

133 FERC ¶ 61,137
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Waterbury Generation LLC

Docket No. ER10-2760-000

ORDER GRANTING WAIVER

(Issued November 16, 2010)

1. On September 17, 2010, as amended on September 24, 2010, Waterbury Generation LLC (Waterbury) requested waiver of the unreserved transmission use penalty provisions in section 8.1 of the Northeast Utilities Companies (NU Companies) Local Service Schedule (Schedule 21-NU) under section II of ISO New England Inc.'s (ISO-NE) tariff.¹ Waterbury states that it has incurred, and will continue to be exposed to, these penalties because it has no advance knowledge of ISO-NE real-time dispatch instructions, which ISO-NE issues after the deadline for reserving and scheduling transmission service under Schedule 21-NU. Waterbury requests waiver and refund of penalties assessed starting August 1, 2010. As discussed below, the Commission grants the request for waiver and refund.

I. Background

2. Waterbury owns and operates a General Electric LMS 100 simple-cycle natural gas or oil-fired combustion turbine peaking generating unit located in Waterbury, Connecticut, with a total net summer generating capacity of approximately 96 MW (the Facility). Waterbury explains that its generating unit was designed to operate as a peaking facility, with the expectation that it would be dispatched for approximately 4-6 weeks, or about 300 hours a year and operate at a 2 to 15 percent annual capacity factor. However, Waterbury states that because of the advanced design, low heat-rate, and the fast-start capability of the Facility, ISO-NE has dispatched the Facility much

¹ ISO New England Inc., Transmission, Markets, and Services Tariff, FERC Electric Tariff No. 3.

more frequently and for more hours than anticipated² in order to meet real-time system requirements.

3. The Locational Forward Reserve Market (LFRM) was designed to provide appropriate economic incentives to resources that provide real-time operating reserve supplies during peak periods. Participants whose bids clear in an auction will have an obligation for the entire seasonal period, and capacity must be offered into the system each day under prescribed parameters in order to qualify to supply locational forward reserves. Waterbury participates in the LFRM. Although peaking facilities like the Facility are not expected to be selected in the Day-Ahead Energy Market, participants in the LFRM are required to be available in real-time during the operating day. Therefore, Waterbury receives ISO-NE start-up orders to be on-line within 30 minutes during the operating day, well after the deadline for scheduling point-to-point transmission service, and it receives no advance instructions from ISO-NE about the duration of time the unit will be requested to run.

II. Request for Waiver

A. Description

4. In Order No. 890, the Commission determined that transmission customers should be subject to unreserved use penalties whenever the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its tariff.³ The Commission reasoned that the penalty established in Order No. 890 would create the appropriate incentive for customers to reserve the correct amount of service.⁴

² Approximately three times the expected number of hours.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 838 (2007) (“Absent a penalty in all instances, transmission customers would have an increased incentive to under-reserve transmission service, which would lead to an increase in the likelihood that system reliability would be impaired.”), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁴ *Id.* P 849.

5. Waterbury states that the purpose of unreserved transmission use penalties is to give transmission customers an incentive to reserve the appropriate level of point-to-point transmission service and to deter transactions which have not been arranged with the transmission provider and which, therefore, could adversely affect system reliability.

6. Waterbury states that the Facility is interconnected to the NU Companies' Local Facilities⁵ through NU's 1990 Line to NU's Baldwin Substation.⁶ Waterbury states that it is the only generator on this line. Waterbury explains that, because it is interconnected to the NU Companies' "local transmission" system⁷ rather than PTF, it is required to purchase and reserve "local transmission" service needed to reach the New England grid.⁸ Waterbury states that Schedule 21-NU requires that requests for and schedules related to hourly non-firm local point-to-point service must be submitted to the NU Companies no later than 2:00 p.m. of the day prior to commencement of such service. If a customer fails to reserve sufficient "local" transmission service in advance, it is subject to unreserved use penalties, as incorporated into Schedule 21-NU. Waterbury states that one way for it to avoid the resulting unreserved use penalties is to purchase monthly transmission service for the maximum capacity of the generating facility that may not be needed, but this may be equally or more burdensome than the penalties themselves.

7. In its first month of operation in July 2009, Waterbury explains that the NU Companies calculated the unreserved use penalty based on the maximum amount of

⁵ "Local Facilities" are "primarily radial paths that provide transmission service to directly interconnected generators." Schedule 21-NU at 56. Point-to-point transmission service is provided over NU's Local Facilities under Schedule 21-NU of the ISO Open Access Transmission Tariff. *Id.*

⁶ Waterbury states that NU's 1990 Line to its Baldwin Substation is not subject to competing transmission reservations by third parties and is not presently constrained.

⁷ NU Companies provide "local transmission" service over their non-Pool Transmission Facilities (non-PTF) that are connected only to the New England system. Schedule 21-NU at 60; *see also New England Power Pool*, 109 FERC ¶ 61,155, at n.3 (2004) (explaining the bifurcated New England wholesale electricity market structure with higher-voltage, region-wide Pool Transmission Facilities (PTF) and facilities in the service territories of each transmission owner that are lower voltage lines or radials performing a primarily local (i.e., non-PTF) function).

