

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Devon Power LLC, *et al.*

Docket No. ER03-563-030

INTERIM ORDER REGARDING SETTLEMENT PROCEDURES AND DIRECTING  
COMPLIANCE FILING

(Issued October 21, 2005)

1. In these proceedings, the Commission is considering a proposal by ISO New England, Inc. (ISO-NE) to implement a locational installed capacity (LICAP) mechanism in New England. As discussed in more detail below, in this order the Commission gives the parties in this proceeding a further opportunity to pursue a settlement on an alternative to the LICAP mechanism. The Commission further directs that a settlement judge be appointed to manage the process, and requires that any alternative developed in this process be submitted to the Commission by January 31, 2006. Additionally, the Commission directs ISO-NE to submit a compliance filing regarding its shortage hours proposal.

**Introduction and Background**

2. On March 1, 2004, ISO-NE filed its initial LICAP proposal, which included a proposed implementation date of June 1, 2004. In its June 2, 2004 order, the Commission accepted two broad concepts in ISO-NE's proposal, namely the establishment of installed capacity (ICAP) regions and the use of a demand curve for pricing capacity.<sup>1</sup> The Commission set for hearing, however, certain details of the proposal, including the parameters of the demand curve and issues related to the ability to

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<sup>1</sup> *Devon Power LLC*, 107 FERC ¶ 61,240 (June 2 Order), *order on reh'g*, 109 FERC ¶ 61,154 (2004), *order on reh'g*, 110 FERC ¶ 61,315 (2005).

transfer capacity between ICAP regions. The Commission also delayed the implementation of the LICAP mechanism to January 1, 2006.

3. On June 15, 2005, the presiding Administrative Law Judge issued an Initial Decision in these proceedings.<sup>2</sup> Certain parties requested oral argument before the Commission on the exceptions to the Initial Decision. In an August 10, 2005 order, the Commission granted these requests for oral argument.<sup>3</sup> The Commission also stated in that order that the implementation of the LICAP mechanism, if it proceeds, will not be earlier than October 1, 2006.

4. On September 20, 2005, the Commission held oral argument. Pursuant to the Commission's August 25, 2005 notice scheduling the oral argument, the oral argument focused on whether the LICAP mechanism, as adopted by the Initial Decision, would provide for just and reasonable wholesale power prices in New England, and whether there are workable alternative approaches to LICAP. Parties were given the opportunity at the oral argument, and in briefs filed prior to the oral argument, to present alternatives to LICAP to the Commission.

5. The Commission remains concerned about the resource adequacy situation in New England, especially in the congested areas of Southwest Connecticut and Northeastern Massachusetts, and the resulting impact on wholesale power prices. The parties at the oral argument generally agreed that the status quo is failing and that generation resources are not being added at a rate necessary to maintain reliability and assure just and reasonable wholesale power prices. The Commission has a duty under the Federal Power Act (FPA) to ensure that prices for capacity are just and reasonable. We therefore remain committed to ensuring that a workable mechanism that solves the capacity market problems faced by New England is implemented.

6. Accordingly, in this order we provide the parties with a further opportunity to develop an alternative to LICAP. To ensure that a timely solution is put in place, however, we are continuing to evaluate the Initial Decision, and will direct ISO-NE to submit a compliance filing regarding its shortage hours proposal.

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<sup>2</sup> *Devon Power LLC*, 111 FERC ¶ 63,063 (2005) (Initial Decision).

<sup>3</sup> *Devon Power LLC*, 112 FERC ¶ 61,179 (2005).

**Further Procedures to Develop a Possible Alternative to LICAP**

7. In briefs filed prior to the oral argument and during the oral argument itself, parties presented two alternatives to LICAP: the New England Resource Adequacy Market (NERAM) and the New England Locational Resource Adequacy Market (NELRAM). Neither of these alternatives is fully developed, and those parties advancing alternatives requested that the Commission provide additional time for development of alternatives to LICAP.<sup>4</sup> The Commission grants this request, in part, and will permit parties an opportunity to reach an agreement and to submit for the Commission's consideration a settlement on a viable alternative to LICAP no later than January 31, 2006.

8. As noted above, in their pre-oral argument brief, CMEEC/MMWEC asked the Commission to provide additional time to develop an alternative to the LICAP mechanism, and proposed a two-stage process to develop such an alternative. In the first stage, CMEEC/MMWEC proposed a stakeholder process to allow parties to further refine and develop proposed alternatives, with technical assistance from ISO-NE. Assuming that no complete settlement was reached during this stage, the second stage of CMEEC/MMWEC's proposal would require the Commission to initiate an expedited hearing process to consider alternatives presented during the stakeholder process.

