

170 FERC ¶ 61,084  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Enerwise Global Technologies, Inc.

Docket No. ER20-458-000

ORDER DENYING WAIVER

(Issued February 5, 2020)

1. On November 25, 2019, Enerwise Global Technologies, Inc., d/b/a CPower (CPower)<sup>1</sup> filed a request for waiver of certain ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff) provisions, which includes a primary waiver request (Primary Waiver Request) and an alternative, limited waiver request (Alternate Waiver Request) (collectively, Waiver Requests). CPower explains that it makes the Waiver Requests in order to permit seven residential and commercial, summer-only solar demand capacity distributed generation resources (Demand Capacity Resources)<sup>2</sup> to participate in ISO-NE's fourteenth Forward Capacity Auction (FCA 14)<sup>3</sup> and the substitution auction. As discussed below, we deny the Waiver Requests.

**I. Background**

2. CPower argues that its Demand Capacity Resources cannot participate in FCA 14 and the substitution auction without the requested waivers due to Tariff provisions regarding composite offers in ISO-NE's Renewable Technology Resource exemption. CPower explains that a composite offer is an offer combined from two resources, one with summer-only qualified capacity and one with winter-only qualified capacity.

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<sup>1</sup> CPower is a provider of demand response projects with approximately 3500 MW of demand response resources. Waiver Requests at 1, 6.

<sup>2</sup> A Demand Capacity Resource is an Existing Demand Capacity Resource or a New Demand Capacity Resource. There are three Demand Capacity Resource types: Active Demand Capacity Resources, OnPeak Demand Resources, and Seasonal Peak Demand Resources. *See* ISO-NE, Transmission, Markets and Services Tariff (Tariff), § I (General Terms and Conditions) (0.0.0).

<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.

CPower explains that ISO-NE's Tariff requires FCA Qualified Capacity<sup>4</sup> of distribution generation resources, which includes Demand Capacity Resources, to be the "lesser of" those resources' summer-only or winter-only qualified capacity.<sup>5</sup> CPower further explains that Demand Capacity Resources are required to submit a composite offer because such resources have a 0 MW winter qualified capacity; therefore, without a composite offer, these resources would have a FCA Qualified Capacity of 0 MW. CPower states that, for FCA 14, as result of mitigation from the IMM, it elected to qualify for the auction under the Renewable Technology Resource exemption. The combined capacity for resources under this exemption has a set MW cap for each auction, and the supply offers submitted exceeded the exemption cap for FCA 14. CPower explains that, therefore, ISO-NE prorated the Renewable Technology Resource exemption among resources that qualified for it.<sup>6</sup>

3. CPower notes that the Tariff does not permit composite offers to be prorated under the Renewable Technology Resource exemption when the cap is reached.<sup>7</sup> CPower explains that, as a result, ISO-NE determined that its resources' FCA Qualified Capacity was 0 MW.<sup>8</sup> CPower explains that, as a result, it is also unable to enter a 0 MW FCA Qualified Capacity in the substitution auction for its resources, even though the Tariff permits composite offers from Sponsored Policy Resources to participate in the substitution auction.<sup>9</sup>

4. CPower argues that, due to the proration requirements for composite offers, it will not be able to participate in the substitution auction, despite meeting all other requirements for participation in FCA 14 and the requirements for designation as a Sponsored Policy Resource.<sup>10</sup> CPower contends that neither ISO-NE documents nor Commission precedent indicate that this result is the intent of the Tariff, adding that the Tariff rules were not intended to limit participation in the substitution auction as a result

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<sup>4</sup> FCA Qualified Capacity is the Qualified Capacity that is used in an FCA. *See* Tariff, § I (General Terms and Conditions).

<sup>5</sup> *See* Tariff, Market Rule 1 § III.13.1.4.1.1.

<sup>6</sup> Waiver Requests at 1, 3-4.

<sup>7</sup> *Id.* at 3, 10.

<sup>8</sup> *See id.* at 3, 4.

