UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New England Power Pool — Docket No. ER04-623-000

ORDER ACCEPTING FILING

(Issued May 7, 2004)

1. In this order, the Commission accepts a filing by the New England Power Pool Participants Committee (NEPOOL) proposing amendments to NEPOOL Market Rule 1 Appendix F modifying the eligibility criteria for the payment of operating reserve credits,[1] to be effective March 1, 2004, as requested. Our action here promotes development of a competitive energy market by allowing resources that partially self schedule and partially pool schedule within the same operating day to receive operating reserve credits for the pool scheduled portion of their output.

Background

2. In November 2002, as part of a package of rule changes required for the implementation of standard market design in New England, NEPOOL and ISO New England, Inc. (ISO-NE) filed revisions to Appendix F to Market Rule 1 specifying when generating resources with self scheduled hours are eligible to receive operating reserve credits.[2] The Commission approved these rules in an order issued on January 31, 2003.[3]

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[1] Market Rule 1 defines operating reserve credit as the payment made to a resource for providing operating reserve, replacement reserve, or voltage support. Operating reserve credits are designed to make resources whole when their energy payments are not sufficient to cover their running costs.

[2] We note that recently in ISO New England Inc., et al., 106 FERC ¶ 61,280 (2004) (RTO-NE Order), the Commission granted ISO-NE status as a Regional Transmission Organization (RTO) subject to certain conditions.

[3] New England Power Pool, 102 FERC ¶ 61,112, order on reh'g, 104 FERC ¶ 61,052 (2003) (January 2003 Order).

In the January 31 Order, the Commission found that for resources electing to self schedule and pool schedule in the same commitment period during the same operating day, such resources should not be guaranteed the receipt of their as-bid costs during the pool scheduled portion. [4]

3. The current market rules provide that self scheduled generating resources are ineligible to receive operating reserve credits during periods of contiguous operation spanning multiple days even if the period of their self-schedule has long passed and the resource is providing operating reserves pursuant to ISO-NE's dispatch instructions. NEPOOL states that this has resulted in a recent denial of compensation to one Participant in connection with the cold snap New England experienced in mid-January that motivated ISO-NE to develop and present the Market Rule changes on an expedited basis.

4. NEPOOL states that during the very cold weather and high load conditions that existed from January 14 through January 16, 2004, ISO-NE sought to dispatch virtually all operable generation to meet peak load conditions and, as a result, directed Exelon Generation, LLC (Exelon) to continue to run a number of units in the greater Boston area for system reliability. NEPOOL also states that those units had been continuously operating before this period for over a month, but the initial operating run began with

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[4] January 2003 Order, 102 FERC ¶ 61,112 at P 41. There, section 2.1 of Appendix F, as approved by the Commission provides, as follows:

> In the real time energy market, generating Resources that are pools scheduled Resources that do not have any self scheduled hours during the Minimum Run Time portion of their real time commitment periods (periods of continuous operation bounded by a start-up and the earlier to occur of a shut-down or a unit trip) are eligible to receive real time operating reserve credits for all hours that [they] are not self scheduled during the Commitment Period. For the purpose of this determination, the Minimum Run Time portion of a real time Commitment Period is deemed to commence with the start-up of the Resource. Each real time commitment period is evaluated separately for the purpose of making this eligibility determination.

Additionally, the introduction of Appendix F provides as follows:

> if there are any self scheduled hours contained within a pool scheduled Resource's . . . contiguous block of scheduled hours in the day ahead energy market or within a pool scheduled Resource's . . . minimum run time hours in the real time energy market, then that pool scheduled Resource is not eligible to receive operating reserve credits for that block of scheduled hours.

Exelon submitting self scheduled hours during the minimum run time of its real time commitment period; as a result, ISO-NE concluded that Exelon was ineligible for operating reserve credits. Consequently, Exelon states that it has been denied millions of dollars in revenue that it would have otherwise been qualified to receive.

