

134 FERC ¶ 61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Dartmouth Power Associates
Limited Partnership

Docket No. IN11-4-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued February 3, 2011)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Dartmouth Power Associates Limited Partnership (Dartmouth Power). This order is in the public interest because it resolves the investigation into Dartmouth Power's compliance with the Commission's regulations and ISO New England Inc.'s (ISO-NE) tariff.

Background

2. Dartmouth Power, an indirect subsidiary of Morris Energy Group, LLC, is the owner of a 74.1 MW nameplate dual-fuel generator located in southeastern Massachusetts (the Dartmouth unit). In June 2008, the unit was operated by Wood Group Power Operations, Inc. under an Operation and Maintenance Agreement, but is now operated by an affiliate of Dartmouth Power. Consistent with an Energy Management Agreement between Consolidated Edison Company (ConEd) and Dartmouth Power, ConEd registered the unit as an ISO-NE capacity resource and, at Dartmouth Power's direction, offered and continues to offer all energy from the Dartmouth unit into the ISO-NE market.

3. In June 2008, capacity resources, like the Dartmouth unit, were required by ISO-NE's tariff to offer into the ISO-NE day-ahead market and deliver energy if the offer cleared. If a day-ahead offer did not clear, the unit was required to remain available for energy dispatch in the real-time market consistent with the terms of the offer, unless the unit declared an outage to ISO-NE.

4. Around June 1, 2008, the Dartmouth unit developed a boiler tube leak in its heat recovery steam generator. The leak did not affect the Dartmouth unit's ability to operate. On June 13, 2008, the output from the facility was offered to ISO-NE and the unit was dispatched by ISO-NE. On June 13, ConEd offered energy from the generator for delivery on June 14 in ISO-NE's day-ahead market, consistent with the Dartmouth unit's capacity obligation. The generator did not receive a day-ahead commitment for June 14 from ISO-NE and, thus, the unit was not scheduled to operate on June 14. While not selected to operate in the day-ahead market, the offer remained in place and the Dartmouth unit was required to be available for real-time dispatch from ISO-NE.

5. After learning that the unit was not selected to deliver energy in the day-ahead market, the facility's operators arranged for a weld repair of the boiler tube to begin at 7:00 a.m. on June 14. Neither the operators nor Dartmouth Power contacted ISO-NE to schedule an outage of the unit.

6. Welders at the facility began the repair process at 8:00 a.m. During testing of the repair at approximately 10:00 a.m., a weld bead did not hold and welders initiated a tube bend replacement. It became clear no later than 10:00 a.m. on June 14 that the repairs would be more extensive than originally planned and the unit would not be able to timely respond to a dispatch call by ISO-NE should one occur. The operator did not notify ISO-NE that the generator was unavailable.

7. ISO-NE dispatchers called the facility's control room to dispatch the Dartmouth unit at 10:37 a.m. A Dartmouth operator stated that the facility could not respond because the generator was being repaired. The tube replacement was completed and passed inspection at 2:28 a.m. on Sunday, June 15, at which time the Dartmouth unit's operator notified ISO-NE that the unit was once again available for dispatch.

8. Enforcement staff opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010) into Dartmouth Power's possible violation of ISO-NE's tariff and the Commission's regulations related to the unreported June 14-15 outage.

9. In November 2008, ISO-NE withheld a \$231,952.50 monthly capacity payment to Dartmouth Power. Under payment eligibility requirements in the ISO-NE OATT, Dartmouth Power was ineligible for the payment because Dartmouth Power had failed to timely declare the June 14-15, 2008 outage. On March 20, 2009, Dartmouth Power filed a complaint at the Commission challenging the

authority of ISO-NE to withhold this payment. The Commission denied the complaint, upholding ISO-NE's withholding of the payment.¹

Violations

10. Section III.8.3.1(e) of ISO-NE's tariff provides that generators, like the Dartmouth unit, must "abide by the ISO maintenance coordination procedures" when they conduct maintenance, including notifying ISO-NE of any planned outages due to maintenance. These procedures are located in ISO-NE's Operating Procedure 5 and require generators to schedule maintenance outages with ISO-NE prior to taking a facility out of service for repairs. Section III.8.3.1(c) of the ISO-NE tariff requires that generators, such as the Dartmouth unit, must "notify the ISO of any outage (including partial outages) and the expected return date from the outage."

