

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc.
New England Power Pool

Docket No. ER06-89-001

ORDER ON REHEARING

(Issued May 5, 2006)

1. Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation) seek rehearing of an order issued in this proceeding on November 30, 2005.¹ For the reasons discussed below, we will deny rehearing.

Background

2. On October 28, 2005, ISO New England, Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL Participants Committee) filed interim revisions to Market Rule 1² to aid ISO-NE in implementing its Winter 2005/2006 Action Plan. In the November 30 Order, the Commission conditionally accepted the proposed tariff revisions, to become effective December 1, 2005.³ ISO-NE and the NEPOOL Participants Committee filed the tariff revisions as part of a contingency plan to prepare for the possibility that severe cold weather conditions during the winter season might exacerbate fuel supply and pricing issues for New England generating resources.

3. The October 28, 2005 filing included tariff changes relating to the “posturing” of generating resources. ISO-NE has the authority to constrain or hold-off-line (posture)

¹ *ISO New England, Inc.*, 113 FERC ¶ 61,220 (2005) (November 30 Order).

² *ISO New England Inc., Transmission Markets and Services Tariff*, FERC Electric Tariff No. 3, section III.

³ On March 31, 2006, the interim period expired.

pool-scheduled resources in the Energy Market in order to maintain operating reserves during or in anticipation of shortage situations. The tariff revisions changed the allocation of costs of posturing generating resources. Specifically, section III.F.3.1, which specifies the allocation of charges for operating reserves, was amended to provide that Real-Time Operating Reserve Credits associated with the posturing of facilities would be allocated and charged to market participants in proportion to the daily sum of their Real-Time Load Obligations.⁴

Request for Rehearing

4. Constellation requests rehearing with respect to the Commission's approval of allocating the costs of posturing generation resources to Real-Time Load Obligations. Constellation argues that costs should instead be allocated to Network Load.⁵

5. Constellation contends that "the Commission erred in holding that allocation of the costs of unit posturing to 'Network Load' would result in cost allocation to transmission customers, and [in finding that] 'there is no direct benefit to network transmission customers (network load) that results from allocating the costs to network load.'"⁶ Constellation argues that the Commission appears to distinguish between "load" and "transmission customers" and then uses that distinction as a basis for rejecting Network Load as the billing determinant for the cost allocation. Constellation states that Network Load includes the aggregate demand of all retail customers in New England and that allocation of generation unit posturing costs to Network Load satisfies cost causation principles.

6. Next, Constellation maintains that the Commission acted inconsistently when it rejected arguments to allocate posturing costs to Network Load and failed to provide an explanation for the inconsistency. Constellation argues that the Commission has consistently approved proposals to allocate to Network Load the costs of services that

⁴ Real-Time Load Obligations, or Real-Time Load, refers to the total load serving entities' MWh load obligation, including external transactions, of market participants at each location during a given hour of operation. *See* ISO New England Inc., Transmission Markets and Services Tariff, FERC Electric Tariff No. 3, section III.3.2.1(b)(1).

⁵ Network Load refers to the aggregate transmission customers' demand placed on the transmission system at the time of the monthly peak.

⁶ Constellation Rehearing Request at 10.

enhance system-wide reliability, such as the cost of VARs (maintenance of system power factors), voltage support services, and ISO-NE's Demand Response Program.

7. Constellation argues that the Commission erred by failing to recognize that the allocation of generation unit posturing costs to Real-Time Load Obligations would impose unhedgable and unavoidable costs on load serving entities (LSEs) that they could not and would not anticipate. Constellation further argues that the allocation insulates retail load customers, the acknowledged beneficiaries of the reliability benefits of unit posturing actions, from bearing the costs for which they are the actual cause, while imposing on their contractual suppliers unforeseen regulatory risks for which the suppliers have not been compensated and from which the suppliers cannot protect themselves through any market mechanism.

