

121 FERC ¶ 61, 138
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Devon Power LLC, *et al.*

Docket Nos. ER03-563-030
ER03-563-057
ER03-563-058
ER03-563-059
ER03-563-061
ER03-563-062
ER03-563-063
EL04-102-000
EL04-102-013
EL04-102-014
EL04-102-015
EL04-102-016
EL04-102-017
EL04-102-018

ORDER GRANTING MOTION FOR RELIEF
AND ACCEPTING COMPLIANCE REPORTS

(Issued November 7, 2007)

1. Pursuant to the Commission's order on ISO New England, Inc.'s (ISO-NE) compliance filing proposing a locational installed capacity market (LICAP),¹ ISO-NE has filed periodic compliance reports on the progress made in the siting, permitting and construction of transmission and generation upgrades within the New England control area. ISO-NE has since requested relief from this reporting requirement. In this order we accept five of these compliance reports, as revised, and accept ISO-NE's motion for relief.

¹ *Devon Power LLC*, 107 FERC ¶ 61,240 (Order on Compliance), *order on reh'g and clarification*, 109 FERC ¶ 61,154 (2004), *reh'g denied*, 110 FERC ¶ 61,315 (2005).

I. Background

2. As a means of ensuring reliability, ISO-NE has for many years imposed an installed capacity (ICAP) requirement on load-serving entities, requiring them to procure specified amounts of ICAP based on their peak loads plus a reserve margin. In these and prior proceedings, the Commission has addressed deficiencies in New England's ICAP market. Among these deficiencies, the Commission identified the lack of a locational element as a significant flaw in the ICAP market, stating that "location is an important aspect of ensuring optimal investment."²

3. These proceedings began in response to four cost-of-service reliability-must-run (RMR) agreements for generators located within Connecticut and the constrained Southwest Connecticut area. The Commission rejected three of these RMR agreements out of concern about the effect that widespread use of such contracts could have on the competitive market. The Commission stated that ISO-NE, "rather than focusing on and using stand-alone RMR agreements, should incorporate the effect of those agreements into a market-type mechanism."³ Accordingly, the Commission directed, pursuant to section 206 of the Federal Power Act (FPA),⁴ that revised bidding rules (called Peaking Unit Safe Harbor, or PUSH, bidding) be instituted on an interim basis to give low-capacity factor generating units operating in designated congestion areas the opportunity to recover their costs through the market.⁵ To replace the interim PUSH mechanism, the Commission directed ISO-NE to file by March 1, 2004, for implementation by June 1, 2004, "a mechanism that implements location or deliverability requirements in the ICAP or resource adequacy market . . . so that capacity within [designated congestion areas] may be appropriately compensated for reliability."⁶

4. On March 1, 2004, ISO-NE made a compliance filing as directed by the April 25 Order. In the compliance filing, ISO-NE proposed a LICAP mechanism that would add a locational element to the existing ICAP market, establishing four ICAP regions with separate ICAP requirements: Maine, Connecticut, Northeast Massachusetts/Boston, and

² *New England Power Pool*, 100 FERC ¶ 61,287, at 62,278 (2002).

³ *See Devon Power LLC*, 103 FERC ¶ 61,082, at P 29 (2003) (April 25 Order).

⁴ 16 U.S.C. § 824e (2000).

⁵ *See* April 25 Order, 103 FERC ¶ 61,082 at P 33; *Devon Power LLC*, 104 FERC ¶ 61,123, at P 25-31 (2003).

⁶ April 25 Order, 103 FERC ¶ 61,082 at P 37.

the remainder of New England. Under the proposal, capacity transfer limits would be established to limit the amount of ICAP that load serving entities in one region could purchase from another region. Additionally, ISO-NE proposed to use an administratively-determined downward-sloping demand curve whose interaction with suppliers' bids would establish the amount and price of ICAP that must be procured. Capacity transfer rights would then be allocated to load or generators, depending on their location, to allow market participants to hedge against congestion costs. Holders of capacity transfer rights between two ICAP regions would receive the difference in ICAP prices between those regions.

