

150 FERC ¶ 61,114
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Dunkirk Power LLC

Docket No. ER12-2237-002

ORDER REJECTING FILING

(Issued February 19, 2015)

1. On July 12, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ Dunkirk Power LLC (Dunkirk), submitted an unexecuted cost-of-service agreement to be designated as Dunkirk FERC Electric Rate Schedule No. 1 (July 12, 2012 Filing) pursuant to which Dunkirk proposed to provide Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) with reliability must-run (RMR) service from Dunkirk Unit Nos. 1 and 2 (Dunkirk RMR Units), for the period effective September 11, 2012, through May 31, 2013. For the reasons discussed below, we reject the July 12, 2012 Filing.

I. Background

2. In its July 12, 2012 Filing, Dunkirk asserted that its generating facility (Facility),² located in National Grid's service territory, was not currently economic to operate, despite significant investment by Dunkirk's parent company, NRG Energy, Inc. (NRG). Therefore, Dunkirk stated that it sought to cease operation of the Facility at midnight on September 10, 2012. However, Dunkirk asserted that the New York Independent System Operator (NYISO) and National Grid conducted a series of studies to determine whether deactivation of the Facility would create reliability problems on the transmission system. It states that, as a result of those studies, NRG was informed that there is a reliability need for "two, 115 kV units to remain in service from September 2012 until 11:59 pm May 31, 2013. After midnight on June 1, 2013, one 115 kV unit is expected to be needed

¹ 16 U.S.C. § 824d (2012).

² Dunkirk stated that its Generating Facility is a four-unit coal generating facility located in Western New York and fully controlled in accordance with federal and state environmental requirements. July 12, 2012 Filing at 1.

until a major substation project is completed by June 1, 2015.”³ The proposed Dunkirk Rate Schedule sets forth the rates, terms and conditions for Dunkirk’s provision of RMR service from the Dunkirk RMR Units to National Grid for the period September 11, 2012, through May 31, 2013.

3. In its July 12, 2012 Filing, Dunkirk maintained that it has attempted to reach a bilateral reliability agreement with National Grid that would allow the necessary units to continue operating, and made the instant filing as a backstop. That is, it stated, if negotiations between Dunkirk and National Grid are unsuccessful, Dunkirk requests that the Commission accept the Dunkirk Rate Schedule “without suspension or modification, to be effective on September 11, 2012.” Finally, Dunkirk stated that, if it is able to reach a bilateral agreement with National Grid, it will withdraw the July 12, 2012 Filing.⁴

4. On July 25, 2012, Dunkirk filed a motion to hold the proceeding in abeyance for 30 days (Dunkirk July 25, 2012 Motion), and on August 1, 2012, Dunkirk filed a motion to hold the proceeding in abeyance until August 25, 2012 (Dunkirk August 1, 2012 Motion), stating that “Dunkirk and National Grid entered into a bilateral agreement to provide reliability services from the two Dunkirk units that are the subject of the instant proceeding” and that it was requesting the proceeding be held in abeyance “[i]n order to provide the New York State Public Service Commission [New York Commission] . . . with time to review the agreement and allow the costs incurred pursuant to the settlement to be passed through to National Grid’s retail customers.”⁵ Subsequently, on August 21, 2012, Dunkirk filed a motion (Dunkirk August 21, 2012 Motion) to “postpone indefinitely the date for Commission action on the Dunkirk Rate Schedule.” Dunkirk stated that it was seeking indefinite abeyance in order “to provide time for execution of a final contract and any [New York Commission] order to become final and non-appealable.”⁶

II. Notice of the July 12, 2012 Filing and Responsive Pleadings

5. Notice of Dunkirk’s July 12, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 47,832 (2012), with interventions, comments, or protests due on or before August 2, 2012. A notice of intervention was filed by the New York State Public Service Commission (New York Commission). Timely-filed motions to intervene were

³ Dunkirk July 12, 2012 Filing at 4.

⁴ *Id.* at 2.

⁵ Dunkirk August 1, 2012 Motion at 1, Docket No. ER12-2237-001.

⁶ Dunkirk August 21, 2012 Motion at 1, Docket No. ER12-2237-002.

submitted by Consolidated Edison Solutions, Inc.; City of New York, New York; Multiple Intervenors; National Grid USA; GenOn Energy Management, LLC; Sierra Club; Exelon Corporation (Exelon); Dynegy Danskammer LLC, Dynegy Roseton, LLC and Sithe/Independence Power Partners, LP; Entergy Nuclear Power Marketing, LLC; Independent Power Producers of New York, Inc.; TC Ravenswood, LLC; and the Electric Power Supply Association. Comments were submitted by Exelon, the New York Commission, Sierra Club, and National Grid USA.

A. Comments

6. Exelon argued that Dunkirk's proposal will have unjust and unreasonable effects on NYISO's energy and capacity markets. Exelon stated that, if Dunkirk clears energy from uncompetitive resources in the day-ahead energy market, the uncompetitive unit will artificially lower locational prices and simply prolong the need for the RMR unit. Exelon states that a higher clearing price will encourage new market entrants and alleviate the need for Dunkirk's uneconomic RMR unit. Similarly, Exelon argued, if Dunkirk is able to sell capacity from uncompetitive resources into NYISO's ICAP Market, it will distort capacity market prices. Exelon argued that generators providing RMR service should recover their costs from the distribution companies whose reliability is maintained through a distribution charge that cannot be bypassed.

7. Sierra Club argued that the Commission has identified serious threats that RMRs pose to markets, and that in order to maintain just and reasonable rates, the market distorting effects of RMRs must be minimized. Therefore, in order to limit the adverse effects of Dunkirk's proposed RMR agreement, the Sierra Club argued that the Dunkirk RMR should be limited in duration to the period of demonstrated need: September 10, 2012, until May 31, 2013.

8. The New York Commission supported Dunkirk's motion to hold the instant proceeding in abeyance. The New York Commission stated that issues in the instant filing are related to issues pending before it, and that it would be premature for the New York Commission to comment on Dunkirk's Petition. National Grid also supported Dunkirk's motion to hold the instant proceeding in abeyance. National Grid stated that, in the event that the Commission declines to hold this proceeding in abeyance, it reserves the right to amend its pleading.

III. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely-filed, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

IV. Discussion

10. We find that it is not necessary to address the merits of Dunkirk's July 12, 2012 Filing and will reject the filing on procedural grounds. No service was ever provided under the unexecuted cost-of-service agreement filed with the Commission and the time period covered by the unexecuted agreement has passed.⁷ Accordingly, in light of our rejection, we find there is no need to address the comments on Dunkirk's Filing.

The Commission orders:

Dunkirk's filing is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ Dunkirk entered into two Reliability Support Service Agreements with National Grid for terms of September 1, 2012 through May 31, 2013 and May 31, 2013 through June 1, 2015, which were submitted to the New York Commission.