

130 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Dartmouth Power Associates Limited Partnership

Docket No. EL09-42-001

v.

ISO New England Inc.

ORDER DENYING REHEARING

(Issued February 22, 2010)

1. On June 18, 2009, the Commission issued an order¹ denying a complaint filed by Dartmouth Power Associates Limited Partnership (Dartmouth) against ISO England Inc. (ISO-NE) claiming that ISO-NE improperly revoked Dartmouth's Installed Capacity (ICAP) payment. The June 18, 2009 Order found that, contrary to its assertions, Dartmouth failed to notify ISO-NE within a timely manner of the unexpected outage. On July 15, 2009, Dartmouth filed a request for rehearing of the June 18, 2009 Order. For the reasons discussed below, the request for rehearing is denied.

I. Background

2. Dartmouth is a limited partnership that owns a 74.1 MW natural gas-fired, combined-cycle cogeneration facility located in Dartmouth, Massachusetts. Dartmouth sells all of the facility's electrical output into the wholesale market operated by ISO-NE.

3. As summarized in the June 18, 2009 Order, beginning on or around June 1, 2008, the facility developed a boiler tube leak in its heat recovery steam generator.² On June 13, 2008, the facility was dispatched by ISO-NE and ran with the tube leak. Before

¹ *Dartmouth Power Associates Limited Partnership v. ISO New England Inc.*, 127 FERC ¶ 61,249 (2009) (June 18, 2009 Order).

² *Id.* P 2.

12:00 p.m. on June 13, Consolidated Edison Energy, Inc. (ConEd)³ bid the facility as available on June 14 in ISO-NE's day-ahead electric energy market, but the facility did not receive a day-ahead commitment from ISO-NE. As a result, ConEd allowed the day-ahead bid for June 14 to remain in place for the real-time market.

4. The facility's operators arranged for what Dartmouth calls "shadow maintenance"⁴ at approximately 7:00 a.m. on June 14 to repair the tube leak with a weld bead. The welders began the repair process at 8:00 a.m.; the entire repair process was expected to be completed in two hours. During testing of the repair at approximately 10:00 a.m., the weld bead did not hold. The welders initiated a pipe elbow replacement. ISO-NE called the facility's control room to dispatch the facility in real-time at 10:37 a.m., at which time ISO-NE was informed that the facility was temporarily unavailable. Dartmouth states that the tube replacement work was completed and passed inspection at 2:28 a.m. on June 15, at which time the control operator notified ISO-NE that the facility was available for dispatch.

5. In a resettlement invoice dated November 12, 2008, ISO-NE revoked Dartmouth's ICAP Payments for the month of June in the amount of \$231,952.50 on the ground that Dartmouth failed to timely report the June 14, 2008 forced outage. On January 15, 2009, Dartmouth submitted its Requested Billing Adjustment to ISO-NE, arguing that Dartmouth had notified ISO-NE within a reasonable period of time after the start of the unexpected outage.⁵ On February 20, 2009, ISO-NE denied Dartmouth's Requested Billing Adjustment.

6. In the June 18, 2009 Order, the Commission found that Dartmouth failed to comply with the ICAP payment eligibility requirements in the ISO-NE tariff (Tariff) for the month of June 2008. Specifically, the Commission found that Dartmouth failed to timely notify ISO-NE of the June 14 outage, and that there is nothing in the record to indicate that Dartmouth made any attempt to notify ISO-NE about the outage before

³ ConEd is the energy manager for the facility. It bids all power from the facility into the ISO-NE market and arranges for all fuel deliveries to the facility.

⁴ Dartmouth defines "shadow maintenance" as work performed on equipment that does not jeopardize the facility's ability to run as scheduled on notice of dispatch, including but not limited to meeting the applicable start time and ramp rate conditions as stated in the facility's bid parameters. Dartmouth states that it permits the practice of shadow maintenance to the extent that there is certainty that the facility will be able to meet dispatch instructions if called upon to run. June 18, 2009 Order, 127 FERC ¶ 61,249 n.6.

⁵ *Id.* P 5.

