

126 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

ISO New England Inc.

Docket Nos. ER08-54-007
ER08-54-008
ER08-54-009
ER08-54-010

ORDER DENYING REHEARING, GRANTING CLARIFICATION, AND
ACCEPTING COMPLIANCE FILING

(Issued March 20, 2009)

1. On November 26, 2008, Cargill Power Markets, LLC (Cargill) requested rehearing or, in the alternative, clarification of the Commission's October 27, 2008 order in these proceedings.¹ In this order, the Commission denies rehearing and grants clarification, as discussed below. Further, the Commission will accept a filing submitted on the same date in compliance with the October 27, 2008 Order by ISO New England Inc. (ISO-NE), the Participating Transmission Owners (PTO),² the PTO Administrative

¹ *ISO New England Inc.*, 125 FERC ¶ 61,098 (2008) (October 27, 2008 Order).

² The PTOs provide service under Schedule 21 of the ISO-NE OATT. The PTOs include Bangor Hydro-Electric Company (Bangor Hydro); Town of Braintree Electric Light Department; NSTAR Electric & Gas Corp.; Central Maine Power Company (Central Maine); Central Vermont Public Service Corp. (Central Vermont PSC); Connecticut Municipal Electric Energy Cooperative; The City of Holyoke Gas and Electric Department; Florida Power & Light Company – New England Division; Green Mountain Power Corp. (Green Mountain); Massachusetts Municipal Wholesale Electric Company; New England Power Company (New England Power); New Hampshire Electric Cooperative, Inc.; Northeast Utilities Service Company (Northeast Utilities); Taunton Municipal Lighting Plant; Town of Norwood Municipal Light Department; Town of Reading Municipal Light Department; The United Illuminating Company (United Illuminating); Until Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Electric Cooperative, Inc. (Vermont Electric Cooperative); Vermont Electric Power Company, Inc.; Vermont Transco, LLC; and Vermont Public Power Supply Authority.

Committee, the Schedule 20A Service Providers (SSP),³ and the New England Power Pool (collectively, the Filing Parties).

I. Background

2. In Order No. 888, the Commission introduced a *pro forma* Open Access Transmission Tariff (OATT) that, *inter alia*, included rollover rights for long-term firm transmission service of one-year's duration or longer.⁴ On March 31, 2005, the newly created SSPs, along with others, proposed new contractual and tariff rate schedule arrangements for the Phase I/II high-voltage direct current transmission facilities and submitted the new Schedule 20A to the ISO-NE regional tariff.⁵ This Schedule 20A, which effectively was the SSPs' *pro forma* OATT and which was accepted for filing by the Commission on May 25, 2005, did not provide rollover rights for long-term firm transmission service.⁶

3. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers in order to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890

³ The SSPs hold the rights to transmission capacity over the United States portion of the 2000 megawatt high-voltage direct current transmission facilities interconnecting the transmission systems operated by ISO-NE and Hydro-Québec TransÉnergie (Phase I/II high-voltage direct current transmission facilities). The SSPs include Bangor Hydro; Boston Edison Company; Commonwealth Electric Company and Cambridge Electric Company; Central Maine; Central Vermont PSC; Green Mountain; New England Power; Northeast Utilities; United Illuminating; and Vermont Electric Cooperative.

⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,665, 31,745 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁵ ISO-NE, Transmittal Letter, Docket No. ER05-754-000, at 1 (Mar. 31, 2005). Prior to this filing, the public utilities holding the rights to transmission capacity over the Phase I/II high-voltage direct current transmission facilities included the rates, terms, and conditions for transmission service on these facilities in their individual local OATTs under Schedule 21 of the ISO-NE OATT.

⁶ *ISO New England Inc.*, 111 FERC ¶ 61,244 (2005) (May 25, 2005 Order).

amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability (ATC), open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, reassignments of transmission capacity, and rollover rights.

