UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Calpine Corporation and LS Power Associates, L.P.,	)	
Complainants,	)	
v.	)	Docket No. EL18-53-000
ISO New England Inc., Respondent.	)	

MOTION TO INTERVENE AND COMMENTS OF CLEAR RIVER ENERGY CENTER LLC

Pursuant to Rules 212, 213, and 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,[1] Clear River Energy Center LLC ("Clear River" or "Invenergy") requests leave to intervene herein and submits these comments ("Comments") on the complaint of Calpine Corporation and LS Power Associates, L.P. (jointly, "Complainants") against ISO New England Inc. ("ISO-NE") in the captioned proceeding.[2] Clear River is presently developing a 1,080 MW natural gas-fired facility in Burrillville, Rhode Island (the "Clear River Energy Center" or the "Project").

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[1] 18 C.F.R. §§ 385.212, .213, .214 (2017).

[2] *Calpine Corporation and LS Power Associates, L.P. v. ISO New England Inc.*, Docket No. EL18-53-000, "Complaint Seeking Fast Track Processing and Shortened Comment Period" (Dec. 21, 2017) ("Complaint").

I. SUMMARY OF COMMENTS

The Complaint focuses on ISO-NE's Forward Capacity Market ("FCM") rules under which ISO-NE operates a three-year forward capacity market. The existing rules relevant to the Complaint are (1) a new entrant may elect to lock in the clearing price for a Capacity Supply Obligation ("CSO") awarded in a Forward Capacity Auction ("FCA") for seven years (the "Lock-In Period") after which is it considered to be an Existing Generating Capacity Resource and required to offer into the six FCAs thereafter as a price taker (i.e., offering at zero);[3] (2) a new entrant may buy replacement capacity in an Annual Reconfiguration Auction ("ARA") if it does not anticipate achieving commercial operation before an applicable Capacity Commitment Period ("CCP");[4] and (3) a new entrant is required to post security at least annually until its generation project achieves commercial operation.[5]

Complainants request that the Commission change these rules for FCA-12 (i.e., for the 2021-2022 CCP). Complainants ask that (1) an Existing Generating Capacity Resource be prevented from participating in FCA-12 if ISO-NE

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[3]ISO New England Inc., Transmission, Markets, and Services Tariff ("Tariff") § III.13.1.1.2.2.4.

[4]Tariff § III.13.3.4.

[5]Tariff, Exhibit 1A, Financial Assurance Policy ("FAP") § VII.B.2.b.

determines that the project is not reasonably likely to achieve commercial operation during that CCP (referred to as a "Delayed Project"); (2) the Delayed Project remain qualified to participate in subsequent auctions and its Lock-In Period extended for an additional year (collectively, the "Extension Provisions"); and (3) the Extension Provisions and such prospective qualification and one-year extension remain available only to the extent that subsequent Tariff revisions do not further change the rules for participating in post-FCA-12 auctions, i.e., a Delayed Project could not necessarily assume that it could maintain its status as an Existing Generating Capacity Resource or its ability to bid into what effectively would be the seventh FCA following its initial offer.[6] Accordingly, even if the Commission were to adopt Complainants' proposed Tariff language, there would be no certainty as to whether those aspects of the Proposal that allow the Delayed Project to participate in future auctions or to protect its seven-year price lock-in will survive until FCA-13.

On January 2, 2018, ISO-NE submitted its answer opposing the Complaint.[7]

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[6]Complaint at 15. The terms of the Complainants' proposal are collectively referred to herein as the "Delayed Project Proposal" or "Proposal."

[7]*Calpine Corporation and LS Power Associates, L.P. v. ISO New England Inc.,* Docket No. EL18-53-000, "Answer of ISO New England Inc. to the Complaint of Calpine and LS Power" (Jan. 2, 2017) ("ISO-NE Answer").

