

169 FERC ¶ 61,178
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Genbright, LLC

Docket No. ER20-158-000

ORDER GRANTING REQUEST FOR LIMITED WAIVER

(Issued December 3, 2019)

1. On October 22, 2019, pursuant to Rule 207(a)(5) of the Commission's regulations,¹ Genbright, LLC (Genbright) submitted a request for a one-time, limited waiver of sections of Market Rule 1 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff)² to allow four distributed energy resource projects (Projects) to participate in the fourteenth Forward Capacity Auction (FCA)³ 14 administered by ISO-NE. As discussed below, we grant the requested waivers.

I. Background

2. Market Rule 1 of the Tariff governs the operation and eligibility requirements of ISO-NE's FCA. Under these rules, each new resource seeking to participate must undergo a qualification evaluation.⁴ To participate, project sponsors must submit both a Show of Interest form and a New Capacity Qualification Package. After the required information is submitted, ISO-NE determines whether a new resource qualifies to offer capacity in the FCA. Tariff Section III.13.1.1.2.8 requires ISO-NE, "[n]o later than 127 days before the [FCA]," to send notification to Project Sponsors or Market

¹ 18 C.F.R. § 385.207(a)(5) (2019).

² ISO-NE, Transmission, Markets and Services Tariff, § III Market Rule 1 – Standard Market Design (0.0.0) (Market Rule 1), § III.13.1 Forward Capacity Auction Qualification (63.0.0).

³ Capitalized terms not defined herein are used as they are defined in the Tariff. See Tariff § I.2 Rules of Construction; Definitions (116.0.0).

⁴ Tariff § III.13.1.

Participants as to whether the new resource is accepted for participation in the FCA.⁵ This notification is referred to as a Qualification Determination Notification (QDN). Tariff Section III.13.1.9.1 requires a Project Sponsor to pay a Forward Capacity Market (FCM) Deposit within the timeframe specified in the ISO-NE Financial Assurance Policy, which, for FCA 14, ends on October 28, 2019.⁶

3. Genbright states that it submitted its Show of Interest form on April 26, 2019, and the New Capacity Qualification Package on June 21, 2019, as required. Genbright states that, on September 27, 2019, it received four QDNs stating that each of the Projects was ineligible to participate in FCA 14.⁷

4. Genbright asserts that the four Projects were mistakenly disqualified from participating in FCA 14. Genbright states that Eversource Energy Service Company (Eversource), the Projects' interconnecting electric distribution company, and ISO-NE inadvertently mischaracterized the proposed point of interconnection for each Project as subject to the jurisdiction of the Commission, which would have required each Project to interconnect pursuant to ISO-NE's Schedule 23 small generator interconnection process to qualify for FCA 14. Because the Projects had applied to interconnect through the state-administered interconnection process rather than the Schedule 23 process, ISO-NE disqualified the Projects from FCA 14. However, upon further investigation, Eversource determined that the Projects were indeed connected to state-regulated, distribution lines that are not subject to the Commission's jurisdiction.⁸ Genbright states that, although both Eversource and ISO-NE now agree that the Projects were incorrectly determined to be ineligible for participation in FCA 14, the Projects remain ineligible because ISO-NE's September 27, 2019 deadline to make final qualification determinations has passed.⁹ Because the Projects were disqualified from FCA 14, Genbright also missed the

⁵ *Id.* § III.13.1.1.2.8.

⁶ *See Id.* § III.13.1.9; Forward Capacity Auction 14 Schedule, Capacity Commitment Period: 2023-2024, <https://www.iso-ne.com/static-assets/documents/2017/05/fca-14-timeline-5-9-2017.pdf>. *See also* Waiver Request at 1 n.2; ISO-NE Comments at 2.

⁷ Waiver Request at 4.

⁸ *Id.* at 2, 5.

⁹ *Id.* at 5.