5. In its Order on Compliance,⁷ the Commission established hearing procedures and delayed the implementation of the LICAP mechanism from the proposed June 1, 2004 effective date until January 1, 2006.⁸ The Commission explained that “deferring the implementation of LICAP until January 1, 2006 will allow participants in import-constrained regions an opportunity to move toward the development of needed infrastructure prior to the realization of full LICAP rates.”⁹ In addition, the Commission directed ISO-NE to file quarterly reports updating progress made in the siting, permitting and construction of transmission and generation upgrades within the New England control area, with particular emphasis on progress within Designated Control Areas (DCAs). The Commission directed ISO-NE to file these reports every 90 days.¹⁰

6. On June 16, 2006, the Commission accepted a settlement agreement providing for the implementation of the Forward Capacity Market (FCM) as an alternative to the LICAP mechanism.¹¹ The FCM requires annual auctions where capacity is sold on a per-megawatt of deliverable capacity basis. Capacity resources participating in the forward

⁷ 107 FERC ¶ 61,240 at P 71.

⁸ The Commission also established a separate investigation and paper hearing in Docket No. EL04-102-000 to determine whether a separate energy load zone should be created for Southwest Connecticut, and whether it should be implemented in advance of LICAP.

⁹ Order on Compliance, 107 FERC ¶ 61,240 at P 71.

¹⁰ *See Id.*; see also *Devon Power LLC*, 109 FERC ¶ 61,156 (2004), *order on reh'g and clarification*, 110 FERC ¶ 61,313 (2005).

¹¹ *Devon Power LLC*, 115 FERC ¶ 61,340 (Order on Settlement Agreement), *order on reh'g and clarification*, 117 FERC ¶ 61,133 (2006).

capacity auctions must agree to a commitment period of one year, where capacity is committed three-plus years ahead of that period in order to allow for the participation of potential new entrants. The first commitment period is to begin June 1, 2010.

7. The settlement agreement also sets a transition period prior to the first commitment period of the FCM. During this transition period – which began December 1, 2006 and ends June 1, 2010 – fixed payments will be made to all installed capacity resources. The payments are made by load-serving entities holding unforced capacity obligations. The settlement agreement also stipulates that the transition payments are to be adjusted downward to account for availability.¹²

8. Similar to LICAP, the FCM includes a locational component through capacity zones based on potentially binding transmission limits. ISO-NE will hold separate but simultaneous auctions for each capacity zone. The FCM is intended to provide appropriate signals to investors when new infrastructure resources are necessary, with sufficient lead time to allow that infrastructure to be put into place before reliability is sacrificed.

9. Since the Commission's Order on Compliance, ISO-NE has filed eleven quarterly reports updating progress made in the siting, permitting and construction of transmission and generation upgrades within the New England control area, of which six have been accepted by delegated authority.¹³ None of these reports were contested. ISO-NE also

¹² This adjustment will be made using a modified equivalent demand forced outage rate (EFORd) measurement. *See* Order on Settlement Agreement, 115 FERC ¶ 61,340 at P 31.

¹³ *ISO New England, Inc.*, Docket No. ER03-563-043 (February 23, 2005) (unpublished letter order) (accepting ISO-NE's first compliance report); *ISO New England, Inc.*, Docket No. ER03-563-045 (February 23, 2005) (unpublished letter order) (accepting ISO-NE's second compliance report); *ISO New England, Inc.*, Docket No. ER03-563-049 (May 15, 2006) (unpublished letter order) (accepting ISO-NE's third compliance report); *ISO New England, Inc.*, Docket No. ER03-563-051 *et al.* (December 6, 2005) (unpublished letter order) (accepting ISO-NE's fourth and fifth compliance reports); *ISO New England, Inc.*, Docket No. ER03-563-056 (May 16, 2006) (unpublished letter order) (accepting ISO-NE's sixth compliance report).

filed, along with its ninth report, a motion for relief from the reporting requirement.¹⁴ In this order we address the five pending compliance reports and ISO-NE's motion for relief.

