

136 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bangor Hydro Electric Company

Docket No. TS11-5-000

ORDER DENYING WAIVER OF STANDARDS OF CONDUCT

(Issued September 15, 2011)

1. In this order, we deny, without prejudice, Bangor Hydro Electric Company's (Bangor Hydro) request for waiver of the Standards of Conduct to permit its transmission function employees to engage in actions necessary to effectuate spot market resales of energy in the ISO New England, Inc. (ISO-NE) real-time market, as discussed below.

Background

2. In its June 13, 2011 filing, Bangor Hydro requests a limited waiver of the Standards of Conduct to allow its transmission function employees to engage in "ministerial actions" to arrange for resales of energy in the ISO-NE real-time market. Bangor Hydro explains that it is required by the Maine Public Utilities Commission (MPUC) to purchase energy from certain generating facilities in the state. Bangor Hydro states that it owns both transmission and distribution facilities, and that open access to its transmission lines is provided pursuant to the ISO-NE Transmission, Markets and Services Tariff.¹ Bangor Hydro further states that it and its affiliates are prohibited from engaging in retail sales of energy to customers located in Bangor Hydro's historic retail service territory; thus, Bangor Hydro serves as a mere "pass through" of any energy interconnected with its transmission system that it is required by the MPUC to purchase. In the past, Bangor Hydro states that it entered into long-term "back-to-back" agreements to resell all such power to unaffiliated entities. Bangor Hydro explains that these agreements are arranged through a lengthy auction process overseen by the MPUC.²

¹ Bangor Hydro, an indirect, wholly-owned subsidiary of Emera Inc., owns 827 miles of transmission lines and 4,850 miles of distribution lines. Bangor Hydro Filing at 2.

² *Id.* at 3-4.

3. Bangor Hydro states that the MPUC has directed it to take 20 percent of the output from the 60 megawatt (MW) Rollins Wind Project (Rollins Project), a new generating facility interconnected with Bangor Hydro's transmission system, that is currently being developed by Evergreen Wind Power III, LLC (Evergreen Wind). Bangor Hydro states that the MPUC has not yet issued precise guidance as to how Bangor Hydro is to dispose of this energy. Bangor Hydro states that because the Rollins Project is expected to come online shortly, there is insufficient time for the MPUC to offer the power through the same auction process used for prior power resales.³

4. In connection with this, Bangor Hydro requests the Commission to waive the Standards of Conduct to permit its employees to perform necessary "ministerial actions" to resell power from the Rollins Project into the ISO-NE real-time market or for similar circumstances in the future.⁴ According to Bangor Hydro, the waiver would be limited to its operations only and would not extend to its affiliates.

5. Bangor Hydro describes the "ministerial actions" necessary to effectuate the resales as follows. First, Evergreen Wind will, on an hourly basis, enter an Internal Bilateral Transaction (IBT) into the ISO-NE real-time market system for a sale of energy from the Rollins Project to Bangor Hydro. Then, Bangor Hydro will accept the IBT and the amounts (in MW) associated with it as entered by Evergreen Wind in the ISO-NE market system. As a result, Bangor Hydro states, it will take ownership of the energy from Evergreen Wind and be entitled to the revenues from the ISO-NE markets associated with the Rollins Project's energy output. Bangor Hydro adds that the above described ministerial actions will require no decision-making, no discretion, and will not give Bangor Hydro any ability to capitalize on any non-public transmission information. Bangor Hydro further explains that neither Evergreen Wind nor Bangor Hydro will enter into the ISO-NE real-time market system any price associated with the energy from the Rollins Project. According to Bangor Hydro, it will be a price taker with regard to the conveyance of this energy into the ISO-NE real-time market.

6. Bangor Hydro argues that, as a transmission-owning member of ISO-NE, the functional control of its higher voltage transmission system has been turned over to ISO-NE. In this regard, Bangor Hydro asserts that it has limited functional control over transmission and has only limited ability to do anything that could result in restricted access to its system.⁵ Also, Bangor Hydro states that it lacks marketing function and its transmission function employees would not engage in any marketing functions nor would

³ *Id.* at 4.

⁴ *Id.* at 6.

⁵ *Id.* at 7.

they be permitted to convey non-public transmission information to any marketing function personnel at any affiliate of Bangor Hydro. Thus, Bangor Hydro contends that granting its waiver request would not provide Bangor Hydro or any affiliate a competitive advantage in contravention of the purposes of the Standards of Conduct.⁶

7. Bangor Hydro further argues that its waiver request is similar to that granted by the Commission in 2008 to Commonwealth Edison (ComEd) to allow ComEd's transmission employees to engage in limited energy affiliate activities to effectuate resales of excess power ComEd was required to purchase from Qualified Facilities.⁷ Bangor Hydro emphasizes that ComEd described its activities related to the sale of energy as "purely passive" and "ministerial" and the Commission found that such "activity does not raise the type of affiliate abuse concerns that the [S]tandards of [C]onduct are designed to remedy."⁸ In Bangor Hydro's opinion, the Commission should apply the same reasoning to its request because similarly to ComEd, Bangor Hydro's participation in the ISO-NE market will be limited to performance of ministerial functions necessary to effectuate a resale of energy that it is required by MPUC to purchase but does not need.

Notice of Filing and Motion to Intervene

8. Notice of Bangor Hydro's filing was published in the Federal Register, 76 Fed. Reg. 36,533 (2011), with interventions, comments, and protests due on or before June 15, 2011. MPUC filed a notice of intervention.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention serves to make the MPUC a party to the proceeding.

