

105 FERC ¶ 61,324
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

PPL Wallingford Energy LLC

Docket Nos. ER03-421-002
ER03-421-006

Devon Power LLC, et al.

ER03-563-013
ER03-563-015
ER03-563-017
ER03-563-019
ER03-563-022

ORDER ON REHEARING AND COMPLIANCE

(Issued December 22, 2003)

1. In this order, the Commission denies requests by PPL Wallingford Energy LLC (PPL Wallingford), National Grid USA (National Grid), and Northeast Utilities (NUSCO) for rehearing and clarification of the Commission's May 16, 2003 Order.¹ This order also denies a request for rehearing by Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC (Applicants) of the Commission's July 24, 2003 Order² and grants a request for rehearing by ISO New England (ISO-NE) of the Commission's August 12, 2003 Order.³ The Commission also accepts the compliance filings of ISO-NE and Applicants that were filed in accordance with the Commission's July 24 Order. This order benefits customers because it provides further clarification regarding measures taken to ensure market reliability in New England.

¹ PPL Wallingford Energy LLC, 103 FERC ¶ 61,185 (2003)(May 16 Order).

² Devon Power LLC, et al., 104 FERC ¶ 61,123 (2003)(July 24 Order).

³ PPL Wallingford Energy, 104 FERC 61,199 (2003)(August 12 Order).

I. Background

2. On January 16, 2003, PPL Wallingford submitted, under Section 205 of the Federal Power Act (FPA), 16 U.S.C. ' 824d (2000), proposed reliability must-run (RMR) agreements with ISO-NE for four of its peaking generating units located in the New England Power Pool (NEPOOL). The Commission, by letter, indicated that the submission was deficient with respect to certain cost information. PPL Wallingford amended its filing on March 31, 2003.

3. Meanwhile, in an order issued on April 25, 2003,⁴ the Commission rejected, in part, RMR contracts submitted by the Applicants in Docket ER03-563-000. While denying the Applicants' request to recover their full cost-of-service (COS) through the proposed Agreements, the Commission did allow the Applicants to use the COS Agreements to recover certain going forward maintenance costs through the Reliability Cost Tracking mechanism. Due to concerns over the financial viability of the Applicants, the Commission directed that funds collected for use by the Applicants be placed in escrow.

4. Additionally, in the April 25 Order, the Commission directed ISO-NE to implement a temporary bidding mechanism that would enable high-cost generators needed for reliability to recover costs through market clearing prices, rather than through RMR agreements, which hereafter would only be authorized as a last resort. Pursuant to its authority granted by section 206 of the FPA, the Commission directed ISO-NE to implement the Peaking Unit Safe Harbor (PUSH) bidding mechanism, under which peaking units in congested areas could be eligible to bid and set market-clearing prices at amounts that included fixed cost and variable cost components. The Commission held that the PUSH bidding mechanism would be effective June 1, 2003, and that it would only be temporary, until ISO-NE implemented (no later than June 1, 2004) a location or deliverability requirements mechanism in the installed capacity (ICAP) or resource adequacy market. To implement this mechanism, the Commission directed that ISO-NE develop initial PUSH Bid Levels for units with a 2002 capacity factor of 10 percent or less and submit them to the Commission pursuant to Section 205, and that affected generators could file with the Commission information to revise those levels.

5. In its May 16 Order, the Commission rejected, consistent with its April 25 Order, the RMR agreements submitted by PPL Wallingford and reiterated its commitment to the PUSH bid mechanism as the preferred alternative. On June 13, 2003, PPL Wallingford filed cost of service information to revise the initial PUSH Bid Levels developed for its units by ISO-NE that were based on information provided ISO-NE by PPL Wallingford.

⁴Devon Power LLC, et al., 103 FERC & 61,082 (2003) (April 25 Order), on reh'g., 104 FERC & 61,123 (2003) (July 24 Order).

6. In its July 24 Order, the Commission addressed cost issues specific to the Applicants' PUSH units by directing ISO-NE to modify the PUSH bid levels proposed for the Applicants' generating units that take into account certain cost adjustments. The July 24 Order also directed Applicants to revise elements of the cost agreements and escrow agreements between each of the Applicants and ISO-NE and rejected the Second Revised COS Agreements that were submitted by Applicants on June 4, 2003. The order also addressed the PUSH market rules that were filed by ISO-NE in compliance with the April 25 Order and addressed issues on rehearing of the April 25 Order.

