

127 FERC ¶ 61,249
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Dartmouth Power Associates Limited Partnership

Docket No. EL09-42-000

v.

ISO New England Inc.

ORDER DENYING COMPLAINT

(Issued June 18, 2009)

1. On March 20, 2009, Dartmouth Power Associates Limited Partnership (Dartmouth) filed a complaint against ISO New England Inc. (ISO-NE) as an appeal of ISO-NE's denial of Dartmouth's Requested Billing Adjustment¹ on February 20, 2009. Dartmouth asserts that ISO-NE's revocation of Dartmouth's June 2008 Installed Capacity (ICAP) payments in the amount of \$231,952.50 for Dartmouth's alleged failure to notify ISO-NE of an unscheduled outage is unreasonable. For the reasons discussed below, Dartmouth's complaint 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. 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 12:00 p.m. on June 13, Consolidated Edison

¹ Section 6.1 of ISO NE's Tariff (Billing Dispute Procedures) provides that "any covered entity may dispute the amount due on any fully paid monthly invoice . . . by submitting a request for billing adjustment to the ISO."

² Dartmouth March 20, 2009 Complaint at 3.

Energy, Inc. (ConEd)³ bid the facility as available on June 14 in ISO-NE's day-ahead electric energy market. ConEd let the day-ahead bid for June 14 remain in place for the real-time market. The facility did not receive a day-ahead commitment for June 14 from ISO-NE.

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 tube bend 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 Feb. 20, 2009, ISO-NE denied Dartmouth's Requested Billing Adjustment. Dartmouth now appeals the denial of its Requested Billing Adjustment to the Commission.

II. Complaint

6. Dartmouth argues that ISO-NE misconstrued its ICAP Resource obligations as requiring a resource to provide ISO-NE with prior notice of a forced outage. It contends

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. Dartmouth March 20, 2009 Complaint at 4 n.9.

⁵ *Id.* at 6.

that neither Market Rule 1 nor ISO-NE's Installed Capacity Manual, which were cited by ISO-NE in its denial of Dartmouth's Requested Billing Adjustment, expressly requires an ICAP Resource to notify the ISO before a forced outage occurs in order to qualify for ICAP payments.⁶ Dartmouth contends that ISO-NE's Operating Procedure No. 5 states that notifications of forced outages should be made "as soon as practicable."⁷

7. Dartmouth argues that ISO-NE's imposition of a prior notice requirement for a forced outage is inconsistent with the very nature of a forced outage. It contends that a forced outage is by definition unexpected and that it is difficult, if not impossible, for a generator to have advance notice of a forced outage, much less provide such notice to others. It contends that it is therefore unreasonable to interpret Market Rule 1 as imposing a prior notice requirement.⁸

8. Dartmouth argues that its notice to ISO-NE of the facility's forced outage was reasonable under the circumstances. It contends that when the shadow maintenance was initiated at 8:00 a.m., it was not anticipated that the repair work would have any impact on the facility's ability to meet ISO-NE's dispatch instructions. Dartmouth states that under the facility's bid parameters for June 14, the facility was required to run within two hours of the notice of dispatch. It contends that given the two-hour estimate for initial repair work, the facility was available to be dispatched as an ICAP Resource during the shadow maintenance (i.e., up until 10 a.m.) in compliance with ISO-NE's operating rules.⁹

9. Dartmouth contends that, at 10:00 a.m., when it became apparent that additional repairs would be required, the control room operator had to make decisions regarding the repair work and return from the facility to the control room to call ISO-NE to report the forced outage. It notes that before the control room operator was able to notify ISO-NE, ISO-NE called to dispatch the facility at 10:37 a.m. It argues that its notice to ISO-NE of the outage at 10:37 a.m. was reasonable notice for purposes of the ICAP Resource obligations. It argues that its notice to ISO-NE, less than 40 minutes after the forced

⁶ *Id.* at 6-7.

⁷ *Id.* at 7 (*citing* ISO New England Operating Procedure No. 5, Generator and Dispatchable Asset Related Demand Maintenance and Outage Scheduling at 5).

⁸ *Id.* at 7-8.

⁹ *Id.* at 8.

outage began, is not made any less reasonable by the fact that ISO-NE initiated the contact.¹⁰

10. Dartmouth requests that the Commission issue an order directing ISO-NE to grant Dartmouth's Requested Billing Adjustment and reimburse Dartmouth in the amount of \$231,952.00 plus accrued interest calculated at the Commission's standard rate, set forth in 18 C.F.R. § 35.19(a)(2)(iii).

