

107 FERC ¶ 61,321
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Devon Power LLC,
Middletown Power LLC,
Montville Power LLC,
and NRG Power Marketing Inc.

Docket Nos. ER04-464-004 and
ER03-563-035

Devon Power LLC,
Middletown Power LLC,
Montville Power LLC,
Norwalk Power LLC,
and NRG Power Marketing Inc.

Docket Nos. ER03-563-029

Devon Power LLC,
000 and
Middletown Power LLC,
Montville Power LLC, and
NRG Power Marketing Inc.

Docket Nos. ER04-464-
ER04-464-001

ISO New England, Inc.

Docket Nos. ER04-23-000,
ER04-23-002 and
ER04-23-003

ORDER ACCEPTING AND SUSPENDING AMENDMENTS
TO RMR AGREEMENTS, ESTABLISHING HEARING PROCEDURES,
AND CONSOLIDATING DOCKETS

(Issued June 28, 2004)

1. On April 29, 2004, Devon Power LLC (Devon), Middletown Power LLC (Middletown), and Montville Power LLC (Montville) (collectively, Applicants) submitted revisions to Schedule 1 of the Reliability Must Run Agreements (RMR Agreements) among each of the Applicants, NRG Power Marketing Inc. and ISO New England, Inc. (ISO-NE), to correct certain errors relating to how fuel costs are calculated for two of the applicants and to clarify the type of fuel used for a third applicant. In this order, the Commission will accept and suspend the proposed revisions, to become

effective April 30, 2004, set the proposed revisions for hearing, and consolidate the instant proceeding with Docket Nos. ER04-23-000, et al. This order benefits customers by further ensuring that generating units needed for grid reliability will continue to operate.

I. Background

2. In two previous orders,¹ the Commission approved the establishment in Docket No. ER03-563-000 of the Reliability Cost Tracker to allow the Applicants to collect the costs for performing Reliability Projects² necessary to ensure that the units would operate during the summer of 2003. At the time the Commission accepted the Reliability Cost Tracker, NRG was in financial distress. Many parties expressed concern that the revenues collected through the Reliability Cost Tracker could be lost as a pre-petition payment in the event of a bankruptcy filing by NRG.³ To allay these concerns, and to ensure more generally that the funds collected would “in fact be used by the Applicants for the maintenance intended to keep [the] units in service,” the Commission required that the funds collected through the Reliability Cost Tracker “be held in escrow by ISO-NE to be withdrawn by the Applicants as necessary upon showing ISO-NE that the funds are to be used solely for the purpose of maintaining [the] units.”⁴

3. On December 1, 2003, the Commission conditionally accepted, suspended, and made effective subject to refund an Amended Reliability Agreement for Devon units 7 and 8 between ISO-NE and Devon filed in Docket No. ER04-23-000, and established hearing and settlement judge procedures.⁵

4. On March 22, 2004, the Commission conditionally accepted, suspended, and made effective subject to refund and set for hearing and settlement judge procedures RMR Agreements between ISO-NE and, individually, Devon, Montville and Middletown filed

¹ See Devon Power LLC, et al., 102 FERC ¶ 61,314, order on reh’g, 104 FERC ¶ 61,123 (2003) (March 25 Order); Devon Power LLC, et al., 103 FERC ¶ 61,082, order on reh’g, 104 FERC ¶ 61,123 (2003) (April 25 Order).

² “Reliability Projects” are the operations and maintenance (O&M) projects listed on Schedule 1, as updated.

³ March 25 Order at P 5-6.

⁴ Id. at P 13.

⁵ See ISO New England, Inc., 105 FERC ¶ 61,263 (2003).

in Docket Nos. ER04-464-000 and 001.⁶ The Commission also consolidated that proceeding with Docket No. ER04-23-000.

