

170 FERC ¶ 61,011  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

ISO New England Inc.

Docket No. ER20-395-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued January 14, 2020)

1. On November 15, 2019, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> ISO New England Inc. (ISO-NE) filed proposed revisions to the ISO New England Financial Assurance Policy<sup>2</sup> to calculate financial assurance for non-commercial resources based on the Net Cost of New Entry (Net CONE)<sup>3</sup> rather than the starting and clearing prices of the Forward Capacity Auction (FCA) (Financial Assurance Rate Filing). In this order, we accept the Financial Assurance Rate Filing, to become effective January 15, 2020, as requested.

**I. Background and Filing**

2. ISO-NE explains that non-commercial resources<sup>4</sup> are subject to specific requirements under ISO-NE's Financial Assurance Policy, which are intended to ensure that such resources achieve commercial operation by the time their relevant Capacity Commitment Period begins. Under the current rules, non-commercial resources must submit a Forward Capacity Market (FCM) Deposit upon resource qualification.<sup>5</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> ISO-NE Transmission, Markets and Services Tariff (Tariff), § I, Ex. I.D.

<sup>3</sup> Capitalized terms not defined herein are used as they are defined in the Tariff. See Tariff, Rules of Construction; Definitions (127.0.0) § I.2.

<sup>4</sup> ISO-NE states that non-commercial resources are resources that have cleared an FCA but have not yet achieved commercial operation. Transmittal at 4.

<sup>5</sup> The FCM Deposit equals \$2.00/kW. *Id.* at 3.

Ten days prior to the auction, the resource must additionally provide financial assurance equal to the non-commercial capacity qualified to participate in the FCA, multiplied by the FCA starting price.<sup>6</sup> Finally, if the resource obtains a Capacity Supply Obligation (CSO), the financial assurance requirement is recalculated to equal the product of the CSO awarded, the capacity clearing price (from the first round of the FCA in which the CSO was awarded), and a multiplier.<sup>7</sup>

3. The Financial Assurance Rate Filing alters the current methodology used to calculate the financial assurance requirements for non-commercial entities, basing it on Net CONE before and after the FCA, rather than the starting price before the FCA and clearing price after the FCA. ISO-NE explains that, before the FCA, the revisions will require a participant to add to its total financial assurance requirements an amount equal to Net CONE multiplied by its non-commercial qualified capacity. Once the non-commercial resource receives a CSO, the financial assurance will be the product of the CSO awarded, the Net CONE value associated with the FCA, and the multiplier.<sup>8</sup>

4. ISO-NE contends that there are several benefits to this approach. First, ISO-NE states that the Financial Assurance Rate Filing provides a uniform financial assurance amount that will no longer vary according to the FCA clearing price. Instead, ISO-NE asserts that the financial assurance requirement will remain consistent whether the clearing price is high or low, consistent with the expectation that resources deliver capacity regardless of the FCA clearing price. Second, ISO-NE explains that, because Net CONE is known prior to the FCA, the revisions reduce uncertainty concerning the financial assurance required after a resource clears and market participants will no longer need to speculate as to the eventual amount. Finally, ISO-NE states that the revisions will reduce the amount of financial assurance required prior to the FCA. ISO-NE

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<sup>6</sup> *Id.* ISO-NE explains that this financial assurance amount subsumes the FCM Deposit already provided. *Id.*

<sup>7</sup> The multiplier is one for the FCA in which the CSO is awarded, increases to two for the subsequent FCA, and then increases to three for the third FCA after the initial award. *Id.*

<sup>8</sup> ISO-NE states that the multiplier will not change as part of the proposed revisions. *Id.* at 4.

explains that whether the revisions increase or decrease the total financial assurance required after the FCA will depend on whether the FCA clearing price is higher or lower than Net CONE.<sup>9</sup>

5. ISO-NE proposes that the revisions apply to future FCAs, beginning with FCA 14. To this end, ISO-NE requests an effective date of January 15, 2020, which would allow the changes to go into effect 10 days before FCA 14. ISO-NE adds that the proposed financial assurance requirement will not apply to non-commercial resources that first cleared in prior FCAs.<sup>10</sup>

