “can reject [a filing] only if it finds that the changes proposed by the public utility are not ‘just and reasonable.’”⁷ The Commission limits this inquiry “into whether the rates proposed by a utility are reasonable -- and [this inquiry does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.”⁸ The Tariff modifications herein “need not be the only reasonable methodology, or even the

⁴ During the time this exigent circumstances filing is pending at the Commission, the ISO will be out of compliance with FCA Schedule Dates for FCA 17. The ISO will submit self-reports to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Office of Enforcement to keep it informed of any non-compliance with the Tariff.

⁵ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

⁶ *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984)).

⁷ *Id.* at 9.

⁸ *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

most accurate.”⁹ As a result, even if an intervenor or the Commission develops an alternative proposal, the Commission must accept the ISO’s Section 205 filing if it is just and reasonable.¹⁰

III. BACKGROUND

On November 4, 2021, the ISO submitted a filing in Docket No. ER22-355-000 to request that the Commission terminate the Capacity Supply Obligation (“CSO”) that NTE Connecticut LLC (“NTE”) had previously obtained for Killingly. On January 3, 2022, effective the following day, the Commission issued an order accepting the ISO’s request to terminate Killingly’s CSO, beginning with the 2022-2023 Capacity Commitment Period and including future Capacity Commitment Periods (“Termination Order”).

On January 10, 2022, NTE submitted a Motion for Stay and Rehearing Request to the Commission. The Commission denied NTE’s Motion for Stay on January 28, 2022. NTE subsequently filed a petition with the D.C. Circuit seeking a stay of the Commission’s Termination Order to permit Killingly to participate in FCA 16 on February 7, 2022. By order issued on February 4, 2022, the D.C. Circuit stayed the Termination Order until 30 days after the Commission resolves NTE’s pending Request for Rehearing of the Termination Order.¹¹

In accordance with the D.C. Circuit’s order, the ISO included Killingly in FCA 16 as an existing resource. Because of the continuing uncertainty regarding Killingly’s status, the ISO provided notice to Market Participants on February 4 and 6, 2022 that it would include Killingly in the auction, would calculate clearing prices and quantities with and without Killingly, and would refrain from announcing the auction’s results until Killingly’s status has been clarified. As things currently stand, the D.C. Circuit’s stay will likely delay the Tariff-required filing of auction results with the Commission until mid-March or later.

Until Killingly’s status is clarified, the ISO cannot establish which set of FCA 16 results to use in the Forward Capacity Market (“FCM”) activities related to FCA 17. For example, the ISO needs FCA 16 results in order to conduct qualification calculations and determinations for FCA 17, and Market Participants have to comply with the qualification requirements for FCA 17 based on those determinations. Until the FCA 16

⁹ *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

¹⁰ *Cf. Southern California Edison Co., et al.*, 73 FERC ¶ 61,219 at p. 61,608 n.73 (1995) (“Having found the plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.” (citing *Cities of Bethany*, 727 F.2d at 1136)).

¹¹ *See supra* note 3. While the Commission issued a Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration on February 11, 2022, the Commission has not yet resolved NTE’s pending Rehearing Request.

results are finalized, the ISO will not be able to conduct these activities for FCA 17.¹² Accordingly, the ISO seeks to delay the FCM activities for FCA 17. While similar changes may be required to delay FCM activities for FCA 18, as explained below, the instant filing does not seek to modify the timing of FCA 18 activities.

IV. DESCRIPTION OF EXIGENT CIRCUMSTANCES

As already noted, the ISO is submitting these proposed Tariff revisions as an “Exigent Circumstances” filing under Section 11.2 of the Participants Agreement. Section 11.2 states:

Exigent Circumstances. In Exigent Circumstances, ISO may unilaterally, upon written notice to the Participants Committee and Individual Participants, file with the Commission pursuant to Section 205, if necessary, and implement a new or amended Market Rule, Operating Procedure, Manual, Reliability Standard, provision of the Information Policy (subject to 11.3), General Tariff Provision, or Non-TO OATT Provision.

“Exigent Circumstances” are defined in the Participants Agreement as circumstances such that the ISO determines in good faith that failure to immediately implement a change would substantially and adversely affect either system reliability or security or the competitiveness or efficiency of the New England Markets, and that invoking the normal stakeholder review procedures set forth in Section 11.1, 11.3 or 11.4 of the Participants Agreement would not allow for timely redress of the ISO’s concerns.