5. NEPOOL points out that following this event, ISO-NE developed the changes to Market Rule 1 filed in the instant docket on March 8, 2004, to allow payment of operating reserve credits for generating resources in similar circumstances. NEPOOL explains that ISO-NE proposed that these changes be permitted to become effective retroactively to cover the cold snap period from January 14 through 16 and avoid the financial impact on Exelon of the current market rules. The NEPOOL Participants Committee considered the proposed changes and recommended by a vote of 80 percent that the participants Committee approve the changes for filing with the Commission as proposed by ISO-NE and for an effective date of January 14, 2004.

6. NEPOOL states that although it chose not to advise the Markets Committee in connection with that Committee's consideration of the Market Rule changes, on the day those changes were being considered by the Committee, NRG Power Marketing, Inc. (NRG) filed a complaint with the Commission against ISO-NE seeking an order compelling payment in the amount of $290,375.22 for Operating Reserves it provided as a result of ISO-NE's dispatch instructions in August 2003. NEPOOL maintains that NRG, like Exelon, was denied compensation based on the eligibility requirements of Appendix F to Market Rule 1. NEPOOL observes that as part of its complaint, NRG also requested that the Commission direct ISO-NE to modify Market Rule 1 so that partially self scheduled generating resources are eligible to receive compensation for any Operating Reserves such resources provide.[5] NEPOOL states that the changes proposed in the instant docket presumably moot NRG's concerns at least for the period on and after the Commission's permitted effective date.

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[5] On February 10, 2004, in Docket No. EL04-82-000, the NRG Companies filed a complaint against ISO New England, Inc. This docket is pending. The NRG Companies request that the Commission issue an order: (1) finding that the ISO violated Market Rules and Commission orders by denying NRG Companies Operating Reserve payments in the real time energy markets administered by the ISO, when NRG Companies' generating units were directed by the ISO to provide Operating Reserves as pool scheduled resources for several Operating Days after the Operating Day in which the units self-scheduled; (2) directing ISO-NE to pay $290,375.22 to NRG for Operating Reserve payments withheld to date; and (3) directing ISO-NE to work towards modifying its market rules and software to guarantee that partially self scheduled participants receive as-bid costs for the pool scheduled increments of their output.

7. NEPOOL explains that on February 20, 2004 the Participants Committee considered and unanimously approved the Market Rule changes filed in the instant docket. NEPOOL also explains that the only issue at the Participants Committee with respect to the Markets Committee recommendation was the requested effective date of January 14. NEPOOL contends that while there remained strong support among participants to address the adverse financial impact on Exelon, that support was not sufficient to overcome objections to retroactively changing the Market Rules.[6] NEPOOL states that those objections to retroactivity resulted in a vote of over 60 percent of the Participants Committee for an April 1 effective date. However, NEPOOL notes that the objections were sufficiently broad that a motion to approve those changes to become effective retroactive to January 14 failed with only a 58 percent vote.[7] NEPOOL states that only when the retroactivity issue was removed and replaced with a proposal that the effective date be no later than March 1, 2004 was the Participants Committee able to achieve the unanimous vote in support of the underlying Market Rule changes.

NEPOOL's Proposal

8. NEPOOL proposes to allow resources that partially self schedule and partially pool-schedule within the same operating day to be compensated for their energy as-bid costs for the pool scheduled portion of their output. Currently, Market Rule 1, Appendix F, provides that resources choosing to partially self-schedule and partially pool-schedule within the same commitment period during the same operating day are not guaranteed the receipt of their as-bid costs during the pool scheduled portion of their operation. NEPOOL requests an effective date of March 1 for this filing.

9. NEPOOL states that the proposed changes to Appendix F to Market Rule 1 replace the current eligibility criteria for operating reserve credits. NEPOOL explains that the current Market Rules have been read to permit operating reserve credits only to generation resources that are pool scheduled with no self scheduled hours during their minimum run time. NEPOOL also explains that under the under the new eligibility criteria reflected in the changes, generating resources with self scheduled hours during

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[6] On March 29, 2004, in Docket No. ER04-677-000, New England Power Pool Participants Committee filed under Federal Power Act section 205 seeking to compensate Exelon New England Holdings, LLC for costs incurred in connection with the operation of its Mystic 8 and 9 units on January 15 and 16 in the amount of $8.55 million. This docket is pending.