As detailed below, to justify their Proposal, Complainants take aim at the Clear River Energy Center alleging that it should be subject to the new rules. However, the Complaint is filled with innuendos and misstatements, if not outright deliberate misrepresentations, about the Clear River Energy Center's development, participation in the FCM, and current status. In these Comments, Clear River refutes these incorrect characterizations, and asks that the Commission give them no weight. Clear River further wishes to explain certain ramifications of the Proposal, primarily the fact that ratepayers clearly would be harmed if Complainants' request is granted and the proposed Tariff rules impede the entry of sorely needed new generation in New England.

Lastly, should the Commission grant the Complaint (which Clear River strongly opposes), Clear River requests that it be modified in two respects: (1) the Commission should make clear that the Extension Provisions will not be subject to change with respect to a Delayed Project's participation in FCA-13 nor in regards to the one-year extension of its Lock-In Period, and (2) in exchange for effectively being required to sit out FCA-12, the Delayed Project should have its posted security refunded within fifteen days of the Commission's order granting the Complaint.

II. MOTION TO INTERVENE

Clear River is developing a 1,080 MW (nameplate) combined-cycle, natural gas-fired generation facility in Burrillville, Rhode Island (i.e., the Project) that will interconnect to transmission facilities owned by National Grid ("NGrid") and operated by ISO-NE through a newly constructed 6-mile transmission line ("Line 3052") that will be owned by NGrid.

Because the changes to the Tariff requested by Complainants will directly affect Clear River and the Project, Clear River has a direct and substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party. Clear River, therefore, respectfully moves to intervene in this matter.

III. COMMENTS

A. The Complaint's Misrepresentations and Misleading Innuendos

The Complaint identified but one project—the Clear River Energy Center—as allegedly of the type that should be subject to the Delayed Project Proposal. To buttress their claim, they throw in whatever inaccurate, misleading, or outright fabricated "evidence" they can so as to place the Project in the worst possible light; indeed, as somehow already having harmed, or presently intending to harm, the markets. These claims are unwarranted.

1. Clear River Energy Center

ISO-NE's three-year FCA is intended to allow sufficient time for new entrants to participate in the FCM and, if awarded a CSO, to complete the permitting and construction of a new generating facility during the three plus years between the auction and the beginning of the CCP. However, the FCM rules also are designed to allow for possible slippage in the commercial operation date ("COD"), for example, due to permit delays beyond a market participant's reasonable control or expectation. Indeed, Clear River has faced such delays due in large measure to the unceasing, and in Clear river's view, entirely uninformed and harmful opposition by a few well-funded "just say 'no' to any gas-fired generation development in New England" groups.[8]

After spending almost two years on its initial development activities, Clear River applied to the Rhode Island Energy Facility Siting Board ("EFSB") for a siting permit in October 2015,[9] several months before it offered its planned capacity into FCA-10 for the 2019-2020 CCP. Clear River offered its planned capacity into the FCA as two separate units (Unit 1 and Unit 2). Unit 1 cleared

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[8] *See, e.g.*, Conservation Law Foundation's website, https://www.clf.org/making-an-impact/blocking-big-gas/ describing Invenergy as a "zombie".

[9] *Invenergy Thermal Development LLC*, EFSB Docket No. SB 2015-06 "Application to Construct the Clear River Energy Center Power Plant in Burrillville, RI" (Oct. 29, 2015), located at http://www.ripuc.org/efsb/2015_SB_6.html.

FCA-10 and elected a seven-year price lock-in; and, as required under Tariff rules offered into FCA-11 and will offer its capacity into FCA-12 as a price taker. As detailed in the ISO-NE Answer, Unit 2 did not clear in FCA-10 or in FCA-11 and is still considered a New Generating Capacity Resource, which could participate into FCA-12 only if ISO-NE were to issue a Qualification Determination Notice ("QDN").[10] On September 29, 2107, ISO-NE issued its QDN stating that Unit 2 would not be qualified to participate in FCA-12, due to delays in the permitting process.[11]

Clear River informed the EFSB that ISO-NE had disqualified Unit 2 from participating in FCA-12.[12] As shown below, in supplemental testimony to EFSB, Clear River explained that, while it would be extending the planned Unit 2 COD to 2022,[13] Clear River intended to move forward to place Unit 1 in commercial operation in 2021, as follows:[14]

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[10]ISO-NE Answer at 7.