7. In its August 12 Order, the Commission accepted PPL Wallingford's cost of service information filing, subject to a modification of the rate of return on equity as well as certain other adjustments to be made by ISO-NE as directed by the Commission.

II. May 16 Order

Requests for Rehearing, Motions for Clarification - Docket No. ER03-421-002

8. PPL Wallingford, National Grid, and NUSCO seek rehearing and clarification as to the Commission's rejection of PPL Wallingford's proposed RMR agreement. As discussed below, we deny their requests for rehearing and clarification. The parties request rehearing and clarification on a number of issues, including whether the PUSH bid mechanism is just and reasonable, whether the Commission's rejection of PPL Wallingford's RMR agreement was procedurally defective, whether the Commission has improperly delegated its FPA responsibilities to ISO-NE, and whether the Commission intended to express a preference for locational ICAP.

Commission Response

9. To a significant extent, the arguments raised on rehearing by PPL Wallingford, National Grid, and NUSCO were addressed by the Commission in its July 24 Order. This includes arguments concerning whether the PUSH bid mechanism is just and reasonable,⁵ arguments concerning technical aspects of the PUSH bid mechanism,⁶ whether the Commission's changes in the PUSH bid mechanism were properly made in accordance with Section 206 of the FPA,⁷ whether there was a sufficient notice to the parties and an adequate record to support the Commission's findings,⁸ and that the

⁵ July 24 Order at P 33-34.

⁶ July 24 Order at P 15-16.

⁷ July 24 Order at P 33.

⁸ July 24 Order at P 34.

Commission did not intend to express a preference for locational ICAP⁹. These issues were fully resolved in Commission's July 24 Order, and the parties' requests for rehearing or clarification of these arguments are denied.

10. We believe that one issue raised on rehearing requires further comment. Both PPL Wallingford and NUSCO request rehearing on the Commission's decision in the May 16 Order that ISO-NE should establish initial PUSH Bid Levels for any of PPL Wallingford's generating units that had a capacity factor of 10 percent or less in 2002. They contend that the Commission impermissibly delegated to a private actor (ISO-NE) its responsibility under Section 205 of the FPA to review rate change proposals. They argue that the Commission must first review PPL Wallingford's costs and PUSH bid eligibility, and then make findings on PPL Wallingford's cost of service and rate of return on equity prior to ISO-NE establishing PUSH Bid Levels for PPL Wallingford's units.

11. We will deny the requests for rehearing on this issue. ISO-NE's role in establishing PUSH bid levels is limited and was a product of our concern over the justness and reasonableness of summer market-clearing prices. ISO-NE has no role in reviewing rate change proposals, but instead has to implement the PUSH bidding mechanism pursuant to the April 25 Order and the market rules established in the July 24 Order. This involves the ministerial task of establishing initial bid levels for each generator, based upon the cost information the generators themselves supplied to ISO-NE. It gives ISO-NE no discretionary authority. The Commission emphasizes that ISO-NE is developing safe harbor bidding thresholds, not stated rates. Pursuant to ISO-NE's PUSH market rules, this cost information is submitted to the Commission for review under FPA Section 205, in accordance with the April 25 and July 24 Orders.

III. July 24 Order

A. Request for Rehearing - Docket No. ER03-563-015

12. On August 22, 2003, Applicants filed a request for rehearing of the July 24 Order. In their request for rehearing, Applicants claim that: the Commission's determination to limit administrative and general (A&G) costs to 18 percent of production demand-related operating and maintenance on the basis of Connecticut Light and Power Company's (CL&P) FERC Form 1 is unsupported; the reduction of return on equity to 10.88 percent fails to recognize Applicants' higher risk; Applicants' bearing of escrow fees and late charges is contrary to the Commission's determination that the NEPOOL market rules are insufficient to permit high cost generating facilities to recover their costs; and that the Commission is incorrect in characterizing the Second Revised COS Agreements as a compliance filing rather than a Section 205 filing. Applicants also state that they should

⁹ July 24 Order at P 61.

be allowed to recover late charges that they have not caused through the Reliability Cost Tracker and that the Second Revised COS Agreements were filed as an exercise of the rights of the Applicants to attempt to recover escrow fees and late charges as Reliability Costs under the Reliability Cost Tracker.

