

110 FERC ¶ 61,202
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc. and
New England Power Pool

Docket No. ER05-508-000

ORDER ON APPENDIX H TO MARKET RULE 1

(Issued March 2, 2005)

1. In this order, the Commission accepts ISO New England's (ISO-NE) and New England Power Pool's (NEPOOL) revisions to ISO-NE's open access transmission tariff (Tariff or OATT), for filing, suspends them for a nominal period to be effective the date of this order, subject to refund and establishes hearing and settlement judge procedures. ISO-NE filed these OATT revisions pursuant to the Commission's directive in a previous order.¹ Among other things, the January 21 Order granted in part and denied in part a complaint filed by ANP Funding I, LLC (ANP) concerning NEPOOL's newly adopted revisions to its Operating Procedures (OPs) for forecasted extreme cold weather conditions. This order establishes hearing and settlement judge procedures to address the compensation and scheduling provisions. This order benefits customers by providing operational clarity and greater reliability in the New England region.

I. Background

2. In response to the extreme cold weather conditions in January 2004 that produced record demand and threatened the reliability of the electric and natural gas systems in the region, NEPOOL adopted a new operating procedure (OP20) and revised an existing operating procedure (OP5) to address reliability needs and provide for market conditions during extreme cold weather forecasts. On December 6, 2004, ANP filed a complaint with the Commission contending that ISO-NE's revisions to the OPs changed the NEPOOL tariff and, as such, should have been filed under section 205(d) of the Federal

¹ *ANP Funding I, LLC*, 110 FERC ¶ 61,040 (2005) (January 21 Order).

Power Act (FPA).² ANP argued that there was no guarantee that generators would be compensated for the costs and risks they would incur as a result of the revisions. In the January 21 Order, the Commission found that the revisions to the OPs must be filed in the NEPOOL tariff, pursuant to section 205. However, because this represented a departure from a prior Commission ruling, and due to reliability concerns, the Commission allowed the revised OPs to remain in effect. The Commission directed ISO-NE to file the revisions to the OPs and stated that it would act expeditiously on the filing.

II. The Instant Filing

3. In response to the Commission's directives in the January 21 Order, on January 28, 2005, ISO-NE and NEPOOL (collectively, ISO-NE) jointly filed a new Appendix H to NEPOOL Market Rule 1. ISO-NE explains that Appendix H includes special provisions relating to the dispatch and operation of the New England bulk power system during extreme cold weather conditions. ISO-NE further explains that Appendix H (or Cold Weather Procedures) incorporates all of the provisions of NEPOOL's Operating Procedures 20 (OP20) and the relevant revised provisions of Operating Procedure 5 (OP5).

4. ISO-NE argues that these revisions were developed to increase the reliability of market operations under extreme cold weather conditions and are expected to reduce the risks of initiating actions under OP4, which could include voltage reductions or rotating blackouts. ISO-NE asserts that the Cold Weather Procedures contained in Appendix H are designed to minimize market disruptions, as well as increase notice and communications so market participants can better prepare and plan for cold weather conditions. The procedures define three categories of cold weather: Cold Weather Watch,³ Cold Weather Warning,⁴ and Cold Weather Event.⁵ ISO-NE states that during a

² 16 U.S.C. § 824d (d) (2000).

³ Cold Weather Watch is defined as when the effective temperature is ≤ 0 degrees and the 7-day Capacity Margin Forecast $\geq 1,000$ MW. Appendix H of ISO-NE's FERC Electric Tariff No. 3 Original Sheet No. 8134.

⁴ Cold Weather Warning is defined as when the effective temperature is ≤ 0 degrees and the 7-day Capacity Margin Forecast > 0 MW and $< 1,000$ MW. Appendix H of ISO-NE's FERC Electric Tariff No. 3 Original Sheet No. 8134.

Cold Weather Event it will step up the day-ahead bidding and commitment process, and move up the deadline for submissions in the day-ahead energy market from noon to approximately 9:00 a.m. so as to provide earlier notice to gas fired generating units. ISO-NE states that this earlier notice will give generators more time to submit nominations for the necessary gas to run the generators by the 12:30 p.m. deadline of the day-ahead gas markets.