[7] NEPOOL notes that NRG's proposal at the meeting to allow the change to be made retroactive to July 1, 2003, in order to address its concerns and resolve the pending NRG complaint was not supported by any other NEPOOL Participant.

their minimum run times may receive operating credits in certain circumstances (i.e., when a partially self scheduled generation resource is dispatched pursuant to the ISO's instructions it will receive operating reserve credits for all hours that are not self scheduled).[8]

10. Additionally, NEPOOL states that section 2.1 has also been modified to note that a resource will not be eligible for operating reserve credits if it has a delivery requirement in the operating day based on forward reserves it sold as an on-line forward reserve resource. Finally, NEPOOL explains that sections 2.1.2 and 2.1.9 clarify how ISO-NE will treat supply offer prices for a generating resource that continues to run into the next operating day in order to satisfy its minimum run time. Specifically, NEPOOL asserts that ISO-NE will continue to use that resource's supply offer prices from its initial commitment in the first operating day to calculate its operating reserve credits until that resource's minimum run time has been met.

11. NEPOOL requests that the Commission permit the changes to Market Rule 1 contained in the instant docket to become effective March 1, 2004, without prejudice to individual participants seeking an earlier effective date. NEPOOL also states that these changes will not affect dispatch directly, nor will changes impact the calculation of locational marginal prices, but rather will impact only compensation to certain generating resources that are dispatched by ISO-NE for operating reserves. NEPOOL explains that such compensation will not be reflected in bills until April, and participants will not be required to make any additional operating reserves payments - until April bills have been released.

Notice of Filing, Interventions and Protests

12. Notice of NEPOOL's filing was published in the Federal Register, 69 Fed. Reg. 12,313 (2004), with motions to intervene and protests due on or before March 29, 2004. Timely motions to intervene and comments were filed by PSEG Energy Resources & Trade LLC and Public Service Electric and Gas Company (PSEG Companies), NRG

[8] NEPOOL explains that generating resources in the day ahead market will be ineligible for operating reserve credits for the Operating Day if its supply offer contains a self schedule for fewer hours that its minimum run time, or two blocks of contiguous self scheduled hours separated by less than the resource's minimum down time. Similarly, NEPOOL states that a generating resource in the real time market will be ineligible to receive operating reserve credits for the Operating Day if it is self scheduled for fewer contiguous hours than its minimum run time, or its submits two self-schedules separated by less than its minimum down time. In other words, a self scheduled resource may be ineligible if self scheduled hours are present during the minimum run time period, even if that minimum run time has passed.

Companies,[9] USGen New England, Inc., and ISO-NE. On April 6, 2004, Northeast Utilities Service Company (NUSCO) on behalf of Northeast Utilities Operating Companies[10] and Select Energy, Inc. (Select Energy) filed a motion to intervene out-of-time. On April 13, 2004, ISO-NE and NEPOOL filed a joint answer responding to NRG's protest.

Responsive Pleadings

13. All intervenors (i.e., ISO-NE, PSEG Companies, NRG Companies and USGenNE) support NEPOOL's proposal to modify Appendix F to Market Rule 1 to permit resources that partially self-schedule and pool-schedule to receive operating reserve credits for their pool scheduled output.

14. PSEG Companies argue that fairness clearly dictates that when a generating unit operates at the direction of ISO-NE during a period when the unit would otherwise not have operated, the unit must be kept whole through the payment of operating reserve credits. PSEG Companies argue that the clarification proposed by NEPOOL in the instant docket is long overdue. PSEG Companies contend that action has now been precipitated only by recent high-visibility events involving Exelon Generation, LLC, in which that market participant operated its units at the direction of ISO-NE and was denied millions of dollars in operating reserve make-whole payments for the service it provided. Additionally, PSEG Companies complain that these events have arisen due to the failure of ISO-NE, its market monitoring unit and its independent market advisor, to clarify the tariff on a timely basis. PSEG Companies contend that in this case, proactive administration of the tariff required ISO-NE to exercise vigilance by recognizing a problem before it had significant financial impacts. PSEG Companies argue that there has been no satisfactory reason given for ISO-NE's failure to act sooner in this case.