B. ISO-NE Compliance Filing – ER03-563-017

13. On August 25, 2003, ISO-NE submitted a compliance filing (August 25 Filing) addressing several PUSH bid mechanism and market rule issues as well as cost support for the Applicants' PUSH Bid Levels as directed by the Commission in the July 24 Order.

14. In compliance with the July 24 Order, ISO-NE filed revisions to Section 5.2.1 of Appendix A (Market Monitoring, Reporting and Market Power Mitigation) of Market Rule 1. This revision provides for mitigation review of PUSH units whenever a PUSH unit's bid exceeds the PUSH bid level for that unit.

15. ISO-NE also provided a discussion regarding the confidentiality of PUSH bid data. The Commission directed ISO-NE to provide this discussion in response to an intervenor request that PUSH bid data be made publicly available. The ISO states that certain information, including PUSH Bid Levels, unit capacity factors and 2002 hours of operation is considered proprietary and confidential in accordance with the NEPOOL Information Policy; and therefore, the release of this information might harm the participant and prejudice the market position of that participant. ISO-NE goes on to state, however, that much of the information requested by the intervenors, such as individual bid data, is made public by the ISO after a six-month lag and with participant identification masked. ISO-NE states that additional information such as unit ratings and megawatt-hour output is available on the internet. ISO-NE states that the PUSH bid level and the variable component to the PUSH Bid Level¹⁰ should remain confidential.

16. In the July 24 Order, the Commission suggested that ISO-NE address stakeholder concerns over operating reserve payments and the allocation mechanism that resulted from the implementation of the PUSH mechanism. The ISO provided a status of the stakeholder process to address these concerns and referenced a report on its website.

17. Additionally in this compliance filing, ISO-NE provided a cost analysis of the fixed costs for the Applicants' PUSH units. ISO-NE revised the depreciation and amortization rates, adjusted the return on equity to 10.88 percent, adjusted the negative salvage amounts, and adjusted the level of A&G expenses. ISO-NE also states that,

¹⁰ The fixed cost component to the PUSH bid level is available through the Section 205 filings made by each PUSH bidder.

based on the directives in the July 24 Order and the August 12 Order,¹¹ it has reduced the return on equity for other PUSH generators to 10.88 percent as well.¹²

18. In its August 25 Filing, ISO-NE states that the Commission, in its July 24 Order, directed that the ISO-NE's new PUSH bid levels would become effective on the day that the July 24 Order is issued. ISO-NE contends that it was not able to implement the new PUSH bid levels until August 14, 2003, to be effective August 15, 2003, because the Commission gave the Applicants 10 days to comply with the July 24 Order. ISO-NE states that the Applicants' August 5, 2003 compliance filing (see discussion below) included revised depreciation rates and amortization associated with interconnection rights—information that the ISO-NE needed to make its calculations. ISO-NE adds that upon receipt of the compliance filing, it had to review the new information and supporting workpapers and perform calculations that were needed to develop the new PUSH bid levels. ISO-NE requests that the Commission confirm that the August 15, 2003 effective date is consistent with the Commission's intent.

¹¹ 104 FERC ¶ 61,199 at P 15.

¹² These generators include the Exelon generating units (refer to ER03-959-000), the Mirant Kendall generators (refer to ER03-998-000), and Connecticut Jet Power LLC (refer to ER03-563-020).

On September 12, 2003, the Bankruptcy Court for the Northern District of Texas issued a "Temporary Restraining Order Against the Federal Energy Regulatory Commission" ("TRO") in *In re Mirant Corp.* (Mirant Corp. v. FERC), Adversary Proceeding No. 03-4355, which enjoins the Commission "from taking any action, directly or indirectly, to require or coerce the [Mirant] Debtors to abide by the terms of any Wholesale Contract [to which a Mirant Debtor is a party] which Debtors are substantially performing or which Debtors are not performing pursuant to an order of the Court unless FERC shall have provided the Debtors with ten (10) days' written notice setting forth in detail the action which FERC seeks to take with respect to any Wholesale Contract which is the subject of this paragraph."

Should the TRO be converted into a preliminary injunction, an action that the Commission opposes, the Commission will appeal that order. Despite the Commission's disagreement with the validity of the TRO and its expectation that the TRO (or a preliminary injunction) will be vacated on appeal, the Commission must comply with it until vacated. The TRO requires ten days' written notice before the Commission takes a proscribed action with respect to a covered Mirant Wholesale Contract. Accordingly, to the extent that this Order requires Mirant to act in a manner proscribed by the TRO, the Order will provide written notice to Mirant of the action that FERC will take with respect to a covered Mirant Wholesale Contract, which action will not become effective until ten (10) days after issuance of this Order. In all other respects, this Order is effective immediately.

