



November 4, 2021

**VIA ELECTRONIC FILING**

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

**Re: *ISO New England Inc.***  
**Resource Termination Filing; Docket No. ER22- -000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act,<sup>1</sup> ISO New England Inc. (the “ISO”)<sup>2</sup> hereby electronically submits to the Federal Energy Regulatory Commission (“Commission”) this resource termination filing for Killingly Energy Center (“Killingly”) - Resource No. 38663/ Project 12280.

Pursuant to Section III.13.3.4.A of the Tariff if, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path schedule milestones is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a Capacity Supply Obligation (“CSO”), then, after consultation with the Project Sponsor, the ISO has the right, through a filing with the Commission, to terminate the resource’s CSO for any future Capacity Commitment Periods.<sup>3</sup> The termination also removes the resource’s right to any payments associated with that CSO and the resource’s qualified capacity for participation in the Forward Capacity Market. If the Commission accepts this termination filing, then the ISO will

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<sup>1</sup> 16 U.S.C.A. § 824d (2012).

<sup>2</sup> Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO’s Transmission, Markets and Services Tariff (the “Tariff”).

<sup>3</sup> Pursuant to Section III.13.3.4A, the ISO also has the right to terminate a CSO, through a filing with the Commission, if a Project Sponsor covers a CSO for two Capacity Commitment Periods. [REDACTED]

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terminate Killingly's CSO and the Project Sponsor, NTE Connecticut, LLC ("NTE"), will forfeit any financial assurance provided with respect to that CSO.<sup>4</sup>

[REDACTED]

[REDACTED]. Accordingly, after consultation with NTE, the ISO is exercising its right to seek to terminate Killingly's CSO. If the Commission accepts this termination filing, then the ISO will terminate the CSO, draw down the financial assurance that NTE provided for Killingly's CSO, and remove Killingly's qualified capacity. These actions will make Killingly ineligible to participate in the sixteenth Forward Capacity Auction ("FCA"), which will commence on February 7, 2022. The ISO respectfully requests an order accepting termination of Killingly's CSO within 60 days from the date of this filing and providing an effective date of January 3, 2022 for the termination. This will enable the ISO to reflect the termination, as appropriate, in the auction input file for the sixteenth FCA.

In support of the termination of Killingly's CSO, the ISO is submitting with the non-public version of this filing:

[REDACTED]

Because these documents contain confidential Market Participant information, they are being submitted as part of the non-public version of this filing. Confidential information has also been redacted in the public version of this filing letter. As such, pursuant to the Commission's regulations,<sup>7</sup> as part of the public version of this filing, the ISO is submitting a form of a Non-Disclosure Agreement, which any participant or intervernor can then submit to the ISO in order to request a copy of the complete, non-public version of this filing.

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<sup>4</sup> See, also, ISO Financial Assurance Policy, Section VII.D.

<sup>5</sup> [REDACTED]

<sup>6</sup> The 2022-20223 Capacity Commitment Period begins on June 1, 2022.

<sup>7</sup> 18 C.F.R. § 388.112 (2018).

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**I. DESCRIPTION OF THE ISO; COMMUNICATIONS**

The ISO is the private, independent non-profit entity that serves as the Regional Transmission Organization (“RTO”) for New England. The ISO plans and operates the New England bulk power system and administers New England’s organized wholesale electricity market pursuant to the Tariff and the Transmission Operating Agreement with the New England Participating Transmission Owners. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the New England Control Area and to plan and operate the system according to reliability standards established by the Northeast Power Coordinating Council and the North American Electric Reliability Corporation.

