

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Wallingford Energy LLC and
PPL EnergyPlus, LLC

Docket No. ER03-421-010

ORDER ON CLARIFICATION

(Issued July 27, 2006)

1. In this order, the Commission grants clarification of its April 6, 2006 Order on remand¹ in these proceedings, as requested by ISO New England, Inc. (ISO-NE) in its May 5, 2006 motion for clarification. In this order, the Commission clarifies that, subject to the results of the ongoing hearing and settlement judge procedures in this case (and any resulting refund and/or established cost-of-service rate), PPL Wallingford Energy LLC and PPL EnergyPlus, LLC (PPL) is currently eligible for both retroactive and prospective monthly payments associated with its proposed Reliability Must-Run (RMR) Agreement. The Commission will address the remaining requests for rehearing and clarification filed in this proceeding in a subsequent order.

¹ *PPL Wallingford Energy LLC and PPL EnergyPlus, LLC*, 115 FERC ¶ 61,015 (2006) (April 6 Order).

I. Background

2. On January 16, 2003, PPL submitted, under section 205 of the Federal Power Act (FPA),² a proposed RMR Agreement with ISO-NE pertaining to four of the five 45 megawatt (MW) peaking units at its Wallingford Station. PPL stated in its filing that ISO-NE had determined that the units are needed for reliability purposes in Connecticut. PPL and ISO-NE negotiated the RMR Agreement under then-existing Market Rule 17 of the New England Power Pool (NEPOOL) tariff.³

3. The proposed RMR Agreement generally follows the *pro forma* cost-of-service RMR Agreement approved as part of Market Rule 1.⁴ The initial term of the RMR Agreement is one year, from February 1, 2003 to January 31, 2004, with automatic annual extensions unless terminated by notice. Under the RMR Agreement, PPL would submit bids for energy and ancillary services from the units into the New England energy markets using a stipulated bid formula included in the agreement. The RMR Agreement provides for PPL to receive a monthly fixed cost charge from ISO-NE, which is determined using an annual fixed revenue requirement developed for the PPL units. PPL proposed an annual fixed revenue requirement for the four units under the RMR Agreement of \$30.7 million (which represents four-fifths of the \$38.4 million proposed revenue requirement for the Wallingford Station), resulting in a proposed monthly charge of \$2.56 million. Pursuant to the RMR Agreement, any inframarginal revenues earned by the units from the energy markets would be credited against these fixed-cost payments.

4. On February 28, 2003, the Commission issued a deficiency letter requesting additional information from PPL regarding the January 16, 2003 filing. PPL filed an amendment to its filing on March 31, 2003 in response to this letter.

5. Prior to issuing its May 16, 2006 Order in this proceeding, the Commission issued in another proceeding an order on April 25, 2003 that rejected, in part, RMR agreements filed by NRG Power Marketing Inc. for four generating units located in the Connecticut

² 16 U.S.C. § 824d (2000).

³ Market Rule 17 was replaced when the Commission accepted a new comprehensive tariff implementing energy markets and locational marginal pricing in New England, known as Market Rule 1. *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287 (2002).

⁴ *Id.*

and Southwest Connecticut areas.⁵ The Commission also directed ISO-NE to temporarily modify its tariff to include a provision (the Peaking Unit Safe Harbor (PUSH) mechanism) permitting seldom run units in congested areas to raise their energy market bids to levels that would include both variable costs and a fixed cost adder, to give those units opportunities to recover their costs through the market.⁶ The PUSH mechanism was to be in place for a period of one year until the permanent mechanism was put in place on June 1, 2004.⁷

6. In accordance with *Devon I*, on May 16, 2003, the Commission issued an order rejecting PPL's proposed RMR Agreement.⁸ The Commission concluded that the tariff changes it directed in *Devon I* would permit all suppliers, including PPL, to charge higher prices during hours of high demand.⁹ In the December 22 Order, the Commission denied requests for rehearing of the May 16 Order, finding that, to a large extent, the arguments raised on rehearing were addressed in *Devon II*, including whether the PUSH mechanism is just and reasonable.¹⁰

7. In 2004 and 2005, following a report by ISO-NE on the implementation and results of the PUSH mechanism,¹¹ the Commission accepted RMR agreements between

⁵ *Devon Power LLC*, 103 FERC ¶ 61,082 (*Devon I*), order on reh'g, 104 FERC ¶ 61,123 (2003) (*Devon II*).