5. On April 1, 2004, the Commission conditionally accepted for filing, suspended, and set for hearing and settlement judge procedures a February 6, 2004 filing submitted in Docket No. ER03-563-029 which, inter alia, updated Schedules 1 and 2 of the Reliability Cost Tracker. Applicants stated that the Reliability Projects listed in the February 6 filing were “needed so that the facilities can continue to contribute to and maintain system reliability in Connecticut,” and that, without acceptance of the updated schedules, “Applicants will be unable to move forward with the new Reliability Projects” to be completed during the spring of 2004.⁷ The Commission also consolidated that proceeding with the proceedings in Docket Nos. ER04-23-000, et al.

II. Instant Filing

6. Applicants, in Docket Nos. ER04-464-004, et al., state that they recently became aware of certain errors contained in the Devon and Montville RMR Agreements which set forth the manner in which Devon’s and Montville’s fuel costs are determined for purposes of calculating their respective Stipulated Bid Costs under those agreements and herein seek to correct those errors. Specifically, Applicants state that the Montville RMR Agreement has been revised to add a gas transportation cost inadvertently omitted in Schedule 1 (the interruptible local transportation charge currently at \$0.15 per dekatherm) and to replace references to Middletown with Montville. Applicants state that the gas indicies and fuel costs identified in Schedule 1 of the Devon RMR Agreement were incorrect and did not accurately reflect Devon’s fuel costs in generating electricity and have therefore, revised Schedule 1 accordingly. Finally, Applicants state that Schedule 1 of Middletown’s RMR Agreement has been changed at the request of ISO-NE to clarify that the jet fuel used for Middletown 10 is Colonial 55 jet fuel.

7. Applicants state that, while the March 22 Order set the underlying RMR Agreements for hearing, the hearing was held in abeyance pending the outcome of settlement discussions and that those settlement discussions are ongoing. Therefore, the Applicants ask that the Commission consolidate the revisions proposed herein with those ongoing settlement discussions.

8. Applicants further request waiver of the Commission’s prior notice requirement to permit an April 30, 2004 effective date.

⁶ See Devon Power LLC, et al., 106 FERC ¶ 61,264 (2004) (March 22 Order).

⁷ Applicants’ Transmittal Letter at 3-4.

III. Notice of Filing, Protests, and Interventions

9. Notice of Applicants' filing was published in the Federal Register,⁸ with protests or interventions due on or before May 20, 2004. A timely motion to intervene and protest was filed by NSTAR Gas & Electric Corporation (NSTAR). NSTAR states it is concerned that the revisions will raise Devon's Stipulated Bid Costs, and thus raise costs to NSTAR. NSTAR states its concerns would be alleviated to the extent that the proposed fuel cost adders in the Devon RMR Agreement provided a true-up mechanism with respect to such amounts to ensure that Devon's Stipulated Bid Costs are not inappropriately inflated and to ensure that Devon does not overcollect its costs. If the Commission does not order a true-up mechanism, NSTAR asks that the Commission require the Applicants to demonstrate why one is not warranted.

IV. Discussion

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ the timely, unopposed motion to intervene serves to make NSTAR a party to this proceeding.

11. The Commission's preliminary analysis indicates that Applicants' filing has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, the Commission will accept and suspend the proposed revisions to the RMR Agreements, to be effective April 30, 2004, subject to refund and set them for hearing. In addition, the Commission will consolidate the instant proceeding with Docket Nos. ER04 -23-000, et al. The concerns raised by NSTAR regarding the need for a true-up provision can be addressed and resolved in that hearing.

The Commission orders:

(A) The proposed revisions are hereby accepted for filing and suspended, to be effective April 30, 2004, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by 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 in Docket Nos. ER04-464-004 and ER03-563-035 concerning the justness and reasonableness of the proposed revisions.

⁸ 69 Fed. Reg. 26587 (May 13, 2004).

⁹ 18 C.F.R. § 385.214 (2003).

(C) Docket Nos. ER04-464-004 and ER03-563-035 are hereby consolidated with Docket Nos. ER04-23-000, et al. for purposes of hearing and decision.

(D) The settlement judge, or presiding judge, as appropriate, in Docket Nos. ER04-23-000, et al. shall determine the procedures best suited to accommodate consolidation of Docket Nos. ER04-464-004 and ER03-563-035 with Docket Nos. ER04-23-000, et al.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.