



February 11, 2022

Via eTariff Filing

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

Re: New England Power Pool and ISO New England Inc.
FERC Docket No. ER22- _____ -000
Involuntary Termination of Sunwave USA Holdings Inc. NEPOOL Membership &
MPSA with ISO-NE

Dear Secretary Bose:

The New England Power Pool Participants Committee¹ (“NEPOOL”) and ISO New England Inc. (“ISO-NE”, and together with NEPOOL, the “Filing Parties”) hereby submit this transmittal letter, together with a revised list of NEPOOL Participants from the Second Restated NEPOOL Agreement, in order to terminate (i) the NEPOOL Participant status of Sunwave USA Holdings Inc. (“Sunwave”)², and (ii) the Market Participant Service Agreement (“MPSA”) between ISO-NE and Sunwave,³ each as a result of the failure by Sunwave to pay when and as due the amounts invoiced to it under the Billing Policy. Given the breadth of its Payment Defaults and its unresponsiveness regarding those defaults, the Filing Parties can no longer reasonably expect that Sunwave will cure its Payment Defaults.

I. BACKGROUND

Pursuant to Section 16.1(c) of the Restated NEPOOL Agreement and Section 3.2 of the MPSA, a Participant has the obligation to make timely payment of all amounts due under the Second Restated NEPOOL Agreement, Participants Agreement, and the ISO-NE Tariff. The ISO-NE Billing

¹ Capitalized terms used but not defined in this filing are intended to have the same meaning given to such terms in the Second Restated New England Power Pool Agreement (the “Second Restated NEPOOL Agreement”), the Participants Agreement, or the ISO New England Inc. Transmission, Markets and Services Tariff (“ISO-NE Tariff”, and together, the “Documents”).

² Sunwave became a NEPOOL Participant effective February 1, 2014. *See New England Power Pool*, Docket No. ER14-1244-000, (Mar. 24, 2014) (unpublished letter order). Sunwave became a Market Participant also on February 1, 2014. During the term of its membership, Sunwave has been a member of the Supplier Sector.

³ The MPSA between Sunwave and ISO-NE is reported by ISO-NE in its EQR filings as MPSA No. 567.

Policy, Exhibit ID to the ISO-NE Tariff (“Billing Policy”), defines the procedures used in administering charges and payments due under the Documents.

In the event that a Participant fails to pay the amount it owes when due (a “Payment Default”), the Billing Policy outlines the consequences to the defaulting Participant of the Payment Default, the actions that may be taken by ISO-NE to recover amounts due, and how ISO-NE will make up for any resulting shortfall of funds.⁴ If a Payment Default is not cured by 10:00 a.m. Eastern Time on the Business Day immediately following the Business Day when such payment was originally due, ISO-NE must notify each member and alternate on the Participants Committee, members of the Budget and Finance Subcommittee, each Participant’s billing contact, and each of the New England governors and utility regulatory agencies of the identity of defaulting Participant, whether the defaulting Participant has a registered load asset, and the actions it plans to take or has taken in response to such Payment Default.⁵ If the Payment Default is not cured by 8:30 a.m. Eastern Time of the second Business Day after the date when such payment was originally due, the defaulting Participant will be suspended from the New England Markets⁶ and a notice of such suspension sent to each Participants Committee member and alternate, to the energy regulatory agencies in each of the New England states and to the Commission.⁷ In the case of Sunwave, all of these steps were followed.

In addition, if a Payment Default continues for at least five days, NEPOOL may initiate a proceeding before the Commission to terminate the defaulting Participant’s status as a NEPOOL member.⁸ By delegation of authority, the Participants Committee has authorized the Chair of the Membership Subcommittee to initiate such membership termination proceedings with the Commission.⁹

Pursuant to the Financial Assurance Policy contained in Section I of the Tariff¹⁰ and the MPSA, ISO-NE has the broad authority to ask the Commission to terminate an entity’s status as a Market Participant. Specifically with regard to the MPSA, ISO-NE may terminate upon any material

⁴ Billing Policy at §§ 3.3 and 3.4.