<sup>9</sup> *Id.* at 10-11.

<sup>10</sup> *Id.* at 3-4.

of participation under the Renewable Technology Resource exemption.<sup>11</sup> CPower states that it could not have known that the Renewable Technology Resource exemption cap would be exceeded until after its resources qualified under the exemption.<sup>12</sup>

## II. Waiver Requests

5. CPower requests that it be permitted to submit the summer-only qualified capacity for its Demand Capacity Resources as FCA Qualified Capacity for FCA 14 at the Internal Market Monitor's mitigated price (Offer Floor Price).<sup>13</sup> To this end, CPower submits its Primary Waiver Request that seeks a one-time waiver of Tariff Sections III.13.1.4.1.1 (Qualification Process for New Demand Capacity Resources), III.13.2.8.2.1 (Supply Offers), III.13.2.8.2.2 (Supply Offer Prices), III.13.1.9 (Financial Assurance), III.13.1.1.2.9 (Renewable Technology Resource Election), and any other provisions that would permit its Demand Capacity Resources to participate in FCA 14, as CPower claims ISO-NE and the Commission intended.<sup>14</sup>

6. CPower also submits an Alternate Waiver Request that seeks limited waiver of the Tariff to allow it to: (1) withdraw from its election of the Renewable Technology Resource exemption for its resources; and (2) extend certain relevant deadlines to allow CPower to proffer composite offers for summer-only and winter-only qualified capacity.<sup>15</sup> Specifically, CPower requests waiver of Tariff Sections III.13.1.1.2.9 (Renewable Technology Resource Election), III.13.1.5 (Offers Composed of Separate Resources), III.13.2.8.2.2 (Supply Offer Prices), III.13.1.9 (Financial Assurance Deadline), and III.13.1.9, Ex. IA § VII.B.1 (Financial Assurance Policy).

7. CPower argues that its Primary Waiver Request and Alternate Waiver Request both meet the criteria for a waiver. First, CPower argues that it acted in good faith throughout the qualification process for FCA 14 by: (1) seeking to participate in FCA 14 under the Renewable Technology Resource exemption after its offers were mitigated;

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<sup>11</sup> *Id.* at 3-5, 10-12.

<sup>12</sup> *Id.* at 10.

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

<sup>14</sup> *Id.* at 5.

<sup>15</sup> CPower explains that this relief would not require recalculating the Renewable Technology Resource exemption. *See id.* at 5.

(2) submitting its supply offers by the required deadline; and (3) responding immediately to ISO-NE when it was unable to enter its composite offers.<sup>16</sup>

8. Second, CPower argues that the Waiver Requests are limited in scope because they do not require a change to any operating mechanism or the operation of the Forward Capacity Market (FCM). CPower adds that the Waiver Requests only ask the Commission to remedy the unintended consequence of the interaction of Tariff provisions, rather than waive any rules regarding the Minimum Offer Price Rule or the Renewable Technology Resource exemption limits to composite offers.<sup>17</sup>

9. Third, CPower contends that the Waiver Requests address a concrete problem: that its Demand Capacity Resources have been excluded from FCA 14 as a result of the unintended and unforeseen interaction of Tariff provisions. CPower argues that, absent proration of its Demand Capacity Resources under the Renewable Technology Resource exemption, those resources would have participated in FCA 14 with composite offers, as contemplated by the Tariff.<sup>18</sup>

10. Finally, CPower argues that the Waiver Requests will not have undesirable consequences because they do not seek advantageous treatment, do not seek to alter its offer parameters, and will not exclude other resources from participating in FCA 14. CPower contends that, if not for the unintended interaction of various Tariff provisions, its Demand Capacity Resources would have been allowed to participate in FCA 14 at a mitigated offer price. CPower adds that its Alternate Waiver Request will not disrupt ISO-NE's Renewable Technology Resource exemption calculations for FCA 14.<sup>19</sup>

11. CPower argues that the Commission has granted limited waiver of the Tariff for resources that were excluded incorrectly from participating in the FCM.<sup>20</sup>

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<sup>16</sup> *Id.* at 15-16.