II. Notice of Filings and Responsive Pleadings

10. Notice of ISO-NE's seventh compliance report, as revised, was published in the *Federal Register*, 71 Fed. Reg. 13,828 (2006), with interventions and protests due on or before March 22, 2006.¹⁵ None were filed.

11. Notice of ISO-NE's eighth compliance report, as revised, was published in the *Federal Register*, 71 Fed. Reg. 35,886 (2006), with interventions and protests due on or before July 3, 2006.¹⁶ None were filed.

12. Notice of ISO-NE's ninth compliance report was published in the *Federal Register*, 71 Fed. Reg. 54,047 (2006), with interventions and protests due on or before September 14, 2006. None were filed.

13. Notice of ISO-NE's Motion for Relief from Reporting Requirement was published in the *Federal Register*, 71 Fed. Reg. 54,036 (2006), with comments, protests or interventions due on or before September 8, 2006. Public Parties filed a timely protest.¹⁷

¹⁴ ISO-NE August 24, 2006 Motion for Relief from Reporting Requirement, Docket No. ER03-563-030, *et al.*

¹⁵ We note that ISO-NE inadvertently re-filed its sixth report as its seventh report on February 28, 2005 in Docket Nos. ER03-563-057 and EL04-102-013. In light of the subsequent revised report, filed March 1, 2006, ISO-NE's inadvertently re-filed sixth report is moot.

¹⁶ We note that ISO-NE originally filed its eighth report on May 26, 2006 in Docket Nos. ER03-563-058 and EL04-102-014. In light of the subsequent revised report, ISO-NE's original eighth report is moot.

¹⁷ The Public Parties include: The New England Conference of Public Utilities Commissioners; the Connecticut Department of Public Utility Control; and Richard Blumenthal, Attorney General for the State of Connecticut. The New England Conference of Public Utilities Commissioners previously filed a timely, unopposed motion to intervene, which was accepted by the Commission on June 2, 2004. *Devon Power LLC, et al.*, 107 FERC ¶ 61, 240 (2004). The Connecticut Department of Public Utility Control previously filed a timely, unopposed motion to intervene, which was

(continued...)

14. Notice of ISO-NE's tenth compliance report was published in the *Federal Register*, 72 Fed. Reg. 36,444 (2007), with interventions and protests due on or before July 16, 2007. None were filed.

15. Notice of ISO-NE's eleventh compliance report was published in the *Federal Register*, 72 Fed. Reg. 56,733 (2007), with interventions and protest due on or before October 15, 2007. None were filed.

III. Discussion

A. ISO-NE's Compliance Reports

16. Since the Commission's Order on Compliance, ISO-NE has filed eleven compliance reports, of which six have been accepted by delegated authority.¹⁸ On August 24, 2006, ISO-NE filed a motion for relief from the reporting requirement along with its ninth report. It did not file another compliance report until ten months later. ISO-NE explains that, with the filing of the motion, the reporting schedule was inadvertently removed from its tracking of required filings. In addition, responsibility for preparing the report was not reassigned after a shift in internal staffing.

Commission Determination

17. ISO-NE's five pending compliance reports, which are uncontested, are hereby accepted. The reports comply with the substantive requirements set forth in the Commission's Order on Compliance.

B. ISO-NE's Motion for Relief

1. ISO-NE's Filing

18. In light of the Commission's approval of the FCM settlement agreement, ISO-NE requests relief from the quarterly reporting requirement. ISO-NE notes that the Commission established the reporting requirement to track infrastructure developments pending the completion of the hearing and implementation of the LICAP market. It

accepted by the Commission on March 23, 2003. *Devon Power LLC, et al.*, 102 FERC ¶ 61,314 (2003). Mr. Blumenthal previously filed a timely, unopposed motion to intervene, which was accepted by the Commission on November 8, 2004. *Devon Power LLC, et al.*, 109 FERC ¶ 61,156 (2004).