October 28, 2019 deadline by which selected projects must submit the FCM Deposit required under the Tariff.¹⁰

II. Waiver Request

5. Genbright requests a waiver of the deadline in Tariff Section III.13.1.1.2.8 for ISO-NE's selection of resources eligible to participate in FCA 14 (i.e., September 27, 2019). If the Commission grants this request, Genbright also asks the Commission to waive the requirement under Tariff Section III.13.1.9.1 for Genbright to make payment of the FCM Deposit by October 28, 2019 and any intervening deadlines in the FCA 14 process that may pass before a waiver is granted.¹¹

6. Genbright states that the Commission has previously granted waivers of tariff requirements if a petitioner has missed tariff deadlines due to inadvertent error when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹²

7. First, Genbright states that it acted in good faith when qualifying for FCA 14, but an inadvertent error by Eversource and ISO-NE prevented projects otherwise eligible for qualification from participating in FCA 14. Genbright asserts that on the same day it received the QDNs, September 27, 2019, Genbright alerted ISO-NE and Eversource that the QDNs relied on inaccurate determinations of the Commission's jurisdiction over the applicable points of interconnection as the basis for denying the Projects' eligibility to participate in FCA 14. Genbright adds that it acted diligently and expeditiously in working with both Eversource and ISO-NE to investigate the underlying facts and determine that the QDNs were incorrect and to file these requested waivers. Genbright asserts that it has complied with all other deadlines, submittals, and requirements under the Tariff for the Projects to participate in FCA 14.¹³

¹⁰ See *supra* note 6. Although Genbright submitted the requested waivers on October 22, 2019, prior to the FCM Deposit deadline, the deadline passed in the intervening time between Genbright's submission of the requested waivers and issuance of this order.

¹¹ Waiver Request at 1 n.2, 8 n.15.

¹² *Id.* at 5.

¹³ *Id.* at 6.

8. Second, Genbright asserts that the request is limited in scope because it is a one-time waiver of a discrete deadline in the Tariff. Genbright states that it has satisfied all milestones and deadlines under the Tariff governing participation in FCA 14, including filing complete and timely Show of Interest forms and New Capacity Qualification Packages and responding to ISO-NE's other requests for information. Genbright adds that the requested waivers only apply to the four Projects and thus does not entail a broader waiver of the FCM process or quality of services thereunder.¹⁴

9. Third, Genbright contends that granting the waivers would remedy a concrete problem because, without the waivers, the Projects cannot offer capacity in FCA 14.

10. Fourth, Genbright asserts that the waivers will not have undesirable consequences, such as harming third parties or unfairly disadvantaging other market participants, because granting the waivers will not delay ISO-NE's implementation of FCA 14 nor impact the eligibility of any participants that have been afforded eligibility under the program.¹⁵

III. Notice of Filing and Responsive Pleadings

11. Notice of Genbright's filing was published in the *Federal Register*, 84 Fed. Reg. 57,719 (2019), with interventions and protests due on or before November 4, 2019. Eversource, ISO-NE, and New England Power Pool Participants Committee filed timely motions to intervene. National Grid filed a motion to intervene out-of-time. Eversource¹⁶ and ISO-NE filed comments.

12. Eversource supports granting the requested waivers. Eversource states that the error was not caused by Genbright.¹⁷ Eversource explains that it erroneously reported to ISO-NE that the projects were interconnecting to distribution feeders that had a prior wholesale use at the time of the interconnection request. Eversource states that, upon further investigation, it could not identify the wholesale use that was the basis for its initial determination. Therefore, Eversource argues that the Projects appropriately

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 7-8.

¹⁶ Eversource filed comments on behalf of NSTAR Electric Company (NSTAR). Eversource states that NSTAR is its affiliate and is the local electric distribution company to which the Projects interconnect.

¹⁷ Eversource Comments at 2.

submitted state-jurisdictional interconnection applications and should be eligible to participate in FCA 14.