⁸ Under the ISO-NE market structure, electric generators directly interconnected to PTF facilities are not required to pay or make transmission reservations for transmission needed to deliver their capacity to load.

hourly unreserved usage for the month multiplied by the actual monthly penalty rate, for a total unreserved use penalty of \$186,569, although the transmission bill for July 2009 was only \$7,567. Waterbury states that, for the following month, August 2009, it began reserving transmission service on monthly basis even though it was far more service than the hourly transmission service it actually needed, at roughly ten times the cost. In July 2010, Waterbury reverted to reserving non-firm local point-to-point transmission service on a weekly, daily, or hourly basis, based on its best estimates of the hours it may be called upon in real-time. Waterbury estimates a cost of \$47,910 of reserving non-firm local point-to-point transmission service virtually around-the-clock. Waterbury states that it must choose between unreserved use penalties for failure to schedule in advance transmission service and potentially greater charges for transmission service that it does not need. Waterbury estimates the charges to be more than half a million dollars annually either way, raising the cost to generation customers and impairing the economic viability of the Facility.

8. Waterbury states that the NU Companies have reviewed this filing and authorized Waterbury to state that they do not oppose Waterbury's request for a waiver of unreserved use penalties and that ISO-NE also authorized Waterbury to state that it does not oppose this filing. The NU Companies will continue to bill Waterbury for any unreserved use penalties that may accrue starting September 1, 2010, until the Commission issues its decision in this case. Waterbury states that it has agreed to pay any such penalties under protest and subject to refund and that the NU Companies have agreed to hold any such funds in escrow pending a Commission decision.⁹

9. In support of its request for waiver, Waterbury states that it acted in good faith and its unreserved use of the NU Companies' Local Facilities is solely the result of responding to ISO-NE dispatch signals and not for purposes of avoiding "local transmission charges." Waterbury states that the waiver is unique and of limited scope for the following reasons: (i) unlike nearly all other peaking resources on the NU Companies' system, the Facility is interconnected to the NU Companies' local network, rather than PTF facilities; (ii) Waterbury sells capacity into the ISO-NE capacity market under a long-term contract with The United Illuminating Company, and Waterbury may be subject to default under this contract if it fails to comply with any of ISO-NE's requirements for participation in the ISO-NE markets; (iii) Waterbury's exposure to unreserved use penalties is unique for a New England peaking unit because of the Facility's advanced design, low heat rate, and favorable operating characteristics; and (iv) the waiver would be effective only for as long as the availability of transmission service over the subject Local Facilities is not limited by competing reservation(s) by a

⁹ See Waterbury's September 24, 2010 amendment to the instant filing.

third party. Further, the waiver resolves a concrete problem by allowing Waterbury to respond to ISO-NE's signals without having to pay penalties. Finally, Waterbury explains that the waiver will in no way harm third parties because there are no competing transmission reservations on NU's 1990 line. On the contrary, Waterbury explains that granting the waiver will benefit generation customers by enabling it to provide reliable service when needed.

B. Notice

10. Notice of Waterbury's filing was published in the *Federal Register*, 75 Fed. Reg. 59,254 (2010), with interventions, protests, or comments due on or before October 8, 2010. Northeast Utilities Service Company filed an intervention and comments.¹⁰

11. The NU Companies state that they do not object to Waterbury's request for waiver of penalties assessed after August 1, 2010, nor do the NU Companies object to the waiver of the provisions of Schedule 21-NU providing for unreserved transmission use penalties through such time that the NU Companies notify Waterbury that NU's 1990 Line to its Baldwin Substation has potentially become subject to competing transmission reservations as a result of subsequent generator interconnection(s). The NU Companies also agree that Waterbury's situation is unique in that it currently is the only peaking generating facility connected to an NU Company's radial transmission line rather than being directly connected to a PTF and the only generating facility interconnected to NU's Baldwin Substation and using NU's 1990 Line. Finally, the NU Companies state that waiving the penalties will not interfere with the Commission's intent to discourage disorderly use of transmission service.

III. Commission Determination

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

13. As discussed below, the Commission will grant Waterbury's request for waiver. We note, however, that the waiver granted here is of limited scope.

14. The Commission has granted relief where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied;

¹⁰ NUSCO states that it is acting agent for the NU Companies.

¹¹ 18 C.F.R. § 385.214 (2010).

and (4) the waiver does not have undesirable consequences, such as harming third parties.¹²

15. The Commission finds that the request for waiver here satisfies the aforementioned conditions. We agree that Waterbury's unreserved use of the NU Companies' Local Facilities occurred as a result of responding to ISO-NE dispatch signals and not for the purposes of avoiding local transmission charges. It thus appears that Waterbury, the NU Companies, and ISO-NE all have acted in good faith under their applicable tariffs and agreements. Additionally, this waiver is of limited scope, since it will apply solely to the unreserved transmission use penalties prescribed in Schedule 21 of the NU Companies' Local Service Schedules of section II the ISO-NE Tariff. And the waiver will apply only until the availability of transmission service over the subject Local Facilities becomes limited by competing reservation(s) by a third party.¹³ The waiver addresses a single concrete problem, i.e., that of unreserved transmission use penalty charges paid by Waterbury. As to whether the waiver could have undesirable consequences, we conclude that no third parties will be harmed by granting this limited waiver of Schedule 21-NU.

16. Due to the specific and unique facts presented above, the Commission will grant Waterbury's request for limited waiver of Schedule 21-NU and the requested refund of penalties paid since August 1, 2010.

¹² See, e.g., *EnerNOC Inc.*, 122 FERC ¶ 61,297 (2008); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation, LLC*, 120 FERC ¶ 61,007 (2007) (each evaluating requests for waiver).

¹³ The waiver will terminate upon notice from the NU Companies to Waterbury that the 1990 line to the Baldwin Substation has potentially become subject to a competing transmission reservation as a result of subsequent generator interconnection that could, if simultaneous dispatch were to occur, exceed the transmission capability of the subject Local Facilities.

The Commission orders:

Waterbury's request for waiver and refund of penalties is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.