9. On October 7, 2005, several of the parties, through the New England Power Pool (NEPOOL) Participants Committee, submitted a joint motion requesting the appointment of a settlement judge.<sup>5</sup> Duke Energy North America, LLC (Duke), Capacity Suppliers, ISO-NE, Calpine and the New England Conference of Public Utilities Commissioners filed answers or comments to the joint motion or answers to the answers and comments. The Commission grants the joint motion and, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure,<sup>6</sup> directs the Chief Administrative Law Judge to appoint a settlement judge to guide the process of developing a proposed alternative to LICAP. The settlement judge may use the process proposed as "stage one" by CMEEC/MMWEC, or may use another process to facilitate agreement among the

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<sup>4</sup> See Pre-Oral Argument Comments of the Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company (CMEEC/MMWEC) (Sept. 13, 2005).

<sup>5</sup> The Movants requested that Judge Lawrence Brenner be appointed the settlement judge.

<sup>6</sup> 18 C.F.R. § 385.603 (2005).

interested parties. The chosen process should include all the necessary stakeholders and parties to these proceedings, including ISO-NE and the New England states. The settlement judge is directed to submit a status report to the Commission every 30 days. If an alternative is developed, it should be filed no later than January 31, 2006.

### **Consideration of Initial Decision and Compliance Filing on Shortage Hours**

10. In parallel with the above stakeholder effort to develop an alternative, the Commission will continue to evaluate the Initial Decision and the record in the LICAP proceeding. As noted above, the Commission is committed to ensuring that a just and reasonable alternative to the status quo is in place prior to the time when load growth is expected to cause regional reliability problems. Continuing to consider the Initial Decision ensures that if the parties cannot agree upon a workable alternative, the Commission will be prepared to move promptly to consider the existing record and the Initial Decision.

11. Additionally, at the hearing below, ISO-NE proposed a shortage hours adjustment to the payments that capacity resources would receive under the LICAP mechanism.<sup>7</sup> This adjustment, according to ISO-NE, is intended to take into account the actual availability of each generator in contributing to system reliability during the critical hours of the year. The Initial Decision found that “availability should continue to be measured using the [Demand Estimated Forced Outage Rate (EFORd)] approach *at this time*.”<sup>8</sup> The presiding judge, however, as well as a number of parties including Commission Trial Staff, saw “promise in the [s]hortage [h]ours approach.”<sup>9</sup> The Initial Decision states that, while ISO-NE successfully showed that EFORd is not perfect and that the shortage hours approach may provide a better overall availability metric, ISO-NE did not successfully show that the current EFORd approach is so imperfect as to be unjust and unreasonable. Finally, the Initial Decision states that “availability should continue to be defined using the EFORd metric until the ISO has the opportunity to set forth a more fully developed shortage hours proposal to replace EFORd.”<sup>10</sup>

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<sup>7</sup> See generally Initial Decision at P 440-41.

<sup>8</sup> *Id.* at P 549.

<sup>9</sup> *Id.* at P 555.

<sup>10</sup> *Id.* at P 761.

12. ISO-NE argues in its Brief on Exceptions that the shortage hours metric is a well developed proposal and that further details are safely left to implementation through the filing of market rules in a compliance filing.<sup>11</sup> At the oral argument, counsel for ISO-NE urged the Commission to provide it an opportunity to submit a compliance filing to further develop the shortage hours proposal.<sup>12</sup>

13. To aid in its continued consideration of the Initial Decision, the Commission will provide an opportunity for ISO-NE to make a compliance filing further detailing its proposal for implementation of the shortage hours approach within the context of the LICAP mechanism. Should ISO-NE avail itself of this opportunity, it should make this filing no later than 60 days from the date of this order. The Commission will notice the filing and accept comments from interested parties.

14. Finally, to further aid our consideration of the Initial Decision, the Commission directs ISO-NE to file additional material. In a December 8, 2004 request for expedited rehearing, in Docket No. ER03-563-048, the Connecticut Department of Public Utility Control and other parties included three ISO-NE exhibits (Attachments F-1, F-2, and F-3) concerning annual cost impact calculations. The Commission directs ISO-NE, as part of its shortage hours compliance filing, to file updated “Integrated LICAP models” to reflect the most recent data and system conditions.

The Commission orders:

(A) The requests for additional procedures to pursue a settlement on an alternative to the LICAP mechanism are hereby granted in part, as discussed in the body of this order.

(B) Pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding, within five (5) days of the date of this order, to guide the process of developing an alternative to LICAP, as discussed in the body of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. These procedures shall terminate on January 31, 2006.

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<sup>11</sup> Brief on Exceptions of ISO-NE at 33.

<sup>12</sup> See Transcript of Oral Argument at 21:18 – 22:7.

(C) Within thirty (30) days of the date of this order, and every thirty (30) days thereafter, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the discussions.

(D) ISO-NE is hereby directed to submit a compliance filing further detailing its shortage hours proposal and providing additional material on cost impact calculations within sixty (60) days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.