

137 FERC ¶ 61,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

In re Holyoke Gas and Electric Department

Docket No. IN12-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 29, 2011)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Holyoke Gas and Electric Department (Holyoke).
2. This Order is in the public interest because it resolves Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011), into whether Holyoke's failure during 2008 and 2009 to report to ISO New England, Inc. (ISO-NE) and schedule in advance consistent with the ISO-NE tariff, three planned outages of two of its generating units serving as ISO-NE capacity resources violated 18 C.F.R. § 1c.2 (2011) where Holyoke continued to offer the units' generation for dispatch by ISO-NE while the units were out of service.
3. In the attached Agreement, Holyoke stipulates that it neither notified ISO-NE of the three outages nor scheduled them consistent with ISO-NE tariff requirements. Holyoke further stipulates that it offered its units' energy for dispatch during the three outages when Holyoke knew those units could not have provided energy if dispatched by ISO-NE. Holyoke neither admits nor denies that its failure to report to ISO-NE and schedule in advance its three planned outages while reporting its units as available for dispatch violated section 1c.2 of the Commission's regulations. Holyoke agrees to make certain compliance reporting requirements to Enforcement and to disgorge the full amount of its capacity payments from ISO-NE during the outages, \$336,267.86 plus interest.

Background

4. Holyoke is a municipally-owned utility under section 3(7) of the Federal Power Act (FPA), 16 U.S.C. § 796(3)(7), that provides electricity, natural gas, district steam, and telecommunications services to more than 18,000 Massachusetts retail customers. As of April 2009, Holyoke owned and operated generating resources in the ISO-NE control area of approximately 72.5 MW.

5. Holyoke owns and operates two dual-fuel peaking units, Cabot Unit 6 (9.6 MW nameplate capacity) and Cabot Unit 8 (9.7 MW nameplate capacity). During 2008, Holyoke registered Cabot Units 6 and 8 as Installed Capacity Resources (ICAP) in ISO-NE's capacity market. Under the terms of ISO-NE's tariff in effect during 2008, ISO-NE each month paid Holyoke an ICAP payment for each unit based on that unit's Unforced Capacity (UCAP) Rating (a seasonal MW amount adjusted for availability) multiplied by a fixed capacity price (\$3.05/kW-month through May 31, 2008 and \$3.75/kW-month from June 1, 2008, through May 31, 2009).

6. As the owner and operator of a capacity resource receiving ICAP payments, Holyoke was required by the terms of the ISO-NE tariff to offer the Cabot Units' energy into ISO-NE energy markets.¹ ISO-NE's tariff also obligated Holyoke to notify ISO-NE of any outages of the Cabot Units and to schedule in advance with ISO-NE any planned outages of those units required for non-emergency maintenance, inspection or repair.² The ISO-NE tariff also required Holyoke to submit Generator Availability Data (GADS Data) for the Cabot Units for the previous month, which data is used in part by ISO-NE to calculate the Cabot Units' UCAP.

7. On July 10, 2009, the ISO-NE Market Monitoring Unit referred Holyoke's failure to plan in advance or notify ISO-NE of an outage of Cabot Unit 8. Subsequently, Holyoke voluntarily disclosed to Enforcement two other planned outages (one involving Cabot Unit 6 and one involving Cabot Unit 8) of which ISO-NE was not aware. Enforcement staff conducted an investigation into Holyoke's actions and concluded that Holyoke's failure to report to ISO-NE and schedule in advance its three planned outages while reporting its units as available for dispatch violated 18 C.F.R. § 1c.2 (2011).

¹ ISO-NE FERC Electric Tariff, 1st Rev. Sheet No. 7265.

² ISO-NE FERC Electric Tariff, 2nd Rev. Sheet No. 7234 & 2nd Rev. Sheet No. 7031.

Settlement

8. Holyoke admits to three separate outages involving its two Cabot Units: an outage of Cabot Unit 6 from April 1, 2008 to September 10, 2008; an outage of Cabot Unit 8 from June 5, 2008 to June 9, 2008; and an outage of Cabot Unit 8 from September 16, 2008 to January 15, 2009. During each of these three outages, Holyoke admits to neither notifying ISO-NE of the fact of the outage nor scheduling the outage consistent with ISO-NE's tariff requirements for scheduling planned outages. During each of the three outages, Holyoke offered the respective Cabot Unit's energy into ISO-NE day-ahead and real-time energy markets, and later submitted GADS data indicating that the units had been available for dispatch during that period, even though Holyoke knew the units could not have provided energy if dispatched by ISO-NE.