[11]*See* ISO-NE Answer at 12.

[12]*Invenergy Thermal Development LLC*, EFSB Docket No. SB 2015-06, "Informational Filing" (Nov. 1, 2017), located at http://www.ripuc.org/efsb/2015_SB_6.html.

[13]*Invenergy Thermal Development LLC*, EFSB Docket No. SB 2015-06, "Pre-Filed Supplemental Testimony of John Niland" (Dec. 13, 2017), at 1–2 (stating "[s]ince Unit 2 will not participate in FCA 12, this will result in staggered installation of the second train to meet the on-line date for the FCA 13 CSO of June 1, 2022."), located at http://www.ripuc.org/efsb/2015_SB_6.html.

[14]*Id.* at 3.

> As stated in its November 1, 2017 letter to the Board, Invenergy has adjusted the major equipment order dates. Invenergy has also confirmed with its supplier, GE, that pending EFSB approval of the Project by the second quarter in 2018, [Clear River] would be able to issue a limited notice to proceed for that equipment, so it can be designed, fabricated and delivered consistent with the schedule associated with the revised commercial operation date for Unit 1 of June 1, 2021, and adjust [Clear River]'s CSO date within the rules as allowed by the ISO-NE Tariff.

Clear River also recently instructed ISO-NE to submit its Large Generator Interconnection Agreement ("LGIA") under FPA § 205 on an unexecuted basis, in order that Clear River could protest some of the LGIA terms, including certain of the milestone dates NGrid proposed for issuing notices to proceed to construct facilities for which Clear River is required to pay.[15] In addition, Clear River recently filed a complaint under FPA § 206 ("Clear River Complaint") asking the Commission to eliminate Tariff provisions that allow network upgrade-related O&M Costs to be directly assigned to interconnection customers.[16]

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[15]*ISO New England Inc., et al.*, Docket No. ER18-349-000, "Filing of Unexecuted Original Service Agreement No. LGIA-ISONE/National Grid-17-01 under Schedule 22 of the ISO New England Inc. Open Access Transmission Tariff" (Nov. 29, 2017); *ISO New England Inc., et al.*, Docket No. ER18-349-000, "Motion To Intervene and Protest of Clear River Energy Center LLC" (Dec. 20, 2017) ("LGIA Protest").

[16]*Clear River Energy Center LLC v. ISO New England Inc., et al.*, Docket No. EL18-31-000, "Complaint of Clear River Energy Center LLC" (Nov. 17, 2017).

2. Complainants Improperly Suggest That Clear River's Participation in FCA-12 Would Be Manipulative

While a premise of the Complaint is that FCA-12 prices will be lower if Delayed Projects are allowed to participate, Complainants phrase this concern in a manner that can be read to suggest that Clear River itself is intending to suppress prices for some manipulative purpose. Complainants ask the Commission to "act expeditiously to prevent the unjust and unreasonable suppression of prices [in FCA-12] by Unit 1 ("Unit 1") of the [Clear River Energy Center]."[17] The Complaint allegedly "seeks interim relief to prevent price suppression by delayed new resources in FCA 12."[18] And the Complainants dangle the claim that Clear River somehow might intentionally wish to offer into FCA-12 knowing that it cannot possibly deliver by the [CCP], but expecting to turn a profit in the ARA.[19] Obviously, Complainants trade in these purposefully unsubstantiated claims to couch Clear River as a bad actor and presumably to justify its being kicked out of FCA-12. But, as explained in detail in the ISO-NE Answer, Clear River is **required** to participate in FCA-12 in accordance with

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[17]Complaint at 1 (emphasis added).

[18]Complaint at 3.

[19]Complaint at n.28.

existing Tariff rules,[20] and was identified in ISO-NE's November 7, 2017 Informational Filing as an Existing Capacity Resource that would qualify for FCA-12, without objection from Complainants.[21] More importantly, Clear River **has no motive** for suppressing FCA-12 prices because its price is locked in.

