

137 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Granite Reliable Power, LLC

Docket No. ER12-65-000

ORDER DENYING REQUESTS FOR WAIVERS

(Issued December 9, 2011)

1. On October 11, 2011, Granite Reliable Power, LLC (Granite) requested waiver of the unreserved transmission use penalty provisions in section 8.1 and waiver of advance reservation requirements in section 7.2 of the Northeast Utilities Companies (NU Companies)¹ Local Service Schedule (Schedule 21-NU) under section II of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (ISO-NE Tariff)² for the entities acting in their capacity as counterparties and scheduling entities for Granite, which includes Granite, Central Vermont Public Service Corporation (CVPS), and Green Mountain Power Corporation (Green Mountain Power) (collectively, the Scheduling Entities). As discussed below, the Commission denies the requests for waivers.

I. Background

2. Granite states that it will operate a 99 MW wind-powered generation facility (Facility) consisting of 33 Vestas V90 3 MW turbines. The Facility will be interconnected in Dummer, New Hampshire to Public Service Company of New Hampshire (PSNH) at PSNH's 115 kV Paris Switching Station using Granite's existing radial transmission facility to deliver the energy to the Paris Switching Station. From the Paris Switching Station, energy will flow over PSNH's non-pool transmission facilities, terminating at the Whitefield Substation, where power will be delivered to

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

² ISO-NE Tariff, Open Access Transmission Tariff, § II.

ISO-NE pool transmission facilities. Granite expects commercial operation of the Facility to commence by year-end 2011.

3. Granite states that it has entered into long term power purchase agreements with CVPS and Green Mountain Power for a portion of the Facility's generation output, effective April 1, 2012. From start of commercial operations until April 1, 2012, Granite will reserve all of the transmission needed for the Facility to supply capacity and energy to the market and to satisfy any bilateral transactions.

II. Waiver Requests

4. Granite requests waiver of the unreserved transmission use penalty provisions in section 8.1 and waiver of advance reservation requirements in section 7.2 of the NU Companies Schedule 21-NU under section II of ISO-NE's Tariff for all Scheduling Entities for the Facility.³

5. Granite explains that, because it will be interconnected to the NU Companies' local transmission system⁴ rather than ISO-NE pool transmission facilities, it is required to purchase and reserve local transmission service needed to reach the New England grid.⁵ Granite states that Schedule 21-NU requires that requests for and schedules related to firm or non-firm local point-to-point service must be submitted to the NU Companies no later than 2 p.m. of the day prior to commencement of such service. Granite further states that, according to Schedule 21 of the ISO-NE Tariff, requests submitted after 2 p.m. will be accommodated if it is practical to do so, and that reservation changes are permitted up to 20 minutes before the start of the next clock hour.⁶ If a customer fails to reserve sufficient local transmission service in advance, it is subject to unreserved use

³ Granite Reliable Power, LLC Oct. 11, 2011 Filing (Granite Filing) at 1.

⁴ NU Companies provide "local transmission" service over their non-pool transmission facilities that are connected only to the New England system. Schedule 21-NU at 60; *see also New England Power Pool*, 109 FERC ¶ 61,155, at P 1 n.3 (2004) (explaining the bifurcated New England wholesale electricity market structure with higher-voltage region-wide pool transmission facilities, and facilities in the service territories of each transmission owner that are lower voltage lines or radials performing a primarily local (i.e., non-pool transmission facility) function).

⁵ Under the ISO-NE market structure, electric generators directly interconnected to pool transmission facilities are not required to pay or make transmission reservations for transmission needed to deliver their capacity to load.