4. Consistent with the compliance deadlines adopted in Order No. 890, the Filing Parties submitted a compliance filing on October 11, 2007. On May 7, 2008, the Commission accepted the Filing Parties' compliance filing subject to certain modifications regarding rollover rights, creditworthiness, clustering, unreserved use penalties, simultaneous submission window, ancillary services, and the ATC methodology.⁷ The Filing Parties submitted these modifications on June 6, 2008, as amended on June 17 and July 25, 2008. In the October 27, 2008 Order, the Commission accepted the compliance filing, subject to additional modifications.

II. Request for Rehearing or Clarification

5. Cargill maintains that the Commission should grant rehearing on the appropriateness of including the rollover language of Order No. 888 in Schedule 20A. Cargill explains that, while it is true that SSPs' pre-Order No. 890 OATT did not contain the *pro forma* rollover provisions, the October 27, 2008 Order "fails to take into account that the SSPs' pre-Order No. 890 OATT filing did not properly account for or explain this material deviation from Order No. 888."⁸ It argues that the SSPs failed to put the Commission or their customers on notice that Schedule 20A did not provide rollover rights for long-term firm transmission service.⁹ Cargill remarks that it is "puzzling" that the Commission would determine that the transmission service offered by the SSPs in November of 2008 "should provide for rollover rights while that same transmission service offered one year earlier should not offer rollover rights."¹⁰ Cargill acknowledges

⁷ *ISO New England Inc.*, 123 FERC ¶ 61,133 (2008) (May 7, 2008 Order). Additionally, the May 7, 2008 Order directed ISO-NE to revise Market Rule 1 to permit non-generation resources to provide regulation and frequency response service. ISO-NE submitted these revisions on August 5, 2008. This compliance filing was accepted on September 15, 2008. *See ISO New England Inc.*, Docket No. ER08-54-006 (Sept. 15, 2008) (unpublished letter order).

⁸ Cargill Request for Rehearing at 5.

⁹ *Id.* at 6, 7.

¹⁰ *Id.* at 7.

the Commission's finding in the October 27, 2008 Order that many of the provisions of the *pro forma* OATT are not applicable to the service provided by the SSPs.¹¹

6. Because the SSPs failed to justify this deviation from the *pro forma* OATT and because the filed rate doctrine should not apply to improperly filed tariffs, Cargill argues that all long-term firm transmission service awarded by the SSPs in November 2007 should be eligible for rollover. Cargill explains that otherwise the Commission's policy of requiring transmission providers to identify and justify all deviations from their OATTs would be frustrated: "tariff filings would devolve into a complex game of 'hide the changes.'"¹²

7. In the alternative, Cargill requests a clarification. Cargill contends that the participants in the November 2007 allocation process were confused as to the nature of the service they were bidding on. Therefore, given this confusion, Cargill alternatively argues that the Commission should clarify that none of the capacity allocated in November 2007 is eligible for rollover.

III. Compliance Filing

8. On November 26, 2008, as amended on January 15, 2009, and February 12, 2009, the Filing Parties submitted revisions to the ISO-NE OATT in compliance with the October 27, 2008 Order. Specifically, ISO-NE revised its OATT to: (i) provide qualitative criteria for Municipal Market Participants to qualify for unsecured credit and (ii) delete a sentence providing that delays in performance of cluster studies for Regional Network Service be considered "extenuating circumstances" with respect to penalties. The PTOs revised Schedule 21-Common to: (i) reflect a July 25, 2008 effective date for rollover reform provisions and (ii) provide additional clarification regarding the clustering of system impact studies. The SSPs revised Schedule 20A to reflect a November 26, 2008 effective date for rollover reform provisions. Additionally, several of the PTOs and SSPs submitted revisions to their individual local service schedules regarding creditworthiness and the ATC methodology.

IV. Notice and Responsive Pleadings

9. Notice of the November 26, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 75,422 (2008), with interventions and protests due on or before December 17, 2008. Notice of the January 15, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 5833 (2009), with interventions and protests due on or before February 5, 2009. Notice of the February 12, 2009 filing was published in the

¹¹ *Id.* at 5 (referring to October 27, 2008 Order, 125 FERC ¶ 61,098 at P 18).

¹² *Id.* at 8.

