UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.,	**)**	**Docket Nos. ER24-2007-000**
New England Power Pool	**)**	**ER24-2009-000**
Participants Committee, and	**)**	
Participating Transmission Owners	**)**	
Administrative Committee	**)**	

MOTION FOR LEAVE TO ANSWER AND FURTHER ANSWER OF ISO NEW ENGLAND INC.

Pursuant to Rules 101(e), 212, and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"),[1] ISO New England Inc.[2] (the "ISO") submits this Motion for Leave to Answer and Further Answer ("Further Answer") to the pleadings[3] filed in response to the ISO's Motion for Leave to Answer and Answer in the above-captioned proceedings on June 20, 2024. The pleadings all relate to the proposed revisions to Sections I, II, and III of the Tariff filed by the ISO together with the NEPOOL Participants Committee ("NEPOOL") and the Participating Transmission Owners Administrative Committee ("PTO-AC") (together, "Filing Parties") in compliance with the Commission's *Improvements to Generator Interconnection Procedures and Agreements*, Order Nos. 2023 and 2023-A ("Order No.

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1 *See* 18 C.F.R. §§ 385.101(e), 385.212, 385.213.

2 Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in Section I.2.2 of the ISO's Transmission, Markets and Services Tariff ("Tariff"). Section II of the Tariff contains the Open Access Transmission Tariff ("OATT"). Schedule 22 of the OATT contains the Large Generator Interconnection Procedures ("LGIP") and Agreement ("LGIA"), Schedule 23 of the OATT contains the Small Generator Interconnection Procedures ("SGIP") and Agreement ("SGIA"), and Schedule 25 of the OATT contains the Elective Transmission Upgrade Interconnection Procedures ("ETU IP") and Agreement ("ETU IA") (collectively, the "Interconnection Procedures")

3 Motion for Leave to Answer and Answer of Glenvale LLC ("Glenvale Answer"); Motion for Leave to Answer and Answer of Longroad Energy Holdings, LLC ("Longroad Answer") (combined the "Answers).

2023 Revisions"); and the revisions to Section II of the Tariff pursuant to Section 205 of the Federal Power Act ("FPA") (the "Order No. 2023 Related Changes") that the Filing Parties submitted on May 14, 2024.[4]

I. INTRODUCTION

The Order No. 2023 Compliance Package proposed revisions to Sections I, II, and III of the Tariff that are necessary for the New England region to move from the existing first-come, first-served serial interconnection process to the first-ready, first-served Cluster Study process required in Order Nos. 2023 and 2023-A. In their respective Answers, Glenvale and Longroad continue to challenge, and ask that the Commission reject or modify, several aspects of the Order No. 2023 Compliance Package. These aspects relate to: (i) the study deposit amounts proposed under Schedules 22, 23, and 25 of the Tariff; (ii) the amount of Commercial Readiness Deposits ("CRDs") required to be submitted with an Interconnection Request; (iii) the $50,000 application fee required to be submitted with an Interconnection Request for a Large Generating Facility; (iv) the timing associated with the ISO's ability to accept surety bonds to satisfy CRD requirements; and (v) the deposits for which surety bonds will be accepted.

As addressed in Section III of this Answer, the arguments proffered by Glenvale and Longroad lack merit and should be rejected. Fundamentally, they fail to demonstrate that any aspect of the Order No. 2023 Compliance Package is unjust, unreasonable, unduly discriminatory, or otherwise fails to accomplish the goals of Order Nos. 2023 and 2023-A. Accordingly, the

[4] ISO New England Inc., *Revisions to the ISO New England Inc. Transmission, Markets and Services Tariff in Compliance with Order Nos. 2023 and 2023-A*, Docket No. ER24-2009-000 (May 14, 2024); and *Errata to Revisions to the ISO New England Inc. Transmission, Markets and Services Tariff in Compliance with Order Nos. 2023 and 2023-A*, Docket No. ER24-2009-000 (May 31, 2024) ("Order No. 2023 Compliance Revisions"); ISO New England Inc., *Revisions to Section II of the ISO New England Inc. Transmission, Markets and Services Tariff Related to Compliance with Order Nos. 2023 and 2023-A*, Docket No. ER24-2007-000 (May 14, 2024) ("Order No. 2023 Related Revisions') (collectively the "Order No. 2023 Compliance Package").