19. Notice of ISO-NE's August 25 Filing was published in the Federal Register, 68 Fed. Reg. 52,759 (2003) with comments, protests, or interventions due on or before July 7, 2003. Comments in support of ISO-NE's August 25 Filing were filed by NUSCO.

C. Third Revised COS Agreements – ER03-563-013 & -022

20. On August 5, 2003, Applicants filed their Third Revised Cost of Service Agreements (August 5 Filing) in Docket No. ER03-563-013 in compliance with the Commission's July 24 Order. This filing also provides revised rate calculations for the PUSH Bid Levels as directed by the July 24 Order. Notice of the August 5 Filing was published in the Federal Register, 68 Fed. Reg. 52,391 (2003), with comments, protests, or interventions due on or before August 26, 2003. Timely protests and comments on the Applicants' August 5 Filing were filed by NUSCO and ISO-NE. On August 26, 2003, NEPOOL filed a timely motion to intervene in Docket No. ER03-563-013. On September 30, 2003, Applicants submitted an errata (September 30 Errata Filing) to their August 5 Filing (ER03-562-022). On October 21, 2003, ISO-NE filed a protest to Applicants' September 30 Errata Filing. On November 14, 2003, Applicants filed a motion for leave to answer and an answer to ISO-NE's protest.

21. In its protest of the August 5 Filing, ISO-NE states that Applicants modified the termination provisions in the revised Agreements to grant Applicants the right to terminate the Agreements if Applicants determine that they will not earn a reasonable rate of return on their investments. NEPOOL's motion to intervene notes several typographical errors contained in the Agreements. In its protest of Applicants' September 30 Errata Filing, ISO-NE requests that the Commission reject Applicants' September 30 Errata Filing on grounds that if it is a "correction," then it is selective and incomplete.

22. In its protest, NUSCO asks the Commission to scrutinize the cost filing, stating that the revised depreciation analysis reflects overly short remaining service lives due to the impact of the reliability project undertaken, and that the revenues from standard offer service (SOS) contracts are not credited against the PUSH bid levels.¹³ NUSCO states that electricity from the Applicants' units is meeting part of the Applicants' parent's (NRG PMI) SOS load responsibility and that revenues from this portion of the units' output should be credited against the PUSH bid level.

¹³ NUSCO stated at p 3 of its September 15, 2003 comments in Docket ER03-563-017 that the Commission directed the Applicants to provide information about revenues received from other agreements pertaining to their PUSH generating units. The July 24 Order did not contain this specific directive.

D. Commission Response

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

Applicants' PUSH Bid Level Issues

24. The July 24 Order addressed cost issues specific to the Applicants' PUSH units by directing ISO-NE to modify the PUSH Bid Levels proposed for the Devon, Middletown, Montville, and Norwalk generating units to take into account certain cost adjustments. These adjustments include the removal of the 15 percent contingency included in the negative salvage amounts, revision of the depreciation rates with supporting workpapers, revision of the interconnection rights amortization period for the Middletown units, and reduction of the return on equity to 10.88 percent. We address the PUSH Bid Level issues as follows, and direct ISO-NE to implement the necessary changes to the Applicants' PUSH Bid Levels as soon as practical from the date of this order.

A&G expenses

25. We deny rehearing on the issue of A&G expenses. Applicants contend that the Commission's use of a proxy of 18 percent (based on CL&P's 1999 Form 1 A&G cost data) is incorrect and does not allocate sufficient A&G expenses to the PUSH units. Applicants have allocated a total of \$21,676,316 of A&G expenses to the PUSH units, \$16,089,993 (or 74 percent) of which is for Corporate Services. Applicants claim that Corporate Services represent an assignment of costs from their owner, NRG Energy, Inc., for services provided to all NRG/Devon subsidiaries. Applicants state that Corporate Services was allocated among the corporate subsidiaries on the basis of direct labor costs of each subsidiary consistent with Commission policy. However, Applicants have not justified or demonstrated with any specificity how their total expenses for Corporate Services are allocated among all of generating units of NRG's subsidiaries or how their Corporate Services expenses are assigned to the various A&G Expense Accounts (Accounts 920 through 935). In light of Applicants' failure to support the vast majority of their proposed A&G expenses, the Commission developed an estimate for A&G expenses based on CL&P form 1 data. The resulting 18 percent proxy is based on the ratio of CL&P's 1999 Form 1 production-related A&G expenses to its production demand-related expenses. Applying this 18 percent proxy to Applicants' total fixed production expenses of \$68,257,612 (see Exhibit NRG-2, Schedule No. 2) results in about \$12,268,000 being assigned to the units rather than \$21,676,316, as proposed by the Applicants.