13. ISO-NE does not oppose the requested waivers.¹⁸ ISO-NE states that the information it received during the qualification process reflected the point of interconnection on the distribution facilities for each of the Projects as distribution facilities subject to the Tariff.¹⁹ ISO-NE explains that, after the QDN deadline, it learned that this information was incorrect and that the state interconnection process was the applicable process for administering the interconnection for each of the Projects.²⁰ ISO-NE states that, if it had been given the correct information, it would have been able to qualify each of the Projects for FCA 14.

14. ISO-NE states that it cannot consider the newly available information to qualify the Projects for FCA 14 unless the Commission grants a waiver of the Tariff deadline to issue the QDNs. ISO-NE therefore requests that, if the Commission grants the waiver, the Commission also waive the Renewable Technology Resources (RTR) notification deadline in Tariff Section III.13.1.1.2.10, so ISO-NE can inform Genbright and other resources of their qualified capacity values after the deadline specified therein.²¹ ISO-NE also requests that, if the Commission grants the requested waivers after the FCM Deposit deadline of October 28, 2019, the Commission direct Genbright to submit the required FCM Deposit within five business days of the Commission's ruling.²² ISO-NE asks that the Commission act on the requested waivers as early as possible, or by no later than January 24, 2020, in order for the waiver to be effective for FCA 14, which begins February 3, 2020.²³

¹⁸ ISO-NE Comments at 1, 5.

¹⁹ *Id.* at 3-4.

²⁰ *Id.* at 4.

²¹ *Id.* at 5.

²² *Id.* at 1-2.

²³ *Id.* at 2 n.5, 5 n.9.

IV. Discussion

A. Procedural Matters

15. 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.

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

17. We grant the requested waivers. Specifically, we grant waiver of: (1) the procedural deadline in Tariff Section III.13.1.1.2.8 for ISO-NE's selection of resources eligible to participate in FCA 14; (2) the FCM Deposit deadline in Tariff Section III.13.1.9.1; (3) any intervening deadlines applicable in the FCA 14 qualification process; and (4) the RTR notification deadline in Tariff Section III.13.1.1.2.10.

18. 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.²⁴ We find that the requested waivers satisfy these criteria.

19. First, we find that the underlying error was made in good faith. Genbright acted in good faith to qualify for FCA 14 because it complied with the applicable deadlines and submittals required by the Tariff to participate in FCA 14. Specifically, Genbright timely submitted both the Show of Interest forms and the New Capacity Qualification Package required for each of the Projects. The Projects were not disqualified due to any error by Genbright but rather were disqualified because Eversource inadvertently mischaracterized the proposed point of interconnection for each Project as subject to the Commission's interconnection process, instead of the state-administered interconnection process. On the same day that Genbright received the QDNs, it alerted ISO-NE and Eversource that the QDNs relied on inaccurate determinations of the Commission's

²⁴ See, e.g., *New Brunswick Energy Mktg. Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

jurisdiction over the points of interconnection. After investigation, Eversource and ISO-NE determined that the Projects were interconnecting to state-regulated distribution lines that were not subject to the Commission's interconnection jurisdiction. Genbright filed the requested waivers after working diligently and expeditiously with both Eversource and ISO-NE to investigate the underlying facts and determine that the QDNs were incorrect.

20. Second, we find that the requested waivers are limited in scope because they are one-time waivers of procedural deadlines for participation in FCA 14.

21. Third, we find that granting the requested waivers for the four Projects would remedy a concrete problem because, without the waivers, the Projects cannot offer capacity in FCA 14.

22. Finally, we find that, based on the record here, granting the requested waivers will not create undesirable consequences or harm third parties because the waivers will not delay ISO-NE's implementation of FCA 14 on February 3, 2020.

23. In light of our granting of the FCM Deposit deadline in Tariff Section III.13.1.9.1, we direct Genbright to submit the FCM Deposit to ISO-NE within five business days of the issuance of this order.

The Commission orders:

(A) The requested waivers are hereby granted, as discussed in the body of this order.

(B) Genbright is hereby directed to submit the required FCM Deposit to ISO-NE within five business days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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