<sup>17</sup> *Id.* at 16.

<sup>18</sup> *Id.* at 15-17.

<sup>19</sup> *Id.* at 17-18.

<sup>20</sup> *Id.* at 12 (citing *ISO New England Inc.*, 142 FERC ¶ 61,051 (2013); *ISO New England Inc.*, 138 FERC ¶ 61,196, at PP 65-68 (2012); *ISO New England Inc.*, 135 FERC ¶ 61,147, at P 32 (2011)).

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

12. Notice of CPower's filing was published in the *Federal Register*, 84 Fed. Reg. 66,180 (2019), with interventions and protests due on or before December 16, 2019.<sup>21</sup> ISO-NE; National Grid; New England Power Pool Participants Committee; and RENEW Northeast, Inc. filed timely motions to intervene. Calpine Corporation (Calpine) and NRG Power Marketing LLC (NRG) filed motions to intervene out-of-time. ISO-NE filed a protest. On December 12, 2019, CPower filed an answer.

13. While ISO-NE opposes the Primary Waiver Request as not limited in scope, it states that it does not oppose the Alternate Waiver Request. ISO-NE confirms that the Renewable Technology Resource exemption cap for FCA 14 was reached and that the proffered capacity under the exemption was prorated among the Sponsored Policy Resources that qualified, which included CPower's seven Demand Capacity Resources.<sup>22</sup> ISO-NE states that resources under the Renewable Technology Resource exemption cannot enter composite offers in the FCA when there has been proration of the resources under that exemption.<sup>23</sup> ISO-NE also confirms that Demand Capacity Resources are qualified in the FCA at the lower of the resource's summer qualified capacity or winter qualified capacity and that CPower was qualified at its winter qualified capacity given the circumstances.<sup>24</sup>

14. ISO-NE maintains that the Primary Waiver Request is not limited in scope because it would allow CPower's Demand Capacity Resources to qualify for FCA 14 in a way that is not contemplated by the Tariff. ISO-NE also argues that the Primary Waiver Request goes beyond an identified concrete problem because it would allow CPower to enter FCA 14 at the full summer qualified capacity for its Demand Capacity Resources without entering into composite offers, as the Tariff requires. ISO-NE explains that CPower could have entered composite offers for all or a portion of its summer qualified capacity, rather than seeking to bypass this process.<sup>25</sup> ISO-NE also contends that the Primary Waiver Request would harm third parties because it would give CPower's resources preferential treatment as compared to other Demand Capacity Resources that

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<sup>21</sup> On December 2, 2019, the Commission issued an errata shortening the date for filing interventions and protests from December 16, 2019, to December 9, 2019.

<sup>22</sup> ISO-NE Protest at 3 (citing Tariff, Market Rule 1 §§ III.13.1.1.1.7, III.13.1.1.2.10(a)).

<sup>23</sup> *Id.* at 3 (citing Tariff, Market Rule 1 § III.13.1.5(e)).

<sup>24</sup> *Id.* at 3-4 (citing Tariff, Market Rule 1 § III.13.1.4.1.1).

<sup>25</sup> *Id.* at 6.

entered FCA 14 under composite offers that are not based only on their summer qualified capacity.<sup>26</sup>

15. ISO-NE states that the Alternate Waiver Request would allow CPower's Demand Capacity Resources to participate in FCA 14 by entering composite offers in a manner that is contemplated by the Tariff. ISO-NE argues that the Alternate Waiver Request addresses a concrete problem by allowing CPower to revert its decision to elect the Renewable Technology Resource exemption and then enter composite offers for its Demand Capacity Resources consistent with the Tariff.<sup>27</sup> ISO-NE adds that granting the Alternate Waiver Request would not harm third parties.

