



July 25, 2016

**VIA ELECTRONIC FILING**

The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: Genbright LLC's Request for Limited 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 the ISO New England's Transmission, Markets and Services Tariff**

Dear Secretary Bose:

Genbright LLC hereby requests a limited waiver of Section III.13.1.1.2.1(a), Section III.13.1.1.2.1(b) and Section III.13.1.1.2.2.1, of the ISO New England Inc.'s Transmission, Markets and Services Tariff (the "ISO Tariff") as necessary to facilitate the Qualification of an aggregation of Distributed Energy Resources ("DERs"), including solar and battery storage, for the ISO-NE's eleventh Forward Capacity Auction ("FCA 11").<sup>i</sup>

As explained in Section V of this Request for Limited Waiver, Genbright respectfully requests a waiver of the 60 day notice requirement so that the waiver of certain requirements can be effective on April 22, 2016, which was the deadline for ISO-NE's Show of Interest for FCA 11. Genbright also respectfully requests that the Commission issue an order on this Request for Limited waiver in 60 days, i.e., by September 25, 2016 which is five days prior to when the ISO Notifies New Capacity of Qualification Acceptance/Denial for FCA 11.

**I. DESCRIPTION OF FILING PARTY AND COMMUNICATIONS**

The Honorable Kimberly D. Bose, Secretary

July 25, 2016

Page 2 of 13

Genbright LLC is a privately owned for profit company based in Hingham, MA that provides demand response and energy brokerage services to end use customers and commercial asset management services to owners of DERs, primarily in New England. Genbright is a voting member of ISO-NE.

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## II. BACKGROUND

Genbright is seeking to enroll a portfolio of small-scale (i.e., under five megawatts) solar PV projects that are classified as Generators in the ISO-NE forward capacity market (“FCM”).<sup>1</sup> For some of these projects, Genbright is also working with the solar asset owners to develop battery storage assets that will be co-located on the solar sites. Both the solar assets and battery storage assets are included in Genbright’s Show of Interest and Qualification Package for FCA 11.

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<sup>1</sup> This includes assets that are commercially operational and those that are under construction or development.

The Honorable Kimberly D. Bose, Secretary

July 25, 2016

Page 3 of 13

Currently, the ISO-NE allows similar projects to qualify as a capacity resource in the FCM as either a Generator or a Demand Resource.<sup>2</sup> Solar PV facilities co-located with energy storage systems are similarly treated by the ISO-NE as either a Generator or Demand Resource. Energy storage projects installed behind the meter and designed to serve at least some portion of a customer's load are treated as Demand Response resources. By contrast, energy storage projects co-located with solar PV facilities and designed solely to export power to the local distribution grid are treated as Generators.

The qualification process for Generators and Demand Resources is very different. Although the ISO-NE Tariff does facilitate the aggregation of multiple DER projects to be part of a single Demand Resource, the ISO-NE Tariff does not include rules that facilitate the aggregation of small scale DERs when they are classified as Generators. Qualifying dozens or hundreds of DERs is therefore the same, from an administrative perspective, as qualifying dozens or hundreds of Generators, because these small scale DERs are subject to the same Tariff provisions as all other Generators.<sup>3</sup>

As explained below, this administrative burden can create an unintended barrier to entry for an aggregation of DERs to qualify in ISO-NE FCM markets. Beginning with the Show of

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<sup>2</sup> Capitalized terms have the meanings given to them in the ISO New England Inc.'s Transmission, Markets and Services Tariff ("ISO Tariff").

<sup>3</sup> According to the latest ISO-NE PV Forecast, about 1,325 MWs of AC nameplate PV solar arrays are operating in ISO-NE territories as of the end of 2015. About 1,775 MWs are forecast to be operational system-wide by the end of 2016 and 3,727 MWs are forecast to be online by the end of 2025. Most of the MWs associated with these solar projects are under 5 MWs in AC capacity and connected directly to the local distribution system rather than physically serving behind the meter load. As of June, 2016 only 16 Solar PV assets consisting of 11 MWs of Summer Claimed Capability (SCC) have been registered as capacity resources with non-zero SCC.

