

167 FERC ¶ 61,252  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New Brunswick Energy Marketing Corporation

Docket No. ER19-2011-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued June 20, 2019)

1. On May 30, 2019, New Brunswick Energy Marketing Corporation (NB Energy Marketing) filed a request for a limited waiver of Section III.13.1.10 of Market Rule 1 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff).<sup>1</sup> Specifically, NB Energy Marketing requests waiver of the deadline for submitting a Show of Interest form<sup>2</sup> to participate in the fourteenth ISO-NE Forward Capacity Auction (FCA 14). As discussed below, we grant the waiver request.

**I. Background**

2. Under Tariff Section III.13.1.1.2, sponsors of new and import capacity resources must submit to ISO-NE a Show of Interest form during a specified submission window in order to participate in an FCA. The submission window for the upcoming FCA 14 was April 12 to 26, 2019. The next step in the FCA qualification process is the submission of a Qualification Package during the June 13 to 21, 2019 window.

3. The Show of Interest form requires an entity seeking to participate in the auction to provide basic identification information (e.g., the project name, contact information, date of expected commercial operation, project address or location, interconnection status, whether the project has previously participated in the FCM and received capacity payments, a description of the resource type, a simple location plan and one-line

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<sup>1</sup> ISO-NE, Transmission, Markets and Services Tariff, § III (0.0.0) (Market Rule 1), § 13.1 (62.0.0) (Forward Capacity Auction Qualification).

<sup>2</sup> Capitalized terms not defined herein are used as they are defined in the Tariff. See Tariff § I.2 (116.0.0) (Rules of Construction; Definitions).

diagram of the plant and station facilities).<sup>3</sup> ISO-NE “may waive the submission of any information not required for evaluation of a project.”<sup>4</sup>

## II. Waiver Request

4. NB Energy Marketing states that 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>5</sup> NB Energy Marketing maintains that its waiver request satisfies these requirements.

5. NB Energy Marketing states that its oversight in timely submitting the Show of Interest form was unintentional and in good faith.<sup>6</sup> NB Energy Marketing explains that the employee responsible for managing NB Energy Marketing’s participation in ISO-NE’s FCM recently received a diagnosis of a medical condition that prevented the employee from fulfilling this obligation.<sup>7</sup> NB Energy Marketing states that it has transferred the employee’s responsibilities over to other employees. NB Energy Marketing adds that, because the employee was the point of contact with ISO-NE and recipient of ISO-NE’s email notifications, the employee now managing NB Energy Marketing’s expected participation in FCA 14 did not receive ISO-NE’s reminders regarding the Show of Interest form deadline. NB Energy Marketing asserts that, on May 7, 2019, the employee now responsible for this paperwork discovered the missed

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<sup>3</sup> Tariff § III.13.1.1.2.1 (62.0.0).

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

<sup>5</sup> Waiver Request at 3 (citing *ISO New England Inc.*, 165 FERC ¶ 61,137, at P 41 (2018); *Portsmouth Genco, LLC*, 151 FERC ¶ 61,064 (2015) (granting waiver of a PJM deadline pertaining to the base residual auction); *Blue Sky West, LLC*, 145 FERC ¶ 61,285 (2013) (granting waiver of ISO-NE’s Market Rule 1 to allow ISO-NE to use corrected data); *Conservation Servs. Group Inc.*, 145 FERC ¶ 61,284 (2013) (granting waiver of ISO-NE’s FCM rules to allow a market participant with qualified capacity to submit supplemental data); *Nat’l Grid USA*, 145 FERC ¶ 61,283 (2013) (same); *Mass. Elec. Co.*, 134 FERC ¶ 61,116 (2011); *Comverge, Inc.*, 133 FERC ¶ 61,250 (2010); *CPower, Inc.*, 133 FERC ¶ 61,127 (2010)).

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

<sup>7</sup> *Id.* at 4.

Show of Interest form deadline and promptly contacted ISO-NE for possible resolution. NB Energy Marketing states that this waiver request resulted from discussions with ISO-NE.

6. NB Energy Marketing acknowledges that, in *Seneca Energy II*, the Commission denied a request for waiver of the Show of Interest form deadline.<sup>8</sup> NB Energy Marketing however distinguishes this waiver request by arguing that here, the employee's medical condition caused the missed deadline. NB Energy Marketing adds that allowing it to participate in the auction could bring substantial additional capacity into the market, which the Commission has recognized is a benefit.<sup>9</sup> NB Energy also points out that, unlike *Seneca Energy II*, ISO-NE has not opposed its waiver request.<sup>10</sup>