Correspondence and communications in this proceeding should be addressed to:

Margoth Caley, Esq.  
Senior Regulatory Counsel  
ISO New England Inc.  
One Sullivan Road  
Holyoke, MA 01040-2841  
Tel: (413) 535-4045  
Fax: (413) 535-4379  
E-mail: mcaley@iso-ne.com

**II. BACKGROUND**

Killingly is a proposed combined cycle generator that acquired a 631.955 MW CSO [REDACTED] in the thirteenth FCA, which is associated with the 2022-2023 Capacity Commitment Period. Accordingly, Killingly was required to achieve commercial operation on June 1, 2022 (*i.e.*, the first day of the 2022-2023 Capacity Commitment Period, which is associated with the thirteenth FCA).<sup>8</sup> Killingly also acquired 631.9555 MW CSOs in the fourteenth and fifteenth FCAs. [REDACTED].<sup>9</sup> Killingly is currently qualified to participate in the sixteenth FCA as an Existing Generating Capacity Resource.

As part of the qualification process for participation in an FCA, a non-commercial resource must provide a critical path schedule, which must include dates for milestones related

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<sup>8</sup> [REDACTED]

<sup>9</sup> [REDACTED]

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to, among other things, financing, permitting, major equipment orders, and commercial operation.<sup>10</sup> Once a resource acquires a CSO, the ISO is required to monitor that resource's compliance with its critical path schedule until the resource achieves FCM Commercial Operation, loses its CSO pursuant to Section III.13.3.4A of the Tariff, or withdraws from critical path schedule monitoring pursuant to Section III.13.3.6 of the Tariff.<sup>11</sup> Killingly provided a critical path schedule when it qualified for participation in the thirteenth FCA. As such, the ISO has been monitoring Killingly's critical path schedule since Killingly obtained a CSO in the thirteenth FCA, which was held in February 2019.

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>10</sup> Section III.13.1.1.2.2.2 of the Tariff.

<sup>11</sup> Section III.13.3.1.2 of the Tariff.

<sup>12</sup> Section III.13.3.2 of the Tariff.

<sup>13</sup> Section III.13.3.3 of the Tariff.

<sup>14</sup> [REDACTED]

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[REDACTED]

### **III. REASONS FOR TERMINATION**

Pursuant to Section III.13.3.4.A of the Tariff if, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path schedule milestones is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a CSO, then, after consultation with the Project Sponsor, the ISO has the right, through a filing with the Commission, to terminate the resource's CSO for any future Capacity Commitment Periods. The termination also removes the resource's right to any payments associated with that CSO and the resource's qualified capacity for participation in the Forward Capacity Market.

As described above, Killingly first acquired a CSO in the thirteenth FCA, which took place in February 2019 (*i.e.*, over two and a half years ago).

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Because a trigger for CSO termination in Section III.13.3.4A of the Tariff has been met, the ISO is now exercising its right to seek termination of Killingly's CSO through this filing with the Commission.<sup>20</sup>

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16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

<sup>20</sup> The CSO will be terminated for the 2022-2023, 2023-2024, and 2025-2026 Capacity Commitment Periods. As already mentioned, Killingly's qualified capacity will also be removed such that Killingly will not be able to

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**IV. REQUESTED EFFECTIVE DATE**

The ISO respectfully requests that the Commission accept the termination of Killingly's CSO to become effective on January 3, 2022 (which is 60 days from the filing date), so that the ISO can reflect the termination, as appropriate, in the auction input file for the sixteenth FCA, which is scheduled to commence on February 7, 2022.

**V. ADDITIONAL SUPPORTING INFORMATION**

Materials included herewith are as follows:

- This transmittal letter - **PUBLIC**
- Attachment A: Form of a Non-Disclosure Agreement – **PUBLIC**
- Attachment B: [REDACTED] – **CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE**
- Attachment C: [REDACTED] – **CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE**
- Attachment D: [REDACTED] – **CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE**
- Attachment E: [REDACTED] – **CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE**
- Attachment F: [REDACTED] – **CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE**
- Attachment G: [REDACTED] – **CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE**

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participate in the sixteenth FCA, which will commence on February 7, 2022. In addition, NTE will forfeit any financial assurance provided with respect to the CSO.

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**VI. CONCLUSION**

For the reasons explained in this filing letter, the ISO respectfully requests that the Commission accept this resource termination filing with an effective date of January 3, 2022. In addition, the ISO respectfully requests that the Commission issue an order within 60 days of the date of this resource termination filing. Commission action on this resource termination filing is important because the ISO and Market Participants need certainty on the status of Killingly prior to the sixteenth FCA, which is scheduled to commence on February 7, 2022.