Exigent Circumstances are presented here, and the ISO has made the good faith determinations required in Section 11.2 of the Participants Agreement. Prompt implementation of the revisions to the Tariff is necessary to address the lack of finalized FCA 16 results. Failure to implement these changes would substantially and adversely affect the efficiency of the FCM, and would create additional uncertainty.

The ISO has provided written notice of this filing to the New England Power Pool Participants Committee and Individual Participants, as required by Sections 11.2 and 17.11(e) of the Participants Agreement.

V. DESCRIPTION OF, AND JUSTIFICATION FOR, THE TARIFF REVISIONS

The proposed Tariff revisions affect only Section III.13 of the Tariff. Specifically, the ISO proposes to add the following text in Section III.13:

¹² Concurrent with this filing, the ISO is also submitting to the Commission a request for waiver of Tariff provisions that require the publication of certain data related to FCA 16 by no later than 15 days after the auction.

For the seventeenth Forward Capacity Auction (associated with the 2026-2027 Capacity Commitment Period), any dates, date ranges and/or deadlines for activities related to the Forward Capacity Auction established in or pursuant to any provision of the ISO New England Inc. Transmission, Markets, and Services Tariff and all other ISO New England Operating Documents shall not apply. For the seventeenth Forward Capacity Auction, the ISO shall publish each date, date range, and/or deadline for Forward Capacity Auction activities as soon as practicable. The ISO may adjust any published date, date range and/or deadline for Forward Capacity Auction activities if needed and shall publish a revised date, date range and/or deadline as soon as practicable. The ISO shall establish and, as applicable, adjust, such published dates, date ranges and/or deadlines to provide reasonable advance notice of each date, date range, and/or deadline.

It is important to note that the proposed language applies to FCA Schedule Dates included in any part of the Tariff and/or other ISO New England Operating Documents. For example, the language applies to any FCA Schedule Dates included in the ISO New England Financial Assurance Policy and ISO New England Planning Procedure No. 10 – Planning Procedure to Support the Forward Capacity Market. Equally important, the proposed Tariff revisions do not affect other timelines in the Tariff that are not specifically related to FCA activities (*e.g.*, the Interconnection Procedure timelines, including but not limited to, the three-year time-out provisions for CNR Interconnection Service, and the three-year automatic retirement for non-operation established in Section III.13.2.5.2.5 of the Tariff).

As explained above, the revisions are needed because, without final FCA 16 results, the ISO cannot conduct the FCM activities for FCA 17 that, pursuant to the Tariff, must occur in short order following FCA 16. For instance, on February 17, 2022 the ISO has to provide Market Participants with Existing Capacity Resources with the existing Qualified Capacity values for their resources. The definitive calculation of those Qualified Capacity values cannot be made for all resources without final FCA 16 results. Once the ISO moves one FCA Schedule Date, it needs to move subsequent FCA Schedule Dates in the FCA qualification process.

The ISO considered proceeding with FCA 17 qualification activities using two sets of FCA 16 results (*i.e.*, clearing prices and quantities with and without Killingly). However, the ISO identified significant impediments to this approach. The ISO's systems and processes are built with the expectation of a single final set of results from the FCA, and cannot handle multiple sets of results. Proceeding with two sets of FCA 16 results poses an extraordinary risk to all the downstream activities. For example, before the ISO can initiate FCA 17 activities, FCM implementation requires population of FCA 16 results for all resources that cleared in FCA 16 in the ISO's capacity tracking system (this includes clearing prices and megawatt quantities, which are visible to Market Participants for their resources). It would be inappropriate to populate the ISO's

capacity tracking with a set of FCA 16 results that is not final. Also, the ISO's capacity tracking system cannot support proceeding into FCA 17 resource qualification with two concurrent sets of results, and, consequently, using more than one set of FCA 16 results would require either the provisional qualification or late qualification of some resources. In addition, processing two sets of results would allow some resources to know the extent to which they were marginal to clearing in FCA 16. Moreover, in response to the qualification determinations that the ISO issues, some Market Participants are required to take certain actions, within specific timelines. Without knowing the auction clearing prices, or if their resources actually cleared (an outcome that could be different in each of the two sets of FCA 16 results), Market Participants would have no firm basis on which to take those actions. For these reasons, the ISO determined that the appropriate approach is to delay the beginning of FCA 17 activities until there is certainty on the FCA 16 results. Such delay requires adjusting the schedule for FCA 17 activities.