But if Complainants want to talk about motive, while Clear River **has no motive** for increasing prices, this certainly appears to be Complainants' sole objective—a not altogether unreasonable supposition given the fact that Complainants control more than 3,200 MW of existing capacity in New England that would benefit from higher clearing prices in FCA-12.[22] And that is a fact.

In any event, two other facts are noteworthy. While not important to Complainants, it is important that new entrants like Clear River be able to participate in capacity markets under terms that accommodate potential permitting delays. Second, if the risk of the rules is such that significant FCM penalties could be imposed were permitting delays to be experienced, then Clear

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[20]Tariff § III.13.1.1.2.2.4.

[21]*ISO New England Inc.,* Docket No. ER18-264-000, "Informational Filing for Qualification in the Forward Capacity Market" (Nov. 7, 2017), at Attachment C, p.17.

[22]Calpine and LS Power are affiliated with more than 3,200 MW of capacity in New England. *See, e.g., LS Power Marketing, LLC, et al.,* Docket Nos. ER10-2739-018, *et al.*, "Updated Market Power Analysis" (Dec. 29, 2017), at Attachment B (Asset Appendix) (indicating that LS Power is affiliated with 890 MW of capacity (nameplate) in ISO-NE); *Calpine Energy Services, L.P., et al.,* Docket Nos. ER10-2042-025, *et al.*, "Updated Market Power Analysis" (Dec. 29, 2017), at Attachment B (Assets Appendix) (indicating that Calpine is affiliated with 2,336 MW of capacity (nameplate) in ISO-NE).

River and other new entrants would be much less likely to participate in the market, capacity prices would significantly increase, ratepayers would pay more, and reliability likely would be impacted.

Indeed, one more fact: Clear River estimates that exclusion of its Project from FCA-12 could result in an increase in total New England capacity prices by as much as $588 million. This estimate is based on the FCA-12 demand curve posted by ISO-NE[23] and the conservative assumption that, with Clear River in the supply stack, the market would clear at the same price that it did in FCA-11 with a clearing price of $5.31/kW/month. Removing Clear River and holding all other factors equal (i.e., new capacity paid at its relevant lock-in price; no other changes in supply stack), Clear River estimates that the market would clear at $7.03/kW/month. Thus, while ISO-NE likely would purchase less capacity, the total cost to ratepayers could increase by $588 million; and different assumptions might portend a smaller increase, the potential for a significant impact on ratepayers cannot be denied. Indeed, given that Complainants control about 3,200 MW in New England, they alone could reap close to 10% of the $588

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[23]The demand curve for FCA 12 is found at https://www.iso-ne.com/static-assets/documents/2017/10/fca_12_demand_curves_isone_public_8-1-2017.xlsx.

million price increase that potentially would result from Clear River's sitting out FCA-12.[24]

3. As Complainants Well Know, Clear River's Request That ISO-NE File Its LGIA on an Unexecuted Basis Is Consistent With Tariff Rules and FERC Policy and Procedures

Complainants state that Clear River "has decided not to execute a [LGIA] for the project,"[25] and that Clear River "did not provide the required notice [to proceed with design and procurement for long lead and major materials] to NGrid by December 1, 2017."[26] Again, Complainants suggest that Clear River has no intention to diligently work to place the Project into service in 2021, or that inexplicably, Clear River itself is responsible for such permitting delays as it has faced. However, the fact is that Clear River exercised its right to request that the LGIA be filed unexecuted so that the Commission could rule on various disputed issues (including the dates by which Clear River is required—and Clear River believes unreasonably—to issue NGrid a notice to proceed).[27] The filing of an unexecuted LGIA will not delay the development of the Project. The parties

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[24]Under these assumptions and the FCA-12 demand curve, Clear River estimates that ISO-NE would acquire approximately 34,190 MW at $7.03.

[25]Complaint at 7.

[26]Complaint at 9.

[27]*See, e.g.*, LGIA Protest at 9 & Attachment A.

will implement the LGIA and Clear River will be permitted to interconnect to NGrid's system once it receives the requisite permits regardless of the outcome of these disputed issues.