¹⁸ See *supra* note 13.

continues that the Commission has since approved the establishment of the FCM market, for which the first auction will be held in February 2008 with a commitment period beginning June 1, 2010. In addition, a transitional mechanism is already in operation.¹⁹ ISO-NE asserts that much progress has been made in addressing the infrastructure needs of the region, as evidenced in its ninth compliance report. ISO-NE also notes that its annual Regional System Plan (RSP) and reliability reports offer an analysis of resources and transmission facilities needed to maintain reliable and economic operation of New England's bulk electric power system over a ten-year period. Thus, ISO-NE concludes that the reporting requirement has served its purpose and is no longer necessary.

2. Comments

19. The Public Parties argue that the Commission should deny ISO-NE's motion and direct ISO-NE to file additional information about the reliability impact of the underlying enhancements. They contend that continued reporting is necessary not only to monitor investments during the transition to FCM, but also to assess the impact of the recently launched Locational Forward Reserve Market. They claim that the purpose of the compliance filings has been to track the progress of infrastructure developments pending implementation of a new capacity market and that the approved settlement does not render the reports useless. According to the Public Parties, ISO-NE's assertion that much progress has been made is insufficient to justify terminating the compliance filings. In addition, they contend that the annual RSPs are inadequate substitutes for the compliance reports because, unlike the current reporting requirement, the RSPs are not published quarterly (they are published annually) and are not filed with the Commission.

20. The Public Parties maintain that ISO-NE is the entity best-suited to keep the Commission and the states informed about the progress of region-wide infrastructure. The Public Parties further state that ISO-NE could do more than present information offered by participating resources and facilities. Thus, the Public Parties contend that ISO-NE could assist the Commission and the states by providing a more complete evaluation of New England's reliability status by drawing upon ISO-NE's expert analyses and assessments.

¹⁹ During the transition to the FCM, fixed payments will be paid to all installed capacity on a non-locational basis. These payments will be netted against RMR payments and adjusted to account for outages. *See* Order on Settlement Agreement, 115 FERC ¶ 61,340 at P 75.

3. Commission Determination

21. In the Order on Compliance, the Commission established hearing procedures to arrive at a market design that would appropriately compensate generators needed for reliability, and attract and retain necessary infrastructure to assure long-term reliability. As part of that order, the Commission directed ISO-NE to file reports – the quarterly reports at issue here – updating progress made on infrastructure development. The Commission, however, has since accepted the FCM as a market design that should appropriately compensate generators and attract and retain necessary infrastructure. As discussed above, the first forward capacity auction will take place on February 1, 2008 with the first commitment period beginning June 1, 2010.

22. In addition, ISO-NE's quarterly reports are not the only source of information concerning the development of resources and transmission facilities needed to assure long-term reliability. ISO-NE's RSPs are published annually and are easily accessible online. In addition, ISO-NE posts on its website an annual 10-year forecast of capacity, energy, loads and transmission (CELT Report). Although the RSPs are published annually, and not quarterly, market performance reports are available weekly, monthly, and annually on ISO-NE's website. The website also offers an annual report on system-wide generating capacity needed to meet reliability standards set by New England Power Pool and the Northeast Power Coordinating Council. Considering the availability of information to allow for tracking of infrastructure developments and the amount of time it takes to complete construction of generation and transmission facilities, we find no compelling reason to continue to require ISO-NE to file quarterly compliance reports with the Commission.

23. Accordingly, we will grant ISO-NE's motion for relief from the quarterly reporting requirement. ISO-NE's compliance filings have provided the Commission and participants with vital information about infrastructure development in New England. With the establishment of the FCM, however, the original need for these filings has since subsided. Moreover, similar information is publicly accessible on ISO-NE's website.

The Commission orders:

(A) ISO-NE's seventh, eighth, ninth, tenth, and eleventh compliance reports are hereby accepted for filing.

(B) ISO-NE's motion for relief from the quarterly reporting requirement is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.