

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc. and
New England Power Pool

Docket No. ER05-508-000
ER05-508-001
ER05-508-003

ORDER APPROVING PARTIAL SETTLEMENT AND ACCEPTING,
AS MODIFIED, LAST RESORT REQUIREMENT

(Issued November 17, 2005)

1. In this order the Commission approves the partial settlement agreement submitted by ISO-New England Inc. (ISO-New England). Regarding the remaining unsettled issue, the Commission conditionally accepts ISO-New England's Last Resort Requirement proposal, as modified to require de-listed generators to use Good Utility Practice in responding to ISO-New England's requests to return to service from economic outages during Cold Weather Events, as discussed below. ISO-New England is directed to file revised tariff sheets incorporating the Last Resort Requirement, as modified to delete the Best Efforts standard it proposed and insert the Good Utility Practice standard proposed by generators.

I. Background

2. On January 28, 2005, ISO-New England and New England Power Pool (NEPOOL) (collectively ISO-NE) jointly filed a new Appendix H to NEPOOL Market Rule 1 to address extreme cold weather conditions. The rule changes were prompted by a January 2004 cold snap that produced record demand and threatened the reliability of the electric and natural gas systems in the region. ISO-NE originally revised its operating procedures to cover cold weather conditions, but after a complaint and Commission order,¹ ISO-NE filed, under section 205 of the Federal Power Act (FPA), the tariff revisions we are considering here.

3. Appendix H includes special provisions relating to the dispatch and operation of the New England bulk power system during extreme cold weather conditions. ISO-NE argued that these revisions were developed to increase the reliability of market operations

¹ *ANP Funding I, LLC*, 110 FERC ¶ 61,040 (2005) (January 21 Order).

under extreme cold weather conditions and are expected to reduce the risks of initiating actions under Operating Procedure 4, which could include voltage reductions or rotating blackouts.

4. In a March 2005 Order, the Commission accepted and suspended Appendix H and established hearing and settlement judge proceedings to resolve the generator compensation and scheduling provisions contained in Appendix H.² Subsequently, the parties submitted a partial settlement and requested that the Commission rule on the outstanding issue regarding ISO-NE's authority over de-listed generators.

II. Settlement

5. On September 8, 2005, ISO-NE filed a partial settlement on behalf of ISO-NE and the other settling parties. The settlement resolves all but one issue in Docket No. ER05-508-000 without the need for an evidentiary hearing or any further proceedings regarding the outstanding issue. The settlement provides for parties to submit briefs and reply briefs on the unresolved issue to the Commission for resolution. The settlement establishes procedures for generator compensation and scheduling when ISO-NE experiences cold weather conditions through April 15, 2006. The unresolved issue concerns the potential obligations of a de-listed resource on economic outage during a Cold Weather Event.³

6. Initial Comments were filed on September 28, 2005 by Commission Trial Staff. On September 30, 2005, the Settlement Judge certified the uncontested partial settlement to the Commission.

7. The settlement is in the public interest and is hereby approved. The rate schedule sheets submitted as part of the settlement are in compliance with Order No. 614.⁴ The rate schedules are hereby accepted for filing and made effective as specified in the

² *ISO New England, Inc. and New England Power Pool*, 110 FERC ¶ 61,202 (2005) (March 2005 Order). ISO-NE filed a request for rehearing of the March 2005 Order arguing that the Commission erred in including generator compensation issues in the hearing and settlement proceedings, and requested clarification as to the scope of the scheduling provisions set for hearing and settlement judge procedures. As discussed below, the requests for rehearing and clarification are now moot.

³ Cold Weather Event is defined as when the effective temperature is ≤ 0 degrees and the 7-day Capacity Margin Forecast ≤ 0 MW for an operating day. Appendix H of ISO-NE's FERC Electric Tariff No. 3 Original Sheet No. 8134.