9. During each of the three outages, ISO-NE sought to dispatch the out-of-service Cabot Unit for next-day service: on June 8, 2008, for Cabot Unit 6 and Cabot Unit 8; and on December 20, 2008, for Cabot Unit 8. In each of the three instances, Holyoke responded to ISO-NE's dispatch request the next day by placing its unit on forced outage status, a status reserved for outages due to emergency, unanticipated failures, or other causes beyond the control of the generation owner.³ In none of the three instances did Holyoke inform ISO-NE that the unit had already been out of service for unscheduled, planned maintenance. In each of the three instances, Holyoke stopped making energy offers from the out-of-service Cabot Unit effective as of the date it declared a forced outage until the end of its outage.

10. Holyoke accepted its full ISO-NE capacity payments for its out-of-service Cabot Units during the periods of each of its three outages. These capacity payments amounted to \$199,867.86 for Cabot Unit 6 for the months of April through September 2008, \$35,680.13 for Cabot Unit 8 for June 2008, and \$165,957.37 for Cabot Unit 8 for the months of September 2008 through January 2009. However, ISO-NE learned from Holyoke's switchboard operator on December 20, 2008, that Cabot Unit 8 already had been out-of-service when ISO-NE sought to dispatch it for next-day service, thereby triggering an ISO-NE investigation. In May 2009, after ISO-NE determined Holyoke had not complied with the outage scheduling and notification requirements of its tariff, ISO-NE withheld Holyoke's January 2009 and December 2008 capacity payments for Cabot Unit 8 totaling \$65,137.50. Due to the six-month resettlement period limitation in ISO-NE's tariff, Holyoke retained the \$100,819.87 for Cabot Unit 8's capacity payments for September 2008, October 2008 and November 2008. In total, Holyoke retained \$336,267.86 of capacity payments for Cabot Units during periods the units were out of service.

³ ISO-NE FERC Electric Tariff, 1st Rev. Sheet No. 7030.

11. Enforcement concluded that Holyoke's actions in each of its three Cabot Unit outages during 2008-2009 misrepresented the availability of that unit to ISO-NE in connection with the supply of ICAP and constituted a violation of 18 C.F.R. § 1c.2 (2011).
12. In the attached Agreement, Holyoke stipulates that it neither notified ISO-NE of its units' three outages nor scheduled those three outages consistent with ISO-NE tariff requirements. Holyoke further stipulates that it offered its units' energy for dispatch during the outages and later reported them available for GADS purposes when Holyoke knew those units could not have provided energy if dispatched by ISO-NE. However, Holyoke neither admits nor denies that its failure to report to ISO-NE and schedule in advance its three planned outages while reporting its units as available for dispatch violated 18 C.F.R. § 1c.2 (2011).
13. The Agreement resolves Enforcement's investigation of Holyoke. The Agreement requires Holyoke to disgorge \$336,367.86 plus interest and to make certain compliance reports to Enforcement. Specifically, Holyoke must make an initial compliance monitoring report covering the period June 1, 2009 through the effective date of the Agreement and thereafter must make two semi-annual compliance reports. The required compliance reports will disclose all violations of ISO-NE tariff requirements during the applicable period and will provide a detailed update of all compliance measures instituted, and training administered during that period. Enforcement reserves the right at its sole discretion to require additional semi-annual reports for one additional year.

Determination of the Appropriate Sanctions and Remedies

14. We conclude that the terms set forth in the Agreement are fair and equitable resolutions of the matters concerned and are in the public interest, as they reflect the nature and seriousness regarding Enforcement's conclusions concerning Holyoke's conduct. First, Holyoke's misrepresentations and failure to comply with ISO-NE tariff requirements did not cause any actual harm to the reliability of the ISO-NE system, though under different circumstances ISO-NE could have needed Holyoke's capacity. Second, Holyoke fully cooperated with Enforcement's investigation.