Given that the need to move the deadlines arose last week and the FCM activities for FCA 17 start this week, the ISO has not had sufficient time to consider the timing for all deadlines. Moreover, because the ISO still does not know when FCA 16 results will be finalized, it cannot accurately determine the length of the delay. For those reasons, the proposed Tariff revisions are drafted to provide the ISO with the time it needs to fully conduct its analysis. Once the ISO determines each FCA Schedule Date, it will publish it with as much lead-time as possible so that all parties can comply with each FCA Schedule Date. In addition, the Tariff revisions proposed here will give the ISO the flexibility it needs, should further events (such as additional court actions) again require the ISO to move FCA Schedule Dates.

Based on the analysis that the ISO has conducted to date, the ISO envisions that the qualification activities for FCA 17 will begin in April 2022, and FCA 17 will occur in March 2023, approximately one month later than its usual timing. This schedule will require the ISO to compress the approximately one year FCA qualification cycle to eleven months prior to FCA 17. To compress the FCA qualification process, the ISO will seek to minimize disruptions to the currently established order and relative timing of the FCA qualification process events in order to maximize the familiarity and certainty of the process for affected parties, which include Market Participants, the Commission, and all affected business units at the ISO.

The proposed Tariff revisions submitted in the instant filing address FCA 17. The compressed schedule for FCA 17, however, will also require the ISO to similarly compress the schedule for FCA 18. As the changes for FCA 18 do not create exigent circumstances, the ISO will discuss the schedules with stakeholders and will submit a filing to the Commission at a later time.

VI. REQUESTED EFFECTIVE DATE, REQUESTS FOR WAIVER OF 60-DAY PRIOR NOTICE REQUIREMENT, SHORTENED COMMENT PERIOD, AND EXPEDITED COMMISSION ACTION

The ISO respectfully requests that the Commission permit the Tariff revisions submitted herein to become effective on February 16, 2022, without condition, suspension or hearing. Accordingly, the ISO requests waiver of the 60-day prior notice requirement of Section 205 of the Federal Power Act. Such a waiver will serve the public interest because the Tariff revisions proposed in this filing will enable the ISO to begin pursuing FCA 17 activities in an orderly and deliberate manner, and will remove some of the uncertainty regarding FCA 17 that now exists because of the delay in finalization of the FCA 16 results.

The ISO also requests that the Commission either waive, or shorten to the maximum extent possible, the notice and comment periods for this filing, so that the Commission may issue an order as expeditiously as possible.

VII. ADDITIONAL SUPPORTING INFORMATION

Section 35.13 of the Commission's regulations generally requires public utilities to file certain cost and other information related to an examination of traditional cost-of-service rates. However, the revisions submitted herein do not modify a traditional "rate" and the ISO is not a traditional investor-owned utility. Therefore, to the extent necessary, the ISO requests waiver of Section 35.13 of the Commission's regulations. Notwithstanding its request for waiver, the ISO submits the following additional information in substantial compliance with relevant provisions of Section 35.13 of the Commission's regulations:

35.13(b)(1) – Materials included herewith are as follows:

- This transmittal letter;
- Blacklined Tariff section reflecting the revisions submitted in this filing;
- Clean Tariff section reflecting the revisions submitted in this filing;
- List of governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to which a copy of this filing has been sent.

35.13(b)(2) – The ISO respectfully requests that the Commission issue an order accepting the Tariff revisions to become effective on February 16, 2022.

35.13(b)(3) – Pursuant to Section 17.11(e) of the Participants Agreement, Governance Participants are being served electronically rather than by paper copy. The names and addresses of the Governance Participants are posted on the ISO's website at

<http://www/committees/directory/default/committee.action?committeeId=1>. A copy of this transmittal letter and the accompanying materials have also been sent electronically to the governors and electric utility regulatory agencies for the six New England states that comprise the New England Control Area, to the New England Conference of Public Utility Commissioners, and to the Executive Director of the New England States Committee on Electricity. In accordance with Commission rules and practice, there is no need for the Governance Participants or the other entities described above to be included on the Commission's official service list in the captioned proceeding unless such entities become intervenors in this proceeding.

