

(referred to as the reference price), an investigation is triggered that may result in mitigation. The Commission further contended that the degree to which a supply offer may exceed the reference price before triggering an investigation depends on whether transmission constraints affect a unit's dispatch or whether it is located in a chronically constrained area identified as a Designated Congestion Area (DCA).

3. In the September 20 Order, the Commission noted that units within DCAs which must be run at certain times to alleviate transmission congestion, and so are likely to have market power at those times, may be classified as RMR units. The Commission accepted a CT Proxy proposal that sets a DCA threshold to serve as a safe harbor bid.³ The Commission added that if RMR units are not adequately compensated under the CT Proxy safe harbor price, they may apply for a special compensation arrangement under specified RMR contracts. Exhibit 4 to Appendix A of Market Rule 1 contains a pro forma cost-of-service agreement. The Commission also found that RMR fixed costs represent the costs of relieving congestion in specific regions and therefore should be reflected in the cost of energy in those regions.⁴

4. On December 20, 2002, the Commission issued an order⁵ that granted in part and denied in part requests for rehearing filed in response to the Commission's September 20 Order. The Commission also accepted two compliance filings made in response to the September 20 Order.

5. In the December 20 Order, the Commission approved the CT Proxy proposed by ISO-NE that the CT Proxy price may serve as a safe harbor during all hours, and bids that exceed the CT Proxy safe harbor will be subject to the mitigation review that applies to transmission-constrained periods.

6. Also in the December 20 Order, the Commission reiterated that ISO-NE has the authority to negotiate RMR agreements as are needed to ensure system reliability. The Commission noted that the conditions under which the ISO may enter into RMR agreements are, of necessity, flexible in order to meet the changing demands of the

markets. The Commission expected ISO-NE to exercise vigilance to ensure that only those units that are needed to ensure reliability receive RMR contracts, and that those contracts will not be in effect indefinitely but will be limited to the periods during which the units are needed for reliability. The Commission further stated that RMR agreements will be filed with the Commission in accordance with the Commission's rules and regulations and will be effective on the date approved by the Commission.⁶

7. On February 26, 2003, the Applicants filed four cost-of-service agreements, negotiated between NRG and ISO-NE, that pertain to generating units designated by ISO-NE as RMR units. The agreements cover 1,728 MW of capacity located within the Connecticut and Southwest Connecticut (SWCT) DCAs. Applicants contend that while the effort to keep these generators operating arose under the prior NEPOOL rate regime, the recently activated NE-SMD market may not adequately allow these generating units to recover their investments, due in-part to the lack of a locational resource adequacy mechanism and the use of the CT Proxy market mitigation mechanism within DCAs.

8. On March 25, 2003, in response to an emergency motion filed by Applicants, the Commission issued an order that allows ISO-NE to begin collecting funds that are to be disbursed to the Applicants to perform specific maintenance projects so that the units remain available for the upcoming summer peak period.⁷

Notice of Filings, Protests, and Interventions

9. Notice of Applicants' filing was published in the **Federal Register**, 68 Fed. Reg. 11541 (2003), with comments, protests, or interventions due on or before March 12, 2003. Timely motions to intervene were filed by PPL Wallingford Energy, LLC; PPL EnergyPlus, LLC; Pinpoint Power, LLC; and PG&E National Energy Group LLC.

10. Timely motions to intervene with protests were filed by ISO-NE, the Connecticut Department of Public Utility Control (CT PUC), the Connecticut Attorney General's Office (CTAG), Dominion Energy Marketing Inc. (DEMI), Connecticut Industrial Energy Consumers (CT IEC), National Grid USA (National Grid), Northeast Utilities Service Company (NU), The United Illuminating Company (UI), NSTAR Electric & Gas Corporation (NSTAR), New England Consumer-

Owned Entities (NE COE), and the Connecticut Office of Consumer Counsel (CT OCC). NU also filed a supplement to its protest.

11. Timely motions to intervene with comments (or limited comments) were filed by NEPOOL, PSEG Companies, and Mirant Americas Energy Marketing L.P. On March 25, 2003, KeySpan-Ravenswood LLC (KeySpan) filed a motion to intervene out of time. The notices of intervention and the timely, unopposed motions to intervene serve to make the intervenors parties to this proceeding. See 18 CFR 385.214 (2002). Given the early stage of this proceeding and the absence of undue delay or prejudice, we find good cause to grant the untimely, unopposed intervention of KeySpan and accept their comments. Additionally, the Commission rejects a motion filed by DEMI to consolidate this proceeding with PPL Wallingford Energy LLC, *et al.*, Docket No. ER03-421-000, which is currently pending before the Commission.

12. Applicants, pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212 and 385.213 (2002), filed an answer to the protests filed by NU, CT PUC, NE COE, CT IEC, UI, and DEMI on March 12, 2003. Rule 213 of the Commission's Rules of Practice and Procedure, 18 CFR 385.213 (2002), generally prohibits the filing of an answer to a protest. Accordingly, we are not persuaded to allow the Applicants answer and we will reject it.

Discussion of RMR Issues

Demonstrated Need

13. CT PUC, UI, CTAG, CT IEC, NE COE, National Grid USA (National Grid) and NSTAR urge rejection of these agreements by the Commission.

Intervenors—CTAG, NSTAR—argue that in order to receive approval for cost-of-service treatment the prospective generator must show that: (1) the unit(s) are needed for reliability; and (2) the unit(s) would be retired if no RMR contract were approved. CTAG and NSTAR assert that the Applicants have not shown that they intend to retire units in the absence of cost-of-service agreements and that the ISO-NE letter does not specify a need for the Applicants' units. CTAG states that covering NRG's entire Connecticut fleet with these RMR agreements would remove 40 percent of the generation in SWCT from the market. Furthermore, CTAG argues that NRG's Interconnection Agreement with CL&P requires NRG to operate its Norwalk and Cos Cob units until fall 2003—well past the effective date of the proposed cost-

³ The CT Proxy proposal, described in Appendix A to Market Rule 1, is based on the estimated price to recover the annual cost of a new combustion turbine unit (CT) for the region over the number of hours it is expected to operate during the year (estimated to be the number of hours the DCA is constrained). This CT Proxy serves as the safe harbor bid for all units in the DCA.

⁴ September 20 Order at P 61.

⁵ New England Power Pool and ISO New England, Inc., 101 FERC ¶ 61,344(2002) (December 20 Order).

⁶ December 20 Order at P 33.

⁷ Devon Power LLC, 102 FERC ¶ 61,314 (2003).