

supports this approach and urges the Commission to direct the ISO to modify Appendix H to clarify that this obligation exists. Our strong support of the ISO's approach is based on the following considerations discussed more fully in Section III below. First, NECPUC stresses the critical importance of having procedures in place to ensure that during severe cold weather events, system reliability is not jeopardized. Second, the limited obligation, specified by the ISO, is "sufficiently narrow in that [it is] applicable only to specifically-defined, extreme cold weather conditions and may be implemented only for such time as to ensure system reliability." *ISO New England, Inc. and New England Power Pool*, 110 FERC ¶ 61,202 at P 30 (2005) ("*ISO New England*" or "*March 2 Order*"). Indeed, Appendix H's sunset provision provides that Appendix H is scheduled to terminate in April 2006, thus further limiting the application of the ISO's proposal. Third, the revised Appendix H addresses concerns about compensation which is one of the issues set for settlement or hearing. Finally, the ISO's proposal is consistent with obligations set forth in several interconnection agreements and is consistent with the Commission policy on ISO authority to direct generator actions to ensure system reliability in emergency situations.

I. STATEMENT OF ISSUES

NECPUC requests that the Commission resolve the issue raised in paragraph D of the Partial Settlement by determining that, under Appendix H, a de-listed generator must make its best efforts to provide energy, if during a Cold Weather Event the ISO requests such action in order to avoid load shedding.

II. BACKGROUND

A. The Cold Snap and the Operating Procedure 20.

During the “Cold Snap” of January 14-16, 2004, New England experienced extreme cold weather conditions that produced record demand and threatened the reliability of the electric and natural gas systems in the region. *ISO New England*, 110 FERC ¶ 61,202 at P 2. In response to the “Cold Snap,” the ISO led an extensive stakeholder process in which generators, end-users LSEs, ISO-NE and NECPUC participated. The stakeholder process eventually produced a number of changes to the ISO’s operating procedures. These “Cold Weather Event Procedures” were developed as “interim measures that define in greater detail and with greater deliberation and transparency how the ISO will exercise its discretion under the filed rate to ensure reliability during extreme cold weather conditions.” Transmittal Letter, dated January 28, 2005 in Docket ER05-508 at 2. In November 2004, NEPOOL approved, with 96% in favor, the Cold Weather Event Procedures.

On November 18, 2004, the Office of Market Oversight and Investigations (OMOI) issued its 2004/05 Winter Energy Market Assessment.¹ The report lists the features in the Cold Snap Procedures in OP 20 (later Appendix H) and other steps which it suggests will reduce the risk of winter problems in New England:

- During cold snaps ISO-NE will alter bidding schedules so generators know their power commitment before gas trading and pipeline scheduling deadlines.

¹ Federal Energy Regulatory Commission Office of Market Oversight and Investigations, 2004/05 Winter Market Assessment at 32 (Nov. 18 2004) (“Winter Market Assessment”) Available at <http://www.ferc.gov/EventCalendar/Files/200411181021052005-winter-assessment-report.pdf>.

- ❑ ISO-NE and States clarified emissions rules and made them more flexible.
- ❑ Increased power imports from operational and equipment improvements.
- ❑ *Restrictions on economic outages during cold snaps.*
- ❑ Unit commitment and forecasting processes now consider fuel and pipeline data.
- ❑ Generator improvements to reduce cold-weather forced outages.

Winter Market Assessment at 32 (emphasis added).

B. ANP Complaint.

On December 6, 2004, ANP filed a Complaint asserting that new NEPOOL Operating Procedure 20 (“OP20”) and amended NEPOOL Operating Procedure 5 (“OP5”) (collectively, the “OP Changes”), conflict with Section 3.2.6 of Appendix B to NEPOOL Market Rule 1, and accordingly, should have been filed with FERC pursuant to Section 205 of the Federal Power Act (“FPA”). NECPUC intervened and supported ISO and NEPOOL answers in opposition to the Complaint and urged FERC to dismiss the Complaint. NECPUC rejected ANP’s assertion that generators do not have an obligation to be available if needed by the ISO to maintain reliability:

[N]othing in the current market rules, NEPOOL agreements or operating procedures supports ANP’s suggestion that the rules now in place allow generators to refuse to operate their units when ISO-NE reasonably determines they are necessary for reliability. In fact, ANP’s view is inconsistent with the Commission’s own recent statement on the importance of generators’ compliance with reliability directives. *See, ISO New England, Inc.*, 106 FERC ¶ 61,280, P.174 (2004) (rejecting a supplier’s proposed modification to the RTO documents that could have been read to allow a generator to avoid compliance with a reliability directive issued by the RTO). Further NECPUC stresses the critical importance of having procedures in place to ensure that during severe cold weather events, system reliability is not jeopardized.