Commission should reject the Answers, and accept the Order No. 2023 Compliance Package as filed, without conditions, or modifications.

II. MOTION FOR LEAVE TO FILE ANSWER

This Further Answer responds to the new arguments in the Answers. While the Commission's Rules of Practice and Procedure allow parties to file answers to comments, the Commission's rules prohibit answers to protests.[5] The Commission, however, has the authority to waive this prohibition.[6] The Commission has found good cause to permit answers in various circumstances, including where the answer would assure a complete record in the proceeding,[7] lead to a better understanding of the issues in the proceeding,[8] permit the issues to be narrowed or clarified,[9] aid in the disposition of the issues raised by the protests,[10] or otherwise assist the Commission in its decision-making process.[11] This Further Answer achieves these purposes. It clarifies misconceptions contained in Glenvale and Longroad's Answers, assures a complete and accurate record, and provides a better understanding of the issues relating to the Order No. 2023 Compliance Package. For these reasons, the ISO respectfully requests that the Commission grant

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5 *See* 18 C.F.R. § 385.213(a)(2). Note that the ISO also responds to the comments filed by RENEW as explicitly allowed under this section.

6 *See* 18 C.F.R. § 385.101(e).

7 *See, e.g., High Island Offshore Sys., L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

8 *See, e.g., CenterPoint Energy–Miss. River Transmission, LLC*, 141 FERC ¶ 61,080, at P 4 (2012).

9 *See, e.g., TransColorado Gas Transmission Co.*, 111 FERC ¶ 61,208, at P 4 (2005); *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224, at 62,078 (1998).

10 *See, e.g., Transcontinental Gas Pipe Line Co.*, 140 FERC ¶ 61,251, at 62,258 n.6 (2012).

11 *See, e.g., S. Cal. Edison Co.*, 141 FERC ¶ 61,100, at P 5 (2012); *ISO New Eng. Inc. & New Eng. Power Pool*, 140 FERC ¶ 61,177, at P 6 (2012); *E. Shore Nat. Gas Co.*, 181 FERC ¶ 61,233, at P 9 n.17 (2022) (accepting an answer "to the extent [it] . . . is an answer to the protest . . . because it provides information that has assisted us in our decision-making process"); *Tri-State Generation & Transmission Ass'n*, 179 FERC ¶ 61,118, at P 34 (2022) (accepting an answer to a protest because it "provided information that assisted us in our decision-making process").

this motion for leave to answer and consider the following answer in ruling on the Order No. 2023 Compliance Package.

III. ANSWER

A. Contrary to Glenvale's Claims, the ISO's Proposed Study Deposit, Application Fee, and Commercial Readiness Deposit Structure Are Just and Reasonable and Accomplish the Purposes of Order Nos. 2023 and 2023-A

In its Answer, Glenvale argues that the Commission should reject the Filing Parties' proposal to: 1) require a $250,000 study deposit for Large Generating Facilities seeking to enter a Cluster Study;[12] 2) require a $50,000 application fee for Large Generators;[13] 3) require a $500,000 initial CRD for Large Generators;[14] and 4) subject Small Generating Facilities to the same deposit and fee structure (with lower amounts).[15] Glenvale argues that Order Nos. 2023 and 2023-A foreclosed the Filing Parties' proposed structure because therein, the Commission determined that study costs, and therefore CRDs, must be based on project size. The Commission should reject these arguments.

First, in establishing reforms to the Commission's existing *pro forma* generator interconnection procedures and agreements, the Commission did not make any findings specific to the ISO's Tariff, including its generator interconnection procedures and agreements, or preclude

[12] Glenvale Answer at 7-8.

[13] *Id.* at 12-13.

[14] *Id.* at 4. In footnote nine of its Answer, Glenvale raises the prospect that that a 2 megawatt ("MW") project would be required to provide a $250,000 study deposit, $500,000 initial CRD and $50,000 application fee to participate in a Cluster Study. This is partially correct, but warrants clarification. The amounts referenced are those that apply to Large Generating Facilities greater than 20 megawatts in size, which includes uprates to those facilities, as those increases are Material Modifications and require Interconnection Requests under Schedule 22 both under current rules and Order No. 2023 compliant rules.