11. Dartmouth Power should have declared an outage prior to the maintenance undertaken on June 14, 2008. The failure to notify ISO-NE of the planned outage and the expected return date from the outage violated ISO-NE tariff sections III.8.3.1(c) (because Dartmouth Power did not notify ISO-NE of the planned outage) and III.8.3.1(e) (because Dartmouth Power did not follow ISO-NE's maintenance and coordination procedures).

12. Dartmouth Power is a Seller in the ISO-NE organized market.² Section 35.41(a) of the Commission's regulations, 18 C.F.R. §35.41(a) provides that a Seller in an organized market "must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market." Section 35.41(b) of the Commission's regulations, 18 C.F.R. § 35.41(b) states: "[A] Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences."

13. Because Dartmouth Power did not follow ISO-NE requirements regarding maintenance and outage notification, it violated 18 C.F.R. §35.41(a). Further, when the Dartmouth unit initiated repairs on June 14, 2008, operators did not

¹ *Dartmouth Power Assocs. Ltd. Partnership v. ISO New England, Inc.*, 127 FERC ¶ 61,249 (2009), *order denying reh'g*, 130 FERC ¶ 61,130 (2010).

² *See* 18 C.F.R. § 35.36(a)(1) (defining "Seller").

notify ISO-NE that the unit was unavailable for dispatch and, as a result, the unit's real-time energy offer was misleading. Dartmouth Power therefore violated 18 C.F.R. §35.41(b) which requires Dartmouth Power to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication" to ISO-NE.

14. Enforcement staff determined that Dartmouth Power's behavior in June 2008 was not part of a larger pattern or practice of failure to declare outages to ISO-NE.

15. Since the June outage, Dartmouth Power has implemented a series of improvements to its maintenance coordination and outage notification procedures, including: hiring a full-time Compliance Manager; instituting a compliance training program for its generation operators; terminating the operation and maintenance contract with its third-party operator and replacing the unit's former operators with employees within the Dartmouth Power corporate family; incorporating compliance requirements as part of operators' job descriptions and performance reviews; and adopting a compliance policy regarding maintenance determinations and notification of outages.

16. Dartmouth Power was fully cooperative with Enforcement's investigation.

Stipulation and Consent Agreement

17. Enforcement staff and Dartmouth Power resolved Enforcement staff's investigation of the violations by Dartmouth Power by means of the attached Agreement.

18. The Agreement requires Dartmouth Power to submit semi-annual monitoring reports to Enforcement for a period of one year with the option of a second year at staff's discretion. Each compliance report shall detail new and existing compliance program measures and alert staff to any additional violations of the outage notification requirements that may occur.

Determination Not to Require a Civil Penalty

19. The Commission views Dartmouth Power's violations as serious. While no actual harm occurred to the market or the reliability of the ISO-NE system, Dartmouth Power's behavior had the potential to cause harm under different system conditions. Generators that are obligated to respond to dispatch instructions must arrange for and coordinate planned outages with the applicable regional transmission entities and inform dispatchers of forced outages as soon as possible.

20. Under section 316A (b) of the Federal Power Act (FPA), the Commission may assess a civil penalty up to \$1 million per day per violation for as long as the violation continues.³

21. In the unique circumstances presented in this matter, the Commission accepts the Agreement although the Agreement does not require payment of a civil penalty. Dartmouth Power already had to forego its monthly capacity payment of \$231,952.50 for violation of ISO-NE's tariff. But for ISO-NE's withholding of this payment, the Commission would likely have assessed a civil penalty.

22. We conclude that the requirement that Dartmouth Power submit compliance monitoring reports under the conditions specified in the Agreement are fair and equitable, and in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ 16 U.S.C. § 825o-1(b) (2006). Section 1284(e) of the Energy Policy Act of 2005 amended section 316A(b) of the FPA to grant the Commission authority to assess a civil penalty of not more than \$1,000,000 for each day that a violation of any provision of Part II of the FPA or any provision of any rule or order thereunder continues.

UNITED STATES OF AMERICA
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Dartmouth Power Associates
Limited Partnership

Docket No. IN11-4-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Dartmouth Power Associates Limited Partnership (Dartmouth Power) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010), into violations of the ISO New England, Inc. (ISO-NE) Open Access Transmission Tariff (OATT) and 18 C.F.R. §§ 35.41(a) and 35.41(b) (2010).

