



EDF Development, Inc.  
Constellation Energy Group, Inc.  
Constellation Power Source Generation,  
Inc.

EC09-46-001

ORDER DENYING MOTION TO INTERVENE AND DISMISSING REQUEST FOR  
REHEARING

(Issued May 29, 2009)

1. On March 19, 2009, Mr. Lovern, President of R &L Associates, submitted a motion to intervene out-of-time and requested rehearing of the Commission's February 19, 2009 order.<sup>1</sup> In this order we deny Mr. Lovern's motion to intervene and dismiss the request for rehearing.

**I. Background**

2. On December 17, 2008, EDF Development, Inc. (EDF Development), Constellation Energy Group, Inc. (Constellation Energy), Constellation Nuclear Energy Group, LLC (Constellation Nuclear), and EDF International executed a Master Put Option and Membership Interest Purchase Agreement (Master Agreement). Under that Master Agreement, EDF Development: (1) will acquire a 49.99 percent ownership interest in Constellation Nuclear for \$4.5 billion; (2) has provided a \$1 billion up-front cash investment in Constellation Energy in the form of non-voting non-convertible cumulative preferred stock; and (3) will provide Constellation Energy with additional liquidity support of up to \$2 billion through put options that, upon exercise by Constellation Energy, would obligate EDF Development to purchase certain non-nuclear generating facilities.

3. Under the terms of the Master Agreement, the parties have agreed to an exercise price with respect to each of the 11 generation assets that is subject to a put option, provided that the aggregate exercise prices under the put options may not exceed \$2 billion. Subject to such limitation and to the satisfaction of other customary conditions precedent (including the receipt of all necessary regulatory approvals), Constellation Energy has complete discretion over which of the put options it may wish to exercise. If Constellation Energy exercises any of the put options, EDF Development

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<sup>1</sup> *EDF Development Inc.*, 126 FERC ¶ 61,140 (2009).

is obligated to complete the purchase of the affected generating plant within five business days following the satisfaction of all conditions precedent to closing. The put options expire no later than December 31, 2010.

4. On February 19, 2009, the Commission issued an order approving the put options.

## **II. Motion to Intervene and Requests**

5. On March 19, 2009, Mr. Lovern submitted a motion to intervene out-of-time and a request for rehearing. Lovern argues that good cause exists to grant his untimely intervention, arguing that consumer interests in Maryland will not be adequately protected without his intervention because no other party to the proceeding has represented the interests of the retail customers of Baltimore Gas and Electric (BG&E), Constellation Energy's principal public utility subsidiary. Additionally, Lovern states that because the transaction between EDF Development and Constellation Energy still must receive approval from the Maryland Public Service Commission, granting his out of time intervention will neither disrupt the business model nor prejudice, or impose, any additional burden on the existing parties. Lovern also contends that he is filing this motion to intervene late due to the fact that the Commission ignored the issues that support this late intervention that Lovern raised in a letter dated July 2, 2008 (July 2008 letter) addressed to former Chairman Joseph Kelliher and former General Counsel John Moot.

6. The July 2008 letter addressed BG&E's budget billing program, whereby BG&E bills customers a like amount each month during a twelve month cycle. Lovern asserts that BG&E has been "stealing money" from its customers by assessing late payment fees to customers at times when the late fees exceed the amount of the credit balance in the customer's budget billing account. Mr. Lovern does not explain how these asserted facts have any bearing on the issues that were before this Commission in these proceedings.

## **III. Discussion**

7. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention is substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such an intervention.<sup>2</sup> Although Lovern argues that he has communicated his concerns regarding BG&E's billing practices to the Commission in the July 2008 letter, this was five months prior to the EDF Development and Constellation Energy filings in these proceedings, and did not serve to make him a party to any future

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<sup>2</sup> *E.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

proceeding. Further, nothing impeded Lovern from filing a timely motion to intervene. Therefore, Lovern has not met this higher burden of justifying his late intervention. As such, we deny Lovern's motion to intervene out-of-time. As Lovern is not a party to these proceedings, we need not address his request for rehearing.<sup>3</sup>

The Commission orders:

Lovern's motion to intervene out-of-time is hereby denied and his request for rehearing is hereby dismissed.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> See 16 U.S.C. § 8251(a) (2006) (only parties may seek rehearing); 18 C.F.R. § 385.713(b) (2008) (same).