

129 FERC ¶ 61,302
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Maine Power Company

Docket No. ER10-199-000

ORDER ACCEPTING AND SUSPENDING PROPOSED AGREEMENT AND
INITIATING HEARING PROCEEDINGS

(Issued December 30, 2009)

1. On November 2, 2009, Central Maine Power Company (Central Maine) filed an unexecuted service agreement (Agreement) with Kennebunk Light & Power District (Kennebunk) for local network transmission service pursuant to ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). As discussed below, we accept the proposed Agreement for filing, suspend it for a nominal period to become effective January 1, 2010, subject to refund and establish hearing proceedings.

I. Background

2. Central Maine states that Kennebunk currently takes wholesale local network service pursuant to an unexecuted service agreement under Schedule 21-CMP¹ of the Tariff.² The proposed unexecuted service agreement provides that Central Maine will accommodate an additional interconnection point for Kennebunk's new 115kV West Kennebunk substation. Central Maine explains in its transmittal letter that the new 115kV line is connected to its Line Section 163A,³ a non-pool transmission facility radial

¹ Central Maine provides local service over Non-Pool Transmission Facilities (Non-PTF) under Schedule 21 of the Tariff.

² *Central Maine Power Co.*, 89 FERC ¶ 61,030 (1999). (The Commission accepted, suspended, and set for hearing the 1999 unexecuted local network service agreement).

³ A line section is that portion of a Transmission Provider's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

tap, and that the service agreement is being filed unexecuted in accordance with the Tariff and as requested by Kennebunk.⁴ Central Maine requests that the Agreement become effective January 1, 2010.

3. The unexecuted service agreement specifies that Kennebunk will pay to Central Maine rates and charges for local network service and scheduling control and dispatch service, which will be determined by Kennebunk's load share ratio pursuant to Schedule 21-CMP. Central Maine explains that Kennebunk will be responsible for all applicable redispatch charges assessed by ISO-NE through its administration of Market Rule 1. The unexecuted service agreement also sets forth the cost of metering and direct assignment facilities, if any, in accordance with Schedules 13 (Metering Services) and 14 (Monthly Carrying Charge for Direct Assignment Facilities) of Schedule 21-CMP as applicable.

II. Notice of Filing and Responsive Pleadings

4. Notice of this filing was published in the *Federal Register*, 74 Fed. Reg. 59154 (2009), with interventions and comments due on or before November 23, 2009. Kennebunk filed a motion to intervene and protest and Central Maine filed an Answer.

5. Kennebunk contends that the Agreement fails to acknowledge that the Kennebunk's load served from the West Kennebunk substation is directly connected to Central Maine's PTF and, under the terms of the ISO-NE Tariff, is therefore exempt from charges for local network transmission service. Kennebunk contends that the following text from section II.12.2(c) of the Tariff is controlling and exempts it from local network transmission service charges:

[W]here all or a part of the load of Transmission Customers taking service under this OATT is connected directly to PTF, the Transmission Customers receiving the service shall have no obligation to pay charges for service across Non-PTF transmission facilities with respect to that portion of the connected load . . . , but shall continue to pay its share of any other Local Network Service costs directly associated with the PTF-connected load.

⁴ Under the Tariff, transmission facilities are designated as either Pool Transmission Facilities (PTF) or non-Pool Transmission Facilities (non-PTF). PTF facilities are higher voltage lines that are used to provide service throughout the region. In contrast, non-PTF facilities are lower voltage lines or radial lines that primarily perform a local service. Service on PTF facilities is provided under the ISO-NE Tariff. Service on non-PTF facilities is provided under Local Service Schedules under the ISO-NE Tariff.

6. Kennebunk argues that because the Agreement seeks to impose charges for local network transmission service on Kennebunk loads, it is unjust and unreasonable. Kennebunk argues that the Agreement should be modified expressly to exempt Kennebunk loads served from the West Kennebunk substation from charges for local network transmission service. Specifically, Kennebunk request that the following language be added to Part II, item 3.q. of the Agreement:

[Kennebunk] load served from the West Kennebunk 115kV substation is connected directly to PTF for purposes of Section II.12.2(c) of the ISO New England Transmission Markets and Services Tariff, and is therefore exempt from charges for Local Network transmission service.

7. Additionally, Kennebunk argues that the Commission has already found it is unjust and unreasonable to charge a transmission customer in Kennebunk's position a fully rolled-in Local Network transmission service rate based on the fact that a tap line like Line Section 163A intervenes between PTF and the customer's substation. Kennebunk states that, under *Mansfield*,⁵ the transmission owner is limited to charging a direct assignment rate for the tap line only, and is required to treat the transmission customer's load served from the PTF tap as "connected directly to PTF" and exempt from local network transmission service charges.

