

cost-of-service agreement, subject to consent of ISO-NE. National Grid argues that the proposed agreements offer no specific terms or conditions as to when the agreements may be terminated and no justification for departure from the pro forma agreement. National Grid believes that this appears to enable the Applicants to terminate the agreements when they so desire.

45. NE COE protests the absence of a provision preventing Applicants from delisting a resource. NE COE states that under Market Rule 1, generators are permitted to delist a resource from the day-ahead and real-time markets, which a generator typically undertakes to be able to sell in New York markets. NE COE argues that generators receiving support under cost-of-service agreements should not be permitted to remove the relevant facilities in seeking sales outside of New England. Moreover, NE COE submits that the Applicants' units are needed to meet reliability and thus there is no reason to permit Applicants to delist.

Cost-of-Service Tracker

46. Numerous intervenors express opposition to the Applicants' proposed section 5.1.3, entitled Reliability Projects that is not included in the pro forma agreement. This Section provides a cost tracking provision to compensate the Applicants for the costs of specifically identified Reliability Projects to ensure that the Applicants complete this needed maintenance in order to keep the facilities in operation so that they are available when called upon by the ISO. Generally speaking, intervenors do not oppose the theory behind the tracker. However, many parties object to the lack of oversight, which, if in place, could ensure that the funds are spent on the intended maintenance and will also serve to protect the funds collected by ISO-NE in the event of an NRG bankruptcy petition. DEMI opposes the absence of prior review or approval of the costs; CT DPUC and NU urge the Commission to direct that funds be placed in escrow; CT IEC states that there are no measures to ensure funds will be dedicated to necessary expenditures; and National Grid argues that costs flowing through the tracker should be identified and that the tracker mechanism should be modified to limit the Applicants to recovery of an amortized portion of any multi-year maintenance or capital investment. NEPOOL, while not taking a formal position on the proposed reliability agreements, asks the Commission to carefully consider the implications of a potential bankruptcy filing by one or more of the applicants

on the advance payment provisions for the major maintenance expenses.

Commission Response

47. The Commission addressed the cost-of-service tracking mechanism for Reliability Projects in the March 25 Order. The units under the proposed RMR agreements are needed this year for reliability. They need to undergo maintenance in order to operate, and NRG may not be able to raise the funds to pay for maintenance costs without an assured revenue source, such as would be provided by an RMR contract. However, it appears that these units do not need to be guaranteed their full cost-of-service to remain in operation. The cost-of-service tracking provisions contained in section 5 of these agreements assures payment only of going forward maintenance costs. This is a provision that may not be applicable to all RMR agreements; however, we consider it applicable here because the Applicants may not otherwise be in a financial position to fund maintenance in advance of revenue. The escrow modification we ordered in the March 25 Order will alleviate concerns that the funds collected from participants are used for maintaining these units. While we deny the remainder of the RMR agreements, this provision will ensure the units are maintained and operational. Because the bid ceiling discussed above would provide the units with an opportunity to recover their fixed costs, we direct ISO-NE and the Applicants to modify the agreements so that the amounts paid by NEPOOL participants in accordance with section 5, Reliability Projects will be credited against the fixed cost-of-service portion of the new reference price bid ceiling.

Delivery Standard

48. Several intervenors take issue with NRG's proposal to reduce the delivery standard according to section 3.4.2 of the proposed cost-of-service agreements.²² ISO-NE indicates that it cannot accept the proposed standard absent empirical evidence that such a revision is appropriate.²³ NU submits that ratepayers should not be required to pay for RMR service if they receive a diminished reliability benefit and

²² Section 3.4.2 of the Applicants proposed cost-of-service agreements states that a unit shall be deemed to be in full compliance if the unit delivers in any hour at least 95% of the requested MW or not more than 5 MW less than the requested MW. The pro forma cost-of-service agreement, provides for at least 97% and not more than 2 MW less than the requested MW.

²³ ISO-NE states that necessary evidence has not been provided and supports the 97% or not less than 2 MW standard required in the pro forma agreement in Market Rule 1.

further suggests considering a reduction of the Applicants cost-of-service recovery if they cannot meet the ISO-NE designated performance standards. CT OCC asserts that NRG's request is completely inappropriate especially in the context of the company's rather high cost-of-service recovery requests. CT IEC concludes that NRG hopes to secure the most amount of money for the least amount of output based on NRG's statement that the facilities may not be able to meet the reduced performance standard. CT IEC argues that in order to ensure reliability in Connecticut, which is the goal of cost-of-service agreements, the Applicants' generating units must meet their performance goals and any failure to do so must be strictly penalized. NSTAR argues that the Applicants must not be allowed to undermine ISO-NE's need to know what it can count on and when in a constrained dispatch. NEPOOL, without taking a formal position, asks the Commission to carefully consider the deviation from the pro-forma agreement with regard to the diminished performance standard.

Commission Response

49. The Commission is not convinced by the Applicants' statements that the non-performance penalty standards contained in section 3.4.2 of the agreements need to be changed from the pro-forma agreements. We therefore deny this change.

Cost-of-Service

50. ISO-NE has not reviewed rate-related information and states that it does not take any position on the appropriateness of rates requested by the Applicants. However, ISO-NE does confirm that the units specified "are necessary to support reliability in Connecticut and [the ISO] is prepared to execute cost-of-service agreements with the Applicants."²⁴ Further, the ISO is prepared to "execute the Agreements in substantially the same from as they have been submitted," subject to any changes ordered by the Commission.²⁵

51. Numerous intervenors—DEMI, NU, CT CPUC, CT IEC, CTAG, NSTAR and CT OCC—believe NRG's proposed rates exceed the bounds of "just and reasonable" ratemaking and call for suspending the filing and setting it for hearing. Intervenors also address specific items of NRG's filed cost-of-service including the proposed return

²⁴ Comments of ISO-NE at 3.

²⁵ The Commission notes that the ISO-NE raises concerns regarding the deviations from the pro-forma RMR agreement that the applicants proposed in the filing—the Cost Tracking mechanism and the reduction in the performance standard.