Respectfully submitted,

/s/ Margoth Caley  
Margoth Caley, Esq.  
Senior Regulatory Counsel  
ISO New England Inc.  
One Sullivan Road  
Holyoke, MA 01040-2841  
(413) 535-4045

Attorney for ISO New England Inc.



**Attachment A**  
**Form of Non-Disclosure Agreement**

## NON-DISCLOSURE AGREEMENT

FOR DOCKET NO. ER22-\_\_\_\_-000

**THIS NON-DISCLOSURE AGREEMENT** (the “Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the undersigned individual (the “Authorized Intervenor Representative”) and ISO New England Inc., a Delaware corporation, with offices at One Sullivan Road, Holyoke, Massachusetts, 01040-2841 (the “ISO”). The Authorized Intervenor Representative and the ISO shall be referred to herein individually as a “Party,” or collectively as the “Parties.”

### RECITALS

**Whereas**, the ISO serves as the Regional Transmission Organization for the New England Control Area, and operates and oversees wholesale markets for electricity pursuant to the requirements of the ISO Tariff, as defined below; and

**Whereas**, the ISO New England Information Policy requires that the ISO maintain the confidentiality of Confidential Market Information; and

**Whereas**, the ISO has submitted a non-public version of a resource termination filing for Killingly Energy Center that includes Confidential Market Information; and

**Whereas**, Confidential Market Information is not available to Competitive Duty Personnel; and

**Whereas**, this Agreement is a statement of the conditions and requirements under which the ISO may provide the Confidential Market Information to Authorized Intervenor Representatives.

**NOW, THEREFORE**, intending to be legally bound, the Parties hereby agree as follows:

- 1. Definitions.** Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the ISO Tariff.

**1.1 Affected Governance Participant.** A Governance Participant, which as a result of its participation in the markets administered by the ISO, provided Confidential Market Information to the ISO, which Confidential Market Information is requested by an Authorized Intervenor Representative under this Agreement. Affected Governance Participant shall include Killingly Energy Center, its agents and representatives, including without limitation its developer NTE Energy.

**1.2 Authorized Intervenor Representative.** A natural person who: (i) is employed by an entity that the FERC has designated as an intervenor in Docket No. ER22-\_\_\_\_-000; (ii) is not a Competitive Duty Personnel; and (iii) has signed this Agreement.

**1.3 Confidential Market Information.** Shall mean the portions of ISO-NE's resource termination filing for Killingly Energy Center that the ISO filed confidentially with FERC in Docket No. ER22-\_\_\_\_-000 on November 5, 2021.

**1.4 Competitive Duty Personnel.** Shall mean a person whose duties include (i) the marketing or sale of electric power at wholesale; (ii) the purchase or resale of electric power at wholesale; (iii) the direct supervision of any employee with duties specified in subparagraph (i) or (ii) of this paragraph; or (iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale. Competitive Duty Personnel shall not have access to the Confidential Market Information provided under this Agreement.

**1.5 FERC.** The Federal Energy Regulatory Commission.

**1.6 Governance Participant.** Shall have the meaning set forth in the ISO Tariff.

**1.7 ISO New England Information Policy.** Shall have the meaning set forth in the ISO Tariff.

**1.8 ISO Tariff.** The ISO's Transmission, Markets and Services Tariff, as it may be amended from time to time.

**1.9 Killingly Energy Center.** Shall mean the proposed combined cycle generator that acquired a 631.955 MW CSO with a seven year rate lock in the thirteenth Forward Capacity Auction, which is associated with the 2022-2023 Capacity Commitment Period.

**1.10 Notes of Confidential Market Information.** Shall mean memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in the definition of Confidential Market Information set forth above. Notes of Confidential Market Information are subject to the same restrictions provided in this Agreement for Confidential Market Information except as specifically provided in this Agreement.