15. ISO-NE explains that, the changes proposed in the March 8 Filing would modify the operating reserve credit eligibility rules such that self-scheduling for a period less than a unit's minimum run time would make a unit ineligible for day-ahead operating reserve credits only for that day, and ineligible for real time operating reserve credits only for the self scheduled hours. ISO-NE believes that this change represents an important and necessary market improvement that ensures that operating reserve credits are received in appropriate circumstances.

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[9] NRG Companies include NRG Power Marketing, Inc., Connecticut Jet Power LLC, Devon Power LLC, Middleton Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

[10] The NU Operating Companies are: Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire.

16. NRG Companies contend that the ISO's method of calculating operating reserves costs over the entire day misapplies cost causation principles because the ISO undervalues the cost of such reserves during off-peak periods. As a result, NRG Companies state that the unit's self scheduled hours are inappropriately subsidizing the provision of operating reserves to the pool. NRG Companies request that the Commission direct NEPOOL to revise Market Rule 1 to provide that in instances where a unit is partially self scheduled in the same operating day, the ISO will evaluate costs versus revenue on an hourly basis for the purpose of determining operating reserve credits. NRG Companies claim that this would ensure that the true costs of operating reserves are appropriately reflected in the calculation of operating reserve credits.

17. NRG Companies state that under NEPOOL's proposal, units that trip during their minimum run time would continue to be ineligible for operating reserve credits under section 2.1.7(b)(1) of Appendix F to Market Rule 1.[11] NRG Companies claim that this provision effectively denies a unit that trips during its minimum run time an opportunity to recover its operating costs through operating reserve credits even in those hours in which it provided operating reserves at the ISO's request. As a result, NRG Companies request that the Commission direct NEPOOL to revise Market Rule 1 to make a unit eligible for operating reserve credits on a pro rata basis, where the unit provides operating reserves, but trips off-line during its minimum run time. Further, NRG Companies assert that compensating a unit through the payment of operating reserves credits from those hours in which the unit provided operating reserves ensures that units that provide operating reserves are appropriately compensated for the service provided.

NEPOOL and ISO-NE's Answer

18. NEPOOL and ISO-NE strongly oppose NRG's attempt to circumvent the Commission approved stakeholder process. NEPOOL and ISO-NE states that the instant filing proposes changes that NRG agrees improve existing provisions of Market Rule 1. NEPOOL and ISO-NE point out that the provisions for calculating operating day operating reserve credits have already been approved by the Commission a just and reasonable and NRG does not argue that the improvement render previously approved provisions unreasonable. NEPOOL and ISO-NE argue that nor did NRG seek these changes in the stakeholder process when the improvements were being considered. Instead, NEPOOL and ISO-NE contend that NRG elected to withhold its suggested revisions to raise them for the first time in a pleading before the Commission.

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[11] Market Rule 1, Appendix F, section 2.1.7(b)(i), "Real-Time Operating Reserve Credit Eligibility," states: "If the generating Resource trips during its Minimum Run Time period, the generating resource is ineligible to receive real time operating reserve credit for the period beginning with the later of the start of the Commitment Period or the first hour of the Operating Day and ending at the time of the trip."

19. NEPOOL argues that it is not able at this time to take a substantive position on either of the changes proposed by NRG. NEPOOL contends that those suggested changes may fundamentally change the manner in which operating reserve credits are currently calculated. NEPOOL states that it is unclear without discussion and analysis how such changes would interrelate with other aspects of Market Rule 1 and whether they would present undesirable bidding signals or gaming opportunities. Additionally, NEPOOL argues that nor do NRG's tactics provide an adequate opportunity to assess whether such changes would stall the necessary changes to the software to implement changes already approved by the stakeholders or delay other software enhancement projects already underway that NRG and others may consider as higher priority.

20. NEPOOL contends that NRG should not be permitted to circumvent the NEPOOL process and prejudice other NEPOOL Participants by proposing these changes in the first instance in an adversarial pleading to the Commission. NEPOOL states that if, following the opportunity for thoughtful analysis and debate, sufficient support for the suggested changes exists among participants, such changes may be filed with the Commission for approval pursuant to Section 205 of the Federal Power Act. NEPOOL argues that until such time, NRG's suggested revisions should be rejected.