⁶ *Id.* at P 32-35. Under the PUSH mechanism, such increased bids would be eligible to determine the locational marginal price (LMP).

⁷ *Id.* at P 37.

⁸ *PPL Wallingford Energy LLC*, 103 FERC ¶ 61,185 (May 16 Order), order on reh'g, 105 FERC ¶ 61,324 (2003) (December 22 Order).

⁹ May 16 Order at P 13-14.

¹⁰ December 22 Order at P 9-10.

¹¹ ISO-NE, "A Review of Peaking Unit Safe Harbor (PUSH) Implementation and Results," filed December 3, 2003 in Docket No. ER03-563-025 (PUSH Report). The Commission accepted this report for informational purposes in *Devon Power LLC*, 111 FERC ¶ 61,486 (2005).

ISO-NE and certain generators that could not either adequately recover their costs under the PUSH mechanism or that were ineligible for the PUSH mechanism due to their relatively high capacity factors.¹²

8. On August 9, 2005 the U. S. Court of Appeals for the District of Columbia Circuit issued an opinion remanding this case to the Commission for further proceedings.¹³ In the Remand Order, the court vacated the Commission's orders rejecting PPL's proposed RMR Agreement, concluding that the Commission failed to "respond meaningfully" to three objections raised by PPL during the proceedings before the Commission.

9. On November 29, 2005, PPL submitted a motion for disposition on remand. Subsequently, in the April 6 Order, the Commission conditionally accepted the proposed RMR Agreement and suspended it for a nominal period, subject to refund, and established hearing and settlement judge procedures.

10. In that order, the Commission disagreed with PPL's position that unconditionally granting the RMR Agreement effective February 1, 2003 was the only remedy that was responsive to the court's remand. The Commission ruled that there was not enough evidence in the record to unconditionally accept the RMR Agreement. Noting that it has significant discretion on remand to "reconsider the whole of its original decision,"¹⁴ the

¹² *E.g.*, *Devon Power LLC*, 106 FERC ¶ 61,264 (2004) (*Devon Power*); *Mirant Kendall, LLC and Mirant Americas Energy Marketing, L.P.*, 109 FERC ¶ 61,227 (2004), *order on reh'g*, 110 FERC ¶ 61,272 (2005) ; *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,020, *order on reh'g*, 111 FERC ¶ 61,441, *order on reh'g*, 111 FERC ¶ 63,023 (2005); *Milford Power Company*, 110 FERC ¶ 61,299, *order on reh'g*, 112 FERC ¶ 61,154 (2005); *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 (2006), *reh'g rejected*, 115 FERC ¶ 61,253 (2006); *Consolidated Edison Energy Massachusetts, Inc.*, 112 FERC ¶ 61,263 (2005), *reh'g pending*; *Mystic Development, LLC* 114 FERC ¶ 61,200 (2006), *reh'g pending*; *Pittsfield Generating Company, L.P.*, 115 FERC ¶ 61,059 (2006), *reh'g pending*.

¹³ *PPL Wallingford Energy LLC and PPL EnergyPlus, LLC v. FERC*, 419 F.3d 1194 (D.C. Cir. 2005) (Remand Order).

¹⁴ April 6 Order, *citing Southeastern Michigan Gas Co. v. FERC*, 133 F.3d 34, 38 (DC Cir. 1998); *see also Williams Natural Gas Co. v. FERC*, 872 F.2d 438, 450 (DC Cir. 1989) (noting that the Commission "retains wide discretion on remand.")

Commission required PPL to provide additional support for the proposed RMR Agreement that was not included in the previous record.¹⁵ In particular, the Commission stated that the record lacked convincing evidence regarding the extent of PPL's failure to recover its costs in the market, both historically and prospectively.¹⁶ The Commission stated that PPL's original January 16, 2003 filing offered little support to demonstrate financial need for the proposed RMR Agreement on the basis of past losses (prior to the filing of the RMR Agreement), and that it was not clear whether the costs and revenues PPL expects to incur warranted an RMR agreement. Accordingly, the Commission set for hearing and settlement judge procedures the issue of whether the RMR Agreement is needed to ensure that the PPL Wallingford units remain available to ISO-NE to maintain reliability.