⁵ *Id.* at § 3.7.

⁶ *Id.*

⁷ See ISO-NE Information Policy, Attachment D to the ISO-NE Tariff, at § 2.3.

⁸ Restated NEPOOL Agreement § 16.1(d).

⁹ See Protocol for the Initiation of Membership Termination approved by the Participants Committee April 6, 2001 (the “Termination Protocol”) at 1, Attachment 3 to this filing.

¹⁰ See Financial Assurance Policy, Exhibit IA to Section I of the ISO-NE Tariff (“FAP”), at § II.A.1(b) (termination after review of financial disclosures made as part of minimum capitalization requirement); § II.A.5 (termination after failure to submit certificate or in the event that ISO-NE determines certificate criteria no longer apply); § II.C(3) (termination after failure to meet conditions, including posting of additional Financial Assurance); § V.C.3 (termination of Non-Participant Transmission Customers after failure to meet conditions); § V.D.3 (termination of Non-Participant Transmission Customers that fail to meet Financial Assurance requirements); § XI.A (termination after failure to report Material Adverse Change or to meet conditions imposed as a result of a Material Adverse Change); and § XI.F (termination following a Financial Assurance Default).

default,¹¹ which includes default of the Market Participant's obligations to abide by the terms of the ISO New England Operating Documents and to make timely payment of all amounts due thereunder.¹²

II. INVOLUNTARY TERMINATION OF MEMBERSHIP: Sunwave

Following ISO-NE's submission of all relevant notices required by the Financial Assurance and Billing Policies, Sunwave was suspended on January 21, 2022 as a result of a Financial Assurance ("FA") Default.¹³ Were it not already suspended as a result of that FA Default, Sunwave would have been suspended from the New England Markets on January 24, 2022 as a result of a subsequent Payment Default. Sunwave has remained suspended as a result of one or both of these types of default since January 21, 2022. During this time, Sunwave has failed to take action to cure the Defaults¹⁴ and, notably, has failed to pay six consecutive Invoices, with those Payment Defaults totaling, as of the date of this letter, \$1,176,755.05.

Multiple notices of Sunwave's defaults, as well as the plans to submit this filing, have been provided to Sunwave. ISO-NE has attempted to contact Sunwave regarding the defaults without response. In light of all of the foregoing, and specifically given the number of consecutive Invoices and the amount that Sunwave has failed to pay, it is clear that Sunwave cannot reasonably be expected to cure its Payment Default or to otherwise fully discharge its NEPOOL or ISO-NE payment obligations.

Given that Sunwave has clearly and materially defaulted on its obligations, NEPOOL and ISO-NE agreed to proceed with termination proceedings pursuant to, respectively, Section 16.1(d) of the Second Restated NEPOOL Agreement and Section 2.2 of the MPSA. Accordingly, pursuant to the Termination Protocol (*see* Attachment 3), the ISO-NE Vice President & Chief Financial and Compliance Officer recommended to the Chair of the Membership Subcommittee that termination proceedings be initiated against Sunwave (*see* Attachment 2). The Membership Subcommittee Chairman has directed counsel for the Subcommittee to initiate the termination of the Participant status of Sunwave.

III. REQUESTED EFFECTIVE DATE

Filing Parties respectfully request consideration of the involuntary termination of Sunwave so as to permit the termination of Sunwave's NEPOOL and Market Participant status to become effective as of April 13, 2022 (which is more than 60 days from the date of this filing). If the Sunwave termination is accepted for filing by the Commission as requested, Sunwave will be excused from any further obligations to pay Pool charges and relieved of any further Pool obligations and

¹¹ *See* MPSA, Attachment A to the ISO-NE Tariff, at § 2.2.

¹² *Id.* at § 3.2.

¹³ *See* Notice of Market Participant Suspension, *ISO New England Inc.* (filed Jan. 25, 2022).

