

125 FERC ¶ 61,097
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.

ISO New England Inc.

Docket Nos. ER08-832-000
OA08-110-000

ORDER ACCEPTING IN PART COMPLIANCE FILING AND REJECTING IN PART

(Issued October 27, 2008)

1. On April 15, 2008, under sections 205 and 206 of the Federal Power Act (FPA),¹ ISO New England Inc. (ISO-NE), the Participating Transmission Owners (PTO),² the

¹ 16 U.S.C. §§ 824d, 824e (2006). The Filing Parties indicated that the April 15, 2008 filing included changes to the ISO-NE open access transmission tariff (OATT) under section 205 of the FPA, and that these section 205 changes were directly related to their Order No. 890 compliance. The Filing Parties waived the time limits placed on the Commission's action by section 205 of the FPA. *See* April 15, 2008 filing at 2.

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); Unitil 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.

PTO Administrative Committee, Cross-Sound Cable Company, LLC (Cross-Sound), the Schedule 20A Service Providers (SSP),³ Maine Electric Power Company Inc. (Maine Electric), and the New England Power Pool (collectively, the Filing Parties) jointly submitted proposed revisions to the ISO-NE Open Access Transmission Tariff (OATT) to comply with Order No. 890-A.⁴ In this order, we accept the Filing Parties' filing in part and reject it in part, as discussed below.

I. Background

2. In Order No. 890-A, the Commission granted limited rehearing and clarification of Order No. 890, largely affirming its reforms. The Commission in Order No. 890-A continues its Order No. 890 objectives of ensuring that electric transmission service is provided on a nondiscriminatory, just and reasonable basis, helping to improve the foundation for a competitive electric power market, and providing for more effective regulation and transparency in the operation of the transmission grid.

3. The revisions in Order No. 890-A address, among other things: how transmission providers process service requests; under what circumstances long-term customers may renew (roll over) their transmission service; the ability of network customers to designate certain resources; and how point-to-point customers may reassign transmission capacity. The Commission also directed transmission providers to address certain issues related to the calculation of available transfer capability (ATC) and the calculation of incremental costs for purposes of imbalance charges.

II. The Filing Parties' Compliance Filing

4. ISO-NE states that it has revised its OATT to incorporate the revisions adopted in Order No. 890-A, as applicable. However, ISO-NE explains that because it does not

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 HVDC 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 *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 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), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

offer *pro forma* OATT-type transmission service, many of the Order No. 890-A revisions are not applicable.⁵ ISO-NE also did not adopt Order No. 890-A revisions relating to energy and generator imbalance services because such services are not required in the New England control area. Further, ISO-NE did not adopt Order No. 890-A revisions relating to network resources because the ISO-NE OATT is not subject to Commission-approved reserve sharing programs. Additionally, Order No. 890-A's requirements regarding the calculation of ATC are unnecessary because flowgates are not utilized in New England.⁶

5. The PTOs, Cross-Sound, and the SSPs provide service over the non-pool transmission facilities, the merchant transmission facilities, and the other transmission facilities in New England. Like ISO-NE, the PTOs, Cross-Sound, and the SSPs incorporated the revisions adopted in Order No. 890-A to the extent deemed applicable within the New England market construct. Of the revisions incorporated by the PTOs and the SSPs, one substantive deviation is proposed. Specifically, the terms "Transmission Customer" and "Eligible Customer" either have not been adopted or have been modified to reflect the class of customer able to make a request or reservation in New England.⁷

⁵ ISO-NE provides Regional Network Service and Through or Out Service over the pool transmission facilities (i.e., the higher-voltage transmission facilities of the New England transmission owners.) Neither service requires advance reservations or distinguishes between "firm" and "non-firm" transmission service.

⁶ ISO-NE also proposed certain revisions regarding clustering. However, ISO-NE withdrew these revisions on June 6, 2008, noting that they were submitted as part of ISO-NE's Order No. 890 compliance filing in Docket No. ER08-54-002. ISO-NE's notice of withdrawal was accepted on August 1, 2008. *See ISO New England Inc.*, Docket No. ER08-832-001 (Aug. 1, 2008) (unpublished letter order).

⁷ The PTOs also proposed certain revisions regarding clustering, rollover rights, and process flow diagrams. However, the PTOs withdrew these revisions on July 18, 2008, noting that they were submitted as part of ISO-NE's Order No. 890 compliance filing in Docket No. ER08-54-002. This notice of withdrawal was accepted on September 11, 2008. *See ISO New England Inc.*, Docket No. ER08-832-002 (Sept. 11, 2008) (unpublished letter order).

6. MEPCO did not include revisions to Schedule 20B of the ISO-NE OATT in the instant filing, noting that Schedule 20B will be deleted upon the implementation of the MEPCO roll-in proposal in Docket No. ER07-1289.⁸

7. The Filing Parties request that the revised tariff sheets be made effective April 15, 2008.

III. Notice of Filing and Responsive Pleadings

8. Notice of the Filing Parties' filing was published in the *Federal Register*, 73 Fed. Reg. 24,064 (2008), with interventions and protests due on or before May 6, 2008.

9. A timely motion to intervene was filed by Dynegy Power Marketing, Inc. A timely motion to intervene and comments was filed by Beacon Power Corporation (Beacon Power). On May 21, 2008, ISO-NE filed an answer to the comments submitted by Beacon Power. On June 13, 2008, Beacon Power filed an answer to ISO-NE's answer, and on June 19, 2008, ISO-NE filed an answer to Beacon Power's answer.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. 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 accept Beacon Power's and ISO-NE's answers and will, therefore, reject them.

