UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Richard Blumenthal, Attorney General for the State of Connecticut, the Connecticut Office of Consumer Counsel, the Connecticut Municipal Electric Energy Cooperative and the Connecticut Industrial Energy Consumers

v.

ISO New England, Inc.

Docket No. EL05-150-000

ORDER DENYING COMPLAINT

(Issued October 11, 2006)

1. On September 12, 2005, Richard Blumenthal, Attorney General for the State of Connecticut (CTAG), the Connecticut Office of Consumer Counsel (CT OCC), the Connecticut Municipal Energy Electric Cooperative (CMEEC), and the Connecticut Industrial Energy Consumers (CIEC) (collectively, Complainants) filed a complaint against ISO New England, Inc. (ISO-NE) regarding the compensation for electric generation facilities in Connecticut that are needed for reliability. Complainants request that the Commission amend ISO-NE's tariff, Market Rule 1, to require that all electric generation facilities in Connecticut be compensated on a cost-of-service basis, through Reliability-Must-Run (RMR) agreements, until the Commission can determine that electricity markets in Connecticut are competitive and consistent with the just and reasonable standard of the Federal Power Act (FPA). In this order the Commission will deny the complaint, as discussed below.

I. **Background**

2. Under Market Rule 1, generators in New England seeking RMR agreements (which provide compensation on a cost-of-service basis) must first file for a reliability

determination from ISO-NE.[1] Subject to Commission approval, if ISO-NE determines that the generator is needed for reliability and that generator is not "satisfied" with its current compensation, then under Market Rule 1, the generator may file a cost-of-service RMR agreement with the Commission under section 205 of the FPA.[2] The Commission has held that it will approve an RMR agreement only when the applicant *requires* the agreement to remain available to provide reliability services. We have noted that in a competitive market where cost recovery is not guaranteed, generators should be guaranteed only the *opportunity* to recover their costs.[3]

3. In 2003, the Commission began addressing the sufficiency of New England's capacity markets and the use of RMR agreements in constrained areas of the region, particularly Southwest Connecticut. The Commission subsequently rejected several RMR agreements, expressing concerns about the effect such contracts would have on the competitive market for capacity.[4] As an interim measure to address certain flaws the Commission identified in the New England capacity market, the Commission directed ISO-NE to institute revised bidding rules (called Peaking Unit Safe Harbor, or PUSH, bidding) to give low-capacity factor generating units operating in designated congestion areas the opportunity to recover their costs through the market.[5] Additionally, the Commission directed ISO-NE to develop and file by March 1, 2004 a permanent

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[1] As the complaint notes, ISO-NE has stated that due to a lack of transmission infrastructure, all generation in Connecticut is needed for reliability. *See* ISO-NE, *Technical Assessment of the Generating Resources Required to Reliably Operate Connecticut's Bulk Electric System 2003 and 2006* (Jan. 29, 2003); ISO-NE, *CT & SWCT Need for Resources for RFP 2004 - 2008* (Nov. 13, 2003); ISO-NE, *RTEP04 Technical Report* (Nov. 2004).

[2] *See* section 3.3.1 of Exhibit 2, Appendix A of Market Rule 1.

[3] *See, e.g., Bridgeport Energy, LLC*, 112 FERC ¶ 61,077 (2005) (*Bridgeport*) at P 39.

[4] *See, e.g., Devon Power LLC*, 102 FERC ¶ 61,314 (*Devon I*) and *Devon Power LLC*, 103 FERC ¶ 61,082 (*Devon II*), *reh'g granted in part and denied in part*, 104 FERC ¶ 61,123 (2003) (*Devon III*); *PPL Wallingford Energy LLC*, 103 FERC ¶ 61,085, *reh'g granted in part and denied in part*, 105 FERC ¶ 61,324 (2003) (*PPL Wallingford*).

[5] *Devon II* at P 33; *Devon III* at P 25-31.

mechanism to implement a location-based or deliverability requirement in the installed capacity (ICAP) or resource adequacy market, so that capacity located in designated congestion areas would be appropriately compensated for reliability.[6]

4. In response to this directive, ISO-NE filed a proposed locational installed capacity (LICAP) mechanism. As proposed, the LICAP mechanism would have added a locational element to the then-existing ICAP markets by establishing four regions with separate ICAP requirements and prices:[7] Maine, Connecticut, Northeast Massachusetts/Boston, and the remainder of New England. Under this proposal, capacity transfer limits would have been established to limit the amount of capacity that a load serving entity could procure from outside its region to meet its capacity obligation. In an order issued on June 2, 2004, the Commission found that, while the proposal was conceptually sound, additional revisions were necessary before it could be implemented.[8] Accordingly, the Commission set the matter for hearing.

5. In 2004 and early 2005, the Commission accepted several RMR agreements and conditioned them to terminate on the day a location-based capacity or deliverability requirement was implemented pursuant to the Commission's directive in *Devon II*.[9] The Commission reasoned that accepting the RMR agreements for a limited term was appropriate, given that the units covered by the contracts were aging, low capacity factor units that were performing poorly under the PUSH bidding rules.[10] More recently, the Commission has approved limited-term RMR agreements for newer, baseload facilities needed for reliability that have demonstrated an inability to earn sufficient revenues to

[6] *Devon II* at P 37.

[7] ICAP obligations are imposed on load serving entities, requiring them to procure a specified amount of ICAP each month to ensure that there is sufficient capacity to supply system peak load under various contingencies.

[8] *Devon Power LLC*, 107 FERC ¶ 61,240 at P 1-2 (*Devon V*), *order on reh'g*, 109 FERC ¶ 61,154 (2004) (*Devon VI*), *order on reh'g*, 110 FERC ¶ 61,313 (2005); *order on reh'g*, 110 FERC ¶ 61,315 (2005).

[9] *See, e.g.*, *Devon Power LLC*, 106 FERC ¶ 61,264 (2004) (*Devon IV*); *PSEG Power Connecticut LLC*, 110 FERC ¶ 61,020, *order on reh'g*, 111 FERC ¶ 61,441, *order denying reh'g*, 113 FERC ¶ 61,210 (2005).

[10] *Devon IV* at P 18.

keep generation available to provide reliability services.[11] In other cases, the Commission has conditionally approved and set for hearing the issue of whether certain proposed RMR agreements are needed.[12]

6. On June 16, 2006, the Commission approved a settlement in the LICAP proceeding that adopted a different capacity market mechanism, called the Forward Capacity Market (FCM).[13] Two of the four parties to the instant complaint, CMEEC and the CT OCC, are parties to the FCM settlement. The currently applicable RMR agreements in New England are scheduled to terminate upon the implementation of a LICAP mechanism. However, the FCM Settlement Agreement provides that the RMR agreements will terminate at the beginning of the first commitment period (June 1, 2010) of the FCM.

II. The Complaint

7. The Complainants request that the Commission amend Market Rule 1 to require that all electric generation facilities in Connecticut be compensated on a cost-of-service basis, through RMR agreements, until the Commission can determine that electricity markets in Connecticut are competitive. The complaint asserts that because electric consumers in Connecticut are forced to pay the higher of either cost-of-service rates under RMR agreements or market-based rates for electricity, the current situation is unjust and unreasonable in violation of the FPA.

8. Specifically, Complainants argue that high cost generators have generally opted out of the market in order to receive RMR "cost-of-service compensation far above what they would receive in a competitive region-wide market," while lower variable cost units have remained in the market "collecting profits far in excess of their cost of service and what they would receive in a regulated market."[14] They contend that other units, operating under the PUSH mechanism, are allowed to continue submitting energy bids that far exceed what would be expected in a competitive market, thereby increasing congestion costs in the constrained region and collecting uplift charges for out-of-merit

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[11] *See, e.g., Milford Power Company, LLC*, 110 FERC ¶ 61,299, *order on reh'g*, 112 FERC ¶ 61,154 (2005).

[12] *See, e.g., Bridgeport Energy, LLC,* 112 FERC ¶ 61,077, *order on reh'g,* 113 FERC ¶ 61,311 (2005), *reh'g rejected*, 114 FERC ¶ 61,265 (2006); *Berkshire Power Company, LLC*, 112 FERC ¶ 61,253 (2005), *reh'g denied*, 114 FERC ¶ 61,099, *reh'g rejected*, 115 FERC ¶ 61,253 (2006).

[13] *Devon Power LLC*, 115 FERC ¶ 61,340 (2006) (FCM Settlement Order).

[14] Complaint at 3.

reliability operation even though less expensive alternatives are available in the region-wide energy market. Finally, the complaint states that the Commission has allowed some generation owners to elect to place certain of their units under RMR coverage and keep others in the "market," even though they are owned by the same corporate entity, resulting in both regulated and unregulated generating plants operating side-by-side, one under cost-of-service regulation and one in a "make-believe competitive market."[15]

9. Complainants aver that "as a whole," the Commission has implemented rate policies that are "lose-lose" for consumers and "win-win" for generators, because consumers are forced to pay the most that can possibly be paid to those generators choosing a "regulated" pricing system and the most that can possibly be paid to generators choosing a "market" pricing system. The complaint states that only four generators in Connecticut (representing 30 percent of the generating capacity in Connecticut and 55 percent of Connecticut's annual energy requirement) continue to operate under market-based rates and receive market clearing prices in the ISO-NE markets. The complaint specifically targets the "excess compensation" from inframarginal revenues of the Millstone nuclear units (2 & 3) and Bridgeport Harbor 3, a coal-fired unit[16], along with the "supra-competitive profits" of Norwalk Harbor units (1 & 2) under the PUSH mechanism. In particular, Complainants argue that these low-cost baseload generators receive compensation equivalent to the most expensive unit needed to meet load and reserve requirements, thereby "artificially inflating the price for their power."[17] By comparison, Complainants note that the ability of the high-cost Connecticut generators to re-regulate under RMR cost-of-service contracts allows the generators to set a floor, or minimum level of guaranteed profit, for each of their units.

