



NEPPA Newsline update June 2021

FERC Grants Waiver of Filing Requirements for Participation in ISO-NE FCA 16

Submitted by: Robin Kipnis, General Counsel, Connecticut Municipal Electric Energy Cooperative

In a showing of, perhaps, compassion by the Federal Energy Regulatory Commission (“Commission”), the Connecticut Municipal Electric Energy Cooperative the Massachusetts Municipal Wholesale Electric Company, Pascoag Utility District, and Vermont Department of Public Service, the “neighboring states” recipients of hydroelectric energy and capacity from the Robert Moses Niagara Project, successfully petitioned the Commission for a waiver of ISO-New England Inc.’s (ISO NE) tariff deadline. The Commission granted the waiver to allow the “neighboring states” to participate in ISO-NE’s FCA 16 despite the fact that they would not have executed agreements with the New York Power Authority by the tariff filing deadline. The granting of the waiver petition means that each of these “neighboring states” agreements with NYPA for energy and capacity from the Niagara Power Project can qualify as a “New Import Capacity Resource” for purposes of the sixteenth Forward Capacity Auction. A letter in support of the Petition was filed by NYPA.

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. In this particular instance, the Commission found that the “neighboring states” acted in good faith in their efforts to renegotiate and execute the agreements within the requisite FCA timeframe (more than six years before the contracts’ expiration on August 31, 2025). The Commission recognized the difficulties imposed by the COVID-19 pandemic on the negotiation process which resulted in delays that contributed to the delay in timely execution of these agreements. The Commission highlighted the limited nature of the waiver- a one-time waiver of a procedural deadline limited to Tariff section III.13.1.10(e). Also, the Commission noted that because the term of the agreements are lengthy, the procedural deadline will not likely be missed again. Finally, given that procedurally the agreements have been approved by the Governor but, due to the specific requirements of New York law, they could not be executed in time to meet the ISO NE tariff deadline. The Commission also determined that granting the waiver request does not have “undesirable consequences”, such as harming third parties. The Commission found that granting the waiver request does not delay the FCA qualification process, as the “neighboring states” committed to satisfying the requirement to submit the requisite information before the date on which ISO-NE will notify resource owners of whether they qualify for participation in FCA 16 (i.e., October 1, 2021).