¹⁴ Financial Assurance requirement calculations are forward-looking and position-specific. Sunwave's Jan. 21, 2022 FA Default was cured without specific action by Sunwave, when activity previously included in the FA calculation was subsequently invoiced and became part of Sunwave's aggregate Payment Default amount.

responsibilities incurred, from and after April 11, 2022 (but not those incurred before the effective date).

The NEPOOL Participants Committee further requests that the eTariff record effective date be set at April 11, 2022.¹⁵ ISO-NE will reflect the termination of the MPSA in its EQR filing for the second quarter of 2022.

IV. ADDITIONAL SUPPORTING INFORMATION

In addition to this transmittal letter, this filing includes the following materials:

- The list of NEPOOL Participants from the Second Restated NEPOOL Agreement, which has been marked to show the removal of Sunwave from the list of NEPOOL Participants (Attachment 1);
- Letter from Robert Ludlow, ISO-NE Vice President & Chief Financial and Compliance Officer, to Sarah Bresolin, Membership Subcommittee Chair, recommending termination of Sunwave (Attachment 2);
- Termination Protocol as adopted by the Participants Committee (Attachment 3); and
- A list of governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to which a copy of this filing has been sent (Attachment 4).

The materials filed herewith do not change the NEPOOL Agreement or MPSA as previously filed with the Commission, other than to terminate the Participant status of Sunwave in NEPOOL and to terminate Sunwave's Market Participant status. Therefore, no comparisons of the transactions and revenues or cost data are submitted.

An electronic copy of this filing has been furnished to all the members and alternates of the Participants Committee, which represent all of the electric utilities rendering or receiving service under the ISO-NE Tariff, as well as each of the independent power producers, power marketers, power brokers, load aggregators, customer-owned utility systems, merchant transmission providers, developers, and end users that are currently Participants in the Pool. This transmittal letter and the accompanying materials have also been sent to the governors and electric utility regulatory agencies

¹⁵ The Commission has relieved NEPOOL of the requirement to file changes to the NEPOOL Agreement in tariff format. *ISO New England, Inc. and New England Power Pool*, 95 FERC ¶ 61,384 at 62,441-42 (2001). Accordingly, the NEPOOL Agreement has not been filed formally as an eTariff pursuant to Order No. 714. However, proposed changes to the NEPOOL Agreement are still required to be filed with the Commission with enough information provided to permit the Commission to view the proposed changes in the context of the composite Agreement, *Id.* at 62,442. As a matter of administrative efficiency and convenience, these materials, including Attachment 1 included herewith marked to show the removal of Sunwave from the list of NEPOOL Participants, were submitted using the Commission's eTariff system. A composite list of NEPOOL Participants is posted on the NEPOOL website at: <https://nepool.com/library/operative-documents/>. A composite copy of the Second Restated NEPOOL Agreement is also posted at: <https://nepool.com/library/operative-documents/>.

for the six New England states which comprise the New England Control Area, to the New England Conference of Public Utilities Commissioners, Inc., and to the Executive Director of the New England States Committee on Electricity.

Correspondence and communications regarding this filing should be addressed as follows:

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Tel: 413-540-4479
E-mail: jrecht@iso-ne.com

Respectfully submitted,

NEPOOL PARTICIPANTS COMMITTEE

ISO NEW ENGLAND INC.

By: /s/ Patrick M. Gerity
Patrick M. Gerity
Its Attorney

By: /s/ Jennifer M. Recht
Jennifer M. Recht
Its Attorney

Attachments

cc: Sunwave Participants Committee Member and Alternate
NEPOOL Participants Committee Members and Alternates
Governors, Utility Regulatory Agencies and others identified on Attachment 4

