

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. ER97-3026-000]

Boston Edison Company; Notice of
Filing

June 26, 1997.

Takes notice that on May 20, 1997, Boston Edison Company (Boston Edison) tendered for filing a Standstill Agreement between itself and The Boylston Municipal Light Department, City of Holyoke Gas & Electric Department, Hudson Light and Power Department, Littleton Electric Light & Water Departments, Marblehead Municipal Light Department, Middleborough Gas and Electric Department, North Attleborough Electric Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, and Westfield Gas & Electric Light Department (Municipals). The Standstill Agreement extends through July 31, 1997 the time in which the Municipals may institute a legal challenge to the 1995 true-up bill under their respective contracts to purchase power from Boston Edison's Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective May 21, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-17339 Filed 7-1-97; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket Nos. ER97-2869-000 and ER97-2872-000]

Central Hudson Enterprise
Corporation; and Central Hudson Gas
& Electric Corporation; Order
Conditionally Accepting For Filing
Proposed Market-Based Rates, And
Announcing Policy With Respect To
New Power Sales That Do Not Reflect
Unbundling of Transmission and
Ancillary Services

Issued June 26, 1997.

In this order, we conditionally accept for filing, without hearing or suspension, the proposed market-based power sales rates filed by Central Hudson Gas & Electric Corporation (Central Hudson). In addition, we accept for filing, without conditions, hearing or suspension, the proposed market-based power sales rates filed Central Hudson's power marketer affiliate, Central Hudson Enterprise Corporation (Enterprise).

We also take this opportunity to remind public utilities that all new power sales (*i.e.*, those made on or after July 9, 1996) must separately unbundle transmission and ancillary services. We announce that any power sales filing made after the date this order is published in the Federal Register that does not provide for the unbundling of transmission and ancillary services will be rejected, regardless of whether the sales agreement or tariff is market-based or cost-based.

Background

Central Hudson is a public utility in upstate New York which owns and operates facilities for the generation, transmission and distribution of electric power. Enterprise is a power marketer which is a wholly-owned subsidiary of Central Hudson. Enterprise does not own or operate any electric generation, transmission or distribution facilities and currently has no retail or wholesale electric service customers.

On May 6, 1997, Enterprise and Central Hudson filed separate applications in Docket Nos. ER97-2869-000 and ER97-2872-000 for Commission authorization to engage in the wholesale sale of electric energy and capacity at market-based rates. Among other things, Enterprise and Central Hudson request the same waivers and authorizations afforded to other power marketers and franchised utilities with market-based rate authorization.

Notice of Enterprise's and Central Hudson's filings were published in the **Federal Register**, 62 FR 29,139 (May 29, 1997), with comments, protests and interventions due on or before June 4, 1997. Electric Clearinghouse, Inc. (Electric Clearinghouse) filed a timely motion to intervene in each of the proceedings, raising no substantive issues. The Public Service Commission of the State of New York (New York Commission) filed a notice of intervention in each of the proceedings, raising no substantive issues.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(c), the timely, unopposed motions to intervene of Electric Clearinghouse and the notices of intervention of the New York Commission serve to make them parties to the proceedings in Docket Nos. ER97-2869-000 and ER97-2872-000.

Market-Based Rates

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. In order to demonstrate the absence or mitigation of market power, a transmission-owning public utility must have on file with the Commission an open access transmission tariff for the provision of comparable services. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.¹

As we explain below, we find that, with Central Hudson's filing of an open access *pro forma* compliance transmission tariff,² Enterprise's market-based rate application and Central Hudson's market-based rate application, as modified, meet these standards. Accordingly, we will accept the proposed market-based rates for filing, to become effective on the date of this order, subject to the condition that Central Hudson revise its power sales tariff as discussed below.

¹ *E.g.*, Progress Power Marketing, Inc., 76 FERC ¶ 61,155 at 61,919 (1996); Northwest Power Marketing Company, L.L.C., 75 FERC ¶ 61,281 at 61,889 (1996); *accord* Heartland Energy Services, Inc., *et al.*, 68 FERC ¶ 61,223 at 62,060-63 (1994) (*Heartland*).

² See 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, 61 FR 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12,274 (1997), FERC Stats. & Regs. ¶ 31,048, *reh'g pending* (Open Access Rule).

1. Generation Market Power

In support of their market-based rate applications, Enterprise and Central Hudson have submitted a generation dominance analysis. That analysis indicates that Central Hudson's market share of installed and uncommitted capacity will not exceed levels the Commission previously has found to be acceptable.³

Accordingly, we find that Enterprise and Central Hudson meet the Commission's generation market power standard for approval of market based-rates.