26. Since the PUSH units are based on net plant costs (adjusted for inflation) as recorded on CL&P's books at the time of the sale, absent a showing by Applicants that their A&G is just and reasonable, the use of CL&P as a proxy is reasonable.

Return on Equity

27. We deny rehearing on the issue of return on equity. The Commission, in the July 24 Order, directed the Applicants to use a return on equity of 10.88 percent because this represents the midpoint of the zone of reasonableness.¹⁴ We also accept ISO-NE's adjustment of return on equity to 10.88 percent to the other PUSH units. It was the Commission's intent, as stated in the August 12 Order,¹⁵ that the 10.88 percent return on equity apply to all PUSH eligible units.

Correction to Accumulated Depreciation Reserve

28. In their September 30 Errata Filing, Applicants corrected the gross depreciable plant amounts shown in Schedule No. 3 together with corrections to the reserve for depreciation. In its protest of Applicants' September 30 Errata Filing, ISO-NE requests that the Commission reject Applicants' September 30 Errata Filing on grounds that if it is a "correction," then it is selective and incomplete. In their answer to ISO-NE's protest, Applicants explained their earlier mathematical errors and showed that the difference between their revised amounts and ISO-NE's calculation is approximately \$6000, which is de minimis. Therefore, the Commission is accepting Applicants' revised rate model included with their September 30 Errata Filing.

Generator Depreciation Rates

29. NUSCO comments that the remaining service lives of the generators should be extended to account for the Reliability Projects performed under the tracking mechanism approved by the Commission.¹⁶ Based on the filings relating to the Reliability Projects, these projects maintain the generators by completing current and past due maintenance that was needed to ensure the generators' availability for the Summer 2003 peak season. Therefore, it does not appear that the purpose of the Reliability Projects was to extend the remaining useful lives of the generators. On this basis, we will not adjust the depreciation rates.

¹⁴ July 24 Order at P 49.

¹⁵ August 12 Order at P 15.

¹⁶ Order on Joint Emergency Motion, 102 FERC ¶ 61,314 (2003).

SOS Contracts

30. NUSCO states that it “believes that the Applicants’ generating fleet is a key contributor towards NRG PMI’s capacity obligation under the SOS Agreement and, therefore, the SOS Agreement revenues should be netted against the total cost used in the PUSH bid cap.” NUSCO further states that Applicants have not provided ISO-NE with information about the revenues received under standard offer service contracts.

31. The Commission stated in the July 24 Order that all revenues received from all other sources should be credited against the PUSH bid.¹⁷ This includes revenues from SOS contracts. However, it appears from NUSCO’s statement that it is not certain whether revenues from the SOS contracts are attributable to the Applicants’ PUSH units. We find that NUSCO has not provided evidence that specifically details revenues that should be attributable to the Applicants’ PUSH units and has not shown that any revenues are not being credited appropriately.

Effective Date of Applicants’ PUSH Bid Levels

32. In response to ISO-NE’s request, we are setting an effective date of August 15, 2003 for instituting its new PUSH Bid Levels.

Revised COS Agreements and Escrow Fees

33. In their rehearing request, Applicants contend that they agreed initially to bear escrow costs and late charges when executing the Escrow Arrangements and Trust Agreements so as to commence the spring maintenance work in time for the summer peak season. In exchange, the Applicants state that the parties agreed to reserve their rights to have the Commission resolve the issue of whether Applicants should be allowed to recover these costs under the Reliability Cost Tracker. On rehearing, Applicants state that they filed the Second Revised COS Agreements to implement this right by adding provisions to the Agreements that provide for recovery of these costs under the Reliability Cost Tracker.¹⁸ They also argue that the Commission incorrectly characterized the Second Revised COS Agreement as a compliance filing rather than as a Section 205 filing.

¹⁷ July 24 Order at P 54.

