

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Braintree Electric Light Department

Docket Nos. EL06-48-000  
EL06-48-001

ORDER DENYING PETITION FOR DECLARATORY ORDER AND DIRECTING  
COMPLIANCE FILING

(Issued August 4, 2006)

1. On January 19, 2006, Braintree Electric Light Department (Braintree), a Massachusetts municipal utility, filed a petition for declaratory order, requesting that the Commission determine that the rates and charges associated with a Reliability Must Run Agreement (RMR Agreement) between Braintree and ISO New England, Inc. (ISO-NE) for Braintree's 96 MW, dual-fuel, combined cycle Potter 2 generating facility will satisfy the "just and reasonable" criteria of section 205 of the Federal Power Act (FPA).<sup>1</sup> In this order, the Commission denies the petition, as supplemented, as discussed below. Given the specific facts of this case, however, the Commission will allow Braintree to seek additional compensation to the extent it can show that it has not recovered its variable costs.

**Background**

2. ISO-NE has authority, under Market Rule 1,<sup>2</sup> to negotiate agreements for the purchase of electric energy at cost-based rates from generation facilities that ISO-NE identifies as being necessary to ensure reliability, but that are unable to recover their operating costs under current market conditions.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2000).

<sup>2</sup> Market Rule 1 permits ISO-NE to negotiate contracts for the supply of power at cost-based rates to keep a generating facility in operation when the facility is needed for reliability in New England. Market Rule 1, section III, Appendix A at III.A.6.2 and section III, Appendix A, Exhibit 2 at 3.3.

<sup>3</sup> See, e.g., *Milford Power Company, LLC*, 110 FERC ¶ 61,299, order on reh'g, 112 FERC ¶ 61,154 (2005).

3. Braintree explains that, as a municipal light plant and a political subdivision of Massachusetts, it is excluded by FPA section 201(f)<sup>4</sup> from the provisions of Part II of the FPA. Thus, Braintree sought declaratory relief “to obtain Commission review establishing that rates and charges that include and pass through the cost of Braintree’s proposed RMR Agreement with ISO-NE will be just and reasonable.”<sup>5</sup>
4. Braintree’s Potter 2 generating facility is located within the Southeast Massachusetts (SEMA) region and began commercial operations in 1977. Braintree states that ISO-NE issued a formal determination of need for Braintree on July 21, 2005 and that the determination was reviewed with the NEPOOL Reliability Committee on July 28, 2005. The finding was based on the conclusion that there is a need for Potter 2 to support transmission system voltages and reduce thermal loadings in SEMA. Braintree also states that it has not earned its facility costs for each of the past five years. Under the proposed RMR Agreement, Braintree would provide reliability service for ISO-NE in exchange for a Monthly Fixed-Cost Charge. Braintree states that it would have an Annual Fixed Charge Revenue Requirement of \$5,959,369 under the RMR Agreement.
5. Braintree seeks waiver of the 60-day notice requirement of section 35.3 of the Commission’s regulations,<sup>6</sup> so that the proposed RMR Agreement would become effective one day after filing.
6. On March 23, 2006, Commission Staff issued a deficiency letter to Braintree that included questions regarding engineering issues and the ISO-NE’s reliability determination. Braintree filed its response on April 14, 2006, and ISO-NE submitted a response shortly thereafter.
7. On May 30, 2006, ISO-NE submitted a letter in this proceeding and in Docket No. ER06-822-001, to inform the Commission that the generating facilities owned by Braintree and Fore River Development, LLC (Fore River), which had also filed an RMR Agreement, were not needed for reliability.
8. In order to fulfill its obligations in the Forward Reserve Market concurrently with those it has undertaken under the RMR Agreement, Braintree states that it will commence

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<sup>4</sup> 16 U.S.C. § 824(f) (2000).

<sup>5</sup> Petition at 7.