11. Assuming that PPL sufficiently demonstrates need for the RMR Agreement at the hearing, the Commission also set for hearing and settlement judge procedures the cost-of-service under the RMR Agreement. The Commission stated that PPL's actual annual revenues (earned both before and after the period in which PPL submitted stipulated bids and including Forward Reserve Market revenues) can be compared to the actual costs for these units to determine any amounts due to PPL, or that PPL must credit to ratepayers.¹⁷

II. Procedural Matters

12. On May 5, 2006, ISO-NE filed the motion for clarification and request for shortened response period and expedited action that is the subject of this order. On May 15, 2006, Connecticut Parties¹⁸ filed an answer to ISO-NE's motion for clarification. On May 22, PPL filed an answer to ISO-NE's motion.

13. Additionally, on May 8, 2006, Connecticut Parties filed a request for rehearing and motion for clarification of the April 6 Order, and PPL filed a request for rehearing of

¹⁵ *Id.* at P 22.

¹⁶ *Id.* at P 23.

¹⁷ *Id.* at P 34.

¹⁸ Connecticut Parties are the Attorney General for the State of Connecticut, Connecticut Department of Public Utility Control, Connecticut Municipal Electric Energy Cooperative, and Connecticut Office of Consumer Counsel and Northeast Utilities Service Company, on behalf of its operating affiliate, The Connecticut Power and Light Company.

that order and request for expedited action. As noted above, the Commission will address those pleadings in a subsequent order.

II. Discussion

A. Motion for Clarification

14. ISO-NE asks that the Commission clarify: (1) whether ISO-NE should start making compensatory payments to PPL for periods predating the April 6 Order in the next possible monthly settlement; (2) if it is the Commission's intention that payments for the past period, including those for the non-stipulated bid periods, are to begin now, including those for the non-stipulated bid periods in April and May, what method should be utilized for calculating the revenue credit to be applied for these periods; and (3) whether such payments for past periods should include interest.¹⁹

15. ISO-NE states that while the April 6 Order directs that the RMR Agreement is retroactively effective as of February 1, 2003, subject to refund, it is not clear if the Commission intended ISO-NE to begin compensating PPL for payments during periods predating the April 6 Order before the end of the proceeding. ISO-NE asserts that the order implies that, while the agreement is subject to refund and retroactively effective as of February 1, 2003, payments for the period predating the Commission's order will be determined by the Commission at a later time, and thus payments for the past period should not commence immediately. Therefore, ISO-NE asks that the Commission clarify whether it intended that payments for the period prior to the April 6 Order should begin before the appropriate amount of compensation for that period is determined in the hearing and settlement judge procedures.²⁰

16. If the Commission concludes that payments for the past period should commence in the next possible settlement period, ISO-NE requests that the Commission clarify the method for calculating payments to PPL or refunds to customers. ISO-NE notes that: (1) of the four PPL units seeking the proposed RMR Agreement, one unit began stipulated bidding on April 14, 2006; and (2) the remaining three units, which were obligated in the Forward Reserve Market at the time that ISO-NE filed its motion, planned to begin stipulated bidding on or after June 1, 2006. Therefore, ISO-NE proposes the following periods for calculating revenue credits related to past payments: (1) for the unit that began Stipulated Bidding on April 14, 2006, past payments would be

¹⁹ Motion for Clarification at 1.

²⁰ *Id.* at 3.

calculated from February 1, 2003 to April 13, 2006; and (2) for the remaining three units, past payments would be calculated from February 1, 2003 to the later of June 1, 2006 or the date on which PPL resumes submitting stipulated bids according to the Schedule 1 formulary rates in the RMR Agreement for all four units.²¹ ISO-NE argues that this unit-specific approach is consistent with the Commission's apparent intent in the April 6 Order to utilize actual cost data for calculations during the entire period from February 1, 2003 April 6, 2006 (the date of the Commission's order).²² ISO-NE also contends that this approach provides an appropriate method to address the different units' starting dates for stipulated bidding, and provides sufficient time over which payments for the prior period can be phased in without immediately imposing large payment obligations on load.

17. Finally, ISO-NE notes that unlike previous orders, the April 6 Order does not explicitly state whether payments for the past period should include interest.²³ According to ISO-NE, the Commission's statement in the April 6 Order that it was "not ruling on PPL's proposed procedure for implementing the RMR Agreement" combined with the absence of an explicit approval of interest for the past period raises the question of whether any compensation ultimately provided for the past period should include interest.