⁴ *See Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, (FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000, ¶ 31,096 (2000)).

settlement. The Commission's approval of this settlement does not constitute approval of, or precedent regarding any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act (FPA).⁵

III. Outstanding Issue – De-listed Generators

8. ISO-NE proposes a Last Resort Requirement that would require de-listed resources to make their Best Efforts to return from economic outage and produce energy. ISO-NE argues that this requirement would allow ISO-NE to utilize every source of available generation supply before resorting to load shedding during extreme cold weather conditions. ISO-NE asserts that the proposed Last Resort Requirement would be applicable only during Cold Weather Events as defined in Appendix H and only when additional generation is needed to avoid the implementation of the load shedding procedures contained in Operating Procedure 7 (OP-7). ISO-NE states that it anticipates that the Last Resort Requirement would rarely be triggered and is only applicable for this 2005-2006 winter season since it will sunset in April 2006.

9. ISO-NE states that this Last Resort Requirement applies only to de-listed generators on economic outage and requires them only to use Best Efforts to return to service. ISO-NE asserts that a Best Efforts obligation is fact-specific and is viewed from the perspective of the generators during cold weather conditions. ISO-NE contends that if a generator's owner has made its Best Efforts to obtain fuel and start up, it will have satisfied the Last Resort Requirement, even if the generator is ultimately unable to produce energy.

10. ISO-NE argues that the authority to impose the proposed Last Resort Requirement already exists in a variety of sources. ISO-NE argues that the FPA supports the implementation of policies that protect reliability. ISO-NE also asserts that the Last Resort Requirement is within the scope of the Market Participant Service Agreement (MPSA), which contractually binds generators to operate their assets consistent with reliability, in a manner that maintains safe operations, and in accordance with all applicable reliability requirements of North American Electric Reliability Council (NERC), Northeast Power Coordinating Council (NPCC) and other applicable reliability organizations.⁶ ISO-NE also argues that by requiring ISO-NE to bring all available generators on-line to avoid an energy emergency, the NERC Reliability Standards

⁵ 16 U.S.C. § 824e (2000).

⁶ MPSA section 3.4.

support the proposed Last Resort Requirement. Finally, ISO-NE argues that the Commission's reliability requirements for Regional Transmission Organizations (RTOs) and the individual interconnection requirements support the Last Resort Requirement.

11. ISO-NE states that generators are not being "asked to comply with the Last Resort Requirement to their financial detriment."⁷ ISO-NE asserts that Market Rule 1 contains compensation provisions for generators responding to ISO-NE's request for service. ISO-NE states that:

Section 8.3.3.1(b) of Market Rule 1 provides that a Resource that re-lists in response to a request by the ISO for reliability purposes will recover its direct costs, opportunity costs, and a capacity payment for the month, even though the generator was previously de-listed, as well as the LMP [Locational Marginal Price] for any energy provided. Furthermore, revised Appendix H also provides generators the opportunity to receive compensation for energy above the offer cap if cost justified to reflect a premium for last-minute fuel procurement costs.⁸

ISO-NE asserts that in light of those provisions, generators that return to service will be fully compensated. Therefore, it asserts that Market Rule 1 does not have to be amended to provide additional compensation.

12. The New England Conference of Public Utilities Commissioners (NECPUC) and Massachusetts Municipal Wholesale Electric Company support ISO-NE's proposed Last Resort Requirement requiring Generators to use Best Efforts to return from an economic outage. NECPUC argues that this approach is a practical, narrowly-tailored way to ensure system reliability in emergency conditions. NECPUC asserts that by finding that the Cold Weather Provisions are a subset of system reliability measures in the March 2005 Order, the Commission recognized that ISO-NE already has the authority to order generators to return to service during an emergency to ensure system reliability.⁹ Finally, NECPUC argues that Appendix H adequately compensates any de-listed generators that return from economic outage at ISO-NE's request.

13. Richard Blumenthal, Attorney General for the State of Connecticut filed comments stating that an investigation was conducted and a report was issued on the cold snap of 2004 which led to this proceeding. He requests that the Commission consider the report's recommendations for rule changes to ensure system reliability. The recommendations include: (1) eliminating financial incentives for electric generators to

⁷ ISO-NE brief at 13.

⁸ *Id.*

⁹ NECPUC brief at 9 (citing *ISO New England*, 110 FERC ¶ 61,202 at P 30).

sell natural gas instead of operating during a Cold Weather Event; (2) ensuring generators can and will operate; (3) adopting a mechanism to require electric generators to remain available during cold weather; and (4) investigating all generators that do not supply energy to verify that their unavailability is due to equipment failures and are not attempts to manipulate the market.

