107 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

v. Docket No. EL04-82-000

ISO New England, Inc.

ORDER DENYING COMPLAINT

(Issued May 27, 2004)

1. In this proceeding, several NRG affiliates[1] (collectively, NRG Companies) filed a complaint against ISO New England, Inc. (ISO-NE or ISO) alleging that ISO-NE denied compensation for the provision of Operating Reserves in violation of NEPOOL Market Rule 1 and Commission orders. The Commission denies the complaint based on the pertinent tariff language. This action benefits customers by enforcing the filed rate, thereby providing certainty to the market.

[1] Complainants included in the initial complaint were NRG Power Marketing, Inc., Connecticut Jet Power LLC, Middletown Power LLC, and Montville Power LLC. NRG later moved to add Norwalk Power LLC. All of these entities are referred to herein as NRG or NRG Companies.

Complaint

2. During several days in August 2003, NRG self-scheduled[2] several of its generating units for certain hours during the units' minimum run time.[3] NRG states that during the same calendar day the ISO directed its units to continue to run and to provide Operating Reserves as Pool-Scheduled resources[4] for reliability purposes. In addition, the ISO instructed the units to continue to run for subsequent Operating Days.[5] Through the ISO's settlements process, the ISO denied the NRG units Operating Reserve credits[6] for the Operating Days in which the units were Pool-Scheduled. According to NRG, this resulted in the NRG units failing to recover their costs to operate, even though they were instructed to run as Pool-Scheduled Resources for several Operating Days after the day in which the units were partially self-scheduled.

3. NRG later submitted a request for billing adjustment with the ISO. The ISO denied the claims, asserting that the units were self-scheduled during their minimum run time and, therefore, were not eligible for Operating Reserve Payments under NEPOOL Manual 28, section 5.2.1, which provides that only Pool-Scheduled Resources that do not have any self-scheduled hours during the minimum run time portion of their real-time

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[2] Market Rule 1 defines "Self-Schedule" as "the action of a Participant in committing and/or scheduling its Resource . . . to provide service in an hour, whether or not in the absence of that action the Resource would have been scheduled or dispatched by the ISO to provide the service."

[3] "Minimum Run Time" is the minimum time the unit can be dispatched to run for economic and operational reasons. According to NRG, its units' minimum run time is 16 hours.

[4] Market Rule 1 defines "Pool Scheduled Resources" as "those Resources for which Participants submitted Supply Offers to sell energy in the Day-Ahead Energy Market and which the ISO scheduled in the Day-Ahead Energy Market as well as generators committed by the ISO subsequent to the Day-Ahead Energy Market."

[5] Market Rule 1 defines "Operating Day" as "the calendar day period beginning at midnight for which transactions on the NEPOOL Market are scheduled."

[6] Market Rule 1 defines operating reserve credit as the payment made to a resource for providing operating reserve, replacement reserve, or voltage support. Operating reserve credits are designed to make resources whole when their energy payments are not sufficient to cover their running costs.

commitment periods[7] are eligible to receive real-time Operating Reserve credits. Thus, the ISO reasoned that, between a start-up and either a shut-down or a trip, if a unit self-schedules during its minimum run time, it is ineligible for Operating Reserve Credits for the entire real-time commitment period.

4. NRG asserts in its complaint that the ISO erroneously relied on the fact that the NRG units had some self-scheduled hours during their initial 16 hours of operation while ignoring the fact that the units did not have any self-scheduled hours during the several following Operating Days for which the ISO instructed the units to run. NRG believes that, since the ISO evaluates dispatch on a daily basis, the ISO establishes a commitment period every day, and NRG contends that the ISO is misinterpreting "Commitment Period" to mean the time when a unit starts up to when it shuts down or trips without regard to either the ISO's own daily scheduling and dispatching evaluation or the Operating Reserve service being provided at the ISO's request. NRG concludes that the ISO must pay units Operating Reserve Credits if they have no self-scheduled hours within an operating day, relying on the fact that that is consistent with the manner in which the ISO actually schedules and dispatches resources, i.e., on an operating day basis.