10. Complainants argue that this system violates the Commission's fundamental mission under the FPA to protect consumers from unjust and unreasonable rates. Further, Complainants allege that as a result of the current regime, Connecticut consumers have paid more than $445 million in "supra-competitive returns" to those plants that have remained in the market than they would have paid those same generators under cost-of-service operation, and, based on forward market prices for round-the-clock power in 2006, will overpay these plants by $970 million during the twelve months following the complaint.[18] Complainants argue that Connecticut consumers are forced to pay twice –

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[15] *Id*.

[16] While included in the four units "in the market," Norwich Jet, a small peaking unit, is not a subject of analysis in the complaint.

[17] Complaint at 7.

[18] *Id*. at 4.

once for RMR charges to units that threaten to shut down if not paid fixed cost recovery, and again for excess returns to those generators opting to stay in a fundamentally distorted and fatally flawed market.

11. The complaint states that under the Commission's obligation to ensure that rates for the purchase and sale of electricity are just and reasonable, the Commission may rely upon traditional cost-of service regulation or, in the alternative, a regime of market-based rates, provided that the structure of the market is first found to be competitive. Under either system, standing alone, consumers would receive either the cost/benefit of competition among all generators or the regulated benefit of cost of service pricing for both high and low cost generators. However, the complaint notes that the current "flawed patchwork" of both market-based rates and regulated cost of service rates in Connecticut prevents consumers from receiving either set of benefits.

12. More specifically, Complainants maintain that the Commission may rely upon a market-based rates regime only when it has made an affirmative finding based upon empirical evidence that competition in electric markets is delivering customer benefits in the form of just and reasonable rates. Citing ISO-NE's declaration that all current generation in Connecticut is needed for reliability, Complainants argue that competition cannot exist in Connecticut until new transmission is constructed to "increase transfer capability into Connecticut generally and into certain Connecticut subregions specifically."[19]

13. Complainants note that in response to ISO-NE's reliability determinations, more than 40 percent of Connecticut's total generation capacity has filed RMR agreements with the Commission, representing more than $298 million in annual ratepayer-funded fixed costs, while the vast majority of remaining units in Connecticut operate under the PUSH bidding mechanism or have fully contracted the output of their facilities. Complainants note that ISO-NE has stated that its role in determining reliability need does not require any judgment regarding the cost effectiveness of any proposed RMR agreement, and argue that the Commission "has rubber-stamped ISO-NE's indifference to overall cost-effectiveness."[20]

14. Complainants also maintained that the LICAP proposal, which was pending before the Commission at the time the complaint was filed, would not cure the "fundamental flaws and illegality" of the wholesale electric market in Connecticut because the proposal would not preclude the continuing use of RMR contracts for generators needed for reliability after LICAP went into effect.

[19] *Id.* at 5.

[20] *Id*. at 26.

15. For all of these reasons, Complainants ask the Commission to direct ISO-NE to amend Market Rule 1 (specifically Appendix A, § III.A.6 and Appendix A, Exhibit 2, § 3.2) to require electric generation facilities that have been designated as RMR resources or otherwise determined by ISO-NE to be necessary for reliability in Connecticut to operate under cost-of-service RMR agreements until the Commission is able to determine that re-introduction of market-based rates is consistent with the just and reasonable standards of the FPA. Further, Complainants ask that the Commission initiate a proceeding within one year of the completion of currently-scheduled transmission projects in Connecticut to review the market structure in Connecticut and to determine whether market-based compensation can be reintroduced in Connecticut consistent with the FPA.

III. Notice of Filing and Responsive Pleadings

16. Notice of the complaint was published in the *Federal Register*,[21] with comments, interventions, and protests due on or before October 3, 2005. On September 13, 2005, ISO-NE filed a motion requesting that the Commission extend the due date for its answer to the complaint to October 20, 2005. The Commission issued a notice on September 15, 2005 extending the date for answers to the complaint to October 20, 2005. Appendix A to this order lists the parties filing timely motions to intervene. Parties filing answers, protests or comments are listed below.

17. On October 25, 2005, Complainants filed a motion for leave to answer and to establish November 18, 2005 as the date for their answer. The Commission issued a notice on October 28, 2005 granting Complainants' motion, and on November 18, 2005, Complainants filed an answer.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[22] the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. ISO-NE Answer

19. ISO-NE asserts that the complaint seeks to relitigate the locational marginal price (LMP) market structure in New England, and thus represents an impermissible collateral

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[21] 70 Fed. Reg. 55,122 (2005).

[22] 18 C.F.R. § 385.214 (2006).

attack on the Commission's prior orders approving that market structure. ISO-NE states that the Commission's policy against re-litigation of decided matters "is applied with particular force to matters of market structure," noting that the Commission has previously dismissed a complaint regarding a feature of the New England market design as an impermissible collateral attack.[23] Moreover, ISO-NE contends that Complainants have not alleged any changed circumstances since the Commission approved the LMP market structure that would warrant relitigation of the issues.

20. ISO-NE contends that the complaint represents "a challenge to the validity of LMP as a price-setting method," which was considered and approved by the Commission in orders issued on September 20, 2002 and December 20, 2002.[24] ISO-NE notes that the Connecticut Attorney General was an active participant in that proceeding and did not raise these issues there. As such, ISO-NE argues that the Connecticut Attorney General has waived his rights to now attack the fundamental aspects of the LMP market design. Additionally, ISO-NE notes that in a later order, which denied the Connecticut Attorney General's motion to stay implementation of the LMP market design, the Commission concluded that the implementation of LMP was just and reasonable and would encourage more efficient supply and demand decisions.[25]

21. ISO-NE argues that RMR contracts were approved as "a feature" of the market and note that Complainants never argued that RMR agreements were an inappropriate market feature in the relevant proceeding.[26] ISO-NE also argues that Complainants' claims that LMP should not be utilized in a constrained area such as Connecticut due to a lack of competition were considered and rejected in the December 20 Order.[27] ISO-NE contends that, in denying the stay of LMP implementation, the Commission considered and rejected the contention that generators in transmission-constrained regions are able to

[23] Answer of ISO-NE at 23-24, *citing Northeast Utilities Service Co.*, 105 FERC ¶ 61,122 (2003).

[24] *See New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287 (September 20 Order), *order on reh'g*, 101 FERC ¶ 61,344 (2002) (December 20 Order).

[25] Answer of ISO-NE at 30, *citing New England Power Pool and ISO New England, Inc.*, 102 FERC ¶ 61,248 (2003).

[26] Answer of ISO-NE at 29-30.

[27] *Id.* at 30, *citing* December 20 Order at P 35.

exercise market power.[28] ISO-NE also notes that the Commission acknowledged the prevalence of RMR agreements in *Devon V* and subsequent orders on individually-filed RMR agreements as transitional arrangements until a permanent market solution can be implemented.

22. ISO-NE also argues that the complaint represents a collateral attack on the Commission's rulings in other cases that a unit-by-unit analysis of revenue adequacy for purposes of approving an RMR agreement is appropriate.[29] Second, ISO-NE asserts that by requesting that the market structure in Connecticut be changed to require all generators needed for reliability to enter into RMR agreements, the complaint amounts to a collateral attack on *Devon V*, which found that the New England markets were not offering sufficient compensation to attract and retain needed generation. ISO-NE contends that Complainants would have the Commission change course and abandon the proceedings established in *Devon V* to arrive at a final capacity market structure that would reduce the need for RMR agreements.

23. The Complainants identify certain Connecticut generating units as earning excessive revenues. ISO-NE asserts that they are priced consistent with the LMP market structure and with their market-based rate approvals. ISO-NE further notes that these units recently received renewed market-based rate authority, and Complainants should not be able to indirectly challenge that authority in this separate proceeding.[30] Only one of the Complainants filed a protest, which the Commission considered and rejected, according to ISO-NE.

24. ISO-NE argues that the Commission has found that the PUSH mechanism is just and reasonable and asserts that Complainants have not shown that units submitting PUSH bids are violating the Commission's orders approving the PUSH mechanism. ISO-NE contends that the complaint ignores the fact that when a PUSH unit sets the market-clearing price, it does so with a PUSH bid set at a level previously approved by the Commission to allow that unit to cover its costs. According to ISO-NE, allowing a unit an opportunity to recover its costs in this manner was previously found by the Commission to be consistent with LMP markets.

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[28] Answer of ISO-NE at 30-31, *citing New England Power Pool and ISO New England, Inc.*, 102 FERC ¶ 61,248 at P 11 and n.2.

[29] In particular, ISO-NE cites *PSEG Power Connecticut, LLC*, *supra* note 9.

[30] Answer of ISO-NE at 34, *citing Dominion Energy New England, Inc., et al.*, 109 FERC ¶ 61,262 (2004) and Docket No. ER99-967-001, letter order issued Feb. 28, 2003.

