

170 FERC ¶ 61,188
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. ER20-759-000

ORDER GRANTING REQUEST FOR LIMITED WAIVER

(Issued March 10, 2020)

1. On January 8, 2020, ISO New England Inc. (ISO-NE) submitted a request for a limited waiver of the de-list bid submittal deadline set forth in Section III.13.1.10(b) of the ISO-NE Transmission, Markets, and Services Tariff (Tariff) to allow market participants to adjust or withdraw their Retirement De-List Bids or Permanent De-List Bids (Retirement Bids)¹ for the fifteenth Forward Capacity Auction (FCA 15)² under certain limited conditions. As discussed below, we grant the requested waiver.

I. Background

2. ISO-NE explains that ISO-NE and New England stakeholders are developing a long-term market solution to address the region's energy security needs (Energy Security Improvements), which ISO-NE will file on April 15, 2020, as directed by the Commission.³ However, ISO-NE and New England stakeholders will not finalize the Energy Security Improvements proposal until the New England Power Pool (NEPOOL) Participants Committee (Participants Committee) vote on or before April 2, 2020.⁴ Therefore, ISO-NE states that it may not have finalized the Energy Security Improvements proposal at the time Retirement Bids for FCA 15 are due on March 13,

¹ Capitalized terms not defined herein are used as they are defined in the Tariff. See Tariff § I.2 Rules of Construction; Definitions (127.0.0).

² ISO-NE will conduct FCA 15 in February 2021.

³ Waiver Request at 2 (citing *ISO New England Inc.*, 164 FERC ¶ 61,003 (2018) (July 2 Order)). On August 30, 2019, the Commission extended the date for submitting the Energy Security Improvements filing from July 1, 2019, to April 15, 2020. See Notice of Extension of Time, Docket No. EL18-182-000 (Aug. 30, 2019).

⁴ Waiver Request at 3.

2020.⁵ ISO-NE states that the Energy Security Improvements proposal may have a substantial impact on Retirement Bid decisions because market participants may want to account for revenues they will earn and costs they will incur from participation in FCA 15 once ISO-NE implements the Energy Security Improvements proposal.⁶ ISO-NE states that, absent a waiver of the Retirement Bid submittal deadline set forth in Tariff Section III.13.1.10(b), a market participant will be forced to maintain an FCA 15 Retirement Bid that it submitted prior to the final Energy Security Improvements proposal, even if its preference, once ISO-NE finalizes the proposal, would be to adjust or withdraw its Retirement Bid.⁷ ISO-NE notes that, under the Tariff, there is no express mechanism for adjusting or withdrawing those bids after they are submitted.⁸

II. Waiver Request

3. ISO-NE requests a limited waiver of the March 13, 2020 Retirement Bid submittal deadline in Tariff Section III.13.1.10(b) for FCA 15. Specifically, if ISO-NE makes a non-clerical change to its Energy Security Improvements proposal after the March 13, 2020 deadline to submit Retirement Bids, a market participant would have seven calendar days following the scheduled April 2, 2020 Participants Committee vote to either (1) update its Retirement Bid to reflect the impact of the changes to the Energy Security Improvements proposal or (2) withdraw the Retirement Bid altogether.⁹

4. ISO-NE asserts that its waiver request meets the Commission's criteria for granting waivers. First, ISO-NE argues that it is acting in good faith because the waiver is intended to prevent unfair and inefficient market outcomes for market participants, given the potentially significant impact of the Energy Security Improvements on Retirement Bids and market participant decisions on whether to retire or permanently delist a resource.¹⁰

⁵ See Tariff § III.13.1.10(b).

⁶ Waiver Request at 3. ISO-NE states that it intends to implement the Energy Security Improvement proposal in June 2024, which coincides with the start of the FCA 15 Capacity Commitment Period. *Id.*

⁷ *Id.* at 4.

⁸ *Id.*

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 5.