10:37 a.m. on June 14th when ISO-NE called to dispatch the unit.⁶ We rejected Dartmouth's contention that informing ISO-NE of the outage at 10:37 a.m. was timely notice under the circumstances, and further found that it was implausible that Dartmouth was unable to notify ISO-NE immediately after the rupture of the pipe occurred.⁷

7. The Commission further found that Dartmouth violated the ICAP Payment eligibility requirement which requires Dartmouth to abide by ISO-NE's maintenance coordination procedures. These procedures required Dartmouth to schedule a Maintenance Outage with ISO-NE before taking the facility out of service to commence repairs. The Commission found that despite contentions by Dartmouth that it did not anticipate taking an outage until 10 a.m. after testing determined that its repairs were insufficient, the repairs needed are not the type of work that can be completed while a generating unit is undergoing normal start-up procedures. The Commission concluded that it was unreasonable for Dartmouth to presume that the welding work would not require taking the facility out of service.⁸

8. The Commission stated that a primary reason for standardized maintenance procedures is to avoid the very situation Dartmouth created, and found that Dartmouth's actions created a potential for adverse consequences for regional reliability.⁹ The Commission added that Dartmouth also violated the Tariff by failing to comply with ISO-NE manuals that provide that ICAP resources must notify the ISO Operations Department for any hour of any day that the resource cannot provide the full amount of capacity due to a forced outage.

II. Request for Rehearing

9. Dartmouth argues that the Commission denied the complaint based upon matters of fact that were in dispute between ISO-NE and Dartmouth. Dartmouth asserts that, while both it and ISO-NE agree that a forced outage occurred at the facility on June 14, 2008, the two parties disagree on the precise time of the outage. Dartmouth contends that the time the outage began is a fundamental predicate to deciding whether Dartmouth gave timely notice of the forced outage to ISO-NE.¹⁰

⁶ *Id.* P 24.

⁷ *Id.* P 25.

⁸ *Id.* P 26.

⁹ *Id.* P 27.

¹⁰ Dartmouth July 15, 2009 Request for Rehearing at 4.

10. Dartmouth argues that the time of the facility's forced outage raises what Dartmouth contends is the factual dispute between the parties: whether the facility was capable of dispatch within the ISO-NE parameters during the pipe weld repair.¹¹ Dartmouth contends that the Commission resolved this factual dispute by relying on ISO-NE's assertions, and rejected Dartmouth's statements that "shadow maintenance" was possible in this case and that the facility would be capable of start-up within the two hours required under the Tariff.¹²

11. Dartmouth argues that, when determining the time of a plant's forced outage, it would be more appropriate to rely on statements of the plant's operators rather than opinions of other persons. Dartmouth further argues that because the complaint raises issues of fact, the Commission erred in not setting the complaint for hearing.¹³

III. Commission Determination

12. The request for rehearing is denied. Dartmouth's claim that the Commission based its findings solely on ISO-NE's factual assertions is wrong. As it is required to do, the Commission evaluated the pleadings of both parties, including the parties' affidavits. The Commission ultimately determined that ISO-NE's position was more credible than Dartmouth's. For example, Dartmouth did not state that it attempted to inspect the inside of the steam pipe to determine the extent of the corrosion that caused the crack. Dartmouth's engineering staff should have known that heat from welding could act as a catalyst for the corrosion and that the weld might not hold. As we stated in the June 18, 2009 Order, the repair at issue – repairing a boiler tube leak – is not the type of work that can be completed while a generating unit is undergoing normal start-up procedures.¹⁴ Contrary to Dartmouth's assertions in its complaint, Dartmouth could not predict with certainty that the repair would take only two hours when, by Dartmouth's own admission, the repair would need to be tested after completion to determine whether its repairs were sufficient. Therefore, we find it unreasonable for Dartmouth to assert that the outage did not begin until 10 a.m.

13. In addition, even if we were to accept Dartmouth's assertion that the June 14 outage did not begin until 10 a.m., given that Dartmouth had substantial notice about the need for repairs, Dartmouth should have been able to properly notify ISO-NE of the

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 5.

¹⁴ June 18, 2009 Order, 127 FERC ¶ 61,249 at P 26.

outage before being contacted by ISO-NE. Dartmouth's failure to notify ISO-NE in a timely manner created the potential for adverse consequences for regional reliability. As we stated in the prior order, a primary purpose for standardized maintenance procedures is to avoid the situation Dartmouth created.¹⁵ It is inappropriate that an ISO first discover that an outage has occurred when it calls a generator to dispatch the facility. Dartmouth's actions prevented ISO-NE from discharging its responsibility to evaluate and adjust for the impact of Dartmouth's outage.

14. In addition, we disagree that the Commission should have set the case for hearing. As discussed above, the pleadings of both parties provided sufficient information for us to evaluate all of the issues presented in the case, and the request for rehearing is, accordingly, denied.¹⁶

The Commission orders:

The request for rehearing is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ *Id.* P 27.

¹⁶ *Woolen Mill Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Circ. 1990) (the decision as to whether to conduct an evidentiary hearing is in the Commission's discretion).