

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Mystic I, LLC,  
Mystic Development, LLC, and  
Fore River Development, LLC

Docket Nos. ER04-657-005  
ER04-660-005  
ER04-659-005

ORDER ON COMPLIANCE FILING AND ACCEPTING TARIFF REVISIONS

(Issued October 26, 2005)

1. In this order, the Commission acts on the filing submitted by Mystic I, LLC, Mystic Development, LLC, and Fore River Development, LLC (collectively Project Companies) in compliance with the Commission's order in *Mystic I*.<sup>1</sup> The Commission also accepts the revised tariff sheets filed by the Project Companies, which incorporate the change in status reporting requirement.<sup>2</sup>

**Background**

2. In *Mystic I*, the Commission, among other things, accepted the updated market power analysis filed on behalf of the Project Companies. Despite a protest filed by NSTAR Electric & Gas Corporation (NSTAR), the Commission concluded that the ISO New England Inc. (ISO-NE) market is the appropriate market for conducting the two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.<sup>3</sup> The Commission stated that NSTAR raised no factual issues that challenged the effectiveness of ISO-NE's market monitoring and

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<sup>1</sup> *Mystic I, LLC*, 111 FERC ¶ 61,378 (2005) (*Mystic I*).

<sup>2</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (February 18, 2005), FERC Stats. & Regs. ¶ 61,175 (2005).

<sup>3</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

mitigation. The Commission further noted that it had previously found that sufficient mitigation exists in ISO-NE.<sup>4</sup> Thus, the Commission determined that sufficient safeguards existed to mitigate the exercise of local market power made possible by transmission constraints.

3. The Commission concluded that the Project Companies satisfied the requirements for continued market-based rate authorization. However, the Commission directed the Project Companies to submit a compliance filing to revise each of the Project Companies' market-based rate tariffs to incorporate the change in status reporting requirement adopted in Order No. 652.

4. On July 7, 2005, the Project Companies filed amendments to their respective market-based rate tariffs in response to *Mystic I*.

### **Notice of Filing and Responsive Pleading**

5. Notice of the compliance filing was published in the Federal Register, 70 Fed. Reg. 41,698 (2005), with protests and interventions due on or before July 28, 2005.

6. The Massachusetts Municipal Wholesale Electric Company (MMWEC) filed a motion to intervene, raising no substantive issues. NSTAR filed a protest.

### **Discussion**

#### **Procedural Matter**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene serves to make MMWEC a party to this proceeding.

#### **NSTAR's Protest**

8. NSTAR challenges the compliance filing as failing to mitigate the exercise of market power that might arise from a constrained transmission market. NSTAR's protest attempts to provide evidence of suppliers exercising local market power in the Boston area.<sup>5</sup> In the alternative, NSTAR requests that if the compliance filing is accepted, that

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<sup>4</sup> See *Mystic I* at P 19, citing *NEPOOL*, 100 FERC ¶ 61,287 at P 41.

<sup>5</sup> NSTAR cites an ISO-NE report (published in June 2005) by the Independent Market Monitoring Unit (IMMU) that states that late in 2004 one supplier began exercising local market power in the Boston area and its conduct resulted in considerable  
(continued...)

the issue of the potential for the exercise of market power remain open until the stakeholder process concludes.

9. NSTAR's protest will not be considered here. NSTAR's arguments are beyond the scope of the compliance filing that is the subject of this order, namely, revisions to the Project Companies' market-based rate tariffs to incorporate the change in status reporting requirement. The only issue in a compliance filing proceeding is whether the company has complied with the directives of the Commission's prior order.<sup>6</sup> This compliance filing is not the proper forum in which to raise issues not related to the market-based rate tariff revisions at issue here. While we do not address NSTAR's arguments here, we emphasize that NSTAR is not precluded from raising these concerns within the stakeholder process.

10. The revised tariff sheets incorporating the change in status reporting requirement comply with *Mystic I*, and are accepted for filing.<sup>7</sup> Although the Project Companies request waiver of the 60 day prior notice requirement, the Commission has prescribed a default effective date for the Order No. 652 language as March 21, 2005. Thus, as noted above, we accept the proposed revised tariff sheets for filing, effective March 21, 2005.

### **Reporting Requirements**

11. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.<sup>8</sup> With respect to an individual who

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increases in the operating reserve payments to the supplier. *See* NSTAR Protest at 3, fn3 *citing* IMMU "2004 Assessment of the Electricity Markets in New England." Executive Summary, p. ii, Section I, 3<sup>rd</sup> paragraph.

<sup>6</sup> *See, e.g., Union Light, Heat and Power Company*, 111 FERC ¶ 61,341 at P 11 (2005) and *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336 at P 5 (2004).

<sup>7</sup> *Mystic I, LLC*, FERC Electric Tariff, Third Volume No. 1, Original Sheets Nos. 1-5 (Supercedes FERC Electric Tariff, Second Revised Volume No. 1); *Mystic Development, LLC*, Third Revised Volume No. 1, Original Sheets Nos. 1-5 (Supercedes FERC Electric Tariff, Second Revised Volume No. 1); *Fore River Development, LLC*, FERC Electric Tariff, Third Revised Volume No. 1, Original Sheets Nos. 1-5 (Supercedes FERC Electric Tariff, Second Revised Volume No. 1).

<sup>8</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 17,219 (Apr. 5, 2005), 112 FERC ¶ 61,298, at P 34 (2005).

currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).<sup>9</sup> Thus, consistent with Order No. 664, any of the Project Companies who previously sought and were granted waiver of the full requirements of Part 45 will be required henceforth to comply with the full requirements of Part 45.

The Commission orders:

The Project Companies' compliance filing and related tariff revisions are hereby accepted for filing as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>9</sup> *Id.* at P 36.