16. If the Commission grants the Alternate Waiver Request, ISO-NE requests certain deadlines in order to implement the waiver. First, ISO-NE asks the Commission to issue an order no later than December 18, 2019. Second, ISO-NE asks the Commission to direct CPower to submit any composite offers within five (5) business days of its order. ISO-NE states that, in turn, it will notify CPower of any required financial assurance for the composite offers within two (2) business days from the submission of those offers. Third, ISO-NE asks the Commission to direct CPower to provide the required financial assurance within five (5) business days of ISO-NE's notification of financial assurance requirements for CPower's composite offers.<sup>28</sup>

#### **IV. Discussion**

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

17. 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 Calpine's and NRG's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the

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<sup>26</sup> *Id.* 6-7.

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.* at 7-8.

decisional authority. We are not persuaded to accept CPower's answer and, therefore, reject it.

**B. Substantive Matters**

19. We deny both the Primary Waiver Request and the Alternate Waiver Request. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>29</sup> We find that the Primary Waiver Request and the Alternate Waiver Request do not satisfy these criteria.

20. We find that neither the Primary Waiver Request nor the Alternate Waiver Request is limited in scope. The Commission has found that a waiver is not limited in scope if the party requesting waiver does not provide a compelling reason why it should be afforded special treatment compared to others.<sup>30</sup> Here, CPower seeks to shield its resources from the consequences of its choices and the same risks that other Demand Capacity Resources face in qualifying for FCA 14. When a resource submits a composite offer under the Renewable Technology Resource exemption and the MW cap for resources using the Renewable Technology Resource exemption is reached, the Tariff requires the exemption to be prorated for all of the resources that qualified, which in turn means that the resources cannot submit a composite offer.<sup>31</sup> CPower has not demonstrated that ISO-NE should treat its Demand Capacity Resources differently from other Demand Capacity Resources seeking to participate in FCA 14 or other resources that ISO-NE prorated under the Renewable Technology Resource exemption for FCA 14. Specifically, the Primary Waiver Request would allow CPower's Demand Capacity Resources to qualify for FCA 14 based on summer-only qualified capacity, which, contrary to the Tariff, would permit CPower's resources to submit composite offers without consideration of its 0 MW winter qualified capacity.<sup>32</sup>

21. Similarly, the Alternate Waiver Request would shield only CPower's Demand Capacity Resources from the risk that proration may apply when selecting the Renewable Technology Exemption, while all other resources electing the Renewable Technology Resource exemption faced this same risk, including resources that sought composite

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<sup>29</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

<sup>30</sup> See *Cal. Transmission Project Corp.*, 168 FERC ¶ 61,012, at P 16 (2019).

<sup>31</sup> See Tariff, Market Rule 1 § III.13.1.5 (63.0.0).

<sup>32</sup> See Tariff, Market Rule 1 § III.13.1.4.1.1.

offers. CPower does not demonstrate why its resources should be offered the opportunity to opt out of the Renewable Technology Resource exemption once proration results are known, when no other resource has that choice. For these reasons, we find that the Waiver Requests are not limited in scope and deny them.

The Commission orders:

CPower's Primary Waiver Request and Alternate Waiver Request are hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Enerwise Global Technologies, Inc.

Docket No. ER20-458-000

(Issued February 5, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's order because I would grant CPower's<sup>1</sup> Alternate Waiver Request.<sup>2</sup> CPower's resources elected to participate in ISO New England Inc.'s Forward Capacity Auction (FCA) using the Renewable Technology Resource (RTR) exemption from ISO New England's buyer-side market power mitigation provisions rather than submitting a so-called composite offer that would allow CPower's resources to potentially pair their capacity with complimentary resources.<sup>3</sup> That's a mouthful, but it boils down to this: CPower chose one of two seemingly viable paths for participating in the FCA. It subsequently became clear, however, that the RTR exemption would not be a viable path for CPower's resources to participate in the FCA.<sup>4</sup> As a result, without a waiver, the FCA will categorically ignore the capacity that those resources provide.<sup>5</sup>

2. To address that problem, CPower filed this two-part waiver request. In the "Primary Waiver Request," CPower seeks a waiver that would permit its resources to participate in the FCA through the RTR exemption.<sup>6</sup> In the more limited "Alternate Waiver Request," CPower effectively seeks a waiver of certain deadlines so that it can change course and pursue the composite offer path rather than the RTR exemption path.<sup>7</sup>

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<sup>1</sup> CPower is owned by Enerwise Global Technologies, Inc. *See Enerwise Global Techs., Inc.*, 170 FERC ¶ 61,084, at P 1 (2020) (Order).

