

of-service agreements—thus effectively ruling out retirements before then.⁸

14. DEMI, UI, National Grid and CT OCC state that the only evidence to support the need for the RMR proposal is a letter from ISO-NE, which provides no more detail than stating that largely all of Connecticut's existing generation resources are needed for reliability.⁹ NE COE emphasizes that ISO-NE did not analyze whether Applicants' cost recovery under NE-SMD would enable them to operate and maintain the units. CTAG argues that any proposal for cost-of-service rate treatment should apply only to generating units that are absolutely necessary, not to entire generating fleets. Similarly, CT OCC speculates that some of NRG's units may merit RMR status but questions whether NRG's entire fleet requires such status.

15. Intervenor further submit that the Applicants' proposal fails to discuss system conditions that justify the proposed cost-of-service agreements and fails to identify potential alternatives. DEMI argues that the Commission should require the Applicants to produce evidence supporting the ISO's determination and such evidence should identify the specific reliability concern, the number of days in which this concern is present, as well as the specific manner in which each NRG unit responds to the reliability need.

16. UI argues that cost-of-service agreements do not ensure generation owners return on investment. UI and others assert that NRG's economic hardship is due primarily to its own investment decisions made in the competitive marketplace and that retail customers or suppliers of standard offer service should not be responsible for poor investment decisions. NE COE submits that a more appropriate analysis would examine whether the DCA CT Proxy threshold price would be sufficient to cover the Applicants' going forward costs, enabling them to operate the facilities needed for reliability.

Market Implications

17. Numerous intervenors—CT OCC, NE COE, CT DPUC, UI, CT IEC, CTAG—are concerned that approval of NRG's proposal will create incentives for other generation owners to file for cost-of-service agreements, which could have ramifications for Connecticut and

NEPOOL wholesale electric markets. Moreover, several intervenors including National Grid argue that having a large percentage of Connecticut's generation operating under cost-of-service agreements could compromise and mute the price-signals needed to induce the expansion of generation, transmission, and demand resources in areas such as Southwest Connecticut. CT IEC argues that approval of the agreements could significantly increase rates of Connecticut consumers. PSEG argues that NRG's proposal will create an "uneven" playing field among generators, placing generating units that are not subject to cost-based ratemaking at a competitive disadvantage.

18. PSEG urges the Commission to direct ISO-NE and NEPOOL to file on or before June 2003, for implementation as soon as possible, but not later than January 1, 2004, market rules establishing locational capacity requirements similar to those already in effect in the New York ISO.

19. DEMI states that it was able to reduce its exposure to congestion charges through the acquisition of FTRs or other mechanisms as were other entities contracted to supply standard offer load for the balance of 2003. However, there is no such protection from the costs associated with cost-of-service agreements. DEMI argues that this would unfairly saddle it and others with costs they did not cause and—given that standard offer entities are prohibited from passing the additional costs through to load—would not serve to signal new investment. DEMI submits that the solution would be for the Commission to consolidate this proceeding with Docket No. ER03-421-000 and comprehensively address the circumstances that lead to ISO-NE's conclusion that largely all generation in Connecticut should be subject to cost-of-service agreements.

20. CT PUC urges the Commission to approve under RMR agreements "only an amount sufficient to maintain system reliability"—which would only cover deferred and scheduled maintenance outages to ensure dispatch availability for the Summer 2003 peak season. CT PUC asserts that the costs associated with the major maintenance outage expenses should be, on a very short-term basis, socialized through ISO-NE, but only to keep the units operating as a resource when needed for dispatch. Thus the CT PUC "urges the Commission to expeditiously grant approval to allow ISO-NE to provide NRG with up to \$25 million for reliability investments in addition to going forward costs necessary to ensure

operation of the units and reliability of the system in SWCT."¹⁰

21. CT IEC argues that an RMR revenue stream should include: (1) Compensation only for going-forward costs of operation; (2) payments for deferred maintenance administered via a mechanism that provides proper oversight that the maintenance is critical for reliability and not for economic purposes; and (3) provisions conditioning the continuance of RMR revenues upon the improved reliability of the generation units.

22. NSTAR argues that cost-of-service pricing should not be available to merchant facilities and the Commission should require the Applicants to reapply for market-based rates if the units are not retired at the conclusion of the cost-of-service agreements. NSTAR further argues that, should prices rise and Applicants take advantage of DCA bidding safe harbor provision, credits may well exceed ISO-NE's payment obligation, in which case, Applicants would retain the revenues. NSTAR argues that it is wrong for merchant generators to collect market prices in good years and resort to cost-of-service guarantees in lean years.¹¹

23. NSTAR argues that the Applicants fail to identify a duration for the reliability need of these facilities. NSTAR asserts that the agreements should not be subject to automatic annual extension without action from ISO-NE. Moreover, NU and NSTAR submit that these contracts must be subject to annual review by the Commission and not allowed to continue indefinitely.

24. UI argues that the cost-of-service agreements do not give the ISO sufficient flexibility to respond to changing circumstances, for example, implementation of NE-SMD or new resources being introduced into SWCT. UI and NU urge the Commission to reduce the termination notice period from 120 days, as proposed by the Applicants, to 60 days in order to permit the ISO to terminate the agreement if there is no longer a need for the resources. NSTAR asserts the cost-of-service agreements should list identical provisions for ISO-NE termination (Sections 2.1.2 and 2.2.1 of the Applicants' proposed cost-of-service agreements stipulate 60 days and 120 days notice, respectively) and in any case 60 notice is reasonable, as was found in *Sithe New Boston*.¹²

25. CT DPUC asserts that the Commission should direct ISO-NE and

⁸ CTAG Protest at 10.

⁹ Attachment 1 to the Applicants' proposal is a letter, dated February 26, 2003, from Kevin Kirby of ISO-NE to Joseph M. DeVito of NRG Energy, Inc. It states: " * * * the ISO-NE has conducted a reliability assessment for Connecticut for the years 2003 and 2006 and has determined that absent any transmission improvements or new resources, largely all of the existing resources in Connecticut are needed for reliability, including the NRG units."

¹⁰ CT DPUC Motion at 6.

¹¹ NSTAR Protest at 8.

¹² *Sithe New Boston LLC*, 98 FERC ¶ 61,164.