

145 FERC ¶ 61,284  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 27, 2013

In Reply Refer To:  
Conservation Services Group Inc.  
Docket No. ER14-356-000

Holland & Knight LLP  
101 St. James Avenue  
Boston, MA 02116

Attn: Paul G. Lannon, Jr.  
Attorney for Conservation Services Group Inc.

Dear Mr. Lannon:

1. On November 8, 2013, Conservation Services Group Inc. (CSG) filed a request for a limited, one-time waiver of the capacity qualification deadlines in ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The waiver would permit consideration of supplemental data that CSG submitted to the ISO-NE Internal Market Monitor (IMM) regarding CSG's Combined Heat and Power (CHP) facilities that have been qualified for participation in ISO-NE's Eighth Forward Capacity Auction (FCA 8). As discussed below, the Commission grants the requested waiver.

2. CSG is a lead market participant and participates in the Forward Capacity Market (FCM) on behalf of existing and new capacity resources. All resources seeking to submit offers in the Forward Capacity Auction at prices below the relevant Offer Review Trigger Price must provide documentation justifying that price as competitive in light of the resource's costs for review by the IMM.<sup>1</sup> If a resource wishes to provide this documentation after the capacity qualification deadline, it must seek a waiver of that deadline. CSG states that this request for such a limited waiver relates to an existing FCM resource involving CHP facilities in Massachusetts. CSG explains that it sought to qualify these projects in FCA 8 and to submit offers in the FCM at prices that are below

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<sup>1</sup> ISO-NE, Transmission, Markets and Services Tariff § III.13.1.1.2.2.3(a) (21.0.0).

the relevant Offer Review Trigger Price. CSG notes that FCA 8 is the first application of the Offer Review Trigger Price to a forward capacity auction.<sup>2</sup>

3. CSG states that it submitted supporting data to the IMM for review, and that the IMM subsequently requested further information regarding CSG's application. CSG further states that it provided what it believed to be responsive supplemental information to the IMM. CSG explains that the IMM, however, concluded that the information was not sufficient to enable the IMM to calculate an independent estimate of the capacity price. CSG states that, accordingly, the IMM determined that the New Resource Offer Floor Price for these resources should be set to the applicable Offer Review Trigger Price of \$15.819/kW-month. CSG states that in the likely event that the auction proceeds beyond the first round, the floor price will be lower than the Offer Review Trigger Price and CSG's IMM-designated floor price will cause the elimination of its resources from the market.<sup>3</sup>

4. CSG states that it has continued to work with the IMM to resolve the issue and has submitted supplemental data to the IMM that it believes would justify a New Resource Offer Floor price that is below the Offer Review Trigger Price. CSG explains that it was, however, unable to submit this supplemental data prior to the capacity qualification deadlines for FCA 8. CSG therefore requests a limited, one-time waiver of the capacity deadlines in ISO-NE's Tariff, Market Rule 1, sections III.13.1.1.2, III.13.1.1.2.8, III.13.1.9, and III.13.1.10 to permit consideration of the supplemental data submitted to the IMM in support of its position that these resources should be qualified for a New Resource Offer Floor Price below the applicable Offer Review Trigger Price.<sup>4</sup>

5. In support of its request, CSG contends that its request for waiver is consistent with prior situations in which the Commission has granted a waiver. It asserts that it has acted in good faith throughout the qualification process, and notes that CSG has cooperated with the IMM to provide the information necessary to enable the IMM to calculate "an independent estimate of the [ ] resources' capacity price," and believed in good faith that it had provided adequate information to enable the IMM to do so. CSG asserts that the waiver is a one-time event that is limited in scope. CSG asserts that the waiver would remedy a concrete problem by permitting the IMM to consider the supplemental data submitted by CSG to calculate revised New Resource Offer Floor

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<sup>2</sup> Petition at 3.

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

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

Prices for CSG's resources. In addition, CSG asserts that granting the waiver request will have no undesirable effects, nor will it delay FCA 8.<sup>5</sup>

6. CSG requests that the Commission issue an order granting waiver on or before December 31, 2013. CSG asserts that this will provide the IMM with sufficient time, prior to the February 3, 2013 auction run date, to consider the supplemental data submitted by CSG and issue a revised price determination.<sup>6</sup>

7. Notice of CSG's filing was published in the *Federal Register*, 78 Fed. Reg. 70,031 (2013), with interventions and protests due on or before November 22, 2013. ISO-NE filed a motion to intervene and comments explaining that it does not oppose CSG's waiver request.<sup>7</sup> ISO-NE believes CSG's errors were inadvertent and made in good faith. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>8</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. The Commission has granted one-time waivers of tariff provisions in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) granting a waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>9</sup>

9. We find that CSG has demonstrated good cause to grant the request for waiver of the capacity qualification deadlines because CSG's requested waiver satisfies the aforementioned conditions. First, we find that CSG has acted in good faith in seeking to work with and supply the IMM with the appropriate information to justify its requested New Resource Offer Floor Price. Second, the requested waiver is a one-time waiver, and is limited in scope. Third, the waiver will remedy a concrete problem because the additional information supplied would assist the IMM in appropriately calculating New Resource Offer Floor Prices for CSG's resources. Fourth, we find that granting the

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<sup>5</sup> *Id.* at 4-6.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *See* ISO-NE Comments.

<sup>8</sup> 18 C.F.R. § 385.214 (2013).

<sup>9</sup> *See, e.g., ISO New England Inc.*, 142 FERC ¶ 61,051, at P 20 (2013); *N.Y. Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *ISO New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011).

requested waiver will not lead to undesirable consequences, such as harm to third parties. Further, ISO-NE does not oppose the request.<sup>10</sup>

10. Accordingly, we grant CSG's request for a limited, one-time waiver of the capacity qualification deadlines in ISO-NE's Tariff, Market Rule 1, sections III.13.1.1.2, III.13.1.1.2.8, III.13.1.9, and III.13.1.10 to permit consideration of supplemental data submitted to the IMM regarding CSG's CHP facilities that have been qualified for participation in ISO-NE's FCA 8. The Commission notes that this waiver is limited to the specific and unique facts presented here and does not constitute established precedent that would allow market participants to avoid these or other terms and conditions set forth in the Tariff.

By the direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>10</sup> See ISO-NE Comments at 1, 3.