25. ISO-NE objects to Complainants' characterization of its position regarding RMR agreements, stating that it does not believe that generators should have the option to sell either at market-based or cost-based rates once markets are completed in New England. ISO-NE states that it will work with stakeholders to develop and file with the Commission rules to make RMR agreements "a true matter of last resort."[31]

26. ISO-NE states that, should the Commission conclude that Complainants are not seeking to relitigate settled issues in the absence of changed circumstances, the complaint, nevertheless, has failed to meet the burden of proof under section 206 of the FPA. ISO-NE states that Complainants must first demonstrate that Market Rule 1 and the rates for the coal and nuclear generators targeted in their complaint are unjust and unreasonable. ISO-NE contends that Complainants fail to make this showing because each of the market features at issue (including the use of LMP in constrained areas, use of RMR agreements and PUSH bidding until a permanent capacity market structure is in place, and market-based rates for the targeted generators) has been approved by the Commission and is working as intended. Moreover, ISO-NE argues that the Complainants have not shown that circumstances have changed since the Commission's rulings.

27. ISO-NE states that Complainants cannot meet their burden because RMR agreements do not result in LMPs at non-competitive levels. ISO-NE argues that RMR agreements ensure that units submit offers reflecting true marginal costs, "which is identical to the behavior that would be expected of a company facing perfect competition."[32] Meanwhile, sellers not under RMR agreements may bid into the market at up to $25/megawatt-hour above their marginal costs without facing mitigation. As a result, ISO-NE concludes, RMR contracts do not inflate LMPs as Complainants assert, and instead have a pro-competitive effect. Additionally, ISO-NE argues that the actual clearing prices do not support the assertion that LMPs are being driven to an uncompetitive level so as to benefit the coal and nuclear units targeted in the complaint. According to ISO-NE, during the 12 months preceding the answer, the Millstone nuclear units and the Bridgeport coal units received average LMPs of $65.44 and $65.93, respectively. ISO-NE notes that these are less than the $66.01 average LMP for the New England hub during the same period.[33] Moreover, ISO-NE states, the average LMP in the Connecticut load zone was only $2.71/megawatt-hour higher than the average LMP

[31] Answer of ISO-NE at 41.

[32] *Id*. at 44.

[33] The hub price is calculated from a set of pre-defined nodes from within the New England control area. The hub price is calculated for the Day-Ahead and Real-Time Energy Markets. *See* Market Rule 1, section III.2.8.

for the New England hub during that period. ISO-NE asserts that these data show that Complainants claim of an “irretrievably broken” market in Connecticut is erroneous and fails to meet their section 206 burden.

28. ISO-NE also challenges the assertion in the complaint that the nuclear and coal plants in question are earning “supra-competitive returns” under the current market structure. ISO-NE notes that this assertion is based on a rough cost-of-service and compensation analysis. It argues that the question of whether a unit is over-recovering in a market-based context cannot be assessed at a single point in time, which the cost-of-service analysis in the complaint attempts to do. Market returns fluctuate over time, according to ISO-NE, and thus if gas prices were lower, a complaint might not have been filed at all. Moreover, ISO-NE argues that as gas and oil prices rise, coal and nuclear generators will receive increased revenues from the higher LMPs set by gas-fired generators, sending a market signal to build non-gas-fired units. ISO-NE contends that if non-gas units are built and the price of gas remains high, non-gas units will more frequently set the LMP and non-gas units will earn less. ISO-NE argues that this shows that the LMP-based market is working as intended, and that Complainants have failed to meet their burden under section 206 of the FPA.

29. ISO-NE contends that to the extent circumstances have changed in Connecticut, those developments have benefited Connecticut. ISO-NE notes transfer limits both within and into Southwest Connecticut have begun to increase due to transmission upgrades. Moreover, ISO-NE states that both phases of a major transmission upgrade project have been approved since the Commission approved LMP implementation, thus increasing the potential for increased transfer capability and generation interconnection in Southwest Connecticut.

30. Finally, ISO-NE notes that Complainants have not followed the usual New England stakeholder procedures for proposing changes to Market Rule 1, and as a result, stakeholders in the region have not had a chance to carefully consider the changes proposed in the complaint.

C. Comments Supporting the Complaint

31. American Public Power Association (APPA), Electricity Consumers Resource Council, Multiple Intervenors, and the NEPOOL Industrial Customer Coalition (Industrial Consumers) filed comments supporting the complaint.

32. Industrial Consumers argue that just and reasonable rates cannot result from the "higher of cost-of-service or market-based rates" compensation situation present under Market Rule 1. Further, Industrial Consumers state that the Commission may not authorize market-based rates without a demonstration that the market is workably competitive. Industrial Consumers note that "they are on record" advocating a return to cost of service when markets become dysfunctional or unduly punitive to consumers

because of the exercise of market power or other market dysfunctions, and argue that this "hold-harmless" policy would allow the Commission the opportunity to reassess the viability of the organized wholesale electricity markets.[34]

33. Similarly, APPA notes that RTOs with "Day Two" market designs taken together with RMR agreements, capacity markets, and new proposals for further capacity payments (such as LICAP) represent a "'No Generator Left Behind' pricing regime."[35] APPA also notes that its members in New England that are seeking long-term power supplies to serve their loads cannot find suppliers that will offer a fixed price for more than a two-year period, and that the fixed prices quoted are based on very high natural gas-based clearing prices and the expectation that these prices will go even higher. APPA states that these offers are evidence that suppliers are placing little value on the security of a long-term market for their supplies, preferring instead to maintain their flexibility to charge even higher prices during the winter.

D. Comments Opposing the Complaint

34. The following parties filed answers, comments or protests expressing opposition to the complaint or to portions of the complaint or the requested remedy: Connecticut Department of Public Utility Control (CT DPUC), Consolidated Edison Energy, Inc., Constellation Energy Commodities Group, Inc., Constellation New Energy, Inc., FPL Energy, LLC, Mirant Americas Energy Marketing, LP, Mirant New England, LLC, Mirant Canal, LLC, Mirant Kendall, LLC, PPL EnergyPlus, LLC, and PPL Wallingford Energy LLC (collectively Indicated Suppliers), Dominion Energy New England, Inc., Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing III, L.L.C., and Dominion Energy Marketing, Inc. (Dominion), Duke Energy North America, LLC (DENA), Electric Power Supply Association (EPSA), Exelon Corporation (Exelon), Lake Road Generating Company, L.P. (Lake Road), New England Power Pool Participants Committee (NEPOOL), NRG Power Marketing, Inc., Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC (NRG), and PSEG Power Connecticut LLC and PSEG Energy Resources & Trade LLC (PSEG).

35. Indicated Suppliers, DENA and PSEG argue that the Complainants have failed to demonstrate that the existing provisions of Market Rule 1 are unjust, unreasonable, unduly discriminatory or preferential and thus have not met their burden of proof under section 206 of the FPA. DENA asserts that the Complainants fail to demonstrate that the cost to consumers of market clearing prices based on PUSH bids and RMR stipulated

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[34] Comments of Industrial Consumers at 2.

[35] Comments of APPA at 4.

bids exceed market clearing prices in a “competitive region-wide market.” PSEG asserts that the existence of PUSH and RMR contracts in Connecticut does not provide evidence that the market is not workably competitive. Dominion argues that the complaint fails to support its claims that generators selling bilaterally are removed from the competitive market. Dominion further argues that the list of generators transacting bilaterally provided by the Complainants provides no details (*e.g.* term, products offered, identity of buyer, etc.) regarding such agreements.

36. Dominion argues that the complaint overstates the revenues from its Millstone Station nuclear plant. Dominion states that the output is sold under a portfolio of arrangements and hedges, and argues that revenue estimates based on the product of Millstone’s output times the Day-Ahead Market clearing price overstates actual revenues by a significant degree. Moreover, Dominion asserts that its nuclear units provide increased liquidity and reliability to the market. Dominion also notes that the complaint omits important cost items, including decommissioning costs (which can be tens of millions of dollars annually), and doesn’t account for the market risks Dominion has assumed for the life of the facility. Moreover, Dominion argues that the complaint fails to make any allegation that the coal and nuclear unit operators have acted improperly, exercised market power, or charged unlawful rates. Dominion contends that the complaint offers no basis to reverse the Commission’s finding that Dominion companies lack market power in New England and satisfy the standards for market-based rate authority.[36] DENA states that even in the absence of PUSH and RMR bids, baseload coal and nuclear units would earn significant inframarginal revenues due to rising oil and gas prices, an effect that the Complainants fail to quantify.

37. DENA maintains that the Complainants implicitly suggest that a competitive regional market can only exist in the absence of transmission constraints. DENA disagrees, noting that the avoided costs to customers of the various transmission upgrades needed to eliminate constraints in Connecticut reflect the reliability costs of those constraints. Further, DENA states that the Complainants are "simply wrong" in asserting that the market clearing prices set by PUSH and RMR unit bids are excessive when compared to the costs of maintaining an unconstrained transmission system.