The Honorable Kimberly D. Bose, Secretary

July 25, 2016

Page 4 of 13

Interest and continuing through the qualification process, the ISO-NE and market participants have between two and four months to submit and review information, including satisfying any deficiencies in the Qualification Package. Given the amount of documentation and necessary consultation that may be required to resolve deficiencies in Tariff language that describes “documentation” and “information” requirements, this can make it difficult to qualify dozens or hundreds of small scale generation projects within the required timeframe. By contrast, if projects of the same scale and technology were located behind the meter, they would be subject to the sections of the tariff that address the qualification process for Demand Resources, which have far fewer and more precisely defined administrative requirements than the requirements for Generators.<sup>4</sup>

Genbright is requesting a limited waiver to two specific sections of the tariff because there is not sufficient time to make the potential Tariff changes effective for the FCA 11 Qualification process and as explained in Section V, Genbright believes that this request meets the Standards for Granting Waivers. Genbright is requesting limited waivers to two specific sections of the Tariff that have created the greatest administrative burden and also represent the greatest contrast between sections of the Tariff for projects of the same scale and technology, but that are located behind the meter and governed by sections of the Tariff that relate to demand response resources.

### **III. REQUEST FOR WAIVER OF ISO TARIFF SECTIONS**

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<sup>4</sup> See Appendix 1 below.

The Honorable Kimberly D. Bose, Secretary  
July 25, 2016  
Page 5 of 13

Genbright is requesting a limited waiver of the site control and one line diagram requirements for battery and solar projects under five megawatts that are classified as Generators.

**A. Request for Partial Waiver of Section III.13.1.1.2.1(a)**

Section III.13.1.1.2.1(a) of the ISO Tariff provides a list of the information necessary to complete a New Capacity Show of Interest Form and evaluate a project. This list includes “a simple location plan and a one-line diagram of the plant and station facilities, including any known transmission facilities . . . .” Genbright is requesting a waiver from the specific requirement for storage technologies under 2 MWs so that storage technologies can be configured in part based on the optimal amounts of capacity and ancillary services the project will be designed to provide, which depends in part on the FCA 11 results.

Genbright has provided one line drawings and documentation of site control to ISO-NE, however both lack the detail requested from ISO-NE in its Notice of Deficiency dated earlier this month. It has provided additional detail where possible but it cannot provide all the detail for the dozens of projects within the time requested by ISO-NE to satisfy such deficiencies, or possibly before the end of the Qualification Process.

If an aggregation of projects utilizing the same technologies and of the same scale were located behind the meter and registered as Demand Response Resources rather than as a Generator Resources, the Tariff would not require any site control documentation or any one line drawings as part of the Qualification Package. Although requiring one-line diagrams for storage projects co-located with solar is not necessarily onerous, some specific details of the one-lines that the ISO-NE might require under the Tariff would not otherwise be needed by the developer

The Honorable Kimberly D. Bose, Secretary  
July 25, 2016  
Page 6 of 13

at this stage of development to meet a capacity commitment period beginning June 1, 2020. Furthermore, reconciling deficiencies to provide the specific details for an aggregation of storage projects within time frames requested by the ISO-NE is not achievable.

Given the short lead times for developing small scale storage, Genbright does not believe that granting this limited waiver would jeopardize reaching a commercial operation date before the start of the Capacity Commitment Period of June 1, 2020. Also, granting this limited waiver would also allow the aggregation of such projects to be treated on par with the aggregation of similar behind the meter projects enrolled as Demand Response, for which the information requirements do not require any one line diagrams, as specified in Section III.13.1.4.2 of the Tariff.

**B. Request for Waiver of the Site Control Documentation for Projects <5 MWs Located on a Site with An Existing Interconnection Agreement (Section III.13.1.1.2.1.(b) and Section III.13.1.1.2.2.1)**

Section III.13.1.1.2.1.(b) of the Tariff specifies that “The Project Sponsor must submit with the New Capacity Show of Interest Form, 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.”

Section III.13.1.1.2.2.1 of the Tariff, states that “For all Forward Capacity Auctions and reconfiguration auctions, the Project Sponsor must achieve, prior to the close of the New Capacity Show of Interest Submission Window, control of the project site for the duration of the relevant Capacity Commitment Period, which shall be defined 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 Transmission, Markets and Services Tariff.”