Commission Determination

10. The Commission's Standards of Conduct govern the relationship between transmission providers and certain of their affiliates by ensuring that transmission

⁶ *Id.* at 6.

⁷ *Id.* at 8 (citing *Exelon Corp.*, 123 FERC ¶ 61,167 (2008) (*Exelon*)).

⁸ *Id.* at 9 (citing to *Exelon*, 123 FERC ¶ 61,167 at P 29).

providers cannot extend their market power over transmission by giving marketing affiliates unduly preferential treatment.⁹ Specifically, for electric public utility transmission providers, the Standards of Conduct require separation of transmission functions from energy and marketing affiliates. Under section 358.1 of the Commission's regulations, a public utility transmission owner is eligible for waiver of the Commission's Standards of Conduct requirements if it satisfies certain requirements.¹⁰

11. In a prior order,¹¹ the Commission explained that when a public utility transmission owner/operator participates in a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO), the size of the utility is not relevant to whether the waiver request will be granted or denied. Instead, its eligibility for a waiver depends on whether (as provided in section 358.1(c) of the Commission's regulations¹²) it: (1) has turned over operation or control of its transmission system to the ISO/RTO; (2) has no access to information concerning the operation of the transmission facilities it has turned over to the ISO/RTO; and (3) obtains information about such matters only by viewing the ISO/RTO's pertinent Open Access Same-Time Information System (OASIS) postings.¹³

12. Based on Bangor Hydro's representation in this filing, we find that Bangor Hydro has not met the requirements to be eligible for a waiver of the Standards of Conduct. Bangor Hydro states that open access to its transmission lines is provided pursuant to the ISO-NE tariff¹⁴ but it acknowledges that it has limited functional control over transmission.¹⁵ Bangor Hydro also fails to specify whether it has access to information concerning the operation of the transmission facilities that it turned over to ISO-NE.

⁹ 18 C.F.R. Part 358 (2011); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

¹⁰ 18 C.F.R. § 358.1(c) (2011).

¹¹ *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 2 (2011).

¹² 18 C.F.R. § 358.1(c).

¹³ *Black Hills Power, Inc.*, 135 FERC ¶ 61,058 at P 2.

¹⁴ Bangor Hydro Filing at 2.

¹⁵ *Id.* at 8.

From the description of transactions for which Bangor Hydro seeks a waiver of the Standards of Conduct, it appears that Bangor Hydro will be engaged in resale of energy in the ISO-NE real-time market.¹⁶

13. In its filing, Bangor Hydro argues that its situation is similar to the passive resales of power purchased from Qualified Facilities (QFs) made in *Exelon*¹⁷ pursuant to a Public Utility Regulatory Policies Act-mandated purchase obligation.¹⁸ In *Exelon*, the applicant's ministerial acts involved submitting an e-schedule to PJM with its load responsibility for the next day and reporting its day-after estimates to PJM. The applicant had no discretion to alter the estimates based on spot prices; it was a passive price taker, and earned no margin or profit from sales of the QFs output.¹⁹ Unlike the QFs in the *Exelon* proceeding that had no access to the PJM market, Evergreen Wind would be entering the amounts into the ISO-NE market itself. It is not clear from Bangor Hydro's filing whether Evergreen Wind would be required to enter all of the output from Rollins Project that Bangor Hydro is required to purchase or whether it would have discretion to change that amount depending on prices, and whether Bangor Hydro has the ability to influence that decision. Bangor Hydro's filing also does not address whether it would earn a profit or margin from resales. In addition, Bangor Hydro states that it intends the waiver to apply to "similar circumstances in the future" but does not provide the specifics of such circumstances. We, therefore, find that Bangor Hydro's filing does not provide sufficient details to determine whether its resales of power from Rollins Project would constitute passive resales similar to the ones addressed in *Exelon*.

14. For the reasons discussed above, we deny Bangor Hydro's waiver request at this time, without prejudice, but would revisit this determination if Bangor Hydro brings forward information demonstrating that it meets the criteria for waiver set forth in section 358.1(c).²⁰ Bangor Hydro shall have 60 days to either (1) submit information demonstrating that it has no access to information concerning the operation of the

¹⁶ *Id.* at 5.

¹⁷ *Exelon*, 123 FERC ¶ 61,167.

¹⁸ 18 C.F.R. § 292.309 (2011) (providing that an electric utility is no longer required to enter into a contract with a QF if the Commission finds that the QF has access to the ISO/RTO-administered real-time and day-ahead markets, and wholesale markets for long-term sales of electric power).

¹⁹ *Exelon*, 123 FERC ¶ 61,167 at P 12, 21-22.

²⁰ 18 C.F.R. § 358.1(c) (2011).

transmission facilities to the ISO/RTO and that it obtains information about such matters only by viewing the ISO/RTO's pertinent OASIS, or (2) begin compliance with the Commission's Standards of Conduct requirements.

The Commission orders:

Bangor Hydro's request for a limited waiver of the Standards of Conduct is hereby denied without prejudice, as discussed in the body of this order. Bangor Hydro shall have 60 days to either (1) submit information demonstrating that it has no access to information concerning the operation of the transmission facilities to the ISO/RTO and that it obtains information about such matters only by viewing the ISO/RTO's pertinent OASIS, or (2) begin compliance with the Commission's Standards of Conduct requirements.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.