[15] *Id.* at 13-14.

the Filing Parties from seeking to deviate from those reforms. In fact, in Order No. 2023, the Commission "recognize[d] that transmission providers have undertaken efforts to address interconnection queue management issues" and made it clear that its Final Rule was "not intended to divert or slow the potential progress represented by those efforts, and . . . encourage[d] transmission providers to continue to innovate to remedy their identified interconnection queue management issues."[16] Order No. 2023-A further explains that:

> The findings in Order No. 2023 relate to the Commission's existing *pro forma* generator interconnection procedures and agreements, which among other things, relied on a serial first-come, first-served study process. The Commission did not make any findings regarding specific transmission provider's tariffs, and it was not require to do so under FPA section 206. Issues regarding the individual tariffs of specific transmission providers that are currently deviate from the existing *pro forma* generator interconnection procedures and agreements [as has been the case for New England's procedures and agreements since inception] will be addressed on an individual basis on compliance.[17]

The starting point for the Filing Parties' Order No. 2023 Compliance Package is not the Commission's *pro forma* generator interconnection procedures and agreements, but rather a robust set of rules that have evolved over almost two decades to successfully address interconnection queue management issues experienced in New England,[18] and nothing in Order Nos. 2023 and 2023-A is intended to forestall the progress that the region has made.

Second, Glenvale's claim that the Filing Parties' Order No. 2023 Compliance Package "contain[s] virtually no discussion about why the Commission-mandated tiered deposit structure cannot be implemented in New England, why the proposed alternative is necessary or preferable, or why its discriminatory impacts on small projects is acceptable," is untrue and seeks to distract

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[16] Order No. 2023 at P 10.

[17] Order No. 2023-A at P 36.

[18] *See* Order No. 2023 Compliance Revisions Transmittal Letter at 12-22.

from the fact that the Commission has recognized that regional variations may be appropriate. At the outset, the Commission was clear in Order Nos. 2023 and 2023-A that regional transmission organization and independent system operator ("RTO/ISO") proposals would be evaluated under the independent entity variation standard.[19] The Commission also clarified in Order No. 2023-A that higher study deposits may be appropriate in some instances and that "the Commission can consider that going forward, including in response to compliance proposals…."[20] The Commission has accepted independent entity variations from its *pro forma* when an RTO or ISO demonstrates that the proposed variation: (1) is just and reasonable, and not unduly discriminatory or preferential; and (2) accomplishes the purposes of the order. Under that standard, the Filing Parties need not prove that the ISO cannot implement the Commission's tiered deposit structure, only that the proposal meets the standard for a variation, and the Filing Parties have done so in the filings submitted in the above-captioned proceedings.[21] As the Filing Parties have explained, project size is not the main predictor of study complexity due to the nature of the New England system.[22]

Third, Glenvale's assumption that the flat study deposits and higher application fee (which are already applicable in New England), as well as the initial Commercial Reading Deposit will somehow chill Cluster entry are without merit. While Order No. 2023 and 2023-A are increasing the application fee and study deposit set forth in the Commission's *pro forma*, the higher application fee and flat study deposit construct were accepted as a just and reasonable approach to address queue management issues in New England, and remain just and reasonable for that

[19] *See e.g.* Order No. 2023-A at fn 72.

[20] Order No. 2023-A at fn 701

[21] *See* Order No. 2023 Compliance Revisions Transmittal Letter at 43-45; ISO-NE Answer at 9-17.

[22] *Id.* at 43-45.

purpose.[23] Contrary to Glenvale's claims, the strong activity in the ISO's queue over the last ten years (during which time the application fee has been set at $50,000 and study deposits for Large Generating Facilities have been set at *the greater of* 100 percent of the estimated cost of the study or $250,000) shows that the required application fee and deposits are reasonable and not excessive. Since 2014, approximately 600 Interconnection Requests for Large Generating Facilities have been assigned Queue Positions in the ISO's interconnection queue, 89 of which were between 20 and 50 MW and 103 between 50 and 100 MW.

