

117 FERC ¶ 61,132
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. and New England Power Pool Docket No. ER06-1465-000

ORDER ACCEPTING TARIFF SHEETS

(Issued October 31, 2006)

1. On September 1, 2006, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) jointly submitted a filing implementing the transition provisions of the Forward Capacity Market (FCM) Settlement Agreement (Settlement Agreement), which was accepted by the Commission in a June 16, 2006 order.¹ ISO-NE and NEPOOL state that the filing is made pursuant to the terms of the Settlement Agreement and pursuant to section 205 of the Federal Power Act (FPA).² ISO-NE and NEPOOL state that the filing contains changes to section III of the ISO-NE Transmission, Markets and Services Tariff (Market Rule 1) necessary to implement the transition period included in the Settlement Agreement, which will commence on December 1, 2006. In this order, the Commission accepts ISO-NE and NEPOOL's filing, effective December 1, 2006.

I. Background

2. In the June 16 Order, the Commission accepted a contested settlement resolving all issues in Docket No. ER03-563-030. In that proceeding, the Commission addressed a proposal by ISO-NE to establish a locational installed capacity (LICAP) mechanism in New England. After proceedings before the Commission and before an Administrative

¹ *Devon Power LLC*, 115 FERC ¶ 61,340 (2006) (June 16 Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006).

² 16 U.S.C. § 824d (2000).

Law Judge, the Commission held oral argument on the LICAP mechanism and alternatives to LICAP, and later instituted settlement procedures to allow the parties to attempt to reach agreement on an alternative to LICAP.³

3. On March 6, 2006, a broad group of the parties in Docket No. ER03-563-030 submitted a proposed settlement containing an alternative to LICAP – the FCM. When fully implemented, the FCM will establish annual auctions for capacity. These auctions will procure capacity three-plus years in advance of the commitment period. The first FCM auction will be held in first quarter of 2008 for the commitment period of June 1, 2010 to May 31, 2011.⁴

4. The Settlement Agreement also contains a transition period prior to the first commitment period of this FCM. During this transition period – which begins December 1, 2006 and ends June 1, 2010 – fixed payments will be made to all installed capacity resources. Under the terms of the Settlement Agreement, the payments are made by load-serving entities holding unforced capacity obligations. The Settlement Agreement also stipulates that the transition payments are to be adjusted downward to account for availability.⁵ The Settlement Agreement requires ISO-NE to file tariff changes to implement the transition period on or before October 1, 2006.

5. In the June 16 Order, the Commission accepted the Settlement Agreement, concluding that as a package, it presented a just and reasonable outcome that is consistent with the public interest. The Commission also analyzed specific issues raised in comments and protests, including issues regarding the transition mechanism.⁶ The Commission concluded that the transition payments, as part of the overall package

³ A more detailed history of Docket No. ER03-563-030 is included in the June 16 Order at P 3-14 and *Devon Power LLC*, 111 FERC ¶ 63,063 at P 2-36 (2005) (Initial Decision).

⁴ For further details on the design of the FCM, *see* June 16 Order at P 15-29.

⁵ This adjustment will be made using a modified equivalent demand forced outage rate (EFORD) measurement. *See id.* at P 31.

⁶ *See id.* at P 74-108.

represented by the Settlement Agreement, “serve as a reasonable transitory mechanism that enables New England to shift to the FCM.”⁷

II. Description of ISO-NE/NEPOOL Filing

6. ISO-NE and NEPOOL jointly submit changes to section III of Market Rule 1 necessary to implement the portions of the Settlement Agreement related to the transition period that commences on December 1, 2006. ISO-NE and NEPOOL present the proposed market rule changes pursuant to the terms of the Settlement Agreement approved by the Commission in the June 16 Order and pursuant to section 205 of the FPA. The changes were approved by the NEPOOL stakeholders with a 100 percent vote of the NEPOOL Participants Committee.

7. The proposed market rules changes terminate the existing Installed Capacity (ICAP) market and replace it with the transition mechanism set forth in the Settlement Agreement. During the transition period all installed capacity resources will receive fixed monthly ICAP payments.

