

MEMORANDUM

TO: NEPOOL Participants Committee Members and Alternates

FROM: Paul Belval and Samantha Regan, NEPOOL Counsel

DATE: September 29, 2022

RE: Request by NuPower for Waiver of GIS Operating Rules and GIS Agreement

At the October 6, 2022 Participants Committee (the “PC”) meeting, members will be asked to consider once again whether to waive certain NEPOOL Generation Information System (“GIS”) requirements, this time in order to correct renewable energy Certificates for a generator for February and March this year. To provide the requested relief NEPOOL would need to waive provisions of both the GIS Operating Rules (“Rules”) and the Amended and Restated Generation Information System Administration Agreement dated as of October 1, 2017, between APX, Inc. (“APX”) and NEPOOL, as amended and extended (the “GIS Agreement”). The generator, NuPower Cherry Street FC, LLC (“NuPower”),¹ will offer an explanation why it believes its requested relief is appropriate at the October 6 meeting. NuPower states that, if this request is accepted, the value of the Certificates (\$20,000 to \$30,000) will be paid by third party buyers of the Certificates under NuPower’s contract in the Connecticut LREC program.

By way of context, NuPower operates the Cherry Street Facility, which is a fuel cell facility located in Bridgeport, Connecticut. NuPower’s emissions data and Connecticut Class I eligibility for the months of February and March 2022 were not reflected on its GIS Certificates when they were issued on July 15. NuPower attempted to rectify the problem via a request to the Connecticut Public Utilities Regulatory Authority that it recognize the Certificates as Connecticut Class I eligible, but its request was denied by that agency, keeping with its practice with similar requests in the recent past. The Authority noted that, in this situation, only NEPOOL can certify the Certificates as Class I and accordingly this was an issue between NuPower and NEPOOL.

NuPower then sought relief from the Markets Committee (“MC”) pursuant to the MC’s authority under Rule 3.8 to correct Certificates, arguing that the Certificates in question were issued erroneously because of a software error in the GIS. APX, the GIS Administrator, disputes that there was an error in the GIS software and believes the problem with the NuPower Certificates was due to user error. The MC referred NuPower’s request to the GIS Operating Rules Working Group (the “Working Group”) to develop additional evidence of whether there was a software error in the GIS that caused the errors in the NuPower Certificates. Indicating subsequently that it did not expect further evidence to be provided with respect to a software error in the GIS, NuPower requested instead that the Rules and the GIS Agreement be waived to rectify the errors in its February and March 2022 Certificates.

¹ NuPower is not a NEPOOL Participant and is a Non-Participant Account Holder under the GIS Rules.

APX does not have the authority to correct the monthly generation data on the Certificates without both APX and NEPOOL waiving Section 4.2 of the GIS Agreement and Rule 1.4, which require APX to administer and operate the GIS in accordance with the Rules. APX, as the GIS Administrator, has under those provisions “the sole responsibility for the compilation, indexing, reasonable interpretation and implementation of the GIS Operating Rules.” Since APX believes it has followed the Rules and GIS Agreement, it can correct NuPower’s Certificates only if that Rule and Section of the GIS Agreement are waived.

APX indicates that it would be willing to waive the applicable requirements but only if NEPOOL, as the counterparty to the GIS Agreement, agreed to such a waiver and directed APX to correct the Certificates. In addition, APX has stated that it will not engage in discussions with NEPOOL about the requested waiver unless NuPower first retracts its previous statements regarding the claimed error in the GIS software.

When asked in August 2021 by another renewable energy generator, Stored Solar, LLC, to waive these applicable Rules and the GIS Agreement, the PC referred the matter to the MC for a recommendation first. The MC, in turn, referred the issue to the Working Group for recommendations on the request and suggestions on proposed criteria for NEPOOL to consider any future waiver requests. Before the MC acted on that direction from the PC, the producer found an alternative means of relief and withdrew its request for a waiver.

While the PC can act on NuPower’s waiver request without any recommendation from the MC or the Working Group, the PC has already indicated its desire for a recommendation first from the MC in such circumstances. Similarly, while the MC can act on a waiver request without a recommendation from the Working Group, the MC has already indicated its preference for a Working Group recommendation first. Thus, for efficiency the PC can short circuit the process by directing the Working Group to recommend (1) criteria if any to apply to future requests for waiver of the Rules and GIS Agreement to correct erroneous certificates and (2) whether NEPOOL should grant the waivers here to correct NuPower’s February and March Certificates (i.e. whether the criteria in item 1 are met in this instance). The PC can further direct that the MC make a recommendation here based on its consideration of any Working Group recommendation, or can have any Working Group recommendation delivered directly to the PC for action.

Whatever process is selected by the PC, NuPower has stated that it needs to have the Certificates corrected no later than the end of the year. There is time for the Working Group to consider this matter, for the MC to consider any recommendations from the Working Group on this matter, and for the PC to have a recommendation in time for a vote at its November or December meeting (depending upon when the Working Group meets and when the MC makes its recommendation). Of course, the PC could also vote on NuPower’s waiver request at its October 6 meeting if it is prepared to do so.

Separately, APX requests amendments to the GIS Agreement to provide (1) NEPOOL the authority to waive the Rules to permit adjustments to Certificates without APX’s consent; and (2) for APX either to charge NEPOOL for time APX must spend on waiver requests and requests for adjustments to Certificates under Rule 3.8 either at its standard rates or to charge that time against

the 500 annual development hours included in the fee paid under the GIS Agreement. APX explains that it had not experienced these sorts of requests prior to the most recent extension of the GIS Agreement and had not included the considerable effort required to respond to those requests in its modified pricing structure agreed to at the time. NEPOOL may also want to consider revising the Rules to require the GIS Account Holder seeking a waiver of the Rules or an adjustment to its Certificates to pay NEPOOL for the costs associated with addressing that request. If members agree conceptually to those GIS Agreement changes, we would suggest that we work with the Participants Committee chair (or his designee(s)) and APX to prepare an amendment for the Participants Committee's consideration, not contingent on the NuPower request or its requested timeline.

The following alternative forms of resolution can be used for Participants Committee actions on NuPower's request:

RESOLVED, that the Participants Committee refers to the NEPOOL GIS Operating Rules Working Group consideration of the request by NuPower Cherry Street FC, LLC to waive certain NEPOOL Generation Information System Operating Rules and sections of the Amended and Restated Generation Information System Administration Agreement dated as of October 1, 2017, between APX, Inc. and NEPOOL for a recommendation to [this Committee/The Markets Committee] on (1) criteria to apply in acting on this and future waiver requests and (2) the specific waivers sought by NuPower, all as discussed in the materials circulated for this meeting.

OR

RESOLVED, that the Participants Committee [grants] [denies] NuPower Cherry Street FC, LLC's request to waive certain NEPOOL Generation Information System Operating Rules and sections of the Amended and Restated Generation Information System Administration Agreement dated as of October 1, 2017, between APX, Inc. and NEPOOL as discussed in the materials circulated for this meeting.