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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.

Maine Public Service Company

Docket No. OA08-21-000

ORDER ON COMPLIANCE

(Issued May 15, 2008)

1. On December 7, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Maine Public Service Company (MPS), submitted its transmission planning process as a proposed attachment to its Open Access Transmission Tariff (OATT), as required by Order No. 890.² In this order, we accept MPS's compliance filing to become effective December 7, 2007, subject to a further compliance filing as directed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process.³ To remedy the

¹ 16 U.S.C. § 824e (2000 & Supp. V 2005).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

³ The Commission, among other things, also amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity. These reforms have been or will be addressed in other orders.

potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles (discussed below) and to clearly describe that process in a new attachment (Attachment K) to their OATTs.⁴

3. In Order No. 890, the Commission required that each transmission provider's transmission planning process satisfy the following nine principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation and to build on transmission planning efforts and processes already underway in many regions of the country. However, although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.⁵

II. Compliance Filing

4. MPS asserts that its Attachment R complies with the nine planning principles of Order No. 890 and also addresses the recovery of planning costs. MPS states that the purpose of its planning process is to set forth the process by which MPS will plan and provide for the enhancement and expansion of its transmission system to meet the needs of both MPS and its transmission customers on a non-discriminatory basis.

⁴ MPS labeled its Attachment K transmission planning process as "Attachment R." See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n. 246.

⁵ As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need to be codified in the transmission provider's OATT. Rules, standards and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission providers' websites, provided there is a link to those business practices on OASIS. See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55. Transmission providers could therefore use a combination of tariff language in the Attachment K, and a reference to planning manuals on their website, to satisfy their planning obligations under Order No. 890.

III. Notice of Filing and Responsive Pleadings

5. Notice of MPS's filing was published in the *Federal Register*, 72 Fed. Reg. 71,883 (2007), with interventions and protests due on or before January 7, 2008. Timely motions to intervene were filed by the Electric Power Supply Association and Houlton Water Company. A timely motion to intervene and comments were filed by the Maine Public Utilities Commission (Maine Commission). On January 22, 2008, MPS filed an answer to the Maine Commission's comments.

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer of MPS because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

8. We find that MPS's Attachment R transmission planning process, with certain modifications to the provisions concerning dispute resolution and cost allocation (discussed below), complies with each of the nine planning principles adopted in Order No. 890. Accordingly, we accept MPS's Attachment R to be effective December 7, 2007 subject to a further compliance filing as discussed below. MPS is directed to file the compliance filing within 90 days of the date of this order.

9. While we accept MPS's transmission planning process in Attachment R, we nevertheless encourage further refinements and improvements to MPS's planning process as MPS and its customers and other stakeholders gain more experience through actual implementation of this process. Commission staff will also periodically monitor the implementation of the planning process to determine if adjustments are necessary and will inform the transmission provider and the Commission of any such recommendations. Specifically, beginning in 2009, the Commission will convene regional technical conferences similar to those conferences held in 2007 leading up to the filing of the Attachment K compliance filings. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas which may need improvement.

1. Compliance with the Order No. 890 Planning Principles

10. MPS explains how its Attachment R complies with the planning principles of Order No. 890. Specifically, in order to comply with the coordination principle, MPS establishes the Planning Advisory Group, which allows all interested parties to participate in the planning process. MPS states that by being open to all interested parties, the Planning Advisory Group satisfies the openness principle. Further, MPS satisfies the openness principle by providing the process by which parties can obtain access to confidential information and critical energy infrastructure information.

11. According to MPS, its Attachment R satisfies the transparency principle because it provides for MPS to make available sufficient information for other entities to replicate the results of planning studies and describes the methods for disclosing the criteria, assumptions, and data that underlie the plan. Additionally, Attachment R describes the information transmission customers are to supply in connection with the development of the plan, satisfying the information exchange principle. Further, MPS asserts that it satisfies the comparability principle because its Attachment R requires comparable treatment of similarly-situated customers at each stage of the planning process.

12. Regarding the regional participation principle, MPS states that it is not interconnected with other FERC-jurisdictional transmission systems. MPS satisfies the regional participation principle by participating in the regional planning process of the Northern Maine Independent System Administrator, Inc.

13. MPS states that it satisfies the economic planning studies principle because its Attachment R provides procedures for conducting economic planning studies and for entities to request such studies. Additionally, to address the recovery of planning costs, MPS states that any planning costs that are not specifically recovered pursuant to other provisions in Attachment R will be recovered from customers on a load-ratio share basis.

14. Accordingly, we find that MPS's transmission planning process complies with the coordination, openness, transparency, information exchange, comparability, regional participation, and economic planning studies principles adopted in Order No. 890.⁶

⁶ Order No. 890-A was issued on December 27, 2007, subsequent to MPS submitting its Order No. 890 Attachment K compliance filing. In Order No. 890-A, the Commission provided additional guidance, among other things, as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning." See Order No. 890-A, 121 FERC ¶ 61,297 at P 216. Here, MPS has submitted tariff language providing that, as a general matter, demand response

(continued...)

Additionally, we find that MPS's transmission planning process adequately addresses the recovery of planning-related costs. As noted above, we will, however, require MPS to modify in a further compliance filing the provisions in Attachment R addressing the dispute resolution and cost allocation principles.