35.13(b)(4) - A description of the materials submitted pursuant to this filing is contained in this transmittal letter. Clean and redlined copies of the revised Tariff sheets are included with this eTariff filing.

35.13(b)(5) - The reasons for this filing are discussed in this transmittal letter.

35.13(b)(6) – The ISO's approval of the Tariff revisions is evidenced by this filing.

35.13(b)(7) – The ISO has no knowledge of any relevant expenses or costs-of-service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

35.13(c)(1) - The Tariff revisions filed herein do not modify a traditional "rate," and the statement required under this Commission regulation is not applicable to the instant filing.

35.13(c)(2) – The ISO does not provide services under other rate schedules that are similar to the sale for resale and transmission services it provides under the Tariff.

35.13(c)(3) - No specifically assignable facilities have been or will be installed or modified in connection with the revisions proposed herein.

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VIII. CONCLUSION

For the reasons stated herein, the ISO respectfully requests that the Commission accept the Tariff revisions submitted in this filing without condition, modification or hearing, to become effective on February 16, 2022.

Respectfully submitted,

/s/ Margoth R. Caley

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III.13. Forward Capacity Market.

The ISO shall administer a forward market for capacity (“Forward Capacity Market”) in accordance with the provisions of this Section III.13. For each one-year period from June 1 through May 31, starting with the period June 1, 2010 to May 31, 2011, for which Capacity Supply Obligations are assumed and payments are made in the Forward Capacity Market (“Capacity Commitment Period”), the ISO shall conduct a Forward Capacity Auction in accordance with the provisions of Section III.13.2 to procure the amount of capacity needed in the New England Control Area and in each modeled Capacity Zone during the Capacity Commitment Period, as determined in accordance with the provisions of Section III.12. To be eligible to assume a Capacity Supply Obligation for a Capacity Commitment Period through the Forward Capacity Auction, a resource must be accepted in the Forward Capacity Auction qualification process in accordance with the provisions of Section III.13.1.

For the seventeenth Forward Capacity Auction (associated with the 2026-2027 Capacity Commitment Period), any dates, date ranges and/or deadlines for activities related to the Forward Capacity Auction established in or pursuant to any provision of the ISO New England Inc. Transmission, Markets, and Services Tariff and all other ISO New England Operating Documents shall not apply. For the seventeenth Forward Capacity Auction, the ISO shall publish each date, date range, and/or deadline for Forward Capacity Auction activities as soon as practicable. The ISO may adjust any published date, date range and/or deadline for Forward Capacity Auction activities if needed and shall publish a revised date, date range and/or deadline as soon as practicable. The ISO shall establish and, as applicable, adjust, such published dates, date ranges and/or deadlines to provide reasonable advance notice of each date, date range, and/or deadline.

Special Retirement De-List Bid, Permanent De-List Bid and Substitution Auction Demand Bid Modification and Withdrawal Provisions for the sixteenth Forward Capacity Auction (associated with the Capacity Commitment Period beginning on June 1, 2025). For the sixteenth Forward Capacity Auction (associated with the Capacity Commitment Period beginning on June 1, 2025), on or before June 3, 2021, the Internal Market Monitor will modify any submitted Permanent De-List Bids, Retirement De-List Bids and substitution auction test prices (whether or not associated with a Retirement De-List Bid) submitted for the sixteenth Forward Capacity Auction to reflect the impact of updated CONE, Net CONE and Capacity Performance Payment Rate values accepted by the Commission in Docket No. ER21-787.

The Internal Market Monitor will provide Lead Market Participants with updated Permanent De-List Bids, Retirement De-List Bids and substitution auction test prices in the retirement determination

notifications that it issues on June 3, 2021. Within 5 Business Days of the issuance of the retirement determination notifications, a Lead Market Participant may withdraw its Retirement De-List Bid, Permanent De-List Bid, or substitution auction demand bid, and the attendant substitution auction test price, by written notification to the Internal Market Monitor. The election to withdraw a Retirement De-List Bid will also withdraw the associated substitution auction demand bid.

Special Dynamic De-List Threshold and Certain Information Publications for the sixteenth Forward Capacity Auction (associated with the Capacity Commitment Period beginning on June 1, 2025). For the sixteenth Forward Capacity Auction (associated with the Capacity Commitment Period beginning on June 1, 2025), on or before June 3, 2021, the ISO will recalculate and re-post the Dynamic De-List Bid Threshold pursuant to Section III.13.1.2.3.1.A to reflect the impact of updated CONE and Net CONE values accepted by the Commission for use in the sixteenth Forward Capacity Auction in Docket No. ER21-787.