¹⁸ Section 4.14 of the Escrow Arrangements filed in ER03-563-005 preserve the rights of the parties to argue whether amounts paid by NRG may be recovered as a Reliability Cost. The Applicants filed the Second Revised COS Agreements pursuant to this provision.

34. The Commission is denying rehearing on these issues. The July 24 Order correctly recognized that the Second Revised COS Agreements filed in ER03-563-008 were filed pursuant to Section 205. The July 24 Order, in resolving the dispute over the escrow fees and late charges, decided that the Applicants should be responsible for these escrow and late fees.¹⁹ Applicants have not raised any new arguments on rehearing of the July 24 Order. Therefore, we deny the Applicants' request for rehearing of this issue and reiterate our rejection of the Second Revised COS Agreements. We direct the Applicants to remove provisions that allow for the recovery of these costs as directed and in accordance with the July 24 Order.²⁰

35. Furthermore, the Commission reiterates that the Applicants are not to unilaterally modify the Agreements by adding provisions that are not consistent with the prior orders. The July 24 Order directed Applicants to remove certain language that was not contained in the originally filed COS Agreements.²¹ Specifically, the May 28, 2003 compliance filing contained an additional provision (Section 2.2.3), which remains in the Third Revised COS Agreements, allowing the Applicants to terminate the Agreements unilaterally if they determine that they are not recovering their costs. The Applicants chose to enter into the Agreements to obtain certain financial guarantees that would enable them to continue to operate the units. The termination provision in question would allow the Applicants to unilaterally switch between the security of RMR and the opportunities of market-based operation, whichever is in their sole interest.

36. These Agreements were entered into by ISO-NE because the ISO determined that, absent any transmission improvements or new resources, continued operation of these resources in Connecticut is necessary to maintain reliability.²² The Commission anticipated, at the time of the April 25 Order, that these Agreements would be temporary until a locational or deliverability ICAP mechanism is placed into effect. As noted by ISO-NE, unilateral termination of the Agreements by the Applicants conflicts with the intent of these Agreements, which provides direct funding from NEPOOL participants to allow Applicants to perform much needed maintenance. These Agreements provide the Applicants with certain security by guaranteeing this continued funding, so as to provide NEPOOL the benefits of continued operation of the Applicants' units. The risk to electricity customers in NEPOOL of unilateral termination of these Agreements by the Applicants will not serve this purpose. We therefore direct Applicants to delete the

¹⁹ July 24 Order at P 75.

²⁰ Id.

²¹ July 24 Order at P 103.

²² April 25 Order at P 27.

unilateral termination provision so that Section 2.2.3 of the Agreements reflects the February 26, 2003 filing. The Commission also directs Applicants to correct the errors as noted by NEPOOL.²³

PUSH Market Rules

37. In the PUSH Market Rules filed by ISO-NE in compliance with the April 25 Order, ISO-NE proposed that PUSH bids be reviewed for mitigation only when they exceed the PUSH bid level by a specified amount. This proposal would have treated PUSH procedures similarly to the Reference Level mitigation procedures used for non-PUSH bidding units. The Commission stated that it did not agree with this proposed treatment and directed ISO-NE to modify the proposed PUSH market rules to subject PUSH units to mitigation review whenever their bids exceed the PUSH bid level.²⁴

38. Also, the July 24 Order directed ISO-NE to explain whether it believes it is necessary to keep PUSH bid data confidential after the expiration of the PUSH mechanism²⁵ and directed ISO-NE to provide the Commission with status reports of stakeholder discussions on the allocation of Operating Reserves costs. In Docket ER03-563-004, ISO-NE requested that the Commission defer, to the stakeholder process, the investigation of the impact that the PUSH mechanism may have on Operating Reserve issues.

39. The Commission accepts the proposed Market Rule revisions. With this revision, PUSH units are reviewed for mitigation whenever their bids exceed the applicable PUSH bid level. The procedures for reviewing the PUSH bid are the same as for other units once the mitigation review is triggered. This provision meets the concerns the Commission discussed in the July 24 Order.

40. We agree with ISO-NE's characterization regarding the confidentiality of PUSH Bid Level information because this is commercially sensitive information—the release of which may harm the competitive position of the PUSH unit/bidder and may create opportunities for inappropriate bidding strategies by competitors. Release of information after the six-month lag as described by ISO-NE is appropriate. On this basis we accept ISO-NE's explanation and its treatment of PUSH information.