ANP Funding I, LLC, Motion to Intervene and Answer of NECPUC at 3 (December 20, 2004).

In its January 21, 2005 Order, the Commission did not rule on the merits of OP 20 but concluded that OP 5 (which allows generators to declare Economic Outages and ISO to disallow and/or recall Economic Outages) and OP 20 (which specifies the extreme cold weather conditions under which ISO will disallow or recall Economic Outages) can affect rates and service and therefore are required to be filed under section 205 of the Federal Power Act. *ANP Funding I, LLC v. ISO New England, Inc. and New England Power Pool*, 110 FERC ¶ 61,040 at P 1 (2005).

C. Appendix H to Market Rule 1.

On January 28, 2005 in response to the January 21 Order, ISO-NE and NEPOOL filed Appendix H to Market Rule 1. Appendix H contains the cold weather procedures formerly contained in OP 20 and OP 5. One of the provisions in OP 20 and later Appendix H addressed the specific circumstances in which the ISO will cancel or deny economic outages during cold weather warnings and events. In the joint filing, NEPOOL and ISO-NE stated, “[t]he Cold Weather Event Procedures *could very well make the difference between power remaining available in certain sub-regions in New England and rotating blackouts.*” Transmittal Letter at 9 (emphasis added). NECPUC also strongly supported the Cold Weather Procedures. Several generators filed protests objecting to, among other things, the provisions relating to canceling or denying economic outages during extreme cold weather circumstances.

On March 2, 2005, the Commission accepted Appendix H for filing, subject to refund, and established hearing and settlement judge procedures. The Commission stated:

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.

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.

ISO New England, 110 FERC ¶ 61,202 at P 30-31 (internal citation omitted).

The Partial Settlement resulted in a number of changes that addressed concerns raised by generators about compensation and scheduling flexibility. These include:

- granting greater bidding flexibility for Cold Weather Event days, through re-declarations by generating Resources in specified circumstances;
- providing a means for generating Resources to recover costs exceeding the \$1000/MWh Supply Offer cap when high fuel costs during Cold Weather Conditions cause production costs to exceed that level; and
- enhancing price and schedule certainty for generating Resources during Cold Weather Conditions by shifting the schedule for the Day-Ahead Energy Market earlier in the day during Cold Weather Events, thus encouraging acquisition of gas in sufficient quantity to meet regional generating needs.

Explanatory Statement to Partial Settlement Agreement at 7. The Partial Agreement specifically provides that a fully de-listed resource electing to reschedule

Economic Outages or agreeing at the ISO's request to Return From Economic

Outage will receive the compensation already provided in Section 8.3.3.1(b) of Market Rule 1. This provision specifies that a Resource that re-lists in response to a request by the ISO for reliability purposes is eligible to receive an ICAP payment for the month for which the Resource has been re-listed, plus any additional reasonably incurred maintenance and opportunity type costs associated with re-scheduling the outage and becoming an ICAP Resource. *Id.* Moreover, revised Appendix H provides generators the opportunity to receive compensation above the \$1000 MW bid cap if cost justified to reflect a premium for last-minute fuel procurement costs.²

The Settlement Agreement addresses *ICAP* units' requirement to return from economic outage and indicates that the ISO may ask de-listed units to "voluntarily" return from economic outage, but does not address whether, if the generator declines to "voluntarily" return from economic outage, the ISO may request the generator to make its best efforts to return. This is the unresolved issue the parties ask the Commission to resolve.

III. NECPUC SUPPORTS ISO'S APPROACH TO ENSURING SYSTEM RELIABILITY DURING EXTREME COLD WEATHER CONDITIONS

A. The Approach Balances The Need For the ISO To Ensure System Reliability In Emergency Conditions With Concerns Over Providing Generator Compensation And Scheduling Flexibility.

NECPUC understands that the ISO will suggest an approach that is similar but more limited to that in the original Appendix H. This approach clarifies that in a Cold

² Settlement Agreement Appendix H § 3.6.

