

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Exelon New Boston, LLC

Docket No. ER04-344-000

ORDER ACCEPTING SECOND AMENDED RELIABILITY MUST RUN  
AGREEMENT FOR FILING

(Issued February 27, 2004)

1. In this order, the Commission accepts the Second Amended and Restated Reliability Must Run Agreement (Second Amended RMR) between Exelon New Boston LLC (Exelon NB) and ISO New England, Inc. (ISO-NE) governing the operation of the New Boston facility. For the reasons discussed below, the Commission will accept the Second Amended RMR. This action benefits customers by ensuring the availability of generation and, consequently, the reliable supply of electricity until needed transmission improvements are completed.

**Background**

2. On December 30, 2003, Exelon NB tendered for filing, pursuant to Section 205 of the Federal Power Act, an unexecuted Second Amended RMR between Exelon NB and ISO-NE. Exelon NB avers that the terms of this agreement are substantially similar to the terms in a cost-of-service RMR for the New Boston facility previously approved by the Commission in Docket No. ER02-648-000.<sup>1</sup> Exelon NB proposes a January 1, 2004 effective date, and requests waiver under Section 35.11 of the Commission's regulations of the sixty-day notice requirement.

3. The original RMR Agreement was between Sithe New Boston, LLC and ISO-NE and was filed with the Commission on December 28, 2001, with a requested effective date of January 1, 2002. Sithe New Boston LLC became Exelon New Boston LLC upon Exelon's purchase of the northeast generating assets of Sithe Energies Inc. in October 2001. The Commission accepted the RMR Agreement for filing, suspended it for a nominal period, allowed it to become effective, subject to refund, on January 1, 2002, and

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<sup>1</sup>101 FERC ¶61,323 (2002).

established hearing and settlement procedures.<sup>2</sup> The parties reached settlement, which was approved by the Commission by order dated December 20, 2002. The term of the RMR Agreement (Amended RMR), as modified pursuant to the settlement agreement, expired on December 31, 2003. Exelon NB requests an effective date for the Second Amended RMR of January 1, 2004.

4. The Second Amended RMR covers the operation of New Boston facility Unit 1 – a 360 MW steam turbine generating unit. Initially, the New Boston facility consisted of two similarly configured 360 MW steam turbine units (Unit 1 and Unit 2). In April 2002, ISO-NE determined that one of the two New Boston units was no longer needed and could be retired as of July 1, 2002. As a result, Exelon NB initially retired Unit 1 as of July 1, 2002. On October 1, 2002, Unit 2 was destroyed by a major fire. At the request of ISO-NE, Unit 1 was reactivated effective November 1, 2002, to meet Boston area reliability needs.

5. Exelon NB states that the prior Amended RMR expressly provided that if ISO-NE did not allow the facility to shut down at the end of the contract term, the parties would agree to a successor contract on “substantially the same terms.” Exelon NB states that it intended to retire the New Boston facility at the expiration of the Amended RMR because its age, maintenance requirements, and operating characteristics make the unit uneconomic within the market. However, ISO-NE recently denied Exelon’s request to shut down the facility by acknowledging that Unit 1 continues to be needed to maintain reliability in the Boston area. On this basis, ISO-NE requested a new, three-year RMR contract pursuant to sections 18.4 and 18.5 of the Restated NEPOOL Agreement. The Second Amended RMR proposes to extend the term of the Amended RMR for an additional 36 months, through December 31, 2006, as requested by ISO-NE. Exelon NB states that the December 31, 2006 date is based on the scheduled completion of certain transmission projects by NSTAR Electric & Gas Corporation (NSTAR) that are anticipated to relieve congestion, and, therefore, allow Exelon NB to deactivate.