38. Both DENA and Dominion argue that the complaint is erroneously premised on the notion that Connecticut is a separate market. They argue that, given the daily imports and exports of power into and out of Connecticut, Connecticut is part of the larger New England market. Dominion contends that requiring all generators in Connecticut to enter

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[36] Protest of Dominion at 36, *citing Virginia Electric and Power Co.*, 111 FERC ¶ 61,241 (2005); *Virginia Electric and Power Co.*, 112 FERC ¶ 61,227 (2005); *Dominion Energy New England, Inc.*, 109 FERC ¶ 61,262 (2004).

into RMR agreements will not achieve the price uniformity the complaint seeks since Connecticut will continue to import power, and would exacerbate the market distortions caused by RMR agreements.

39. Indicated Suppliers and EPSA argue that Connecticut consumers benefited from low, market-based rates in recent years but now as supply tightens the Complainants propose to eliminate competitive markets in favor of cost-based regulation. EPSA argues Connecticut delayed making transmission upgrades for years and now wishes to avoid the financial consequences of disregarding those upgrades.

40. Several parties who oppose the complaint argue that the Complainants have not met their burden to show that the requested relief is just and reasonable. Indicated Suppliers, for example, assert that the Complainants have failed to demonstrate that the proposed rates resulting from the complaint's proposed RMR remedy are just and reasonable.

41. Dominion asserts that the Commission has repeatedly stated that RMR contracts should serve as a last resort, and the complaint provides no basis for the Commission to expand the use of RMR contracts. Dominion asserts that RMR agreements implemented as part of the requested relief would remain in effect until, at minimum, the completion of several scheduled transmission projects, and as such would have no defined term. Dominion argues that, given the uncertainty surrounding the scheduled transmission upgrades in southwestern Connecticut, an indefinite term for RMR agreements would be contrary to Commission precedent, which states that RMR agreements are to be of limited duration.[37] Moreover, Dominion argues that the uncertain term of the agreements would produce regulatory uncertainty that could chill investment in Connecticut. Given current load growth patterns in Connecticut, Exelon contends that consumers would, over the long-term, pay more with greater reliance on RMRs than under a market-oriented solution. Exelon further contends that under the requested relief consumers would also likely experience a diminished level of reliability. DENA argues that the proposed solution would discriminate against in-state generation as imports into Connecticut would still be able to earn market-based rates and any corresponding inframarginal revenues.

42. More specifically, several parties argue that the requested relief will have an adverse impact on the competitive markets in New England and elsewhere. ConEd, Dominion and EPSA argue that granting the requested relief would undermine existing and prospective bilateral contracts with Connecticut suppliers and would reduce liquidity in the wholesale markets. EPSA asserts that such a reduction in liquidity would dampen price signals for forward contracting thus gutting the pricing arrangements in existing

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[37] Protest of Dominion at 27-28, *citing USGen New England, Inc.*, 108 FERC ¶ 61,012 at P 22-23 (2004); *Devon II* at P 31.

contracts. Dominion and NRG contend that granting the requested relief would undermine the single clearing price model, which is needed to ensure that the market offers incentives for developing and supporting the appropriate mixture of generation resources. Dominion and Exelon contend that requiring all Connecticut generation to be placed under RMR contracts would not only distort market signals that are needed to ensure long-term reliability but would also discourage investment in new generation in Connecticut. Dominion also contends that forcing generators into cost-based rates would reduce their incentive to increase availability and operating efficiency and reduce overall operating costs. PSEG states that, in requiring all units to seek RMR treatment, the Complainants believe that the inframarginal revenues of coal and nuclear units should pay for RMR costs. PSEG contends that such relief would "substantially destroy any hope of creating a competitive market in New England."[38]

43. The CT DPUC shares many of the concerns raised in the complaint, however, it does not believe that the requested relief is the appropriate means for providing incentives to make needed improvements to generation infrastructure. The CT DPUC is further concerned that cost of service rates would continue Connecticut's dependence on old, inefficient units that are unable to both operate year-round and comply with emissions regulations.

44. DENA argues that because the CT DPUC and the Connecticut Attorney General oppose the right of the ISO to enter into RMR contracts with generators needed for reliability, it is inappropriate for the Commission to grant the request for relief while at the same time CT DPUC and the Attorney General continue to challenge the Commission's authority to grant the very same relief in separate proceedings.

45. A number of parties opposing the complaint argue for alternative approaches. Rather than relying on cost of service rates, the CT DPUC believes that the rules for RMR contract eligibility and compensation should be reformed to require that generators seek to retire or shut down before seeking an RMR agreement. The CT DPUC further argues that the Commission should limit RMR compensation to going forward costs that provide sufficient revenues to generators for continuing operations. Indicated Suppliers and EPSA argue that rather than abandoning market based rates in Connecticut, the Commission should work to address the market design flaws that have made RMR agreements a necessity for generators. Exelon states that a more efficient solution to ensuring reliability would be to allow the capacity market to send proper price signals for both new investment and for resource retirement.

46. Many parties assert, like ISO-NE, that the complaint represents a collateral attack on the Commission's orders approving existing components of New England's markets.

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[38] Protest of PSEG at 14.

NRG argues that the complaint seeks to reexamine decisions to authorize PUSH bidding and thus should be seen as a collateral attack on PUSH. Dominion and the NEPOOL Participants Committee assert that each wholesale market feature identified in the complaint as requiring fixing—PUSH bids, LMP pricing, RMR agreements—has been raised as an issue in prior Commission proceedings and thus the complaint should be viewed as a collateral attack on prior Commission orders. PSEG asserts that revenues received by coal and nuclear units provide no evidence that the market is not workably competitive, and thus PSEG argues that the complaint is a collateral attack on the single market clearing price market design.

47. Finally, the NEPOOL Participants Committee asserts that the requested relief was addressed in the stakeholder process and would represent a significant and involuntary change to core RTO documents. Thus, the NEPOOL Participants Committee argues, the complaint is an inappropriate attempt to circumvent the Commission-approved process for changing Market Rule 1. The NEPOOL Participants Committee asks the Commission to dismiss the complaint and continue to make clear that, absent exigent circumstances, the stakeholder processes must be utilized and exhausted prior to changing those filed rate arrangements.

E. Complainants' Answer

48. In their answer, Complainants contend that the complaint should not be dismissed either as a collateral attack or for failure to follow the NEPOOL stakeholder procedures, as ISO-NE and other respondents argue. First, Complainants assert that the Commission should reject claims that its complaint amounts to a collateral attack, because they are not seeking to relitigate any of the issues raised in the earlier proceedings that approved New England's market design. Instead, they contend that the complaint challenges the cumulative impact of several ISO-NE and Commission determinations since the approval of the market design, including the recognition by ISO that Connecticut is a separate reliability zone and that all generators in the state are needed for reliability, the approval of RMR contracts for over 40 percent of generation in Connecticut, and the implementation of the PUSH mechanism. According to Complainants, the Commission has an obligation to review the cumulative impact these determinations, which it argues has been to push the wholesale electricity market "over the 'tipping point.'"[39]

49. Second, Complainants argue that they have shown changed circumstances, and thus their complaint is not a collateral attack. In particular, they note that ISO-NE's determination that all generators in Connecticut are needed for reliability and the subsequent increase in RMR agreements both occurred after the Commission established

[39] Answer of Complainants at 8.

LMP-based markets in New England. Moreover, Complainants charge, the Commission has acknowledged that the proliferation of RMR agreements has undermined and changed the competitive market.[40]

50. Third, Complainants argue that collateral estoppel cannot be applied because of the Commission's independent obligation under the FPA to ensure that rates are just and reasonable. They assert that the Commission cannot simply rely on its previous determinations in the face of the dramatic changes that have occurred, and must instead rely on actual empirical evidence that the market is functioning effectively.

51. Complainants also urge the Commission to reject calls to dismiss the complaint for failure to follow the NEPOOL stakeholder process. They argue that dismissing the complaint on such grounds would result in a subdelegation to ISO-NE and NEPOOL of the Commission's authority to ensure that rates are just and reasonable, which the FPA does not permit.

52. Complainants also object to protests and comments challenging the remedy proposed in their complaint. They argue that the proposed remedy is appropriately limited to Connecticut and will not impact the greater New England regional market, noting that the Commission and ISO-NE's market rules already segment the market in Connecticut from the market in the rest of New England.[41] They state further that spot market operations will continue across New England, and the generators under RMR contracts will submit bids limited to their variable costs, which "should have little impact on the LMPs actually experienced in the spot markets."[42] Moreover, Complainants assert that their proposed remedy will not impair incentives to new entry, noting that their remedy would require cost-of-service compensation, a regime that previously resulted in adequate investment in the electric sector, and that the remedy would only be in place for a limited period of time until transmission constraints are resolved. Further, Complainants contend that there is no basis to claims that their remedy would deter the formation of bilateral contracts, that the increased RMR agreement filings that would result from their remedy are not substantial as Dominion claims. They also assert that the

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[40] *Id.* at 10-11, *citing Devon II* at P 31.

[41] Complainants note, *e.g.*, that RMR fixed payment costs are allocated only to the Connecticut load zone, Connecticut is treated as a separate geographic area for reliability determinations, and the Commission has recognized that Connecticut and Southwest Connecticut operate as separate load pockets.

[42] Answer of Complainants at 19-20.

Commission should not rely on ISO-NE to remedy the procedures for RMR contract eligibility, given in part that it has been aware of the problems cause by increased RMR agreements since at least 2003 and has not yet acted.