2. Transmission Market Power

When a transmission-owning public utility or its affiliate seeks authorization to charge market-based rates, the Commission has required the public utility to have an open access transmission tariff on file before granting such authorization.⁴ Central Hudson has filed an open access *pro forma* compliance transmission tariff in Docket No. OA96-14-000. Accordingly, we find that Enterprise and Central Hudson have satisfied the Commission's transmission market power standard for approval of market-based rates.

3. Other Barriers to Entry/Reciprocal Dealing

Central Hudson owns and operates a natural gas distribution system and associated pipeline and storage facilities. Should Central Hudson or any of its affiliates deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor of Central Hudson or Enterprise in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of Central Hudson's or Enterprise's authority to sell power at market-based rates.⁵

With this safeguard, we are satisfied with Enterprise's and Central Hudson's explanation that there are no other barriers to entry or reciprocal dealing considerations of concern here.

4. Affiliate Abuse

Enterprise and Central Hudson commit in their power sales tariffs that they will not sell power to or purchase power from each other. In addition, Enterprise and Central Hudson have

submitted a code of conduct (governing, among other things, the pricing of affiliate sales and purchases of non-power goods and services and the exchange of market information) that satisfies the Commission's requirements concerning affiliate abuse.

With these and other safeguards contained in the proposed power sales tariffs and code of conduct, we are satisfied with Enterprise's and Central Hudson's explanation that there are no affiliate abuse considerations of concern here.

Unbundling of Rates

1. Announcement of Policy

Order No. 888 provides (FERC Stats. & Regs. at 31,654) that, as part of the functional unbundling of wholesale services, the prices for wholesale generation, transmission and ancillary services must be separately stated for sales under requirements or coordination contracts executed after July 9, 1996. As discussed below, Central Hudson has failed to satisfy this requirement. It is not, however, the first utility to do so. In fact, this requirement has not been satisfied in several recent cases,⁶ and we have unnecessarily expended resources in preparing Commission orders addressing this deficiency.

As a result, we take this opportunity to notify all public utilities that any future filing of a power sales agreement or tariff, after the date of publication of this order in the Federal Register, that does not provide for unbundling of transmission and ancillary services consistent with the requirements of Order Nos. 888 and 888-A will be rejected by the Director of the office of Electric Power Regulation or his designee.⁷

2. Central Hudson's Filing

Central Hudson's market-based power sales tariff does not address the Commission's unbundling requirements. In addition, the tariff does not address the circumstances under which transmission and ancillary services will be provided under Central Hudson's open access transmission tariff. Accordingly, we will direct Central Hudson to revise its market-based power sales tariff to state explicitly separate prices for generation, transmission and ancillary services. In addition, we will require Central

Hudson to revise its market-based tariff to state that: (1) When transmission and ancillary services to effectuate power sale transactions under Central Hudson's market-based tariff are to be obtained by Central Hudson, Central Hudson must file a service agreement placing itself under its open access transmission tariff; and (2) when the customer itself is obtaining transmission and ancillary services from Central Hudson, Central Hudson must file a service agreement placing the customer under its open access transmission tariff.⁸

Since we are permitting Central Hudson to report prices for short-term market-based transactions (one year or less) in quarterly summaries, as discussed below, the separate prices for the unbundled services in such short-term transactions should be included in those quarterly summaries. For long-term transactions (longer than one year), the separate prices should be included in the service agreements filed for specific transactions.

Waivers, Authorizations and Reporting Requirements

Enterprise has requested the following authorizations and waivers of various Commission regulations consistent with those granted other power marketers: (1) Waiver of the filing requirements of Subparts B and C of Part 35, except sections 35.12(a), 35.13(b), 35.15 and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101 and 141; (3) abbreviated filings with respect to interlocking directorates under Parts 45 and 46; (4) blanket authorization for issuances of securities or assumptions of liabilities pursuant to FPA section 204, 16 U.S.C. 824c (1994). We will grant Enterprise the requested authorizations and waivers to the extent granted to other power marketers.

Consistent with previous Commission decisions, we will require Enterprise to file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter. This requirement is necessary to ensure that contracts relating to rates and services are on file as required by section 205(c) of the Federal Power Act (FPA), 16 U.S.C. 824d (1994), and to allow the Commission to evaluate the reasonableness of the charges and to provide for ongoing monitoring of the marketer's ability to exercise market power.⁹

Consistent with procedures we have adopted in other cases, Central Hudson

³ See, e.g., Southwestern Public Service Company, 72 FERC ¶ 61,208 at 61,966-67 (1995), *reh'g pending*; Louisville Gas & Electric Company, 62 FERC ¶ 61,016 at 61,146 (1993).

