

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.

)

Docket No. ER22-____-000

**PETITION OF ISO NEW ENGLAND INC.
FOR TEMPORARY TARIFF WAIVER, SHORTENED COMMENT PERIOD,
AND EXPEDITED COMMISSION ACTION**

Pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“Commission”),² ISO New England Inc. (the “ISO”) respectfully requests that the Commission temporarily waive provisions of the ISO Tariff that require the ISO to publish information related to Forward Capacity Auction (“FCA”) 16 no later than fifteen days after the FCA. The ISO conducted FCA 16 on February 7, 2022; February 22 is the fifteenth day following the FCA.

The requested temporary waiver is appropriate because of continuing, litigation-related uncertainty regarding the results of FCA 16. In short, it would not be prudent to publish information related to FCA 16 in advance of publishing the FCA 16 results themselves. As explained in more detail below, this uncertainty has been created by the United States Court of Appeals for the District of Columbia Circuit’s (“D.C. Circuit”) February 4, 2022 stay of the Commission’s order authorizing termination of Killingly Energy Center’s (“Killingly”) Capacity Supply Obligation (“CSO”), effective January 4, 2022.³

¹ 18 C.F.R. § 385.207.

² Capitalized terms used but not defined in this waiver request have the meanings ascribed to them in the ISO New England Inc. Transmission, Markets and Services Tariff (“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).

The ISO respectfully requests that the Commission either waive or shorten to the maximum extent possible any notice and comment periods pertaining to this petition, so that the Commission may expeditiously issue an order granting the requested waiver. The ISO further requests that the Commission act expeditiously and grant the requested waiver by February 21, 2022.

I. BACKGROUND

On November 4, 2021, the ISO submitted a filing in Docket No. ER22-355-000 to request that the Commission terminate the CSO that NTE Connecticut, LLC (“NTE”) obtained for Killingly in FCA 13.⁴ On January 3, 2022, effective January 4, 2022, 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”).⁵

On January 10, 2022, NTE submitted a motion for stay and rehearing request to the Commission.⁶ The Commission denied NTE’s motion for stay on January 28, 2022.⁷ 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

⁴ Resource Termination Filing of ISO New England Inc., Docket No. ER22-355-000 (Nov. 4, 2021).

⁵ *ISO New England Inc.*, 178 FERC ¶ 61,001 (2022) (“Termination Order”).

⁶ Emergency Motion for Stay, Request for Rehearing, and Request for Shortened Answer Period of NTE Connecticut, LLC, Docket No. ER22-355-001 (Jan. 10, 2022) (“Request for Rehearing”).

⁷ *ISO New England Inc.*, 178 FERC ¶ 61,063 (2022).

order issued on February 4, 2022, the D.C. Circuit stayed the Termination Order until thirty days after the Commission resolves NTE's pending Request for Rehearing.⁸

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. FCA 16 was conducted as scheduled on February 7, 2022. The D.C. Circuit's stay may delay the determination of which set of results to file with the Commission pursuant to the Tariff until mid-March or later. Pursuant to Section III.13.8.2 of the Tariff, the ISO is required to submit the results of the FCA to the Commission as soon as practicable. However, until Killingly's status is clarified, the ISO cannot determine which set of FCA 16 results to submit to the Commission.

In addition to submitting the results of the FCA to the Commission as soon as practicable after the FCA, the ISO is required to publish information related to the FCA no later than fifteen days after the FCA. Specifically, Section III.13.1.8 of the Tariff requires that the ISO publish the following offer and bid information fifteen days after the FCA: (a) resource name, quantity, and Load Zone (or interface, as applicable) in which the resource is located of each Permanent De-List Bid, Retirement De-List Bid; (b) the quantity and Load Zone (or interface, as applicable) in which the resource is located of each Static De-

⁸ 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 Request for Rehearing. *ISO New England Inc.*, 178 FERC ¶ 62,082 (2022).

List Bid; (c) name of submitter, quantity, and interface of Export Bids and Administrative Export Bids; and (d) name of submitter, quantity, and interface of offers from New Import Capacity Resources.

Similarly, pursuant to Section III.13.8.1(c) of the Tariff, with the exception of de-list bid price information, the ISO must publish its determinations for the items described in subsections (vi),⁹ (vii),¹⁰ and (viii)¹¹ of Section III.13.8.1(c) (which the ISO submits confidentially to the Commission as part of its informational filing for the FCA)¹² no later than fifteen days after the FCA.

Under the Forward Capacity Market (“FCM”) design, the publication of information related to the FCA no later than fifteen days after the FCA is followed by the filing of the FCA results as soon as practicable. Under normal circumstances, the ISO would release the information related to FCA 16 by February 22, 2022, and it would submit

⁹ The information to be published is: which new resources are accepted and rejected in the qualification process to participate in the FCA.

¹⁰ The information to be published is: the Internal Market Monitor’s determinations regarding each requested offer price from a new resource submitted pursuant to Section III.13.1.1.2.2.3 or Section III.13.1.4.1.1.2.8, including information regarding each of the elements considered in the Internal Market Monitor’s determination of expected net revenues (other than revenues from ISO-administered markets) and whether that element was included or excluded in the determination of whether the offer is consistent with the resource’s long run average costs net of expected net revenues other than capacity revenues.