53. Complainants challenge certain "demonstrably false or inaccurate pronouncements" made by opponents of the complaint regarding the history of the wholesale power market in Connecticut and New England. First, they assert that the wholesale market problems facing Connecticut are not the result of inadequate compensation of generating facilities, as some respondents suggest, but instead the product of severe operating restrictions in Connecticut caused by low voltage, inability of generation units to run simultaneously due to transmission constraints, lack of quick-start generation, and the need for all existing generation to be available to meet contingencies.[43] These circumstances make all generators in Connecticut indispensable to reliability and require market rule or contractual protections to ensure consistency with the functioning of a competitive market, Complainants maintain.

54. Moreover, Complainants state that the reasonableness of rates in Connecticut cannot be determined by comparing the LMPs received by the Bridgeport and Millstone power plants with LMPs at hub nodes. They argue that any similarities in the prices noted by ISO-NE are "the result of happenstance and more likely are the product of the specific topology of grid operations and the power plants that are currently subject to RMR contracts," and that RMR agreements bidding at variable cost likely have a significant impact on LMPs.[44] Complainants also offer evidence of significant price divergences between the Massachusetts Hub and Norwalk Harbor LMP node, which is supplied by two generators not under RMR agreements.[45] They also object to ISO-NE's claim that RMR contracts are consistent with competitive wholesale markets, arguing that this claim cannot be squared with any measure of long-run efficiency and ignores the fact that the fixed recovery under an RMR agreement is charged by "regulatory fiat," shifting risk to consumers.

55. Last, Complainants argue that those respondents challenging their claim that the coal and nuclear generators remaining in the market are earning excessive revenues fail to provide any quantitative analysis to contradict the cost of service estimates provided in the complaint. They also note that $768 million in nuclear decommissioning funds were

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[43] *Id*. at 26-28.

[44] *Id.* at 29.

[45] *Id.*

transferred to their new owner, compensating for decommissioning risk. Finally, they question the claim by certain respondents that the high returns accruing to the generators remaining in the market are necessary to maintain high availability of those generators.

F. Commission Conclusion

56. Section 206 of the FPA provides that whenever the Commission finds, either on its own motion or on complaint, that any existing rates, charges or classifications of a public utility are unjust, unreasonable, unduly discriminatory or preferential, it shall determine the just and reasonable rates, charges or classifications and establish the same by order.[46] Section 206(b) states that in any proceeding under this section, "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant."[47] Accordingly, Complainants bear the burden to (1) establish that Market Rule 1 as currently filed with the Commission is unjust and unreasonable with regard to the compensation of generating facilities needed for reliability in Connecticut, and (2) if that showing is made, to show that their proposed amendments to Market Rule 1 are just and reasonable.[48]

57. The Commission denies this complaint, as discussed further below. Complainants have not met their burden under section 206 to establish that the current provisions of Market Rule 1 regarding the compensation of generating facilities needed for reliability in Connecticut are unjust and unreasonable, nor that the Complainants' proposed alternative (to put all units in Connecticut under RMR contracts) is just and reasonable. PUSH bidding, RMR contracts, bilateral contracts, and market-based rates under LMP are all Commission-approved mechanisms, and their simultaneous use does not, without further proof, amount to unjust and unreasonable rates. Moreover, these mechanisms are fully integrated into New England's energy markets, and rather than indiscriminately driving up prices in those markets, they either serve to lower prices (in the case of RMR contracts) or allow for scarcity pricing (in the case of PUSH units). In short, Complainants have not met their burden to show that the presence of some RMR agreements and PUSH bidding concurrently with market-based rates under LMP have driven rates in Connecticut to unjust and unreasonable levels. Further, the complaint does not demonstrate that generators have exhibited any form of market power, and, therefore, we cannot justify establishing their cost recovery at cost-of-service rates.

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[46] *See* 16 U.S.C. § 824e (2000).

[47] 16 U.S.C. § 824e(b) (2000).

[48] *See, e.g., American Electric Power Service Corporation*, 113 FERC ¶ 61,050 at P 18 (2005).

Finally, we find that Complainants' proposed solution – placing all generators within Connecticut under cost-of-service RMR agreements for an undefined period of time – would not be just and reasonable.

58. As the Commission has stated on several occasions, we prefer not to authorize "out of market" RMR payments because they distort market clearing prices in a way that understates the value of resources necessary to reliably serve load. We also prefer a single approach for establishing conduct and impact thresholds for all generators rather than adopting a PUSH alternative for selected units because competitive markets treat all suppliers uniformly. Nevertheless, serious under-recovery of costs in certain cases was threatening the reliability of ISO-NE's markets and demanded the use of short-term measures until a more comprehensive solution could be developed. Although we share Complainants' dissatisfaction with such temporary measures, we find their request to restrain legitimate market revenues earned by some generators to be misdirected, as discussed in more detail below.

59. Use of the PUSH Mechanism and RMR Agreements. The complaint argues that generators in Connecticut are able to charge the "higher of" either cost of service or market-based rates due to the "aggregate effect" of the Commission's decisions to create the PUSH mechanism and approve the use of RMR agreements, resulting in a market in which electric rates are unjust and unreasonable. This argument fails to recognize both the recent history of this market and the existence of several mitigation tools. Significantly, neither the PUSH mechanism nor RMR agreements was created in a vacuum. Rather, these mechanisms were established on an interim basis to address cost recovery issues for generators in New England that are needed for reliability but unable to recover their costs. As we recently stated in our order approving the FCM settlement, there is substantial evidence "regarding the inability of generators to earn sufficient revenues in the current market, both to continue operating or to support new investment."[49]

60. As ISO-NE notes, two events occurred during 2000 that resulted in generators actually under-recovering their costs.[50] At that time, due to issues in the region-wide, non-locational capacity market, a vertical demand curve was implemented with a cap at a deficiency charge of $4.86/kW-month. This system resulted in compensation being provided to generators only if the system was short of capacity, but provided little revenue otherwise and failed to recognize the value of locational capacity. Second, after the heat wave of May 2000, energy price caps of $1000/MWh were put in place by ISO-

[49] FCM Settlement Order at P 204.

[50] Answer of ISO-NE at 11.

NE, limiting the ability of prices to reflect scarcity. Recognizing the likelihood for generators to under-recover their costs, the Commission stated that "the current situation in NEPOOL may not allow suppliers in [designated congestion areas] an adequate opportunity to recover their costs and that a location specific capacity requirement must be in place."[51] Since first recognizing this issue, ISO-NE has worked towards the establishment of an appropriate capacity market that would appropriately compensate capacity resources for providing reliability (particularly in congested areas).

61. The Complainants aver that under the PUSH bidding mechanism, generators are allowed to submit energy bids that "far exceed what would be expected in a competitive market,"[52] increasing congestion costs in the constrained region. This argument fails to recognize, however, the fact that units operating under the PUSH bidding mechanism still continue to submit bids into the day-ahead energy markets (as noted above), and the limited nature of the PUSH mechanism itself. When it accepted PUSH bidding, the Commission approved a market mechanism that allows an increase in the energy bids of certain older, inefficient peaking units that are seldom operated yet are needed for reliability (largely in pockets with insufficient transmission infrastructure) but were unable to recover their costs in the market due to limits on their bidding ability. PUSH bids are permitted to include both a variable cost component and a fixed cost component for capacity in each designated congestion area (DCA) with a capacity factor of 10 percent or less during 2002. The variable cost and fixed cost components of PUSH bids are specifically approved by the Commission for each PUSH unit. Thus, such bids do not allow the units to obtain prices that "far exceed what would be expected in a competitive market." Moreover, at the time we approved PUSH we stated that "our reason for increasing the safe harbor energy bids of these units is to provide a market mechanism for high cost, seldom run units to recover their fixed costs."[53] Further, we noted that "capacity with a capacity factor of 10 percent or less for the year is likely to be among the most expensive energy-producing capacity in the DCA" and that "when such capacity is called upon to produce energy, demand is likely to be pressing upon the total capacity in the DCA, and thus, higher prices are likely to be economically justified."[54] Further, limiting the use of PUSH bidding to units with capacity factors of 10 percent or less actually ensures that these relatively inefficient units will only be called when scarcity conditions exist and electricity prices should naturally rise to reflect such conditions.

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[51] *Devon II* at P 31.

[52] Complaint at 3.

[53] *See e.g., Devon Power LLC, et al.*, 103 FERC ¶ 61,082 at P 34.

[54] *Id.* at P 34.

62. Furthermore, contrary to the argument that the PUSH mechanism has driven rates to unjust and unreasonable levels, a 2003 ISO-NE study of generator cost recovery under the PUSH mechanism found that "PUSH offers have been ineffective in providing recovery of fixed costs for inframarginal units, or in sending price signals for needed new investment through higher LMPs," and as a result "it is unlikely that PUSH units will recover all of their allowed fixed costs through the existing PUSH mechanism."[55] In addition, as noted in the report, PUSH units "set LMPs for only three percent of their on-line hours despite being expensive resources."[56] Rather than being a windfall, the PUSH Report indicates that cost recovery remains a challenge for many peaking generators needed for reliability in New England.