The Honorable Kimberly D. Bose, Secretary  
 July 25, 2016  
 Page 7 of 13

Section 1.4 of Schedule 23 of Section II of the ISO-NE's Transmission, Markets and Services Tariff provides, in relevant part, that:

*“1.4 Documentation of site control must be submitted with the Interconnection Request . . . Site control may be demonstrated through:*

*1.4.1 Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Small Generating Facility;*

*1.4.2 An option to purchase or acquire an easement, a license or a leasehold interest in the site for such purpose; or*

*1.4.3 An exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease, or grant the Interconnection Customer the right to possess or occupy a site for such purpose; or*

*1.4.4 Filed applications for required permits to site on federal or state property.”*

Genbright has provided lease agreements, site licensing agreements and/or certifications from the project owners to demonstrate site control. However, the ISO has interpreted the Tariff's site control requirement to require additional documentation not explicitly listed in Section 1.4 of Schedule 25 of Section II of the Transmission, Markets and Services Tariff. These include i) commercial agreements demonstrating relationships between current and past project owners, ii) commercial agreements demonstrating relationships between individual project owners and their parent companies, iii) commercial agreements demonstrating relationships between parent companies and asset management companies, iv) commercial agreements demonstrating relationships between project companies, parent companies or asset management companies and the Lead Participant, v) Power Purchase Agreements, vi) Schedule Z's and clarifications of the meanings or intentions of provisions in some of these agreements. Deficiencies in such documentation for an aggregation of DERs are difficult to resolve within the short time often requested by the ISO to ensure that the Qualification process remains on

The Honorable Kimberly D. Bose, Secretary  
July 25, 2016  
Page 8 of 13

schedule. Failure to resolve these inquiries or deficiencies can lead to disqualification from the qualification process.

Genbright is requesting a waiver of this Site Control requirement for both solar and storage projects less than five MWs located at the same site if either the storage or the solar project have an Interconnection Agreement with the local Distribution Company. We note that in order for a solar or battery project to have obtained an Interconnection Agreement, the developer would have to demonstrate Site Control as part of the Interconnection Request or Application. However, because small scale projects connected to the distribution system interconnect with the Distribution Company, and Qualification for FCA 11 is determined by ISO-NE, this can lead to two different sets of requirements for the demonstration of Site Control for the developers of small DERs. For example, it is possible for a project owner that has demonstrated Site Control to a Distribution Company in order to obtain an Interconnection Agreement, to be disqualified by the ISO-NE for not demonstrating Site Control because the ISO has additional requirements to document Site Control, such as those listed above.<sup>5</sup> We also note that if projects involving the same technologies and of the same scale were able to qualify as Demand Resources, then demonstration of Site Control would not be a requirement.

#### **IV. STANDARD FOR GRANTING WAIVERS**

The Commission has granted waivers where: (1) the party seeking the waiver acted in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4)

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<sup>5</sup> While in theory, it is possible for a project to demonstrate site control for interconnection to a local Distribution Company that, for example, expires prior to the Capacity Commitment Period, in practice this would atypical.



The Honorable Kimberly D. Bose, Secretary

July 25, 2016

Page 9 of 13

the waiver will not have undesirable consequences, such as harming third parties. The instant request meets each of these criteria.<sup>6</sup>

First, Genbright is seeking the waiver in good faith and has at all times acted in good faith. Genbright has provided the ISO-NE with information and documentation for each item for which it is requesting a waiver and it has provided additional information to the ISO-NE to satisfy deficiencies. For example it has provided one line drawings and documentation of site control to ISO-NE, however both lack the detail requested from ISO-NE in its Notice of Deficiency dated earlier this month. It has provided additional detail where possible but it cannot provide all the detail for the dozens of projects within the time requested by ISO-NE to satisfy such deficiencies or possibly before the end of the qualification process. Furthermore, Genbright will continue to work with the ISO-NE and appropriate committees to address these issues through the typical process used to make changes to the Tariff.