Weather Event,³ de-listed generators must make their best efforts to return from an economic outage if the ISO has already requested ICAP units to make best efforts to return from economic outage and de-listed units to voluntarily return from economic outage and additional generating units are needed to avoid load shedding. As discussed below, NECPUC supports this approach because it is a practical, narrowly-tailored way to ensure system reliability in emergency conditions and, together with the Revised Appendix H, addresses concerns over providing compensation and additional scheduling flexibility to generators.

B. Requiring De-listed Generators to Make Best Efforts to Return from Economic Outage in Extreme Cold Weather Conditions in Order to Avoid Load Shedding Is a “Sufficiently Narrow” Measure Which ISO Should Have Available to It to Ensure System Reliability.

In its March 2 Order, the Commission noted with approval the fact that the Cold Weather Provisions in Appendix H “appear to improve emergency operations under Market Rule 1,” and that they accomplish this in a narrowly tailored way because “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.” *ISO New England*, 110 ¶ 61,202 at P 30. In fact, the Commission specifically noted that “the shortened duration of this proposal distinguishes it from the operational measures the

³ Appendix H defines a Cold Weather Event as “Days when Cold Weather Conditions are forecast to exist and the 7-day Capacity Margin Forecast indicates a capacity margin less than or equal to) MW of an Operating Day.”

Commission rejected in *PJM Interconnection LLC*, 110 FERC ¶ 61,053 at P137 (2005).”
Id. at P 30,n.8.

The situations in which the ISO will need to invoke its emergency authority to require de-listed generators that have not voluntarily returned from economic outage to make their best efforts to return to service will be extremely limited, but in these extreme situations, ISO must have the authority to take actions to ensure system reliability.

C. ISO Already Has This Authority.

The Commission stated in its March 2 Order, its view that:

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.

ISO New England, 110 FERC ¶ 61,202 at P 30. Additional sources of authority for ISO actions to order generator actions during an emergency to ensure system reliability include the Generator Interconnection Rule⁴ and specific interconnection agreements.

Interestingly, one of the parties who has argued that the ISO does not or should not have the authority to require de-listed units to return from economic outage in extreme cold weather conditions has agreed to the ISO’s exercise of such authority in its Interconnection Agreements. In its Protest of the Cold Weather Procedures, Calpine suggests that the ISO does not or should not have the authority to require de-listed units

⁴ *Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003*, 104 FERC ¶ 61,103 (2003)

to return from economic outage to ensure system reliability in emergency situations, *see*. *e.g.* Motion to Intervene One Day Out of Time and Protest of Calpine Eastern Corporation and Calpine Energy Services, L.P., filed February 10, 2005 in Docket No. ER05-508 at 15. However, Calpine has specifically agreed to take the actions which it may now suggest it is not required to take. Calpine's interconnection agreements with CMP contain the following provisions:

3.10.2 If a Party determines in its good faith judgment that an Emergency exists which endangers or could endanger life or property, the Party recognizing the problem will take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, danger, or loss. . . .

3.10.3 Customer and CMP may each, consistent with Good Utility Practice, have the Independent System Operator, or CMP System Operations take whatever actions or inactions it deems necessary during an Emergency, without liability to the other Party for such actions or inactions, to: (i) preserve the safety of the public and personnel of Customer, CMP and their contractors; (ii) preserve the integrity of the T&D System or Customer's Facility or other equipment or property; (iii) limit or prevent damage; or (iv) expedite restoration of service.⁵

Moreover, the Commission has confirmed in the RTO proceeding that it will not countenance provisions that would allow Market Participants to refuse to comply with reliability directives of the ISO. *See ISO New England, Inc.*, 106 FERC ¶ 61,280 at P 174 (2004) (rejecting a supplier's proposed modification to the RTO documents that

⁵ Interconnection Agreement By and Between Central Maine Power Company and Rumford Power Associates, L.P, amended March 26, 2002 (filed with settlement agreement approved in Docket No. EL01-94-000; Interconnection Agreement By and between Central Maine Power Company and Calpine Construction Finance Company, L.P., amended Dec. 12, 2001 (filed with settlement agreement approved in Docket No. ER01-2032-000); Interconnection Agreement by and Between Central Maine Power Company and Androscoggin Energy L.L.C. dated Oct. 21 1998 (filed in Docket No. ER99-878-000).

could have been read to allow a generator to avoid compliance with a reliability directive issued by the RTO).

