

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.

Docket No. ER06-620-000

ORDER ACCEPTING NON-CONFORMING
MARKET PARTICIPANT SERVICE AGREEMENTS

(Issued April 11, 2006)

1. On February 10, 2006, ISO New England Inc. (ISO New England) submitted, pursuant to Section 205 of the Federal Power Act¹ and the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (the Tariff), non-conforming Market Participant Service Agreements (Service Agreements). The Service Agreements were executed by EnergyConnect, Inc. (EnergyConnect); WebGen Systems, Inc. (WebGen); and Lotus Energy Capital, LLC (Lotus Energy). As discussed below, the Commission accepts the non-conforming Service Agreements effective December 9, 2005, for EnergyConnect, December 14, 2005, for Lotus Energy, and January 5, 2006, for WebGen, as requested.

I. Description of Filing

2. ISO New England asks the Commission to accept three executed, non-conforming Service Agreements. The Service Agreements create the contractual obligation for ISO New England to provide service under its Tariff to market participants, as well as the contractual obligation for market participants to comply with the Tariff. The Service Agreements at issue in this case are non-conforming by virtue of the elimination of Section 3.6 of the pro forma Service Agreement. ISO New England explains that Section 3.6 provides that the market participant agrees to be bound by the “Participants Agreement” and to pay the required fees and charges. Specifically, the section provides as follows:

Participants Agreement. By entering into this Agreement, the Market Participant agrees to be bound by the Participants Agreement, through [New England Power Pool (NEPOOL)] or individually, as the case may be, and to pay the fees and

¹ 16 U.S.C. § 824d (2000).

charges specified therein. The Participants Agreement provides processes for stakeholder input, individually and collectively, into revisions of certain provisions of ISO New England Operating Documents and the planning process for the New England Transmission System.

3. ISO New England states that in 2005 it allowed EnergyConnect and WebGen to participate in its Demand Response program, and Lotus Energy to participate in its Firm Transmission Rights (FTR) auctions, although they did not participate in the NEPOOL stakeholder process. Despite the fact that EnergyConnect, WebGen, and Lotus Energy did not generally participate in NEPOOL, ISO New England determined that its Tariff required these three entities to execute Service Agreements, including Section 3.6, regarding NEPOOL participation. Now, after filing its most recent Electric Quarterly Report, ISO New England believes that it was not necessary for all participants in the Demand Response programs or the FTR Auctions to be parties to Section 3.6 of the Service Agreement.

4. EnergyConnect and WebGen seek to participate solely in the Demand Response programs, and not in other New England ISO markets, programs, or services. ISO New England states its belief that the deletion of Section 3.6 (the Participants Agreement) from the Service Agreement would be just and reasonable in the limited circumstances presented in this case. In support of this position, ISO New England explains that Demand Response-only participants do not participate in the energy and ancillary services markets, so such participants have less need or inclination to participate in stakeholder discussions at the Participants Committee regarding the development of market designs and rules. As such, ISO New England states, Demand Response-only participants more closely resemble transmission-only customers, who are not required to be bound by the Participants Agreement, than entities participating in the core energy and ancillary services market. ISO New England makes the additional point that the obligation to pay fees and charges under the Participants Agreement could constitute a financial barrier that would discourage some entities from participating in Demand Response programs.

5. ISO New England states that Lotus Energy desires to participate only in ISO New England's FTR Auctions and secondary FTR markets. Like the Demand Response-only participants above, FTR-only participants do not participate in the core energy and ancillary services markets; therefore, ISO New England argues, such participants have little need or desire to participate in the stakeholder process. Also, as in the Demand Response-only context, ISO New England asserts that the obligation to pay Participants Agreement expenses could constitute a financial barrier that might discourage some entities from the purchase and sale of FTRs. ISO New England argues that exempting FTR-only entities from the Participants Agreement could encourage greater participation in the FTR markets, thereby improving liquidity.

6. New England ISO requests waiver of the Commission's prior notice requirements,² so that the effective dates of the Service Agreements are: December 9, 2005, for EnergyConnect; December 14, 2005, for Lotus Energy; and January 5, 2006, for WebGen. ISO New England states that failure to allow the requested retroactive effective dates could financially harm the three customers.

II. Procedural Matters

7. Notice of New England ISO's February 10, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 10,029 (2006), with interventions and protests due on or before February 28, 2006. New England Power Pool (NEPOOL) filed an untimely Motion to Intervene on March 3, 2006. Given the early stage of this proceeding and the absence of any undue prejudice or delay to any party, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³ the Commission will grant the out-of-time unopposed motion to intervene. No protest was filed.

III. Discussion

8. The Commission finds that the Service Agreements reflect a material deviation from the pro forma service agreement currently on file with the Commission. However, given the fact that the parties discussed in this order will require few if any of the available services offered by NEPOOL, the removal of Section 3.6 of the pro forma Service Agreement from the Service Agreements at issue here is just and reasonable, and not unduly discriminatory or preferential. The Commission agrees with ISO New England that exempting the three entities from Section 3.6 could encourage greater participation in the Demand Response and FTR markets.

9. In consideration of the approach taken in this filing, ISO New England states it will be working with NEPOOL through the stakeholder process to determine the extent to which a second, alternative, pro forma version of the Service Agreement should be developed for inclusion in the Tariff for use by Demand Response-only and FTR-only entities. If determined to be needed or useful, ISO New England states that it will be filed for Commission approval.

² See 16 U.S.C. § 824d(d) (2000) (requiring at least 60 days' notice for changes to, *inter alia*, contracts); see also 18 C.F.R. § 35.3(a) (2005) (requiring not less than 60 days' nor more than 120 days' notice prior to date on which a change in a contract is effective).

³ 18 C.F.R. § 385.214 (2005).

10. The Commission will grant ISO New England's request for waiver of the 60-day notice requirement. ISO New England has shown good cause for waiver,⁴ as supported by the facts that the filing in this case is uncontested and does not change rates. ISO New England also acted quickly after recognizing the need to file the Service Agreements, a conclusion it reached when it finished the process of compiling its Electric Quarterly Report for the fourth quarter of 2005.⁵ Accordingly, the effective dates of the Service Agreements will be: December 9, 2005, for EnergyConnect; December 14, 2005, for Lotus Energy; and January 5, 2006, for WebGen.

The Commission orders:

The Commission accepts the three non-conforming Service Agreements for filing, to be effective as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (waiving prior notice requirement when uncontested filing does not change rate).

⁵ See *Id.* at 61,337 (stressing the need to make filings as soon as possible).