6. Among the changes in the Second Amended RMR are provisions for the performance by Exelon NB of various overhaul work to Unit 1 and for the recovery of the expenses associated with such work. Exelon NB avers that while it had intended to deactivate the unit after the expiration of the Amended RMR, to ensure the availability of Unit 1 for the duration of the Second Amended RMR, expenditures of approximately \$7.5 million for reliability maintenance must be performed. The Second Amended RMR provides that these maintenance costs would be collected over the term of the agreement even though Exelon NB must pay these costs upfront. The costs would be recovered

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<sup>2</sup> See 98 FERC ¶61,164 (2002).

through locational capacity revenues allocable to Unit 1 and any energy and ancillary services revenues it may receive from market sales from Unit 1, in each case after first netting these revenues against the actual variable costs of Unit 1. To the extent that Exelon NB has capacity revenues remaining after using them to fund the reliability maintenance, the agreement provides that they will be credited back to ratepayers. If the agreement is terminated early or if the capacity and energy and ancillary services revenues from Unit 1 over the three-year term fail to pay off any balance of the overhaul costs upon the agreement's expiration on December 31, 2006, the Second Amended RMR provides for a balloon payment of the remaining overhaul cost balance.

7. Under the Second Amended RMR, Exelon NB proposes a Fixed Cost Charge of \$2.5 million, per month, the same charge that was in the Amended RMR. This rate is based on Exelon NB's cost-of-service (COS) that was established via settlement in Docket No. ER02-648-000. Exelon NB asserts that since this agreement is an extension of the Amended RMR on substantially the same terms, the same Fixed Cost Charge should remain in effect and should not be subject to review. Exelon NB states, however, that in the event the Commission sets the proposed Fixed Cost Charge under the Second Amended RMR for hearing, it will seek a \$2.7 million Fixed Cost Charge based on a new COS study it performed and included in the instant filing. While Exelon NB proposes to maintain in effect certain costs from the Amended RMR, such as monthly fixed and variable O&M expenditures, it also will request alternative amounts if the Commission sets the fixed charge for hearing. Exelon NB adds that the updated overall rate of return, cost of debt and equity, and components of the capital structure for Exelon NB are consistent with the approach ordered by the Commission with respect to other facilities. Specifically, Exelon NB uses the capital costs and structure approved by the Commission in Docket No. ER03-959 involving ISO-NE's Peaking Unit Safe Harbor (PUSH) bid levels for the eight other plants owned by Exelon.<sup>3</sup>

### **Notice of Filings, Protests, and Interventions**

8. Notice of Exelon NB's filing was published in the Federal Register, 69 Fed. Reg. 2345 (2004), with protests and motions to intervene due on or before January 20, 2004. Timely motions to intervene were filed by NRG Energy Inc., New England Power Pool Participants Committee (NEPOOL), PPL Energy Plus, LLC and PPL Wallingford Energy

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<sup>3</sup> In 2003, the Commission established the PUSH bidding mechanism for peaking units in order to address RMR issues in New England. See *Devon Power LLC, et. al.*, 103 FERC ¶ 61,082 (2003), order on reh'g, 104 FERC ¶ 61,123 (2003); *Exelon Framingham LLC, et. al.*, 104 FERC ¶61,312 (2003); and *PPL Wallingford Energy LLC*, 103 FERC ¶ 61,185 (2003), order on reh'g, 105 FERC ¶61,324 (2003).

LLC, and NSTAR. ISO-NE filed a timely motion to intervene, comment and protest. The Mirant Parties and Massachusetts Municipal Wholesale Electric Company (MMWEC) filed motions to intervene out of time. The Massachusetts Office of the Attorney General filed a notice of intervention. ISO-NE filed a motion to amend its motion to intervene, comment and protest. Exelon NB filed an answer to ISO-NE's protest and its amended protest.

### **Discussion**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>4</sup> the timely unopposed motions to intervene serve to make the parties that filed them parties to the proceeding. We will grant the motions of Mirant and MMWEC to intervene out of time given their interest in this proceeding, the early stage of the proceeding and the absence of any undue prejudice or delay. While the Commission typically does not allow answers to protests, we will accept Exelon NB's answer as it aids the clarification of the record.

