

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

PPL Wallingford Energy LLC

Docket Nos. ER03-421-000
ER03-421-001

ORDER REJECTING RELIABILITY-MUST-RUN AGREEMENT

(Issued May 16, 2003)

1. In this order, the Commission rejects a proposed, cost-of-service, reliability-must-run (RMR) agreement (Agreement), submitted by PPL Wallingford Energy LLC (PPL-Wallingford).¹ Instead, we conclude that the LMP market design with modification to the market power mitigation recently ordered in Devon Power LLC² will give the PPL-Wallingford units an opportunity to recover their costs through the market. This order benefits customers by helping to ensure the continued availability of generating resources needed for system reliability while protecting competition in the Connecticut electric market.

Background

2. Starting December 2001, PPL-Wallingford sold, at market-based rates,³ electric power from its recently constructed facility of five 45 MW natural gas combustion peaking turbines, located in Wallingford, southwestern Connecticut. PPL-Wallingford states that, when New England energy markets began operating under price caps and mitigation procedures, the peaking facility, which generated approximately 8 percent of the time in 2002, encountered difficulty in recovering its costs.

¹PPL-Wallingford was formed expressly for the purpose of developing and operating the Wallingford, Connecticut, generating facility.

²Devon Power LLC, 103 FERC ¶ 61,082 at P 32 (2003) (Devon).

³In an unpublished letter order, PPL-Wallingford received authorization for sales at market-based rates on May 10, 2001. Docket No. ER01-1559-000.

3. On January 15, 2003, ISO New England (ISO-NE) stated in a letter to PPL-Wallingford that, after conducting a reliability assessment for Connecticut, it had determined that, absent any transmission improvements or new resources, largely all of the existing resources in Connecticut are needed for reliability, including the PPL-Wallingford units. On January 16, 2003, under Section 205 of the Federal Power Act, 16 U.S.C. § 824d (2000), PPL-Wallingford submitted the unexecuted proposed Agreement between itself, its agent, PPL Energy Plus, and ISO-NE (January submittal). The parties had negotiated the proposed Agreement under Market Rule 17 of the New England Power Pool (NEPOOL) Market Rules and Procedures.⁴ The proposed Agreement cites the ISO-NE letter of January 15, 2003, and provides for PPL-Wallingford to continue operation of four of the generating units⁵ on a cost-of-service basis to provide reliability. PPL-Wallingford asks the Commission to accept the proposed Agreement, which ISO-NE will execute after Commission acceptance, and to waive the statutory 60-day prior notice requirement for an effective date of February 2, 2003.

4. The proposed Agreement substantially follows the pro forma RMR cost-of-service agreement approved by the Commission as part of the New England Standard Market Design (NE-SMD).⁶ Its term is one year, through January 31, 2004, which will be extended automatically each year unless terminated by notice. In exchange for keeping the four units available for generation dispatch by ISO-NE, PPL-Wallingford will receive a fixed monthly payment, which includes all allowable capacity costs and fixed operation and maintenance costs and a variable payment for operation and maintenance charges, based on an annually adjusting formulary rate. The proposed Agreement provides for reduction of the monthly fixed cost payments as a result of revenues earned by PPL-Wallingford. ISO-NE will cause the payments to be made by the NEPOOL Participants through the monthly settlement process for the NEPOOL market.

⁴Section 17.3.2.2(b) of the NEPOOL Market Rules provides that, for resources lacking a history of operation in economic merit, ISO-NE may determine that some of these resources should be entitled to receive a very high bid price or have special contractual arrangement to ensure their availability when needed to support system reliability and security. See Sithe New Boston, LLC, 98 FERC ¶ 61,164 at 61,608-09, reh'g denied, 100 FERC ¶ 61,106 (2002).

⁵The fifth unit's generation is committed for installed capacity under a long-term sales contract.

⁶See New England Power Pool and ISO New England, Inc., 100 FERC ¶ 61,287, order on reh'g, 101 FERC ¶ 61,344 (2002), reh'g pending.

