

111 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

ISO New England, Inc., *et al.*

Docket No. ER05-754-000

ORDER ACCEPTING TARIFF SHEETS FOR FILING

(Issued May 25, 2005)

1. On March 31, 2005, the Filing Parties, namely, (i) ISO New England Inc. (ISO New England); (ii) the New England Transmission Owners;¹ (iii) the Asset Owners in the United States portion of the Hydro-Quebec High Voltage Direct Current Transmission Facilities (Phase I/II HVDC-TF),² that interconnect the transmission systems operated by ISO New England and Hydro-Quebec TransEnergie (HQTE), and (iv) the Interconnection Rights Holders (IRH) Management Committee, submitted for approval, pursuant to section 205 of the Federal Power Act (FPA),³ a new contractual arrangement and tariff rate schedule applicable to the Phase I/II HVDC-TF. Among other things, the Filing Parties propose to transfer the Asset Owners' operational authority over the Phase I/II HVDC-TF to ISO-NE for an initial term of five years.

2. For the reasons discussed below, we will accept the Filing Parties' submittals for filing to become effective April 1, 2005 (unless otherwise noted). This order will benefit the public by expanding the operational reach of ISO-NE and thus extend both the regional and inter-regional market benefits attributable to an independently governed regional transmission organization (RTO).

¹ Bangor Hydro-Electric Company, Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Green Mountain Power Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company, and Vermont Electric Cooperative, Inc.

² See P 3, below.

³ 16 U.S.C. § 824d (2000).

Background

3. The Phase I portion of the Phase I/II HVDC-TF is owned by the New England Electric Transmission Corporation and Vermont Electric Transmission Company and commenced operations in 1986.⁴ The Phase II portion of the Phase I/II HVDC-TF is owned by New England Hydro-Transmission Electric Company, Inc. and New England Hydro-Transmission Corporation and commenced operations in 1990.⁵ The Canadian portion of the Phase I/II HVDC-TF is owned by HQTE, which is the transmission division of Hydro-Quebec. As noted above, the owners of the Phase I/II HVDC-TF are referred to herein as the Asset Owners.

4. The Filing Parties state that the construction and operation of the Phase I/II HVDC-TF were funded through a series of contracts among lenders, project sponsors, and the ultimate users of the line. The Filing Parties state that utilities throughout New England were offered the opportunity to obtain rights to use the transmission capacity of the Phase I/II HVDC-TF to transmit power to and from Quebec in exchange for their commitments to pay the costs of building, maintaining, and operating the project. The Filing Parties state that those utilities that agreed to these terms executed Support Agreements.⁶

⁴ The Phase I facilities include a 107-mile direct current (DC) transmission line rated at 450 kV and two 690 MW AC/DC converter terminals at both ends of the Phase I DC transmission line. The nominal transfer capability of the Phase I facilities is 690 MW. The Phase I facilities extend from Sherbrooke, Quebec to Monroe, New Hampshire. These facilities cross the international border at Norton, Vermont.

⁵ The construction of the Phase II facilities followed the extension, by HQTE, of the Phase I transmission line from Sherbrooke, Quebec approximately 700 miles north to a site near the LaGrande River at James Bay. Following this extension, the New England Hydro-Transmission Electric Company, Inc. and New England Hydro Transmission Corporation extended the United States portion of the DC intertie from Monroe, New Hampshire approximately 133 miles south to a site (Sandy Pond) near Ayer, Massachusetts. This addition increased the nominal transfer capacity between HQTE and New England from 690 MW to approximately 2000 MW (its current capacity).

⁶ Pursuant to the Third Amended and Restated Agreement with Respect to Use of Quebec Interconnection, the IRHs have agreed to the rules for the exercise of the IRHs' Use Rights, for making the Use Rights available to others, and for the collective management of those rights through the IRH Management Committee. *See New England Power Company*, 83 FERC ¶ 61,328 (1998) and *IRH Management Committee*, 99 FERC ¶ 61,248 (2002).

