

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 16, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

CASE 12-E-0136 - Petition of Dunkirk Power LLC and NRG Energy,
Inc. for Waiver of Generator Retirement
Requirements.

ORDER DECIDING RELIABILITY NEED ISSUES
AND ADDRESSING COST ALLOCATION AND RECOVERY

(Issued and Effective May 20, 2013)

BY THE COMMISSION:

BACKGROUND

On March 14, 2012, NRG Energy, Inc. and Dunkirk Power LLC (collectively, NRG) filed a notice, pursuant to the Commission's Order Adopting Notice Requirements for Generation Unit Retirements (Retirement Order),¹ which stated that NRG intended to "mothball" its Dunkirk generating station by September 10, 2012.² Niagara Mohawk Power Corporation d/b/a

¹ Case 05-E-0889, Policies and Procedures Regarding Generating Unit Retirements, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

² The term "mothball" is synonymous with a "retirement" for purposes of providing notice under the Retirement Order, given that each action may result in adverse reliability impacts. However, as discussed below, "mothballing," in comparison to "retirement" may have unique implications for establishing appropriate levels of compensation.

National Grid (National Grid) advised Department of Public Service Staff (DPS Staff) that the proposed mothballing would have adverse impacts on transmission system reliability in western New York.³ National Grid's analysis concluded that two generating units were needed at the Dunkirk station for an interim period until certain transmission system reinforcement projects could be completed in May 2013. National Grid further indicated that at least one generating unit at the Dunkirk station might be required beyond May 2013 until permanent solutions could be implemented in June 2015.

On July 18, 2012, the Commission issued a notice directing National Grid and NRG to file proposed terms for an agreement that would ensure adequate generation support services were being procured to meet reliability needs. On July 20, 2012, National Grid and NRG submitted a proposed Term Sheet Agreement, which provided for reliability support services (RSS) from September 1, 2012, through May 31, 2013 (2012 RSS Agreement). Pursuant to the 2012 RSS Agreement, NRG committed to defer mothballing actions on two 115 kV generating units and to keep them available during the nine month term of the agreement in exchange for a monthly fixed-price charge, tax related payments and other provisions. On August 16, 2012, the Commission approved the Term Sheet Agreement, and directed National Grid and NRG to file a final executed contract implementing the Term Sheet Agreement.⁴ The Commission also directed that cost

³ Letter from C.E. Root, National Grid Sr. V.P., Network Strategy to T.G. Dvorsky, DPS Director, Office of Electric, Gas and Water, dated March 30, 2012.

⁴ Case 12-E-0136, Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements, Order Deciding Reliability Need Issues and Addressing Cost Allocation and Recovery (issued August 16, 2012) (August 16 Order).

recovery matters should be addressed in National Grid's rate proceeding in Case 12-E-0201.⁵

In the August 16 Order, the Commission also directed National Grid to work with DPS Staff to develop a schedule and process for soliciting alternative solutions to any remaining reliability needs that may exist after May 31, 2013.⁶ On September 17, 2012, National Grid filed a schedule for soliciting alternative RSS to address the remaining reliability needs beyond May 31, 2013, until system reinforcement projects can be completed in June 2015. In accordance with the schedule, National Grid issued a request for proposal (RFP) on October 24, 2012, seeking proposals from various sectors, including merchant and portable generation, energy storage, demand response, and energy efficiency. The RFP was published to over 40 potential bidders.

National Grid held a pre-bid conference on November 14, 2013, which was attended by participants from each sector, as well as by the Pace Energy Center and DPS Staff. The pre-bid conference provided bidders an opportunity to discuss the technical requirements of the work scope, including questions on air permitting, site ownership, interconnection, and cost structures.

Three responses to the RFP were received on December 14, 2013. National Grid conducted a review and analysis of the responses and determined that one proposal should not be

⁵ On August 27, 2012, National Grid filed a copy of the executed 2012 RSS Agreement between NRG and National Grid.

⁶ National Grid concluded from its reliability studies that, lacking other alternatives, a single Dunkirk 115 kV unit would be needed from June 1, 2013, until June 1, 2015, when a new substation and associated transmission projects would be completed.

considered because it did not meet the technical criteria necessary for ensuring reliability. National Grid compared the remaining two proposals and identified NRG's proposal as its preferred solution following extensive review and negotiations.

On March 5, 2013, National Grid submitted a proposed RSS Agreement that sets forth the terms under which National Grid would procure RSS from NRG's Dunkirk generating station from May 31, 2013, to June 1, 2015, in order to maintain transmission system reliability in western New York (2013 RSS Agreement). National Grid proposed that the costs associated with the 2013 RSS Agreement should be recovered consistent with the terms of the Joint Proposal filed in Case 12-E-0201.⁷

In conformance with the State Administrative Procedure Act (SAPA) §202(1), notice of the proposed 2013 RSS Agreement was published in the State Register on March 20, 2013. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on May 6, 2013. One comment was received by that date.

THE PETITION

National Grid provided its rationale for why NRG's Dunkirk generating station was its preferred solution among the two remaining bids after eliminating the other bid that would not address the reliability needs. First, it asserts that NRG is able to implement RSS on June 1, 2013. Absent implementation of a solution on June 1, 2013, an extension of the 2012 RSS Agreement would be required, thereby increasing costs. Under the 2012 RSS Agreement, the maximum extension possible would be

⁷ Case 12-E-0201, Niagara Mohawk Power Corporation d/b/a National Grid - Electric and Gas Rates, Order Approving Electric and Gas Rate Plans In Accord With Joint Proposal (issued March 15, 2013).

to September 1, 2013. National Grid concluded that the other proposal presented significant implementation risks which may have delayed support services from being available until September 1, 2013, or later.