Second, the waiver is of limited scope. Genbright is only requesting changes to two of the requirements in the Show of Interest and Qualification process. The waivers are limited to only the specific projects listed in Appendix 2 and only for purposes of qualifying for FCA 11. These requirements create an unreasonable administrative burden and also represent the greatest contrast between sections of the Tariff for projects of the same scale and technology, but that are located behind the meter and governed by sections of the Tariff that relate to demand response resources.

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<sup>6</sup> See *ISO New England Inc.*, 127 FERC ¶ 61,242 at P 13 (2009) (citing *ISO New England Inc. - EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008)).

The Honorable Kimberly D. Bose, Secretary  
July 25, 2016  
Page **10** of **13**

Third, the requested waiver addresses a concrete problem must be remedied. Unless the Commission grants the requested limited waivers, these resources are not likely to meet the requisite deadlines for qualifying as capacity resources. Genbright believes that the aggregation of DERs is a valid and important business model for supporting reliability in ISO-NE as well as supporting state and federal policy initiatives for modernizing the grid in a cost-effective manner that will benefit ratepayers.<sup>7</sup> By granting this request for limited waiver, the FERC will remove an important short term barrier to entry for the aggregation of DERs that will allow progress to continue.

Fourth, the waiver will not have undesirable consequences, such as harming third parties. From a system perspective, these small scale DERs would still be providing superior information when compared to Demand Resources. Given the shorter lead times required to develop these projects, granting the requested waiver will allow Genbright to take on forward supply obligations for the capacity commitment period beginning on June 1, 2020.

#### **V. REQUEST FOR WAIVER OF 60 DAY NOTICE AND REQUEST FOR ORDER IN 60 DAYS**

The Show of Interest deadline was April 22, 2016. The deadline by which ISO-NE Notifies New Capacity Of Qualification Acceptance/Denial is September 30, 2016. Genbright is therefore requesting that the Commission issue an Order granting this Request for Limited Waiver by September 25, 2016, which will ensure that a waiver is granted prior to the Deadline by which ISO-NE Notifies New Capacity Of Qualification Acceptance/Denial.

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<sup>7</sup>ISO New England Inc.'s Request for Limited Waiver of Sections III.13.1.4.2.5.2, III.13.1.4.3.1.2, and III.13.1.2.3.1.1 of the ISO New England Inc. Transmission, Markets and Services Tariff.

The Honorable Kimberly D. Bose, Secretary

July 25, 2016

Page **11** of **13**

## **VI. CONCLUSION**

For the foregoing reasons, Genbright requests that the Commission grant a one-time limited waiver of Section III.13.1.1.2.1(a), Section III.13.1.1.2.1(b) and Section III.13.1.1.2.2.1 of the ISO-NE Tariff.

The Honorable Kimberly D. Bose, Secretary

July 25, 2016

Page 12 of 13

## VII. Appendix 1

ISO Requirements	Qualification Package for Generators	Qualification Package for Demand Resources
Capacity Resources/Resource IDs	25x Show of Interest Submittals, Qualification Packages	1 x Show of Interest Submittal, Qualification Packages
Site Control*	Up to 7x25 Commercial Agreements	1 x Customer Acquisition Plan
Interconnection*	25 x (Interconnection Requests or Interconnection Agreements), (25 x Substations and/or 25x Points of Interconnection)	No Requirement
Electrical One Lines	25 Electrical One Lines	No Requirement
Site Plans	25 Site Plans	No Requirement
Critical Path Schedule	25x(Commercial Operation Dates, Major Permitting Dates, Equipment Order Dates, Commissioning Dates, Construction Substantially Complete Dates, Equipment Testing Dates, Equipment Delivery Dates)	1x COD Date, 2 x Target Dates
Financing	Up to 25 Financing Plans, Dates, Documentation	Financing Plan
M&V	N/A	M&V Plan
ORTP Cost Workbook	25 ORTP Cost Workbooks	1 x ORTP Cost Workbook

\* For Batteries Co-Located with Solar, Existing Site Agreements and Interconnections might suffice or only require simple modifications

The Honorable Kimberly D. Bose, Secretary

July 25, 2016

Page 13 of 13

**VIII. Appendix 2: Resource IDs for Projects Requesting Waiver**

Resource IDs

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Document Content(s)

Genbright LLC Request For Waiver.DOCX.....1-13