Transition Payments	
Period	Payment (\$/kW-month)
December 1, 2006 - May 31, 2007	\$3.05
June 1, 2007 – May 31, 2008	\$3.05
June 1, 2008 – May 31, 2009	\$3.75
June 1, 2009 – May 31, 2010	\$4.10

These payments will be adjusted downward to account for forced outages. According to provisions of the Settlement Agreement, ISO-NE will adjust those payments using a modified EFORd measurement.

8. Section III.8, which contains the existing ICAP market provisions, will be replaced in its entirety with the proposed market rules changes. The new section III.8 sets forth the rules and procedures associated with transition payments, ICAP resources, commitment periods, operating procedures and requirements, cost allocation of ICAP payments, sanctions, and other provisions.

9. The proposed market rules change presented in the instant filing revise the period during which ICAP resources commit to provide capacity to New England. During the

⁷ *Id.* at P 89.

transition period resources must remain listed⁸ during seasonal periods in order to receive transition payments: the summer period will last from May through October, while the winter period will last from November through April.

10. The proposed market rule changes contain requirements associated with each type of ICAP resource and describe how availability will be measured. Availability measurements will affect the net transition payment received by individual ICAP resources. During the transition period, availability for generating units will be calculated based on a weighted EFORd formula, which most heavily weights availability during times of greatest need. The times of greatest need are defined as seasonal peak hours (highest 100 hourly system loads during each of the winter and summer periods) and shortage hours.

11. Under the proposed market rule changes, to qualify as an ICAP resource, Dispatchable Asset Related Demand resources⁹ must either self-schedule or bid into the day-ahead energy market, must provide outage information and must perform audits. These resources will not receive transition payments. Rather, based on its ability to reduce consumption, each resource will receive an adjustment to its share of the costs of transition payments.

12. During the transition period, the ICAP status of demand resources in the real-time demand response¹⁰ and in the real-time profiled response¹¹ programs will be governed by the provisions of Appendix E to Market Rule 1. ISO-NE and NEPOOL state that under

⁸ Listed capacity is any resource participating, i.e., "listed," in the capacity market. ISO-NE states that the main obligations imposed on a listed capacity resource are that it must offer into both the day-ahead and real-time energy markets whenever available, and that it must comply with ISO maintenance scheduling procedures. Under the existing ICAP market the commitment period is monthly.

⁹ These resources must meet ISO-NE requirements to have energy consumption modified in real-time. These resources must have the ability to respond to remote certain instructions from the ISO and meet certain requirements specified in the ISO-NE Manuals.

¹⁰ The real-time demand response program is actually made up of two sub-programs based upon response time: the two hour and 30 minutes response programs. These programs require customers to commit to mandatory energy reductions on either 30-minutes notice or 2-hours notice from ISO-NE.

¹¹ The real-time profiled response requires that participants provide a determined percentage of mandatory response that can be achieved upon demand by ISO-NE.

the proposed transition rules, such resources that are ICAP resources will receive transition payments. However, availability for these resources will not be measured using an EFORd approach. As required by the Settlement Agreement, the current availability treatment of these resources will be carried forward from the existing ICAP market.

13. As provided for in the Settlement Agreement, transition payments will also be made to energy efficiency and demand side management installations. These resources are separate from those in the real-time demand response programs. In order to accommodate these resources, ISO-NE and stakeholders developed a new class of capacity resource, known as “Other Demand Resources.” Such resources are defined as installations undertaken as part of merchant, utility, or state sponsored programs, that are installed after June 16, 2006, and that result in additional and verifiable reductions in end-use customer demand.¹² The proposed revisions in the instant filing define three categories of Other Demand Resources: energy efficiency, load management and distributed generation projects. Each of these Other Demand Resources must provide a minimum of 100 kW of demand reduction within a single load zone, submit and adhere to a measurement and verification plan, and provide monthly reports to qualify as an ICAP resource.

14. ISO-NE and NEPOOL state that in order to measure and verify the demand reduction achieved by Other Demand Resources, protocols developed over the past two decades by the industry and state regulatory authorities will be relied upon. ISO-NE states that this is necessary because typically Other Demand Resources are individually small and dispersed and thus traditional techniques may not be cost-effective. Section III.8.3.6.2.2 of the proposed transition rules states that all Other Demand Resource measurement and verification plans must be consistent with the International Performance and Measurement Verification Protocol¹³ or an alternative protocol that has been reviewed and approved by the state regulatory agency with jurisdiction over utility or state-sponsored Other Demand Resource programs.