⁴ See, e.g., Open Access Rule, FERC Stats. & Regs. at 31,656-57; *accord* Southern Company Services, Inc., 71 FERC ¶ 61,392 at 62,536 (1995); *Heartland*, 68 FERC at 62,059-60.

⁵ See, e.g., *LG&E*, 62 FERC at 61,148.

⁶ See *E.G.*, Orange and Rockland Utilities, Inc., 78 FERC ¶ 61,344 (1997); Idaho Power Company, 78 FERC ¶ 61,343 (1997).

⁷ Any power sales filing before that date that does not reflect the unbundling requirement will be made deficient.

⁸ See Public Service Electric & Gas Company, 78 FERC ¶ 61,119 (1997).

⁹ See, e.g., *Heartland*, 68 FERC at 62,065-66.

may file umbrella service agreements for short-term (one year or less) transactions within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales. For long-term transactions (longer than one year), Central Hudson must submit the actual individual service agreement for each transaction within 30 days of the date of commencement of service.¹⁰

To ensure the clear identification of filings, and in order to facilitate the orderly maintenance of the Commission's files and public access to the documents, long-term transaction service agreements should not be filed together with short-term transaction summaries.

Additionally, we will direct Enterprise and Central Hudson to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (1) Ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filings that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.¹¹ Alternatively, rather than reporting continually, Enterprise and Central Hudson may elect to report such changes every three years in conjunction with an updated market analysis.¹²

The Commission Orders

(A) Central Hudson is hereby directed to revise its market-based power sales tariff, within 15 days of the date of this order, to reflect the revision discussed in the body of this order.

(B) Central Hudson's market-based power sales tariff is hereby conditionally accepted for filing, to become effective on the date of issuance of this order, on the condition that Central Hudson makes the compliance filing directed in Ordering Paragraph (A) above.

(C) Enterprise's market-based power sales tariff is hereby accepted for filing, to become effective on the date of issuance of this order.

(D) Enterprise's request for waiver of Parts 41, 101 and 141 of the Commission's regulations is hereby granted.

(E) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Enterprise should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Enterprise is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Enterprise, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving Enterprise. Any such person instead shall file a sworn application providing the following information:

(1) full name and business address; and

(2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Enterprise's issuance of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(I) Enterprise's requests for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16, is hereby granted.

(J) Enterprise and Central Hudson are hereby directed to conform with the

filing and reporting requirements specified in this order. If Enterprise or Central Hudson transacts under its market-based power sales tariff prior to July 1, 1997, the first quarterly report of transactions undertaken by it will be due within 30 days of the calendar quarter ending June 30, 1997. If not, the first quarterly report of transactions will be due within 30 days of the calendar quarter ending September 30, 1997.

(K) Enterprise and Central Hudson are hereby directed to file an updated market analysis within three years of the date of this order, and every three years thereafter.

(L) Enterprise and Central Hudson are hereby directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics that the Commission has relied upon in approving market-based pricing. Alternatively, as discussed in the body of this order, Enterprise and Central Hudson may elect to report any such changes every three years with the updated market analysis filed pursuant to three years with the updated market analysis filed pursuant to Ordering Paragraph (K) above. Enterprise and Central Hudson shall notify the Commission of which option they elect in the first quarterly report filed pursuant to Ordering Paragraph (J) above.

(M) Enterprise and Central Hudson are hereby informed of the rate schedule designations shown on the Attachment to this order.

(N) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,
Secretary.

Attachment

Central Hudson Enterprise Corporation

Docket No. ER97-2869-000

Rate Schedule FERC No. 1

Supplement No. 1 to Rate Schedule No. 1—Code of Conduct

Central Hudson Gas & Electric Corporation

Docket No. ER97-2872-000

FERC Electric Tariff Original Volume No. 3

Supplement No. 1 to FERC Electric Tariff Original Volume No. 3—Code of Conduct [FR Doc. 97-17314 Filed 7-1-97; 8:45 am]

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¹⁰ See, e.g., Plum Street Energy Marketing, Inc., et al., 76 FERC ¶ 61,319 at 62,556 (1996); Southern Company Services, Inc., 75 FERC ¶ 61,130 at 61,444-45 (1996).

¹¹ See, e.g., Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175 at 61,695 (1994), order on reh'g, 72 FERC 61,082 (1995); Intercoast Power Marketing, Inc., 68 FERC ¶ 61,248 at 62,134, Clarified, 68 FERC ¶ 61,324 (1994).

¹² We reserve the right to require such an analysis at any time.