5. The Filing Parties state that prior to this year (*i.e.*, prior to the start-up date of the ISO New England RTO on February 1, 2005), transmission service over the Phase I/II HVDC was not provided as part of the regional tariff overseen by ISO New England. The Filing Parties explain that the IRHs that are Commission-jurisdictional transmission providers offered, instead, any of their available Use Rights to transmission customers through their individual local open access transmission tariffs (Local OATTs). The Filing Parties state that after February 1, 2005, each of these IRHs offered their use rights under Schedule 21 of the ISO New England OATT, but that under the Local OATTs incorporated into Schedule 21, there has been no single set of terms and conditions for transmission service among these providers. In addition, the Filing Parties state that rates for service have been developed individually by each of these transmission provider IRHs.

6. The Filing Parties' state that their submittals will provide greater certainty and clarity regarding the operation of, and transmission service over, the Phase I/II HVDC-TF. The Filing Parties also state that their submittals will further integrate these facilities into ISO New England's regional transmission grid, while recognizing the existing contractual rights and obligations of the Filing Parties.

7. The Filing Parties state that their submittals include a proposed Transmission Operating Agreement entered into between ISO New England and the Asset Owners. The Filing Parties state that pursuant to this agreement, the Asset Owners will transfer operational authority and other rights and responsibilities over their facilities to ISO-NE. The term of the Transmission Operating Agreement is five years, beginning February 1, 2005.

8. The Filing Parties' state that their submittals also include a proposed Transmission Service Administration Agreement entered into between: (i) ISO New England; (ii) the IRH Management Committee on behalf of the IRHs⁷; and (iii) a subset of the IRHs (referred to in the new arrangements as the "Schedule 20A Service Providers" or SSPs") that (a) are also Commission-jurisdictional transmission providers; (b) currently offer their shares of the Use Rights in their individual Local Service Schedules under Schedule 21 of Section II of the ISO New England Tariff; and (c) under the new arrangements, will be offering their Use Rights under Schedule 20A of Section II of the ISO New England Tariff.

9. In addition to these documents, the Filing Parties also submit a proposed Schedule 20A of the ISO New England OATT, modifications to Schedule 21 (as sponsored by the Schedule 20A Service Providers), and conforming tariff revisions. The Filing Parties

⁷ Namely, all of the entities that hold the rights to the transmission capacity to the Phase I/II HVDC-TF (the Use Rights) by virtue of being the financial supporters of the facilities.

also submit a draft Interconnection Operators Agreement (IOA) entered into by ISO New England and HQTE, and a draft Asset Owners Agreement (AOA) entered into by the Asset Owners and HQTE.⁸

10. With respect to rates and other service-related issues, the Filing Parties state that Schedule 20A and the corresponding amendments to Schedule 21 would preserve existing rates on a non-rolled-in basis, and the terms and conditions (including the existing advance reservation requirements) under which transmission service is currently offered over the Phase I/II HVDC-TF. The Filing Parties note, however, that no provision in their submittals would preclude roll-in in the future, assuming that a mutually acceptable roll-in proposal can be achieved that would not result in unacceptable cost shifts or disruption of existing contractual rights and obligations.

11. The Filing Parties request waiver of the Commission's notice requirement to permit their submittals (non-inclusive of the IOA and AOA) to become effective April 1, 2005.

Notice of Filing and Responsive Pleadings

12. Notice of the Filing Parties' submittals was published in the *Federal Register*⁹ with motions to intervene and protests due on or before April 21, 2005. Motions to intervene were timely filed by PPL EnergyPlus, LLC and PPL Maine, LLC (PPL), the New England Power Pool Participants Committee (NEPOOL), and H.Q. Energy Services (U.S.), Inc. (HQUS). Comments in support of the Filing Parties' submittals were submitted by HQUS. A protest was filed by PPL.

13. In its protest, PPL notes that Phase I/II HVDC-TF has been used to transmit energy between the New England region and Hydro-Quebec during both emergency and non-emergency conditions and has been recognized by the Commission as a critical element in the overall reliability of the New England power system.¹⁰ PPL argues that under these circumstances, the failure to integrate the costs of the Phase I/II HVDC-TF into ISO New England's regional transmission rates will inappropriately maintain an

⁸ The Filing Parties note that HQTE cannot execute its final agreement to the IOA or the AOA until a final French translation of the negotiated English text of these contracts has been prepared. As such, the Filing Parties do not request that these agreements be made effective at this time. The Filing Parties state that bi-lingual versions of the IOA and AOA will be submitted for Commission approval once the French translations are completed and reviewed by all parties to these agreements.