2. Dispute Resolution

15. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be utilized, but that a transmission provider seeking to rely on an existing dispute resolution process must specifically address how its procedures will address matters related to transmission planning. The Commission encouraged transmission providers, customers, and other stakeholders to utilize the Commission's Dispute Resolution Service to help develop a three step dispute resolution process, consisting of negotiation, mediation, and arbitration. To facilitate resolution of all disputes related to planning activities, a transmission provider's dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under FPA section 206 to file complaints with the Commission.⁷

16. MPS's Attachment R adopts the MPS OATT's arbitration provisions, which provide that the arbitration decision is final and binding upon parties. The Maine Commission states that binding arbitration may not be ideally suited to disputes about transmission planning which affect a wide range of consumers, regulators, transmission owners, generators, and competitive suppliers. Additionally, the Maine Commission notes that binding arbitration would prevent state regulator participation in the process. The Maine Commission requests that MPS remove binding arbitration from the dispute resolution provisions of Attachment R, as well as remove the limitations on parties' ability to initiate section 206 complaints during the arbitration step of dispute resolution. In response to the Maine Commission's comments, MPS agrees to make the changes suggested by the Maine Commission.

resources will be treated comparably. However, since Order No. 890-A was issued subsequent to the filing before us, MPS did not have an opportunity to demonstrate that it complies with this requirement of Order No. 890-A. Therefore, MPS is directed to file within 90 days of issuance of this order, a compliance filing addressing the necessary demonstration required by Order No. 890-A.

⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-503.

17. Order No. 890 and the Commission's Staff white paper⁸ suggest that the third-step of the dispute resolution process may include binding arbitration. However, in response to the Maine Commission's comments that providing for binding arbitration would inhibit state regulators from participating in dispute resolution related to transmission planning, MPS has agreed to remove the binding arbitration provisions from its planning dispute resolution procedures. Additionally, MPS has agreed to eliminate restrictions on the exercise of any interested person's rights to file a complaint. Accordingly, we direct MPS to file, within 90 days of issuance of this order, a further compliance filing that revises its Attachment R as explained in its January 22, 2008 response.

3. Cost Allocation

18. The cost allocation principle requires that transmission providers address in their OATT planning attachments the allocation of costs of new facilities that do not fit under existing rate structures. In Order No. 890, the Commission suggested that such new facilities might include regional projects involving several transmission owners or economic projects that are identified through the study process, rather than individual requests for service. The Commission did not impose a particular allocation method for such projects and, instead, permitted transmission providers and stakeholders to determine the criteria that best fit their own experience and regional needs. Transmission providers therefore were directed to identify the types of new projects that are not covered under existing cost allocation rules and, as a result, would be affected by the cost allocation proposal.

19. The Commission did not prescribe any specific cost allocation methodology in Order No. 890. The Commission instead suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.⁹ In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as

⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of White Paper, Docket Nos. RM05-17-000 and RM05-25-000 (August 2, 2007) (White Paper).

⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-561.

participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.¹⁰

20. MPS's Attachment R provides that MPS, with input from its Planning Advisory Group, will determine which projects are reliability projects and which are economic projects.¹¹ Further, MPS's Attachment R specifies that the "cost of economic projects that specifically benefit individual customers... shall be allocated to the entities that benefit from the projects."¹² The Maine Commission suggests that MPS may wish to consider developing definitions for reliability and economic upgrades, as well as criteria for the determination of beneficiaries. Additionally, the Maine Commission suggests that a "beneficiaries pay" cost allocation scheme should apply to both economic and reliability projects to limit disincentives to building transmission in Northern Maine. In response to the Maine Commission's comments, MPS states that the planning process set forth in its Attachment R is a new process. As such, MPS states that if a new issue arises regarding the planning process, MPS will consider revisions to the planning process to eliminate disputes regarding the issues identified by the Maine Commission.

21. MPS's transmission planning process specifies that the costs of reliability projects will be allocated to all transmission customers on a load-ratio share basis consistent with a formula rate specified in MPS's OATT. We find that MPS has provided sufficient detail on the cost allocation for these projects.¹³ However, with respect to economic projects, we find that the cost allocation methodology provided in MPS's Attachment R does not comply with the cost allocation principle found in Order No. 890, as MPS does not provide sufficient detail regarding how its "beneficiaries pay" approach will be applied. While we recognize that MPS's planning process is a new process, we nevertheless made clear in Order No. 890-A, as noted above, that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to

¹⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

¹¹ Attachment R at Section 9.1

¹² *Id.* at Section 9.3

¹³ Additionally, in Order No. 890, the Commission indicated that its intent is not to upset existing cost allocation methods applicable to specific requests for interconnection or transmission service under the *pro forma* OATT. Rather, the cost allocation principle is intended to apply to projects that do not fit under the existing structure, such as regional projects involving several transmission owners or economic projects. See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 558.

pursue that investment.¹⁴ We also note that the Commission's Staff white paper specified that as much detail as possible should be provided on how a "beneficiaries pay" approach will be applied.¹⁵ Participants using this approach were encouraged to address: (1) how beneficiaries will be identified and whether classes of customers will be identified for purposes of allocating project costs; (2) how project costs will be allocated to an entity whose needs may not have given rise to the upgrade, but that nevertheless has a need during the planning horizon that is met in whole or in part by that upgrade; and (3) how identified beneficiaries may address alternatives or deferrals of transmission line costs, such as through the installation of distributed resources. Accordingly, we direct MPS to file, within 90 days of issuance of this order, a further compliance filing that revises its Attachment R to provide additional detail regarding how its "beneficiaries pay" approach will be applied.

The Commission orders:

(A) MPS's compliance filing is hereby accepted to become effective December 7, 2007, subject to a further compliance filing as directed in the body of this order.

(B) MPS is hereby directed to submit a compliance filing, within 90 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

¹⁵ See White Paper at 18.