

145 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

ISO New England Inc. and
New England Power Pool

Docket No. ER13-2397-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS

(Issued November 15, 2013)

1. On September 17, 2013, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, Filing Parties) jointly submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to Appendix A of Market Rule 1² of ISO-NE's Transmission, Markets and Services Tariff (Tariff). The revisions modify the market power mitigation rules in Appendix A that apply to supply offers for resources that are committed out-of-merit to address a local reliability need (Reliability Commitment Mitigation Revisions). As discussed below, the Commission accepts the Reliability Commitment Mitigation Revisions, effective September 18, 2013, as requested.

I. Background

2. Filing Parties state that market participants owning resources that are committed out-of-merit to address a local reliability need are in a unique position to assert market power, because such resources are committed based on the need to address local reliability concerns rather than their offer price. Filing Parties state that, under the existing Tariff,³ the Internal Market Monitor (IMM) currently performs a reliability commitment mitigation conduct test to prevent such market participants from exercising this market power and earning excessive out-of-merit revenues through Net Commitment Period Compensation (NCPC) payments. Specifically, when a resource is committed by ISO-NE to address a local reliability need, the IMM evaluates the supply offer for that

¹ 16 U.S.C. § 824d (2012).

² ISO New England Inc., Transmission, Markets and Services Tariff, [Appendix A, Appendix A Market Monitoring, Reporting and Market Power Mit. \(26.0.0\)](#).

³ Section III.5.5.5.2 of Appendix A.

resource based on the minimum run time submitted in the supply offer. If the financial parameters of the supply offer⁴ exceed 110 percent of the cost-based Reference Levels for that particular resource, the supply offer fails the conduct test, and the offer will then be mitigated to the Reference Level values for each parameter.⁵ Filing Parties explain that the effect of this mechanism is that the most a market participant can receive through NCPC payments for providing the local reliability service is 10 percent in excess of the resource's cost-based Reference Levels.⁶

3. Filing Parties state, however, that the IMM has determined that the current conduct test is susceptible to manipulation when a resource is committed beyond its minimum run time. Because the current conduct test evaluates a resource's performance only for the period of its minimum run time, a market participant that presumes or knows that its resource will be operated for reliability purposes beyond the resource's minimum run time can structure the parameters of its supply offer to receive out-of-market NCPC payments in excess of 10 percent above the applicable Reference Levels. Specifically, Filing Parties state that a market participant could lower the start-up fee component in the supply offer and raise either the no-load fee or energy offer price.

II. Proposal

4. To prevent opportunities for market manipulation, Filing Parties propose to add an additional conduct test, the Actual Run Time Conduct Test, for those resources that pass the current conduct test and which are dispatched for a local reliability need. Filing Parties explain that, unlike the current conduct test, the Actual Run Time Conduct Test will be performed after the operation of the resource and will use the resource's actual run time, rather than its minimum run time. A resource will fail either the current conduct test or the Actual Run Time Conduct Test if its financial parameters are in excess of 10 percent of the cost-based Reference Level for the resource, using the resource's minimum run time or actual run time, respectively. If the resource's supply offer fails the Actual Run Time Conduct Test, the supply offer will be mitigated down to its Reference Level parameters, just as in the event of a failure of the current conduct test. Thus, Filing Parties assert that the Actual Run Time Conduct Test will prevent a resource from

⁴ A supply offer consists of five parameters: an economic minimum level of output (MW); a minimum run time (hours); a start-up fee (\$); a no-load fee (\$/hour); and an offer price for energy at the resource's economic minimum (\$/MWh).

⁵ Filing Parties explain that a resource's Reference Levels, which are calculated daily by the IMM, have been set to reflect the incremental costs of operating the resource.