5. NRG further supports its position by positing that the NEPOOL Manual 28 "cannot be legitimately interpreted to allow the ISO [to] instruct a unit to keep running indefinitely and provide Operating Reserves (without an opportunity for cost recovery) after it partially self-scheduled during its initial day of operation." Additionally, NRG claims that NEPOOL and the ISO made representations in earlier proceedings that indicated that an operating day is the pertinent period for determining whether a unit is eligible for Operating Reserve credits. Finally, NRG states that the ISO's understanding of its Market Rules is inequitable and could result in less reliable markets in New England.

6. NRG asks the Commission to find that the ISO violated its Market Rules and Commission orders when it denied NRG Operating Reserve payments and to order the ISO to pay $290,375.22 for such payments withheld to date.[8]

[7] Commitment Periods are periods of continuous operation bounded by a start-up and the earlier to occur of a shut-down or a unit trip.

[8] NRG also requested that the Commission direct the ISO to modify its market rules to guarantee that partially self-scheduled participants receive as-bid costs for the pool-scheduled increments of their output, but it withdrew the request in its motion to amend the complaint, given NEPOOL's filing in Docket No. ER04-623-000 revising the eligibility criteria for Operating Reserve Credits. See New England Power Pool, 107 FERC 61,135 (2004).

Notice And Interventions

7. Notice of NRG's complaint was published in the Federal Register, 69 Fed. Reg. 7,744 (2004) with motions to intervene and protests due on or before February 23, 2004. Timely motions to intervene were filed by the New England Power Pool Participants Committee (NEPOOL); Exelon Corporation (Exelon); USGen New England, Inc.; American National Power, Inc.; Northeast Utilities Service Company on behalf of the NU Operating Companies (NUSCO); Select Energy, Inc. (Select Energy), and Dominion Resources, Inc., Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., and Dominion Retail, Inc. (collectively, Dominion Resources). PSEG Energy Resources & Trade LLC (PSEG) filed a motion to intervene out-of-time. On March 3, 2004, Exelon New England Holding LLC (Exelon NEH) filed comments; it did not seek to intervene.

ISO-NE's Answer

8. ISO-NE states that "eligibility for Real-Time operating reserve credits is not tied to whether a unit self-schedules within any particular Operating Day, but rather on whether a unit has self-scheduled during the minimum run time of the relevant Real-Time Commitment Period."[9] According to the ISO, the Market Rules clearly provide that if a unit self-schedules during its minimum run time, it is not eligible for Operating Reserve credits for that minimum run time, and for subsequent hours of the real-time commitment period. The ISO asserts that the reference to Operating Days that NRG cites from sction 2.1 of Appendix F of Market Rule 1 pertains to when the ISO will tally up Operating Reserve credits owing to eligible units, and does not affect the eligibility of units to receive those credits. The ISO concludes that NRG's reading of Market Rule 1 must be rejected.

9. ISO-NE comments that the representations in pleadings in other proceedings NRG cites are either irrelevant, are taken out of context, or do not prove the points that NRG attempts to make. In any event, the ISO notes that none of the statements contain a reference to Operating Day as the period of time by which Operating Reserve credit eligibility is judged or imply that a unit would qualify for Operating Reserve credits during a subsequent Operating Day within the same real-time commitment period.

Other Responsive Pleadings

10. NEPOOL takes no position on the correct interpretation of Market Rule 1 but cautions that the complaint should only be granted if the Commission determines that ISO-NE has improperly interpreted and applied the rule as it was in effect during August 2003. NEPOOL asserts that the representations made in the relevant pleadings shed no light on the dispute because they all qualify the discussion with reference to specific

[9] ISO Answer at 4.

eligibility requirements to be met by units with self-scheduled hours that seek payment for Operating Reserves provided in real time.

11. NUSCO/Select Energy assert that the tariff provision clearly provides that units operating as NRG's did in August 2003 are ineligible for Operating Reserve credits if they have any self-scheduled hours during the minimum run time portion of a real-time commitment period. NUSCO/Select Energy note that the extensive market rule revisions adopted by NEPOOL and filed in Docket No. ER04-623-000 demonstrate that the ISO could not have provided NRG with Operating Reserve payments absent changing the existing rules. NUSCO/Select Energy argue that, to the extent the Commission determines that any portion of the filed tariff is unjust or unreasonable, any modification should not result in retroactive relief.