III. Notice and Responsive Pleadings

11. Notice of the March 20, 2009 complaint filed by Dartmouth was published in the *Federal Register*, 74 Fed. Reg. 13,427 (2009), with interventions and protests due on or before April 9, 2009. On April 9, 2009, ISO-NE filed an answer to the complaint. Dartmouth filed a response to ISO-NE's answer. The New England Power Pool Participants Committee filed a motion to intervene.

12. ISO-NE answers that the Commission should deny the complaint. It contends that Dartmouth failed to comply with the ICAP Payment eligibility requirements in the ISO-NE tariff (Tariff) for the month of June 2008. Specifically, it contends that Dartmouth violated the Tariff by failing to notify ISO-NE about the June 14, 2008 forced outage,¹¹ as required by section III.8.3.1(c) of the Tariff. It contends that instead, ISO-NE discovered when it called to dispatch the unit that Dartmouth had taken the facility out of service to perform maintenance work. ISO-NE argues that Dartmouth admitted the outage only when questioned by ISO-NE.¹²

¹⁰ *Id.* at 9.

¹¹ ISO-NE notes that Market Rule 1 defines a Forced Outage as "an immediate reduction in output or capacity or removal from service, in whole or in part, of a generating unit" for one of any number of reasons "as specified in the ISO New England Manuals and ISO New England Administrative Procedures." It states that this can include an emergency, threatened emergency, unanticipated failure, or other cause beyond the control of the owner or operator of the facility. ISO-NE April 9, 2009 Answer at 12 (*citing* ISO Tariff § III.8.3.1(e)). It further states that ISO New England Operating Procedure No. 5: *Generator and Dispatchable Asset Related Demand Maintenance and Outage Scheduling* (OP-5) clarifies that a forced outage includes "any outage or inability, in whole or in part, of a Generator ... to provide its claimed capability ... that has not been approved by the ISO in the form of a Planned or Maintenance Outage, or the granting of Inactive Reserve or Retired status in accordance with section I.3.9 of the Tariff." *Id.* (*citing* OP-5 at 4).

¹² *Id.* at 13.

13. ISO-NE disputes Dartmouth's contention that Dartmouth complied with the notification requirement because its notification to ISO-NE at 10:37 a.m. was "as soon as practicable under the circumstances."¹³ It argues that OP-5 requires a generator to provide ISO-NE with notice of a forced outage "as soon as practicable."¹⁴ It contends that Dartmouth knew it was experiencing a forced outage as early as 7:00 a.m. when it decided to perform maintenance work the morning of Saturday, June 14. It further argues that Dartmouth claimed that it complied with section 8.3.1 of Market Rule 1 only after it received the November 12, 2008 resettlement for June 2008 that had eliminated its \$231,952.50 ICAP payment for that month.

14. ISO-NE argues that Dartmouth violated the maintenance coordination procedures under the Tariff. It contends that OP-5 defines a Maintenance Outage as "an outage that can be deferred beyond the end of the weekend, but requires that the generator ... be removed from service within the next 14 days."¹⁵ It further contends that if the maintenance cannot be deferred beyond the end of the weekend, the outage must be classified as a forced outage.¹⁶ ISO-NE argues that this definition describes Dartmouth's June 1 boiler tube leak. It contends that Dartmouth was able to defer performing maintenance on the boiler tube leak past the following weekend (i.e., June 7-8), but was apparently not able to defer the maintenance for more than fourteen days, as it ultimately performed the maintenance on the thirteenth day (June 14). It argues that Dartmouth then attempted to fix the problem through an unreported and unscheduled outage. ISO-NE contends that under no circumstances should Dartmouth have commenced this maintenance work without first scheduling it with ISO-NE.

15. ISO-NE disputes Dartmouth's characterization of the repair as minor maintenance that did not require it to schedule an outage with ISO-NE.¹⁷ It contends that welding work to fix a boiler tube leak renders a unit unable to commence the normal start-up process (and thus incapable of responding to dispatch instructions) until after the repair is complete. ISO-NE states that a boiler tube generally cannot be repaired while the generator is in the process of its normal start-up procedures because pressurizing the

¹³ *Id.* (citing Dartmouth March 20, 2009 Complaint at 9).

¹⁴ *Id.* (citing OP-5 at 5).

¹⁵ *Id.* at 16 (citing OP-5 at 4).

¹⁶ *Id.* (citing OP-5 at 3).