⁶ ISO-NE September 17, 2013 Filing (Filing) at 6.

passing the current conduct test and still earning in excess of the 10 percent adder by misrepresenting the parameters of its supply offer.⁷

5. The Reliability Commitment Mitigation Revisions also remove from the current conduct test a second factor that is applied when evaluating a supply offer for mitigation. The current conduct test evaluates the resource's operation to determine whether it violates either the aforementioned 10 percent threshold or a potentially more restrictive threshold: the economic maximum limit (in megawatts) of the resource multiplied by \$80/MW. Filing Parties explain that they previously proposed to remove the fixed \$80/MW factor in Docket No. ER13-1877-000, effective December 3, 2014, on the grounds that high and volatile fuel prices could result in mitigation being triggered inappropriately.⁸ However, the Filing Parties now state that it is preferable to remove the \$80/MW factor prior to the upcoming winter, when gas price volatility is likely to increase.⁹ Filing Parties thus now request removal of the \$80/MW factor, effective September 18, 2013.

6. Filing Parties request waiver of the Commission's 60-day prior notice requirement to allow an effective date of September 18, 2013, one day after filing. Filing Parties state that good cause exists because the current reliability commitment mitigation conduct test could result in manipulation, and, without change, could continue to permit a market participant to earn excessive revenues through its assertion of market power. Filing Parties also state that there is little risk that any party will be adversely affected by the waiver requested in these circumstances.

III. Notice of Filing, Interventions, Comments, Protests, and Answers

7. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 59,013 (2013), with interventions and protests due on or before October 8, 2013. Timely motions to intervene were filed by NRG Companies,¹⁰ Dominion Resources Services,

⁷ Filing at 7-8.

⁸ *Id.* at 8. On October 3, 2013, the Commission accepted those tariff revisions subject to condition, to become effective December 3, 2014. *See ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,014 (2013) (October 3, 2013 Order).

⁹ Filing at 8-9.

¹⁰ NRG Companies include NRG Power Marketing LLC, GenOn Energy Management, LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, NRG Canal LLC, and NRG Kendall LLC.

Inc.,¹¹ Exelon Corporation, Maxim Power (USA), Inc., and Northeast Utilities Service Company. NEPOOL Participants Committee filed timely supplemental comments.

8. NEPOOL Participants Committee supports the proposed changes, stating that the Participants Committee voted to support the Reliability Commitment Mitigation Revisions, with 88.96 percent in favor. However, NEPOOL Participants Committee notes that stakeholders expressed concern about the limited time and information they had to consider the proposed revisions.¹²

IV. Discussion

A. Procedural Issues

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

10. We will accept the proposed revisions, effective September 18, 2013, as requested.¹³ Specifically, the Filing Parties propose an Actual Run Time Conduct Test to prevent a resource from passing the current conduct test and still earning in excess of the 10 percent adder by misrepresenting the parameters of its supply offer. Filing Parties

¹¹ Dominion Resources Services, Inc. submitted its intervention on behalf of Dominion Energy Manchester Street, Inc., Dominion Energy Marketing, Inc., and Dominion Nuclear Connecticut, Inc.

¹² NEPOOL Participants Committee states that, under customary practice, proposed Tariff revisions are vetted by stakeholders over at least three meetings with time in between those meetings for discussion and refinement. Here, however, due to the urgency identified by ISO-NE to address concerns raised by the IMM, the stakeholder process was substantially shortened and modified. NEPOOL Participants Committee states that the proposed changes were first presented to the NEPOOL Markets Committee, both for review and a vote, on September 11, 2013 and, shortly thereafter, were presented to the NEPOOL Participants Committee on September 13, 2013.

¹³ See, e.g., *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

have persuasively explained that the proposed revisions should help address valid market manipulation concerns,¹⁴ and no party has asserted otherwise.¹⁵

11. Additionally, we find the proposed earlier removal of the \$80/MW factor from the current conduct test to be appropriate. Consistent with the Commission's October 3, 2013 Order,¹⁶ Filing Parties have persuasively explained that earlier removal of the \$80/MW factor should help prevent inappropriate mitigation of resources due to high and volatile fuel prices.

The Commission orders:

The Reliability Commitment Mitigation Revisions are hereby accepted for filing, effective September 18, 2013, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ Attached to the filing is the testimony of David LaPlante, ISO-NE's Vice President of Internal Market Monitoring, and Robert Laurita, the IMM's Manager of Surveillance and Analysis.

¹⁵ We note that any relevant conduct that may have been referred to the Office of Enforcement, as required under Commission regulations, is non-public.

¹⁶ October 3, 2013 Order, 145 FERC ¶ 61,014 at P 33.