

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mystic Development, LLC
Mystic I, LLC

Docket Nos. ER05-1304-000
ER05-1305-000

ORDER REJECTING RELIABILITY MUST RUN AGREEMENTS

(Issued October 7, 2005)

1. On August 9, 2005, Mystic Development, LLC (Mystic Development) and Mystic I, LLC (Mystic I) (together, Applicants), under section 205 of the FPA,¹ proposed two Reliability Must Run (RMR) Agreements containing the Applicants' revenue requirements for providing cost-based generation service from Mystic I's Mystic 7 Unit and Mystic Development's Mystic 8 and Mystic 9 Units in the Northeast Massachusetts region (August 9 Filing). For the reasons described below, the Commission will reject the proposed RMR agreements without prejudice to Applicants filing revised agreements and making any necessary showings.

Background

2. ISO New England, Inc. (ISO-NE) has authority, pursuant to Market Rule 1,² to negotiate power supply agreements for the purchase of electricity at cost-based rates from

¹ 16 U.S.C. § 824d (2000).

² Market Rule 1 permits ISO-NE to enter into contracts for the supply of power at cost-based rates where the generation facilities from which power is to be supplied are needed for reliability in New England, and where the generation facility has demonstrated that it has not earned sufficient revenues in the market to keep the facility in operation.

generation facilities that ISO-NE identifies as being necessary to ensure reliability, but which are unable to recover operating costs under current market conditions. In recent decisions, the Commission has approved limited-term RMR agreements for newer, baseload facilities needed for reliability that demonstrated an inability to earn sufficient revenues to keep generation operational due to market flaws.³

The August 9 Filings

3. Mystic 8 and Mystic 9 are natural gas-fired generation facilities with a combined capacity of 1,695 MW. Mystic 7 is an oil and natural gas-fired facility with a capacity of 565 MW. All three units are located within the Boston Import Areas (*i.e.*, NEMA/Boston) load pocket. Citing severe revenue deficiencies resulting from a dysfunctional market, Applicants filed with the Commission two unexecuted RMR Agreements related to Mystic Units 7, 8 and 9. The RMR Agreements set forth proposed charges for the provision of reliability services by Mystic Development and Mystic I from Units 7, 8 and 9, determined by ISO-NE to be needed for reliability.⁴

4. The Applicants maintain that these units are not recovering their fixed costs or facility costs, and that revenue shortfalls have jeopardized their ability to continue to operate such units. The Applicants state that the RMR Agreements are substantially similar to ISO-NE's *pro forma* RMR Agreement with the exception of fuel supply restrictions outlined in Schedule 6 and sections 3.2.2.1 of the proposed RMR Agreements.

5. In return for the reliability services provided by these units, Applicants would be paid a Monthly Fixed-Cost Charge in accordance with the formula set forth in the applicable Schedule 4 of the RMR Agreement. The Monthly Fixed-Cost Charge would be paid by market participants through the Monthly Settlement process for the New England Markets. Bids for energy and ancillary services generated by the units would be submitted based on Stipulated Bid Costs corresponding to the units' characteristics and operating parameters, which are identified in the applicable Schedule 3 of the RMR Agreements.

³ *Milford Power Company, LLC*, 110 FERC ¶ 61,299 (2005), *order on reh'g*, 112 FERC ¶ 61,154 (2005).

⁴ In a letter dated December 15, 2004, ISO-NE concluded that, after consultation with the Independent Market Advisor, the Mystic units are needed for reliability purposes.

Notice of Filings, Interventions and Protests

6. Notice of Applicants' filings was published in the *Federal Register*, 70 Fed. Reg. 49,271 (2005), with interventions, comments, or protests due on or before August 30, 2005.⁵ Filing motions to intervene in one or both proceedings were: ISO-NE; the Massachusetts Attorney General (Massachusetts AG); Massachusetts Municipal Wholesale Electric Company, jointly with Reading Municipal Light Department, Wellesley Municipal Light Plant, and Concord Municipal Light Plant (Municipals); NSTAR Electric & Gas Corporation, on behalf of its affiliates, Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company (NSTAR); the NRG Companies⁶ (NRG); Distrigas of Massachusetts LLC; Dominion Energy New England, Inc., jointly with Dominion Energy Marketing (Dominion); FPL Energy, LLC; the Massachusetts Department of Telecommunications and Energy; the New England Power Pool Participants Committee; National Grid USA, on behalf of itself and New England Power Company, Massachusetts Electric Company, Narragansett Power Company; and Granite State Electric Company; Select Energy, Inc.; and TransCanada Power Marketing Ltd (TransCanada). Filing motions to intervene out of time were Exelon New England Holdings LLC (Exelon), in both proceedings, and Dominion, in Docket No. ER05-1305-000.

