

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. ER07-108-000

ORDER ACCEPTING NON-CONFORMING MARKET PARTICIPANT SERVICE
AGREEMENT

(Issued December 21, 2006)

1. On October 31, 2006, ISO New England Inc. (ISO New England) submitted, pursuant to section 205 of the Federal Power Act¹ and the ISO New England Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (Tariff), a non-conforming market participant service agreement (Service Agreement), executed with Innoventive Power LLC (Innoventive Power). As discussed below, the Commission accepts the Service Agreement effective November 1, 2006, as requested.

I. Description of Filing

2. ISO New England asks the Commission to accept the executed Service Agreement. The Service Agreement creates the contractual obligation for ISO New England to provide service under the Tariff to market participants, and the contractual obligation for market participants to comply with the Tariff. The Service Agreement is non-conforming because it eliminates section 3.6 of ISO New England's *pro forma* service agreement. Section 3.6 states that the market participant agrees to be bound by the "Participants Agreement," and as such, the participant is required to pay certain fees and charges. Specifically, section 3.6 provides as follows:

Participants Agreement. By entering into this Agreement, the Market Participant agrees to be bound by the Participants Agreement, through NEPOOL [New England Power Pool] or individually, as the case may be, and to pay the fees and charges specified therein. The Participants Agreement provides processes for

¹ 16 U.S.C. § 824d (2000).

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 Innoventive Power seeks to participate solely in its Load Response Programs and not in other markets, programs, or services operated or provided by ISO New England. ISO New England has agreed to remove the requirement of section 3.6 for Innoventive Power, as it has done for other non-conforming market participant service agreements identical to the Service Agreement.² This modification, ISO New England states, could encourage greater participation in the Demand Response and Financial Transmission Rights (FTR) markets, while remaining just and reasonable due to the limited participation of entities such as Innoventive Power.

4. ISO New England requests waiver of the Commission's prior notice requirements,³ so that the effective date of the Service Agreement is November 1, 2006. ISO New England states that good cause exists to grant this request, and that Innoventive Power recently signed the Service Agreement and requested a November 1, 2006, effective date.

II. Procedural Matters

5. Notice of ISO New England's October 31, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 65,486 (November 9, 2006), with interventions and protests due on or before November 21, 2006. On November 21, 2006, the NEPOOL Participants Committee (Participants Committee) filed a timely motion to intervene with comments. In its comments, the Participants Committee describes its work with ISO New England and other interested parties to develop a demand response provider-only alternative to ISO New England's Market Participant Service Agreement. The Participants Committee states that pending the outcome of those efforts, it has no objection to the Service Agreement. No protests were filed.

III. Discussion

6. The Commission finds that the Service Agreement reflects a material deviation from ISO New England's *pro forma* service agreement currently on file with the

² *ISO New England Inc.*, 116 FERC ¶ 61,308 (2006); *ISO New England Inc.*, 115 FERC ¶ 61,035 (2006).

³ 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) (2006) (requiring not less than 60 days' nor more than 120 days' notice before the date on which a change in a contract is effective).

Commission. However, given the fact that Innoventive Power will require few, if any, of the available services offered by ISO New England, the removal of section 3.6 of the *pro forma* service agreement from the Service Agreement is just and reasonable and not unduly discriminatory or preferential. The Commission agrees that exempting Innoventive Power from section 3.6 has the potential to encourage greater participation in the Demand Response Programs.

7. 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 waiver⁴ by the fact that the filing is uncontested and does not change rates. Accordingly, the effective date of the Service Agreement will be November 1, 2006.

The Commission orders:

The Commission accepts the Service Agreement 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).