The Commission orders:

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

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Holyoke Gas and Electric Department)

Docket No. IN12-3-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Holyoke Gas and Electric Department (Holyoke) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic preliminary investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011), into Holyoke's failure to report to ISO New England, Inc. (ISO-NE) and schedule in advance three planned outages of two of its generating units serving as ISO-NE capacity resources. Enforcement determined that Holyoke's actions misrepresented the availability of its generating units to ISO-NE in connection with the supply of capacity and constituted a violation of 18 C.F.R. § 1c.2 (2011). To settle this investigation, Holyoke agrees to disgorge \$336,367.86, plus interest, of ISO-NE capacity payments received from ISO-NE and will undertake compliance monitoring and reporting obligations.

II. STIPULATED FACTS

Enforcement and Holyoke hereby stipulate and agree to the following:

A. Background

2. Holyoke is a municipally-owned utility under section 3(7) of the Federal Power Act (FPA), 16 U.S.C. § 796(3)(7), that provides electricity, natural gas, district steam, and telecommunications services to more than 18,000 Massachusetts retail customers. As of April 2009, Holyoke owned and operated generating resources in the ISO-NE control area of approximately 72.5 MW.

3. Enforcement's investigation of Holyoke began after a July 10, 2009 referral from the ISO-NE Market Monitoring Unit. The investigation concerns two Holyoke owned and operated dual-fuel peaking units, the Cabot 6 and 8 units (Cabot Units) (9.6 and 9.7 MW nameplate capacity). During 2008, Holyoke registered Cabot Units 6 and 8 as Installed Capacity Resources (ICAP) in ISO-NE's capacity market. Under the terms of

ISO-NE's tariff in effect during 2008, ISO-NE each month paid Holyoke an ICAP payment for each unit based on that unit's Unforced Capacity (UCAP) Rating (a seasonal MW amount adjusted for availability) multiplied by a fixed capacity price (\$3.05/kW-month through May 31, 2008 and \$3.75/kW from June 1, 2008 through May 31, 2009).

4. As the owner and operator of a capacity resource receiving ICAP payments, Holyoke was required by the terms of the ISO-NE tariff to offer the Cabot Units' energy into ISO-NE energy markets. ISO-NE FERC Electric Tariff, 1st Rev. Sheet No. 7265. ISO-NE's tariff also obligated Holyoke to notify ISO-NE of any outages of the Cabot Units and to schedule in advance with ISO-NE any planned outages of those units required for non-emergency maintenance, inspection or repair. ISO-NE FERC Electric Tariff, 2nd Rev. Sheet No. 7234 & 2nd Rev. Sheet No. 7031. The ISO-NE tariff also required Holyoke to submit Generator Availability Data (GADS Data) for the Cabot Units for the previous month, which data is used in part to calculate UCAP.

B. Violations

1. Cabot Unit 6 Outage (April 1, 2008 – September 10, 2008)

5. On April 1, 2008, Holyoke took Cabot Unit 6 out of service for a planned inspection. Holyoke neither notified ISO-NE nor scheduled this planned outage of Cabot Unit 6 with ISO-NE in accordance with ISO-NE's tariff requirements.

6. The Cabot Unit 6 inspection indicated a need for follow-up maintenance and repairs. During the period April 1, 2008 through June 8, 2008 while the repairs were ongoing and the unit remained out of service, Holyoke offered Cabot Unit 6's energy into the ISO-NE day-ahead and real-time energy markets. Holyoke submitted GADS data indicating Cabot Unit 6 had been available for dispatch during the period April 1, 2008 through June 8, 2008. During this April 1, 2008 to June 8, 2008 time period Holyoke knew Cabot Unit 6 could not have provided energy if dispatched by ISO-NE.

7. On June 8, 2008, ISO-NE sought to dispatch Cabot Unit 6 for June 9, 2008. Holyoke responded by placing Cabot Unit 6 on forced outage status, a status reserved for outages due to emergency, unanticipated failures, or other causes beyond the control of the generation owner. ISO-NE FERC Electric Tariff, 1st Rev. Sheet No. 7030. When it placed Cabot Unit 6 on forced outage Holyoke did not inform ISO-NE that the unit already had been out of service for two months. As of June 9, 2008, Holyoke stopped making energy offers from Cabot Unit 6 for the remainder of its outage, which lasted through September 10, 2008. Enforcement concluded that Holyoke's actions misrepresented the availability of Cabot Unit 6 to ISO-NE in connection with the supply of ICAP and constituted a violation of 18 C.F.R. § 1c.2 (2011).

