

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Sithe Power Marketing, L.P. and
Exelon Generation Company, LLC

v.

Docket No. EL02-122-001

ISO New England, Inc.

ORDER DENYING REHEARING

(Issued September 11, 2003)

1. This order addresses the request for rehearing filed jointly by PG&E National Energy Group, PG&E Generating, USGen New England, Inc., and PG&E Energy Trading-Power, L.P. (collectively, PG&E) of the Commission's order issued in this proceeding on November 1, 2002 (November 1 Order).¹ In the November 1 Order, the Commission granted the complaint jointly filed by Sithe Power Marketing, L.P. (Sithe) and Exelon Generation Company, LLC (Exelon) against ISO New England, Inc. (ISO-NE). In that order, the Commission found that Sithe was entitled to roll over an existing service agreement (Service Agreement) for long-term firm transmission service. As discussed below, we will deny PG&E's request for rehearing.

Background

2. The November 1 Order addressed Sithe and Exelon's complaint, in which they sought to roll over their Service Agreement with ISO-NE for an additional one-year term, beginning January 1, 2002.² In the November 1 Order, the Commission determined that ISO-NE was required to honor Sithe's rollover rights under Section 3.2 of the Open Access Transmission Tariff (ISO-NE OATT), which tracks Section 2.2 of the pro forma OATT.³ The Commission further explained that any limitations to the rollover rights

¹Sithe Power Marketing, L.P. and Exelon Generation Company, LLC v. ISO New England, Inc., 101 FERC ¶ 61,149 (2002).

²The Service Agreement originally was for a one-year term, from January 1, 2001 through December 31, 2001.

³As stated in the November 1 Order, Section 3.2 provides that all firm

must be clearly stated in the customer's service agreement and that because the service agreement at issue contains no such limitations on Sithe's rollover rights, Section 3.2 of the ISO-NE OATT controls.⁴

PG&E's Rehearing Request

3. On rehearing, PG&E seeks clarification that the Commission intended to allow extension of Sithe's Service Agreement beyond the effective date of the New England Standard Market Design (NE-SMD). ISO-NE implemented NE-SMD on March 1, 2003.⁵ PG&E states that the Commission can reconcile both the need to implement the efficiency benefits of NE-SMD and the need to respect existing contract rights. PG&E further states that, if and when the Commission approves the elimination of the rollover rights to physical scheduling priorities for such transactions, rollover rights would terminate prospectively, and such transactions would only continue until their contract expiration date.

4. PG&E further argues that the Commission must treat existing out-service and in-service reservations comparably, in determining whether to extend those contracts beyond the NE-SMD effective date. PG&E contends that, to the extent the November 1 Order extends out-service agreements for the period of existing contracts, the Commission should clarify that it has, in effect, reconsidered its previous ruling that in-service agreements terminate on the effective date of NE-SMD,⁶ and that, accordingly, in-service agreements must be extended, as well.

5. Finally, PG&E maintains that, if the Commission determines that the issue of termination of existing contracts on the effective date of the NE-SMD is beyond the scope of the November 1 Order, then the Commission should clarify that parties with in-service contracts, such as PG&E, may raise the issue of comparable treatment for existing

transmission customers, upon the expiration of their contracts or at the time their contracts become subject to renewal or rollover, have a right to continue to take transmission service from their existing transmission provider. The underlying contract must have been for a term of one-year or more (i.e., be a long-term contract) and the existing transmission customer must agree to match the rate offered by another potential transmission customer (up to the transmission provider's maximum filed rate at that time) and to accept a contract term at least as long as that offered by the potential customer (sometimes referred to as the right of first refusal). November 1 Order, 101 FERC 61,149 at P 17 (citations and footnotes omitted).

⁴November 1 Order, 101 FERC 61,149 at P 21.

⁵In its rehearing request, PG&E noted a projected effective date of April 1, 2003.

⁶PG&E cites New England Power Pool, 96 FERC ¶ 61,087 at 61,366 (2001).

in-service reservations in the appropriate forum in which further treatment of out-service agreements under the NE-SMD is addressed.

6. On December 12, 2002, ISO-NE submitted an answer to PG&E's rehearing request.

Procedural Matters

7. Rule 713(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. 385.713(d), prohibits answers to requests for rehearing. Accordingly, we will reject ISO-NE's answer to PG&E's request for rehearing.

Discussion

8. The Commission will deny PG&E's rehearing request. The issues raised by PG&E on rehearing are beyond the scope of the November 1 Order. In that order, the Commission made the discrete finding, based upon the specific Service Agreement at issue, that ISO-NE must honor Sithe's rollover rights under that agreement. Because the November 1 Order did not address such issues as the impact of NE-SMD upon existing contracts with rollover rights or the treatment of in-service and out-service agreements under NE-SMD, PG&E's arguments on rehearing are beyond the scope of this proceeding. However, we note that PG&E is not precluded from raising its arguments in a more appropriate forum.

The Commission orders:

PG&E's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.