7. NB Energy Marketing states that the requested waiver is limited in scope because it seeks only a one-time waiver of ISO-NE's submission deadline for the Show of Interest form.<sup>11</sup> NB Energy Marketing notes that it does not seek a waiver of the Qualification Package deadline, explaining that granting the waiver will not guarantee any particular outcome in the qualification process.<sup>12</sup> NB Energy Marketing believes that the impact of a late-filed Show of Interest form submission from an importing, control area-backed resource would be minimal.<sup>13</sup> Specifically, NB Energy Marketing explains that, although the Show of Interest form requires considerable information concerning a generator's interconnection status, no upgrades to these facilities are required to facilitate NB Energy Marketing's continuing participation in the FCM because NB Energy Marketing is an importing resource with established interfaces between ISO-NE and the New Brunswick

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<sup>8</sup> *Id.* at 5 n.9 (citing *Seneca Energy II, LLC*, 138 FERC ¶ 61,226 (2012) (finding that administrative oversight was an unpersuasive argument to support waiver and that granting waiver at issue could have broad, not limited, ramifications)).

<sup>9</sup> *Id.* (citing *Brookfield Energy Mktg. LP*, 145 FERC ¶ 61,286, at P 7 (2013)).

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

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.* at 5 (citing *Ne. Energy Assoc.*, 152 FERC ¶ 61,175, at P 15 (2015) (explaining that NEA met the waiver requirements because, in part, the waiver was limited as it would not guarantee the results of qualification)).

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

Power Corp. balancing authority area.<sup>14</sup> NB Energy Marketing adds that it is prepared to submit the required Qualification Package by the June 21, 2019 deadline.

8. With respect to addressing a concrete problem, NB Energy Marketing claims that granting the limited waiver would allow it to pursue the qualification process and participate in FCA 14, which would allow it to potentially contribute 160 MW of import capacity to the FCM.<sup>15</sup>

9. NB Energy Marketing asserts that granting the limited waiver request will not have undesirable consequences, such as harming third parties.<sup>16</sup> NB Energy Marketing contends that allowing the late submission of the Show of Interest form should not delay FCA 14 or related deadlines or significantly affect ISO-NE or other entities who timely filed the Show of Interest form. NB Energy Marketing asserts that granting the waiver should not restrict or negatively affect other market participants from offering into the auction and obtaining a capacity position if they clear.<sup>17</sup> NB Energy Marketing reiterates that it would participate in FCA 14 as an importing resource and that the FCA 14 qualification decisions are based upon the Qualification Packages submitted, which NB Energy Marketing intends to submit on a timely basis.

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

10. Notice of NB Energy Marketing's request for waiver was published in the *Federal Register*, 84 Fed Reg. 26,412 (2019), with interventions and protests due on or before June 13, 2019. NRG Power Marketing LLC and New England Power Pool Participants Committee filed timely motions to intervene.

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* (citing *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 13 (2016) (recognizing that a limited waiver allowing an entity to correct a part of its new capacity qualification package would not harm other market participants)); *id.* 6 n.12. NB Energy Marketing states that it is not aware of other entities that sought to qualify for FCA 14 but missed the Show of Interest form deadline.

#### IV. Discussion

##### A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### B. Substantive Matters

12. For the reasons discussed below, we grant the waiver request. The Commission has granted waiver of tariff provisions where: (1) the underlying error was made 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>18</sup> We find that the waiver request satisfies these criteria.

13. First, we find that the error made by NB Energy Marketing in failing to timely file the Show of Interest form was made in good faith. The illness of the employee originally in charge of filing the form has led to difficulties in transitioning the employee's responsibilities as there is uncertainty as to when the employee may be able to reassume his or her responsibilities. While another employee has now been assigned to NB Energy Marketing's expected participation in FCA 14, that employee did not receive the email reminders concerning the Show of Interest form deadline, as those emails were sent to the original employee assigned to the matter. In addition, we note that NB Energy Marketing filed the waiver request upon discovery of the oversight.

14. Second, we find that the waiver request is limited in scope because it is a one-time waiver of a procedural deadline for participation in FCA 14, which is an initial step in the qualification process.

15. Third, we find that granting the waiver request remedies a concrete problem. Specifically, granting the waiver request allows NB Energy Marketing to participate in FCA 14, which could allow it to contribute approximately 160 MW of import capacity to the FCM that would provide potential benefits to ISO-NE customers.

16. Finally, we find based upon the record here that granting the waiver request will not create undesirable consequences or harm third parties because late submission of the Show of Interest form should not delay FCA 14 or related deadlines or materially affect ISO-NE or other entities who timely filed the Show of Interest form. Further, there is no evidence that granting the waiver will restrict or negatively affect other

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<sup>18</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

market participants from offering into the auction and obtaining a capacity obligation if they clear. In making this finding, we note that no parties oppose the waiver request.

The Commission orders:

NB Energy Marketing's waiver request is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner LaFleur is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.