B. Answers

18. PPL argues that the Commission should direct ISO-NE to begin payments to PPL for both the pre-April 6 period and the period after. PPL contends that the FPA does not authorize the Commission to make a rate effective (as it did in the April 6 Order), but withhold payments under the rate. It notes that consistent with the FPA, the Commission has previously conditionally accepted RMR agreements, subject to refund, thereby triggering ISO-NE's payment obligations.²⁴ PPL also states that the refund obligation will fully protect customers if its cost-of-service is reduced as a result of the hearing and settlement judge procedures.

²¹ *Id.* at 5.

²² *Id.*, citing April 6 Order at P 34 (stating that actual costs and revenues for the PPL units from February 1, 2003 to the date of the order are known, and can be compared to determine any amounts due to PPL, or that PPL must credit to ratepayers).

²³ Motion for Clarification of ISO-NE at 6, citing *Devon Power LLC v. ISO New England Inc.*, 112 FERC ¶ 61,097 at P 21 (2005).

²⁴ Answer of PPL at 4 (citations omitted).

19. With regard to the method for calculating the revenue credit for the period before the April 6 Order, PPL states that it is willing to agree to the revised approach proposed by ISO-NE in its motion for clarification, provided it promptly receives payment for all amounts due both retroactively and prospectively. PPL also argues that the Commission should clarify that payments made by ISO-NE to PPL must include interest. PPL contends that the Commission's standard practice (upheld by the courts) is to require interest, noting that the Commission required interest pursuant to rule 35.19 of the Commission's regulations for compensation under an RMR agreement in *Devon Power LLC v. ISO New England Inc.*²⁵

20. Connecticut Parties argue in their answer that the April 6 Order is clear that ISO-NE has no immediate obligation to begin making payments to PPL. First, they contend that because the Commission conditionally accepted the RMR Agreement and made it effective "assuming need is established in the hearing and settlement judge procedures," payments for the prior period could only begin if the Commission makes the finding that need has been established.²⁶ Further, Connecticut Parties note that the Commission did not rule in the April 6 Order on the methodology for calculating retroactive payments that PPL proposed in its motion for disposition on remand, instead setting such issues for hearing and settlement judge procedures. They also note that the Commission required PPL to file an updated cost-of-service. As a result, Connecticut Parties argue that the Commission has no basis on which to find that ISO-NE has an immediate obligation to begin payments to PPL.

21. Connecticut Parties also argue that for the Commission to address the merits here and determine that immediate payments should begin, it must resolve uncertainties regarding both whether any retroactive payments are appropriate for the pre-April 6 Order and the correct net amount of such payments. According to Connecticut Parties, even if financial and reliability need for the RMR Agreement are established, it will still be necessary to determine whether PPL actually provided reliability benefits under the agreement during the pre-April 6 period.²⁷ They also assert that the fact that PPL did not use stipulated bids during the period from February 1, 2003 to the April 6 Order presents

²⁵ 112 FERC ¶ 61,097 at P 21.

²⁶ Answer of Connecticut Parties at 4, *citing* April 6 Order at P 22.

²⁷ Connecticut Parties also contend that the Commission erred in the April 6 Order by granting waiver of the 60-day notice requirement, and as a result payments for the period between February 1 and March 16, 2003 must be refunded in full.

unique complications and substantial uncertainty regarding the calculation of offsetting revenues that can only be resolved through the hearing and settlement judge procedures, making it appropriate to defer payments until after those issues are resolved. Finally, Connecticut Parties argue that the size of the retroactive payment PPL seeks (approximately \$100 million) presents additional concerns, especially since PPL, as a limited liability corporation, will likely pass these payments through to its corporate partners and affiliates, leaving it unable to make refunds if ordered by the Commission. They also suggest that making this large sum payment now is not necessary, since PPL has not claimed an immediate need for the funds to maintain reliability.

