

104 FERC ¶61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Mirant Kendall, LLC

Docket Nos. ER03-998-000
ER03-563-012

ORDER ACCEPTING CERTAIN BID COST INPUT INFORMATION FOR
FILING, AND DIRECTING COMPLIANCE FILING

(Issued August 22, 2003)

1. In this order, under Section 205 of the Federal Power Act (FPA)¹, the Commission accepts for filing, as modified, Mirant Kendall, LLC's (Mirant Kendall) certain proposed Peaking Unit Safe Harbor (PUSH) fixed cost inputs to the PUSH bid level developed by ISO New England Inc. (ISO-NE)² for Mirant Kendall's two jet turbine units (Kendall jets). This order benefits customers by helping to ensure the continued availability of generating resources needed for system reliability while protecting competition in the New England electricity market.

Background

2. On June 27, 2003, in Docket No. ER03-998-000, Mirant Kendall submitted fixed cost data and information in support of its PUSH bid level for its Kendall jets. Mirant Kendall states that the PUSH bid level for the Kendall jets was developed by ISO-NE in accordance with the NEPOOL Market Rules.

3. In Devon, the Commission directed ISO-NE to implement a temporary bidding mechanism that would enable high-cost generators needed for reliability to recover costs

¹16 U.S.C. § 824(e) (2000).

²Mirant Kendall's filing is made pursuant to the Commission's April 25, 2003 order in Devon Power LLC, et al., 103 FERC ¶ 61,082 (2003)(Devon), order on reh'g, 104 FERC ¶ 61,123 (2003)(Devon Rehearing). Devon directed ISO-NE to revise New England Power Pool (NEPOOL) Market Rule 1 to remove the provisions for a generic safe-harbor reference level for generating units located in chronically congested areas (referred to as the Proxy CT proposal) and instead establish unit-specific safe harbor bid levels for generating units that have low capacity factors.

through market clearing prices rather than through RMR agreements, which it found must be used thereafter only as a last resort. The Commission directed ISO-NE to implement a PUSH bidding mechanism, under which peaking units in Designated Congestion Areas (DCAs) could be eligible to bid, and set market-clearing prices, at an amount that included a fixed cost and variable cost component. The Commission held that the PUSH bidding mechanism would be effective June 1, 2003, and that it would only be temporary, until ISO-NE implemented (no later than June 1, 2004) a location or deliverability requirements mechanism in the installed capacity (ICAP) or resource adequacy market. The Commission also ordered ISO-NE to develop initial PUSH bidding levels for units in DCAs with a 2002 capacity factor of 10 percent or less, and it held that affected generators could file with the Commission information to revise those levels.

Notice of Filing and Protests

4. Notice of Mirant Kendall's PUSH bid cost input filing was published in the Federal Register, 68 Fed. Reg. 41,334 (2003) with comments, protests, or interventions due on or before July 18, 2003. A motion to intervene was filed by Northeast Utilities Service Company (NUSCO). Timely motions to intervene, protests, and comments were filed by ISO-NE and jointly by Massachusetts Municipal Wholesale Company, Braintree Electric Light Department, Reading Municipal Light Department, and Taunton Municipal Lighting Plant (collectively, Municipals). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214(c)(1) (2003), the timely, unopposed motions to intervene serve to make NUSCO, Municipals, and ISO-NE parties to this proceeding.

5. ISO-NE states that it retained an independent consultant, Rhema Services, Inc., to assist it in developing the fixed cost components of the PUSH bid levels. The levels of fixed costs filed by both Mirant Kendall and the ISO-NE are essentially the same. Both reflect a rate of return on common equity of 13.39 percent. ISO-NE contends that this represents a generic return on common equity based on the guidance given by the Commission in its May 9, 2003 order³ that the rate used for the Devon units was representative of other generating units.

6. Municipals urge the Commission to reject this filing because Mirant has wrongly submitted its data on an "informational" basis although the NEPOOL market rules make clear that Mirant's filing should have been submitted pursuant to Section 205 of the FPA. Additionally, Municipals state that the filing does not contain adequate information such as testimony, required work papers or other supporting documentation.