21. ISO-NE argues that based on its limited time for review and consideration, it has indicated that the changes proposed by NRG may in fact be highly problematic, and states that it is unable to effectively consider these changes with any accuracy on such short notice. ISO-NE contends that after proper review, ISO-NE may well conclude that the suggested changes are not harmful. Both ISO-NE and NEPOOL strongly urge that the Commission continue to foster this essential stakeholder process by rejecting NRG's proposed changes without prejudice to NRG to bringing them back before the Commission following such process if NRG is not satisfied with the outcome.

Discussion

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene of PSEG Companies, NRG Companies, USGenNE and ISO-NE make them parties in this proceeding. We will grant NUSCO's and Select Energy's motion 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. rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the joint answer because it has provided information that assisted us in our decision-making process.

23. We find that the proposal to revise the eligibility requirements to allow a partially self scheduled and partially pool scheduled generation resource to receive operating credits if the resource is pool scheduled pursuant to ISO dispatch instructions is just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The proposed modifications provide that a generation resource needed for reliability will receive its operating reserve credits for the pool scheduled portion of its output, which benefits all participants. In addition, permitting a partially self scheduled resource to receive its make whole payment, when operating pursuant to ISO dispatch instruction, promotes market efficiency.

24. We find persuasive NEPOOL and ISO-NE's argument that NRG's suggested revisions have not been vetted through the stakeholder process and could impact various participants. NRG should use ISO-NE's internal stakeholder mechanisms, such as one of the standing Technical Committees, to debate and consider the impact of its suggested changes on the energy markets. In this regard, we note that NEPOOL itself utilized the stakeholder process to discuss and analyze the revisions to Market Rule 1 presented in this proceeding. We urge parties to work through ISO-NE to debate the impact of amending the calculation of operating reserve credits. The Commission will not require changes to Market Rule 1 suggested on short notice, particularly when parties have avenues within ISO-NE to effectively consider market rule changes in a more interactive manner. Therefore, we will require ISO-NE and NEPOOL to examine NRG's suggested changes, through the stakeholder process, and to report the status of their examination in the progress reports ordered in Ordering Paragraph D of the September 20, 2002 Order. [12]

25. With regard to PSEG Companies' objection that ISO-NE's market monitoring units failed to clarify that Market Rule 1 did not authorize the payment of operating reserve credits in similar cases involving smaller monetary amounts, we expect that the internal and external market monitoring units in ISO-NE will monitor flaws in market design or in the implementation of rules that create inefficient incentives or market outcomes to assure that any flaws and inefficiencies are removed as soon as feasible.[13]

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[12] New England Power Pool and ISO New England, Inc., 100 FERC ¶ 61,287 (September 20, 2002).

[13] See RTO-NE Tariff No. 1, section 3 Market Rule 1 Appendix A "Market Monitoring, Reporting and Market Power Mitigation" 2.4.1 "Monitoring Targets" (formerly NEPOOL Rate Schedule No. 7 Market Rule 1 Appendix A "Market Monitoring, Reporting and Market Power Mitigation" 2.4.1 "Monitoring Targets").

26. In the prior proceeding approving the payment of operating reserve credits to self scheduled units, NEPOOL committed to examine the issue of restricting payment of operating reserve credits to partially self scheduled resources.[14] As a result, the Commission directed NEPOOL to include a description of its progress in the standard market design quarterly status reports.[15] Although NEPOOL described the status of its progress regarding partially self scheduled resources, NEPOOL did not include any instances where a participant provided resources pursuant to ISO dispatch instruction and did not receive operating reserve credits.[16] Prospectively, we expect the status reports to be more comprehensive and the market monitoring units to modify flaws that create inefficient market outcomes in a timely manner.

The Commission orders:

NEPOOL's proposed amendments to revise Market Rule 1, Appendix F are hereby accepted for filing, to become effective on March 1, 2004, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary

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[14] January 2003 Order, 102 FERC ¶ 61,112 at P 41.

[15] Id.

[16] See ISO-NE's Quarterly Reports filed in Docket No. ER02-2330-014 on June 30, 2003; Docket No. ER02-2330-018 on September 22, 2003; and Docket No. ER02-2330-021 on December 16, 2003.