⁸ The MEPCO roll-in proposal 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 PTO under the ISO-NE transmission operating agreement. On August 7, 2008, ISO-NE submitted a settlement agreement to resolve all issues in Docket No. ER07-1289. Of significance here, the settlement agreement provided for the deletion of Schedule 20B. The settlement agreement was accepted on September 29, 2008. *See ISO New England Inc.*, 124 FERC ¶ 61,297 (2008).

B. Substantive Matters

12. As discussed below, we find that the Filing Parties' filing complies in part with Order No. 890-A. Accordingly, we accept in part and reject in part the Filing Parties' filing, to be effective April 15, 2008.

1. Schedule 3, Regulation and Frequency Response Service

13. Order No. 890 modified Schedule 3 to permit regulation and frequency response service to be provided by generating units as well as other non-generation resources.⁹

a. Comments

14. Beacon Power notes that, while ISO-NE made the appropriate revisions to Schedule 3 in compliance with Order No. 890, ISO-NE's Market Rule 1 limits the provision of regulation services to generators only. Beacon Power, a developer of non-generation storage technology, requests that ISO-NE be required to make corresponding revisions to Market Rule 1.

15. Beacon Power further notes that since January 2008 ISO-NE has been collaborating with its stakeholders to design a pilot program that would evaluate the performance of new technologies in order to determine how best to use these technologies to meet New England's regulation requirements and provide operating experience that ISO-NE ultimately can use to formulate permanent rules. According to Beacon Power, the pilot program is expected to commence in November 2008 and continue through May 2010. Beacon Power requests that ISO-NE be required to develop permanent market rules to become effective no later than the completion of the pilot program (i.e., May 2010), so that new technologies will be authorized to participate in the regulation and frequency response service market immediately upon the successful termination of the pilot program. Additionally, Beacon Power requests that ISO-NE be required to work with Beacon Power and other non-generation resources to create a tariff that allows for a competitive ancillary services marketplace.

b. Commission Determination

16. Beacon Power raised the same comments in response to ISO-NE's Order No. 890 compliance filing in Docket No. ER08-54-000. In that proceeding, the Commission directed ISO-NE to revise Market Rule 1 to allow non-generation resources to provide regulation and frequency response service.¹⁰ On August 5, 2008, ISO-NE proposed

⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 888.

¹⁰ *ISO New England Inc.*, 123 FERC ¶ 61,133, at P 23 (2008) (May 7 Order).

revisions to Market Rule 1 to allow non-generation and generation resources to provide regulation service on a comparable basis. However, ISO-NE recognized that the revisions to Market Rule 1 still preclude certain non-generation resources that operate alternative technologies from participating in the regulation market. To address this, ISO-NE proposed a pilot program that would permit such resources to participate in the regulation market on a trial basis, and, depending on the results of the program, may result in further proposed revisions to ISO-NE's market rules. ISO-NE stated that it recognized that "full compliance with the May 7 Order will require that the ISO work diligently to implement" the revisions to Market Rule 1, the pilot program, and the market rule revisions that result from the pilot program. ISO-NE also expressed its willingness to file with the Commission quarterly updates summarizing ISO-NE's progress in implementing and carrying out the revisions to Market Rule 1 and the pilot program.¹¹

17. ISO-NE's filing in compliance with the May 7 Order was accepted on September 15, 2008.¹² Subject to the future actions to which ISO-NE committed in that filing, we find that ISO-NE's revisions to Market Rule 1 and the proposed pilot program address Order No. 890's requirements regarding participation by non-generation resources in the regulation market. In addition, in light of its expression of willingness in the August 5, 2008 filing, we direct ISO-NE to submit quarterly informational filings summarizing its progress in implementing and carrying out the revisions to Market Rule 1 and the pilot program.

2. Rollover Rights

18. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and a one-year notice period for exercising the right. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.¹³ Order No. 890-A revised the rollover reform language adopted in Order No. 890.

¹¹ Docket No. ER08-54-006, ISO-NE Transmittal Letter, Aug. 5, 2008, at 3.

¹² See *ISO New England Inc.*, Docket No. ER08-54-006 (Sept. 15, 2008) (unpublished letter order).

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1256.

19. The SSPs revised section 2.4 of Schedule 20A to be consistent with the reforms adopted in Order No. 890-A.¹⁴ In an order being issued concurrently with this order under Docket No. ER08-54-002, *et al.*, the Commission finds that the rollover reforms of Order No. 890 should not become effective until after the Commission's approval of ISO-NE's transmission planning process.¹⁵ We reject, without prejudice, the SSPs' proposed revisions to section 2.4 here, because the SSPs' proposed effective date of April 15, 2008, is inconsistent with the Commission's finding that rollover reform language should not become effective until after the Commission's acceptance of Attachment K. The Commission's order in Docket No. ER08-54-002, *et al.* directs the SSPs to re-file the rollover reform language established in Order Nos. 890 and 890-A, with an effective date commensurate with the date of that filing.

The Commission orders:

The Filing Parties' compliance filing is hereby accepted in part and rejected in part, effective April 15, 2008, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ See ISO-NE, FERC Electric Tariff, Vol. No. 3, First Revised Sheet No. 909A and First Revised Sheet No. 909B.

¹⁵ ISO-NE's planning process was accepted on May 15, 2008. See *ISO New England Inc.*, 123 FERC ¶ 61,161 (2008).