## **II. Notice of Filing and Responsive Pleadings**

6. Notice of ISO-NE's filing was published in the *Federal Register*, 84 Fed. Reg. 64,518 (2019), with interventions and protests due on or before December 6, 2019. Calpine Corporation (Calpine); Cogentrix Energy Power Management, LLC (Cogentrix); Dominion Energy Services, Inc.; Eversource Energy Service Company; FirstLight Power; Helix Maine Wind Development, LLC, Ocean State Power LLC, and Wallingford Energy LLC; Massachusetts Electric Company, Nantucket Electric Company, and Narragansett Electric Company, doing business as National Grid; New England Power Generators Association, Inc. (NEPGA); New England Power Pool Participants Committee (NEPOOL Participants Committee); New England States Committee on Electricity; NextEra Energy Resources, LLC; NRG Power Marketing LLC; and Vistra Energy Corp. filed timely motions to intervene. Brookfield Renewable Trading and Marketing LP (Brookfield) filed a motion to intervene out of time. Calpine, Cogentrix, NEPGA, and NEPOOL Participants Committee filed comments.

7. NEPOOL Participants Committee states that, in early 2019, ISO-NE stakeholders raised concerns that the current financial assurance arrangements for non-commercial resources potentially allow such resources to benefit financially from their CSOs, even when they fail to achieve commercial operation in time to honor their CSOs. NEPOOL Participants Committee states that ISO-NE responded to growing stakeholder interest in this issue by offering its own proposal, the Financial Assurance Rate Filing. NEPOOL Participants Committee explains that the Financial Assurance Rate Filing received a

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<sup>9</sup> *Id.* at 5-6.

<sup>10</sup> *Id.* at 6.

61.47 percent vote in support from ISO-NE stakeholders. As a result, NEPOOL Participants Committee states that it did not join ISO-NE in submitting the Financial Assurance Rate Filing because the vote did not meet the 66 2/3 percent threshold required for it to do so.<sup>11</sup>

8. Calpine supports the Financial Assurance Rate Filing, explaining that it is necessary to correct ISO-NE's current flawed collateral requirements. According to Calpine, the current financial assurance requirements for non-commercial resources are counterintuitive and provide few real incentives for resources to achieve commercial operation in a timely manner. Calpine explains that, because FCA clearing prices in recent years have been low, the current financial assurance requirements are too low to ensure that non-commercial resources will be able to satisfy CSOs and thus encourage market participants to submit speculative FCA offers. Calpine asserts that this current design therefore creates serious problems for the FCM because speculative offers inflate the amount of capacity supplied in the market and substantially suppress clearing prices.<sup>12</sup> Calpine argues that the use of Net CONE will help provide consistency and predictability, impose more appropriate collateral requirements to deter speculative offers, and create stronger incentives for resources to move forward with project development.<sup>13</sup>

9. Cogentrix contends that the Financial Assurance Rate Filing will provide a uniform collateral requirement to incentivize delivery of non-commercial resources, reduce uncertainty regarding the amount of collateral that will be required, and reduce the amount of collateral that must be provided prior to the FCA. Cogentrix argues that the existing financial assurance rules are insufficient to discourage risky market speculation and the practical effect of the change to Net CONE will be to increase the overall amount of collateral required. Cogentrix adds that discouraging resources that never deliver their CSOs will help maintain grid reliability.<sup>14</sup>

10. NEPGA argues that the Financial Assurance Rate Filing's proposed methodology is just and reasonable because it balances the risk incurred by a market participant offering non-commercial capacity into the FCA with the risk to capacity suppliers and load in continuing to clear the resource before it demonstrates commercial capability.

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<sup>11</sup> NEPOOL Participants Committee Comments at 3-4.

<sup>12</sup> Calpine Comments at 3-4.

<sup>13</sup> *Id.* at 1-5.

