

123 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc.

Docket No. ER05-715-003

ORDER DENYING REHEARING

(Issued April 17, 2008)

1. In this order, the Commission denies rehearing of its February 21, 2008 Order¹ in which it explained the basis for the Commission's jurisdiction over the filing at issue in this proceeding – ISO New England, Inc.'s (ISO-NE) Power Year 2005/2006 Installed Capacity Requirements (ICR) for the New England Control Area.

Background

2. For over 20 years, ISO-NE has imposed ICRs on its members in order to maintain adequate system reliability.² The ICR is a projection of the minimum amount of capacity required to serve load reliably in the New England region. The ICR is used to determine the monthly unforced capacity (UCAP) requirements (with various adjustments) that each market participant must purchase. ISO-NE calculates the ICR to meet system design criteria with a Loss of Load Expectation of one day in ten years. To meet their UCAP obligations, market participants must self-supply, purchase UCAP through bilateral transactions, or obtain capacity credits from tie-line benefits, or they must make up any deficiencies in the ISO-NE administered installed capacity market. The ICR directly affects the determination of the clearing price in the capacity market and so affects the charges to customers. If a market participant does not have or acquire sufficient capacity, it must pay a deficiency rate.

¹ *ISO New England, Inc.*, 122 FERC ¶ 61,144 (2008).

² Prior to the existence of the ISO-NE the requirements were imposed on the members of the New England Power Pool (NEPOOL), and the ICR was then called NEPOOL's Objective Capability (OC).

3. On March 21, 2005, as supplemented on April 1, 2005, ISO-NE filed its ICR for the 2005/2006 Power Year. The Connecticut Department of Public Utility Control (CT DPUC) protested the substance of the ICR and also argued that the Commission does not have jurisdiction to regulate resource adequacy, a matter the CT DPUC argued that the Federal Power Act (FPA) leaves to the states. The Commission accepted ISO-NE's 2005/2006 Power Year ICR with modifications.³ On appeal, the U.S. Court of Appeals for the District of Columbia Circuit, without addressing the merits, remanded the issue of jurisdiction to the Commission for an explanation of the basis for the Commission's jurisdiction.⁴ In the February 21 Order, the Commission explained the basis of its jurisdiction.

4. On February 28, 2008, the CT DPUC sought rehearing of the Commission's February 21, 2008 Order. The CT DPUC's request for rehearing is for the most part identical to the request for rehearing it filed in Docket No. ER07-655-001, the ISO-NE 2007/2008 Power Year ICR proceeding. The CT DPUC has raised the same argument, that the Commission lacks jurisdiction over ICR, in response to two other ISO-NE filings. The first of those proceedings involved ISO-NE's filing a tariff change in Docket No. ER07-365 to revise the processes and methodologies used to determine ICR. In response to that filing the Commission accepted the tariff changes and explained the basis of its jurisdiction.⁵ The CT DPUC has appealed that decision.⁶ The second of those proceedings involved ISO-NE's just-noted filing in Docket No. ER07-655 of its 2007/2008 Power Year ICR. The Commission accepted the ISO-NE's 2007/2008 Power Year ICR, and again explained the basis of its jurisdiction.⁷ The CT DPUC has also appealed that decision.⁸

³ *ISO New England, Inc.*, 111 FERC ¶ 61,185, *reh'g denied*, 112 FERC ¶ 61,254 (2005).

⁴ *Connecticut Department of Public Utility Control v. FERC*, 484 F.3d 558 (D.C. Cir. 2007).

⁵ *ISO New England, Inc.*, 118 FERC ¶ 61,157, *reh'g denied*, 120 FERC ¶ 61,234 (2007).

⁶ *Connecticut Department of Public Utility Control v. FERC*, No. 07-1375 (D.C. Cir. filed September 19, 2007).

⁷ *ISO New England, Inc.*, 119 FERC ¶ 61,161, *reh'g denied*, 121 FERC ¶ 61,125 (2007).

⁸ *Connecticut Department of Public Utility Control v. FERC*, No. 07-1460 (D.C. Cir. filed November 13, 2007).

5. On March 20, 2008, Richard Blumenthal, Attorney General for the State of Connecticut (CT AG) also filed for rehearing of the February 21, 2008 Order. The CT AG states that it adopts and supports the CT DPUC's request for rehearing.

6. On March 14, 2008, ISO-NE filed a motion for leave to answer and an answer to the CT DPUC's request for rehearing. ISO-NE asks the Commission to deny rehearing. On March 17, 2008, the New England Power Pool Participants Committee filed a motion for leave to answer and an answer to the CT DPUC's request for rehearing. The New England Power Pool Participants Committee urges the Commission to deny rehearing.

Discussion

Procedural Matters

7. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2007), provides that the Commission will not permit answers to requests for rehearing. We will accordingly reject the answers filed by ISO-NE and the New England Power Pool Participants Committee.

Denial of Rehearing

8. As noted above, CT DPUC's request for rehearing of the February 21, 2008 Order, which the CT AG adopts, is virtually a verbatim repetition of its request for rehearing filed in Docket No. ER07-655-001, the ISO-NE 2007/2008 Power Year ICR proceeding.⁹ We accordingly will deny rehearing in this proceeding for the same reasons rehearing was denied in Docket No. ER07-655-001.¹⁰

The Commission orders:

(A) ISO-NE's and the New England Power Pool Participants Committee's answers to the CT DPUC's request for rehearing are hereby rejected.

⁹ The ICR values established in this proceeding, which addresses the 2005/2006 Power Year ICR, pre-date the implementation of New England's Forward Capacity Market (FCM); the FCM is relevant to the 2007/2008 Power Year ICR proceeding, but not relevant to the instant proceeding, the 2005/2006 Power Year ICR proceeding. Thus, insofar as CT DPUC's request for rehearing in this proceeding makes arguments referencing FCM, they are not relevant to this proceeding.

¹⁰ *ISO New England Inc.*, 121 FERC ¶ 61,125 (2007).

(B) CT DPUC's and CT AG's requests for rehearing are hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.