41. The Commission also accepts the operating reserve status report of the stakeholder process.

²³ NEPOOL Motion to Intervene dated August 26, 2003 at fn 3.

²⁴ July 24 Order at P 89.

²⁵ July 24 Order at P 94.

IV. August 12 Order

Request for Rehearing - Docket Nos. ER03-421-006 and ER03-563-019

42. The August 12 Order accepted revised PUSH bid cost inputs submitted by PPL Wallingford in response to the May 16 Order, subject to a modification of the rate of return as well as certain other adjustments to be made by ISO-NE. As directed by the Commission in the August 12 Order, ISO-NE submitted its compliance filing on August 25, 2003.

43. Among the issues discussed in the August 12 Order were PPL Wallingford's proposed allocation of termination costs to A&G expenses and the treatment of depreciation expenses relating to leased equipment. On September 11, 2003, ISO-NE filed a request for rehearing of the August 12 Order with regard to these two issues. ISO-NE states that while it generally does not object to the appropriate allocation of termination costs, PPL Wallingford has not provided evidence supporting the proposed allocation of these corporate costs to subsidiaries that include PPL Wallingford and questions whether these costs are legitimate expenses for PPL Wallingford.²⁶ ISO-NE argues that until PPL Wallingford provides adequate support for its proposed allocation, these termination costs should not be included in the fixed-cost adder used to determine PPL Wallingford's PUSH Bid Levels.

44. ISO-NE also states that the August 12 Order indicates that there may be some confusion concerning whether PPL Wallingford's "Limited-Term Electric Plant" should be properly classified as an operating lease, rather than as a capital lease, as claimed by PPL Wallingford. ISO-NE asks the Commission to modify PPL Wallingford's treatment of these leases as capital leases, thereby removing them from rate base.

Commission Response

45. The Commission finds that PPL Wallingford has not provided adequate evidence supporting its allocation of \$407,700 in termination costs to PPL Wallingford. While the Commission generally allocates these costs to A&G, PPL Wallingford's proposed allocation of these costs without documentation or explanation would exempt PPL Wallingford from the burden of supporting these claims. Accordingly, as described below, we will order PPL Wallingford to submit an explanation to the Commission justifying its allocation of termination costs.

²⁶ These termination costs resulting from pension and post-retirements benefits are associated with PPL Services Corporation and PPL Generation, LLC and are proposed to be allocated to subsidiaries of PPL Corporation.

46. The Commission finds that ISO-NE has provided sufficient information demonstrating that PPL Wallingford's "Limited-Term Electric Plant" should be classified as an operating lease, rather than as a capital lease. ISO-NE submits that the Master Asset Lease Agreement expressly states that "the parties agree that [the] Master Lease and each Schedule are intended to qualify as 'operating leases' under Generally Accepted Accounting Principles."²⁷ Additionally, the fact that PPL Wallingford's own 2001 and 2002 Financial Statements refer to these types of leases as Operating Leases (that would treat lease payments as an operating expense) further indicate PPL Wallingford's own intent to have these leases classified as operational. The Commission directs ISO-NE to adjust PPL Wallingford's PUSH Bid Levels accordingly.

The Commission orders:

(A) The requests of PPL Wallingford, National Grid, and NUSCO for rehearing and clarification of the Commission's May 16 Order are hereby denied, as discussed in the body of this order.

(B) Applicants' request for rehearing of the Commission's July 24 Order is hereby denied, as discussed in the body of this order.

(C) ISO-NE's request for rehearing of the Commission's August 12 Order is hereby granted, and the Commission directs PPL Wallingford to file, within 10 days of the date this order, an explanation and justification for its proposed allocation of termination costs. ISO-NE is hereby directed to adjust PPL Wallingford's PUSH Bid Levels as discussed in the body of this order as soon as practical from the date of this order.

(D) The Third Revised COS Agreements are hereby accepted, subject to the modifications for the recovery of escrow related costs and the removal of additional provisions and the correction of errors as discussed in the body of this order. Applicants are directed to file revised Agreements within 10 days from the date of this order.

(E) ISO-NE's request to reject Applicants' September 30 Errata Filing is hereby denied, as discussed in the body of this order. ISO-NE is hereby directed to adjust the Applicants' PUSH Bid Levels as discussed in the body of this order as soon as practical from the date of this order.

²⁷ Master Asset Lease Agreement, Article 1(b).

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(F) ISO-NE's August 25, 2003 compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.