7. Filing comments were NRG and TransCanada. Filing protests were: ISO-NE; Massachusetts AG; Municipals; and NSTAR. Additionally, ISO-NE requested consolidation of both proceedings while NSTAR requested consolidation of both proceedings and with Boston Generating, LLC, *et al.*, Docket No. EC05-119-000, which concerns the restructuring of ownership and management arrangements that affect the Mystic 7, 8, and 9 Units.⁷

⁵ By a notice of August 30, 2005, the Commission extended this filing deadline to September 2, 2005.

⁶ NRG Power Marketing, Inc., Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

⁷ NSTAR filed further comments concerning consolidation of these proceedings with Docket No. EC05-119-000 on October 5, 2005.

8. On September 19, 2005, Applicants filed a response to the interventions, comments, protests, and motions (Response). On September 30, 2005, NSTAR filed a reply to Applicants' Response; on October 4, 2005, the Municipals filed a reply to Applicants' Response; on October 5, 2005, ISO-NE filed a reply to Applicants' Response.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the late-filed motions to intervene. At this stage of the proceeding, the interventions will not disrupt or otherwise prejudice the proceeding or place additional burdens on the existing parties.⁸

10. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Applicants' Response because it provided information that assisted us in our decision-making process. However, we are not persuaded to accept the replies and will, therefore, reject them.

Rejection of RMR Agreements

11. ISO-NE points out that Market Rule 1 provides for the filing of RMR agreements with cost-based rates under either section 205 of the FPA or section 206 of the FPA.⁹ An entity filing the *pro forma* agreement¹⁰ or having secured a prior determination by ISO-NE that alternative provisions are necessary and appropriate, may file under section 205.¹¹ However, an entity filing a proposed RMR agreement that differs from the *pro*

⁸ See 18 C.F.R. § 385.214(d) (2005).

⁹ 16 U.S.C. §§ 824d, 824e (2000).

¹⁰ See ISO New England Inc., FERC Electric Tariff No. 3, section III – Market Rule 1, Appendix A, Exhibit 4 – Form of Cost of Service Agreement, Original Sheet Nos. 7550-77.

¹¹ See ISO New England Inc., FERC Electric Tariff No. 3, section III – Market Rule 1, Appendix A, Exhibit 2, section 3.3.1(c)(iii).

forma agreement, without having secured such prior determination by ISO-NE, may file under section 206.¹² To file under section 206, however, an entity also must show that existing rates, terms and conditions are unjust and unreasonable, and that the proposed alternatives are just and reasonable.

12. ISO-NE states that Applicants did not negotiate their proposed agreements with ISO-NE as provided by Market Rule 1. It continues that, therefore, Applicants should have submitted the August 9 Filing under section 206, not section 205.

13. In their Response, Applicants seek to bring their August 9 Filing under section 205. They state that they largely accede to ISO-NE's concerns, and that, where they have not adopted ISO-NE's position, they will make technical revisions that they believe will address ISO-NE's concerns. Applicants offer to make a future compliance filing of these revisions.

14. After examination of the August 9 Filing and Applicants' Response, we conclude that, even when the two submittals are read together, the proposed RMR agreements are not a permissible filing under section 205 of the FPA. Sections 35.1 and 35.2 of the Commission's regulations¹³ require rate schedules to set forth in writing, clearly and specifically, all rates, terms and conditions for sales of electric energy subject to the Commission's jurisdiction. We cannot determine from Applicants' August 9 Filing and Response exactly what specific rates, terms and conditions Applicants now propose; an offer to make a future compliance filing in this context is not sufficient. We also find the Applicants have not met the requirements of section 206 of the FPA because they have not demonstrated that existing rates, terms and conditions are unjust and unreasonable.

15. For these reasons, we reject Applicants' August 9 Filing, but without prejudice to Applicants filing proposed revised RMR agreements. Under Market Rule 1, Applicants may file proposed revised RMR agreements under section 205 of the FPA if they have secured ISO-NE's agreement to any differences with the *pro forma* agreement. Alternatively, if they have not secured ISO-NE's agreement, they may file under section 206 of the FPA and seek to make the appropriate showing.

¹² See ISO New England Inc., FERC Electric Tariff No. 3, section III – Market Rule 1, Appendix A, Exhibit 2, section 3.28.

¹³ 18 C.F.R. §§ 35.1, 35.2 (2005).

The Commission orders:

Applicants' August 9 Filing is hereby rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.