What is new for New England in the transition to a region-wide Cluster construct is the addition of the initial CRD.[24] As detailed in the ISO's Answer, the initial CRD amounts follow the same principle as that applied in the *pro forma*, *i.e.* double the study deposit cost, which as described below is a reasonable expectation of the actual study costs associated with projects in New England based on historic averages.[25] Glenvale argues that the total up-front costs would be prohibitive for smaller projects.[26] However, with respect to study deposits, the ISO has shown that historical study costs are in line with the proposed study deposit amounts, and the study deposit amounts listed will likely need to be paid over the course of the study based on expected study costs (*i.e.*, there is no significant savings resulting from lower study deposit amounts at the end of the day). This approach is just and reasonable, which meets the standard the ISO needs to

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[23] *See* Order No. 2023 Compliance Revisions Transmittal letter at 44-45; ISO-NE Answer at 11.

[24] The ISO notes that Site Control requirements in New England already exceeded those in the *pro forma* Interconnection Procedures and the Filing Parties seek to retain those requirements. See Order No. 2023 Compliance Revisions Transmittal Letter at 48-49.

[25] Additionally, when the ISO incorporated Clustering to address the acute queue backlog issues being experienced in certain parts of the systems, the application fee or study deposits were not changed. Rather, the Commission approved the addition of significant Cluster Participation Deposits (in cash) without disrupting the application fee or the study deposit constructs. There is no reason for the Commission to undo these constructs here, simply because we are now adding an initial CRD to ensure only viable projects seek to enter the Cluster.

[26] Glenvale Answer at 4.

demonstrate. Notably, if Interconnection Customers are unable to pay the specified study deposit amounts, then the ISO should be concerned with their ability to pay for their final study costs.

Ultimately, Glenvale's proposed modifications seek to lower the requirements to enter the Cluster Study Process in New England. Cheaper access to Cluster Studies will only serve to allow more speculative projects into the queue as the deposits at risk will be lower during the early part of the Cluster Study, leading to the possibility of withdrawals that will disrupt the early stages of Cluster Studies. This is counter to the Commission's intent in Order Nos. 2023 and 2023-A, which is that only those projects that are commercially viable should enter a Cluster Study.

Finally, Glenvale's proposed modification to the Filing Parties' proposed study deposit and CRD framework disrupts the overwhelmingly stakeholder-supported, balanced Order No. 2023 Compliance Package. Indeed, Glenvale proposed amendments to incorporate a tiered deposit structured failed to receive the requisite support from NEPOOL stakeholders and were therefore not part of the compliance proposal, demonstrating that the region as a whole supported the proposed deposit structure as reasonable for New England.[27]

For these reasons, the Commission should reject the arguments raised in Glenvale's answer and accept the Order No. 2023 Compliance Package as filed. While the ISO's deposit structure deviates from Order Nos. 2023 and 2023-A proposals, it is just and reasonable and accomplishes the Orders' intent. The Commission should accept the Filing Parties' proposal, without modification, under the independent entity variation standard.

[27] Glenvale proposed amendments to Schedule 22, Schedule 23, and Schedule 25 of the OATT, to set: (i) the initial CRD for Large Generating Facilities to lower amounts based on the *pro forma*; and (ii) to set the initial CRD to $70,000 plus $2,000/MW, and include a fixed $250,000 CRD for Small Generating Facilities participating in the Transition Cluster Study. This motion was voted by the NEPOOL Transmission Committee and failed to pass with a vote of 39.42% in favor, far below the required threshold of 66.67% needed.

B. The Order No. 2023 Compliance Package, including the Limited Independent Entity Variation to Allow for Later Implementation of Surety Bonds, Meets the Requirements of Order No. 2023-A

The Longroad Answer continues to challenge the Filing Parties' proposed timing for accepting surety bonds as financial security for CRDs, as well as the types of deposits for which surety bonds may be used. Longroad again suggests that accepting surety bonds is a simple matter, and that the ISO should simply be able to start accepting surety bonds during the transition process with very little effort. However, implementing a system to be able to accept surety bonds is anything but simple.

In order to properly protect both the ISO and other Interconnection Customers from the harm that could occur where a surety bond (1) is not adequately structured to enable the ISO to demand, and obligate the surety to promptly perform and fulfill, the contractual obligations of the Interconnection Customer which are guaranteed by the bond in the event of a project's withdrawal, (2) includes terms and conditions that impede the ISO's ability to demand and receive prompt performance by the surety under the bond or otherwise make it burdensome for the ISO to exercise its rights under the surety bond, or worse (3) contains, or omits, language upon which the surety bond provider relies as grounds to refuse a claim or demand by the ISO to provide funds in cash, the ISO must have the time it needs to create form surety bonds which include the necessary terms and conditions, as well to create a list of surety bond providers acceptable to the ISO as potential sureties under such bonds.