5. Commission staff found the January submittal to lack certain information needed to analyze the proposed Agreement, and required PPL-Wallingford to submit further information describing the units' costs and why PPL-Wallingford believed that it could not profitably operate the units under NE-SMD market conditions. PPL-Wallingford filed its responsive amendment on March 31, 2003 (March amendment). On April 2, 2003, pursuant to Section 18.4 of the Restated NEPOOL Agreement (RNA),⁷ PPL-Wallingford, as a NEPOOL Participant, applied to NEPOOL to deactivate the four generating units.

Interventions, Comments and Protests

6. Notices of the January submittal (Docket No. ER03-421-000) and the March amendment (Docket No. ER03-421-001) were published in the Federal Register, 67 Fed. Reg. 4190 and 17,793 (2003), respectively, with comments, interventions and protests due on or before April 21, 2003. Entities who intervened in the Docket No. ER03-421-000 proceeding are deemed to intervene in the Docket No. ER03-421-001 proceeding. All the entities listed in the appendix, which gives each entity's short name, filed timely interventions, and most also filed comments or protests. On February 21, corrected on February 24, 2003, PPL-Wallingford filed an answer to the protests to its January submittal.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c)(1) (2003), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), an answer may not be made to a protest unless otherwise ordered by the decisional authority. We will reject PPL-Wallingford's answer because it raises no new argument not presented in its January 16 submittal and March 31 amendment, and has not assisted in the decision-making process.

Parties' Positions

⁷Section 18.4 of the RNA requires Participants, among other things, to submit to NEPOOL and ISO-NE any new or materially changed plan for retirements of capacity or any other action that may significantly affect the stability, reliability, or operating characteristics of its system or any other Participant's system.

8. The Interveners who filed Comments and Protests in this proceeding also intervened in Devon, where they largely repeated the same arguments. These arguments are discussed in depth in Devon.⁸ The Interveners' overall reason for opposing Commission acceptance of PPL-Wallingford's proposed Agreement is the expectation that the probable result will be proliferation of requests for cost-of-service RMR contracts from generators throughout New England, which will harm the region's competitive electricity markets.

9. Specific to this proceeding, the Protestors object to what they see as PPL-Wallingford's attempt to get the benefits of market prices, when to its advantage, and to be protected against the effects of competition by a cost-of-service contract at other times. The Connecticut Protestors object to Connecticut customers paying for PPL-Wallingford's decision, which they call imprudent, to construct units that were more expensive than other natural gas-fired peaking units of the same vintage, and to a return-on-equity that they deem excessive.

10. The Protestors state that any interim cost recovery for PPL-Wallingford should be short-lived and oppose the proposed Agreement's provision for automatic extensions. The Interveners also state that PPL-Wallingford's March amendment is inadequate as to financial information and generally fails to respond to the Commission's questions concerning continued operation of the units under NE-SMD.

11. ISO-NE repeats that the Wallingford units are needed to support reliability in Connecticut. It states that it did not review PPL-Wallingford's cost-of-service justification, and that it takes no position on the appropriateness of the rates requested in the proposed Agreement. Currently, it is evaluating PPL-Wallingford's application to deactivate the four generating units, in accordance with Section 18.4 of the RNA.

12. NEPOOL Committee urges the Commission to consider carefully the justness and reasonableness of the proposed Agreement's rates. It observes that ISO-NE was not obliged to review the proposed rates and has no financial incentive to do so. It adds that those responsible for making the payments neither reviewed nor negotiated the proposed Agreement. NEPOOL Committee points out that PPL-Wallingford has not applied to retire the generating units but to deactivate them.