<sup>6</sup> 18 C.F.R. § 35.3 (2006).

stipulated bidding effective June 1, 2006, as soon as its present Forward Reserve Market commitments end. Braintree also states that, between the effective date of the RMR Agreement with ISO-NE and the commencement of stipulated bidding, Braintree will reconcile Forward Reserve Market revenues with RMR revenues to ensure that it does not over-recover its Potter 2 costs during this period and will provide monthly revenue crediting.

### **Notices, Interventions, and Protests**

9. Notice of Braintree's filing in Docket No. EL06-48-000 was published in the *Federal Register*, 71 Fed. Reg. 6068 (2006), with comments, interventions, and protests due on or before February 21, 2006. Timely motions to intervene were filed by the New England Power Pool Participants Committee, the Massachusetts Attorney General (MassAG), the Massachusetts Municipal Wholesale Electric Company (MMWEC), and NSTAR Electric & Gas Corporation (NSTAR). MassAG and NSTAR protest the filing; NSTAR asks that the Commission defer the requested effective date. On March 8, 2006, Braintree filed an answer. On March 16, 2006, NSTAR filed an answer to Braintree's answer.
10. ISO-NE filed a motion to lodge an answer filed in other proceedings in the record of Docket No. EL06-48-000, asserting that the issues addressed in that pleading are also relevant in the instant proceeding. Braintree and MMWEC filed answers to the motion to lodge arguing, among other things, that motions to lodge may not be filed by non-parties. ISO-NE subsequently filed a motion to intervene out-of-time.
11. Notice of Braintree's response to the deficiency letter was published in the *Federal Register*, 71 Fed. Reg. 26,938 (2006), with comments, interventions, and protests due on or before May 12, 2006. NSTAR filed timely comments and renewed the arguments in its initial protest.
12. Notice of ISO-NE's May 30<sup>th</sup> filing in Docket No. EL06-48-001 was published in the *Federal Register*, 71 Fed. Reg. 34,905-06 (2006), with comments, interventions, and protests due on or before June 20, 2006. Braintree filed a motion seeking an expedited decision on the revised reliability determination and requesting an evidentiary hearing and settlement judge procedures regarding any disputed issues of material fact with respect to the eligibility of Potter 2 for RMR treatment. In its June 20 filing, Braintree indicated that, absent contrary guidance from the Commission, it intended to continue to

perform under the RMR Agreement until the contract termination date, September 23, 2006. NSTAR subsequently filed an answer opposing Braintree's request for retroactive rate relief and institution of a hearing and settlement procedures.<sup>7</sup>

## **Discussion**

### **Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also grant the untimely motion to intervene filed by ISO-NE given the early stage of this proceeding, its interests, and the absence of any undue burden or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers to protests and answers to answers filed in this proceeding and will, therefore, reject them.

### **ISO-NE Reliability Determination**

14. ISO-NE's initial reliability determination indicated that Braintree's Potter 2 facility was needed to support transmission system voltages and to reduce thermal loadings. The ISO-NE's initial steady-state analysis showed that there would be fifteen thermal violations and four voltage violations without Potter 2 operating under the ISO-NE's 2005 Summer Peak study which forecasts 27,986 MW of load. By comparison, with the Braintree facility operating, ISO-NE determined that there would be seven thermal violations and one voltage violation.

15. NSTAR protests that the ISO-NE determination of need is based on unsupportable assumptions, fails to reflect increased transmission capacity that will be available shortly, ignores other equipment that is now in service, and does not consider alternative remedies that are less expensive than allowing Braintree to charge RMR rates. NSTAR also states that the ISO-NE's 2005 study does not include NSTAR's 345-kV transmission project, the construction of which is well underway and, when operational, will favorably redistribute power flow patterns.

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<sup>7</sup> In addition, NSTAR filed a motion to intervene. NSTAR was already a party to this proceeding by virtue of its timely, unopposed motion to intervene filed on February 21, 2006.

