

131 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Canandaigua Power Partners, LLC

Docket Nos. ER09-172-002

Canandaigua Power Partners II, LLC

ER09-173-002

ORDER DISMISSING REQUEST FOR REHEARING

(Issued April 19, 2010)

1. In this order, the Commission dismisses a request for rehearing of two letter orders issued on January 22, 2009 (January 22 Letter Orders),¹ which accepted applications for market-based rate authority filed by Canandaigua Power Partners, LLC and Canandaigua Power Partners II, LLC (collectively, Canandaigua Power Partners).

I. Background

2. On October 31, 2008, Canandaigua Power Partners filed applications for market-based rate authority with accompanying tariff sheets. The proposed market-based rate tariffs provide for the sale of energy, capacity, and ancillary services at market-based rates.

3. The January 22 Letter Orders accepted Canandaigua Power Partners' applications, and granted waivers of certain filing requirements and blanket authorizations for future issuances of securities and assumptions of liability. The January 22 Letter Orders found that, based on Canandaigua Power Partners' representations, they satisfied the Commission's requirements for market-based rates regarding horizontal and vertical market power.

¹ *Canandaigua Power Partners I, LLC*, Docket No. ER09-172-000, (Jan. 22, 2009) (unpublished letter order); *Canandaigua Power Partners II, LLC*, Docket No. ER09-173-000 (Jan. 22, 2009) (unpublished letter order).

4. On February 6, 2009, Cohocton Wind Watch (Cohocton) filed a request for rehearing of the January 22 Letter Orders.
5. On February 13, 2009, Canandaigua Power Partners filed an answer to the request for rehearing.
6. On May 15, 2009, as amended on October 21, 2009, Canandaigua Power Partners and their affiliates, Evergreen Wind Power, LLC and Evergreen Wind Power V, LLC, filed a notice of change in status to report an affiliate that owns generation which had not been identified in their market-based rate applications (May 15 Change in Status). Specifically, Canandaigua Power Partners and their affiliates explained that an affiliate, Madison Dearborn Capital Partners IV, L.P. (Madison Dearborn), owns voting interests in US Power Generating Company, LLC (US Power Gen), which owns several subsidiaries that own generating facilities in the New York Independent System Operator, Inc. (NYISO) and ISO-New England (ISO-NE) markets. Canandaigua Power Partners and their affiliates stated that, through their affiliation with Madison Dearborn, they are affiliated with US Power Gen and its subsidiaries. In their May 15 Change in Status, Canandaigua Power Partners and their affiliates included revised pivotal supplier and wholesale market share screens for the NYISO and the ISO-NE markets consistent with the requirements of Order No. 697.² They included the capacity owned by US Power Gen in those revised screens. The Director, Division of Electric Power Regulation – West, in a Letter Order issued pursuant to delegated authority, accepted that filing on December 1, 2009.³
7. On November 19, 2009, the Commission granted an affiliate of Canandaigua Power Partners, Milford Wind Corridor, LLC, waiver of the Commission's open access transmission tariff (OATT) requirements in Order Nos. 888,⁴

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 62, 399, 408, 440, and 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

³ *First Wind Energy Marketing, LLC*, Docket No. ER09-1549-000 (Dec. 1, 2009) (unpublished letter order) (Letter Order Accepting Change in Status).

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 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order

(continued...)

889,⁵ and 890,⁶ among other things, in relation to its ownership interest in a 88-mile, 345 kV transmission line, located in Utah in the PacifiCorp East balancing authority area in the Western Electric Coordinating Council region, that is intended to connect its generating facilities to the integrated transmission grid (Milford Line).⁷

8. On January 7, 2010, Canandaigua Power Partners and their affiliates filed a request for waiver of the Commission's OATT requirements with respect to their ownership of a 9-mile, 115kV generator lead line (Cohocton Gen Lead) and a 38-mile, 115 kV generator lead line (Evergreen Gen Lead) located in the NYISO and ISO-NE markets, respectively.⁸ Canandaigua Power Partners and their affiliates represented that these lines are radial facilities designed and constructed solely for the purpose of interconnecting generating facilities with the transmission system. They submitted that the Cohocton Gen Lead and the Evergreen Gen Lead do not comprise an integrated transmission system and do not serve, and are not designed to serve, other customers.

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 *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g and clarification*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

⁷ *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 (2009) (Milford OATT Order).

⁸ On March 29, 2010, Canandaigua Power Partners' affiliate filed an amendment to their initial market-based rate application in docket number ER10-426-000, to in part, clarify to the Commission that they inadvertently identified the voltage of Evergreen Gen Lead as 345 kV, rather than as 115 kV, which is the correct voltage of that facility. This correction does not affect our determination in this order.

