

147 FERC ¶ 61,193
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 9, 2014

In Reply Refer To:
New Hampshire Transmission
LLC
Docket No. ER14-1989-000

NextEra Energy Resources, LLC
Attn: Gunnar Birgisson
801 Pennsylvania Ave., NW
Washington, DC 20004

Dear Mr. Birgisson:

1. On May 19, 2014, NextEra Energy, Inc. filed, on behalf of New Hampshire Transmission, LLC (NHT), a request that the Commission grant a limited waiver of the Attachment F Implementation Rule of ISO-New England Inc.'s (ISO-NE) Open Access Transmission Tariff (OATT).¹ NHT states that the requested waiver will prevent unnecessary charges to ISO-NE transmission customers and avoid costly fluctuations in NHT's cash flows. NHT also requests that the Commission provide for a shortened comment period, and grant the requested waiver no later than June 9, 2014. As discussed below, the Commission grants waiver of certain provisions of Attachment F, effective June 1, 2014.

2. Attachment F requires ISO-NE participating transmission owners (PTOs), including NHT, to jointly submit by July 31 of each year an annual informational filing with the Commission, which updates the regional formula transmission rates under ISO-NE's OATT. For this purpose, each PTO must use the expenses recorded in its FERC Form 1 from the prior calendar year (as applicable here, 2013) to calculate its respective Transmission Revenue Requirement. In addition, Attachment F requires each PTO to calculate an Annual True-Up by comparing the updated Transmission Revenue Requirement to that from the previous year. The cumulative total of the PTOs' revenue requirements (as adjusted by the Annual True-Up) is used to establish the regional

¹ ISO-NE, Transmission, Markets and Services Tariff, Section II, Open Access Transmission Tariff, Attach. F, Implementation Rule (Attachment F).

network service, through or out service and scheduling, system control, and dispatch service rates in effect from June 1 through May 31 of each year.

3. NHT requests a limited waiver of the Attachment F Implementation Rule of ISO-NE's OATT to allow NHT to exclude, on a one-time basis, certain reliability planning expenses from the Transmission Revenue Requirement calculation in its 2014 informational filing, and instead only to include such amounts in the Annual True-Up component of this year's calculation.² Specifically, NHT states that it is requesting the waiver because its 2013 reliability planning expense level of approximately \$7.1 million was a one-time occurrence that is much higher than the anticipated 2014 expense level of approximately \$1 million. NHT states that, without the requested waiver, the mechanics of the Attachment F Implementation Rule would require ISO-NE transmission customers to reimburse NHT \$14.2 million (twice the level of the high reliability planning expense), once by inclusion in the new level of expense in the base component of the rate, and again by having it included in the True-Up component. The affected customers would then receive a refund of \$7.1 million through the next year's True-Up component.³

4. NHT states that it is acting in good faith because compliance with the Tariff has unintended and undesirable effects. NHT states that it is submitting the waiver request in a good faith effort to avoid unnecessary fluctuations in the rates calculated in accordance with Attachment F. NHT asserts that ratepayers benefit from only being subjected to the actual costs incurred by NHT under the reliability planning study and NHT benefits from avoiding disruptive fluctuations to its cash management.

5. NHT states that the requested waiver is of limited scope because it is limited to a one-time omission of specific NHT reliability planning costs, incurred in 2013, from the base component of the 2014 rate.

6. NHT states that the requested waiver remedies a concrete problem because, absent the waiver, NHT's 2014 rate will inappropriately reflect the unusually high 2013 reliability planning expense resulting in an over-charge and refund to ISO-NE transmission customers. NHT asserts that this will adversely impact the stability of the Regional Network Service rate and cause NHT to incur unnecessary and costly fluctuations to its cash flows. NHT explains that without the waiver, it will have to take otherwise unnecessary cash management efforts. NHT would have to undertake

² The Attachment F Implementation Rule would otherwise require NHT to include those expenses in the Transmission Operations and Maintenance Expense element of NHT's base annual Transmission Revenue Requirement calculation, that NHT is updating pursuant to the formula rate specified in Attachment F, for inclusion in the Regional Network Service rate effective June 1, 2014.

