

156 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Genbright LLC

Docket No. ER16-2283-000

ORDER DENYING WAIVER

(Issued September 23, 2016)

1. On July 26, 2016, Genbright LLC (Genbright) filed a request for a limited, one-time waiver of sections III.13.1.1.2.1(a), III.13.1.1.2.1(b), and III.13.1.1.2.2.1 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff)¹ to allow for the participation of Genbright's aggregation of Distributed Energy Resources in ISO-NE's eleventh Forward Capacity Auction (FCA 11). We deny Genbright's request for waiver, as discussed below.

I. Background

2. Genbright provides commercial asset management services to owners of Distributed Energy Resources and demand response resources and energy brokerage services to end use customers. Genbright seeks to enroll small-scale (i.e., under five megawatts) projects classified as generators into ISO-NE's Forward Capacity Market and is working with solar asset owners to co-locate battery storage assets on solar sites. Genbright states that both the solar and battery storage assets were included in its Show of Interest and Qualification Package submitted for FCA 11.²

3. Section III.13.1.1.2 of ISO-NE's Tariff establishes the requirements for New Generating Capacity Resources to qualify for the FCA. In order to qualify as a New Generating Capacity Resource, the project's sponsor must submit a New Capacity Show

¹ ISO-NE, ISO New England Inc. Transmission, Markets and Services Tariff, § III.13 (III.13 Forward Capacity Market) (1.0.0) (ISO-NE Tariff).

² Filing at 2.

of Interest Form during the New Capacity Show of Interest Submission Window and a New Capacity Qualification Package by the New Capacity Qualification Deadline.³ For FCA 11, ISO-NE's New Capacity Show of Interest Window opened on April 7, 2016, and closed on April 22, 2016. ISO-NE's New Capacity Qualification Deadline was June 21, 2016.⁴

4. Section III.13.1.1.2.1 of ISO-NE's Tariff lists the submission requirements that New Generating Capacity Resources⁵ must meet. These requirements include, *inter alia*, "a simple location plan and a one-line diagram of the plant and station facilities, including any known transmission facilities; the location of the proposed interconnection; and other specific project data as set forth in the New Capacity Show of Interest Form,"⁶ and "documentation demonstrating that the Project Sponsor has already achieved control of the project site for the duration of the relevant Capacity Commitment Period pursuant to Section III.13.1.1.2.2.1."⁷

II. Waiver Request

5. Genbright requests a partial waiver of section III.13.1.1.2.1(a) of ISO-NE's Tariff, specifically, waiver of the one-line diagram requirements for Genbright's storage capacities under two MWs.⁸ Genbright states that it received a Notice of Deficiency earlier in July 2016 from ISO-NE regarding the lack of detail in Genbright's one-line drawings and site control documentation in its New Capacity Show of Interest Form. Genbright states that it is unable to reconcile the document deficiencies ISO-NE

³ *Id.* § III.13.1.1.2.

⁴ *Id.* § III.13.1.10. For a useful timeline, *see* http://www.iso-ne.com/static-assets/documents/2015/11/a06_iso_proposed_fca_11_schedule_11_04_15.pdf.

⁵ The Tariff defines a New Generating Capacity Resource as a resource, or a portion of a resource, that has not cleared in any previous FCA. Tariff §§ III.13.1.1.1–III.13.1.1.1.1(a).

⁶ ISO-NE Tariff § III.13.1.1.2.1(a).

⁷ *Id.* § III.13.1.1.2.1(b). Section III.13.1.1.2.2.1 defines what demonstrates a sponsor's control of the project site during the relevant Capacity Commitment Period in section 4.1 of Schedule 22, section 1.5 of Schedule 23, or section 4.1 of Schedule 25 of section II of the Tariff.

⁸ Filing at 3.

identified in the Notice of Deficiency and provide requested details for all the storage projects in the timeframe that ISO-NE set forth.⁹ Genbright further states that it would not be required to submit any one-line diagrams were it treated on a par with the aggregation of similar behind-the-meter projects enrolled as Demand Response.¹⁰

6. Genbright also seeks waiver of sections III.13.1.1.2.1(b) and section III.13.1.1.2.2.1 of the Tariff governing the documentation requirements for site control that must be submitted with the New Capacity Show of Interest Form for Genbright's projects of less than five MWs located on a site with an existing Interconnection Agreement.¹¹ Genbright states that it adequately demonstrated site control by providing lease agreements, site licensing agreements, and certifications from project owners, but ISO-NE required additional site control documentation not explicitly stated in the Tariff. Genbright claims that resolving the documentation deficiencies for its aggregated Distributed Energy Resources would be difficult to achieve while maintaining the FCA qualification process schedule. Genbright states that projects of similar technologies and scale are not required to demonstrate site control if they are seeking to qualify as Demand Resources.¹²

7. Finally, Genbright requests waiver of the Commission's 60-day prior notice requirements,¹³ to allow waiver of the specified tariff requirements to be effective April 22, 2016. Genbright states that it submitted its New Capacity Show of Interest Form and its New Capacity Qualification Package prior to the April 22, 2016, Show of Interest Deadline, but ISO-NE issued a Notice of Deficiency at the beginning of July requesting additional details. Genbright claims that it takes between two and four months for market participants to satisfy any deficiencies in the Qualification Package.¹⁴ Genbright also requests Commission action by September 25, 2016, prior to the

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 5.