16. NSTAR further asserts in its May 12, 2006 filing that Phase 1 of the NSTAR 345-kV transmission project eliminates all of ISO-NE's voltage concerns and nearly all thermal overload concerns with the result that any remaining issues cited in the ISO-NE's 2005 study are easily resolved by means of operating procedures without the need for RMR rates. NSTAR also states that the local area system, inclusive of the generating and transmission resources within and to that area, is in complete compliance with all NERC and Northeast Power Coordinating Council (NPCC) planning criteria; therefore it concludes that the local system is fully capable of reliable operation assuming that Potter 2 is not available. NSTAR believes that operating fixes are particularly appropriate in this case since the contingencies addressed, stuck breaker and double circuit tower faults, are not listed in ISO-NE's Operating Procedure 19, and thus ISO-NE would not normally dispatch Potter 2 in real time to address these conditions.

17. On May 30, 2006, ISO-NE submitted a letter to inform the Commission that its previous findings of need in its reliability determinations for Braintree and Fore River were incorrect and that the Braintree and Fore River facilities are, in fact, not needed for reliability.<sup>8</sup> In its letter, ISO-NE states that the stuck breaker and double circuit tower contingencies identified in the December Study for Potter 2 violate planning criteria but do not violate NPCC/ISO-NE operating criteria for normal contingencies that involve the loss of multiple elements. This conclusion is based on the fact that the consequences of the multiple element criteria violations are not expected to have an inter-area impact.<sup>9</sup> Therefore, ISO-NE indicates that it would not dispatch Potter 2 to address the identified planning criteria violations unless requested to do so as a Special Constraint Resource under Schedule 19 of Part II of the ISO-NE Tariff. If the stuck breaker contingencies were to occur, ISO-NE continues, they would be addressed through special switching arrangements, or by a combination of local area load shedding and generator redispatch.

18. ISO-NE states that it has updated its original studies to include the 2006 summer peak loads and to investigate the effect of Phase 1 of the NSTAR 345-kV Project. According to ISO-NE, after Phase 1 is in service, there is one single element

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<sup>8</sup> ISO-NE states that its planning department undertook a review of all other reliability determinations to ensure that the circumstances that occurred in the case of Braintree and Fore River do not exist elsewhere, and confirmed that the issue is limited to the Braintree and Fore River reliability reviews.

<sup>9</sup> According to ISO-NE's Planning Procedures, the loss of small portions of the system may be tolerated if the reliability of the overall interconnected system is not jeopardized. ISO New England Planning Procedure No. 3, *available at* [http://www.iso-ne.com/rules\\_proceeds/isone\\_plan/index-p1.html](http://www.iso-ne.com/rules_proceeds/isone_plan/index-p1.html).

contingency, related to an overload on the 117 Line which can be addressed by an operational solution. Accordingly, ISO-NE's analysis now concludes that Potter 2 is no longer needed for reliability. On May 26, 2006 ISO-NE provided notice of termination to Braintree pursuant to section 2.2.1 of the RMR Agreement, to the extent the Commission makes the RMR Agreement effective as of the date Braintree requested (January 19, 2006).

### **Braintree's Economic Harm**

19. Braintree states in its June 20 filing that, in light of the revised reliability determination, the Commission should set for evidentiary hearing and settlement judge procedures any disputed issues of material fact with respect to the eligibility of Potter 2 for RMR treatment, the reasonableness of the annual fixed charge revenue requirement proposed by Braintree, and any other aspect of the declaratory relief sought by Braintree for the period from January 19, 2006 through September 23, 2006 (the termination date under ISO-NE's May 26, 2006 notice of intent to terminate the Potter 2 RMR Agreement).