5. ISO-NE states that OP5 also provides for ISO-NE to cancel and deny requests for Economic Outages during Cold Weather Warnings or Events. ISO-NE argues that requiring generators to return to service is consistent with Market Rule 1. ISO-NE states that Market Rule 1 provides that the ISO may commit generation at any time to address a projected emergency condition. Furthermore, ISO-NE states that during the extreme cold weather in January 2004, ISO-NE cancelled all Economic Outages to maintain reliability pursuant to the existing provisions of OP5.

6. ISO-NE states that these Cold Weather Provisions are temporary and will terminate on April 15, 2006. ISO-NE asserts that these procedures are an interim measure to ensure system reliability during extreme cold weather conditions this winter while the stakeholders continue to gather information to develop permanent procedures.

7. ISO-NE requests expedited consideration and waiver of the 60-day notice period so Appendix H can become effective upon Commission order. ISO-NE argues that these revisions are necessary to ensure reliability in case of extreme cold weather during this winter season. ISO-NE asserts that since the Cold Weather Procedures impact actual dispatch, traditional refunds would be virtually impossible to calculate. Therefore, ISO-NE requests that if the Commission requires changes to these cold weather procedures, that such changes be made prospective only.

III. Notice of Filing, Interventions, Protests and Answers

8. Notice of ISO-NE's filing was published in the *Federal Register*, 70 Fed. Reg. 6,644 (2005), with comments, interventions and protests due on or before February 9, 2005. Northeast Utilities Service Company on behalf of Northeast Utilities Operating

⁵ Cold Weather Event is defined as when the effective temperature is ≤ 0 degrees and the 7-day Capacity Margin Forecast ≤ 0 MW for an operating day. Appendix H of ISO-NE's FERC Electric Tariff No. 3 Original Sheet No. 8134.

Companies (Northeast), Select Energy, Inc. (Select Energy), and PSEG Energy Resources & Trade LLC (PSEG) filed motions to intervene. ANP Funding I, LLC (ANP), Mirant Americas Energy Marketing LP, Mirant New England, LLC, Mirant Canal, LLC and Mirant Kendall, LLC (collectively Mirant), Lake Road Generating Company, LP (Lake Road), Dominion Energy New England, Inc., Dominion Energy Marketing, Inc. (collectively Dominion), and TransCanada Power Marketing Ltd (TransCanada) filed motions to intervene and protests. Duke Energy North America, LLC (Duke Energy) filed a motion to intervene and comments. Calpine Eastern Corporation, Calpine Energy Services, L.P. (collectively Calpine) filed an out-of-time motion to intervene and protest. The Public Utilities Commissioners of New England filed a notice of intervention and comments. ISO-NE and NEPOOL filed answers to protests and comments.

9. Lake Road states that ISO-NE and NEPOOL have not met their burden of proof to show that Appendix H, as filed, is just, reasonable, and not unduly preferential under section 205 of the FPA..

10. ANP and Lake Road argue that by giving ISO-NE the right to deny applications or cancel Economic Outages, Appendix H conflicts with Market Rule 1 and Commission rulings that entitle generators to make their own economic decisions on whether to offer capacity into the market. Protesters state that Market Rule 1 allows participants to make economic decisions regarding their generator resources and as such they are not required to provide service if they reasonably do not expect revenues from operations to justify the operation, including operating and opportunity costs. ANP argues that by approving Market Rule 1, the Commission approved generators' use of Economic Outages as a mechanism to manage risks.

11. Calpine, ANP and Lake Road argue that Appendix H would allow ISO-NE to force de-listed generators⁶ to supply capacity even though these generators would be ineligible for payments since other ISO-NE tariff provisions make a de-listed unit ineligible for capacity payments. Protesters assert this would require generators that otherwise would have been on Economic Outage to bid into the real-time market and potentially make such generators subject to sanctions and penalties under Appendix B to Market Rule 1 for any failure to comply. Lake Road states that the Commission should only accept Appendix H for filing if ISO-NE deletes provisions that empower ISO-NE to deny or

⁶ A de-listed unit is one that has made the appropriate notification to ISO-NE under Section III.8.3.4 of Market Rule 1 to opt out of participation in the ISO-NE installed capacity market.

cancel Economic Outages and to require units to return to service, or at a minimum, the Commission should require ISO-NE to add specific tariff language under which generators subject to such requirements would be adequately compensated.