NECPUC further notes that the Commission's determination in *Devon Power LLC* that the ISO should not have the authority to approve or disapprove a decision to de-list does not impinge on the ISO's authority to require a de-listed unit to make its best effort to return from economic outage in an emergency to avoid load shedding. *See Devon Power, LLC*, 107 FERC ¶ 61,240 at P 74 (2004) ("*Devon*"). In *Devon*, ISO-NE proposed to require generators to demonstrate that the expected cost-savings attributable to de-listing of a unit in a transmission constrained region would exceed the ICAP revenues and other revenues that the generator would receive if it did not de-list. Absent the showing, ISO-NE proposed that it would "have the authority to deny any de-listing request." *Id.* The Commission found that "ISO-NE should not have the authority to "second-guess a generator's business decisions regarding whether to sell into the ICAP market" and that "since participation in the ICAP market is voluntary, it is not appropriate to prohibit or limit a generator's decision to cease participating in the ICAP market." *Id.* *Devon* does not address the situation raised by the unresolved issue in the Partial Settlement regarding whether, in an extreme cold weather situation, the ISO should have the authority to require a unit which has already made the business decision to de-list to make its best effort to return from economic outage and provide energy in order to avoid load-shedding. In short, the issue before the Commission here involves the ISO's authority to issue a reliability directive in an emergency situation and the de-listed unit's obligation to comply. The rejected provisions in *Devon*, in contrast, involved a

mitigation measure involving the ISO's determination of whether the de-listing decision was based on sound business judgment.

Further, a generator's interest in making business decisions is not absolute as is clear from the above discussion. Here, revised Appendix H and the resolution of the unresolved issue requested by the ISO strike the proper balance between the ISO's need to ensure reliability and generation owners' interest in managing their assets efficiently. *See Midwest Independent System Operator, Inc.*, 109 FERC ¶ 61,157 at P 288-290 (2004) (affirming the MISO's System Supply Resources Program as a reasonable temporary backstop reliability measure and finding that some interference with decisions to take a unit out of service is appropriate as a last resort short-term reliability measure). Further, the ISO's approach combined with the provisions of Appendix H achieves the transparency that the Commission has sought in other control areas in which the ISO has the authority to take actions to prevent system emergencies. *Cf. California Independent System Operator Corporation*, 108 FERC ¶ 61,022 at P 45 (2005) (directing the ISO to define what would constitute "all reasonable efforts" to revoke the waivers of must offer requirements for non-RMR units before dispatching RMR units to prevent a system emergency); *order on reh'g*, 109 FERC ¶ 61,097 (2004).

D. De-Listed Generators Which Return From Economic Outage In Response To A Request From ISO Will Be Compensated.

Revised Appendix H makes clear that de-listed generators that return to service in response to a request by ISO-NE will receive the compensation described in Section III.8.3.3(b) of Market Rule 1. This provision specifies that a Resource that re-lists in response to a request by the ISO for reliability purposes is eligible to receive an

ICAP payment for the month for which the Resource has been re-listed, plus any additional reasonably incurred maintenance and opportunity type costs associated with re-scheduling the outage and becoming an ICAP Resource. *Id.* Moreover, revised Appendix H provides generators the opportunity to receive compensation above the \$1000 MW bid cap if cost justified to reflect a premium for last-minute fuel procurement costs.⁶ Accordingly, the compensation provisions of revised Appendix H address claims previously made in protests to the Original Appendix H that de-listed generators will not be compensated if they are required to return from economic outage in extreme cold weather conditions.

III. CONCLUSION

The ISO's approach is narrowly tailored to give the ISO the tools it needs to ensure system reliability in extreme cold weather conditions while providing transparency to Market Participants regarding the circumstances in which ISO will exercise its emergency authority. For these reasons and the reasons stated above, NECPUC respectfully requests that the Commission resolve the "Unresolved Issue" by determining that, under Appendix H, a de-listed generator must make its best efforts to provide energy if during a Cold Weather Event the ISO requests such action in order to avoid load shedding.

⁶ Settlement Agreement Appendix H § 3.6.

Respectfully submitted,

NEW ENGLAND CONFERENCE OF
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document by electronic service pursuant to the Commission's regulations or U.S. first class mail, postage prepaid, upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 28th day of September, 2005.

Harvey L. Reiter