20. Braintree states that, in performing under the Potter 2 RMR Agreement, it has foregone other opportunities to mitigate its operating losses, and has subjected itself to the risk of various penalties for nonperformance for the obligations it assumed under the Potter 2 RMR Agreement.<sup>10</sup> According to Braintree, these foregone opportunities include: (1) limiting its revenues in the Forward Capacity Market for the period January 19 through May 31, 2006, to the levels of its stipulated bid under the RMR Agreement; (2) foregoing bidding in the Forward Capacity Market for the commitment period beginning June 1, 2006, because of inconsistency between the obligations imposed by the RMR Agreement and those imposed by participation in the Forward Capacity Market; and (3) refraining from de-listing Potter 2 for purposes of taking an "economic outage" and thereby temporarily curtailing its losses due to the deficiency of Potter 2's market revenues to meet its fixed operation and maintenance costs. Braintree believes that it is entitled to compensation for having relied on ISO-NE's processes leading to the RMR Agreement, and that the contractual level of compensation provided under the Potter 2 RMR Agreement represents the just and reasonable level of such compensation. Braintree proposes to continue to operate under the Potter 2 RMR Agreement for the duration of the term of that agreement (September 23, 2006) unless the Commission provides contrary guidance.

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<sup>10</sup> Braintree notes that the ISO-NE is not contractually bound by the RMR Agreement. *See* Braintree's June 7, 2006 filing at 7. Braintree also should not be contractually bound by this agreement, which was never executed, and thus Braintree should not be subject to penalties for nonperformance.

### **Commission Determination**

21. The Commission denies the petition for declaratory order because the ISO-NE's updated and corrected analysis shows that Potter 2 is not needed to provide reliability in the SEMA region. Market Rule 1 authorizes ISO-NE to identify units that are needed for reliability. Market Rule 1 also authorizes ISO-NE to enter into an RMR cost-of-service agreement (subject to Commission approval)<sup>11</sup> with a generator that is needed for reliability. Consistent with Market Rule 1, a generator that is not needed for reliability is not eligible for an RMR agreement and RMR rate treatment. In this instance, based on the determination in ISO-NE's May 30 letter, Braintree is not entitled to recover cost-based rates under an RMR agreement. Therefore, the issues related to the cost of service and the facility cost test are moot since Braintree does not qualify for RMR treatment based upon the reliability determination of ISO-NE.

22. Nevertheless, because Braintree relied on the determination of need by the ISO-NE and began operating under the RMR Agreement in the interest of ensuring reliability in the region, we believe that Braintree should be assured of recovering its variable costs until the date the ISO-NE notified the Commission that Braintree was not needed for reliability. Thus, to the extent that Braintree can show that the revenues it received through ISO-NE's markets did not meet its variable costs, during the period January 19 through May 30, 2006, Braintree may seek additional compensation by submitting a compliance filing to the Commission.<sup>12</sup> Braintree must provide enough data to demonstrate any revenue shortfall, excluding fixed costs and opportunity costs. Any compensation that is due to Braintree will be allocated to customers in the same manner as the Monthly Fixed-Cost Charge described in Market Rule 1.<sup>13</sup>

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<sup>11</sup> See, e.g., *Berkshire Power Company, LLC*, 115 FERC ¶ 61,253 at P 10-12 (2006) (holding that ISO-NE reliability determinations are subject to Commission review).

<sup>12</sup> This outcome is consistent with the Commission's refund policy. See *Carolina Power & Light Company*, 87 FERC ¶ 61,083 (1999) (establishing that the Commission will limit the application of the time value refund formula to an amount that permits a public utility to recover its variable costs).

<sup>13</sup> Market Rule 1 section III.6.4.4(c) states: "Any monthly fixed-cost charges paid to Resources pursuant to Reliability Agreements negotiated under Appendix A, section III.A.6 and Exhibit 2 shall be allocated and charged pro rata to Market Participants and Non-Market Participants with Network Load in proportion to the sum of their Network Load during that month within the affected Reliability Region."

The Commission orders:

(A) Braintree's petition for declaratory order is hereby denied, as discussed in the body of this order.

(B) Braintree may choose to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.