¹⁷ ISO-NE notes that Dartmouth's phrase "shadow maintenance" does not appear in ISO-NE's tariff or operating documents, and it is not aware that this term is used in the industry. *Id.* at 19 n.57.

boiler and the boiler tubes by heating the boiler with hot exhaust gases from the combustion turbine is one of the first (and primary) steps of the start-up process for this type of combined cycle steam turbine generator. ISO-NE states that the start-up process cannot begin, let alone proceed under normal procedures, while a welding repair to the boiler tubing is underway, and doing so would put the welder at significant safety risk. Moreover, ISO-NE contends that in light of the need for testing – or even the potential need for testing – it was irresponsible to make any assumptions about whether the tube leak could be repaired without varying from the unit’s normal start-up procedures.

16. ISO-NE contends that a primary purpose of ISO-NE’s maintenance coordination procedures is to avoid the very situation Dartmouth created, with its potential adverse consequences for regional reliability. It argues that its procedures are designed to provide sufficient time for ISO-NE to assess the potential impact on reliability of each outage request. It argues that the ISO cannot assess this impact if a generator takes its facility out of service to conduct maintenance without scheduling the work in accordance with OP-5.¹⁸

17. ISO-NE argues that Dartmouth violated section III.8.3.1(f) of the Tariff by failing to report the June 14 outage correctly in its June GADS Data. ISO-NE states that Dartmouth violated the Tariff by failing to comply with the ISO-NE manuals. Specifically, it contends that Dartmouth violated section 3.8.1 of Manual M-20, which provides 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. It contends that the Tariff provides that an ICAP Resource must satisfy these requirements, as they appear in the ISO New England Manuals, in order to receive an ICAP Payment for a month.¹⁹

18. In addition, ISO-NE argues that the Commission should dismiss the complaint for failing to comply with Rule 206(b)(8) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.206(b)(8) (2008), by failing to support its factual assertions with all documents and affidavits attainable by Dartmouth. Specifically, ISO-NE contends that Dartmouth provided no record evidence to support its assertion that its repair work could be finished within two hours. It also contends that Dartmouth provides no affidavits explaining how Dartmouth could have completed the boiler tube welding work without preventing the facility from meeting its start-up time. Further, ISO-NE argues that Dartmouth does not include documentary evidence to support its assertion that Dartmouth contacted welders to perform maintenance work at 7:00 a.m. on Saturday

¹⁸ *Id.* at 22.

¹⁹ *Id.* at 24.

June 14. ISO-NE also argues that Dartmouth failed to include any evidence demonstrating that Dartmouth was taking steps to schedule an outage with ISO-NE should the weld bead not hold²⁰

19. Dartmouth responds that it did not expect a forced outage to occur when it began its maintenance at 7:00 a.m., and could not notify ISO-NE until 10:00 a.m. when it discovered that a forced outage was necessary. It reiterates that under the circumstances, notification within 40 minutes after occurrence of the event complies with ISO-NE's Operating Procedures that require a generator to notify ISO-NE of a forced outage "as soon as practicable." It contends that ISO-NE's response that Dartmouth should have notified ISO-NE at 7 a.m. begs several questions, such as how could Dartmouth notify ISO-NE of a forced outage before the forced outage has occurred.

20. Dartmouth urges the Commission to reject ISO-NE's request for summary dismissal of Dartmouth's complaint. Dartmouth argues that the complaint satisfies the Commission's procedural requirements, and contains a signed documentation of the facts presented to ISO-NE.

IV. Commission Determination

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion of intervention serves to make the party that filed it a party to this proceeding. Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the Dartmouth's answer because it has provided information that has assisted us in our decision-making process.

22. ISO-NE requests that we dismiss the complaint because it fails to comply with Rule 206(b)(8), 18 C.F.R. § 385.206(b)(8) (2008), arguing that Dartmouth has failed to support many of its factual assertions with affidavits or other documentary support. We decline to dismiss the complaint for this reason because Dartmouth has provided sufficient information for us to render a decision.

B. Commission Determination

23. The Commission denies Dartmouth's complaint. Section 8 of Market Rule 1 of the Tariff specifies the requirements with which a Market Participant must comply to qualify for an ICAP Payment during the transition period leading up to the first Capacity Commitment Period to the Forward Capacity Market. Section III.8.3 states: "To receive

²⁰ *Id.* at 26-27.