The ISO has not previously required or accepted surety bonds as an alternative form of financial security to cash deposits in the interconnection context (nor has the ISO accepted surety bonds in any other context). The Commission's intent, in ordering the ISO to accept surety bonds as a form of security for CRDs in addition to cash or irrevocable letters of credit, clearly was not

to require acceptance of a form of security which would afford substantially less protection to the ISO, and by extension the other participants in the cluster, than the level of protection afforded by cash deposits or irrevocable letters of credit.

Surety bonds, however, are generally not analogous to irrevocable letters of credit as a form of financial security for the performance of an interconnection customer's payment obligations. Due to significant and material differences between letters of credit and surety bonds – with which the ISO lacks prior experience – the ISO requires the additional time requested in the Order No. 2023 Compliance Package to: (1) better understand these distinctions, in particular the types of surety bond terms and conditions needed to adequately protect the ISO, surety bond language which if present in the bond might undermine such protection or expose the ISO and other Interconnection Customers to unnecessary risk of non-performance by the surety, and the potential risk to the ISO in being able to enforce its rights under a surety bond, including but not limited to where there is a bankruptcy filing by the Interconnection Customer; (2) develop and implement necessary and appropriate processes for the use of surety bonds, and; (3) create surety bond forms with language appropriately tailored to the particular obligations of Interconnection Customers which such bonds are intended guarantee, which processes and bond language will, together, afford adequate protection to the ISO and other Interconnection Customers, notwithstanding the relevant differences between surety bonds and irrevocable letters of credit (briefly discussed below).

Generally, a letter of credit is a commercial instrument issued by a bank to a specific party (i.e., beneficiary) which gives the beneficiary the right to draw payments on the letter of credit, up to full amount of the letter of credit, if certain specific conditions are met, typically nonpayment by the "applicant" on whose behalf the letter of credit has been issued. Thus, a letter of credit

provides both a guarantee for a payment to the beneficiary owed under a separate contract between the beneficiary and applicant, and the means to realize that payment in present funds from the issuing bank. Generally, a letter of credit is governed by the law chosen by the issuing bank or parties – typically designated in the letter of credit itself – or in the absence of such designation, the Uniform Commercial Code ("UCC") of applicable state law. A letter of credit is a separate and independent transaction from the contract between the applicant and the beneficiary to which the letter of credit relates.

Surety bonds are significantly different than letters of credit. Generally, surety bonds are contracts of suretyship, therefore governed by state contract law. Surety bonds, generally, are not "on-demand" payment instruments, and do not otherwise qualify as negotiable instruments governed by the UCC. Through a surety bond, a surety, as secondary obligor, guarantees performance of particular contractual obligations by the primary obligor – the "bond principal" – under the particular contract, or contracts, which underlie the bond and are identified with specificity on the face of the bond. The bond and the surety's guarantee thereunder, are for the benefit of the party named as "obligee" on the bond. Generally, the surety's potential liability to the obligee or other beneficiaries of a surety bond cannot exceed the amount of the "penal sum" stated on the face of the bond.

Because a surety bond is a contract of suretyship, the bond's language is generally determinative of the rights and obligations which the surety, bond principal, and obligee have under and arising from the bond. Unlike a letter of credit, however, a surety bond attaches to and incorporates the underlying contract -- which in this case will include the ISO's Interconnection Procedures – and the obligations of the bond principal, such that the surety bond must be interpreted consistently with the underlying contract. The surety's obligations under the bond are,

therefore, subject to the rights and defenses of the bond principal under the underlying contract. Unlike an issuing bank under a letter of credit, a surety's obligations to perform under the surety bond are, generally, conditional – they do not mature or become due unless and until the bond principal is in default or breach of its obligations under the underlying contract. Moreover, a material change in the underlying contract (again, in this case, the Interconnection Procedures) by the obligee and principal without the surety's consent may be deemed to have altered the extent or nature of the obligations secured by the bond and to which the surety agreed, rendering a bond claim subject to suretyship defenses under common law.