8. Holyoke accepted its full ISO-NE capacity payments for Cabot Unit 6 of \$199,867.86 for the months of April through September 2008.

2. Cabot Unit 8 Outage (June 5, 2008 – June 9, 2008)

9. On June 5, 2008, Holyoke took Cabot Unit 8 out of service for planned asbestos removal activities. Holyoke neither notified ISO-NE nor scheduled this planned outage of Cabot Unit 8 with ISO-NE in accordance with ISO-NE's tariff requirements.

10. Holyoke offered Cabot Unit 8's energy into ISO-NE's markets from June 5, 2008 through June 9, 2008 while the unit was out of service. Holyoke submitted GADS data indicating Cabot Unit 8 had been available during the period June 5, 2008 through June 8, 2008. During this June 5, 2008 to June 9, 2008 time period Holyoke knew Cabot Unit 8, if dispatched by ISO-NE, could not have provided energy within the start-up period on file with the ISO.

11. On June 8, 2008, ISO-NE sought to dispatch Cabot Unit 8 for June 9, 2008. Holyoke responded by placing Cabot Unit 8 on forced outage status. When it placed Cabot Unit 8 on forced outage Holyoke did not inform ISO-NE that the unit already had been out of service for three days. Holyoke returned Cabot Unit 8 to service on June 10, 2008. Enforcement concluded that Holyoke's actions misrepresented the availability of Cabot Unit 8 to ISO-NE in connection with the supply of ICAP and constituted a violation of 18 C.F.R. § 1c.2 (2011).

12. Holyoke accepted its full ISO-NE capacity payment for Cabot Unit 8 of \$35,680.13 for June 2008.

3. Cabot Unit 8 Outage (September 16, 2008 – January 15, 2009)

13. On September 16, 2008, Holyoke took Cabot Unit 8 out of service for a planned inspection. Holyoke neither notified ISO-NE nor scheduled this planned outage of Cabot Unit 8 with ISO-NE in accordance with ISO-NE's tariff requirements.

14. The Cabot Unit 8 inspection indicated a need for follow-up maintenance and repairs, including shipment of the unit's air injector off-site to be rebuilt. During the period September 16, 2008 through December 20, 2008 while the repairs were ongoing and the unit remained out of service, Holyoke offered Cabot Unit 8's energy into the ISO-NE day-ahead and real-time energy markets. Holyoke submitted GADS data indicating Cabot Unit 8 had been available during the period September 16, 2008 through December 20, 2008. During this September 16, 2008 to December 20, 2008 time period Holyoke knew Cabot Unit 8 could not have provided energy if dispatched by ISO-NE.

15. On December 20, 2008, ISO-NE sought to dispatch Cabot Unit 8 for December 21, 2008. In response to the dispatch request, Holyoke's switchboard operator informed ISO-NE that Cabot Unit 8 was already out of service for maintenance. Holyoke on December 21, 2008 placed Cabot Unit 8 on forced outage status without informing ISO-NE that Cabot Unit 8 had been out of service since September. As of December 21, 2008, Holyoke stopped making energy offers from Cabot Unit 8 for the remainder of its outage, which lasted until January 16, 2009. Enforcement concluded that Holyoke's actions misrepresented the availability of Cabot Unit 8 to ISO-NE in connection with the supply of ICAP and constituted a violation of 18 C.F.R. § 1c.2 (2011).

16. Holyoke accepted its full ISO-NE capacity payments of \$165,957.37 for Cabot Unit 8 for the months of September 2008 through January 2009. In May 2009, after ISO-NE discovered Holyoke had not complied with the outage scheduling and notification requirements of its tariff, ISO-NE withheld Holyoke's January 2009 and December 2008 capacity payments for Cabot Unit 8 totaling \$65,137.50. Due to the six-month resettlement period limitation in ISO-NE's tariff, Holyoke retained the \$100,819.87 for Cabot Unit 8's capacity payments for September 2008, October 2008 and November 2008.

C. Additional Factors

17. Enforcement concluded that while no actual harm occurred to the reliability of the ISO-NE system, Holyoke's actions in misrepresenting the availability of its ICAP resources could have compromised the reliability of the ISO-NE electric grid had ISO-NE required that capacity.