Second, it found that NRG's proposal provided a lower overall cost compared to the other proposal, which included certain variable expenses and exposure to delay-related costs. Such factors had the potential to raise the costs of that option. Ultimately, National Grid determined that obtaining An RSS agreement from NRG was the lower cost and lower risk solution. Moreover, National Grid notes that NRG is currently providing RSS and could continue to do so without interruption or local community disruption.

2013 RSS Agreement

The 2013 RSS Agreement provides for NRG to defer mothballing actions on one of its 115 kV-connected 80 MW generating units and to operate and maintain that unit during the term of the contract from June 1, 2013 through May 31, 2015. The 2013 RSS Agreement includes a Fixed-Cost Charge of approximately \$2.1 million/month or \$51.0 million for the 24 month period. The agreement also provided for the following adjustments: (a) property tax costs of up to \$13 million to be paid by National Grid for the 24 month period; (b) a Capacity Revenue True-Up to be paid by NRG to National Grid in the amount of capacity revenues earned by the RSS Units during the Term of the Agreement; and (c) a Take or Pay Coal Contract True-Up to be paid by National Grid based upon actual coal deliveries to the plant. The contractual agreement would address planned and forced outages, additional expenditures that may be incurred to continue providing safe and reliable service, force majeure events and National Grid's right to audit NRG's accounts and records relating to the contract.

Cost Recovery

The Joint Proposal in the recently approved National Grid rate case addresses recovery of these costs. Specifically, Section 12.1.1 of the Joint Proposal provides in part:

Up to \$57[] million of electric deferred credits will be used to offset Reliability Support Services ("RSS") costs associated with RSS agreements relating to the Dunkirk plant or other RSS agreements with other generators.

Section 12.1.2 provides:

Any RSS costs to be recovered through retail delivery rates must be approved by the Commission. Any RSS costs (above \$57[] million) relating to the Dunkirk plant or any other RSS agreements with other generators will be recovered through a generic RSS surcharge that will be implemented on April 1, 2013. Unless and until [National Grid] incurs \$57[] million of RSS costs, the generic RSS surcharge will be set at \$0. To qualify for recovery through this surcharge, the RSS agreements must be approved or authorized by the authority having jurisdiction over the agreement, including but not limited to the Commission or other regulatory entity.

Accordingly, the 2012 RSS Agreement costs and a portion of the costs associated with the 2013 RSS Agreement would be offset by deferral credits up to \$57.0 million. Amounts incurred in excess of \$57.0 million under the 2013 RSS Agreement would be recovered through the generic RSS surcharge.

DISCUSSION

2013 RSS Agreement

National Grid has carefully evaluated the available alternatives and identified NRG's proposal as the most cost-effective and reliable support services available beginning June 1, 2013, until planned system reinforcement projects can be implemented. The proposed 2013 RSS Agreement between NRG and National Grid for the provision of RSS on an interim basis is

proposed for the purpose of ensuring the maintenance of adequate generation resources necessary for safe, adequate, and reliable service.

In reviewing whether the costs incurred under the 2012 RSS Agreement are just and reasonable, we find that the 2013 Agreement adheres to the economic rationale we adopted in our August 16 Order. Furthermore, the 2013 Agreement was the culmination of a competitive bidding process. Accordingly, we approve the 2013 RSS Agreement as in the public interest. This addresses the concerns with the economic impacts of closing NRG's Dunkirk generating station, which were raised in the public comments filed by Page Woodbury on May 6, 2013.

Cost Recovery

Upon consideration, we concur that cost recovery for the 2013 RSS Agreement should proceed according to the applicable provisions approved as part of the Joint Proposal in Case 12-E-0201.⁸ National Grid is expected, however, to include in its transmission revenue requirement filing, due to FERC in June 2013, the costs associated with the 2012 and 2013 RSS Agreements, as allocated between retail and wholesale customers. The wholesale customers' share of the costs, expected to be recovered through the FERC Transmission Service Charge, would be credited to retail customers through National Grid's Transmission Revenue Adjustment mechanism.

CONCLUSION

As we have noted previously, it is essential that the mothballing or retirement of generation units that are subject

⁸ Case 12-E-0201, Niagara Mohawk Power Corporation d/b/a National Grid - Electric and Gas Rates, Order Approving Electric and Gas Rate Plans In Accord With Joint Proposal (issued March 15, 2013).

to a lightened regulatory regime do not jeopardize the reliability of the electric system. We have taken the necessary steps herein to ensure the procurement of sufficient generation facilities necessary for the provision of safe and adequate service, as required under the Public Service Law. The 2013 RSS Agreement governing the procurement of RSS from NRG represents a reasonable balance of the interests of electric consumers and the generation owner, and is in the public interest.

The Commission orders:

1. National Grid shall procure Reliability Support Services from Dunkirk Power LLC, and Dunkirk Power LLC shall provide Reliability Support Services to National Grid in accordance with the proposed 2013 Reliability Support Services Agreement, which is approved.

2. National Grid and NRG Power Marketing LLC shall file a final executed copy of the contract implementing the 2013 Reliability Support Services Agreement at least five days prior to the commencement of Reliability Support Services thereunder.

3. National Grid shall recover the costs of the 2013 Agreement in accordance with the provisions of the applicable terms of the Joint Proposal approved in Case 12-E-0201 on March 15, 2013, and as discussed in the body of this order.

4. The deadline provided for in this order may be extended as the Secretary may require.

5. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN
Acting Secretary