

based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable.

Background

2. On September 24, 2004,² as amended October 1, 2004, Boston Generating submitted for filing an updated market power analysis in compliance with the Commission's order issued on May 13, 2004.³ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and clarified on July 8, 2004.⁴
3. On January 3, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a deficiency letter seeking additional information related to Boston Generating's updated market power analysis.
4. On January 24, 2005, Boston Generating submitted for filing a response to the deficiency letter that included a new updated market power analysis.
5. Boston Generating states that it owns the Project Companies and is a wholly-owned subsidiary of EBG. Boston Generating states that EBG is a passive financial owner with no operating or marketing capability and no role in day-to-day operations. The Project Companies are located in Northeastern Massachusetts within the ISO New England Inc. (ISO-NE) market. Mystic I has two operational units: Mystic Jet, a 14 MW peaking unit and Mystic 7 with a nameplate capacity of 617 MW. Mystic Development

² On November 28, 2003, the Project Companies, along with six other subsidiaries of Exelon Generation Company, LLC (Exelon) filed their respective joint triennial market power study update. The upstream ownership of the Project Companies was subsequently transferred in *Exelon New England Holdings, LLC*, 107 FERC ¶ 61,148 (2004) and *Boston Generating, LLC*, 108 FERC ¶ 62,122 (2004), from Exelon New England Holdings to EBG Holdings, LLC (EBG). Pursuant to that ownership change, Boston Generating states that its September 24, 2004 filing supersedes the November 28, 2003 filings with regard to the Project Companies.

³ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

⁴ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

consists of two gas-fired 872 MW units (Mystic 8 and 9). Fore River is an 872 MW gas and oil-fired unit.

Notice and Responsive Pleadings

6. Notice of Boston Generating's September 24, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 60,387 (2004), with protests and interventions due on or before October 15, 2004. NSTAR Electric & Gas Corporation (NSTAR) filed a timely motion to intervene and protest. The Project Companies submitted for filing an answer to that protest.

7. Notice of Boston Generating's October 1, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 64,042 (2004), with protests and interventions due on or before October 22, 2004. None was filed.

8. Notice of Boston Generating's January 24, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 5991 (2005), with protests and interventions due on or before February 11, 2005. NSTAR filed a timely motion to intervene and protest. The Project Companies also submitted an answer to that protest.

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene serves to make NSTAR a party to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Project Companies' answers and will therefore reject them.

Discussion

Market-Based Rate Authorization

11. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers

whether there is evidence of affiliate abuse or reciprocal dealing.⁵ As discussed below, the Commission concludes that the Project Companies satisfy the Commission's standards for market-based rate authority.

Generation Market Power

12. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Boston Generating submitted the pivotal supplier and the wholesale market share screens for the ISO-NE market. Boston Generating states that it studied the ISO-NE market because in the April 14 Order, the Commission stated that applicants located in the areas of Independent System Operators/Regional Transmission Operators (ISOs/RTOs) with sufficient market structure may consider the geographic region under the control of the ISO/RTO as the relevant default geographic region for purposes of completing generation market power analyses.

13. Boston Generating states that all of the Project Companies' generation is located within ISO-NE. Boston Generating concludes that the Project Companies pass the pivotal supplier screen. Boston Generating also states that the Project Companies pass the wholesale market share screen in ISO-NE.

14. In its protests, NSTAR objects to the use of the ISO-NE market as the relevant market for application of the screens. It argues that the Northeastern Massachusetts/Boston (NEMA/Boston) zone of ISO-NE is the relevant market for application of the screens. NSTAR contends that the April 14 Order stated that "transmission limitations can create load pockets wherein a geographic market can be smaller than the control area."⁶ NSTAR further asserts that the Commission has already recognized that NEMA/Boston is a separate energy zone and that it is import constrained.⁷ NSTAR concludes therefore that the market power analysis is flawed

⁵ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁶ April 14 Order, 107 FERC ¶ 61,018 at P 66.