12. ANP argues that Appendix H relies on administrative solutions for cold weather conditions and these non-market procedures will result in inaccurate price signals and is contrary to Commission policy. ANP asserts that during cold weather conditions when the market is under stress, accurate price signals are more important to decrease demand. ANP also contends that Appendix H focuses solely on the supply side and does not address possible solutions from load which will further exacerbate market inefficiencies.

13. ANP contends that while Appendix H does adjust scheduling requirements for a Cold Weather Event, it does not align gas and electric bidding deadlines during the other two cold weather situations. Duke contends that new Market Rule provisions are needed to coordinate the bidding and scheduling timelines for the New England electric day-ahead market with that of New York Independent System Operator (NYISO), during all conditions, including extreme cold weather conditions. Duke argues that this is necessary so that New England's day-ahead market, like that of NYISO, would better align with the natural gas day-ahead market. By making ISO-NE's bidding and scheduling timelines consistent with NYISO, Duke asserts that ISO-NE would eliminate a significant seams issue, while increasing reliability.

14. ANP, Lake Road and Mirant argue that Appendix H exposes generators to substantial economic risks without providing adequate compensation. ANP asserts that during cold weather periods, gas supply and transportation in New England can become restricted causing volatile price spikes. ANP argues that if a generator is denied an economic outage it has to buy or hold gas to support its generation offer, but if the ISO does not dispatch that generator, it will not be paid. Furthermore, even if the generator is dispatched, it may not be able to cover its gas prices due to the volatile market and could be forced to operate at a loss. ANP argues that under Appendix H, the generator is required to bear all of the risks and costs during a Cold Weather Event.

15. ANP describes several specific risks faced by generators under the procedures presented in Appendix H including gas cost risks, gas transportation risks, commitment and dispatch uncertainty, operational risks, and credit and liquidity constraints. For example, ANP argues that if a generator elects to buy or hold gas to support its generation offer, but is not committed to run by the ISO, it will have to attempt to sell its gas to avoid a loss on the purchase price of the gas. Such a risk is exacerbated during Cold Weather Conditions when peak gas demand drives prices to high levels. If a generator is unable to sell all of its gas within the intra-day transportation restriction, it may be subject to pipeline imbalance penalties. Further, ANP states that if a generator waits until it is committed to procure gas but cannot obtain enough gas then the generator would be subject to pipeline penalties if it runs and will risk having its gas supply shutoff,

causing the generator to trip offline. ANP contends that Appendix H fails to take into account the risks associated with gas pipeline transportation tariffs. ANP asserts that generators will have to consider the expected cost and availability of gas transportation including imbalance charges, ratable takes and curtailments.

16. ANP states that when trading deadlines are moved ahead as dictated by Appendix H under a Cold Weather Event, generators must still provide an offer based on *estimated* gas price information. An additional risk, ANP states, is that a generator's risk-adjusted offer price may be arbitrarily mitigated after the price. Further, gas supply requirements are not certain since ISO-NE may keep a generator on beyond the initial commitment and may run the units at a variety of dispatch levels. ANP and Calpine state that such risks associated with the gas market are compounded by the mismatch between the gas day and the power day, and that Appendix H does not rectify this problem.

17. ANP claims that the credit and cash liquidity that are required to purchase gas at scarcity prices can be too much for a generator to bear. A generator must consider its access to available credit lines and cash when deciding whether to become available, and it may find that its existing cash is depleted by the need to provide collateral or prepayment to the fuel provider without the certainty of the recovery of such a credit or cash outlay. ANP surmises that this could interfere with ability to meet other commitments or take advantage of other opportunities. ANP concludes that Appendix H exposes generators to financial risks that threaten the stability of the generation market as a whole, since some generators may not be able to bear the potential losses that could result under Appendix H.