ICAP Payments for a month (or in the case of a Dispatchable Asset Related Demand Resource, to receive an adjustment to its share of ICAP Payment costs), an ICAP Resource must satisfy the requirements and obligations associated with its resource type listed below.” Section III.8.3.1 details the “requirements and obligations” that a generating unit must comply with “[t]o perform as an ICAP Resource.” If a generating unit complies with these “requirements and obligations” for the entire month, it qualifies for the monthly ICAP Payment. If it fails to comply with these “requirements and obligations,” it does not qualify for the monthly ICAP Payment.

24. We find that Dartmouth failed to comply with several of the section III.8.3.1 requirements pertaining to outages. Specifically, Dartmouth failed to notify ISO-NE about the June 14 outage as required by section III.8.3.1(c), which requires that Dartmouth “notify the ISO of any outage (including partial outages) and the expected return date from the outage.”²¹ There is nothing in the record to indicate that Dartmouth made any attempt to notify ISO-NE about the outage before 10:37 a.m. on June 14th when ISO-NE called to dispatch the unit. On the contrary, ISO-NE first discovered that Dartmouth was not available for dispatch when it called Dartmouth at 10:37 a.m. on June 14th.

25. Furthermore, we are not persuaded that this communication constitutes notice by Dartmouth as contemplated under the ISO-NE tariff. We reject Dartmouth’s contention that informing ISO-NE of the outage at 10:37 a.m. was timely notice “under the circumstances.” Dartmouth was aware at 7 a.m. on June 14 that it was engaging in repairs that could result in the facility being unable to respond to dispatch.²² In addition, Dartmouth was aware as early as June 1 that the facility had developed a boiler tube leak in its heat recovery steam generator that would require repair.²³ Dartmouth states that the tube leak increased the facility’s water vapor emissions and the continued operation of the facility violated state opacity standards. Dartmouth, therefore, was aware of the need for an outage and the need for maintenance of the boiler tube. Given these circumstances, it is implausible that Dartmouth would be unable to notify ISO-NE immediately after the rupture of the pipe in fact occurred, but prior to commencing the necessary repairs.

26. Dartmouth’s actions also violated the ICAP Payment eligibility requirement in section III.8.3.1(e), which requires Dartmouth to abide by ISO-NE’s maintenance coordination procedures. These procedures, provided in OP-5, require Dartmouth to

²¹ ISO-NE Tariff section III.8.3.1(c).

²² Dartmouth March 20, 2009 Complaint at 4.

²³ *Id.* at 3.

schedule a Maintenance Outage with ISO-NE before taking the facility out of service to commence repairs.²⁴ 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 – repairing a boiler tube leak – are not the type of work that can be completed while a generating unit is undergoing normal start-up procedures. In general, welding work to fix a boiler tube leak renders a unit unable to commence the normal start-up process until after the repair is complete, and therefore creates an outage. It was unreasonable for Dartmouth to presume that the welding work would not require taking the facility out of service, and, as the facts bore out, the welding work did take the facility out of service and Dartmouth was unable to satisfy ISO-NE’s dispatch instructions.

27. We agree with ISO-NE that Dartmouth’s actions created the potential for adverse consequences for regional reliability. In fact, a primary purpose for standardized maintenance procedures is to avoid the very situation Dartmouth created. ISO-NE’s procedures require ICAP Resources to schedule maintenance outages with ISO-NE so that it can plan accordingly and reduce the likelihood of an unexpected outage. Among other things, OP-5’s procedures are designed to provide “sufficient time for ISO and its Local Control Centers to assess the impact of each Generator’s ... outage request on the New England Control Area’s bulk power system reliability.”²⁵ Dartmouth’s actions prevented ISO-NE from discharging its responsibility to evaluate and adjust for the impact of a pre-scheduled Maintenance Outage.

28. In addition, Dartmouth violated the Tariff by failing to comply with the ISO-NE manuals. Specifically, Dartmouth Power violated section 3.8.1 of Manual M-20, which provides that ICAP resources must notify the ISO Operations Department for any hour of any day that the resource cannot provide the full amount capacity due to a forced outage. ISO-NE’s Tariff provides that an ICAP Resource must satisfy these requirements in order to receive an ICAP Payment.

29. For the reasons discussed above, Dartmouth was not eligible for, and ISO-NE was not required to pay, a monthly ICAP Payment for the month of June 2008. Accordingly, Dartmouth’s requested appeal of its Requested Billing Adjustment and its complaint are denied.

²⁴ OP-5 at 3.

²⁵ OP-5 at 4.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.