**1.11 Third Party Request.** Any request or demand by any entity upon the Authorized Intervenor Representative for release or disclosure of Confidential Market Information. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court; or (ii) arbitration panel, business, company, entity or individual.

## **2. Protection of Confidentiality.**

**2.1 Duty to Not Disclose.** The Authorized Intervenor Representative represents and warrants that: (i) s/he represents and is duly authorized by an entity that has been designated by the FERC as an intervenor in Docket No. ER22-\_\_\_\_-000; (ii) s/he is familiar with, and will comply with, such entity's applicable data protection procedures; and (iii) s/he is not a Competitive Duty Personnel. The Authorized Intervenor Representative hereby covenants and agrees not to disclose the Confidential Market Information, to deny any Third Party Request, and to defend against any legal process that seeks the release of Confidential Market Information in contravention of the terms of this Agreement. The Authorized Intervenor Representative further agrees at all times to store securely, and to restrict others' access to, all Confidential Market Information in the same manner as his/her employer stores and protects its trade secrets and other proprietary business information.

**2.2 Defense Against Third Party Requests.** The Authorized Intervenor Representative shall defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders. In the event a protective order or other remedy is denied, the Authorized Intervenor Representative agrees to furnish only that portion of the Confidential Market Information which his/her or his/her employer's legal counsel advises the ISO (and of which the ISO shall, in turn, advise any Affected Governance Participants) in writing is legally required to be furnished, and to exercise its best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information.

## **2.3 Use and Care of Confidential Market Information.**

**2.3.1 Use.** The Authorized Intervenor Representative shall use the Confidential Market Information only for purposes of developing and presenting his/her or his/her employer's arguments and positions in FERC Docket No. ER22-\_\_\_\_-000 based on the Confidential Market Information. Any pleading, affidavit, testimony, or other document that comprises or contains any reproduction of Confidential Market Information, in whole or in part, or any statements or other materials that disclose any Confidential Market Information, in whole or in part, shall be filed with FERC only in a non-public filing that follows the requirements of Section 388.112 of the FERC's regulations.

**2.3.2 Control of Confidential Market Information.** The Authorized Intervenor Representative shall be the custodian of any and all Confidential Market Information received pursuant to the terms of this Agreement from the ISO.

**2.3.3 Competitive Duty Personnel.** If the Authorized Intervenor Representative subsequently becomes Competitive Duty Personnel, s/he shall thereafter no longer have access to the Confidential Market Information and shall continue to comply with the requirements set forth in this Agreement with respect to Confidential Market Information to which s/he previously had access. He/she shall promptly notify the ISO of his/her employer's new Authorized Intervenor Representative, who shall execute this Agreement, and thereafter will take custody of all Confidential Market Information in the possession of the original Authorized Intervenor Representative. If no new Authorized Intervenor Representative of the same employer has executed this Agreement within 10 days after the original Authorized Intervenor Representative became Competitive Duty Personnel, the original Authorized Intervenor Representative, within 10 days after the end of the previously identified 10-day period, (a) shall return all Competitive Market Information to the ISO, or (b) shall destroy all Competitive Market Information, and (c) shall deliver to the ISO an affidavit certifying that, to the best of his/her knowledge and belief, all Confidential Market Information has been returned or destroyed.

**2.3.4 Notice of Disclosures.** The Authorized Intervenor Representative shall promptly notify the ISO, and the ISO shall promptly notify any Affected Governance Participant, of any inadvertent or intentional release or possible release of the Confidential Market Information provided pursuant to this Agreement. The Authorized Intervenor Representative shall take all steps to minimize any further release of Confidential Market Information, and shall take reasonable steps to attempt to retrieve any Confidential Market Information that may have been released.

**2.3.5 Ownership and Privilege.** Nothing in this Agreement, or incident to the provision of Confidential Market Information to the Authorized Intervenor Representative, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against subsequent disclosure or discovery in any formal proceeding or investigation. Moreover, no transfer or creation of ownership rights in any intellectual property comprising Confidential Market Information is intended or shall be inferred by the disclosure of Confidential Market Information by the ISO, and any and all intellectual property comprising Confidential Market Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of the ISO and/or the Affected Governance Participant.