22. Connecticut Parties state that if the Commission decides that retroactive payments should begin now, the method of payment used by ISO-NE should reflect the difference between actual revenues and actual costs. As a starting point, Connecticut Parties assert that PPL's updated cost-of-service should be used, along with supplemental data obtained through discovery pursuant to hearing and settlement judge procedures. Using actual costs is imperative if RMR payments are based on PPL's full cost-of-service, according to Connecticut Parties, because that cost-of-service is very high in the test year used in PPL's application.²⁸ They also contend that retroactive payments should be adjusted for any penalties for nonperformance that would have been assessed under the RMR Agreement, based on the assumptions in ISO-NE's reliability assessment of the PPL units (which notes an average failure of one-third of the units to respond when called). Further, Connecticut Parties argue that the payments should be adjusted for the increase in LMP caused by PPL's submission of higher PUSH bids instead of stipulated bids during significant portions of the retroactive period. Finally, they assert that ISO-NE should credit the increased revenues received by PPL's Unit 1 (which is not under the RMR Agreement) as a direct result of PUSH bidding by the four units under the RMR Agreement.

23. Connecticut Parties also state that PPL is not entitled to interest payments and has not provided justification for interest. They note that the Commission has discretion on whether to order payment of interest when it fashions a remedy to correct legal error.²⁹ They argue that the Commission should exercise its discretion and not order interest in this case because it will be impossible to restore the status quo ante for all parties, given

²⁸ Answer of Connecticut Parties at 10-11.

²⁹ *Id.* at 13, citing *Exxon Co. v. FERC*, 182 F.3d 30, 48 (D.C. Cir. 1999), and *Texas Eastern Transmission Corp.*, 69 FERC ¶ 61,064 (1994).

the difficulties in determining what markets rates customers would have paid for energy if PPL had submitted stipulated bids for the entire retroactive period and in determining how PPL would have performed under the RMR Agreement.³⁰ Connecticut Parties state that, in any event, there is no reason to order interest now, since the Commission can order interest later if the facts established at hearing show that interest is an appropriate equitable remedy on some or all of PPL's cost-of-service.

C. Commission Determination

24. In the April 6 Order, the Commission ruled that it is not clear whether the PPL units had failed to recover their costs prior to filing the RMR Agreement, nor is it clear whether the costs and revenues PPL expects to incur warrant an RMR agreement. Therefore, the Commission required that the issues of financial need be resolved at hearing.³¹ As we stated in the April 6 Order, the Commission's standard for approval of RMR agreements is whether, absent an RMR contract, the facility will be unavailable to provide reliability service.³² If the hearing determines PPL's need for the RMR Agreement, then the hearing and settlement judge procedures shall address the cost-of-service under the RMR Agreement.

25. The Commission agrees with ISO-NE's proposed two-period methodology for RMR Agreement payments, as discussed below. Further, the Commission clarifies that retroactive payments should be made to PPL beginning with the next possible settlement period, with interest, subject to refund. The Commission realizes that these refunds will likely need to be adjusted in the future through some form of true-up mechanism, depending on whether the hearing determines that an RMR Agreement is necessary, and if so, based on the final cost-of-service rate. Further, if the hearing determines that the PPL units are not eligible for the proposed RMR Agreement, then PPL will be required to refund all RMR payments that it receives, with appropriate interest.

26. Specifically, we direct ISO-NE to begin making retroactive payments for the following periods and units: (1) for the unit that began stipulated bidding on April 14, 2006, past payments are to be calculated from February 1, 2003 to April 13, 2006 using

³⁰ *Id.* at 13-14, citing *Consumer Fed'n of Am. v. FPC*, 515 F.2d 347, 359 (D.C. Cir. 1975) (“While full refund under an invalid order is a sound basic rule, it may be offset, at least in part, by the lack of a mechanism to restore the full status quo ante.”)

³¹ April 6 Order at P 30.

³² *Id.* at P 28.

the cost-of-service rate proposed by PPL; and (2) for the remaining three units, past payments are to be calculated from February 1, 2003 to the later of either June 1, 2006 or the date on which PPL resumes submitting stipulated bids according to the formulary rates in the RMR Agreement for all four units using the cost-of-service rate proposed by PPL.

