

124 FERC ¶ 61,296  
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.

Mirant Americas Energy Marketing, L.P.  
Mirant New England, LLC  
Mirant Kendall, LLC  
and Mirant Canal, LLC

Docket Nos. EL01-93-012 and  
EL01-93-013

v.

ISO New England, Inc.

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued September 29, 2008)

1. On May 30, 2008, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2008) the following parties jointly filed a comprehensive settlement agreement resolving all claims, and related documentation (the Settlement): the New England Power Pool (NEPOOL) (on its own behalf and on behalf of its Participants collectively); ISO New England Inc.; the Braintree Electric Light Department; the NRG Companies (NRG Power Marketing, LLC f/k/a NRG Power Marketing, Inc.; Connecticut Jet Power LLC; Devon Power LLC; Middletown Power LLC; Montville Power LLC; Norwalk Power LLC and Somerset Power LLC); Mirant Corporation (on behalf of Mirant Americas Energy Marketing, LP; Mirant New England, LLC; Mirant Canal, LLC; and Mirant Kendall, LLC); the Duke Parties (Duke Energy North America LLC and Duke Energy Trading and Marketing, LLC); Fitchburg Gas & Electric Light Company and Unitil Power Corporation; FPL Energy, LLC; Green Mountain Power Corporation; Massachusetts Municipal Wholesale Electric Company (in its own name and as the New England Publicly Owned Entities intervenors); National Grid USA (on its own behalf and on behalf of all affiliates who are NEPOOL Participants); Northeast Utilities Service Company (on behalf of itself and all affiliates who are NEPOOL Participants and on behalf of Select Energy, Inc.); NSTAR Electric and Gas Corporation (on behalf of itself and all affiliates who are NEPOOL Participants); the PSEG entities (PSEG Energy Resources & Trade LLC; PSEG Power Connecticut LLC); Reading Municipal Light Department; Exelon New England Holdings, LLC (as

successor to Sithe New England Holdings, LLC); Taunton Municipal Lighting Plant; The Vermont Joint Owner intervenors (Central Vermont Public Service Corporation, Green Mountain Power Corporation, Vermont Electric Cooperative, Inc. and the Vermont Public Power Supply Authority), through Vermont Electric Power Company, Inc. acting on their behalf as agent; and Wisvest Corporation and Wisconsin Energy Corporation (collectively the “Settling Parties”).

2. The central issues in this proceeding revolve around bid mitigation agreements and associated refunds. The proceeding began with a complaint filed against the ISO which alleged that certain procedures being utilized by the ISO were effectively amendments to the NEPOOL Tariff which the ISO was required to file with the Commission for review and approval. On August 10, 2001, the Commission agreed and directed that the ISO make a filing with the Commission pursuant to Federal Power Act section 205, 16 U.S.C. §824d (2006).<sup>1</sup> On October 26, 2001, the Commission issued an order which granted a request made by NSTAR, which had intervened in the proceeding, that the ISO file bid mitigation agreements with the Commission for review and approval pursuant to the Federal Power Act, section 205, 16 U.S.C. §824d (2006).<sup>2</sup> In this order, the Commission also granted a waiver of the requirement that 60 days notice must be given before the bid mitigation agreements could become effective and service pursuant to the agreements could commence.

3. On December 21, 2001, the Commission affirmed the directives from the October 26, 2001 Order.<sup>3</sup> NSTAR appealed the three orders to the United States Circuit Court of Appeals for the District of Columbia Circuit (the “DC Circuit”), Case No. 02-1047, *NSTAR Electric & Gas Corporation v. FERC*. The DC Circuit, on April 28, 2003, vacated the August 10, 2001, October 26, 2001, and December 21, 2001 Orders and remanded the matter to the Commission for further proceedings with respect to the Commission’s decision granting the waiver of the 60 day notice period and declining to issue refunds.<sup>4</sup> On December 23, 2003, the Commission reaffirmed the three prior

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<sup>1</sup> *Mirant Americas Energy Marketing, L.P.*, 96 FERC ¶ 61,201 (2001) (August 10, 2001 Order).

<sup>2</sup> *Mirant Americas Energy Marketing, L.P.*, 97 FERC ¶ 61,108 (2001) (October 26, 2001 Order).

<sup>3</sup> *Mirant Americas Energy Marketing, L.P.*, 97 FERC ¶ 61,630 (2001) (December 21, 2001 Order).

<sup>4</sup> *NSTAR Electric & Gas Corp.*, 64 Fed. Appx. 786 (D.C. Cir. 2003).

orders.<sup>5</sup> On March 9, 2004, the Commission denied requests for rehearing of the December 23, 2003 Order and stated that the prices received under the Bid Mitigation Agreements at issue were reasonable, and thus there is no basis to order refunds.<sup>6</sup> The Commission also stated that the waiver of the 60 day notice period was justified. NSTAR and the Maine Public Utilities Commission each separately appealed the Commission's December 23, 2003 and March 9, 2004 Orders to the DC Circuit.<sup>7</sup> The D.C. Circuit upheld the Commission's waiver of the 60 day notice requirement, but stated that there was no clear basis for the Commission's finding that the rates associated with the bid mitigation agreements were just and reasonable.<sup>8</sup>

4. On September 21, 2007, in response to the Second NSTAR Appeal Decision, the Commission set for hearing the issue of the justness and reasonableness of each bid mitigation agreement and, if the agreement was determined not to be just and reasonable, whether and to what extent refunds should be issued.<sup>9</sup>

5. On June 19, 2008, Commission Trial Staff filed timely comments supporting the offer. The settlement resolves all outstanding issues in the above-referenced proceeding that were set for hearing and settlement judge proceedings by the Commission in Hearing Orders.

6. On July 2, 2008, the Settlement Judge certified the Settlement as an uncontested settlement.

7. The subject settlement is fair, reasonable, and is in the public interest and is hereby

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<sup>5</sup>*Mirant Americas Energy Marketing, L.P.*, 105 FERC ¶ 61,359 (2003) (December 23, 2003 Order).

<sup>6</sup>*Mirant Americas Energy Marketing, L.P.*, 106 FERC ¶ 61,243 (2004) (March 9, 2004 Order).

<sup>7</sup>Case No. 05-1362, *NSTAR Electric & Gas Corporation v. FERC*, consolidated with Case No. 05-1363, *Maine Public Utilities Commission v. FERC*.

<sup>8</sup>*NSTAR Electric & Gas Corp.*, 481 F.3d 794 (D.C. Cir. 2007) (Second NSTAR Appeal Decision).

<sup>9</sup>*Mirant Americas Energy Marketing, L.P.*, 120 FERC ¶ 61,264, *order on reh'g*, 121 FERC ¶ 61,197 (2007).

approved. The standard of review for any modifications proposed by the settling parties, the Commission or third parties is the just and reasonable standard. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2006).

8. The request for a waiver of the requirements of Rule 2010, as requested in the May 30, 2008 filing, to effect service as stated in the May 30, 2008 filing, is granted.

9. The settlement agreement, having been approved, resolves all issues in the captioned proceeding. This order terminates Docket Nos. EL01-93-012 and EL01-93-013.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.