II. STIPULATIONS

Enforcement and Dartmouth Power hereby stipulate and agree to the following:

A. Background

2. The Dartmouth generating unit (Dartmouth unit) is a 74.1 MW (nameplate) dual fuel generator located in southeastern Massachusetts. The Dartmouth unit is registered with ISO-NE as an ICAP Resource and qualifies for capacity payments from ISO-NE. The Dartmouth unit is owned by Dartmouth Power, an indirect subsidiary of Morris Energy Group, LLC. In June 2008, the unit was operated by Wood Group Power Operations, Inc. under an Operation and Maintenance Agreement, but is now operated by an affiliate of Dartmouth Power. Consistent with an Energy Management Agreement between Consolidated Edison Company (ConEd) and Dartmouth Power, ConEd registered the unit as an ICAP Resource and, at Dartmouth Power's direction, offers all energy from the Dartmouth unit into the ISO-NE Day-Ahead Market.

3. In June 2008, ICAP generation resources, like the Dartmouth unit, were required to offer into the ISO-NE Day-Ahead Market and deliver energy if the offer cleared. If a Day-Ahead offer did not clear, the unit was required to remain available for energy dispatch in real-time consistent with the terms of the offer, unless the unit declared an outage. Dartmouth Power acknowledges that it was the

entity ultimately responsible for compliance with ISO-NE's tariff requirements regarding outage notification.

4. Around June 1, 2008, the Dartmouth unit developed a boiler tube leak in its heat recovery steam generator. The leak did not affect the Dartmouth unit's ability to operate. On June 13, 2008, the output from the facility was offered to ISO-NE and the unit was dispatched by ISO-NE. On June 13, ConEd offered energy from the generator for delivery on June 14 in ISO-NE's Day-Ahead Market, consistent with the Dartmouth unit's ICAP obligation. The generator did not receive a day-ahead commitment for June 14 from ISO-NE. Thus, the unit was not scheduled to operate on June 14. While not selected to operate in the Day-Ahead Market, the offer remained in place and the Dartmouth unit was required to remain available for real-time dispatch from the ISO.

5. After learning that the unit was not selected in the Day-Ahead Market, the facility's operators arranged for a weld repair of the boiler tube to begin at 7:00 a.m. on June 14. Neither the operators nor Dartmouth Power contacted ISO-NE to schedule an outage of the unit.

6. Welders at the facility began the repair process at 8:00 a.m. During testing of the repair at approximately 10:00 a.m., a weld bead did not hold and welders initiated a tube bend replacement. It became clear no later than 10:00 a.m. on June 14 that the repairs would be more extensive than originally planned and the unit would not be able to timely respond to a dispatch call by ISO-NE should one occur. The operator did not notify ISO-NE that the generator was unavailable.

7. ISO-NE called the facility's control room to dispatch the Dartmouth unit in real-time at 10:37 a.m. A Dartmouth operator stated that the facility could not respond because the generator was being repaired. The tube replacement was completed and passed inspection at 2:28 a.m. on Sunday, June 15, at which time the Dartmouth unit's operator notified ISO-NE that the unit was once again available for dispatch.

8. In July 2008, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2010) into Dartmouth Power's possible violation of ISO-NE's tariff and the Commission's regulations related to the unreported June 14-15 outage.

9. In November 2008, ISO-NE withheld a \$231,952.50 payment for the Dartmouth unit's June 2008 ICAP participation. Under payment eligibility requirements in the ISO-NE OATT, Dartmouth Power was ineligible for the June 2008 ICAP payment because Dartmouth Power had failed to timely declare the June 14-15, 2008 outage. On March 20, 2009, Dartmouth Power filed a complaint

at the Commission challenging the authority of ISO-NE to withhold this payment. On June 18, 2009 in *Dartmouth Power Assocs. Ltd. Partnership v. ISO New England, Inc.*, 127 FERC ¶ 61,249 (2009), the Commission denied the complaint, upholding ISO-NE's withholding of the payment. The Commission denied Dartmouth Power's request for rehearing of this order in *Dartmouth Power Assocs. Ltd. Partnership v. ISO New England, Inc.*, 130 FERC ¶ 61,130 (2010).

10. Dartmouth Power's behavior was not part of a larger pattern or practice of failure to declare outages to ISO-NE.

11. While no actual harm occurred to the market or the reliability of the ISO-NE system, Dartmouth Power's behavior had the potential to cause harm under different system conditions.

