

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Sithe New England Holdings, LLC

Docket Nos. EL02-128-002 and  
EL02-128-003

v.

ISO New England, Inc.

ORDER ON REHEARING AND COMPLIANCE

(Issued November 17, 2003)

1. In this order, the Commission denies NSTAR Electric & Gas Corporation's (NSTAR) request for rehearing of a Commission order issued on July 1, 2003.<sup>1</sup> The July 1 Order, among other things, granted, in part, and denied, in part, Exelon New England Holdings, LLC's (Exelon) rehearing request of a February 5 Order.<sup>2</sup> Also, in this order, the Commission accepts ISO New England's (ISO-NE) compliance report. This decision reinforces the Commission's goal of ensuring reliable electric service in the Northeast region.

**Background**

2. New England Power Pool (NEPOOL) Market Rule 5 provides the operating parameters for generators regarding ISO-NE's Desired Dispatch Point (DDP) provisions. Pursuant to the market rules, to be eligible to set the Real Time Marginal Price in NEPOOL's energy market, a generator must follow dispatch instructions by operating at its assigned DDP; and to qualify for the full recovery of its as-bid costs through uplift

---

<sup>1</sup> Sithe New England Holdings, LLC v. ISO New England Inc., 104 FERC ¶ 61,006 (2003) (July 1 Order).

<sup>2</sup> Sithe New England Holdings, LLC v. ISO New England Inc., 102 FERC & 61,131 (2003) (February 5 Order).

payments, a generator must operate at its DDP. In a December 21 Order,<sup>3</sup> the Commission approved revisions to Market Rule 5. Specifically, the DDP formula was modified to expand the bandwidth used to determine compliance with DDP. The December 21 Order approved the tariff changes effective December 28, 2001.

3. In a complaint filed on September 23, 2002, Sithe alleges that ISO-NE unfairly denied it uplift payments for the provision of reliability service to NEPOOL between July 1, 2001 and December 27, 2001. The Commission, on February 5, 2003, denied Sithe's complaint. On March 7, Exelon<sup>4</sup> submitted a rehearing request of the February 5 Order. Exelon argued that the ISO-NE's newly automated software system, which was designed to assess generators' compliance with ISO-NE's DDP, did not perform as ISO-NE intended, and resulted in the flagging of generators that had deviated from their DDP. The deviations, Exelon argued, many of which were very minor or beyond the generator's control, further resulted in generators being disqualified from uplift payments.

4. In the July 1 Order, the Commission, among other things, granted Exelon's request, in part, and found that "ISO-NE should exclude from uplift payments only those MWs supplied that exceed the DDP." The July 1 Order further directed ISO-NE to pay uplift on those MWs up to the DDP and to disqualify uplift on the MW hours that exceed the DDP.<sup>5</sup>

5. In the instant rehearing request, NSTAR contends that the Commission, in the July 1 Order, failed to engage in reasoned decision-making and approved an erroneous interpretation of Market Rule 5 by ordering ISO-NE to disqualify from uplift only that portion of a generator's output that exceeded the DDP under Market Rule 5. NSTAR argues that the Commission acted arbitrarily and capriciously by engaging in unlawful retroactive ratemaking and also failed to provide a rationale for its findings since it is contrary to the position the Commission took in prior orders.<sup>6</sup>

---

<sup>3</sup> New England Power Pool, 97 FERC ¶ 61,338 (2001) (Docket Nos. ER02-185-000 and ER02-185-001) (December 21 Order).

<sup>4</sup> As a result of the sale of certain assets by Sithe Energies, Inc. to Exelon Generation Company, LLC, approved by the Commission in *Sithe Energies, Inc.*, 100 FERC ¶ 62,197 (2002), Sithe New England Holdings, LLC was renamed Exelon New England Holdings, LLC, effective November 1, 2002.

<sup>5</sup> *Sithe New England, LLC v. ISO New England Inc.*, 104 FERC ¶ 61,006 at P 9 (2003) (July 1 Order).

<sup>6</sup> Rehearing Request at 1, 5.

6. On August 1, 2003, pursuant to Commission directives, ISO-NE submitted a compliance report. According to ISO-NE, the software parameters for determining eligibility for uplift payments under Market Rule 5.4.5.7(a) between July 1 and December 27, 2001 complies with the Commission's July 1 Order.

### **Notice of Filing and Intervention**

7. Notice of ISO-NE's compliance report was published in the Federal Register, 68 Fed. Reg. 47,561 (2003), with protests and interventions due on or before September 2, 2003. On September 2, 2003, NEPOOL Participants Committee intervened, with no substantive comments.

### **Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>7</sup> the timely, unopposed motion to intervene serves to make NEPOOL Participants Committee a party to this proceeding.

#### **B. Commission Conclusion**

9. As NSTAR correctly points out, the Commission cannot approve rate increases retroactively, and it has not done so here. On reviewing Exelon's Rehearing Request and upon closer scrutiny of Market Rule 5, the Commission, in the July 1 Order, determined that Market Rule 5 allowed ISO-NE to disqualify uplift only on the portion of the generator's output that is greater than the DDP. Market Rule 5 provides for this outcome:

##### a. Generation above Desired Dispatch Point Excluded

Supplied Energy (MWh) from Bid Blocks above the Desired Dispatch Point are [sic] excluded if the Bid Price exceeds the Energy Clearing Price. This exclusion does not include any Energy supplied from Bid Blocks below the Desired Dispatch Point or any Energy supplied from Bid Blocks above the Desired Dispatch Point from Bid Blocks with Bid Prices less than the Energy Clearing Price.

Market Rule 5.4.5.7.a

---

<sup>7</sup>18 C.F.R. ' 385.214 (2003).

10. As a general rule, the Commission expects that suppliers will have an opportunity to recover their operating costs. As Exelon correctly pointed out, neither the Commission nor ISO-NE can force generators to operate at a loss.<sup>8</sup> As we stated in the July 1 Order, the Commission does not believe that Market Rule 5.4.5.7 (a) is designed to deny uplift payments on all MWs because there was a deviation from the DDP bandwidth, but rather, the Market Rule is intended to provide uplift payments to generation that has supplied MWs needed to maintain reliability. This conclusion was not a new requirement but reflects the proper interpretation of Market Rule 5.

11. NSTAR contends that the Commission's decision fails to interpret Sections 5.4.5.6 and 5.4.5.7 in concert, which is necessary to understand the full intent of the Market Rule. However, Section 5.4.5.6 does not lead to a contrary result. Section 5.4.5.6.c.ii discusses when a Trading Interval will be set to zero for not following the DDP, and provides that ISO-NE may, in appropriate circumstances, excuse such failures. Section 5.4.5.6.c.ii does not preclude ISO-NE from acknowledging bids up to the desired DDP. ISO-NE has implemented the Commission's July 1 Order and has not argued that the Commission's interpretation of Market Rule 5 is in error. This interpretation of Market Rule 5 provides that ISO-NE will assess penalties only to the extent generators' decisions impact the reliable operation of the NEPOOL energy market.

The Commission orders:

(A) NSTAR's request for rehearing is hereby denied, as discussed in the body of this order.

(B) ISO-NE's compliance report is hereby accepted.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

---

<sup>8</sup> Exelon's March 7, 2003 Transmittal Letter in its Rehearing Request at 9.