63. In support of their argument that PUSH units are earning excessive revenues and causing an unjust and unreasonable situation in Connecticut, Complainants cite only the Norwalk Harbor PUSH units, which they state "are able to extract substantial margins . . . due to their exercise of market power and their strategic location on the transmission grid."[57] Complainants claim that these units are "the only major generating units located within the Norwalk-Stamford load pocket" and "are often operated to maintain bulk power system security and contingency response."[58] While the complaint focuses on the revenues earned by these units, it ignores the fact that these units are the only large generators providing reliability services precisely in a location where these services are necessary, thus justifying a mechanism to allow reasonable cost recovery. Moreover, the complaint fails to recognize that such units are subject to the same market power mitigation as are other generators (discussed below). No specific evidence of withholding or any other demonstration of market power is offered in the complaint. Furthermore, there are no market rules in place that would prevent construction of a competing generation facility in this location that could lower rates. In short, Complainants have not proven that the rates collected by these units through ISO-NE's markets are unjust and unreasonable given the critical role they appear to play in ensuring reliability in their region.

64. In addition, in their answer the Complainants state that "since 2003, on information and belief, several of the PUSH units have operated at capacity factors well

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[55] *See* ISO-NE, *Review of PUSH Implementation and Results* at 1, 33, filed in Docket No. ER03-563-025 and accepted for informational purposes in *Devon Power LLC*, 111 FERC 61,486 (2005).

[56] *Id*. at 1.

[57] Complaint at 32.

[58] *Id*. at 31.

in excess of ten percent" and that these units are "recovering well in excess of their fixed costs."[59] However, Complainants offer no evidence to support this allegation and have not shown that units under PUSH bidding are earning excessive returns, or that PUSH units are operating in a manner contrary to the intent of the mechanism. We note that this fact does not prevent parties from challenging under section 206 the need for any generator in the market to retain PUSH bidding as a cost recovery mechanism.

65. Similarly, the Complainants argue that the "proliferation" of RMR agreements represents market failure. As with the PUSH bidding mechanism, the Commission has stated that it views RMR contracts as transitional tools to be replaced by a long-term capacity market solution.[60] Thus, in 2004 and early 2005, the Commission accepted several RMR agreements, noting that accepting the RMR agreements for a limited term (until the implementation of a capacity market solution) was appropriate. The basis for these initial agreements was the concern that absent a cost-of-service agreement, these older, inefficient peaking/intermediate units that are needed for reliability would not continue to operate to provide reliability service.

66. While making its argument alleging market failure based on the proliferation of RMR contracts, the Complainants do not acknowledge that Connecticut's weak transmission infrastructure is the reason generators are eligible for such contracts. As we note above and have noted previously, a generating unit becomes eligible to file an RMR agreement with the Commission only after ISO-NE determines that it is needed for reliability and that out-of-market financial arrangements will be necessary to ensure that the unit remains available.[61] The RMR agreements in Connecticut that the complaint references were negotiated and filed with the Commission under these procedures. These contracts were necessitated by the previously mentioned flawed capacity market and the inadequate transmission infrastructure in Connecticut, both of which have made RMR agreements necessary to preserve reliability in severely-constrained areas within the state. The lack of transmission infrastructure in Connecticut has led ISO-NE to determine that all generating units in Connecticut are needed for reliability.[62] ISO-NE states that "the weak transmission system within Connecticut and Connecticut's limited ability to import

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[59] Answer of Complainants at 35.

[60] See *Devon V* at P 72.

[61] *See Devon Power LLC*, 109 FERC ¶ 61,154 at P 28 (2004), *order on reh'g*, 110 FERC ¶ 61,315 (2005).

[62] *See* Complaint at nt. 1.

power mean that virtually all generators in Connecticut are needed for reliability."[63] As this determination of reliability from ISO-NE is the necessary prerequisite to these RMR contracts, it is noteworthy that the Complainants do not dispute this conclusion.

67. Without sufficient transmission infrastructure in place, old and inefficient units that should be retired remain necessary to preserve reliability. Further, because the bid offers for these expensive and inefficient units have historically been mitigated, RMR contracts often become necessary to ensure that these units do not leave the market. As Exelon states, "RMR contracts serve a very important role in ensuring reliability in New England in the short-term" but "should not displace a long-term, market-oriented solution…"[64] In effect, these RMR costs represent the real costs associated with an insufficient transmission infrastructure.

68. In any event, RMR contracts are not completely separate from the market. For example, units under RMR contracts are forced to bid all of their capacity into the day-ahead and real-time energy markets at their marginal costs, which actually serves to reduce LMPs. Further, while these units are provided an annual fixed revenue requirement, they must credit all revenues earned in the energy markets in excess of their marginal costs directly against those fixed revenue payments. The complaint does not take note of these features of the RMR agreements, and does not quantify the actual impact of the RMR agreements on LMPs. As a result, Complainants have failed to demonstrate that the RMR contracts have resulted in unjust and unreasonable rates.

69. As indicated by the complaint, on several occasions we have stated our preference that generators not operate under RMR contracts and that RMR agreements should be a last resort. However, we must balance that preference with the concern that an inability to recover costs may prevent a generator from being available to provide reliability service in constrained areas like Southwest Connecticut, especially where "there is significant evidence that SWCT is the most heavily constrained area within New England."[65] Further, we note that the Complainants are incorrect in their allegation that "owners of generation can opt into or out of RMR coverage, shifting investment risk fully

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[63] *See* Answer of ISO-NE at 13.

[64] *See* Answer of Exelon at 4.

[65] *Devon V* at P 49.

to ratepayers."[66] ISO-NE's *Pro Forma* Cost-of-Service RMR Agreement states that, assuming the facility under contract remains available, only ISO-NE can cancel the RMR agreement, upon 120 days notice.[67]

70. We reject the allegation that the Commission is "rubber-stamping" RMR agreements.[68] To the contrary, we stated in *Bridgeport* that "we do not take the position that designation of a need for reliability from ISO-NE guarantees Commission approval of an RMR contract.…"[69] Instead, we noted that "we must examine the facts in each instance against the standard of section 205(a) of the FPA that all rates and charges demanded by any public utility for the sale of electric energy subject to the Commission's jurisdiction shall be just and reasonable."[70] Further, in formalizing the use of the facilities costs test in assessing cost recovery to determine RMR eligibility, we stated that "it is not the position of the Commission that cost-of-service agreements should be the recovery floor for generators that are unable to earn a profit for a given year."[71] Moreover, in that order we stated that the Commission's standard for RMR approval is the concern that absent an RMR contract, the facility will be unable to continue operation and that the Commission is responsible only for assuring that a generator seeking an RMR agreement is provided the *opportunity* to recover its costs.[72] As a result, several RMR agreements in New England (including *Bridgeport*) have been conditionally accepted with the burden clearly placed on the generator to establish its financial need for the proposed agreement before the agreement may be finally approved by the Commission.[73]

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[66] Complaint at 33.

[67] *See* Market Rule 1, appendix A, section III, exhibit 4.

[68] *Id*. at 26.

[69] *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077 at P 32.

[70] *Id*.

[71] *Id*.

[72] *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311 at P 29.

[73] *See supra*, note 12; *see also Pittsfield Generating Company, L.P.*, 115 FERC ¶ 61,059 (2006), *reh'g pending*.

71. Further, under the terms of the FCM settlement, the current RMR agreements will terminate in 2010. To protect ratepayers in the interim, the FCM Settlement Order was clear that the Settlement Agreement "explicitly states that participants do not waive their rights to challenge the need for RMR contracts, given changes in a generator's compensation or changes to system infrastructure."[74] Thus, to the extent that any party feels that an RMR agreement is no longer necessary (especially in light of transition payments under the FCM Settlement Agreement), that party is free to file for relief with the Commission under section 206.

72. Moreover, Complainants' proposed remedy would alter the fundamental purpose of RMR agreements, which is to preserve the availability of units needed for reliability that are unable to recover their costs. Complainants' requested remedy would inappropriately use RMR agreements as a means of market mitigation by applying them to all units in Connecticut, regardless of whether the units meet the prerequisites for RMR contracts. As stated previously, we find that sufficient mitigation already exists in this market and that the current rates in Connecticut are just and reasonable. Furthermore, the Complainants seek to expand the use of "last resort" RMR contracts at a time when ISO-NE is focusing on the use of market solutions in New England, including the recent approval of Phase II of the Ancillary Services Market.[75]

73. Complainants' arguments regarding the use of PUSH and RMR agreements in Connecticut in combination with LMP-based energy markets draw the wrong conclusion about the competitiveness of the rates established in this market. All capacity resources in ISO-NE—whether they have RMR contracts, bilateral contracts, or are eligible for the PUSH mechanism—must submit bids into the day-ahead markets, as discussed above. Generators under RMR contract submit stipulated bids that approximate an expected competitive offer; all other generators, including PUSH units and those with or without bilateral contracts, may submit bids up to the $1000/MWh bid cap. As a result, these mechanisms are integrated into the market and do not, by themselves, indicate that the market has become unjust and unreasonable.

74. Significantly, we note that submitted bids that exceed specified conduct and impact thresholds, whether from PUSH units, RMR units, units under bilateral contracts or units operating in the competitive market (such as the coal and nuclear units targeted in the complaint) may be mitigated to reference levels that reflect the units' estimated marginal cost. PUSH units differ from other generators in that they have somewhat higher conduct thresholds, but they are otherwise subject to the same mitigation rules as

[74] FCM Settlement Order at P 166.