⁶ Granite Filing at 3.

penalties, pursuant to Commission policy and as incorporated into Schedule 21-NU. Granite argues that, given the Facility's intermittent nature, Granite will not be able to accurately forecast the transmission requirements 20 minutes in advance of actual operations, and thus will unfairly incur unreserved use penalties.⁷

6. Granite states that the Commission has routinely waived tariff requirements where the applicant demonstrates: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.⁸ Granite asserts that it satisfies the Commission's standard for granting waivers and that the Commission has recognized the impropriety of imposing imbalance energy penalties on generators who deviate from their schedules to respond to reliability concerns.⁹

7. Granite attests that it, NU Companies and ISO-NE have acted in good faith, and that any unreserved use of NU Companies's local facilities will result solely because of the intermittent nature of the Facility and not for the purpose of avoiding local transmission charges. Granite asserts that the waivers are of limited scope because they would apply to only the unreserved use penalty provisions and the advance reservation requirement, and to only those times when Granite requires more transmission capacity than it has reserved. Granite argues that the relief it requests will remedy a concrete problem because, absent the requested waivers, Granite will have to choose between incurring unreserved use penalties for failure to reserve transmission service in advance, and potentially even greater charges for transmission service that it does not need, because the Facility is intermittent in nature and is not able to meet the advance notice requirements.¹⁰ Finally, Granite asserts that the waivers will not harm the reliability of the transmission system and will not harm third parties since ISO-NE uses a regional network service model that does not consider point-to-point transmission service reservations over local facilities in scheduling and dispatching network resources.

8. Granite requests that the waivers remain in effect so long as Schedule 21-NU contains penalties for unreserved use and an advance reservation requirement. Granite also requests that the waivers continue without regard to the potential for constraints on the local facilities, whether such constraints result from existing or new generation using

⁷ *Id.* at 6.

⁸ *Id.* at 5.

⁹ *Id.* at 5-6 (citing *Pittsfield Generating Company, L.P.*, 127 FERC ¶ 61,035 (2009) (*Pittsfield*)).

¹⁰ Granite Filing at 4.

the local facilities so long as ISO-NE utilizes a least cost security-constrained dispatch methodology for the dispatch of generation resources.¹¹

9. Granite states that ISO-NE and the NU Companies authorized Granite to state that they do not oppose Granite's requests for waivers.

Notice of Filing

10. Notice of Granite's filing was published in the *Federal Register*, 76 Fed. Reg. 64,936 (2011), with interventions, protests, or comments due on or before November 1, 2011. None was filed.

III. Commission Determination

11. The Commission denies Granite's requests for waivers of the unreserved use penalty provisions and the advance reservation requirements. Granting the waivers would be inconsistent with Commission precedent and policy and contrary to Order Nos. 890 and 890-A.¹²

12. The Commission previously has granted waivers of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable

¹¹ *Id.* at 5.

¹² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *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), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

In Order No. 890, the Commission determined that transmission customers shall be subject to unreserved use penalties whenever the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its tariff. The Commission reasoned that the penalty established in Order No. 890 would create the appropriate incentive for customers to reserve the correct amount of service. Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848; *see also* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 448.

consequences, such as harming third parties.¹³ In an effort to support waiver of both the advance reservation requirements and unreserved transmission use penalties, Granite attests that it, NU and ISO-NE have acted in good faith, and that any unreserved use of NU's local facilities will result solely because of the intermittent nature of the Facility and not for the purpose of avoiding local transmission charges. Granite further states that because it seeks waivers of two (as opposed to several) tariff provisions, its requested waivers are of limited scope. Granite additionally states that the waivers will remedy a concrete problem, mainly the "devastating impact" of penalties that would directly offset revenues from generation. Moreover, Granite states that it is unlikely that unreserved use of the subject local transmission facility will adversely affect system reliability or affect the ability of other generators to reserve transmission service.

13. Granite's requests for waivers are founded primarily on the intermittent nature of the Facility and therefore provide an insufficient basis for granting either of the requested waivers. While Granite claims that the penalties would be unfair, because intermittent resources are unable to schedule power with precision, the Commission expressly rejected this argument in Order No. 890:

We do not agree . . . that unreserved use penalties can result in charges that are unjust and unreasonable for intermittent resources, such as wind generators, that can not precisely schedule power in future periods. Unreserved use penalties are based on the transmission capacity reserved rather than the transmission service scheduled, so an intermittent resource's inability to precisely schedule power in future periods is irrelevant, as long as the resource has reserved sufficient transmission capacity to deliver the resource's full output.¹⁴

14. While intermittent resources might have limited ability to accurately forecast or control generation levels,¹⁵ they are able to reserve sufficient transmission capacity to

¹³ See, e.g., *Vermont Electric Power Company, Inc.*, 132 FERC ¶ 61,068 (2010); *National Grid USA*, 129 FERC ¶ 61,212 (2009); *Connecticut Light & Power Co.*, 126 FERC ¶ 61,186 (2009).