Federal Register, 74 Fed. Reg. 8524 (2009), with interventions and protests due on or before March 5, 2009. None was filed.

V. Discussion

A. Request for Rehearing or Clarification

10. The Commission denies Cargill's request for rehearing and grants clarification as discussed below. At the outset, Cargill has not proffered any new or newly persuasive evidence from that which it already has put forward in this proceeding and in its complaint proceeding, which dealt with the same issue.¹³ We reiterate that the Commission accepted the SSPs' pre-Order No. 890 Schedule 20A of Section II of the ISO-NE OATT, which proposed new contractual and tariff rate schedule arrangements for the Phase I/II high-voltage direct current transmission facilities, without rollover rights.¹⁴ We reaffirm that, because of the nature of the service provided by the PTOs and the SSPs, many provisions of the *pro forma* OATT are not applicable to them. As we stated in the December 2008 Complaint Order, to now direct that the SSPs' Schedule 20A reflect a one-year rollover right, nearly four years after it was proposed and accepted, would be unfair to customers who entered into service agreements based on the understanding that no rollover rights existed for those agreements.¹⁵ In fact, Cargill points out that other participants, *viz.* Brookfield Energy Marketing Inc. and H.Q. Energy Services (U.S.) Inc., did not believe that one-year rollover rights existed at the time of the November 2007 allocation process.¹⁶ Nor does Cargill point to any other participant who relied on the inclusion of a one-year rollover right under Schedule 20A. Cargill has provided no evidence that the SSPs intended to allow customers to exercise a one-year rollover right.¹⁷

11. Cargill worries that "transmission providers would have every incentive to hide deviations from the *pro forma* OATT" if the Commission does not direct the retroactive

¹³ See *Cargill Power Markets, LLC v. Central Maine Power Co.*, 125 FERC ¶ 61,271 (2008) (December 2008 Complaint Order); *see also* October 27, 2008 Order, 125 FERC ¶ 61,098 at P 18.

¹⁴ May 25, 2005 Order, 111 FERC ¶ 61,244; October 27, 2008 Order, 125 FERC ¶ 61,098 at P 18; December 2008 Complaint Order, 125 FERC ¶ 61,271 at P 9, 11.

¹⁵ December 2008 Complaint Order, 125 FERC ¶ 61,271 at P 10.

¹⁶ Cargill Request for Rehearing at 9.

¹⁷ December 2008 Complaint Order, 125 FERC ¶ 61,271 at P 10.

filing of tariff sheets “adopting the appropriate *pro forma* language.”¹⁸ The Commission need not retroactively assess the rates, terms, and conditions of Schedule 20A that were proposed in the March 31, 2005 filing. The Commission reviewed and accepted the SSPs’ filing as just and reasonable, which did not include a one-year rollover right.¹⁹ Although parties had the opportunity to comment on that filing,²⁰ the time to contest that filing has long passed. Accordingly, we clarify that prior to the date the Order No. 890 rollover language in Schedule 20A became effective (i.e., November 26, 2008), Schedule 20A provided for no rollover rights. Therefore, we conclude that any service obtained under the *pro forma* Schedule 20A service agreement prior to November 26, 2008, was not provided rollover rights.

B. Compliance Filing

12. We have reviewed the revisions proposed by the Filing Parties and find them consistent with our directives in Order No. 890. Accordingly, we accept the proposed revisions effective October 11, 2007, April 15, 2008, July 25, 2008, and November 26, 2008, as requested.

The Commission orders:

(A) Cargill’s request for rehearing is hereby denied and its request for clarification granted, as discussed in the body of this order.

(B) The Filing Parties’ compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

Kimberly D. Bose,
Secretary.

¹⁸ Cargill Request for Rehearing at 8, 9.

¹⁹ May 25, 2005 Order, 111 FERC ¶ 61,244 at P 16.

²⁰ We note that PPL EnergyPlus, LLC and PPL Maine, LLC jointly filed a protest to the SSPs’ March 31, 2005 filing. PPL Protest, Docket No. ER05-754-000 (Apr. 21, 2005) (contesting different issue).