Indeed, Clear River believes that if its LGIA Protest is granted, this actually would expedite the Project and mitigate the impact of the delays already suffered. For example, in the LGIA Protest, Clear River is asking that it be provided an option to build Line 3052.[28] Clear River can build it faster and more economically than NGrid. Thus, the decision to protest NGrid's failure to recognize this option in the LGIA, far from being a hindrance to Project development, would serve to facilitate its timely development.

Complainants also take issue with Clear River's Complaint challenging ISO-NE's Tariff Schedule 11 allocation of O&M costs for network upgrades.[29] Complainants claim "this targeted May 31, 2021 [COD] appears overly optimistic. On November 17, 2017, [Clear River] filed a complaint against ISO-NE relating to its cost responsibility for transmission upgrades."[30] The Clear River Complaint is about whether Clear River will be directly assigned network upgrade-related O&M Costs that in all other parts of the country are borne by

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[28] *See* LGIA Protest at 7–8, 16–27.

[29] *See supra* note 16.

[30] Complaint at 8.

transmission customers. While an important legal matter, the Commission's decision on the Clear River Complaint is of absolutely no significance as to whether Clear River proceeds to commercial operation. Why Complainants have dropped Clear River's Complaint into this proceeding is mysterious.

The fact that the Clear River Complaint will need to be resolved by no stretch of logic should lead anyone to conclude that its filing will further delay Clear River Energy Center's commercial operation, or that the Project will not be constructed unless the Clear River Complaint is favorably ruled upon. Nothing about the Clear River Complaint affects the Project's timeline for permitting, siting, or construction. Complainants have provided no reasons, much less any facts, to substantiate why they are guessing otherwise.

4. Complainants Wrongly Suggest That Clear River's Participation in FCA-12 Will Not Be In Accordance With Tariff Rules

Complainants state that Clear River

> bears little to no risk in offering Unit 1 into FCA 12 [because it can offer into an ARA] where capacity prices historically have been much lower than the FCA clearing price. Consequently, not only will [Clear River] escape any penalty for failure to deliver, it would very likely profit from doing so.[31]

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[31]Complaint at n.28.

Thus, Clear River ostensibly would intentionally bid into FCA-12 without regard to its plans for placing the Project into service during the 2021-2022 CCP, because it can count on shedding any FCA-12 CSO at a profit.

First of all, Clear River has at all times acted in good faith in connection with the development of its Project. There is not even a whiff of a contrary suggestion by anyone who knows what they are talking about. The permitting delays the Project faces are not of Clear River's making, and have extended much longer than anyone reasonably should have expected. When Clear River initially participated in the FCM, it gave ISO-NE a good faith estimate of when the Project would be operational based on circumstances present at the time. Since then, Clear River has continued to pursue project development while prosecuting its permitting and siting proceedings. As detailed by ISO-NE, Clear River has continued to meet the Tariff requirements applicable to delayed projects.[32] Indeed, in response to Complaints' allegation that the COD of Unit 1 "is known to be delayed,"[33] ISO-NE stated that "there is no information in the Complaint, nor is the ISO aware of any information, which demonstrates that Unit 1 is

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[32] *See, e.g.* ISO-NE Answer at 6–8, 12–13.

[33] *See, e.g.*, Complaint at 10, 16–17.

'known to be delayed' with certainty beyond the commitment period of FCA 12."[34]

Complainants' general suggestion that Clear River is a speculative project that faces no financial risk associated with its participation in the FCM is likewise untrue. Clear River has expended approximately $16 million to date in connection with development activities, including preliminary engineering and design, permitting, and legal costs, and has posted approximately $8.5 million in security associated with its participation in the FCM. This month (January 2018) Clear River will post another $9 million to ISO-NE as a Major Permits Deposit in connection with its interconnection, and will post approximately $4.2 million in additional security in order to continue to participate in the FCM, bringing its total spend to approximately $37 million by the end of January 2018. Some of the costs expended to date have been offset as a result of Clear River's participation in the ARA for FCA-10, but there are nevertheless no grounds to doubt either Clear River's fidelity or fortitude to complete the Project.