Commission Response

13. The discussion in Devon presents our current policy toward RMR, cost-of-service agreements as they pertain to NEPAL. The Commission stated that an RMR agreement

⁸Devon, 103 FERC ¶ 61,082 at P 13-26.

should be a last resort and that proliferation of these agreements is not in the best interest of the competitive market as they affect other suppliers in the market, especially those operating within the same Designated Congestion Area (DCA). The Commission observed that the current situation in NEPOOL may not allow high cost, seldom run suppliers' units in DCAs, specifically those with capacity factors of 10% or less, an adequate opportunity to recover their costs. We said that a location-specific capacity requirement must be in place and that ISO-NE and NEPOOL need to address expeditiously the issue of resource adequacy within the DCAs as well as other transmission constrained areas in New England. In the interim, we directed ISO-NE and NEPOOL to modify the market power mitigation mechanism to give selected high-cost but seldom-run units in DCAs a higher safe harbor bid (Peaking Unit Safe Harbor Bid) that could result in higher market clearing prices in high demand periods and enhance the ability of these units to recover their fixed and variable costs through the market. ISO-NE and NEPOOL must make a compliance filing incorporating this directive on or before May 30, 2003. These temporary rules are to remain in effect until ISO-NE makes a filing and places into effect certain changes prior to the 2004 summer peak season. The Commission pointed out that these actions change only the form by which generators will be able to recover their fixed and variable costs, i.e., by use of safe harbor bids within the market rather than by RMR contracts.⁹

14. The policy ordered in Devon will permit higher prices during the hours when demand approaches the capacity limit and will apply to all suppliers, including PPL-Wallingford. The Locational Marginal Price (LMP) market design and temporary changes to market power mitigation that the Commission has directed in Devon will allow PPL-Wallingford to receive market clearing prices that could be set by the higher peaking unit safe harbor bid that applies to selected units. It may also give PPL- Wallingford more latitude to offer its power at higher prices without concern for mitigation. Under this mechanism, when ISO-NE calls upon the PPL-Wallingford units for dispatch this summer, these units' bids, when accepted, will establish the LMP if they are the highest accepted offer. Otherwise, PPL-Wallingford may receive a price that exceeds its offer when a higher cost unit bid is also accepted. On the basis of the rationale developed in Devon, and with the market modifications made in that order, we will reject PPL-Wallingford's proposed Agreement.

15. Should any of the PPL-Wallingford units qualify for the Peaking Unit Safe Harbor Bid, i.e., a 2002 capacity factor of 10% or less, the safe harbor bid levels will need to be determined by ISO-NE.

The Commission orders:

⁹Devon, 103 FERC ¶ 61,082 at P 31-32.

The cost-of-service RMR Agreement submitted by PPL-Wallingford is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

ER03-421-000

Interventions without Comments or Protests

Exelon Corporation and Exelon Generation Corporation (Exelon)
Keyspan-Ravenswood, LLC (Ravenswood)
Mirant Americas Energy Marketing, LP (Mirant)
NRG Companies (NRG)
PG&E National Energy Companies (PG&E)
Pinpoint Power LLC (Pinpoint)

Interventions with Comments

AES Londonderry, LLC (AES)
ISO New England Inc. (ISO-NE)
New England Power Pool Participants Committee (NEPOOL Committee)
PSEG Companies (PSEG)

Interventions with Protests

Connecticut, Attorney General for the State of (CTAG)
Connecticut Department of Public Utility Control (CTPUC)
Connecticut Industrial Energy Consumers (CIEC)
Connecticut Office of Consumer Counsel (CTOCC)
Connecticut Municipal Electric Energy Cooperative (CMEEC)
Dominion Energy Marketing, Inc. (Dominion)
National Grid USA (National Grid)
NSTAR Electric & Gas Corporation (NSTAR)
New England Consumer-Owned Entities (NECOE)
Northeast Utilities Service Company (NU)
United Illuminating Company (UI)

ER03-421-000

Supplemental Comments

CMEEC and NECOE, jointly
CTPUC
ISO-NE
NEPOOL Committee

Supplemental Protests

CTAG
CIEC
National Grid
NU
UI