14. ANP Funding I, LLC, Calpine Eastern Corporation, Calpine Energy Services, L.P., Lake Road Generating Company, L.P., Mirant Americas Energy, LP, Mirant New England, LLC, Mirant Canal, LLC, and Mirant Kendall, LLC (collectively, Generators), filed a reply on October 18, 2005 to the briefs of ISO-NE and NECPUC. Generators state that contrary to ISO-NE's statements, they do not reject any obligation that exists under the FPA or the ISO-NE Tariff to help prevent load shedding during extreme cold weather conditions. Generators state that they take reliability very seriously and will strive to do all they reasonably can to respond to emergency conditions by acquiring fuel so that they can produce energy.

15. Generators state that the Commission has expressly provided all generators in New England, Installed Capacity (ICAP) Resources as well as de-listed units, the right to decide whether the revenues from operation will be sufficient to justify operating their plants.¹⁰ Further, Generators assert that the Commission recently approved a provision which makes it clear that the decisions of de-listed resources to return to service from economic outage are purely voluntary.¹¹

16. However, Generators state that they are willing to accept, for this winter, that de-listed generators have an obligation to make efforts to return to service from economic outage at ISO-NE's request to avoid involuntary load shedding during Cold Weather Events as part of a Last Resort Requirement. However, Generators assert that the standards for these efforts must be clearly defined. Generators state that ISO-NE has not clearly defined its proposed Best Efforts standard, nor is Best Efforts a clearly defined term within the industry. Furthermore, Generators assert that legal precedent establishes several conflicting definitions. Consequently, Generators state they are unsure which standard they will be judged by. For example, Generators argue that ISO-NE has not indicated to what extent, if any, economic factors will be considered in determining whether the Best Efforts standard has been met.

17. Generators assert that the recognized standard for generators' obligations under the ISO-NE tariff, in addition to obligations specific to capacity resources, is the Good Utility Practice standard. Generators argue that this term is defined in the ISO-NE tariff

¹⁰ Section III.B.3.2.6 of the ISO-NE tariff.

¹¹ Section III.8.3.3.1 of the ISO-NE tariff.

and is a well-recognized standard within the industry.¹² According to Generators, the Good Utility Practice standard explicitly recognizes that a generator's obligation is not absolute, but, rather, is defined by considerations of reasonable cost consistent with good business practices. Generators characterize Good Utility Practice as an objectively quantifiable standard that incorporates applicable reliability requirements and, therefore, is the appropriate basis for measuring efforts by de-listed generators to return to service from economic outage at the request of the ISO-NE during Cold Weather Events.

18. Additionally, Generators argue that depending on the circumstances, the revised Appendix H may not provide adequate compensation to de-listed generators for returning to service from economic outage during a cold weather event. Generators reference the following risks associated with de-listed units returning to service in this situation: (1) generators can make efforts to return from economic outage but may not be dispatched for any particular time period; (2) generators may purchase fuel but not in sufficient quantities to enable the generator to synchronize to the grid; (3) generators may incur substantial imbalance penalties from pipelines if ISO-NE's operation instructions deviate significantly from gas transportation nominations; or (4) generators could be subject to substantial credit burdens when arranging for fuel supplies. Generators contend that even as revised, Appendix H may not provide compensation for such costs.

19. Generators also argue that capacity payments made to de-listed generators returning to service are inadequate and that the capacity compensation level must reflect the deficiency in the level of ICAP purchases precipitating the ISO's last-minute requests. Generators find the ICAP clearing price an inadequate valuation of capacity service in this period. The Generators alternatively propose that capacity compensation to de-listed resources required to return from economic outage be \$6.66/kw- month for the month in question.¹³ This compensation, they suggest, will be provided to de-listed resources that succeed in providing generation in response to an ISO direction to return from Economic Outage on a Good Utility Practice basis. The Generators add that the need for more capacity during a Cold Weather Event is the result of ISO-NE having planned for and acquired less than the adequate amount.