Second, despite Complainants' suggestion that Clear River has the option of not participating in FCA-12, as detailed in the ISO-NE Answer, because Unit 1

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[34]ISO-NE Answer at 13.

participated in and cleared FCA-10, Clear River is required by Tariff rules to participate in the next six FCAs as a price taker.[35]

Finally, there is nothing untoward, as Complainants suggest, about covering a CSO if a resource is not in-service during the applicable period. Indeed, ISO-NE's Tariff covers this possibility by providing for ARAs in which entities with CSOs but whose resources are not yet operational must participate or ISO-NE will bid in on their behalf.[36] When a resource successfully covers its CSO (such as by purchasing replacement capacity through an ARA) that resource no longer has a CSO for the covered CCP. Thus, Complainants' statement that there would be a failure to deliver without penalty on Clear River's part if it covers its expected FCA-12 CSO through an ARA, is a patently incorrect statement.

In any event, prices in the ARAs could be higher or lower than prices in the FCA in which a shed CSO was initially awarded. Complainants' suggestion that Clear River, by participating in FCA-12, will be taking deliberate actions to make a profit in the ARA without risk is wrong. There simply is no guarantee,

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[35]Tariff § III.13.1.1.2.2.4.

[36]Tariff § III.13.3.4(b).

and thus, all market participants bear the risk that resulting prices do not meet their expectations.

Finally, any prudent market participant would consider the impact of all market rules, including the ability to cover a CSO through an ARA if its project is unexpectedly delayed, before deciding to offer new capacity into a three-year forward auction in the first place. Just because Complainants do not like the results of the recent ARAs does not mean that the rules are unjust and unreasonable or that Clear River has done anything untoward.

5. Complainants Attempt To Link Plans For Unit 2 To Those For Unit 1 Is Again Deliberately Misleading

Complainants assert that a later COD for Unit 2 is evidence that Unit 1 likewise could not be ready at any time during the FCA-12 CCP.[37] ISO-NE has already debunked this claim.[38] In addition to ISO-NE's discussion in this regard, Clear River notes that Complainants highlight one statement in an EFSB proceeding where Clear River informed the EFSB that ISO-NE had indeed determined that Unit 2 would not be permitted to participate in FCA-12. Taking

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[37]Asserting that "the delays have been so serious that ISO-NE found that Unit 2 is not qualified to participate in FCA 12 because it will not be operational by the 2021-2022 [CCP]" and that "ISO-NE already found sufficient justification to disqualify Unit 2 from FCA-12, in part because permitting delays have meant that Unit 2 will not be available for the 2021-2022 [CCP]." Complaint at 7, 11.

[38]ISO-NE Answer at 2–3, 12.

this statement out of context, Complainants then allege that this means Unit 1 also should not be able to participate in FCA-12.[39] Whether just sloppy or deliberate, Complainants disregarded those portions of Clear River's EFSB testimony where it explained that it could stage Unit 2's construction, and still meet the June 1, 2021 COD for Unit 1.

As shown *supra,* the EFSB testimony plainly demonstrates Clear River's basis for confirming that Unit 1 should remain on schedule and how, among other things, Clear River will work with its suppliers and vendors to change schedules as needed to meet Unit 1's COD, as well as its basis for disagreeing with ISO-NE's prognosis regarding Unit 2. Unit 2 can proceed on a different schedule than Unit 1, and is staged to be placed into service 6 to 12 months after Unit 1 goes into service.

B. If the Commission Grants the Complaint, the Commission Should Modify Relief in Two Respects From What Was Requested

If the Commission grants the Complaint and modifies the Tariff to include the Delayed Project Proposal, which it should not do, Clear River requests that the Commission make two modifications.

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[39] *See* Complaint at 8, 11–12.