Additionally, and perhaps most critically, surety bonds, unlike letters of credit, are generally not payable immediately on demand, without demonstration of the validity of the demand, without a default by the bond principal, or without investigation by the surety of a claimed default by the bond principal. Generally, a surety bond will require performance and/or payment by the surety subject to the obligee first declaring the principal in default of an obligation, and submitting a claim under the bond to the surety. A surety, generally, has the obligation and right to investigate a claim for validity, before paying the claimant or performing the bond principal's underlying obligations. As such, surety bonds generally do not serve as a pool of credit to be drawn against in order to fund the performance of definite and noncontingent financial obligations of the bond principal. Rather, surety bonds guarantee the obligee against the bond principal's failure to perform contractual obligations by contractually obligating the surety to perform where the bond principal has failed.[28]

[28] While the ISO intends that its form surety bond protects against the issues that this creates, sufficient time is required to develop appropriate language.

Given these differences in the nature and enforcement of surety bonds and letters of credit, a surety bond implicates a significantly greater risk of potential non-payment or delay in payment by the surety, in particular while a surety investigates the validity of a claim and/or potential grounds to avoid payment or other performance under the bond. To ensure that the surety bonds which the ISO will be required to accept provide substantially the same level of protection to the ISO, and by extension the other participants in the cluster, as cash deposits or irrevocable letters of credit, the language of surety bond forms to be used and the processes for integration of the same into the LGIP and SGIP, must be carefully approached by the ISO. Because the underlying interconnection processes are indisputably complex, and because the CRDs required throughout those processes are phased, related and continuing, and in varying amounts some of which cannot be ascertained until after completion of the cluster study phase of the Interconnection Procedures, there is no merit to Longroad's reductive assertion that employing surety bonds in lieu of cash or letters of credit for CRDs should be a simple process, either for the ISO or potential sureties who might underwrite any such bonds.

At a minimum, to be enforceable, the language of the surety bonds will require clarity as to the source of underlying contractual obligations for which each bond is being issued. As a result, the form of surety bonds to be used by ISO-NE will require language which is properly tailored to identify the limited contractual and tariff obligations underlying the bond. As such, the language of the surety bonds developed by the ISO will likely require proper reference to identify the multiple different Interconnection Customer agreements to be "bonded" at different phases of the interconnection process, as well as language referring to the particular commercial readiness and withdrawal penalty obligations under such agreement(s) and related tariff provisions as are ultimately approved by Commission. Until the Commission ultimately approves the Compliance

Package and the various study requirements thereunder, these terms will not be fully known, again making in nearly impossible for the ISO to accept surety bonds during the transition. Accepting surety bonds without these safeguards in place during the transition, during which withdrawal penalties are higher, would be irresponsible

Longroad also again implies that the ISO has had time to implement this requirement for some time, arguing that "ISO-NE has been on notice about the surety bond requirement since the issuance of Order No. 2023-A on March 21, 2024, and on notice that the issue was pending on rehearing since August 2023."[29] Longroad further argues that "[a]ny time constraints that ISO-NE faces in implementing this aspect of the Commission's orders are the result of its own inaction."[30] This argument, however is a red herring. The ISO acted immediately after the issuance of Order No. 2023-A to propose rules for the acceptance of surety bonds as part of the NEPOOL stakeholder process, and began implementation activities during this same time period.

C. Order No. 2023-A Did Not Require That the Use of Surety Bonds to Cluster Enabling Transmission Upgrade ("CETU") Participation Deposits, Which Are Not Part of the *Pro Forma* LGIP

The Longroad Answer challenges the Filing Parties' proposal to limit the use of surety bonds for CRDs established in Order No. 2023 and 2023-A, and requests that the Commission require the ISO to extend the use of surety bonds to CETU Participation Deposits.[31] The Commission should decline this request for the following reasons.

As explained in the Order No. 2023 Compliance Revisions Transmittal Letter, the New England Interconnection Procedures have evolved since the initial Order No. 2003 compliance

[29] Longroad Answer at 3.

[30] *Id.* at 4.

[31] Longroad Answer at 4-7.

filings to address region-specific concerns.[32] A critically important difference is the New England-specific Clustering approach that the Commission accepted in 2017 as the just and reasonable means to resolve the acute queue backlog in Northern and Western Maine due to the need for new common significant transmission infrastructure to accommodate multiple Interconnection Requests seeking to interconnect in the same electrical part of the system. [33] As part of that construct, the ISO established, and the Commission accepted as just and reasonable, significant cluster participation requirements, including *a cash-only* Cluster Participation Deposit, carefully designed to ensure that only viable projects requiring a CETU to interconnect to the system elected to enter a given cluster. In other words, the existing Clustering construct, including the Cluster Participation Deposit, do not stem from and are not part of the Commission's *pro forma* interconnection procedures; it is a mechanism unique to the New England region.