The Commission granted their request for waiver of the OATT requirements for these lines, finding that these transmission facilities are limited and discrete.⁹

II. Discussion

A. Request for Rehearing

9. Cohocton requests that the Commission further examine Canandaigua Power Partners' applications for market-based rate authority to ensure that these entities do not possess horizontal or vertical market power.¹⁰ In support of this request, Cohocton explains that, based on the New York Public Service Law definition of electric corporation, Canandaigua Power Partners' electric corporation includes gas, oil, and transmission facilities with other direct and indirect ties to the energy industry that may not have been included in their market-based rate applications.¹¹

10. Cohocton also asserts that Canandaigua Power Partners, LLC and Canandaigua Power Partners II, LLC share facilities that are considered "related facilities" under New York Public Service Law section 2-d.¹² Cohocton therefore requests that the Commission provide clarification as to why Canandaigua Power Partners, LLC and Canandaigua Power Partners II, LLC submitted separate dockets to the Commission when applying for market-based rate authority.

⁹ *Evergreen Wind Power V, LLC*, 130 FERC ¶ 61,186, at P 18 (2010) (Evergreen OATT Order).

¹⁰ Cohocton Request for Rehearing at 2.

¹¹ Cohocton Request for Rehearing at 2. Specifically, Cohocton asserts that Canandaigua Power Partners' electric corporation includes: First Wind Holdings, Corp.; First Wind Holdings, LLC; First Wind Energy, LLC; UPC Wind Partners; UPC Wind Holdings; UPC Wind; UPC Renewables; UPC Solar; CPP; CPPII; Windfarm Prattsburgh; UPC Wind Management; NY Wind I, II, III, IV; New York Wind, LLC I, II, III, IV; Evergreen; Milford; Clipper Winds; BQ; Steel Winds; Astoria Gas; Wind City Oil and Gas, and all investors and hedgers, including power swaps with Credit Suisse and hedges via an oil swap in Kaheawa Wind Power I, Hawaii.

¹² Cohocton Request for Rehearing at 1.

B. Commission Determination

11. We will dismiss Cohocton's request for rehearing of the January 22 Letter Orders. Because Cohocton is not a party to these proceedings, it lacks standing to seek rehearing of the January 22 Letter Orders under the Federal Power Act and the Commission's regulations.¹³ Moreover, pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2009), answers to requests for rehearing are not permitted. Therefore, the Commission rejects the answer filed by Canandaigua Power Partners.

12. Notwithstanding our dismissal of Cohocton's rehearing request, we note that Cohocton's concerns regarding whether Canandaigua Power Partners possess horizontal and vertical market power have been addressed in other dockets. The Letter Order Accepting Change in Status, issued on December 1, 2009, reviewed Canandaigua Power Partners' and their affiliates' revised pivotal supplier and wholesale market share screens that included the additional generation of U.S. Power Gen. That Letter Order found that Canandaigua Power Partners and their affiliates pass both screens in the NYISO and ISO-NE markets, and therefore concluded that Canandaigua Power Partners and their affiliates satisfy the requirements for market-based rate authority regarding horizontal market power.¹⁴

13. In Order No. 697, the Commission explained that, in cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission will continue to allow such sellers to rely on the grant of waiver of the OATT requirement to help satisfy the vertical market power requirements for market-based rate

¹³ See 16 U.S.C. § 825(a) (2006); 18 C.F.R. § 385.713(b) (2009); and *Southern Co. Services, Inc.*, 92 FERC ¶ 61,167, at 61,566 (2000). We further note that, in any event, Cohocton's rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713(c)(2) of the Commission's Rules of Practice and Procedure. See 18 C.F.R. §385.713(c)(2) (2009). Rule 713(c)(2) requires that a rehearing request include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying. Under Rule 713(c)(2), any issue not so listed will be deemed waived. See also *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh'g*, Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006).

¹⁴ See Order Accepting Change in Status, P 5.

authority.¹⁵ In the Milford OATT Order and the Evergreen OATT Order, the Commission found that the Milford Line, Evergreen Gen Line, and Cohocton Gen Lead constitute limited and discrete transmission facilities. As such, the Commission granted waiver of the OATT requirements of Order Nos. 888, 889, and 890.¹⁶ Given these waivers, Canandaigua Power Partners and their affiliates satisfy the requirements for market-based rate authority regarding vertical market power.

14. With respect to Cohocton's request for clarification as to why Canandaigua Power Partners submitted two separate dockets to the Commission, the Commission determined in Order No. 697 that sellers may elect whether to transact under a single market-based tariff for an entire corporate family or under separate tariffs.¹⁷ Prior to submitting a market-based rate application, each new applicant must request a docket number. Canandaigua Power Partners submitted separate applications with accompanying tariff sheets under two separate docket numbers. Accordingly, Canandaigua Power Partners' applications were properly submitted to the Commission.

The Commission orders:

Cohocton's request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁶ Milford OATT Order, 129 FERC ¶ 61,149 at P 27; Evergreen OATT Order, 130 FERC ¶ 61,186 at P 18-19.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 936.