

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

December 19, 2005

In Reply Refer To:
Devon Power LLC
Docket No. ER03-563-030

Sherry A. Quirk, Esq.
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Dear Ms. Quirk:

1. On December 13, 2005, ISO New England Inc. (ISO-NE) filed a motion requesting an extension of time to submit a compliance filing in response to the Commission's October 21, 2005 Interim Order in this proceeding.¹ As discussed below, the Commission grants ISO-NE's motion for extension of time.
2. In these proceedings, the Commission is considering a proposal by ISO-NE to implement a locational installed capacity (LICAP) mechanism in New England. In the Interim Order, the Commission provided the parties with additional time to develop alternatives to the LICAP mechanism for consideration by the Commission. In particular, the Interim Order established settlement judge procedures to guide the process of developing a proposed alternative to LICAP, and directed the parties to file an alternative (if one is developed) by January 31, 2006.²
3. Additionally, the Interim Order stated that in parallel with this stakeholder effort to develop an alternative, the Commission would continue to evaluate the Initial Decision issued on June 15, 2005³ and the record in the LICAP proceeding.⁴ To aid in its

¹ *Devon Power LLC*, 113 FERC ¶ 61,075 (2005) (Interim Order).

² *Id.* at P 7-9.

³ *Devon Power LLC*, 111 FERC ¶ 63,063 (2005) (Initial Decision).

⁴ Interim Order at P 10.

consideration of the Initial Decision, the Commission provided ISO-NE with an opportunity to make a compliance filing detailing its proposal to include within the LICAP mechanism a “shortage hours adjustment” to the payments that capacity resources would receive.⁵ The Initial Decision rejected this proposal, but “saw promise in the [s]hortage [h]ours approach.”⁶

4. In its motion for extension of time, ISO-NE requests that the Commission extend the time by which it must make the shortage hours compliance filing to the earlier of (1) ten days after the ongoing settlement judge discussion are terminated, or (2) February 10, 2006. ISO-NE states that good cause exists to grant this extension of time. ISO-NE notes that it is currently developing enhancements and alternatives to address the concerns expressed at the hearing regarding the shortage hours mechanism, and states that it hopes to address these concerns within the New England Power Pool (NEPOOL) stakeholder process prior to submitting a compliance filing. ISO-NE also states that its experts are focused on the development of alternatives to LICAP in the settlement procedures established by the Commission, and would need to divert resources away from these efforts to complete its compliance filing by the date established in the Interim Order. Finally, ISO-NE argues that litigating a compliance filing on its shortage hours proposal at this time would not be conducive to the settlement process.

5. On December 13, 2005, the Commission issued a notice shortening the time to answer ISO-NE’s motion to December 16, 2005. The Massachusetts Department of Telecommunications and Energy and NSTAR Electric and Gas Corporation filed answers in support of the motion. The NEPOOL Participants Committee filed an answer taking no position on the motion, and stating that it fully supports the commitment of ISO-NE to receive stakeholder input on the shortage hours compliance filing before submitting it to the Commission. Capacity Suppliers⁷ filed an answer stating that while they do not oppose the motion they are concerned about the possibility of a further delay in the implementation of “a workable capacity market.”⁸ They assert that ISO-NE’s motion, by

⁵ See Interim Order at P 11-13. For a description of ISO-NE’s proposal, see generally Initial Decision at P 440-41.

⁶ Initial Decision at P 555.

⁷ Capacity Suppliers are: Mystic Development, LLC, Mystic I, LLC, Fore River Development, LLC, FPL Energy, LLC, Mirant Americas Energy Marketing, LP, Mirant New England, LLC, Mirant Kendall, LLC, Mirant Canal, LLC, Entergy Nuclear Generation Company, LLC, Entergy Nuclear Vermont Yankee, LLC, ANP Funding I, LLC, Calpine Energy Services, L.P., Calpine Eastern Corporation, Consolidated Edison Energy, Inc., Dominion Resources, Inc., Dominion Nuclear Connecticut, Inc., Dominion Energy Marketing, Inc., Exelon Generation Company, LLC, Exelon New Holdings, LLC and Select Energy.

⁸ Answer of Capacity Suppliers at 1.

stating that it is developing “enhancements and alternatives” to the shortage hours proposal, suggests that its filing will propose a completely new availability metric and not just provide additional information on the shortage hours proposal as the Commission invited it to do in the Interim Order. Capacity Suppliers express concern that the filing of this new proposal will delay the implementation of the LICAP mechanism.

6. TransCanada Power Marketing Ltd (TransCanada) filed an answer opposing the motion for extension of time. Like Capacity Suppliers, it states that ISO-NE’s motion suggests that it will file an alternative to the shortage hours approach, instead of a compliance filing detailing the shortage hours approach it proposed at the hearing. TransCanada argues that the Commission should deny the motion for extension of time, because ISO-NE seeks additional time to make a filing that does not comply with the filing the Commission invited ISO-NE to submit in the Interim Order. Further, it asserts that accepting the compliance filing ISO-NE contemplates in its motion would be inconsistent with Commission policy, which provides that compliance filings may not contain materials or address matters not directed by the Commission.⁹ According to TransCanada, ISO-NE must file any new shortage hours mechanism under section 205 of the Federal Power Act after going through the NEPOOL stakeholder process. Therefore, according to TransCanada, the Commission should reject the motion for extension of time and decline to consider an alternative to ISO-NE’s proposed shortage hours approach in this case.

7. On December 19, 2005, ISO-NE filed an answer to the answers of Capacity Suppliers and TransCanada. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁰ prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept ISO-NE's answer and will, therefore, reject it.

8. The Commission grants the motion for extension of time. We agree with ISO-NE that it should continue to devote its resources to the settlement procedures established in the Interim Order, and that litigating the shortage hours proposal at this time could negatively impact the settlement process. TransCanada’s assertion that ISO-NE is seeking additional time to make an inappropriate compliance filing is premature. The Commission will consider whether ISO-NE’s compliance filing is appropriate and meets the requirements of the Interim Order when it is filed.

⁹ Answer of TransCanada at 3-4.

¹⁰ 18 C.F.R. § 385.213(a)(2) (2005).

9. Accordingly, should ISO-NE take the opportunity to make a compliance filing on its shortage hours proposal as set forth in the Interim Order, it should do so by the earlier of (1) ten days after the ongoing settlement judge discussion are terminated, or (2) February 10, 2006.

By direction of the Commission.

Magalie R. Salas,
Secretary.