12. Exelon NEH, on the other hand, supports NRG's interpretation, arguing that the ISO's understanding of the rules "is at odds with Commission precedent . . . , conflicts with other market rules, serves no economic or policy purpose, and produces patently unfair and absurd results."[10] Exelon NEH explains that it is in the same situation as NRG, having been denied Operating Reserves payments by the ISO after receiving instructions to stay online during a record-breaking cold snap in January 2004. In its case, Exelon NEH had initially self-scheduled its units during their minimum run times over a month earlier (in December 2003 when the units first went online). Exelon NEH claims that the only lawful reading of the market rules is that units would be denied their as-bid costs if they self-schedule and then are Pool-Scheduled within the same Operating Day. It states that ISO-NE should not have the option of forcing generators to provide reserves and then denying them cost recovery.

Amended Complaint

13. On April 2, 2004, NRG moved to amend its complaint. NRG seeks to supplement the complaint to include all known instances where the ISO denied Operating Reserve credits for periods when NRG units were directed to provide Operating Reserves as Pool-Scheduled resources. These instances occurred during certain days of July 2003 and January and February 2004. NRG claims that it failed to recover as-bid costs totaling $1,245,633.40 incurred in providing Operating Reserves at the ISO's direction, yielding total claims of $1,532,564.35. As some of these costs were incurred by an NRG affiliate not involved in the initial complaint, NRG seeks to add Norwalk Power LLC as a complainant.

14. NRG also mentions NEPOOL's decision to grant a request by Exelon NEH for special compensation for the operation of its units during January 2004. It asserts that

[10] Exelon at 1-2.

after ISO-NE denied Operating Reserve payments to Exelon NEH, it sought to recover its roughly $8.5 million in costs under section 7.5(g) of the Restated NEPOOL Agreement.[11] NEPOOL granted the request and subsequently filed under section 205 of the Federal Power Act (FPA)[12] for the Commission to approve the arrangements to compensate Exelon.[13]

Notice And Interventions

15. Notice of NRG's amended complaint was published in the Federal Register, 69 Fed. Reg. 24,145 (2004) with motions to intervene and protests due on or before May 7, 2004. A timely motion to intervene was filed by National Grid USA.

ISO-NE's Answer

16. ISO-NE responds that some of the new claims are not procedurally ripe for review by the Commission because NRG has not exhausted its procedural remedies by submitting the claims to the ISO as requested billing adjustments. Thus, the ISO argues that the claims should be rejected. Regarding Exelon's request for special compensation, the ISO contends that the fact that NEPOOL voted for a special payment for Exelon under section 7.5(g) of the Restated NEPOOL Agreement, which applies to "payments and costs not otherwise reimbursed under [the Restated NEPOOL Agreement]," demonstrates that there was no right to payment under the market rules.

Other Responsive Pleadings

17. NEPOOL again urges the Commission to apply Market Rule 1 as it was filed with and approved by the Commission. NEPOOL notes that a change in interpretation from that of ISO-NE would affect more payments to generating resources than the $1.5 million sought by NRG and the separate $8.5 million approved for Exelon under the Restated NEPOOL Agreement section 7.5(g). According to NEPOOL, the interpretation would affect payments to and from many participants.

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[11] Section 7.5(g) of the Restated NEPOOL Agreement provides that the Participants Committee has the authority to provide for the sharing by participants of costs which are not otherwise reimbursed under the Agreement and which are incurred in order to meet or avoid short-term deficiencies in the amount of resources available to meet reliability objectives.

[12] 16 U.S.C. § 824d (2000).

[13] NEPOOL's filing is considered in Docket No. ER04-677-000. An order on the filing is being issued concurrently with this order. See New England Power Pool, 107 FERC ¶ 61,183 (2004).

18. NEPOOL and NUSCO/Select Energy comment that NRG has not demonstrated that it is entitled to special compensation under the Restated NEPOOL Agreement section 7.5(g), because its situation was, in fact, distinguishable from Exelon's claim.

19. On May 4, 2004, NRG filed an answer in response to the protests.

Discussion

Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant PSEG's motion to intervene out-of-time given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept NRG's answer and will, therefore, reject it.