27. In addition, we direct ISO-NE to make the monthly fixed cost payment for the PPL unit that began stipulated bidding on April 14, 2006, using the cost-of-service rate proposed by PPL, and subject to refund. When the other three PPL units begin making stipulated bids into the ISO-NE market, ISO-NE is directed to make the monthly fixed cost payment to PPL using the cost-of-service rate proposed by PPL, also subject to refund. These monthly fixed cost charge payments are to be net of all revenues from the four units seeking RMR treatment (both for the retroactive period and the prospective period where these units will offer stipulated bids). For the pre-April 6 period, during which time these units offered stipulated bids only from the time PPL filed the proposed RMR Agreement to the time the Commission rejected the proposed RMR Agreement, ISO-NE should net all revenues (including Operating Reserves revenue) from these four units as if they were actually offering stipulated bids during the entire time period. Further, for both the retroactive period and the prospective period, these revenues are to include: (1) revenues resulting from clearing prices in excess of each unit's stipulated bid costs; (2) any installed capacity (ICAP) revenues (or any subsequent transition payment revenues³³); and (3) other revenues from the units. Permitting ISO-NE to provide monthly fixed cost payments subject to refund is consistent with other RMR agreements that were conditionally accepted and set for hearing and settlement judge procedures to determine issues of need.³⁴

³³ On June 16, 2006, the Commission issued an order accepting a proposed settlement agreement to establish a Forward Capacity Market in New England. *Devon Power LLC*, 115 FERC ¶ 61,340 (2006). Part of that settlement agreement provides for transition payments to capacity resources during the transition period from December 1, 2006 to June 1, 2010.

³⁴ See, e.g., *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077, *reh'g denied*, 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 (2006); *Consolidated Edison Energy Massachusetts, Inc.*, 112 FERC ¶ 61,263 (2005), *reh'g pending*.

28. If the hearing determines that the RMR Agreement is not necessary, PPL will be required to make refunds as appropriate. If the hearing determines that the RMR Agreement is necessary for these units to remain available to provide reliability service and determines a cost-of-service rate different than the rate originally proposed by PPL, all payments already received by PPL will be subject to that just and reasonable cost-of-service rate. Therefore, all payments, either retroactive based on ISO-NE's two-period methodology or prospective payments based on stipulated bidding must be adjusted (*i.e.*, credited or refunded) based on the cost-of-service rate determined in the hearing.

29. In granting this clarification, we reject Connecticut Parties' contention that payments to PPL may not begin until there is an affirmative finding of need for the RMR Agreement. We agree with PPL that once a rate is put into effect under section 205 of the FPA, the Commission cannot withhold payments under that rate. The Commission may, however, put the rate into effect subject to refund, which we have done in this case. This refund obligation protects ratepayers in the event that the hearing and settlement judge procedures result in a finding that the RMR Agreement is not warranted or that the proposed cost-of-service is too high.

30. We also reject at this time Connecticut Parties' request that the Commission direct ISO-NE to reflect "actual" costs in its payments to PPL for the retroactive period. In the April 6 Order, the Commission set for hearing and settlement judge procedures, assuming the RMR Agreement is found necessary, an accounting for the retroactive period to determine any amounts due to PPL, or that PPL must credit to ratepayers.³⁵ In doing so, the Commission stated that "PPL's actual revenues . . . can be compared to the actual costs."³⁶ As a result, the issue of reflecting actual costs in PPL's payments under the RMR Agreement (assuming the agreement is found necessary) is currently at issue in the hearing and settlement judge procedures. Thus, at this time, it is more appropriate for ISO-NE to use PPL's proposed cost-of-service to make payments for the retroactive period, subject to refund.

31. Finally, the Commission determines that all payments made (*i.e.*, credits or refunds) shall include interest pursuant to 18 C.F.R § 35.19(a) of the Commission's regulations, consistent with Commission precedent.³⁷ We reject Connecticut Parties'

³⁵ April 6 Order at P 34.

³⁶ *Id.*

³⁷ *Devon Power LLC v. ISO New England Inc.*, 112 FERC ¶ 61,097 at P 21 (2005).

contention that interest is not appropriate at this stage of the proceeding. Given the significant amount of time that has passed since February 1, 2003, we believe that it is appropriate to exercise our discretion to include interest. As the Commission has previously stated, the purpose of ordering interest is to make the recipient whole for the time value of money that it otherwise would have received.³⁸ Again, ratepayers are fully protected by the refund obligation imposed by the April 6 Order.

The Commission orders:

The Commission hereby grants clarification as requested by ISO-NE, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³⁸ See, e.g., *HQ Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, 113 FERC ¶ 61,184 at P 40 (2005).