115 FERC ¶61,339
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

ISO New England Inc. and New England Power Company — Docket No. ER06-269-000

ORDER ACCEPTING AND SUSPENDING AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 16, 2006)

1. On November 30, 2005, ISO New England Inc. (ISO-NE) and New England Power Company (NEP) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),[1] an unexecuted service agreement for a large generator interconnection under Schedule 22 of ISO-NE's Open Access Transmission Tariff (OATT). The parties to the agreement are ISO-NE, NEP and New England Wind, L.L.C. (NE Wind). In this order, we accept the unexecuted interconnection agreement for filing, suspend it for a nominal period to become effective October 31, 2005, subject to refund, and establish hearing and settlement judge procedures.

Background

2. The unexecuted interconnection agreement submitted by ISO-NE and NEP sets forth the rates, terms and conditions for the interconnection of the Hoosac Wind Farm, a wind generation facility being developed by NE Wind and consisting of 20 wind turbines with an aggregate capacity of about 300 MW, located in the towns of Florida and Monroe, Massachusetts. Based on its location, the project will interconnect with the transmission system operated by ISO-NE and owned by NEP at a point known as the Y-25 Line.

[1] 16 U.S.C. § 824d (2000)

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3. ISO-NE and NEP state that the unexecuted interconnection agreement incorporates the requirements of Order No. 2003,[2] as contained in schedule 22 of ISO-NE's OATT. They further state that the agreement deviates from the *pro forma* Large Generator Interconnection Agreement (LGIA) in schedule 22 in one respect. Specifically, article 7 of the agreement (addressing metering issues) was modified to reflect the fact that NE Wind, instead of NEP, will own the metering equipment at the point of interconnection.

4. ISO-NE and NEP request waiver of the Commission's 60-day notice requirement to permit the interconnection agreement with NE Wind to become effective October 31, 2005. They argue that granting the waiver is consistent with Commission policy, which permits the filing of service agreements under an umbrella tariff (such as the ISO-NE OATT) up to 30 days following the commencement of service.[3]

Notice of Filing and Responsive Pleadings

5. Notice of ISO-NE's and NEP's filing was published in the *Federal Register*[4] with interventions and protests due on or before December 21, 2005. NE Wind filed a timely motion to intervene and protest. On January 5, 2006, NEP and NE Wind filed a joint motion to hold this proceeding in abeyance.

6. In its protest, NE Wind states that it is not able to sign the interconnection agreement as filed because of two unresolved issues concerning (1) how to apportion liability between NE Wind and NEP if an event affecting the interconnection facilities

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[2] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, 69 Fed. Reg. 15,932 (Mar. 24, 2004), FERC Stats & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, 70 Fed. Reg. 265 (January 4, 2005), FERC Stats & Regs., Regulations Preambles ¶ 31,171 (2004) (Order No. 2003-B), *order on reh'g*, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005) (Order No. 2003-C).

[3] ISO-NE and NEP Transmittal Letter at 2, *citing Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984 (1993).

[4] 70 Fed. Reg. 73,999 (2005).

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leads to service disruption; and (2) how to design a portion of the interconnection facilities (specifically, whether to route such facilities underground), which gives rise to issues of cost and ownership.

7. With regard to the first issue, NE Wind asserts that the liability provisions associated with tree trimming and the right-of-way (ROW) are unjust and unreasonable because of the broad liability they would impose on NE Wind. According to NE Wind, three significant categories of customers could make claims against NEP for which NE Wind would be liable under section IV (H) of appendix C to the agreement: (1) NE Wind's power sales customers; (2) NEP's transmission customers; and (3) Massachusetts Electric Company's (MECO) distribution customers. NE Wind expresses a willingness to accept liability for service disruptions that its power sales customers experience to the extent such disruptions are directly attributable to the decision made jointly by NEP and NE Wind to maintain a 10 foot corridor along the ROW. However, NE Wind argues that it should not be liable for other claims because the installation of its interconnection facilities will not increase the risk of harm to others. NE Wind asserts that an event on its interconnection facilities, which are radial and sole use, cannot reasonably be deemed the cause of service disruptions on the integrated transmission system. Accordingly, NE Wind contends that section IV(H) of appendix C to the interconnection agreement should include an explicit statement limiting the scope of its liability to its own customers who are unable to take delivery due to an event on the interconnection facilities, when the disruption is directly attributable to the 10 foot ROW.

8. NE Wind claims that the unresolved issues related to the design of certain interconnection facilities are associated with the decision on whether to bury the facilities. NE Wind states that integral to the consideration of whether to bury the facilities is the cost of doing so, and the cost of the project is driven in part by whether NE Wind or NEP owns the facilities. NE Wind asserts that if it owns the facilities, construction costs are projected to be significantly less. NE Wind requests that the Commission provide clear guidance that under Order No. 2003 and related orders, NE Wind is eligible to own the interconnection facilities in question. NE Wind states that it does not insist on owning the facilities, but insists that it has the right to do so. NE Wind also states that it disagrees with NEP's contention that the franchise rights of NEP's affiliates will be implicated by NE Wind's ownership of the facilities.

9. In their January 5, 2006 motion to hold the proceeding in abeyance, NEP and NE Wind requested that the Commission hold the matter in abeyance for 60 days, to March 6, 2006, to allow them to pursue a resolution of the outstanding issues. The parties also requested that, if they have not submitted by that date a revised interconnection agreement signed by all three parties, the Commission refer this matter to a settlement judge to facilitate final resolution of the disputed issues. NEP and NE Wind

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subsequently filed two additional motions to hold this proceeding in abeyance, the first on March 3, 2006 and the second on April 4, 2006.[5] In the April 4 motion, they asked the Commission to continue to hold the proceeding in abeyance until June 5, 2006.

10. On June 6, 2006, NEP and NE Wind reported to the Commission that they were not able to reach a settlement, and requested that the Commission issue an order no later than June 16, 2006 referring the matter to a settlement judge.

Discussion

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules and Practice and Procedure,[6] the timely, unopposed motion to intervene submitted by NE Wind serves to make it a party to this proceeding.

Hearing and Settlement Judge Procedures

12. The unexecuted interconnection agreement submitted by ISO-NE and NEP raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures we order below, as requested by the parties.

13. Our preliminary analysis indicates that ISO-NE and NEP's filing 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 the unexecuted interconnection agreement for filing, suspend it for a nominal period, make it effective October 31, 2005, as requested,[7] subject to refund, and set it for hearing and settlement judge procedures.

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[5] NEP and NE Wind also filed status reports with the Commission on March 24, April 3, and April 24, 2006.

[6] 18 C.F.R. § 385.214 (2005).

[7] *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *reh'g denied*, 65 FERC ¶ 61,081 (1993) (stating that the Commission will grant waiver of notice for service agreements under umbrella tariffs filed up to 30 days following the commencement of service).

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14. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[8] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[9] The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The unexecuted interconnection agreement submitted by ISO-NE and NEP is hereby accepted for filing and suspended for a nominal period, to become effective October 31, 2005, 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 the unexecuted interconnection agreement among ISO-NE, NEP and NE Wind. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

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[8] 18 C.F.R. § 385.603 (2005).

[9] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their backgrounds and experience (www.ferc.gov – click on Office of Administrative Law Judges).

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and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.