ATTACHMENT 1

Participant Name	Effective Date of Membership if after 6/30/2000
Saracen Energy East LLC	5/1/2009
Saracen Power LLC	5/1/2009
Seneca Energy II, LLC	7/1/2004
SFE Energy Massachusetts, Inc.	8/1/2014
Sheldon Energy LLC	1/1/2022
Shell Energy North America (US) L.P.	6/1/2008
Shipyards Brewing Co., LLC	9/1/2007
Shipyards Energy, LLC	9/1/2007
Shrewsbury Electric & Cable Operations	
Sky View Ventures LLC	9/1/2020
SmartEnergy Holdings, LLC	12/1/2014
SmartestEnergy US LLC	1/1/2021
SociVolta Inc.	11/1/2019
Somerset Power LLC	
South Hadley Electric Light Department	
SP Transmission, LLC	3/1/2020
Spark Energy, LLC	8/1/2006
Spruce Mountain Wind, LLC	11/1/2011
SRECTrade, Inc.	11/1/2015
St. Anselm College	2/1/2005
Standard Normal Energy LLC	6/1/2020
Starion Energy, Inc.	2/1/2010
State of Connecticut, Office of Consumer Counsel	2/1/2002
Sterling Municipal Electric Light Department	
Stetson Holdings, LLC	11/1/2013
Stetson Wind II, LLC	7/1/2008
Stonepeak Kestrel Energy Marketing, LLC	9/1/2018
Stored Solar J&WE, LLC	
Stowe Electric Department	10/1/2008
Summer Energy Northeast, LLC	9/1/2010
Sunrun Inc.	10/1/2018
Sunwave USA Holdings Inc.	2/1/2014
Sustaining Power Solutions LLC	4/1/2016
SWEB Development USA, LLC	10/1/2016
Syncarpha Billerica, LLC	10/1/2018
Syncarpha Bondsville, LLC	10/1/2018
Syncarpha Hancock, LLC	10/1/2018
Syncarpha Lexington, LLC	9/1/2017
Syncarpha North Adams, LLC	10/1/2018
SYSO LLC	9/1/2020

ATTACHMENT 2



Robert C. Ludlow
VP, Chief Financial and Compliance Officer

February 3, 2022

Sarah Bresolin
Chairman, NEPOOL Participants Committee Membership Subcommittee
C/O Engie Energy Marketing NA Inc.
sarah.bresolin@engie.com

VIA E-MAIL

Dear Sarah:

Pursuant to Section 16.1(d) of the Second Restated NEPOOL Agreement and the Protocol for the Initiation of Membership Termination Proceedings ("Termination Protocol") adopted by the NEPOOL Participants Committee at its April 6, 2001 meeting, ISO New England Inc. ("ISO-NE") is recommending that NEPOOL initiate termination proceedings for Sunwave USA Holdings Inc. (ISO-NE customer ID number- 124090). The recommendation is due to numerous and long-standing payment defaults under the ISO NE Billing Policy and a Financial Assurance Default under the ISO-NE Financial Assurance Policy.

Sunwave USA Holdings Inc. was suspended on January 21, 2022 as a result of a Financial Assurance Default. ISO-NE has provided multiple notices of Default and has attempted to contact Sunwave USA Holdings Inc., yet Sunwave USA Holdings Inc. has not cured the numerous Defaults and continues to remain suspended since January 21, 2022. Sunwave USA Holdings Inc. has incurred a total of seven payment defaults in 2022, with each one greater than \$50,000. Additionally, Sunwave USA Holdings Inc. has been in Financial Assurance Default since January 21, 2022. The total of these Defaults described above meet the termination criteria for Level 2 Defaults, under the Termination Protocol.

Accordingly, in accordance with the Termination Protocol, ISO-NE recommends that NEPOOL initiate Termination Proceedings for Sunwave USA Holdings Inc. Please feel free to contact me at 413-535-4014 should you have any questions regarding the above information.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Ludlow", with a long horizontal line extending to the right.