18. Enforcement determined that Holyoke's actions led to unjust profits earned by Holyoke.

19. Holyoke fully cooperated with Enforcement's investigation and submitted a detailed report of its actions with respect to all three planned outages, two of which had not been previously disclosed.

III. REMEDIES AND SANCTIONS

20. For the purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation of Holyoke's three 2008 unscheduled, planned outages of Cabot Unit 6 and Cabot Unit 8, Holyoke agrees with the facts as stipulated in paragraphs 2 through 16. Holyoke neither admits nor denies that its failure to report to ISO-NE and schedule in advance its three planned outages while reporting its units as available for dispatch violated 18 C.F.R. § 1c.2 (2011). This Agreement resolves all

claims actually brought or that could have been brought by the Commission as to Holyoke and its employees, agents, representatives and attorneys regarding Holyoke's three 2008 outages of Cabot Units 6 and 8.

A. Disgorgement

21. Within 30 days of the Effective Date of this Agreement, Holyoke shall disgorge \$336,367.86, plus interest (accrued under 18 C.F.R. § 35.19(a)(2) from the date Holyoke received each payment), such amount representing Enforcement's calculation of unjust profits from Holyoke's retained capacity payments during the periods of the three outages of the Cabot Units, to ISO-NE for distribution to those entities that paid ISO-NE for capacity during 2008. Within ten days of the date of the refund payment to ISO-NE, Holyoke will certify to Enforcement that it has satisfied the refund obligation.

B. Compliance Monitoring

22. Holyoke shall make an initial compliance monitoring report and thereafter shall make semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The initial compliance monitoring report shall be submitted no later than 60 days after the Effective Date of this Agreement. The period covered by the initial compliance monitoring report shall be June 1, 2009 through the Effective Date of this Agreement. The first semi-annual compliance monitoring 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 period covered by the report shall consist of the six months ending one calendar month prior to the date of such report. The second semi-annual compliance monitoring report shall be submitted six months thereafter for the six month period succeeding the prior reporting period.

23. Each compliance monitoring report shall: (1) advise Enforcement whether violations of ISO-NE tariff requirements have occurred during the applicable period; (2) provide a detailed update of all compliance measures and procedures instituted, and compliance training administered, by Holyoke in the applicable period, including a description of the compliance measures and procedures instituted, the compliance training provided to all relevant personnel concerning the ISO-NE tariff, and a statement of the personnel or other evidence demonstrating that the personnel have received such training and when the training took place; and (3) include an affidavit executed by an officer of Holyoke that the compliance monitoring reports are true and accurate. Upon request by Enforcement, Holyoke shall provide to Enforcement documentation to support its reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require Holyoke to submit semi-annual reports for one additional year.

III. TERMS

24. 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 Holyoke, its agents, representatives, attorneys, officers, directors and employees, both past and present, and any successor in interest to Holyoke.

25. Commission approval of this Agreement in its entirety and without material modification shall release Holyoke and forever bar the Commission from holding Holyoke, its agents, representatives, attorneys, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

26. Failure to make a timely disgorgement payment to ISO-NE or to comply with the compliance monitoring provisions 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, 16 U.S.C. §792, *et seq.*, and may subject Holyoke to additional action under the enforcement provisions of the FPA.

27. If Holyoke fails to make the disgorgement payments described above at the times agreed by the parties, interest will accrue pursuant to the Commission’s regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the disgorgement amount specified above.

28. This Agreement binds Holyoke and its agents, successors, and assigns. This Agreement does not create any additional or independent obligations on Holyoke, or its agents, representatives, attorneys, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

29. 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 Holyoke has been made to induce the signatories or any other party to enter into the Agreement.

30. 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 Holyoke shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Holyoke.

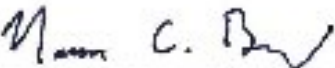
31. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

32. The undersigned representative of Holyoke affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

33. This Agreement may be signed in counterparts.

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

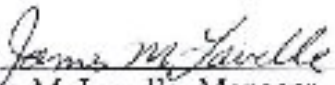
Agreed to and Accepted:



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

11/10/11

Date



James M. Lavelle, Manager
Holyoke Gas & Electric Department

11/7/11

Date

Document Content(s)

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