³Devon Power, LLC, 103 FERC 61,155 (2003).

7. Municipals also raise several other cost of service issues including: (1) the proposed use of a 13.39 percent return on common equity, (2) lack of explanation regarding the development of certain allocation factors for general and common plant and property taxes, (3) lack of support for the proposed depreciation, and (4) different versions of Mirant Kendall's jets investment.

Discussion

8. While Mirant Kendall has filed its PUSH fixed costs as an informational filing, the filing was noticed in the Federal Register and the Commission is treating this filing as a Section 205 filing pursuant to the market rules established in the Devon Rehearing. In addition, the Commission finds that the fixed cost data submitted by Mirant Kendall are sufficient for the Commission to analyze Mirant Kendall's PUSH bid level. Therefore, the Municipals' request for rejection of the filing is denied.

9. The Commission is making one adjustment to Mirant Kendall's cost inputs for its Kendall jets generating units after considering the analyses filed by Mirant and ISO-NE and the protest of the Municipals. That adjustment is to the return on common equity (ROE). We direct ISO-NE to adjust the ROE to 10.88 percent. This ROE is the same as the return adopted in the Devon Rehearing⁴ and further explained in PPL Wallingford.⁵ For the reasons stated there, we direct ISO-NE to modify Mirant Kendall's initial PUSH bid levels to reflect this change in ROE and to implement the revised PUSH level for Mirant Kendall's units as of the date of this order.

10. Municipals claim that no explanation is given for how certain allocation factors used by Mirant Kendall to develop its PUSH bid levels were determined. However, the cost of service that is attached to the ISO-NE motion to intervene in this case does contain a detailed analysis of how the allocation factors are used to support the fixed cost component of Mirant Kendall's PUSH bid level. Mirant Kendall used a two-step process in developing factors used in allocating general and common plant cost and property taxes to Mirant Kendall. Mirant Kendall's allocation is based on average plant investment costs at the Kendall station. The Municipals' concern appears to be the large difference between the beginning of the year (2002) station investment balance at the Kendall station and the end of year investment balance. This difference is appropriate, however, because it reflects that Mirant Kendall brought online a new, large generating

⁴See Devon Rehearing at P 48.

⁵See 104 FERC & 61,199 (2003) at P 15.

unit in 2002. Thus, the Commission finds that Mirant Kendall's allocation method is reasonable.

11. Mirant Kendall uses a depreciation rate of 8.3 percent (based on a 12-year life as provided by ISO-NE in its fixed cost analysis filed on July 18, 2003) to compute its depreciation expenses associated with investment costs of Kendall jet units. Municipals argue that the rate is not explained. Considering the age of the jets (32 years), the Commission finds that a depreciation rate of 8.3 percent is reasonable because the units are near the end of their useful lives.

12. The Municipals state that "Mirant offers two versions of what appear to be the same investment figure, with no explanation for the difference." Mirant Kendall bought the Kendall jets from Cambridge Electric Light Company (Cambridge) for \$2,500,000; however, the original cost of the two jet units (installed in 1970 and 1972) was \$4,838,532 (Cambridge 1997 Form 1 shows the cost of the Kendall jets as \$4,803,436). Mirant Kendall's PUSH bid levels are based on \$2,500,000, which is reasonable.

13. With the exception of the return on common equity, the Commission accepts the fixed costs submitted by ISO-NE to establish the PUSH bid level. Accordingly, we will require Mirant Kendall to make a compliance filing reflecting the return on common equity of 10.88 percent.

The Commission orders:

(A) The Municipals' request for rejection is denied as discussed in the body of this order.

(B) Mirant Kendall's cost input information used to establish the PUSH bid level submitted in ER03-998-000 is hereby accepted, subject to the modification discussed in the body of this order, to become effective the date of this order. ISO-NE is hereby directed, within 10 days of the date of this order, to file the required revisions to Mirant Kendall's PUSH bid level.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.