

127 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pittsfield Generating Company, L.P.

Docket No. ER09-734-000

ORDER GRANTING WAIVER

(Issued April 10, 2009)

1. On February 20, 2009, Pittsfield Generating Company, L.P. (Pittsfield) requested that the Commission waive application of the unreserved transmission use penalty provisions in section 14.5 of the Northeast Utilities Companies (NU Companies)¹ Local Service Schedule (Schedule 21-NU) under section II of the ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff).² Pittsfield requests such penalties be waived from June 6, 2008, until Pittsfield's Reliability Must-Run (RMR) agreement terminates. As discussed below, the Commission will grant Pittsfield's request.

I. Background

2. On September 2, 2005, ISO-NE notified Pittsfield that the Pittsfield generating facility was needed for reliability. Subsequently, on November 30, 2005, Pittsfield filed with the Commission its RMR agreement with ISO-NE.³ Under the RMR agreement, Pittsfield must offer Energy and Ancillary Services into the New England Markets using Stipulated Bids Costs and must comply with ISO-NE dispatch instructions or suffer non-performance penalties.

¹ The NU Companies are: The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire.

² ISO New England Inc., Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3.

³ *Pittsfield Generating Co., L.P.*, 115 FERC ¶ 61,059 (2006), *order on reh'g*, 119 FERC ¶ 61,001 (2007) (approving RMR agreement).

3. In Order No. 890, the Commission determined that a transmission customer will be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty explicitly stated in its tariff.⁴ The Commission reasoned that such penalty provisions should create the appropriate incentive to transmission customers to purchase the correct amount of transmission service.⁵ Further, the Commission directed that local service tariffs be amended.⁶

4. On June 6, 2008, Participating Transmission Owners filed proposed amendments in compliance with Order No. 890 that included, *inter alia*, revisions to section 14.5 of Schedule 21-NU governing unreserved use penalties.⁷ As a result of these amendments, on December 30, 2008, the Northeast Utilities Services Company, on behalf of the NU Companies, submitted a bill to Pittsfield for \$209,336, which was the calculation of additional unreserved use penalty charges for the period from June 6, 2008, through October 31, 2008.

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 834, 848, *order on reh'g*, 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).

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 849.

⁶ *See ISO New England Inc.*, 123 FERC ¶ 61,133, at P 39-40 (2008). The Commission directed that local service tariffs be amended to base the unreserved use penalty for any unreserved use of non-firm point-to-point service on the firm point-to-point rate. The Commission also directed that such penalty language reflect that: (1) unreserved use penalties be based on the period of unreserved use; (2) the unreserved use penalty for a single hour of unreserved use be based on the rate for daily firm point-to-point transmission service; and (3) more than one assessment for a given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly). *See also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 846.

⁷ *ISO New England Inc.*, 125 FERC ¶ 61,098 (2008); *see id.* P 9 n.7 (discussing June 6, 2008 effective date for Schedule 21-NU amendments).

II. Request for Waiver of Penalty Provisions

5. Pittsfield contends that the purposes of the unreserved transmission use penalties are to deter transactions that have not been arranged with the transmission provider and that, therefore, could adversely affect system reliability; and to give transmission customers an incentive to reserve the appropriate level of point-to-point transmission service so that transmission is allocated in an orderly fashion.⁸ Pittsfield explains that its unreserved use is in response to ISO-NE dispatch instructions pursuant to the RMR agreement, is often on very short notice,⁹ and is for the express purpose of preserving system reliability. Moreover, Pittsfield maintains that its reserved or unreserved use of a line does not factor into transmission system operating decisions and cannot adversely impact transmission system reliability. Further, Pittsfield points out that the NU Companies' Local Facilities used by Pittsfield consists of a 115 kV radial line to which only Pittsfield is interconnected; therefore, Pittsfield's unreserved use of the line will not interfere with the orderly allocation of its use.

6. Pittsfield states that subsequent to the receipt of the December 30, 2008 invoice, Pittsfield and the NU Companies discussed these matters and agree that the assessment of unreserved transmission use penalties to Pittsfield under the limited circumstances that Pittsfield discusses in its request do not support the objectives of Order No. 890. Pittsfield states that it has not paid the invoiced \$209,336 in unreserved use penalty charges for the period from June 6, 2008, through October 31, 2008, but, consistent with Schedule 21-NU, has agreed to place the penalty amounts in an escrow account pending Commission action on this request.

III. Notice of Filing and Responsive Pleadings

7. Notice of Pittsfield's filing was published in the *Federal Register*, 74 Fed. Reg. 9609 (2009), with interventions and protests due on or before March 13, 2009. The NU Companies filed a timely motion to intervene and comments.

⁸ Transmittal Letter at 2 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 838).

⁹ See Transmittal Letter at 4-5 (providing timeline example of ISO-NE's dispatch instructions to Pittsfield).

8. The NU Companies state that they do not object to the granting of Pittsfield's request for waiver of the unreserved use penalty provisions as applied to date or to waiver of the provisions of Schedule 21-NU providing for unreserved transmission use penalties through the term of the Pittsfield RMR agreement.

IV. Discussion

A. Procedural Matters

9. 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 is hereby granted.

B. Commission Determination

10. We grant Pittsfield's request to waive the unreserved transmission use penalty provisions as discussed below. As applied to Pittsfield, application of these penalty provisions when Pittsfield is following ISO-NE's dispatch instructions in accord with its RMR agreement produces an unjust and unreasonable result. We note that the unreserved use of local transmission service by Pittsfield to respond to the transmission operator's reliability dispatch instructions was not addressed by either Order No. 890 or the Commission's order approving the amendments to Schedule 21-NU. We agree that Pittsfield's unreserved use of the NU Companies' Local Facilities occurred as a result of responding to ISO-NE dispatch instructions that were intended to preserve the reliability of the local transmission system and not for the purposes of avoiding local transmission charges. Under these circumstances, Pittsfield, the NU Companies, and ISO-NE all have acted in good faith under their applicable tariffs and agreements.

11. In addition, this waiver is limited in scope due to the unique circumstances of Pittsfield's unreserved use of the NU Companies' Local Facilities, because ISO-NE dispatches Pittsfield under the terms of its RMR agreement.¹⁰ The Commission also limits the time for which this waiver is granted; it will terminate at the earlier of the expiration of the term of Pittsfield's RMR agreement on May 31, 2010, or the termination of the RMR agreement on other grounds.

¹⁰ This waiver will not apply to unreserved use of the NU Companies' Local Facilities associated with any bilateral sales between Pittsfield and a third party.

12. Accordingly, we will grant waiver of section 14.5 of the NU Companies' Local Service Schedule 21-NU (i.e., unreserved transmission use penalties) under section II of the ISO-NE Tariff as applied to Pittsfield under the circumstances discussed herein and direct refund of any amounts collected or held from June 6, 2008, to the expiration or termination of Pittsfield's RMR agreement.

13. We note that this request for waiver was filed well after the December 30, 2008 invoice. We would expect that such waiver requests be made as soon as practicable.

The Commission orders:

Pittsfield's request for a waiver of unreserved transmission use penalties in Schedule 21-NU of the ISO-NE Tariff is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.