In Order Nos. 2023 and 2023-A, the Commission recognized these types of efforts, and was clear that the Commission in no way seeks to divert or slow the progress gained by those efforts.[34] However, in developing the compliance proposal, the Filing Parties recognized a need for some adjustments to the Clustering rules in order to synchronize them with the Order Nos. 2023 and 2023-A' shift from a first-come, first-serve serial queue construct to a system-wide Cluster Study Process. As relevant to Longroad's arguments, the Filing Parties proposed to retain the Clustering rules' cluster entry deposit construct under which an Interconnection Customer with a Generating Facility or Elective Transmission Upgrade, for which

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[32] *See* fn 18, *supra.*

[33] *See ISO New England Inc.*, Joint Filing of Revisions to the ISO New England Inc. Transmission, Markets and Services Tariff to Incorporate a Clustering Approach in the Interconnection Procedures, Docket No. ER17-2421-000 (Sept. 1, 2017); *ISO New England Inc.*, 161 FERC ¶ 61,123 (2017). The common significant transmission infrastructure is defined in the Tariff as Cluster Enabling Transmission Upgrade ("CETU"). *See* Tariff at § I.2.2.

[34] Order No. 2023 at P 10.

interconnection is enabled by a CETU, must submit an initial a deposit (currently defined as Cluster Participation Deposit, but replaced with CETU Participation Deposit under the proposed rules) that is equal to five percent of the Interconnection Customer's share of the cost of the CETU, in cash, at the time that the Interconnection Customer submits the Interconnection Request, or after the ISO identifies, during the Customer Engagement Window, that the proposed interconnection needs the CETU.[35] The Filing Parties did not propose to change the amount or form in which this initial entry deposit is to be provided to the ISO.

While Order Nos. 2023 and 2023-A did not modify the underlying Clustering rules' construct and the changes proposed in the Order No. 2023 Compliance Package are intended only to synchronize that process with the mandated Cluster Study Process, Longroad nevertheless asks the Commission to direct the ISO to accept surety bonds for Cluster Participation Deposits (now, defined as CETU Participation Deposits) on the basis that the Filing Parties' proposal to continue to require CETU Participation Deposits be submitted in cash:

> will create unnecessary complexity and costs for developers seeking to interconnect to the ISO-NE system, as developers preferring to use surety bonds would nonetheless be required to provide a different form of financial security for the other deposits, including possibly very large amounts of cash for CETU-related deposits.[36]

The Commission should reject this request.

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[35] Schedule 22, Sections 4.2.3.2.2 and 4.2.4.4. These provisions were accepted by the Commission in connecting with the ISO's establishment of limited clustering rules. *See ISO New England Inc.*, Joint Filing of Revisions to the ISO New England Inc. Transmission, Markets and Services Tariff to Incorporate a Clustering Approach in the Interconnection Procedures, Docket No. ER17-2421-000 (Sept. 1, 2017) (proposing changes to Tariff, Section I.2 - Definitions, Schedule 11, Schedule 22, Procedures, Schedule 23, Schedule 25, and Attachment K to incorporate limited clustering) ("Clustering Revisions Filing"); *ISO New England Inc.*, 161 FERC ¶ 61,123 (2017).

[36] Longroad Answer at 9.

As noted, the CETU Participation Deposit applicable under Section 4.2 of Schedules 22, 23, and 25 is not a part of the CRD structure required under the *pro forma* established in Order Nos. 2023 and 2023-A, and therefore it need not adhere to the requirements the Commission set for those specific deposits. Moreover, the CETU Participation Deposit's amount and form have already been accepted by the Commission as just and reasonable (albeit, under the term "Cluster Participation Deposit"), and the conditions for which that significant deposit requirement to be provided only in cash was created continue to persist in the region.[37] Longroad also failed to demonstrate that the CETU Participation Deposit is no longer just and reasonable.