8. Kennebunk states that it appears that Central Maine has been charging Kennebunk a full Local Network transmission service charge for Kennebunk's load served from the substation since that load became "connected directly to PTF" in about January 2009 -- when Line Section 163 (i.e., the Line Section that connects Line Section 163A to the substation) was reclassified as PTF. Kennebunk states that based on the Commission's *Mansfield* decision, those charges are inconsistent with the controlling filed rate, as set forth in section II.12.2(c) of the ISO-NE Tariff. Kennebunk requests that the Agreement be amended to exempt Kennebunk from future local network transmission charges and that ISO-NE be directed to refund, with interest, all local network transmission charges it has collected since Line Section 163 was reclassified as PTF.

9. In its answer, Central Maine argues that the local network transmission charges are consistent with ISO-NE's tariff and just and reasonable for the service it is providing Kennebunk. Central Maine asserts that Kennebunk failed to address the five factor test discussed in the *Mansfield* decision, the *Mansfield* decision was limited to the facts therein, and a separate Commission decision in Kennebunk's favor is needed to provide the relief it seeks. Central Maine also asserts that even if Kennebunk were exempt from

⁵ *Mansfield Mun. Elec. Dep't. v. New England Power Co.*, 97 FERC ¶ 61,134 (2001), *order on reh'g*, 98 FERC ¶ 61,115 (2002) (*Mansfield*).

the local network transmission charges, it would be required to pay for the facility as a direct assignment.

10. In its answer, Kennebunk contends that Central Maine's continued assertion that Kennebunk is not directly attached to PTF because Line Section 163A is defined as non-PTF illustrates Central Maine's fundamental misunderstanding of both Kennebunk's arguments and the Commission's holdings in *Mansfield*. Kennebunk claims it is a misapplication of *Mansfield* to argue that some claimed "integration" of 115 kV and 34.5 kV facilities owned by Central Maine by means of Kennebunk's West Kennebunk substation and its 12.47 kV distribution system is equivalent to the integration required to justify charging Kennebunk a rolled-in rate for local network transmission service under Schedule 21-CMP to the Tariff.⁶ Kennebunk states that Line Section 163A is not integrated with Central Maine's transmission system based on any of the five factors of the *Mansfield* test. Kennebunk argues that Line Section 163A serves but one purpose: to connect the West Kennebunk Substation to the tap on Central Maine's PTF Line Section 163. Thus, Kennebunk renews its request to amend the Agreement to exempt Kennebunk from local network transmission charges and that ISO-NE be directed to refund, with interest, all local network transmission charges it has collected since Line Section 163 was reclassified as PTF.

III. Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) prohibits an answer to a protest or an answer to an answer, unless otherwise ordered by the decisional authority. We will accept Central Maine's and Kennebunk's answers because they have provided information that assisted us in our decision-making process.

12. Our preliminary analysis indicates that the proposed Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Central Maine's proposed Agreement, suspend it for a nominal period, effective January 1, 2010, as requested, subject to refund, and set it for hearing.

13. Furthermore, the appropriate charges for the load served from Kennebunk's West Kennebunk substation, as discussed above, cannot be resolved based on the record before us, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Based on the information available, the Commission cannot determine whether

⁶ Kennebunk Answer at 4-5.

Line Section 163A is integrated as a network facility and whether, under the proposed Agreement, Kennebunk should be charged the PTF rate alone, or the local network rate or direct assignment cost. In the hearing, the *Mansfield* five factor test should be applied to determine whether Line Section 163A is integrated with the rest of the network, and based on that finding, the appropriate charge under the proposed Agreement. Kennebunk's concern regarding the rate charged for the period prior to January 1, 2010, is outside the scope of this proceeding.⁷

The Commission orders:

(A) Central Maine's proposed Agreement is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2010, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Central Maine's proposed Agreement and the Local Network transmission service charge for the load served from Kennebunk's West Kennebunk substation, as discussed in the body of this order.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall, within (30) days of the date of this order, convene a prehearing conference in these proceedings in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The Prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing

⁷ The Commission has consistently rejected efforts by intervenors to pursue complaints through filing protests. *E.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213, at P 90 (2007); *Entergy Services, Inc.*, 104 FERC ¶ 61,084, at P 13 (2003); *Entergy Services, Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990). Our decision to reject Kennebunk's assertion regarding whether Central Maine charged the filed rate prior to January 1, 2010 as outside the scope of this proceeding is without prejudice to Kennebunk filing a complaint pursuant to the requirements of section 206 of the Federal Power Act raising the issue.

hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.