Robert Ludlow
Vice President, Chief Financial and Compliance Officer

cc: Pat Gerity, NEPOOL Counsel, pmgerity@daypitney.com

ATTACHMENT 3

PROTOCOL FOR THE INITIATION OF MEMBERSHIP TERMINATION PROCEEDINGS

Without limiting any of the rights or remedies of the New England Power Pool (“NEPOOL”) or ISO New England Inc. (the “ISO”) available under the Second Restated New England Power Pool Agreement (the “NEPOOL Agreement”), the ISO New England Inc. Transmission, Markets and Services Tariff (“ISO Tariff”)(including without limitation the ISO New England Financial Assurance Policy for Market Participants (“Financial Assurance Policy”) and the ISO New England Billing Policy (“Billing Policy”) that are exhibits thereto), and the Participants Agreement¹ (together with the NEPOOL Agreement and the ISO Tariff, the “Documents”), this termination protocol outlines the criteria and process by which the Chair of the Membership Subcommittee may approve on behalf of the NEPOOL Participants Committee the initiation of proceedings before the Federal Energy Regulatory Commission (the “Commission”) to terminate the status of a Participant as a member of NEPOOL in accordance with Sections 16.1(c) and 16.1(d) of the NEPOOL Agreement.

Each Participant is obligated to pay when due in accordance with the Documents and the System Rules, including without limitation the Billing Policy, all amounts invoiced to it by NEPOOL, or by the ISO on its own behalf and on behalf of NEPOOL. In addition, each Participant is required to comply with the requirements of the Financial Assurance Policy. These Policies are enforced and managed by the ISO, with the exception of termination of membership issues, which are specifically reserved to the NEPOOL Participants.

Should a Participant fail to pay when due all amounts invoiced to it by NEPOOL, or by the ISO on behalf of NEPOOL (a “Payment Default”), or fail to comply with the Financial Assurance Policy (“Financial Assurance Default”), or fail to perform any other obligation under the NEPOOL Agreement or the ISO Tariff (“Other Default”) and such failure continues for at least ten (10) days, NEPOOL may then initiate termination proceedings before the Commission to terminate such Participant’s status as a NEPOOL Participant.² By delegation of authority, the Participants Committee has charged the Membership Subcommittee with the responsibility to address issues related to, and to approve if appropriate, the termination of a Participant, subject to appeal to the Participants Committee.³ The Participants Committee has determined that the decision to initiate termination proceedings in certain situations against a defaulting Participant can be delegated to and approved by the Chair of the Membership Subcommittee, as set forth below.

¹ Capitalized terms used but not defined in this filing are intended to have the meanings given to such terms in the NEPOOL Agreement, the Participants Agreement, or the ISO Tariff.

² NEPOOL Agreement § 16.2(d).

³ Minutes of the NEPOOL Executive Committee, predecessor to the NEPOOL Participants Committee, at 2036 (Nov. 7, 1997).

I. PAYMENT AND/OR FINANCIAL ASSURANCE DEFAULT

If a Payment Default or Financial Assurance Default (either separately or together referred to for the purposes of this Section 1 as a “Default”) continues for at least ten (10) days (as contemplated by Section 16.1(d) of the NEPOOL Agreement), and if either the Chief Financial Officer, Chief Executive Officer, or Chair of the Board of Directors of the ISO recommends in writing⁴ to the Chair of the Membership Subcommittee that termination proceedings be commenced against such Participant for such Default (with a copy of such recommendation also being sent to Pool counsel, the members of the Membership Subcommittee, and the Participants Committee member and alternate of such Participant), the Chair, or in his or her absence the Acting Chair, of the Membership Subcommittee, to the extent practicable, shall within two (2) business days of the receipt of such recommendation and without further input from the Membership Subcommittee or the Participants Committee, approve the initiation of termination proceedings and shall direct Pool counsel to file such materials with the Commission as are appropriate to cause the termination of the membership of such Participant if such Participant has:

- (i) Two (2) or more Level 1 Defaults; or
- (ii) One (1) or more Level 2 Defaults.