15. According to ISO-NE and NEPOOL’s transmittal letter to their filing, Intermittent Power Resources¹⁴ may qualify as ICAP resources without having to comply with

¹² See section VIII.J.2.b of the Settlement Agreement; see also section III.8.3.6.2 of the proposed market rules changes.

¹³ See <http://www.ipmvp.org>.

¹⁴ According to the Settlement Agreement, Intermittent Resources are wind, solar and run-of-river hydro or other resources.

specific daily bidding and scheduling requirements. However, such resources must provide ISO-NE with outage information, must perform audits or provide alternative data, and must submit specific operating data.

16. ISO-NE proposes that throughout the ICAP transition period, Intermittent Power Resources would continue to receive the treatment for determining capacity and availability in effect on the date that the FCM Settlement Agreement became effective, June 16, 2006. ISO-NE bases this on the language in section VIII.J.1 of the Settlement Agreement, which states:

Intermittent Resources. During the Transition Period, Intermittent Resources shall continue to receive the treatment for determining capacity and availability in effect under the current Market Rules, Tariffs and Manuals.

ISO-NE proposes that an Intermittent Power Resource may claim up to its Installed Capacity as Unforced Capacity in accordance with the rating procedures set forth in the ISO New England Manuals.

17. The transition rules also provide that Settlement Only resources¹⁵ may qualify as capacity resources if they meet specific criteria. ISO-NE and NEPOOL state that the treatment of these resources is consistent with their treatment in the current ICAP market.

18. The proposed market rule changes also articulate the treatment of imports as capacity resources. As discussed above, the Settlement Agreement provides for seasonal commitment for ICAP resources. However, according to the Settlement Agreement, imported capacity import must be for at least two consecutive months (both of which must be in either the summer and winter periods). Thus, under the proposed market rule changes, imports will not be subject to the same commitment period requirements as described above. Imported capacity will be measured using the currently-effective availability provisions. ISO-NE and NEPOOL assert that weighted EFORD measures availability over an entire season (winter or summer) while import capacity is only required to commit for a 2 month portion of that season and thus the currently-effective provisions are appropriate. This treatment will only apply during the transition period.

¹⁵ Settlement Only resources are generators of less than 5 MW and demand resources. Such resources are not modeled in the energy management system, and therefore are exempt from submitting offers day-ahead and real-time. Such units are typically connected to the distribution system of the host utilities, and run as price-takers in the real-time market.

19. Each month, each market participant will be allocated a percentage of the total costs of transition payments for that month that is equal to the market participant's *pro rata* share of the sum of all annual coincident contributions to the New England annual peak load from the previous year. Market participants may meet their assigned obligations through use of bilateral contracts.

20. The Settlement Agreement specifically provides that the transition payments will be considered capacity payments for the purpose of netting in the locational forward reserves market. ISO-NE states that the simplest way to accomplish this is to net the full transition payment from the locational forward capacity market payment. The proposed tariff sheets subtract the transition payments from the locational forward reserves market clearing price to generate a net locational forward reserves market payment, which is then multiplied by the locational forward reserves market. ISO-NE notes that some participants have argued against this treatment. Per the Settlement Agreement, transition payments paid to generators will be adjusted downward to account for outages. This will be accomplished by applying the modified EFORD measurement. ISO-NE notes that no generator will have perfect weighted EFORD availability, and thus no generator that transacts in the locational forward reserves market will actually receive the full transition rate.

21. ISO-NE and NEPOOL request an effective date of December 1, 2006 for the revisions to Market Rule 1. However, the ISO-NE urges that the Commission act on the filing no later than November 1, 2006. ISO-NE states that were an ICAP auction covering December required, under the currently effective market rules, ISO-NE and participants would need to know that on or before November 1. ISO-NE states that unless the Commission indicates otherwise in an order before November 1, ISO-NE will not receive bids for a December ICAP auction, which would occur in November.