¹¹ The information to be published is: the Internal Market Monitor’s determinations regarding offers or Static De-List Bids, Export Bids, and Administrative De-List Bids submitted during the qualification process made according to the provisions of this Section III.13, including an explanation of the Internal Market Monitor-determined prices established for any Static De-List Bids, Export Bids, and Administrative De-List Bids as described in Section III.13.1.2.3.2 based on the Internal Market Monitor review and the resource’s net going forward costs, reasonable expectations about the resource’s Capacity Performance Payments, reasonable risk premium assumptions, and reasonable opportunity costs as determined by the Internal Market Monitor.

¹² The ISO submitted the informational filing for FCA 16 to the Commission on November 9, 2021. The Commission accepted the informational filing on January 21, 2022. *See ISO New England Inc.*, 178 FERC ¶ 61,050 (2022).

the FCA 16 results filing to the Commission by February 28, 2022.¹³ Importantly, the FCA results filing provides the price or prices resulting from the auction. However, in this instance, the ISO has not been able to share any information regarding the outcome of FCA 16 with Market Participants. Given the current circumstances, which are both uncertain and unprecedented, the ISO is proposing a conservative approach with respect to the release of any information related to FCA 16. Specifically, out of an abundance of caution, the ISO will not submit the FCA 16 results filing to the Commission until there is greater certainty on which set of results to file. For this reason, the ISO also seeks to refrain from publishing the above-described bid, offer, and location information related to the FCA within fifteen days after the FCA, as required in Sections III.13.1.8(a), (b), (c), and (d), and III.13.8.1(c) of the Tariff. In order to achieve this, the ISO respectfully requests that the Commission temporarily waive those two Tariff provisions until the ISO publishes the results of FCA 16.

II. REQUEST FOR WAIVER

The Commission has previously granted waivers of tariff provisions based on four well-established criteria: (1) the request is made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver would not have undesirable consequences, such as harm to third parties.¹⁴ The ISO's instant petition meets each of these criteria.

¹³ While Section III.13.8.2 of the Tariff only requires that the results of the FCA be submitted to the Commission as soon as practicable, for every FCA, the ISO has targeted the last day in February as the filing date.

¹⁴ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

(1) The ISO has acted in good faith in conducting FCA 16 pursuant to its Tariff and in compliance with the D.C. Circuit's order that stayed the Commission's Termination Order. The ISO is also acting in good faith by not releasing any information related to FCA 16 until there is certainty on the FCA 16 results.

In accordance with the D.C. Circuit's order of February 4, the ISO included Killingly in FCA 16 on February 7. However, the stay of the Commission's Termination Order does not resolve Killingly's status, and thus does not resolve the proper outcome of FCA 16. Determining those questions awaits the Commission's ruling on NTE's pending Request for Rehearing of the Termination Order, and perhaps further appellate litigation. Accordingly, the ISO has calculated the auction's results with and without Killingly, but has refrained from publishing either set of results while Killingly's status remains unresolved.

This disruption of the FCM may be amplified by the provisions of Sections III.13.1.8(a), (b), (c), and (d) and III.13.8.1(c) of the Tariff, which require the ISO to publish certain offer and bid data related to FCA 16 within fifteen days following the auction, or by no later than February 22, 2022. While the ISO is capable of complying with these publication requirements, it has concluded that, in the present circumstances, the best course is to proceed with caution regarding all aspects of FCA 16. The ISO thus submits it would be prudent not to publish the data required by Sections III.13.1.8(a), (b), (c), and (d) and III.13.8.1(c) until it is in a position to publish the results of FCA 16. This conclusion is supported not only by the need to manage the litigation-related uncertainty regarding FCA 16, but also by the fact that the data in question are of limited value to

Market Participants unless and until they also are informed of the prices and quantities determined by FCA 16.

Therefore, the ISO has determined that the market will be best served by waiving the publication deadlines of Sections III.13.1.8(a), (b), (c), and (d) and III.13.8.1(c) until the ISO publishes the final outcome of FCA 16. However, should the Commission find that the ISO should proceed with publication as required by Sections III.13.1.8(a), (b), (c), and (d) and III.13.8.1(c), the ISO respectfully requests that the Commission promptly deny this petition and thus clarify that the ISO should timely fulfill those publication requirements.

(2) In addition, the requested waiver is of limited scope, as it only applies to the fifteen-day deadlines for publication of information related to FCA 16, and the ISO proposes that the waiver will endure only until the ISO publishes the results of FCA 16.

(3) Moreover, the proposed waiver addresses a concrete problem. The ongoing uncertainty regarding the status of Killingly and, concomitantly, the outcome of FCA 16, counsels following the cautious course the ISO has chosen. In the absence of the requested waiver, however, the Tariff's fifteen-day publication requirements will make that course unavailable.

(4) Finally, there are no undesirable consequences, as all Market Participants will see the information related to FCA 16 at the same time, when the FCA 16 results are published, and the proposed waiver will enable the ISO to move forward in an orderly manner with activities related to FCA 17.¹⁵

¹⁵ In order to move forward with FCA 17 activities in an orderly manner, today, the ISO is also submitting to the Commission an "Exigent Circumstance" filing under Section 11.2 of the

III. REQUEST FOR EXPEDITED COMMISSION ACTION AND FOR PROCEDURAL WAIVERS

The ISO respectfully requests the Commission act expeditiously and grant the requested waiver by February 21, 2022. The ISO also requests the Commission either waive or shorten to the maximum extent possible any notice and comment periods that would otherwise apply to this request, so that it may issue an order by that date and make the proposed waiver of the Tariff's fifteen-day publication dates effective as specified above.

IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant this request for a waiver.

Respectfully submitted,

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Participants Agreement to add language in Section III.13 of the Tariff that will allow the ISO to move the FCA dates, date ranges, and deadlines for FCA 17.