

124 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Maine Electric Power Company Inc.

Docket No. OA07-99-000

ORDER GRANTING REQUEST FOR TEMPORARY WAIVER

(Issued July 2, 2008)

1. On September 11, 2007, Maine Electric Power Company, Inc. (MEPCO) filed a request for temporary waiver of the requirements of Order No. 890.¹ In this order, we grant MEPCO's request for a temporary waiver, subject to the outcome of the hearing procedures established in Docket No. ER07-1289-002 *et al.*

Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.² Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, 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, rollover rights, and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have been approved as independent system operators (ISO) or regional transmission organizations (RTO) were

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 26-61.

directed to submit, within 210 days from publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007), section 206 compliance filings that contain the non-rate terms and conditions set forth in Order No. 890 or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT. The Commission also aligned the compliance filing deadlines for ISOs and RTOs and their transmission-owning members. Specifically, the Commission required public utility transmission owners whose transmission facilities are under the control of RTOs or ISOs to make any necessary tariff filings required to comply with Order No. 890 within 210 days after the publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007).³

Instant Filing

4. MEPCO requests waiver of the requirements of Order No. 890 from October 11, 2007 to December 1, 2007, the date MEPCO expected – at the time of its filing – its proposal to roll the MEPCO facilities into the ISO New England, Inc. (ISO-NE) regional transmission system (Roll-in Proposal) to become effective.⁴

5. MEPCO explains that it currently provides point-to-point transmission service over its facilities under Schedule 20B of the ISO-NE OATT.⁵ MEPCO proposes to delete Schedule 20B, and to provide service over the MEPCO facilities under Schedule 8 or 9 of the ISO-NE OATT. Other than those customers electing grandfathered treatment, service across the MEPCO facilities would then be treated in the same manner as transmission service over pool transmission facilities elsewhere in New England.

³ *Id.* P 157, 161.

⁴ On August 16, 2007, in Docket No. ER07-1289-000, MEPCO, along with ISO-NE and the Participating Transmission Owners Administrative Committee, submitted the Roll-in Proposal, which would permit: (1) the MEPCO facilities to be treated as pool transmission facilities; (2) service over the MEPCO facilities to be offered through the regional network services; and (3) MEPCO to become a participating transmission owner under the ISO-NE transmission operating agreement.

⁵ Schedule 20B replaced the MEPCO OATT when MEPCO joined the regional transmission organization and is equivalent to the local service schedules of other transmission owners in New England.

6. According to MEPCO, when ISO-NE makes its Order No. 890 compliance filing,⁶ any tariff changes or other requirements associated with Order No. 890 compliance will be addressed by ISO-NE and the participating transmission owners in the same manner as those requirements are met with respect to all other pool transmission facilities in New England. However, from October 11, 2007 until December 1, 2007, the MEPCO facilities will continue to be defined as other transmission facilities by the ISO-NE OATT. MEPCO states that without the waiver, it may be deemed to be required to implement a number of changes to Schedule 20B that, in light of the MEPCO Roll-in Proposal, would be short-lived and create unnecessary confusion for customers.

Notice of Filing and Interventions

7. Notice of MEPCO's waiver request was published in the *Federal Register*, 72 Fed. Reg. 54,025 (2007), with interventions and comments due on or before October 2, 2007. On October 1, 2007, PPL EnergyPlus, LLC (PPL EnergyPlus) filed a motion to intervene and protest.

8. PPL EnergyPlus disputes MEPCO's assertion that post-roll-in it will provide service over its facilities under ISO-NE OATT Schedules 8 and 9. PPL EnergyPlus argues that existing rights holders that elect grandfathered treatment will not be provided service under those schedules. PPL EnergyPlus asserts that MEPCO has not justified a waiver as to those grandfathered rights holders.

9. PPL EnergyPlus requests that the Commission clarify that any waiver of MEPCO's Order No. 890 obligations does not apply to service that MEPCO will continue to provide to grandfathered rights holders. It further requests that the Commission clarify that if the MEPCO Roll-in Proposal is rejected, any temporary waiver would terminate and MEPCO will be required to comply with Order No. 890 within 30 days of an order rejecting the proposal.

10. MEPCO filed an answer to PPL EnergyPlus's protest arguing that PPL EnergyPlus raises no new issues that are not already before the Commission in other proceedings, and that the protest should be rejected in its entirety.

⁶ ISO-NE submitted proposed revisions to its OATT to comply with Order No. 890 in Docket No. ER08-54-000. On May 7, 2008, the Commission accepted ISO-NE's Order No. 890 compliance filing. See *ISO New England, Inc.*, 123 FERC ¶ 61,133 (2008).

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene serves to make PPL EnergyPlus a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to permit MEPCO's answer and, accordingly, we will reject it.

B. Substantive Matters

12. On October 29, 2007, the Commission conditionally accepted the MEPCO Roll-in Proposal, but rejected MEPCO's proposal to eliminate Schedule 20B.⁷ MEPCO and ISO-NE requested rehearing of the Commission's October 29 Order. In their request for rehearing, MEPCO and ISO-NE contend, among other things, that MEPCO should be permitted to delete Schedule 20B because under the MEPCO Roll-in Proposal, none of MEPCO's transmission customers will receive point-to-point service under this schedule. On February 4, 2008, the Commission issued an order in Docket No. ER07-1289-002 *et al.* establishing settlement judge procedures, finding that the issues in the case "may be amenable to settlement."⁸ However, on April 23, 2008, the Chief Judge terminated the settlement process, stating that despite having made diligent efforts to reach a resolution, the parties had reached an impasse.

13. The Commission is issuing contemporaneously with this order an order in Docket No. ER07-1289-002 *et al.* in which the Commission establishes hearing procedures to resolve outstanding issues stemming from the MEPCO Roll-in Proposal.⁹ That order states that the issue of whether MEPCO should delete Schedule 20B may be appropriately raised in such hearing procedures. We anticipate that the outcome of these procedures will determine whether MEPCO must revise or delete Schedule 20B. Although MEPCO states that its request for waiver is limited to the period between October 11, 2007 and December 1, 2007 (the anticipated effective date at the time of the instant filing), we will grant temporary waiver until further Commission order in Docket No. ER07-1289-002 *et al.* Granting waiver in this manner should prevent MEPCO from being required to implement a number of changes that, in light of the hearing addressing the Roll-in Proposal, may be short-lived and create unnecessary confusion for customers.

⁷ *ISO New England Inc.*, 121 FERC ¶ 61,097 (2007) (October 29 Order).

⁸ *ISO New England, Inc.*, 122 FERC 61,093 at P 25 (2008).

⁹ *ISO New England, Inc.*, 124 FERC ¶ 61,013 (2008).

The Commission orders:

MEPCO's request for temporary waiver of the requirements of Order No. 890 is hereby granted, subject to further Commission order in Docket No. ER07-1289-002 *et al.*, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.