⁹ 70 Fed. Reg. 19,750 (2005).

¹⁰ PPL protest at 7, citing *PG&E National Energy Group v. ISO New England Inc.*, 99 FERC ¶ 61,187 at P 3, 29 (2002).

inter-regional seam. PPL also argues that rolling the facilities' costs into the regional transmission rate would be consistent with Order No. 2000,¹¹ namely, that it would be consistent with the Commission's policies in favor of seams reduction and the elimination of pancaked rates. In addition, PPL asserts that the Filing Parties' proposed continuation of a separate, special status for these facilities is discriminatory and otherwise unjustified. PPL argues that, in fact, the Phase I/II HVDC-TF qualify as pooled transmission facilities and that the costs of these facilities, accordingly, should be rolled into ISO New England's regional transmission rates.

14. On May 6, 2005, the Filing Parties submitted an answer in response to PPL's protest. In their answer, the Filing Parties assert, among other things, that their proposed arrangements for the Phase I/II HVDC-TF and specifically, their proposal not to provide for roll-in of these facilities at this time, does not violate Order No. 2000.

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the timely unopposed motions to intervene submitted by PPL, NEPOOL, and HQUS serve to make these entities parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹³ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Filing Parties' answer and therefore will reject it.

Analysis

16. We will accept the Filing Parties' submittals for filing, to become effective April 1, 2005, as requested. First, we agree that the new arrangements and proposed rate schedules included in the Filing Parties' submittals will further enhance the integration of the Phase I/II HVDC-TF into ISO New England's regional transmission network. It will do so, moreover, with broad support from all interested parties and in a way that carefully balances and preserves the existing rights of the entities that have an interest in

¹¹ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

¹² 18 C.F.R. § 385.214 (2003).

¹³ *Id.* at § 385.213(a)(2).

these facilities under Commission-approved arrangements. The Filing Parties' proposal will also ensure the continued provision of reliable transmission service over the Phase I/II HVDC-TF.

17. We will reject PPL's proposal to roll in the costs of the Phase I/II HVDC-TF into ISO New England's regional tariff. In our March 24, 2004 Order conditionally granting RTO status to ISO New England, we noted that because there are only a limited number of buyers and sellers in Quebec, roll-in of the Phase I/II HVDC-TF would not provide the benefits associated with the elimination of an inter-regional seam between organized markets.¹⁴ We further noted that unlike other facilities that would be a part of the ISO New England RTO, a customer's ability to use these facilities would be limited due to the terms of existing contracts. Accordingly, we denied the requests made in that proceeding for rolled-in rate treatment and will do so here.

18. While we will not require roll-in at this time, we note, as do the Filing Parties in the transmittal sheet accompanying their submittals, that the arrangements accepted herein will not preclude a roll-in from occurring in the future. In fact, the Commission has encouraged the parties to consider just such a proposal in the past,¹⁵ and we reaffirm that preference here. While significant issues remain to be debated and resolved, we note with approval that transferring operational authority of the Phase I/II HVDC-TF to ISO New England, as accomplished herein, should help accelerate these efforts.

19. Finally, with respect to the IOA and AOA, we will review the terms and conditions of these arrangements when the Filing Parties file the final, executed versions of these agreements with the Commission.¹⁶

¹⁴ *ISO New England Inc., et al.*, 106 FERC ¶ 61, 280 at P 97 (2004).

¹⁵ See *Bangor Hydro-Electric Company, et al.*, 96 FERC ¶ 61,063 (2001); *PG&E National Energy Group, et al. v. ISO New England Inc.*, 99 FERC ¶ 61,187 (2002); *PG&E National Energy Group, et al. v. ISO New England Inc.*, 100 FERC ¶ 61,227 (2002); *IRH Management Committee*, 99 FERC ¶ 61,248 (2002); *NSTAR Electric & Gas Corporation, et al. v. New England Power Pool*, 102 FERC ¶ 61,107 (2003).

¹⁶ As noted above (see *supra* note 8), the Filing Parties state, in the transmittal letter accompanying their filing, that ISO-NE and the Asset Owners will file for acceptance final, executed English/French versions of the IOA and AOA, when available.

The Commission orders:

The Filing Parties' submittals are hereby accepted for filing, effective April 1, 2005 as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.