20. Finally, Generators also propose tariff language that ISO must notify a generator of the requirement to return to service no later than 8:00AM on the day before a Cold Weather Event day.

¹² Section II.1.35 of the ISO-NE tariff.

¹³ \$6.66 kW-month represents the deficiency charge owed by Market Participants that are still deficient after the completion of the Unforced Capacity Deficiency Auction.

21. In its October 25, 2005 answer, ISO-NE states that the Indicated Generators' proposal to require notification of de-listed units by 8:00 AM on the day before a Cold Weather Event day does not coordinate appropriately with the purpose of the Last Resort Requirement, *i.e.*, to avoid implementing OP-7, including load-shedding. ISO-NE states that it will not know whether implementation of OP-7 load-shedding is needed until the Cold Weather Event day itself, not 24 hours in advance of Cold Weather Event peak hours.

22. In response to the Generators' description of various costs and risks that might be incurred when complying with the Last Resort Requirement, ISO-NE points out that section III.8.3.3.1(b) of the ISO-NE tariff currently allows for the collection of opportunity costs. Thus, ISO-NE states that the Generators have opportunity costs as an avenue for collecting a wide variety of costs incurred, if substantiated, in complying with the Last Resort Requirement.

23. Finally, ISO-NE states that the higher capacity payment sought by the Generators for compliance with the Last Resort Requirement raises a number of concerns. ISO-NE surmises that in a month in which the Last Resort Requirement is triggered, the capacity payments made to returning de-listed Resources as compared with those made to ICAP Resources (*i.e.*, \$6.66 per kW-month vs. the monthly ICAP clearing price, respectively) could create equity issues among generators, given that the value of capacity is the same in the emergency hours, whether the source is an ICAP Resource or formerly de-listed Resource. In addition, ISO-NE states that the Generators' proposal does not specify how the responsibility for the incremental capacity payments made to de-listed resources returning from economic outage and producing energy would be allocated among market participants.

24. In their October 28, 2005 response, the Generators state that ISO-NE has not contested their request that Good Utility Practice be adopted as the standard for de-listed generators' efforts to return to service. Accordingly, they state that there appears to be no remaining issue between the ISO-NE and the Generators on this point. Further, the Generators maintain that their proposed capacity payment is reasonable and that ISO-NE's concern regarding equity among generators has been addressed since no generator expressed any such concern. They add that there is no lack of equity, since ICAP resources voluntarily agreed to provide capacity at the prevailing ICAP clearing price, whereas de-listed generators did not.

25. Additionally, regarding the 8:00 AM day-ahead notice requirement, Generators state that they recognize the ISO-NE's concerns and accept that de-listed generators on economic outage responding to a last minute capacity request would be subject to the general scheduling requirements set forth in Appendix H as filed as part of the Partial Settlement.

26. ISO-NE responded on November 2, 2005 arguing that contrary to Generators' comments, it does oppose the Good Utility Practice standard the Generators proposed. Furthermore, ISO-NE states that it also does not agree to the proposal for a higher capacity payment for de-listed resources that return from economic outage then for ICAP resources.

IV. Discussion

27. The Commission accepts, as modified below, ISO-NE's Last Resort Requirement proposal and directs ISO-NE to file revised tariff language as discussed below.

28. As the parties have clarified, despite differences of interpretation, both ISO-NE and Generators agree that de-listed generators have some obligation to return from economic outage during a Cold Weather Event to help prevent load shedding for this winter. All parties also seem to agree that any de-listed generator on economic outage that complies with ISO-NE's request to return to service should be adequately compensated. Additionally, all parties agree that these procedures are temporary and are only applicable to this 2005-2006 winter season.

29. However, the parties disagree as to the appropriate standard de-listed generators on economic outage must meet in response to ISO-NE's request to return to service during a Cold Weather Event. ISO-NE has proposed a Best Efforts standard. But ISO-NE has not defined the term, nor provided any objective criteria on which to judge a generator's actions. Although, in its November 2, 2005 answer, ISO-NE stated that it does not support the Good Utility Practice standard proposed by the Generators, it did not give a reason why that standard is not appropriate, nor did it state how Good Utility Practice differs from ISO-NE's proposed Best Efforts standard. Due to the lack of specificity, ISO-NE has not demonstrated that its Best Efforts standard is just and reasonable and, therefore, the Commission cannot accept it.