III. Notice of Filing and Responsive Pleadings

22. Notice of ISO-NE and NEPOOL's September 1, 2006 filing was published in the *Federal Register*¹⁶ with interventions and protests due on or before September 22, 2006. Motions to intervene or notices of intervention were filed by: ANP Funding I, LLC, Bridgeport Energy, LLC and Casco Bay Energy Company, LLC, Conservation Law Foundation (CLF), Dominion Energy Marketing, Inc., Dominion Energy New England, Inc., Dominion Nuclear Connecticut, Inc., and Dominion Retail, Inc., Exelon Corporation, H.Q. Energy Services (U.S.), Inc. (HQUS), Long Island Power Authority and LIPA, Maine Public Utilities Commission (Maine PUC), Massachusetts Department

¹⁶ 71 Fed. Reg. 54,642 (2006).

of Telecommunications and Energy, Milford Power Company, LLC, New England Power Generators Association (NEPGA), Northeast Utilities Service Company (on behalf of the NU Companies and Select Energy, Inc.), NRG Companies (NRG),¹⁷ and TransCanada Power Marketing Ltd. (TransCanada). Comments were filed by CLF and NRG. Protests were filed by Maine PUC and TransCanada. NEPGA filed comments and a limited protest.

23. ISO-NE and NEPOOL filed separate answers on October 10, 2006.

24. On October 11, 2006, Mirant Energy Trading, LLC, Mirant Canal, LLC, and Mirant Kendall, LLC (Mirant Parties) filed a motion to intervene out-of-time. On October 25, 2006, the New England Conference of Public Utilities Commissioners (NECPUC) and the Connecticut Department of Public Utility Control (CT DPUC) filed a joint motion to intervene out-of-time and answer.

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁸ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁹ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of ISO-NE and NEPOOL because they have provided information that assisted us in our decision-making process. Additionally, given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue delay or prejudice, we will grant the motions to intervene out-of-time of Mirant Parties, NECPUC and CT DPUC.

¹⁷ NRG Companies are: NRG Power Marketing Inc., Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

¹⁸ 18 C.F.R. § 385.214 (2006).

¹⁹ 18 C.F.R. § 385.213(a)(2) (2006).

B. Commission Determination

26. The Commission accepts the proposed transition rules as filed, effective December 1, 2006, as requested. The Commission finds that the proposed rules are just and reasonable and consistent with the Settlement Agreement approved in the June 16 Order. Further, as we concluded in the June 16 Order, we find that the proposed rules represent a just and reasonable transition to the FCM for the region as a whole.²⁰

27. We note that ISO-NE and NEPOOL discuss in their filing the implementation of certain demand response related measurement and verification protocols.²¹ To assist the Commission and stakeholders in following the progress of the implementation of demand response measurement and verification protocols, ISO-NE should include in its regularly prepared quarterly markets report for the first quarter of 2007 a status report on such implementation activities.

Run-of-River Hydro Issues

28. TransCanada protests portions of the transition rules concerning capacity payments to run-of-river hydro facilities, based on an alternative interpretation of the language in section VIII.J.1 of the Settlement Agreement. TransCanada asserts that ISO-NE's interpretation is not the only interpretation of that provision. TransCanada contends that counsel to NEPOOL determined that section VIII.J.1 of the Settlement Agreement is ambiguous, and has further acknowledged that there is a valid alternative interpretation that would not prohibit future revisions to the method for determining capacity and availability of run-of-river hydro facilities. TransCanada interprets section VIII.J.1 as implying that "intermittent resources would receive the treatment for determining capacity and availability in effect under whatever Market Rules, Tariffs and Manuals would be prevailing at any point in time during the transition period."²²

29. TransCanada asserts that, under the tariff provisions in effect as of June 16, 2006, the determination of capacity for run-of-river hydro facilities overstates the capacity that run-of-river hydro plants realistically can contribute. TransCanada argues that continuation of these rules—which would be the result of approving ISO-NE's

²⁰ See generally June 16 Order at P 89-108.

²¹ See *supra* P 14.

²² Protest of TransCanada at 11.

interpretation of section VIII.J.1—would cause consumers to pay for non-existent capacity.