[75] See *New England Power Pool and ISO New England, Inc.*, 115 FERC ¶ 61,175 (2006).

non-PUSH units. Based on these bids, including any mitigated bids, ISO-NE determines a uniform market clearing LMP. The Commission has found that LMPs determined by this process are just and reasonable (discussed further below), as market power is mitigated by the must-offer requirement and the conduct and impact test. Under such a bid-based market, however, some generators needed for reliability, the RMR units, may also receive an additional payment to assure specified cost recovery if revenues from all sources are inadequate. Complainants do not account for the mitigation procedures in place in New England in their complaint, and do not argue that such procedures are flawed. We conclude that those procedures, in combination with the other features of the PUSH mechanism and RMR agreements noted above, help ensure that rates in Connecticut and New England remain just and reasonable.

75. Finally, we disagree with the implication from the Complainants that the bilateral contracts under which much of the generation in Connecticut operate contribute to the "failure" of the market. Bilateral contracts are an important part of this marketplace (and were intended to be a part of the LMP market), and represent a method for parties to reduce their exposure to price volatility. We agree with DENA that the Complainants have failed to provide any detail associated with the terms of any of these highlighted bilateral agreements, including, for example, whether any of these agreements were entered into pursuant to the seller's market-based rate authority.[76] As such, it is not possible to identify whether these agreements operate "outside of the market" as alleged. Under the proposed solution, because all revenues would be credited against the fixed cost RMR payments, it is unlikely that any incentive would remain for parties to enter into bilateral contracts, reducing liquidity.

76. LMP Pricing. The Complainants emphasize that the recent increase in gas prices and corresponding cost increase for the gas-fired units has allowed relatively cheaper coal and nuclear baseload units to earn "supra-competitive" returns due to single price auction LMP pricing. The complaint notes that many of these gas units are under RMR contracts, while the baseload coal and nuclear units remain "in the market," benefiting from the higher LMPs set by the gas units. The Complainants argue "on information and belief" that the baseload plants are earning profits "well in excess of the rates of return that they would receive under traditional cost-of-service ratemaking."[77]

[76] See Answer of DEMA at 32.

[77] Complaint at 28.

77. Despite arguing that their complaint is not a collateral attack on prior Commission decisions,[78] the Complainants contend that "although the baseload nuclear and coal-fired generators do not use high cost oil or natural gas, under the settlement procedures of Market Rule 1, these units are compensated as if they use that high cost fuel, artificially inflating the price for their power."[79] This statement squarely condemns LMP pricing, and to that extent represents a collateral attack on the Commission's prior orders approving that pricing system for New England. Further, this contention neglects to recognize that (1) the relatively higher cost units that are under RMR contracts must bid into the market at their marginal costs, which actually lower LMPs[80]; and (2) the baseload units in question would have earned higher revenues during this period even without RMR contracting, as these coal and nuclear units represent the lowest cost generation in the market. Even in a competitive fully-bilateral, non-LMP market, low cost units will earn higher returns than high cost units, other factors being equal.

78. When the Commission approved New England's market design, the LMP pricing methodology was adopted to replace the single, system-wide energy price system.[81] The purpose of LMP pricing is to accurately price the next MW of power to a specific location in the least-cost manner given transmission constraints; the energy component of the LMP is the same throughout New England, with price differences between pricing nodes reflecting the congestion costs of constrained areas. In approving this design for New England, we stated that we "expect the implementation of locational pricing to provide appropriate price signals indicating the value of additional resources or conservation at each node in the transmission system."[82] The purpose of this pricing system is to provide a transparent signal for all market participants that establishes incentives for market participants to make efficient decisions regarding investments in

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[78] Complainants argue that it is the sum total of the Commission's decisions that have resulted in a market with unjust and unreasonable rates in violation of the FPA. *Id.* at 3.

[79] *Id.* at 7.

[80] Units under RMR contract must offer formula stipulated bids that represent the marginal costs of the units. ISO-NE notes that by contrast in constrained markets, non-RMR sellers are permitted to bid into the market at up to $25/MWh above their marginal cost

[81] *See New England Power Pool and ISO New England Inc*. 100 FERC 61, 287 (2002) at P 63, order on rehearing 101 FERC 61,344 (2002).

[82] *Id.* at P 71.

infrastructure to reduce congestion. Further, LMPs allow inframarginal resources to recover fixed costs and provide an incentive for these units to maximize profits through increased availability and/or efficiency.

79. As discussed below, several factors have influenced the increase in LMP prices. First, available data show that a recent increase in fossil fuel prices has helped drive LMPs upward. ISO-NE notes that prices for natural gas and No. 6 oil, which set the price in New England a majority of time in 2005, rose 97 percent and 66 percent, respectively, between 2000 and 2005.[83] Yearly average load-weighted real-time electric energy prices for New England, during the same time period, rose from $45.95/MWh to $79.96/MWh from 2000 to 2005.[84] Second, the state of Connecticut and Southwest Connecticut in particular has exhibited the "most significant resource need in New England"[85] in recent years, resulting from continued growth in electricity use, continued transmission bottlenecks and inadequate development of new resources.[86] However, these developments do not provide a basis for limiting the allowed cost recovery for price-taking, non-gas, baseload units that bid competitively and are not exhibiting any form of market power. As discussed further below, LMP pricing is used to determine competitive prices over the long term. As system conditions in Connecticut have grown tighter in recent years, combined with the increase in fuel price for marginal units, it is not surprising to see higher LMP prices. During such periods, the most efficient units may earn more than a cost of service rate. The Commission notes that in previous periods, New England markets have not produced sufficient net revenue to support investment in certain new units. ISO-NE, in its 2003 Annual Markets Report, found that a new gas turbine would have recovered only 17 percent of its estimated annual fixed costs for 2003; a new combined-cycle unit would have recovered 66 percent of its estimated annual fixed costs for 2003.[87] Complainants' proposed solution is essentially opportunistic, seeking to lock in the potential short-term benefits of RMR cost-of-service

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[83] *See* ISO-NE, 2005 Annual Markets Report at 44, 64, *available at* http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/index.html.

[84] *Id.* at 45.

[85] ISO-NE, 2005 Regional System Plan, Executive Summary at 8, *available at* http://www.iso-ne.com/trans/rsp/2004/index.html.

[86] ISO-NE, 2004 Regional Transmission Expansion Plan, Executive Summary at 2, *available at* http://www.iso-ne.com/trans/rsp/2004/index.html.

[87] ISO-NE, 2003 Annual State of the Market Report presentation at slide 25, *available at* http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/ 2003/ 2003_State_of_the_Markets_Presentation.pdf.

contracts during a point in time when supplies are becoming scarce and the fuel prices for marginal gas-fired generation have risen. Doing so would remove the price signal to build non-gas-fired generation, which would provide fuel diversity and lower energy prices to the benefit of consumers.

80. While the Complainants would prefer that the competitive market be put on the shelf until new transmission infrastructure is in place[88], the current market provides pricing signals that encourage the development of needed new transmission projects such as those referred to by Complainants. Removal of those signals "until new transmission is constructed to increase transfer capability into Connecticut generally and into certain Connecticut sub-regions specifically"[89] will make additional transmission projects unlikely, as pricing incentives would be largely removed. Further, having addressed this issue previously, the Commission denied the request to delay the implementation of LMP in New England pending a resolution to Connecticut's transmission constraints, stating that "delaying LMP would delay the benefits to New England of sending more accurate price signals about the costs of delivering electricity to the various locations in that area."[90] Moreover, it is not clear from the complaint what an "adequate transmission infrastructure" warranting a return to competition would look like. Thus, although we find that Connecticut's transmission infrastructure is deficient, we do not agree with the Complainants that this fact validates the elimination of the competitive market in Connecticut. Rather, we note that the impending Phase I and Phase II transmission projects and CT DPUC's RFP program to encourage new generation and demand response programs are likely a result of accurate pricing under LMP, and through the reduction of congestion costs, will have a beneficial effect on future pricing in this market.

81. Importantly, under a market-based system, price signals for the construction of non-gas generation exist, and there are no market rules in place that would prevent these units from being constructed. Further, as Dominion notes, ISO-NE recently stated that “greater fuel diversity would reduce (New England’s) vulnerability to gas availability problems.”[91] The fact that low variable cost coal and nuclear baseload units are earning

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[88] Phase I & Phase II of the transmission projects in Southwest Connecticut are currently scheduled for completion in 2009-2010.

[89] Complaint at 5.

[90] *See New England Power Pool,* 101 FERC ¶ 61,344 (2002).

[91] ISO-NE, Final Report on Electricity Supply Conditions in New England During the January 14-16, 2004 “Cold Snap” at 11 (October 12, 2004).

inframarginal revenues does not speak to the competitiveness of this market. These revenues provide incentives for existing generators to reduce their marginal costs and improve overall efficiency and for new, low cost generation to locate in congested areas. Further, we agree with DENA that any increases in inframarginal revenues attributable to either the PUSH mechanism or RMR contracts largely reflect the true cost of relying on older, inefficient generation for reliability, rather than investing in transmission upgrades that would eliminate the need for these mechanisms. The Complainants have not demonstrated that these inframarginal revenues, which are the natural result of a uniform clearing price auction where there are some low-cost supplies and other higher-cost supplies (regardless of coincident RMR contracts), results in unjust and unreasonable rates in this market.