Complaint

21. We disagree with the argument that ISO-NE violated its Market Rules when it denied NRG Operating Reserve credits for running its units pursuant to ISO-NE instruction when the units were self-scheduled during their minimum run time. Market Rule 1 provides that eligibility for real-time Operating Reserve credits is determined by whether a unit is self-scheduled during the minimum run time and, if it is, then it is not eligible for credits for the entire period from start-up to shutdown. Section 2.1 of Market Rule 1, Appendix F, states in part that in the real-time energy market generating resources that are Pool-Scheduled resources that do not have any self-scheduled hours during the minimum run time portion of their real-time commitment periods (periods of continuous operation bounded by a start-up and the earlier to occur of a shut-down or a unit trip) are eligible to receive real-time Operating Reserve credits for all hours that are not self-scheduled during the commitment period.[14] Thus, NRG acknowledges that during several days in August 2003, it self-scheduled several of its generating units in Connecticut for certain hours during the units' minimum run time. NRG also explains that during that same Operating Day, the ISO directed these units to continue to run and provide Operating Reserves as Pool-Scheduled resources for reliability purposes.[15] As a result, NRG was ineligible to receive Operating Reserve credits, because NRG units were

[14] Under Market Rule 1, section 1, the minimum time a unit can be dispatched to run for economic and operational reasons cannot exceed 24 hours.

[15] See NRG's Complaint page 5.

self-scheduled during the minimum run time portion of the real-time commitment period. Therefore, we reject the argument that ISO-NE violated its Market Rules regarding this matter.

22. With regard to the parties' disagreement about the meaning conveyed in the various pleadings and Commission orders discussing the Operating Reserve eligibility requirements, we agree with NEPOOL's assessment that those comments are not entirely on point. For the most part, they deal with the treatment of costs for Operating Days that are partially self-scheduled, and none speak to the interplay between the Operating Day and the commitment period. In any event, those pleadings have little importance here since the meaning of the tariff language is clear. Market Rule 1, Appendix F, provides that, if a resource self-scheduled during its minimum run time, that resource is ineligible to receive Operating Reserve credits during that minimum run time and subsequent hours.

23. We note that NEPOOL has modified its tariff so that generators will not face this problem in the future. In New England Power Pool, 107 FERC ¶ 61,135 (2004), the Commission accepted NEPOOL's proposed revisions to Market Rule 1, Appendix F, effective as of March 1, 2004, such that self-scheduling during a unit's minimum run time would not make that unit ineligible for Operating Reserve credits in all subsequent hours of the same commitment period.[16]

24. Despite the fact that we deny NRG's complaint herein, based on the tariff language previously in effect, NRG will have the opportunity to recover its costs for the hours it operated its units at the direction of the ISO as a result of Commission action on NEPOOL's filing in Docket No. ER04-677-000. As explained above,[17] NEPOOL granted a request by Exelon NEH for special compensation under the Restated NEPOOL Agreement section 7.5(g) for operating its units on certain days in January 2004. NEPOOL filed under FPA section 205 for Commission approval of arrangements to

[16] The revised provision provides that generating resources in the day ahead market will be ineligible for Operating Reserve credits for the Operating Day if their supply offer contains a self schedule for fewer hours than its minimum run time, or two blocks of contiguous self-scheduled hours separated by less than the resource's minimum down time. Similarly, NEPOOL states that a generating resource in the real-time market will be ineligible to receive Operating Reserve credits for the Operating Day if it is self-scheduled for fewer contiguous hours than its minimum run time, or it submits two self-schedules separated by less than its minimum down time. In other words, a self-scheduled resource may be ineligible if self-scheduled hours are present during the minimum run time period, even if that minimum run time has passed.

[17] See supra at P 15 and n.13.

compensate Exelon NEH for those costs. While the Commission conditionally accepts the proposal in an order being issued concurrently with this order, we also require NEPOOL and ISO-NE to treat in a non-discriminatory manner requests from other generators under the Restated NEPOOL Agreement section 7.5(g) to recover costs incurred in similar circumstances.[18] Thus, NRG may pursue recovery of its costs through that process with some assurance that its request will be treated the same as Exelon's.[19]

The Commission orders:

NRG's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

[18] See New England Power Pool, 107 FERC ¶ 61,184 (2004).

[19] As to NRG's argument that Exelon circumvented the appropriate process to request compensation (i.e., through NEPOOL's billing dispute procedures as opposed to its special compensation provision in the Restated NEPOOL Agreement section 7.5(g)), the fact that the Commission will require non-discriminatory treatment for similarly situated generators should address the process concerns raised.