1. The Extension Provisions Should Not Be Subject To Change

As noted above, the proposed Extension Provisions include language that would allow a Delayed Project, such as Clear River, to participate in FCA-13 subject to the then-existing rules and would extend the Delayed Project's Lock-In Period by an additional year. However, as written, these Extension Provisions would be subject to any subsequent Tariff changes, and any balance that the Delayed Project Proposal was purportedly trying to achieve would be lost. For example, without the Commission taking steps to ensure that a Delayed Project, such as Clear River, is not unduly harmed by such intervening Tariff changes, Clear River could be at risk of ISO-NE eliminating its CSO prior to its participation in FCA-13, or otherwise face (through currently unknown or proposed Tariff changes) forfeiture of all currently posted security. Therefore, if the Commission is inclined to grant the Complaint, the Commission, at a minimum, should confirm that (1) the Extension Provisions will not be subject to further revision and (2) no additional tariff revisions will be permitted that would have the effect of putting a Delayed Project in a worse position with respect to FCA-13 than it faces today with respect to FCA-12.

2. The Proposal Should Be Modified To Allow for Reimbursement of the Security Posting Due In Advance of FCA-12

The general objective of the Delayed Project Proposal is to force the Delayed Project to skip a year, such that it would not have any benefits or obligations that would otherwise apply, with such obligations and benefits being restarted *de novo* with respect to FCA-13. However, Complainants have not addressed one of the obligations—the requirement to post security that a Delayed Project will nonetheless face in connection with FCA-12. As noted by ISO-NE, Clear River is currently required to post security in advance of FCA-12, and the Delayed Project Proposal would not relieve a Delayed Project of its security posting requirement.[40]

Under the currently effective FCM rules, any new entrant considers the totality of the market rules that will affect its participation in the FCM. These include the requirement to post security until the project reaches commercial operation, both for years prior to its planned COD and for any years beyond the COD that become relevant because of delays.[41] But they also include the ability to participate in an ARA to cover a CSO whenever there are potential COD delays. A prudent new entrant considers how all of these provisions would

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[40]ISO-NE Answer at 13 & nn. 8, 22.

[41]FAP § VII.B.2.b.

work together to affect its project during the development period. Indeed, it is possible, as Complainants' suggest, but not certain, as Clear River responded above, that a potentially delayed project could obtain replacement capacity in an ARA at a price lower than its clearing price and be able to apply those proceeds towards payment of its security, and any new entrant would take all of these provisions into account in deciding whether to pursue a project in New England. However, under the Delayed Project Proposal, the Delayed Project, even if it was required to skip FCA-12, would nevertheless be obligated to post an additional tranche of security prior to FCA-12. Simply put, granting Complainants' interim relief would necessarily upset the totality of applicable market rules and potential benefits would therefore be inequitable. Therefore, if it grants the Complaint, the Commission should require ISO-NE to refund the security that is due in advance of FCA-12.[42] Because such security would not be used to make

[42]As a practical matter, because the security posting is due on January 22, 2018 and the Commission is not expected to issue its order prior to that date, a Delayed Project would be required to timely post the FCA-12 security on January 22, 2018. However, if the Commission determines that a Delayed Project should be relieved of this security requirement, the security posted on January 22, 2018 can then be refunded to the Delayed Project.

payments to third parties, but held until the resource achieves commercial operation,[43] reimbursing the Delayed Project would harm no one.

IV. COMMUNICATIONS

Please address all communications and correspondence regarding this matter to the following persons who are authorized to receive service:

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V. CONCLUSION

Clear River asks the Commission to give no weight to the Complainants' intentional mischaracterizations and innuendos concerning Clear River, to be mindful of the rate impacts of the Complainant's Proposal; and, should the Commission grant the Complaint, that it make the modifications requested herein.

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[43]FAP § VII.B.2.b; *see generally ISO New England Inc. and New England Power Pool Participants Committee*, Docket No. ER14-525-000, "Revisions to ISO New England Transmission, Markets and Services Tariff Related to Financial Assurance for Non-Commercial Capacity in the Forward Capacity Market" (Dec. 4, 3013), at 5–6 and the attached Montalvo Testimony at 5–7.

Respectfully submitted,
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January 4, 2018

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this day upon each person designated on the official service lists compiled by the Secretary in these proceedings. Dated at Washington, DC this 4th day of January, 2018.

/s/ *Deborah A. Carpentier*
Deborah A. Carpentier