⁷ See NSTAR Protest II at 3 (citing the Commission's order in *Devon Power, LLC*, 109 FERC ¶ 61,154 (2004) (*Devon Power*) regarding the long-term Locational Installed Capacity (LICAP) market scheduled to be in service in New England 2006).

because it is not based on the NEMA/Boston zone. It argues that since the Commission defines the NEMA/Boston zone as a transmission constrained “load pocket,” market power should be measured in the NEMA/Boston zone for the purpose of granting market-based rate authority. NSTAR further argues that if the NEMA/Boston zone is studied, the Project Companies would fail both screens. NSTAR files, as part of its protest, generation market power screens which it states support that opinion.

15. The April 14 Order stated that, when performing the generation market power screens, applicants located in ISO/RTOs with sufficient market structure and a single energy market may consider the geographic region under the control of the ISO/RTO as the default relevant geographic market for purposes of completing their analyses.⁸ However, the Commission has also stated that intervenors can present evidence on a case-by-case basis to show that some other geographic market should be considered as the relevant market.⁹

16. In the instant proceeding, we agree with NSTAR that the Commission has previously designated the NEMA/Boston zone as a load pocket. In that regard, *Devon Power* was not the first instance in which the Commission has done so. ISO-NE proposed the creation of Designated Congestion Areas (DCAs) and a process for selecting DCAs as a part of its filings in 2002.¹⁰ The process for selecting DCAs was approved by the Commission, and ISO-NE made an informational filing on January 28, 2003, which named NEMA/Boston as one of the DCAs.¹¹ The Commission stated that “DCAs are load pockets,” regions that face particularly critical reliability problems during high demand periods, as well as heightened concerns about market power.¹²

17. In the April 14 Order, the Commission noted that structured markets with market monitoring and mitigation generally result in a market where prices are transparent and

⁸ April 14 Order, 107 FERC ¶ 61,018 at P 187.

⁹ July 8 Order, 108 FERC ¶ 61,026 at P 177.

¹⁰ *See, e.g., New England Power Pool*, 100 FERC ¶ 61,287, at P 43 (2002), *order on reh’g*, 101 FERC ¶ 61,344, at P 19 (2002).

¹¹ *See* Docket No. ER02-2330-008 (Joint Informational Filing on Designated Congestion Areas (DCA) and Notice of Implementation of DCAs, January 28, 2003).

¹² *New England Power Pool*, 103 FERC ¶ 61,304, at P 18 (2003).

attempts to exercise market power are sufficiently mitigated.¹³ The Commission noted in the April 14 Order that markets with Commission-approved market monitoring and mitigation “undertake daily and hourly oversight of seller’s pricing behavior to ensure, consistent with clearly established Commission approved rules, that prices do not exceed competitive levels.”¹⁴ Further, the Commission noted that if a market power study showed that an applicant had local market power, the applicant could point to RTO mitigation rules as evidence that this market power has been adequately mitigated.¹⁵

18. The ISO-NE market monitoring and mitigation rules have been filed with the Commission as a part of ISO-NE’s Transmission, Markets, and Services tariff.¹⁶ In its tariff (Appendix A to Market Rule 1), ISO-NE specifies the conduct and impact approach for monitoring and mitigating market power. This approach identifies resources potentially exercising market power by comparing their current energy supply offers with a proxy for what the resource would have bid if it had no market power. When the supply offer exceeds the proxy, referred to as the reference price, by a specified threshold, and also results in a market clearing price that exceeds a specified market impact, an investigation is triggered that may result in mitigation.¹⁷ If the bid is found to be non-competitive, mitigation replaces the offer with the reference price and recalculates a lower market clearing price. The generator receives the higher of the reference price or the market clearing price. Appendix A to ISO-NE’s tariff also states that the ISO, in consultation with its Independent Market Advisor, will monitor the market for conduct that it determines constitutes an abuse of market power but does not trigger thresholds specified for the imposition of mitigation measures by ISO-NE. If the ISO, in consultation with the Independent Market Advisor, identifies any such conduct, it may make a filing with the Commission under section 205 of the Federal Power Act requesting authorization to apply mitigation measures. Any such filing must identify the

¹³ April 14 Order, 107 FERC ¶ 61,018 at P 189.

