

127 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PSEG Power Connecticut LLC

Docket Nos. ER09-507-001
ER09-507-002

ORDER DENYING CLARIFICATION AND REHEARING AND ACCEPTING
COMPLIANCE FILING

(Issued April 3, 2009)

1. On March 5, 2009, PSEG Power Connecticut LLC (Power Connecticut) filed a request for rehearing of a February 3, 2009 letter order authorizing Power Connecticut to collect costs under Power Connecticut's Reliability Must-Run (RMR) agreements.¹ Those costs are related to carbon dioxide (CO₂) emissions incurred when Power Connecticut's units are dispatched by ISO New England Inc. (ISO-NE). In this order, the Commission denies clarification and rehearing and accepts the compliance filing revising the effective date, as discussed below.

I. Background

2. On January 6, 2009, in response to the State of Connecticut regulations that took effect January 1, 2009, Power Connecticut filed proposed revisions to its RMR agreements to include CO₂ emissions allowance costs. Power Connecticut requested an effective date of January 1, 2009, and requested waiver of the sixty-day notice requirement.² Alternatively, Power Connecticut requested an effective date for those RMR agreements of one day after filing, i.e., January 7, 2009:

Power Connecticut requests that the Commission approve the

¹ *PSEG Power Connecticut LLC*, Docket No. ER09-507-000 (Feb. 3, 2009) (unpublished letter order) (February 3 Letter Order).

² Power Connecticut January 6 Filing, Transmittal Letter, (Transmittal Letter) at 3.

revisions to the New Haven Harbor Station and Bridgeport Harbor Unit 2 RMR Agreements and grant waiver of the applicable filing requirements of part 35 of the Commission regulations to permit an effective date of January 1, 2009, consistent with the effective date of Connecticut's RGGI regulations. *In the alternative, Power Connecticut requests an effective date of one day after filing.*^{3]}

3. In support of its requested waiver of the sixty-day notice period and proposed effective dates, Power Connecticut noted that the relevant state regulations took effect on January 1, 2009. It represented that ISO-NE did not oppose the request. Further, Power Connecticut explained *inter alia* that, given the technical nature of the requested changes to its RMR agreements, it could not complete negotiations with ISO-NE and consultation with other agencies, and file its proposed revisions, sixty days prior to the requested effective date. It also requested that the Commission clarify that Power Connecticut may recover CO2 emission allowance costs incurred by Power Connecticut between the requested effective date of the RMR agreements and the date of the issuance of a Commission order.⁴

4. The February 3 Letter Order provided, as requested, that Power Connecticut may begin collecting (through the crediting mechanism of the RMR agreements) the CO2 emissions allowance costs incurred by Power Connecticut for ISO-NE dispatched hours of operation between January 7, 2009, and February 3, 2009, the date of issuance of the Commission order. The Commission also notified Power Connecticut, with reference to the RMR agreements that were attached to Power Connecticut's January 6 filing, that "the RMR Agreement effective dates are incorrect [and t]he correct effective date should be January 7, 2009, one day after the date of the filing."⁵ The Commission also directed Power Connecticut to revise those RMR agreements to reflect an effective date of January 7, 2009.

II. Notice

5. Notice of the February 18, 2009 compliance filing was published in the *Federal Register*, 74 Fed. Reg. 9237 (2009), with interventions and protests due on or before March 11, 2009. None was filed.

³ *Id.* (emphasis added).

⁴ *Id.* at 4.

⁵ February 3 Letter Order at 2.

III. Request for Rehearing or Clarification

6. In its request for clarification, Power Connecticut asks the Commission to direct or clarify that Power Connecticut is entitled to recover CO2 allowance costs under the revised RMR agreements approved by the Commission for the period from January 1, 2009, through February 3, 2009. Power Connecticut states that the Commission should have understood that its requested effective date for the RMR agreements was January 1, 2009. Power Connecticut therefore asks the Commission to clarify that it intended to specify that Power Connecticut could recover CO2 emissions costs from January 1, 2009, to February 3, 2009 (the date of the delegated order).

7. In its alternative request for rehearing, Power Connecticut maintains that “good cause” existed for the Commission to grant the January 1, 2009 effective date, reiterating the reasons it provided in its original filing. Power Connecticut points out that no protests were filed in response to its filing. It further argues that the “good cause” that justified the Commission’s waiving the 60-day notice period and granting an effective date of January 7, 2009—namely, the technical nature of the changes that Power Connecticut needed to make to those agreements and the need to consult with additional agencies—applies equally to permitting an effective date of January 1, 2009. Power Connecticut also argues that the CO2 emissions cost payments are made monthly (i.e., ISO-NE will calculate all of the costs for January, and then provide reimbursement to Power Connecticut at the end of January), and thus any payment by ISO-NE to Power Connecticut would have been prospective at the time that Power Connecticut made its January 6 filing; thus, according to Power Connecticut, there is no violation of the filed rate doctrine.⁶

IV. Discussion

8. The Commission will deny both clarification and rehearing. Power Connecticut requested an effective date of January 1, 2009, or, in the alternative, “one day after filing,” i.e., January 7, 2009. The Commission accepted Power Connecticut’s revised RMR agreements, effective January 7, 2009, as requested.⁷ Power Connecticut asserts

⁶ Request for Rehearing at 5-6.

⁷ The Commission has indicated that it will generally grant waiver when agreements for service are filed after service has commenced if extraordinary circumstances are present. *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339 (*Central Hudson I*), *reh’g denied*, 61 FERC ¶ 61,089, at 61,355 (1992) (*Central Hudson II*). In *Central Hudson II*, the Commission addressed the contention that it had replaced the good cause standard with the extraordinary circumstance standard. The Commission explained that *Central Hudson I* simply elaborated that, when a filing is

(continued...)

that there is no filed rate doctrine violation here, but in fact, the filed rate doctrine is not implicated. Power Connecticut asked the Commission to accept its revised RMR agreements. It made that request on January 6, 2009, and asked the Commission to waive the sixty-day notice requirement so that the agreements could be effective on January 7, 2009. Having granted Power Connecticut's original request, the Commission will not revisit the effective date or collection timeline for the recovery of CO2 emissions allowance costs.

9. With regard to Power Connecticut's compliance filing, the Commission will accept the revised RMR agreements that Power Connecticut submitted reflecting the January 7, 2009 effective date.

The Commission orders:

(A) The requests for clarification and rehearing are denied, as discussed in the body of this order.

(B) The compliance filing is accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

made after the commencement of service (and thus the Commission has no prior notice), the filing utility must make a stronger showing of good cause for waiver than if the filing had been made prior to the commencement of service. 61 FERC at 61,355. While Power Connecticut has provided sufficient cause to justify the Commission's waiving the 60-day notice period and granting an effective date of January 7, 2009 (i.e., one day after the date of filing), Power Connecticut has not made a sufficient showing in its initial filing or in its request for clarification and alternative request for rehearing to justify establishing an effective date before the filing date.