18. Mirant requests that the Commission confirm that nothing in the January 28 Filing overrides the current rights afforded generators under section 3.2.6 of Appendix B and, at a minimum, order that any generator that is involuntarily required to supply capacity be compensated in the same manner as other generators supplying capacity.

19. Lake Road requests that the Commission reject ISO-NE's request that any changes to the ISO-NE's operating procedures be applied only on a prospective basis.

20. Lake Road argues that Appendix H will result in the over-commitment of gas-fired generating resources, including units that would otherwise be on Economic Outage, affecting prices in the energy and gas markets in economically inefficient ways. Lake Road contends that under the Cold Weather Event Procedures, it is likely that more gas-fired generation units than may be needed will be committed day-ahead to operate at their minimum operating levels, regardless of the level of their bids or the fact that they otherwise may not have submitted bids. Lake Road argues this would unreasonably depress prices in electric energy markets because units committed out-of-merit by ISO-NE would likely be selected to provide operating reserves, but their bids would not set the energy market clearing price. Furthermore, Lake Road asserts that the dispatch of

out-of-merit additional generating units would exacerbate supply shortages and price increases in natural gas markets to an economically inefficient level.

21. Calpine argues that gas-fired generators may be required to operate at inefficient operating levels when during these cold weather periods, the objective should be to encourage the most efficient gas use. ISO-NE requires combined cycle facilities to bid their Economic Minimum Limits⁷ at the lowest level of operation they can sustain. Calpine asserts that operating at this level is inefficient, costly and will require a significantly higher quantity of gas per unit of electric generation scheduled than would normally be the case.

22. Mirant argues that reliability during cold weather conditions can be accomplished by modifying existing market price formation rules. Mirant asserts that such modifications would provide a market-based solution and unlike ISO-NE's proposal would not place the entire burden of cold weather conditions on merchant generators. Mirant contends that ISO-NE should be required to implement market price-formation structures that accurately reflect the underlying cost of providing that reliability, including the direct marginal costs of production, the cost of risk associated with offering into the energy market and potentially assuming day-ahead obligations in periods of high fuel price volatility, and the cost of other reliability actions taken by ISO (including dispatching units at their low operating limits).

23. Transcanada requests that the Commission direct the filing parties to expand the scope of ISO-NE's implementation report for the 2004/2005 winter season to include a status report describing its efforts to replace the cold weather procedures with a long-term solution. Transcanada states that issues such as: (1) aligning gas and electric market bidding deadlines – even when there is no cold weather event; and (2) decreasing financial risks for gas-fired generators, which make best effort attempts to comply with ISO-NE's operation requests during cold weather events – need to be addressed by additional market rule improvements. Transcanada requests that the Commission require ISO-NE to develop a schedule to finalize improvements to the cold weather procedures, and require that the status report, including this proposed schedule, be submitted to the Commission by June 1, 2005.

⁷ Market Rule 1 defines Economic Minimum Limit as the maximum of the following values: (1) the Emergency Minimum Limit; (2) a level supported by environmental and/or operating permit restrictions; or (3) a level that addresses any significant economic penalties associated with operating at lower levels that cannot be adequately represented by three-part bidding.

24. Dominion states that it supported ISO-NE's cold weather provisions as a temporary interim measure to establish some safeguards and improve communications during periods of extreme cold weather this winter. Dominion also states that during this interim period, the effectiveness of these cold weather procedures will need to be evaluated with particular attention to whether the scheduling provisions dampen price signals in the energy so they do not reflect generation costs needed for reliability. Dominion requests that the Commission require ISO-NE to file a report that assesses the effectiveness of the Cold Weather Event procedures and summarizes any efforts taken to address participants concerns.

25. ISO-NE argues that contrary to protesters' statements, Market Rule 1 provides generators a safe harbor from sanctions for some economic decisions; it does not provide a right to not operate. Consequently, ISO-NE argues that Appendix H is consistent with its tariff, and necessary to maintain regional reliability during extreme cold weather conditions. ISO-NE also contends that Appendix H does not require a de-listed unit to make a day-ahead supply offer, but is required to offer available energy.