8. Finally, Constellation argues that the Commission erred in failing to address its arguments that allocation to Real-Time Load Obligations would have adverse consequences on LSEs' ability to provide market services to Local Distribution Companies (LDCs). Constellation states that LSEs now may anticipate that ISO-NE will propose similar allocation rules for the costs of further ISO-NE actions taken to address reliability. Constellation goes on to state that the costs to retail load likely will increase, but not in as an efficient or equitable manner as if the costs were allocated directly to these retail customers.

9. National Grid filed a motion seeking leave to answer the rehearing requests and an answer.

Discussion

Procedural Matters

A. Procedural Matters

10. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure⁷ answers to requests for rehearing are not permitted. Therefore, the Commission will reject National Grid's answer.

⁷ 18 C.F.R. § 385.713(d) (2005).

B. Commission Determination

11. We will deny Constellation's request for rehearing of the November 30 Order. We disagree with Constellation's contention that the Commission inappropriately approved cost allocation to Real-Time Load Obligations.
12. Real-Time Load directly benefits from the availability of generating capacity in real time. Network Load derives its benefits and imposes its costs on the New England system through transmission service only. The costs of posturing are directly attributable to Real-Time Load because the posturing at issue here is needed to dispatch generating units to maintain sufficient Operating Reserves, *i.e.*, to ensure adequate generating capacity is available in real time. Therefore, while Network Load and Real-Time Load can occasionally overlap, Constellation's assertion that the Commission erred in distinguishing between "load" and "transmission customers" is misplaced.
13. We disagree with Constellation that the Commission acted inconsistently with cost causation principles when it approved the proposal to allocate the cost of posturing to Real-Time Load Obligations. Under cost causation principles, costs are allocated to the parties who cause the incurrence of such costs. Network Load, *i.e.*, transmission customers, do not cause ISO-NE to posture generation resources in order to maintain the stability and reliability of the transmission system. LSEs, on the other hand, purchase power in the real time energy market to serve load and are, therefore, the entities that directly cause ISO-NE to posture generation resources to ensure that the LSEs have adequate generation to meet their real time load obligations. Thus it is reasonable and consistent with cost causation principles to allocate these costs to LSEs.
14. We also disagree with Constellation's assertion that the Commission acted inconsistently in light of the allocation of the costs of VARs, voltage support services, and ISO-NE's Demand Response Program to Network Load. ISO-NE's posturing proposal will allow it to alter the scheduling and dispatch of generating resources in real time in order to reliably serve load during severe weather conditions when the potential for load curtailment is forecasted. In contrast, VAR and voltage support services are primarily designed to maintain the stability of the transmission system. Therefore, it is consistent with cost causation principles to allocate such transmission-related costs to Network Load.
15. The Commission finds Constellation's argument that allocating posturing costs to Real-Time Load Obligations imposes unavoidable costs on LSEs is unpersuasive. LSEs – Constellation included – voluntarily assume Real-Time Load Obligation when entering into bilateral contracts with end-use customers. Such contracts contain inherent risk associated with unforeseeable future costs, and we would expect that risk to be captured in bilateral contracts between LSEs and end-use customers.

16. The Commission does not agree that rejection of Constellation's request for rehearing would have adverse consequences on the services provided by LSEs to LDCs. Rather, by acting consistently and according to cost causation principles the Commission is providing certainty to LSEs and LDCs that the contracts into which they have entered will not be upset arbitrarily.

17. Further, in the November 30 Order, the Commission stated that "an important purpose of the LSE supply contracts is to shift supply cost risks from the LDCs to the LSEs. Such risks include those from unanticipated as well as anticipated events."⁸ LSEs voluntarily assume supply cost risks in entering into contracts with LDCs, and Constellation has provided no credible argument that would persuade the Commission to relieve LSEs of that voluntary, contractual obligation.

The Commission orders:

Constellation's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary

⁸ *Id.* at 35.