This unique feature of the ISO's interconnection process should be preserved. The Commission should not set the region back by diluting the CETU Participation Deposit cash requirement, risking the re-introduction of the queue backlog issues in areas of the system where CETUs are warranted to interconnect multiple Interconnection Requests. Given the shift to a Cluster Study Process for the entire region, the impact of withdrawals of projects associated with a CETU that the cash deposit sought to minimize would be worse in the future as they would now

[37] Note that the ISO is currently in the process of completing its Third Maine Resource Integration Study, the results of which were presented to New England stakeholder in June of 2024. *See ISO New England*, Third Maine Resource Integration Study Study Results, https://www.iso-ne.com/static-assets/documents/100012/a02_third_maine_resource_integration_study_june2024_non_ceii.pdf (June 20, 2024).

take place in the context of region-wide Cluster process, rather than limited electrical parts of the system. [38]

As the ISO has stated previously, Interconnection Customers with Interconnection Requests for Generating Facilities/Elective Transmission Upgrades enabled by a CETU must be required to demonstrate this increased commitment before the CETU and the Generating Facilities/Elective Transmission Upgrades enabled by the CETU are included in the Cluster Study.[39] The ISO also notes that since the current limited Clustering rules were accepted by the Commission, the ISO has invoked the limited Clustering process five times, and of those times, a cluster has successfully formed twice with Interconnection Customers providing the required deposit(s) in cash, proving that the deposit structure is not unduly burdensome.[40] Requiring that the CETU Participation Deposit be provided in cash is necessary due to the high costs related to CETUs and therefore increased likelihood of withdrawals, impacting the Cluster Study. It also furthers Order No. 2023's intent to ensure the viability of projects entering the queue,[41] and to not disrupt Clustering efforts that are already ongoing.

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[38] As explained in the Clustering Revisions Filing, the CETU process is invoked only in the areas in which a backlog of two or more Interconnection Requests seeking to interconnect in the same electrical part of the system is likely to persist with the continued application of the serial queue study process due to the need for new common significant infrastructure to interconnect the resources. The initial Cluster Participation Deposit was found to be necessary to demonstrate Interconnection Customer's commitment to proceed toward interconnection, and reduce potential negative impacts of projects withdrawing from a CETU. *See* Clustering Revisions Filing at 3, 20-22, 37-38. With a move to regionwide Cluster Studies under Order No. 2023 Cluster participants that are not part of a CETU may nevertheless be impacted by the withdrawal of CETU enabled projects necessitating that the entry requirements for CETU enabled projects remain as they are today.

[39] Order No. 2023 Compliance Revisions Transmittal Letter at 41.

[40] The Third Maine Resource Integration Study has yet to reach the stage where such deposits will be required.

[41] Order No. 2023 at P 49.

Finally, Longroad does not object to the incorporation of the CETU process into the Order No. 2023 Compliance Package. In fact, Longroad appears to recognize the value of retaining this preexisting feature. However, the CETU represents a comprehensive design that involves a number of elements and trade-offs to address specific challenges in the ISO queue. For example, the CETU design includes a regional planning study, conducted outside of the interconnection process, which identifies the likely upgrades needed and informs entry into the Cluster Study phase.[42] The construct allows for the participation of elective transmission upgrades with an associated approach to cost allocation and other items. It is not appropriate, and beyond the scope of the consideration of this overall compliance proposal to reach in and change one aspect of the CETU incorporation without considering the overall CETU process design. ISO conformed the existing CETU process design to the Order Nos. 2023 and 2023-A construct without undoing the balance of trade-offs within the design.

For these reasons, the ISO again submits that the Filing Parties have met the standard for an independent entity variation related to the timing of the acceptance of surety bonds, as well as the types of deposits for which surety bonds will be accepted and therefore Longroad's requests should be rejected.

IV. CONCLUSION

For the reasons stated in the Order No. 2023 Compliance Package and in this Further Answer, the ISO respectfully requests that the Commission reject the Protests, and accept the Tariff Revisions proposed in Order No. 2023 Compliance Package, without modifications or

[42] *See* LGIP Section 4.2.2; and ISO-NE OATT, Attachment K, Section 15 (describing the studies that the ISO undertakes to identify CETUs outside of the current serial queue process).

conditions, as compliant with Order Nos. 2023 and 2023-A to become effective on August 12, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Holyoke, Massachusetts this 19th day of July, 2024.

/s/ Julie Horgan
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