12. Dartmouth Power violated sections III.8.3.1(c) and III.8.3.1(e) of ISO-NE's OATT because Dartmouth Power did not comply with ISO-NE's maintenance and outage coordination procedures and did not notify ISO-NE of the outage. Dartmouth Power also violated 18 C.F.R. § 35.41(a) (2010) by failing to operate and schedule the Dartmouth unit's outage with ISO-NE, schedule maintenance with ISO-NE, or timely declare the outage of the Dartmouth unit to ISO-NE. Additionally, Dartmouth Power violated 18 C.F.R. § 35.41(b) (2010) because the Dartmouth unit's continuing offer to supply energy on June 14, 2008 was inaccurate and misleading.

B. Self-Corrective Action

13. Dartmouth Power conducted an internal investigation of its actions. Since the June 14, 2008 outage, Dartmouth Power has implemented a series of improvements to its maintenance coordination and outage notification procedures, including: hiring a full-time Compliance Manager; instituting a compliance training program for its generation operators; terminating the operation and maintenance contract with its third-party operator and replacing the unit's former operators with employees within the Dartmouth Power corporate family; incorporating compliance requirements as part of operators' job descriptions and performance reviews; and adopting a compliance policy regarding maintenance determinations and notification of outages.

III. REMEDIES AND SANCTIONS

14. For purposes of settling certain civil and administrative disputes between Dartmouth Power and Enforcement related to Dartmouth Power's failure to declare the June 14-15, 2008 outage of the Dartmouth unit to ISO-NE, Dartmouth Power agrees to take the actions described below. This Agreement resolves only

Dartmouth Power's violations of sections III.8.3.1(c) and III.8.3.1(e) of ISO-NE's OATT and 18 C.F.R. §§ 35.41(a) and 35.41(b) (2010) related to the June 14-15 outage and does not resolve any potential violation of North American Electric Reliability Corporation (NERC) reliability standards related to the June 14-15 outage.

15. Dartmouth Power shall make semi-annual reports to Enforcement staff for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter. Each compliance report shall: (1) detail Dartmouth Power's activities and compliance regarding ISO-NE's outage procedures; (2) describe any updates of compliance measures instituted and training administered regarding ISO-NE's outage procedures during the preceding period; (3) provide copies of all new compliance procedures regarding outage determination and notification; (4) advise Enforcement if any additional violations have occurred or any occasions where Dartmouth Power failed to abide by its internal compliance policies regarding outages; and (5) include an affidavit executed by an officer of Dartmouth Power that the compliance reports are true and accurate. Upon request by Enforcement, Dartmouth Power shall provide to Enforcement all documentation supporting its reports. After receipt of the second semi-annual compliance report, Enforcement may, at its sole discretion, require Dartmouth Power to submit semi-annual reports for one additional year.

IV. TERMS

16. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to Dartmouth Power, any affiliated entity, and any successor in interest to Dartmouth Power.

17. Commission approval of this Agreement without material modification shall release Dartmouth Power and forever bar the Commission from holding Dartmouth Power, any affiliated entity, and any successor in interest to Dartmouth Power liable for Dartmouth Power's violation of sections III.8.3.1(c) and III.8.3.1(e) of ISO-NE's OATT and 18 C.F.R. §§ 35.41(a) and 35.41(b) (2010) due to Dartmouth Power's failure to timely notify ISO-NE of the June 14-15, 2008 outage of the Dartmouth unit, but does not include any alleged violations of NERC reliability standards related to the June 14-15, 2008 outage.

18. Failure to comply with the compliance and monitoring program agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a

final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. §792, *et seq.*, and may subject Dartmouth Power to additional action under the enforcement and penalty provisions of the FPA.

19. The Agreement binds Dartmouth Power and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on Dartmouth Power, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

20. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Dartmouth Power has been made to induce the signatories or any other party to enter into the Agreement.

21. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Dartmouth Power shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Dartmouth Power.

22. Dartmouth Power waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

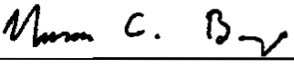
23. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

24. The undersigned representatives of Dartmouth Power affirm that they have read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information and belief, and that they understand that the Agreement is entered into by Enforcement in express reliance on those representations.

25. The Agreement may be signed in counterparts.

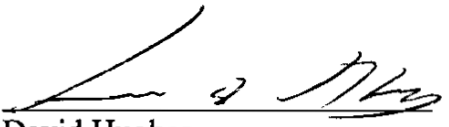
26. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Norman C. Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

1-24-11
Date



David Hughes
Vice President
Dartmouth Power Associates Limited Partnership

1/20/2011
Date

Document Content(s)

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