

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New England Electric Transmission Corporation,
New England Hydro Transmission Corporation, and
New England Hydro-Transmission Electric Company, Inc.

Docket No. EL04-74-001

ORDER DENYING REHEARING

(Issued March 29, 2005)

1. On September 7, 2004, New England Electric Transmission Corporation, New England Hydro Transmission Corporation, and New England Hydro-Transmission Electric Company, Inc. (collectively, Hydros) submitted a request for rehearing of the Commission's August 5, 2004 Order in this proceeding.¹ The Commission's August 5 Order dismissed Hydros' January 20, 2004 request for waiver of Order No. 2003's² requirement that they adopt the *pro forma* Large Generator Interconnection Procedures (*pro forma* LGIP) and the *pro forma* Large Generator Interconnection Agreement (*pro forma* LGIA) in their open access transmission tariff (OATT). We will deny Hydros' request for rehearing as discussed below. This order clarifies the compliance procedures that the Hydros will be required to follow should they receive a large generator interconnection request at some future time. This order benefits customers by providing regulatory certainty for all participants in the interconnection process.

¹ *New England Electric Transmission Corporation*, 108 FERC ¶ 61,144 (2004) (August 5 Order).

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *reh'g pending*; *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

Background

2. The Commission's August 5 Order noted that Order No. 2003 requires that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce must amend their OATTs on file with the Commission to include the *pro forma* LGIP and *pro forma* LGIA.³ Public utilities that do not have an OATT on file are not required to comply with Order No. 2003 since they do not have an OATT to amend.⁴

3. In its January 20, 2004 request for waiver of Order No. 2003's requirements, the Hydros, which do not have an OATT on file with the Commission,⁵ explained that they are limited purpose companies that own and operate a portion of a single transmission asset, the Hydro-Quebec HVDC Intertie (Phase I/II), which is a project-funded high-voltage direct current (DC) facility connecting New England and the Province of Quebec (and thus is like merchant transmission). In requesting waiver, the Hydros claimed that imposing the requirements of Order No. 2003 could potentially have profound adverse consequences on the underlying financing of Phase I/II in particular and of merchant transmission in general.

4. Specifically, the Hydros argued that: (1) there are significant technical factors that make generator interconnection problematic and ultimately unlikely; and (2) they do not have an OATT on file with the Commission, and do not fall within the paradigm that the Commission and interested parties used in the creation of Order No. 2003 (which involved interconnections to networked, alternating current transmission facilities owned by public utilities that provide access to those facilities through OATTs).

5. The Commission's August 5 Order acknowledged that the Hydros did not currently have an OATT on file with the Commission. The Commission's August 5 Order therefore concluded that Order No. 2003 did not apply at that time and no waiver was necessary.⁶

³*Id.* at P 1.

⁴*See* 18 C.F.R. § 35.28(f)(1) (2004); *see also* Order No. 2003-A at P 700, 710.

⁵The Hydros were granted waiver of this request in *Northern States Power Company (Minnesota)*, 76 FERC ¶ 61,250 at 62,296 (1996), *order on rehearing, Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,943 (1996).

⁶April 5 Order at P 11; *see* 18 C.F.R. § 35.28(f)(1)(2004).

6. The Commission added that, should the Hydros receive a request for open access transmission service or large generator interconnection service in the future, the Commission would require that the Hydros file an OATT, which must include the *pro forma* LGIP and *pro forma* LGIA, within 30 days of receiving such a request.⁷

Request for Rehearing

7. In their request for rehearing, the Hydros claim the Commission should not have required the Hydros to comply with Order No. 888⁸ in the event that the Hydros receive a request for service because this requirement negates the Order No. 888 waiver that the Commission previously granted the Hydros. Additionally, the Hydros argue that the Commission failed to address the substance of the Hydros' request for waiver.⁹

Discussion

8. We deny the Hydros' request for rehearing. The waivers of Order No. 888 that the Commission grants are only conditional waivers, and the waiver of Order No. 2003 that the Hydros received was no different.

9. For waivers of Order No. 888, we have explained:¹⁰

We note, however, that all requests for waiver of Order No. 888 that we grant in this (or any future order) are subject to the condition that the public utility receiving such waiver, should it receive a request for transmission service, must file with the Commission a *pro forma* tariff within 60 days of the date of such request and must comply with any additional requirements that are effective on the date of the request.

⁷April 5 Order at P 12.

⁸ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. **¶**31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. **¶**31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC **¶**61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC **¶**61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁹ Having granted the Hydros' request, there was—and is—no reason to opine on their claims that, essentially, they are unique.

¹⁰*Black Creek*, 77 FERC at 61,941.

In this regard, in Order No. 888 we stated:

If the circumstances that give rise to the exemption change, the waiver may no longer be appropriate. For example, a radial line today could very easily become part of a network tomorrow and a portion of a grid that no one is interested in using today could become an important transmission link tomorrow.¹¹

10. Should the Hydros receive a request for transmission service, they are required to adopt an OATT. Giving the Hydros a conditional waiver from the requirement that they keep on OATT on file was not the same as saying that the Hydros were not and would never be required to provide open access transmission services. Once a request for transmission service is received, the waiver ends and the Hydros have an obligation to file an OATT. Thus, in also granting waiver of Order No. 2003, we were doing no more, and no less, than what we did when we acted on the request for waiver of Order No. 888.

11. We also note that should the Hydros receive a large generator interconnection request, they would have 60 days to adopt the *pro forma* LGIP and LGIA.¹²

The Commission orders:

The Hydros' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹¹ Order No. 888 at 31,854. In fact, Order No. 888 specifically stated that a public utility receiving a waiver must commit "to file an open access tariff within 60 days of a request to use its facilities. . . ." *Id.*

¹² *Id.* The Commission notes that, in past Order No. 2003 compliance orders, it incorrectly stated that a public utility with an Order No. 2003 waiver (of the requirement that it have an OATT on file with the Commission) must commit to file an OATT with the Commission within 30 days of a request to use its facilities. *See e.g., East Texas Electric Cooperative, Inc.*, 110 FERC ¶ 61,270 (2005). In fact, a public utility with an Order No. 888 waiver has *60 days* from the date that it receives a request for jurisdictional service in which to file its OATT. *See supra notes 9-10.*