<sup>14</sup> Cogentrix Comments at 4-6.

NEPGA contends that the existing financial assurance requirements for non-commercial resources fail to apply sufficient risk to the resources relative to the risks that such resources may impose on load, other capacity suppliers, and potential capacity suppliers displaced by their capacity offers. NEPGA asserts that basing the financial assurance requirements on Net CONE will address this issue by increasing the financial assurance due from non-commercial resources, compared to the current use of FCA clearing prices, which are expected to remain low.<sup>15</sup>

11. Despite supporting the Financial Assurance Rate Filing's substance, NEPGA asserts that its proposed application unduly discriminates against new non-commercial resources that first clear in FCA 14. Specifically, NEPGA notes that the proposed revisions would not apply to non-commercial resources that cleared in FCA 12 or FCA 13 and contends that, so long as capacity has yet to reach commercial operation, it poses the same risk to load and capacity regardless of the auction in which it first cleared.<sup>16</sup> NEPGA asserts that all non-commercial resources that cleared in FCA 12 and FCA 13 and will clear in FCA 14 are similarly situated, and there is no compelling reason for disparate treatment. NEPGA adds that the need to better align the risks applies equally to all non-commercial capacity. NEPGA asks the Commission to direct ISO-NE, in a compliance filing or pursuant to FPA section 206,<sup>17</sup> to apply the change to all non-commercial capacity participating in FCA 14 and thereafter, including resources that first cleared as new capacity in FCA 12 and FCA 13.<sup>18</sup>

### **III. Discussion**

#### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Brookfield's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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<sup>15</sup> NEPGA Protest at 1, 4-5.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> 16 U.S.C. § 824e.

<sup>18</sup> NEPGA Protest at 7-8.

**B. Substantive Matters**

13. ISO-NE's proposed financial assurance calculation to derive the financial assurance requirements for non-commercial resources appears to be just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept the Financial Assurance Rate Filing, to become effective January 15, 2020, as requested. We agree with ISO-NE that the new methodology will provide certainty to market participants because the financial assurance required to enter the FCM will be known before the FCA. We also agree that the proposed methodology will promote the expectation that non-commercial resources reach commercial operation by ensuring a consistent financial assurance requirement that does not decrease with low FCA clearing prices.

14. We do not agree with NEPGA that applying the Financial Assurance Rate Filing to non-commercial resources that first clear in FCA 14 but not to resources that first cleared prior to FCA 14 and have yet to reach commercial operation is unduly discriminatory. A mere difference in the treatment of two entities does not constitute undue discrimination under the FPA; instead, undue discrimination occurs only if the entities are "similarly situated, such that there is no reason for the difference."<sup>19</sup>

15. Despite NEPGA's assertion that these resources share similar risk profiles, we do not agree that new non-commercial capacity clearing in FCA 14 and future FCAs is similarly situated to existing non-commercial capacity that first cleared before FCA 14. This existing non-commercial capacity has already been subject to the previous financial assurance requirements and enters FCA 14 with settled expectations as to its financial assurance responsibilities. As a result, this existing capacity would have secured financing and/or made arrangements in anticipation of, and contingent upon, the incumbent financial assurance requirements. Accounting for this fact, ISO-NE's proposed application effectively grandfathers existing noncommercial resources that cleared in previous FCAs. By contrast, new non-commercial resources will enter FCA 14 without regard to previous financial assurance requirements and un beholden to any commitments based on anticipated financial assurance responsibilities.

16. Furthermore, this distinction is necessarily limited by the finite period during which this previously cleared capacity will remain non-commercial. Once this capacity reaches commercial operation, all non-commercial capacity will be subject to the new financial assurance requirements.

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<sup>19</sup> *Missouri River Energy Servs. v. FERC*, 918 F.3d 954, 958 (D.C. Cir. 2019) (citations omitted).

The Commission orders:

The Financial Assurance Rate Filing is hereby accepted, to become effective January 15, 2020, as requested, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.