5. Second, ISO-NE contends the waiver is limited in scope because it is a one-time waiver that applies to FCA 15 only if a narrow condition (i.e., a non-clerical change to the Energy Security Improvements proposal) is satisfied and would only permit specific limited actions (i.e., adjustment or withdrawal of the de-list bid during a seven-day period).¹¹

6. Third, ISO-NE claims the waiver is necessary to remedy a concrete problem. ISO-NE contends that granting the waiver would avoid the negative consequences of the timing mismatch between the deadline to submit Retirement Bids and the finalization of the Energy Security Improvements proposal. ISO-NE points out the challenges with the alternatives to address this problem (e.g., delaying the implementation of the Energy Security Improvements until Forward Capacity Auction 16 or moving up the date of the Participants Committee's final vote on the Energy Security Improvements proposal).¹²

7. Fourth, ISO-NE states the waiver will not have undesirable consequences. ISO-NE maintains that, although the Internal Market Monitor voiced concerns in the past about revocable de-list bids due to the potential for participants to use such bids to "fish" for uncompetitively high de-list bids, that concern applies only when the bid can be withdrawn or revoked after the Internal Market Monitor informs a bidder whether its bid will be mitigated.¹³ However, with regard to the instant waiver request, ISO-NE asserts that any withdrawal would take place in April 2020, before the Internal Market Monitor finalizes its review of Retirement Bids in mid-June 2020.¹⁴

8. ISO-NE requests that the Commission issue an order on its waiver request on or before March 8, 2020, to give market participants time to decide how to proceed before the March 13, 2020 Retirement Bid submission deadline.

III. Notice of Filing and Responsive Pleadings

9. Notice of ISO-NE's filing was published in the *Federal Register*, 85 Fed. Reg. 2420 (Jan. 15, 2020), with interventions and protests due on or before January 29, 2020. Dominion Energy Services, Inc.; Eversource Energy Service Company; Exelon Corporation; National Grid; Participants Committee; New England States Committee on

¹¹ *Id.*

¹² *Id.* at 5-6.

¹³ *Id.* at 6.

¹⁴ *Id.*

Electricity; and NRG Power Marketing LLC filed timely motions to intervene. On February 3, 2020, Calpine Corporation (Calpine) filed a motion to intervene out of time.

IV. Discussion

A. Procedural Matters

10. 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.

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Calpine'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.

B. Substantive Matters

12. We grant the requested waiver to extend the March 13, 2020 Retirement Bid submission deadline through seven calendar days after the Participants Committee vote scheduled for April 2, 2020, as follows. Specifically, if ISO-NE makes a non-clerical change to its Energy Security Improvements proposal after March 13, 2020, the deadline in Tariff Section III.13.1.10(b) to submit Retirement Bids for FCA 15, but before or during the Participants Committee vote on the Energy Security Improvement proposal scheduled for April 2, 2020, a market participant would have seven calendar days following the Participants Committee vote to either (1) update its Retirement Bid to reflect the impact of the changes to the Energy Security Improvements proposal; or (2) withdraw the Retirement Bid altogether.

13. 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.¹⁵ We find that the requested waiver satisfies these criteria.

14. First, we find that ISO-NE acted in good faith by seeking waiver of the relevant Tariff deadline to prevent unfair and inefficient market outcomes that could occur if market participants are not allowed to adjust or withdraw their Retirement Bid if ISO-NE makes a non-clerical change to the Energy Security Improvements proposal after the March 13, 2020 Retirement Bid submission deadline and in the lead-up to, or as part of,

¹⁵ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

the Participants Committee vote on the Energy Security Improvements proposal scheduled for April 2, 2020.

15. Second, we find that the requested waiver is limited in scope because it is a one-time waiver of a future procedural deadline for participation in FCA 15 that is conditioned on a specific future event: ISO-NE making a non-clerical change to the Energy Security Improvements proposal after the March 13, 2020 Retirement Bid submission deadline and in the lead-up to, or as part of, the Participants Committee vote scheduled for April 2, 2020. Also, it would only allow specific limited actions: adjustment or withdrawal of the de-list bid during a seven-day period.

16. Third, we find that granting the requested waiver remedies a concrete problem created by the mismatch between the March 13, 2020 Retirement Bid submission deadline for FCA 15 and the Participants Committee vote on the Energy Security Improvements proposal scheduled for April 2, 2020.

17. Finally, we find that, based on the record here, granting the waiver will not have undesirable consequences, such as harming third parties. ISO-NE notes that the Internal Market Monitor voiced concerns in the past about revocable bids. However, we agree with ISO-NE that such concerns arise only when a bid can be withdrawn or revised after the Internal Market Monitor has completed its review of the bid and notified the market participant of its determination of whether the bid will be mitigated. Granting the instant waiver does not present this problem. If ISO-NE makes a non-clerical revision to the Energy Security Improvements proposal after March 13, 2020, a market participant will only be permitted to withdraw or revise its bid within seven days after the Participants Committee vote, well before the Internal Market Monitor finalizes its review of Retirement Bids in mid-June 2020.

The Commission orders:

ISO-NE's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.