¹⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 837.

¹⁵ Other than a general observation regarding intermittency, Granite has offered no evidence that the 20 minutes advance reservation condition allows insufficient time for forecasting its transmission requirements. Without more information from Granite, we do not have a basis for concluding that forecasting is and will remain a problem for Granite.

deliver their full output in the event it is produced, thereby mitigating potential unreserved use penalties. As explained in Order No. 890-A, exempting these or any other type of resource from unreserved use penalties, based on their intermittent nature alone, would diminish incentives to reserve adequate transmission to deliver the resource's output, potentially creating reliability problems for the transmission provider and discriminating in favor of the resource in the allocation of transmission rights.¹⁶ Other than citing the Facility's intermittent nature and expressing general concerns about how being subject to penalties would be to its detriment, Granite identifies no reason for distinguishing it from other intermittent resources to which Order No. 890 and the reasoning therein would otherwise apply. Granite's argument that the penalties would offset its revenues from generation is unconvincing; Granite is similarly situated to other generators in that respect, and so is the potential for an offset that may result from incurring penalties. We expect NU Companies to reasonably accommodate schedules that Granite may submit after the 2 p.m. prior-day deadline.¹⁷

15. Granite also fails to provide a sufficient basis for distinguishing it from other intermittent resources to which the ISO-NE Tariff's advance reservation requirements apply. Granite argues that, given its inability to precisely predict transmission needs, and in order to avoid penalties, it might be forced to reserve and pay for unnecessary transmission capacity. However, the purpose of unreserved transmission use penalties is to ensure reliability, as discussed above, and an orderly allocation of point-to-point transmission service.¹⁸ To that end, it would be inconsistent to find that intermittent resources may be properly subject to unreserved transmission use penalties but that, due to their intermittent nature alone, the same resources should not be subject to advance transmission reservation requirements in the first place. While Granite states its belief that it is "unlikely" that unreserved use will adversely impact reliability,¹⁹ orderly allocation of transmission service, or third parties, its attestation is insufficient, particularly because Granite seeks waiver of both the advance reservation requirement and associated penalty provisions for an indefinite period of time. Indeed, due to the lack of any time constraint or other qualification, we also disagree with Granite's argument that its waiver requests are of limited scope.

¹⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 448.

¹⁷ ISO-NE Tariff, Open Access Transmission Tariff, § I.(2)(f) ("Schedules for Non-Firm Local Point-To-Point Service must be submitted to the PTO no later than 2:00 p.m. of the day prior to commencement of such service. Schedules submitted after these times will be accommodated, if practicable.").

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 849.

¹⁹ Granite Filing at 6.

16. Lastly, we note that Granite attempts to analogize its circumstances to those in *Pittsfield*,²⁰ but we find the comparison unpersuasive. In *Pittsfield*, the Commission granted a waiver of unreserved transmission use penalty provisions where the penalties were incurred pursuant to a reliability-must-run agreement that required the generator in question to run at the direction of ISO-NE for the purpose of preserving system reliability.²¹ The Commission held that a waiver was proper because its discussion in support of unreserved use penalties in Order No. 890 did not address circumstances where a generator is dispatched for the purpose of preserving system reliability.²² In short, the Commission granted limited waiver of unreserved transmission use penalties, because the generators' unreserved use occurred: (1) as a result of responding to ISO-NE's dispatch instructions; (2) pursuant to a reliability-must-run agreement; and (3) for the express purpose of preserving system reliability. None of those circumstances exist here. Unlike the facility at issue in *Pittsfield*, Granite generates electricity to satisfy non-reliability specific purposes, such as its obligations under certain long-term power purchase agreements and other bilateral transactions, not to satisfy obligations incurred under a reliability-must-run agreement. Accordingly, *Pittsfield* is inapposite to this proceeding.

The Commission orders:

Granite's requests for waivers are hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ *Pittsfield*, 127 FERC ¶ 61,035.

²¹ *Pittsfield*, 127 FERC ¶ 61,035 at P 10.

²² *Id.*