In addition, the ISO will, on or before June 11, 2021, repost information concerning Permanent De-List Bids and Retirement De-List Bids pursuant to Section III.13.1.8(e) and will repost information about the aggregate quantity of supply offers and demand bids that have elected to participate in the substitution auction pursuant to Section III.13.1.8(g).

III.13. Forward Capacity Market.

The ISO shall administer a forward market for capacity (“Forward Capacity Market”) in accordance with the provisions of this Section III.13. For each one-year period from June 1 through May 31, starting with the period June 1, 2010 to May 31, 2011, for which Capacity Supply Obligations are assumed and payments are made in the Forward Capacity Market (“Capacity Commitment Period”), the ISO shall conduct a Forward Capacity Auction in accordance with the provisions of Section III.13.2 to procure the amount of capacity needed in the New England Control Area and in each modeled Capacity Zone during the Capacity Commitment Period, as determined in accordance with the provisions of Section III.12. To be eligible to assume a Capacity Supply Obligation for a Capacity Commitment Period through the Forward Capacity Auction, a resource must be accepted in the Forward Capacity Auction qualification process in accordance with the provisions of Section III.13.1.

For the seventeenth Forward Capacity Auction (associated with the 2026-2027 Capacity Commitment Period), any dates, date ranges and/or deadlines for activities related to the Forward Capacity Auction established in or pursuant to any provision of the ISO New England Inc. Transmission, Markets, and Services Tariff and all other ISO New England Operating Documents shall not apply. For the seventeenth Forward Capacity Auction, the ISO shall publish each date, date range, and/or deadline for Forward Capacity Auction activities as soon as practicable. The ISO may adjust any published date, date range and/or deadline for Forward Capacity Auction activities if needed and shall publish a revised date, date range and/or deadline as soon as practicable. The ISO shall establish and, as applicable, adjust, such published dates, date ranges and/or deadlines to provide reasonable advance notice of each date, date range, and/or deadline.

Special Retirement De-List Bid, Permanent De-List Bid and Substitution Auction Demand Bid Modification and Withdrawal Provisions for the sixteenth Forward Capacity Auction (associated with the Capacity Commitment Period beginning on June 1, 2025). For the sixteenth Forward Capacity Auction (associated with the Capacity Commitment Period beginning on June 1, 2025), on or before June 3, 2021, the Internal Market Monitor will modify any submitted Permanent De-List Bids, Retirement De-List Bids and substitution auction test prices (whether or not associated with a Retirement De-List Bid) submitted for the sixteenth Forward Capacity Auction to reflect the impact of updated CONE, Net CONE and Capacity Performance Payment Rate values accepted by the Commission in Docket No. ER21-787.

The Internal Market Monitor will provide Lead Market Participants with updated Permanent De-List Bids, Retirement De-List Bids and substitution auction test prices in the retirement determination

notifications that it issues on June 3, 2021. Within 5 Business Days of the issuance of the retirement determination notifications, a Lead Market Participant may withdraw its Retirement De-List Bid, Permanent De-List Bid, or substitution auction demand bid, and the attendant substitution auction test price, by written notification to the Internal Market Monitor. The election to withdraw a Retirement De-List Bid will also withdraw the associated substitution auction demand bid.

Special Dynamic De-List Threshold and Certain Information Publications for the sixteenth Forward Capacity Auction (associated with the Capacity Commitment Period beginning on June 1, 2025). For the sixteenth Forward Capacity Auction (associated with the Capacity Commitment Period beginning on June 1, 2025), on or before June 3, 2021, the ISO will recalculate and re-post the Dynamic De-List Bid Threshold pursuant to Section III.13.1.2.3.1.A to reflect the impact of updated CONE and Net CONE values accepted by the Commission for use in the sixteenth Forward Capacity Auction in Docket No. ER21-787.

In addition, the ISO will, on or before June 11, 2021, repost information concerning Permanent De-List Bids and Retirement De-List Bids pursuant to Section III.13.1.8(e) and will repost information about the aggregate quantity of supply offers and demand bids that have elected to participate in the substitution auction pursuant to Section III.13.1.8(g).

New England Governors, State Utility Regulators and Related Agencies*

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