¹⁴ *Id.*

¹⁵ July 8 Order, 108 FERC ¶ 61,026 at P 177.

¹⁶ ISO-NE’s market monitoring and mitigation rules are located in Appendix A of ISO New England, Inc., FERC Electric Tariff No. 3, Section III – Market Rule 1 – Standard Market Design beginning with Original Sheet No. 7400.

¹⁷ *New England Power Pool*, 103 FERC ¶ 61,304, at P 42 (2003)

particular conduct that warrants mitigation, propose a specific mitigation measure for the conduct, and present the ISO's justification for imposing that mitigation measure.¹⁸

19. In the instant proceeding, NSTAR raises no factual issues challenging the effectiveness of ISO-NE's market monitoring and mitigation. In addition, the Commission has previously found that sufficient mitigation exists in ISO-NE.¹⁹ Thus, without specific evidence to the contrary, we are satisfied that ISO-NE has Commission-approved tariff provisions in place to address instances where transmission constraints would otherwise allow generators to exercise local market power and that these rules and procedures will apply in the NEMA/Boston zone within ISO-NE.

20. Finally, we have reviewed Boston Generating's generation market power screens for the ISO-NE market. When performing the market power screens, Boston Generating uses a proxy value of the maximum actual import flow during the entire year and applies it for each of the seasons. Appendix E of the April 14 Order states that simultaneous import capability should be estimated for each of the four seasonal peak usage periods. Boston Generating did not model a simultaneous import capacity during the peak periods. However, Boston Generating passes the generation market power screens without considering imports by competitors. Although Boston Generating did not support the competitors' native load proxies with hourly native load data for ISO-NE, Boston Generating did provide hourly total system load for ISO-NE, which will always be larger than or equal to ISO-NE native load. The April 14 Order states that appropriate simplifying assumptions are those assumptions that do not affect the underlying methodology used by the screens.²⁰ Because using a larger native load value for the competitors understates the competitors' market share, which overstates the applicant's market share, we believe that its use is an appropriate simplifying assumption for purposes of the wholesale market share screen.

21. Based on the representations contained in the application, and the simplifying assumptions discussed above, we find that the Project Companies pass both the pivotal supplier and wholesale market share screens for the ISO-NE market. Accordingly, we

¹⁸ ISO New England, Inc., FERC Electric Tariff No. 3, Section III – Market Rule 1 – Standard Market Design, Appendix A, Original Sheet No. 7407.

¹⁹ *New England Power Pool*, 100 FERC ¶ 61,287 at P 41.

²⁰ April 14 Order, 107 FERC ¶ 61,018 at P 117.

find that the Project Companies satisfy the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

22. Boston Generating states that the Project Companies do not have transmission market power since they do not own, operate or control any jurisdictional facilities beyond those necessary to interconnect their generation facilities to the grid. No intervenors have raised transmission market power concerns. Based on Boston Generating's representation, we find that the Project Companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

23. Boston Generating states that the Project Companies cannot erect barriers to market entry because they do not own or control any plant sites, gas pipeline or gas distribution facilities, engineering and construction firms or any other inputs to the power production process. No intervenors have raised barrier to entry concerns. Based on Boston Generating's representations, we are satisfied that the Project Companies cannot erect barriers to entry.

Affiliate Abuse

24. Boston Generating states that there is no likelihood of affiliate abuse with respect to the Project Companies because they are not affiliated with any public utility in the United States that has a franchised service territory or captive customers. In addition, no intervenors have raised affiliate abuse concerns. Based on Boston Generating's representations, the Project Companies satisfy the Commission's concerns with respect to affiliate abuse.

Reporting Requirements

25. Consistent with the procedures in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based

power sales during the most recent calendar quarter.²¹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²²

26. The Project Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.²³ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, the Project Companies are directed, within 30 days of the date of issuance of this order, to revise each of their market-based rate tariffs to incorporate the following provision:

[Insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

²¹ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

²² The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

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27. The Project Companies are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) The Project Companies' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) The Project Companies' next updated market power analysis is due within three years of the date of this order.

(C) The Project Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.