¹² *Id.* at 6-8.

¹³ 18 C.F.R. § 35.3 (2016).

¹⁴ Filing at 4-5.

September 30, 2016 deadline by which ISO-NE notifies New Capacity of Qualification Acceptance or Denial.¹⁵

8. Genbright asserts that it meets the Commission's standard for granting waivers. Genbright states that it has at all times acted in good faith, it has submitted information and documentation required by the Tariff sections for which Genbright is requesting waiver, and it has provided additional information in order to address deficiencies. Genbright also asserts that its request for waiver is of limited scope in that it is requesting changes to only two of the requirements in the Show of Interest process, for only specific projects, and for only FCA 11. Genbright further asserts that its request for waiver addresses the concrete problem of a barrier to entry for the aggregation of Distributed Energy Resources, an important business model for supporting reliability in ISO-NE. Finally, Genbright asserts that the request for waiver will not have undesirable consequences insofar as these small scale Distributed Energy Resources would still be providing superior information for qualification when compared to Demand Resources.

III. Notice of the Filing and Responsive Pleadings

9. Notice of Genbright's request for waiver was published in the *Federal Register*, 81 Fed. Reg. 50,697 (2016), with interventions and protests due on or before August 16, 2016. Motions to intervene were filed by Consolidated Edison Energy, Inc., New England Power Pool Participants Committee, ISO-NE, and Massachusetts Electric Company (National Grid). On August 16, 2016, National Grid and ISO-NE each filed comments opposing Genbright's request for waiver. On September 9, 2016, Genbright filed an answer to ISO-NE's comments.

10. National Grid claims that it has the right to own, qualify, and take title to certain capacity projects for specific solar facilities managed by Genbright and that Genbright has not shown that it has the rights to the capacity resources set out in its request for waiver. National Grid states that Genbright filed a petition with the Massachusetts Department of Public Utilities, which is still pending, arguing that it should be permitted to qualify the capacity products from any solar facilities to which National Grid asserted title.¹⁶

11. ISO-NE claims that Genbright's request for waiver does not meet the Commission's standards for granting waivers. ISO-NE states that Genbright's request is not of limited scope. ISO-NE states that the one-line diagram required by the Tariff is

¹⁵ *Id.* at 10.

¹⁶ National Grid Comments at 2-4.

necessary to conduct the initial interconnection analysis and overlapping interconnection impact analysis used in determining the deliverability of new capacity in the Forward Capacity Auction. Deliverability of new capacity, according to ISO-NE, is a fundamental premise of the Forward Capacity Market, one which would be undermined by granting Genbright's request for waiver. ISO-NE also argues that site control information assists in the determination of whether a project is real and can achieve commercial operation by the relevant Capacity Commitment Period. Thus, according to ISO-NE, granting the request for waiver would change the way New Capacity Generating Resources are qualified.

12. ISO-NE states that there is no concrete problem to be remedied since Genbright does not claim that the requirements of the Tariff are unjust or unreasonable but only that Genbright cannot provide the detail ISO-NE requested before the end of the qualification process. ISO-NE claims that Genbright failed to submit the required information after Genbright was provided with opportunities and explanations of available options for satisfying the Tariff requirements. ISO-NE argues that the requested waiver would have undesirable consequences and would be unduly discriminatory to other participants that abided by the Tariff requirements, by allowing Genbright to gain a more favorable position.¹⁷

IV. Discussion

A. Procedural Issues

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Genbright's answer and will, therefore, reject it.

B. Commission Determination

14. 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

¹⁷ ISO-NE Comments at 3-7.

third parties.¹⁸ We find that Genbright's request for waiver does not satisfy the foregoing criteria and thus, we will deny it.¹⁹

15. Genbright's request for waiver is not limited in scope. As ISO-NE notes, granting Genbright's request would undermine the qualification process for resources in the FCM, allowing for the participation of its resources in the FCA without confirmation that its resources are deliverable and that Genbright has site control. Genbright has failed to support such a request.

16. Further, Genbright's request for waiver has undesirable consequences. Granting Genbright's request for waiver would give Genbright a favorable position relative to other market participants that have met the Tariff requirements, an outcome that Genbright has not adequately justified. We thus find that granting Genbright's request for waiver would be unduly discriminatory to market participants that abided by the Tariff requirements.

17. We find Genbright's additional argument, that the request for waiver will not have undesirable consequences because these small scale Distributed Energy Resources would still be providing superior qualification information than Demand Resources, to be inapposite.

18. Based upon the foregoing, we deny Genbright's waiver request.

¹⁸ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

¹⁹ Note, however, that the Commission is assessing policy issues related to aggregated electric storage resources in Docket No. AD16-20-000. That proceeding may provide a forum for Genbright's concerns. In addition, to the extent Genbright asserts that the Tariff is unduly discriminatory with respect to its treatment of distributed energy resources, Genbright could submit a complaint pursuant to section 206 of the Federal Power Act.

The Commission orders:

Genbright's request for waiver is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.