26. ISO-NE contends that Appendix H reduces generator risks. ISO-NE argues that the increased communication will allow generators to have earlier information as to whether additional resources are necessary, and provide earlier information to the ISO if a gas-fired generator is unable to purchase supply so that the ISO can address commitment scheduling concerns. Additionally ISO-NE asserts that the earlier notification procedures will allow generators more time to acquire the necessary supplies to operate.

27. ISO-NE asserts that Appendix H should improve price signals. ISO-NE argues that Appendix H procedures should decrease over-commitment, which should improve the ability of locational marginal pricing to reflect shortage conditions. Additionally, ISO-NE argues that the improved communications from generators should give ISO-NE an accurate picture of available resources. ISO-NE also argues that Appendix H provisions do not place all of the risks during Cold Weather Provisions on generation. ISO-NE asserts that Appendix H requires posting of forecasts and supply conditions on the website as well as alerting participants to the possibility of OP4 provisions, which call for load responses.

28. Regarding scheduling, ISO-NE argues that even the protesters agree that Appendix H is an improvement over the current provisions. Furthermore ISO-NE states its intent to continue to explore possibilities to improve coordination between the gas and electricity markets. ISO-NE also argues that ANP and Calpine improperly used their protests to bring complaints and request that the Commission dismiss their arguments as outside the scope of these proceedings. Finally, ISO-NE asserts that a hearing or evidentiary proceeding is unnecessary since it has provided sufficient information on which the Commission can accept its Appendix H filing.

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We accept Calpine's motions to intervene out-of-time given their interest in this proceeding, the early stage of this 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 ISO-NE's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

30. The Cold Weather Provisions appear to improve emergency operations under Market Rule 1. Market Rule 1 provides that ISO-NE may direct scheduling changes to ensure system reliability if it anticipates an Emergency Condition. ISO-NE's proposed Cold Weather Provisions appear to be a subset of these system reliability measures included in ISO-NE's tariff. These Cold Weather Provisions appear to be sufficiently narrow in that they are applicable only to specifically-defined, extreme cold weather conditions and may be implemented only for such time as necessary to ensure system reliability.⁸

31. However, ISO-NE's proposed generator compensation and scheduling provisions contained in Appendix H raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Consequently, our preliminary analysis indicates that ISO-NE's proposed Cold Weather Provisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept ISO-NE's revisions for filing, suspend them for a nominal period to be effective on the date of this order, subject to refund, and set them for hearing and settlement judge procedures.

⁸ The shortened duration of this proposal distinguishes it from the operational measures the Commission rejected in *PJM Interconnection LLC*, 110 FERC ¶ 61,053 at P 137 (2005).

32. Since at this time there are several weeks of winter remaining, there is still the potential of extreme cold weather conditions that could detrimentally impact system reliability throughout the region. As we stated in the January 21 Order, we want ISO-NE to have the tools necessary to ensure reliability this winter season.. In the January 21 Order we indicated that we would act expeditiously and waive the 60-day notice period. Since it appears that, to date, the ISO-NE has not had to enact the Cold Weather Provisions, we will make the tariff revisions effective as of the date of this order. Accordingly, consistent with our prior commitment in the January 21 Order, we will grant waiver of the 60-day prior notice period⁹ and make the Cold Weather Provisions effective on the date of this order and subject to refund. Accordingly, ISO-NE shall remove the Cold Weather Provisions from the revised OP5 and OP20 since these provisions will be included in ISO-NE's tariff.

33. While we are setting these matters for a trial-type evidential hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

⁹ See *Central Hudson Gas and Electric Company, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) and January 21 Order at P 24.

¹⁰ 18 C.F.R. § 385.603 (2004).

¹¹ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

The Commission orders:

(A) ISO-NE's revised tariff sheets are hereby accepted for filing, suspended for a nominal period, to become effective as of the date of this order, subject to refund, as discussed in the body of this order.

(B) ISO-NE shall remove the revised OP5 and OP20 from their Operating Procedures.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of ISO-NE's proposed Appendix H. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.