**2.3.6 Duration of Obligations.** At any time after the later of 1) the date an order terminating Docket No. ER22-\_\_\_\_-000 no longer is subject to judicial review, or 2) the date any other Commission proceeding relating to the Confidential Market Information is concluded and no longer subject to judicial review, the ISO may request (in writing) that the Authorized Intervenor Representative return or destroy all Confidential Market Information. The Authorized Intervenor Representative shall comply with this request within 15 days after the date the request is made. If requested, the Authorized Intervenor Representative shall also submit to the ISO an affidavit stating that, to the best of his/her knowledge and belief, the request to return or destroy the Confidential Market Information has been fully satisfied. Notwithstanding the foregoing terms of this paragraph, however, the Authorized Intervenor Representative may retain copies of filings, of official transcripts, and of exhibits in the Commission's Docket No. ER22-\_\_\_\_-000 or any related court proceeding which contain Confidential Market Information or Notes of Confidential Market Information, provided that any such copies are at all times secured in accordance with Section 2.1 of this Agreement. Regardless of any order terminating Docket No. ER22-\_\_\_\_-000 or any related court proceeding, this Agreement shall remain in effect to the extent that, and for so long as, the Authorized Intervenor Representative retains any Confidential Market Information or Notes of Confidential Market Information.

### **3. Remedies.**

**3.1 Material Breach.** The Authorized Intervenor Representative agrees that any release of Confidential Market Information to persons not authorized to receive it or any publication of any material related to or that relies upon the Confidential Market Information, including notes of Confidential Market Information, which is not redacted or summarized in such a manner that the Confidential Market

Information may not be identified shall constitute a breach of this Agreement and may cause irreparable harm to the ISO and/or the Affected Governance Participant. In the event of a breach of this Agreement by the Authorized Intervenor Representative, the ISO may terminate this Agreement upon written notice to the Authorized Intervenor Representative, and all rights of the Authorized Intervenor Representative hereunder shall thereupon terminate. The Authorized Intervenor Representative hereby shall indemnify, save, hold harmless, discharge, and release the ISO and each Affected Governance Participant from and against any and all payments, liabilities, damages, losses or costs and expenses paid or directly incurred by the ISO and/or each Affected Governance Participant arising from, based upon, related to, or associated with the breach of, or failure to perform or satisfy, any obligation of the Authorized Intervenor Representative set forth in this Agreement.

**3.2 Judicial Recourse.** In the event of any breach of this Agreement, the ISO or the Affected Governance Participant shall have the right to seek and obtain at least the following types of relief: (a) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (b) the immediate return of all Confidential Market Information to the ISO. The Authorized Intervenor Representative expressly agrees that in the event of a breach of this Agreement, any relief sought properly includes, but shall not be limited to, the immediate return of all Confidential Market Information (including any copies or notes thereof) to the ISO.

**4. Jurisdiction.** The Parties agree that jurisdiction over all other actions and requested relief with respect to the Agreement shall lie in any court of competent jurisdiction.

**5. Severability and Survival.** In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms.

**6. Representations.** The undersigned represent and warrant that they are vested with all necessary corporate, statutory and/or regulatory authority to execute and deliver this Agreement, and to perform all of the obligations and duties contained herein.

**7. Third Party Beneficiaries.** The Parties specifically agree and acknowledge that each Affected Governance Participant is an intended third party beneficiary of this Agreement entitled to enforce its provisions.

**8. Counterparts.** This Agreement may be executed in counterparts and all such counterparts together shall be deemed to constitute a single executed original.

**9. Amendment.** This Agreement may not be amended except by written agreement executed by authorized representatives of the Parties.

ISO NEW ENGLAND INC.

AUTHORIZED INTERVENOR REPRESENTATIVE

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Name:

Title:

Representing:

Address:



## **Attachment B**

**Redacted**

## **Attachment C**

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## **Attachment D**

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# **Attachment E**

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## **Attachment F**

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# **Attachment G**

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