

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc.

Docket No. ER06-1311-000

ORDER ACCEPTING NON-CONFORMING
MARKET PARTICIPANT SERVICE AGREEMENTS SUBJECT TO CONDITION
AND GRANTING WAIVER

(Issued September 29, 2006)

1. On July 31, 2006, ISO New England Inc. (ISO New England) submitted, pursuant to section 205 of the Federal Power Act (FPA)¹ and the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (Tariff), three non-conforming Market Participant Service Agreements (Service Agreements). ISO New England executed the Service Agreements with: DemandDirect, LLC (DemandDirect); Freedom Partners, LLC (Freedom Partners); and Energy Spectrum, Inc. (Energy Spectrum). For the reasons discussed below, we will accept the three, non-conforming Service Agreements, subject to condition. We will also grant waiver of the 60-day prior notice requirement to allow Applicants' participation as Demand Response Providers in ISO New England's Load Response Programs² as of the effective dates requested by ISO New England.

Description of Filing

2. ISO New England states that the three Service Agreements differ from the *pro forma* Service Agreement in that they eliminate section 3.6, "Participants Agreement."

¹ 16 U.S.C. § 824d (2000).

² ISO New England's Load Response Programs compensate large electricity users for reducing consumption when market prices are high or system reliability is at risk. Demand Response Providers are business entities that arrange and coordinate participation by individual customers in the Load Response Programs.

This section provides that the Market Participant agrees to be bound by the Participants Agreement and to pay the required fees and charges. Specifically, this section provides as follows:

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 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.

The Service Agreements with DemandDirect and Freedom Partners delete section 3.6 in its entirety. The Service Agreement with Energy Spectrum only deletes the first sentence of section 3.6.

3. ISO New England states that deletion of section 3.6 from the three Service Agreements would be just and reasonable in the limited circumstances presented in this case. It states that Applicants' situation is materially identical to the situation of other Demand Response Providers whose similarly non-conforming Service Agreements were accepted by the Commission on April 11, 2006.³ ISO New England explains that Applicants wish to participate solely in Load Response Programs, and not in other markets, programs, or services operated or provided by ISO New England. It points out that Demand Response Providers offer one discrete yet valuable service but typically receive modest amounts from the Load Response Programs. It makes the additional point that the obligation to pay fees and charges under the Participants Agreement, as required by section 3.6, could constitute a financial barrier that would discourage some entities from participating in Load Response Programs.⁴

4. ISO New England cites the July 23, 2003 Report and Recommendations of the New England Demand Response Initiative that recommended lowering from \$5,000 to \$500 the annual fee for Demand Response Providers to participate in the Load Response Program. ISO New England also refers to its statement, in its February 10, 2006 filing in Docket No. ER06-620-000,⁵ that it would be working with NEPOOL to develop a second, alternative *pro forma* Service Agreement, to be included in its Tariff, for use only

³ *ISO New England Inc.*, 115 FERC ¶ 61,035 (2006), Docket No. ER06-620-000.

⁴ NEPOOL rules currently require Demand Response Providers to become NEPOOL Participants and to pay a minimum annual fee of \$5,000.

⁵ *See note 3, supra.*

by Demand Response Providers and certain other entities. ISO New England states that it has been working internally to develop the second, alternative *pro forma* Service Agreement, which would delete section 3.6 and make appropriate conforming Tariff modifications, and that it will file this agreement for Commission approval.

5. Pursuant to section 35.11 of the Commission's regulations,⁶ ISO New England asks the Commission to waive the 60-day prior notice requirement⁷ to permit the effective dates proposed by Applicants: February 1, 2006, for DemandDirect; March 1, 2006 for Freedom Partners; and August 1, 2006 for Energy Spectrum. ISO New England states that failure to allow the requested retroactive effective dates could financially harm the three customers.

Notice of Filing and Response

6. Notice of ISO New England's July 31, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 45,814 (2006), with interventions and protests due on or before August 21, 2006. On August 16, 2006, the New England Power Pool Participants Committee (NEPOOL Committee) filed a motion to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), NEPOOL Committee's timely, unopposed motion to intervene serves to make it a party to this proceeding. No comments or protests were filed.

Discussion

7. We will accept the Service Agreements with DemandDirect and Freedom Partners. Because these Applicants will require few if any of the available services offered by NEPOOL, we find that removal of section 3.6 from the three Service Agreements is just and reasonable, and not unduly discriminatory or preferential. Additionally, we agree with ISO New England that exempting the Applicants from section 3.6 could encourage greater participation in Load Response Programs. Similarly, we will accept Energy Spectrum's Service Agreement. However, ISO New England has not sufficiently explained why all of section 3.6 of the service agreement has not been deleted. We will require ISO New England to either (1) file a revised service agreement with Energy Spectrum deleting section 3.6 entirely or (2) explain why it is appropriate to include the second sentence of section 3.6 in Energy Spectrum's Service Agreement. Further, we encourage ISO New England to hasten its efforts to finish the alternative *pro*

⁶ 18 C.F.R. § 35.11 (2006).

⁷ See section 205(d) of the FPA, 16 U.S.C. § 824d(d) (2000); section 35.3(a) of the Commission's regulations, 18 C.F.R. § 35.3(a) (2006).

forma Service Agreement applicable to Demand Response Providers and to file this agreement for Commission acceptance.

8. We will grant ISO New England's request for waiver of the 60-day prior notice requirement. ISO New England has shown good cause for waiver, as supported by the facts that the filing is uncontested and does not change rates.⁸ Accordingly, the effective dates of the Service Agreements will be February 1, 2006, for DemandDirect and March 1, 2006, for Freedom Partners.

9. Concerning the Energy Spectrum Service Agreement, for which ISO New England requests a prospective effective date, we note that the agreement was filed as a service agreement pursuant to the ISO New England Tariff. Therefore, under our policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*,⁹ we find that good cause exists to support waiving the prior notice requirement and granting the requested effective date of August 1, 2006.

The Commission orders:

(A) DemandDirect and Freedom Partners Service Agreements are hereby accepted for filing, to be effective on the dates requested, as discussed in the body of this order. Energy Spectrum's Service Agreement is conditionally accepted for filing, to be effective on the date requested, as discussed in the body of this order.

⁸ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 at 61,355-56 (1992) (waiving prior notice requirement when uncontested filings do not change rates).

⁹ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (for service agreements executed under umbrella tariffs and filed before service commences, waiver of notice will be granted if the service agreements are filed within 30 days after service commences, but rates collected prior to Commission acceptance are subject to refund if not found to be just and reasonable).

(B) ISO New England is directed to submit a compliance filing within 20 days of the date of this order to (1) file a revised service agreement with Energy Spectrum deleting section 3.6 entirely or (2) explain why it is appropriate to include the second sentence of section 3.6 in Energy Spectrum's Service Agreement.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.