<sup>2</sup> I dissent only in part because I agree that the Primary Waiver Request is not limited in scope, substantially for the reasons stated in ISO New England's Protest. *See ISO New England Protest* at 5.

<sup>3</sup> Order, 170 FERC ¶ 61,084 at P 2.

<sup>4</sup> *Id.* P 3.

<sup>5</sup> *Id.* PP 3-4.

<sup>6</sup> *Id.* P 5.

<sup>7</sup> *Id.* P 6.

ISO New England protested the Primary Waiver Request, but does not oppose the Alternate Waiver Request.<sup>8</sup> CPower argues that both requests satisfy the Commission's waiver criteria, which require the party seeking waiver to show that: (1) it acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>9</sup>

3. I believe that the Alternate Waiver Request satisfies those four criteria and is in the public interest.<sup>10</sup> First, CPower appears to have acted in good faith by attempting to qualify under the RTR exemption and then promptly seeking waiver when it realized that a quirk in the tariff provisions governing the RTR exemption would exclude these resources from participating in the FCA. Second, the Alternate Waiver Request is limited in scope because it provides for a one-time exception to certain tariff deadlines, it applies only to these few CPower resources, it applies only in this FCA, and it does not create a new means of participating in the FCA or guarantee that CPower's resources will clear in the FCA. Third, the Alternate Waiver Request would address a concrete problem, namely the inability of CPower's resources to participate in the FCA due to the overall limit on the amount of capacity that can participate through the RTR exemption and the associated tariff provisions, which, as noted, treat CPower's resources as providing zero megawatts of capacity.<sup>11</sup> Finally, there is no evidence in the record of potential harm to third parties or other undesirable consequences from the Alternate Waiver Request, which is unopposed.<sup>12</sup> In addition, I believe that the Alternate Waiver Request is in the public interest because it will provide a path through which CPower's resources can participate in the FCA and potentially contribute to ISO New England's goal of ensuring resource adequacy at just and reasonable rates.

4. The Commission asserts that the Alternate Waiver Request is not limited in scope principally because it would apply only to CPower's resources and not to other resources

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<sup>8</sup> ISO New England Protest at 2.

<sup>9</sup> See Order, 170 FERC ¶ 61,084 at P 19.

<sup>10</sup> As noted, *supra* note 2, I agree that the Primary Waiver Request is not limited in scope.

<sup>11</sup> Order, 170 FERC ¶ 61,084 at P 3; CPower Waiver Request at 16-17.

<sup>12</sup> As noted, ISO New England protested the Primary Waiver Request, but stated that it does not object to the Alternate Waiver Request and, in fact, agreed that the Alternative Waiver Request satisfies the Commission's four waiver criteria. See ISO New England Protest at 2.

that elected the RTR exemption.<sup>13</sup> But that is the very nature of waiver requests. Because they seek relief from generally applicable tariff provisions, waiver requests almost by definition produce different treatment for the applicable resources. Unless the Commission is prepared to categorically reject all waiver requests, the potential for differential treatment is not a reasoned basis for denying the Alternate Waiver Request. Moreover, the fact that the Alternate Waiver Request applies only to CPower's resources would seem to support CPower's request, not to undermine it. If the request applied to all resources that elected the RTR exemption *then* it might very well not be limited in scope.

For these reasons, I respectfully dissent in part.

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Richard Glick  
Commissioner

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<sup>13</sup> Order, 170 FERC ¶ 61,084 at P 21.