A. DEFAULT LEVELS

Level 1 (any one of the following):

- **Magnitude:** \$15,000 - \$50,000 (Payment Default);
- **Duration:** 10 – 24 days (either Payment Default or Financial Assurance Default); or
- **Frequency:** 3 or more Payment Defaults, Financial Assurance Defaults or any combination thereof within any twelve-month period

Level 2 (any one of the following):

- **Magnitude:** \$50,001 or more (Payment Default);
- **Duration:** 25 or more days (either Payment Default or Financial Assurance Default); or
- **Frequency:** 5 or more Payment Defaults, Financial Assurance Defaults or any combination thereof within any twelve-month period.

For purposes of calculating the number of times that a Financial Assurance Default occurs, an existing Financial Assurance Default shall be deemed to be

⁴ The recommendation of the ISO shall include the basis for such recommendation, including without limitation an indication of the number of Level 1 and/or Level 2 Defaults, as defined herein, of such Participant.

another, new Financial Assurance Default on the first day of each calendar month. Moreover, for purposes of calculating the number of times that a Payment Default or a Financial Assurance Default occurs, a Payment Default or Financial Assurance Default that is subsequently cured will be included in such calculation.

The Chair of the Membership Subcommittee shall refer to the full Membership Subcommittee for its consideration any recommendation to terminate a Participant where such Participant does not have either (i) at least two (2) Level 1 Defaults or (ii) at least (1) Level 2 Default, as those Defaults are defined above.

II. OTHER DEFAULT

Should (i) the criteria set forth in Section I above not support the approval by the Chair of the Membership Subcommittee of the initiation of termination proceedings, or (ii) a Participant fail to perform any obligation under the Documents which is an Other Default, the Membership Subcommittee, upon notice of such Other Default, shall consider the issues raised by such Other Default and approve the initiation of termination proceedings or take such other action as may be appropriate.

III. MISCELLANEOUS

Nothing set forth herein shall limit the ability of the Membership Subcommittee or the Participants Committee to terminate or suspend service to a Participant or to take any other action with respect to a Participant's default under the Documents.

Without limiting the generality of the foregoing, the Membership Subcommittee or the Participants Committee retains the ability to suspend service to, or commence termination proceedings against, any Participant in the event of any single Payment Default or Financial Assurance Default, regardless of whether such default constitutes a Level 1 or Level 2 Default.

The Secretary of the Participants Committee or NEPOOL Counsel shall, upon the filing with the Commission of the materials necessary to commence termination proceedings against a defaulting Participant, notify the utility regulatory authorities in each state in New England in which such defaulting Participant does business of the pending termination proceeding against such defaulting Participant and the possibility of suspension of service to such Participant.

In the event of conflict between the provisions of this Protocol and the Documents, the provisions of the Documents shall govern.

ATTACHMENT 4

**New England Governors
and Utility Regulatory
and Related Agencies**

February 11, 2022

Connecticut

The Honorable Ned Lamont
State Capitol
210 Capitol Ave.
Hartford, CT 06106

Connecticut Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051-2605

Maine

The Honorable Janet T. Mills
One State House Station
Rm. 236
Augusta, ME 04333-0001

Maine Public Utilities Commission
18 State House Station
242 State Street
Augusta, ME 04333-0018

Massachusetts

The Honorable Charlie Baker
Office of the Governor
Rm. 360 State House
Boston, MA 02133

Massachusetts Department of Public Utilities
One South Station
Boston, MA 02110

New Hampshire

The Honorable Christopher T. Sununu
State House
107 North Main Street
Concord, NH 03301

New Hampshire Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, NH 03301-2429

Rhode Island

The Honorable Daniel J. McKee
82 Smith Street
Providence, RI 02903

Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Vermont

The Honorable Philip B. Scott
109 State Street, Pavilion
Montpelier, VT 05609

Vermont Public Utility Commission
112 State Street, Drawer 20
Montpelier, VT 05620-2701

**New England Governors
and Utility Regulatory
and Related Agencies**

February 11, 2022

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