30. However, Good Utility Practice is an existing standard, is defined in the tariff,¹⁴ has been approved by the Commission,¹⁵ and is commonly used within the industry. We recognize that Good Utility Practice includes cost considerations for determining whether to return to service. However, ISO-NE has stated that it intends to fully compensate

¹⁴ ISO-NE Tariff, section 11.1.35.

¹⁵ Generator reply brief at 13 (citing generally similar definitions in the *pro forma* Open Access Transmission Tariff and the tariffs for PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.).

de-listed generators that return to service and that Market Rule 1 and the revised Appendix H provide sufficient compensation for direct and opportunity costs.¹⁶ Consequently, by assuring through the relevant tariff compensation provisions that generators will be sufficiently compensated for costs, the cost considerations have been addressed.

31. In their reply brief, Generators raise four potential scenarios that, they state, the current compensation procedures may not cover. However, in an initial review, the Commission believes that those costs, as long as they are properly documented and quantified, would be recoverable under Market Rule 1 and Appendix H.¹⁷ Additionally, Generators were concerned that they would not be compensated for costs incurred in returning to service if they were not dispatched. Again, the Commission finds that as long as the costs are properly documented and quantified, such costs would be recoverable.

32. The Generators seek a capacity payment of \$6.66/kw-month, to be made to de-listed resources returning from economic outage in a month in which the Last Resort Requirement is triggered. The Generators believe that such compensation is justified because a de-listed resource previously had made an economic decision that the current price of ICAP did not provide sufficient revenues to operate the plant. ISO-NE responds that a disparity in the capacity payments made to returning de-listed Resources as compared with those made to ICAP Resources (\$6.66 per kW-month vs. the monthly ICAP clearing price, respectively), could create equity issues among generators, given that the value of capacity is the same in the emergency hours, whether the source is an ICAP resource or formerly de-listed resource.

¹⁶ Section III.8.3.3.1(b) of Market Rule 1 states that any de-listed resource that responds to an ISO request and elects to reschedule its outage and become an ICAP resource, which was not sold as capacity to New York, shall be re-listed as an ICAP resource, and all obligations associated with this status shall apply to the resource for the remainder of the Unforced Capacity [UCAP] obligation month. In exchange for assuming this reliability obligation, the resource is eligible to receive the UCAP clearing price used for load shifting in the obligation month for which the resource has been re-listed, plus any additional reasonably incurred maintenance and opportunity type costs associated with re-scheduling the outage and becoming an ICAP resource. Section III.H.3.6 of Revised Appendix H clarifies that to the extent that the \$1,000/MWh offer cap does not cover the full costs of gas-fired units during Cold Weather Events, generators are able to make section 205 filings with the Commission for additional compensation.

¹⁷ *Id.*

33. In response to the Generators' assertion that for de-listed resources, the price of ICAP does not justify the costs associated with plant operations, ISO-NE has made it clear in its brief and response that such costs, including opportunity costs, will be reimbursed to resources complying with the Last Resort Requirement and that generators will be made whole. The Commission believes that the ISO-NE tariff compensation provisions are just and reasonable. Since a generator will recover its direct and opportunity costs, receive a capacity payment and get reimbursed for any last-minute fuel procurement costs whether or not dispatched, the Commission finds that generators returning to service will be adequately compensated when responding to an emergency situation.

34. Finally, based on the partial settlement and the above discussion resolving the compensation issues, the Commission finds that ISO-NE's requests for rehearing and clarification of the March 2005 Order are moot.

The Commission orders:

- (A) The Partial Settlement Agreement is accepted.
- (B) ISO-NE's proposed Last Resort Requirement is hereby accepted, as modified to incorporate the Good Utility Practice standard as discussed herein, effective as of the date of this order.
- (C) Within 15 days from the date of this order, ISO-NE must file a revised Appendix H, as discussed above.
- (D) ISO-NE's requests for rehearing and clarification are dismissed as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.