82. Short-term vs. Long-term Market Performance. Stating "on information and belief" that the coal and nuclear baseload units identified in the complaint are earning excessive inframarginal revenues while other units are under cost-of-service RMR contracts or under PUSH bidding, the complaint fails to establish what competitive pricing in this market should look like, including what infrastructure would be necessary prior to returning to a competitive market. Instead, the complaint takes a snapshot of the market in Connecticut at a specific point in time and claims that the baseload units in the market are earning excessive revenues and should be held to RMR cost-of-service rate recovery, so as to save Connecticut ratepayers approximately $1 billion during the next twelve months.[92]

83. While it may be true that the proposal might benefit Connecticut ratepayers on a short term basis, such measures defeat the purpose of single price auctions and competitive markets, the intent of which are to establish just and reasonable rates over the long term that reflect the marginal cost of competitive generation in this market. Complainants' argument, however, is based on only a single point in time and makes numerous assumptions about the actual cost-of-service values for the highlighted units. For example, we note that the Complainants' $1 billion savings analysis was based on an assumed average LMP of $90/MWh, while the average day-ahead LMP for 2006 year-to-date is approximately $70/MWh. Importantly, there have been several periods during the eight years since Connecticut has restructured its power market when mandating a switch to cost-of-service compensation would have resulted in ratepayers paying more than they paid under market-based-rates. As ISO-NE notes, after adjustment for fuel prices,

[92] This "overpayment" estimate is based on forward market prices for round-the-clock power in 2006 of $90/MWh.

wholesale electricity prices have declined by 5.7 percent since its first full year of operations, and New England experienced a price decline of 11 percent from 2001 to 2004.[93]

84. Additionally, at the specific point in time the complaint was filed, natural gas and oil costs had increased dramatically in the aftermath of Hurricane Katrina. Accordingly, several parties note that it is very unlikely that the Complainants would have filed this complaint several years ago when natural gas and oil prices were lower, and capacity charges were essentially non-existent.[94] Moreover, natural gas prices have fallen significantly since last year's highs.[95]

85. When market-based rates exceed cost-based rates, it is not market failure but rather a signal for the construction of new generation and/or transmission, as well as the implementation of demand-side solutions. Over time, addition of these new resources will drive the marginal cost to reliably serve load, and thus LMPs, lower. By seeking an all RMR cost-of-service solution at this time, the complaint ignores the pricing signals of this market and the variability of market returns, seeking only to lock in a short-term solution. As EPSA notes, the proposed solution "would have generators earn cost-based rates precisely during those times of scarcity and transmission constraints when higher, market-based prices should signal investment."[96] In addition, mandating a switch to cost-of-service compensation stifles efficiency and creates tremendous regulatory uncertainty. As Dominion notes, the complaint sends a signal to the market that if capital is put at risk and the investment proves to be successful, the investor can expect to face challenges seeking to limit it to a cost-of-service level of return.[97] Other parties also question the

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[93] ISO-NE White Paper, *Progress of New England's Restructured and Electric Industry and Competitive Markets, The Benefits of ISOs and RTOs,* April 2005.

[94] As discussed above, ISO-NE notes that prices for natural gas and No. 6 oil, which are on the margin for a majority of the time in New England, rose 97 percent and 66 percent, respectively, between 2000 and 2005. *See* 2005 Annual Markets Report at 44, 64.

[95] *See, e.g.,* Energy Information Administration, Short-Term Energy Outlook, *available at* http://tonto.eia.doe.gov/steo_query/app/pricepage.htm#Natural%20Gas (showing a significant decrease in the cost of natural gas to electric utilities since September 2005).

[96] *See* Answer of EPSA at 6.

[97] Answer of Dominion at 31.

effect that the abandonment of competitive markets will have upon new investment; the CT DPUC, for example, "does not agree . . . that the best manner to remedy this situation is to abandon market-based approaches."[98] We share the concerns raised by these parties; while Complainants assume that new entry by generators would continue under their proposed remedy, limiting revenues and muting the price signals of the market through an "all-RMR" solution would likely inhibit new entry.

86. While the Complainants label the current situation a "higher of" market-based or cost-of-service construct, several parties view the complaint's proposed remedy as an attempt to mandate the "lower of" market-based or cost-of-service rates for generators. For example, DENA notes that by requesting the suspension of market-based returns in Connecticut until transmission infrastructure is in place, the Complainants seek to allow market-based returns for generators only when no transmission constraints exist. DENA states that it is likely when no constraints exist that a surplus of capacity will be available and market-based prices would be lower than cost-based rates.[99] Essentially, the Complainants wish to have market-based rates when a surplus of capacity exists, and cost-based rates when market prices reflect congestion, scarcity, or even that fuel diversity is needed. We agree with respondents and reject the notion expressed in the complaint that markets are only just and reasonable if they mandate the lower of cost-based rates or market-based rates. LMPs are supposed to send proper price signals over the long-term and should not be rescinded each time that market prices might be greater than cost-based-rates, especially at a time when increased natural gas prices and tight supplies are a primary reason for the relatively high energy market prices. LMPs are designed to reflect the hour-to-hour value of an additional megawatt of supply or conservation. Such a market-based value has no specific relationship to a traditional cost-of-service rate which does not vary to reflect ever-changing market conditions.

87. Further, Complainants' proposal ignores the superior long-term capacity market solution now represented by the FCM settlement, which is supported by the vast majority of the intervenors and two of the four parties to this complaint, along with the CT DPUC.[100] Addressing the original capacity market proposal in their complaint, the Complainants argue that "LICAP will not cure the fundamental flaws" of the wholesale electric market in Connecticut because "neither the LICAP proposal nor any Commission order to date on that proposal has precluded the use of, or form of, RMR contracts for generators deemed 'needed' for reliability once LICAP goes into effect."[101] Under the

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[98] Answer of CT DPUC at 7, 11.

[99] See Answer of DENA at 13.

[100] CT OCC and CMEEC were both parties to the FCM Settlement.

[101] Complaint at 9.

FCM Settlement the current RMR agreements in place in New England will terminate in June 2010 at the beginning of the first commitment period under the FCM. During the period of transition payments, the transition payments will be netted against RMR revenues, protecting against over-recovery. Furthermore, as stated previously, the Settlement Agreement explicitly states that participants do not waive their rights to challenge the need for RMR contracts, given changes in a generator's compensation or changes to system infrastructure. Regarding future RMR contracts (during the transition period and after the FCM market is operational), we agree with ISO-NE that "to the greatest extent possible, RMR contracts should be eliminated" and that market rules should be revised through the stakeholder process to reflect a stricter standard for application.[102]

88. Unit-by-Unit RMR Agreement Analysis. Complainants also argue that the Commission's allowance of a unit-by-unit analysis of eligibility for RMR agreements has allowed generation owners to place only certain units under RMR contracts while allowing other units to remain in the market, contributing to the unjust and unreasonable situation they assert exists in Connecticut. The Commission has already addressed these contentions in the *PSEG Power Connecticut, LLC* proceeding,[103] and Complainants offer no new arguments that persuade us to revisit our conclusions in that docket. In *PSEG*, the Commission noted that generating stations may contain units of varying ages and with different operated characteristics, and that owners often make decisions on a per-unit basis.[104] The Commission also explained that even during the era when utilities generally provided bundled services it was not uncommon for particular services to be offered from particular units.[105] The Commission also emphasized that in situations where only certain units of a station are included in a cost-of-service RMR contract, unit costs must be allocated correctly.[106] For the same reasons expressed in the *PSEG* cases, we reject Complainants' arguments in this regard.

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[102] See Answer of ISO-NE at 7, 41.

[103] *See supra* note 9.

[104] *See* 110 FERC ¶ 61,020 at P 33; 111 FERC ¶ 61,441 at P 29-31.

[105] *See* 111 FERC ¶ 61,441 at P 31, *citing Central Maine Power Co.*, 57 FERC ¶ 61,083 at p. 61,304 (1991) and *Indiana & Michigan Electric Co.*, 10 FERC ¶ 61,295 at pp. 61,590-92 (1980).

[106] *See* 110 FERC ¶ 61,020 at P 34; 111 FERC ¶ 61,441 at P 32.

The Commission orders:

Complainants' complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A – Intervenors

AES Eastern Energy, L.P.
American Public Power Association
Central Maine Power Company
Connecticut Department of Public Utility Control
Consolidated Edison Energy, Inc.
Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., FPL Energy, LLC, Mirant Americas Energy Marketing, LP ("Mirant Americas"), Mirant New England, LLC, Mirant Canal, LLC, Mirant Kendall, LLC, PPL EnergyPlus, LLC, and PPL Wallingford Energy LLC.
Dominion Energy New England, Inc., Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing II, L.L.C., and Dominion Energy Marketing, Inc.
Duke Energy North America, LLC
Electric Power Supply Association
Electricity Consumers Resources Council, Multiple Intervenors and the NEPOOL Industrial Customer Coalition
Entergy Nuclear Generation Company, LLC and Entergy Nuclear Vermont Yankee, LLC
Exelon Corporation
Lake Road Generating Company, L.P.
Long Island Power Authority and LIPA
Maine Public Utilities Commission
Office of the Massachusetts Attorney General
Milford Power Company, LLC
National Grid USA
New England Power Pool Participants Committee
New York Independent System Operator, Inc.
Public Service Commission of the State of New York
NRG Power Marketing, Inc., Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC
NSTAR Electric & Gas Corporation
PJM Interconnection, L.L.C.
PSEG Power Connecticut LLC and PSEG Energy Resources & Trade LLC
United Illuminating Company
Vermont Department of Public Service