

124 FERC ¶ 61,096
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. ER08-54-004

ORDER DENYING MOTION TO INTERVENE
AND DISMISSING REQUEST FOR REHEARING

(Issued July 28, 2008)

1. On June 6, 2008, Cargill Power Markets, LLC (Cargill) submitted a motion to intervene out-of-time and requested rehearing of the Commission's May 7, 2008 order.¹ In this order we deny Cargill's motion to intervene and dismiss the request for rehearing.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.² Among other things, the Commission revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have been approved as independent system operators (ISO) or regional transmission organizations (RTO) were directed to submit, within 210 days from publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007), section 206 compliance filings that contain the non-rate terms and conditions set forth in Order No. 890 or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT. The Commission also aligned the compliance filing deadlines for ISOs and

¹ *ISO New England Inc.*, 123 FERC ¶ 61,133 (2008) (May 7 Order).

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 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

RTOs and their transmission-owning members. Further, the Commission required public utility transmission owners whose transmission facilities are under the control of RTOs or ISOs to make any necessary tariff filings required to comply with Order No. 890 within 210 days after the publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007).

4. On October 11, 2007, as amended on January 17, 2008, ISO New England Inc. (ISO-NE), the Participating Transmission Owners (PTO), the PTO Administrative Committee, Cross-Sound Cable Company, LLC, the Schedule 20A Service Providers (SSP), Maine Electric Power Company Inc., and the New England Power Pool (collectively, the Filing Parties) jointly submitted their compliance filing as required by Order No. 890. In its May 7 Order, the Commission accepted the revised provisions of the Filing Parties' OATT, as being consistent with the directives in Order No. 890.

II. Motion to Intervene and Requests

5. On June 6, 2008, Cargill submitted a motion to intervene out-of-time and a request for rehearing. Cargill argues that good cause exists to grant its untimely intervention, stating that Cargill recently learned that one of the SSPs intends to apply Order No. 890's rollover reforms to its transmission service in a manner that conflicts with the May 7 Order. Cargill contends that this is its first opportunity to raise this issue as Cargill has "only recently learned with certainty of this SSP's position."³

6. Should Cargill be granted party status at this point in the proceeding, Cargill requests that the Commission clarify that the May 7 Order intended Order No. 890's rollover reform language to apply to Schedule 20A no earlier than the acceptance of the Filing Parties' Attachment K, not October 11, 2007, as requested.⁴ Cargill also requests that the Commission clarify that paragraph 50 of the May 7 Order equally applies to the SSPs and that the SSPs (or ISO-NE on their behalf) must submit revised Schedule 20A tariff sheets reflecting Order No. 890's rollover reform language. Alternatively, Cargill asks that the Commission grant rehearing on the effective date of the new Order No. 890 rollover reform language.

³ Cargill Motion to Intervene at 6.

⁴ Cargill points out that ISO-NE's Attachment K was accepted on May 15, 2008, and the thirty-day deadline for incorporating Order No. 890's rollover reform language into Schedule 21-Common and Schedule 20A is June 16, 2008. Cargill requests clarification that the revised rollover language that the SSPs must file will be effective the date of their compliance filing (i.e., from the date of the May 15, 2008 order through June 16, 2008, the compliance deadline).

III. Discussion

7. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.⁵ Cargill has not met this higher burden of justifying its late intervention. As such, we deny Cargill's motion to intervene out-of-time. Accordingly, we will dismiss Cargill's request for rehearing.

The Commission orders:

Cargill's motion to intervene out-of-time is hereby denied and its request for rehearing is hereby dismissed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵ *E.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).