10. ISO-NE supports the extension of the RMR as required to meet continuing reliability needs in the Boston area. ISO-NE states that recent reliability studies confirm that the capacity shortage and transmission constraints that prompted the ISO to enter into the Amended RMR still exist and are expected to continue unless there are transmission improvements or new resources. ISO-NE states that while a number of transmission upgrade projects are currently planned for the Boston area, current best estimates indicate that the earliest that any of the improvements necessary to permanently eliminate the need for Exelon NB Unit 1 might be completed is mid-2006, or later. However, ISO-NE states that if the necessary transmission projects are completed more quickly than currently anticipated, or if appropriate new resources are developed, the ISO has the authority under section 2.1(b) of the agreement to terminate the Second Amended RMR Agreement upon 60 days written notice.

11. ISO-NE generally supports the proposed changes to the Amended RMR that are incorporated in the Second Amended RMR. However, ISO-NE asserts that there is no basis for Exelon NB's position that the Commission need not ensure that the rates are just and reasonable pursuant to Section 205 of the FPA if the rates are an extension of the rates in the previously approved Amended RMR Agreement. ISO-NE stated that its preliminary analysis of Exelon NB's newly-submitted COS revealed concerns. However, in its amended comments, ISO-NE states that, while certain of its concerns over the new COS were answered as a result of conversations with Exelon NB, ISO-NE maintains that

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<sup>4</sup> 18 C.F.R. § 385.214 (2003).

there still is the issue of whether it is appropriate in developing the COS for this facility to use PUSH assumptions and methods for ROE and A&G approved by the Commission in Docket No. ER03-959 for establishing bid thresholds for Exelon's PUSH eligible units. ISO-NE states that this issue must be addressed before the new COS can be approved, and urges the Commission to investigate the new COS rates, set them for hearing, and place them in effect following a one-day suspension, subject to refund.

### **Commission Response**

12. The Commission accepts the Second Amended Reliability Must Run Agreement for filing to be effective as requested. This agreement is necessary because of reliability concerns unique to the Boston area. Normally the unit would be deactivated; however it remains in service solely because of reliability concerns. This particular unit is required to protect against the possibility of thermal overloads because other units within the North Eastern Massachusetts Area (NEMA) cannot currently fulfill this function and the locational installed capacity plan that ISO-NE is required to file on March 1, 2004 is not anticipated to propose a suitable alternative to maintaining the unit. In these circumstances, the Commission is accepting this RMR agreement.

13. Because the rates contained in RMR Agreements are properly reviewable under Section 205 of the FPA,<sup>5</sup> we therefore reviewed the rates in the Second Amended RMR under section 205. The Commission has examined the costs and assumptions contained in the new COS that Exelon NB filed, including the ROE related to Exelon's PUSH filings. We analyzed the new COS filed by Exelon NB and compared it to the rates contained in the Amended RMR Agreement and are satisfied that the rates contained in the Amended RMR that expired on December 31, 2003 remain just and reasonable. Accordingly, we will accept the Second Amended RMR agreement with the rates from the Amended RMR to remain in effect and will accept the proposed provisions for the recovery of the Reliability Overhaul Costs. By accepting the old rates the concerns of ISO-NE regarding the new COS and the use of PUSH assumptions need not be addressed here. We direct Exelon NB to refile the Second Amended RMR to reflect these rates and to remove the new rates that are based on the filed new COS.

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<sup>5</sup> 101 FERC ¶ 61,341 at P 14.

The Commission orders:

(A) The Second Amended and Restated Reliability Must Run Agreement filed on December 30, 2003 is accepted for filing, suspended for one day to become effective January 1, 2004.

(B) Exelon NB is directed to file within 10 days from the date of this order, the Second Amended RMR agreement to reflect the rates that will be in effect, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,  
Acting Secretary.