³ NHT May 19, 2014 Filing at 4-5 (Petition).

additional loan principal and equity distribution payments followed by loan borrowings and equity contributions so as to maintain an appropriate capitalization structure, and NHT would see a gratuitous increase in its income tax liability followed by a large income tax refund.

7. NHT claims that the requested waiver will not result in undesirable consequences. NHT states that granting this limited waiver will have no adverse consequences on the general public, ISO-NE, ISO-NE's OATT, PTOs, or transmission customers taking transmission service under ISO-NE's regional network service and through or out service transmission rates. NHT states that granting the waiver produces more consistent transmission rates and does not impact the level of transmission revenues recovered by other PTOs.

8. Notice of NHT's filing was published in the *Federal Register*, 79 Fed. Reg. 30,600 (2014), with interventions and protests due on or before May 29, 2014. On May 21, 2014, Exelon Corporation submitted a timely motion to intervene. On May 29, 2014, ISO-NE submitted a timely motion to intervene and comments. New England Power Pool (NEPOOL) Participants Committee and Northeast Utilities (NU) submitted untimely motions to intervene. NHT filed an answer to ISO-NE's comments.

9. ISO-NE does not state that it objects to the Commission granting the waiver, but raises some concerns nonetheless. ISO-NE claims that NHT does not state a concrete problem in its request for waiver, as required in justification of a tariff waiver. ISO-NE asserts that the inclusion of an additional \$7.1 million in the Regional Network Service rate calculation will not have a significant effect when compared to last year's cumulative total of \$1.72 billion used for the calculation. ISO-NE also asserts that NHT fails to explain how the fluctuations in NHT's cash flows will have adverse effects and how handling the variation is not "just an everyday task."⁴

10. ISO-NE also argues that, pursuant to section 3.04(a) of the Transmission Operating Agreement (TOA), the NHT filing should be viewed as an exercise of rights under Section 205 of the FPA rather than a waiver request. Further, ISO-NE states that NHT failed to consult with ISO-NE in advance of the filing, as required by TOA § 3.04(a), to determine whether ISO-NE will need to make any software modifications in order to implement the filing.

11. ISO-NE further requests that if the Commission grants the waiver, the associated waiver make clear that the Commission is not thereby finding the particular reliability

⁴ Petition at 6.

study expenses of NHT just and reasonable, and is leaving the informational filing approach of Attachment F undisturbed.

12. In its answer to ISO-NE's comments, NHT states that the financial impact on NHT is a "concrete problem" for purposes of justifying its waiver request and that granting the waiver request will have no ascertainable net impact on ratepayers. NHT also states that ISO-NE's request for the Commission to clarify that it is not finding the reliability expenses just and reasonable is gratuitous because NHT did not request that the Commission make such a finding.

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), we will grant NEPOOL's and NU's late-filed motions to intervene given their interests in this proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept NHT's answer because it has provided information that assisted us in our decision-making process.

15. The Commission has previously granted limited waiver of tariff provisions where: (i) the applicant has been unable to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requested waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties.⁵ NHT's waiver request satisfies those criteria.

16. We find NHT's effort to avoid unnecessary fluctuations in the rates by excluding an unusually high expense to be in good faith. Further, NHT seeks a one-time waiver of only certain Attachment F requirements, which will apply only during one year; thus, we find the waiver to be limited in scope. Additionally, we find that allowing NHT to exclude unusually high reliability planning expenses from its transmission revenue calculation in the 2014 informational filing will remedy a concrete problem. Although ISO-NE contends that inclusion of the reliability planning expenses would not have a

⁵ See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013); *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

significant impact on ratepayers, it remains the case that granting the waiver request benefits ratepayers by preventing unnecessary fluctuations in the Regional Network Service rate. Finally, granting NHT's waiver request does not adversely affect third parties.⁶

17. NHT's request for limited waiver of Attachment F of ISO-NE's OATT is hereby granted, effective June 1, 2014. NHT is granted waiver to exclude certain 2013 reliability planning expenses and instead only include such amounts in the True-Up component of the transmission revenue requirement calculation.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁶ While ISO-NE raises the question of whether NHT was required to consult with ISO-NE to determine whether ISO-NE will need to make any software modifications in order to implement the filing, ISO-NE does not allege that it will, in fact, need to make any software modifications in order to implement NHT's waiver request.