30. TransCanada argues that there are numerous reasons why the provision is ambiguous. First, it asserts that “current” has more than one meaning. TransCanada contends that understanding the word “current” to mean “prevailing” would support its interpretation of the language. TransCanada states that it understood the language to refer to market rules, tariffs and manuals that would prevail and that those rules might be modified from time to time during the transition period.

31. TransCanada explains that ISO-NE established a task force to address a number of issues related to hydro units in May 2005 and that one of the specific charges was to evaluate the flow ratings for these units. According to TransCanada, the task force met during the LICAP settlement discussions but did not ultimately issue a report until June of 2006, after the Settlement Agreement had been filed. TransCanada understood the language in section VIII.J.1 to mean that new rules would be written when the task force process reached its conclusion and that those new rules would go into effect for the transition period, until replaced or supplemented by a new method for the FCM.

32. TransCanada contends that the provisions in place on June 16, 2006 require load to pay for capacity that cannot contribute to reliability, which, TransCanada argues, is inconsistent with ISO-NE’s litigation position and with load’s goal in the LICAP proceeding. TransCanada argues that for that reason, ISO-NE had an obligation to inform the parties if it reached an agreement that represented a departure from its prior statements and from load’s goal in settlement discussions. TransCanada states that ISO-NE never informed the parties of its interpretation of section VIII.J.1 during the settlement discussions.

33. TransCanada notes that ISO-NE first disclosed its interpretation of section VIII.J.1 (which, TransCanada argues, would prohibit changes to the method for determining capacity and availability of intermittent resources after June 16, 2006) in a memorandum dated August 4, 2006. TransCanada contends that, given ISO-NE’s position in the settlement discussions, ISO-NE had an affirmative duty to disclose its interpretation of section VIII.J.1 before parties agreed to the provision.

34. TransCanada estimates that approving ISO-NE’s interpretation would impose \$13 million over the course of the transition period. TransCanada contends that the Commission will need to determine which of the two interpretations should prevail.

ISO-NE's Position

35. ISO-NE states in the instant filing that the word “current” in the section in question refers to the treatment in effect at the time the Settlement Agreement became effective. ISO-NE does not believe that the word “current” in that section can be read to mean that the treatment of Intermittent Power Resources would be governed by the then-effective market rules, and that those rules could be revised during the transition period. ISO-NE states that such an interpretation would render the statement itself unnecessary. Furthermore, the language in section VIII.J.1 stands in contrast to the language in adjacent section VIII.J.2, which explicitly states that the treatment of real-time demand resources shall “continue to evolve” as the associated market rules are revised. ISO-NE asserts that it is implausible that such differing language would have been used to indicate the same treatment.

Commission Discussion

36. The Commission will not adopt TransCanada’s interpretation of the language in section V.III.J.1. We agree with ISO-NE that the plain language of the Settlement Agreement provides that the treatment for determining capacity and availability in effect on the effective date of the Settlement Agreement will continue throughout the transition period. We are also persuaded by ISO-NE’s reference to adjacent section VIII.J.2 and the “continue to evolve” language used there, and agree that it would be implausible to suggest that this differing language means the same thing as the use of the word “current” and the other language in section V.III.J.1.

37. Further, we note that ISO-NE and NEPOOL explain in their answers that this issue was presented to the August 11, 2006 meeting of the NEPOOL Participants Committee as an amendment to the draft transition rules ultimately filed here. Minutes of that meeting state that a representative of TransCanada offered an amendment to delete from section III.8.8.3 the phrase “[t]hroughout the ICAP Transition Period, Intermittent Power Resources shall continue to receive the treatment for determining capacity and availability in effect on June 16, 2006.”²³ The minutes go on to state that, following discussion among the participants, “the amendment was then voted and failed.”²⁴

²³ See preliminary minutes of the Participants Committee meeting held on August 11, 2006, within Supplemental Notice of September 8, 2006 Meeting, accessed at http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/prtcpnts/mtrls/2006/sep82006/index.html.

²⁴ *Id.*

The Commission concludes that had TransCanada's interpretation been the prevailing interpretation among participants, the proposed amendment discussed above would likely have passed the Participants Committee vote and the proposed transition rules would have reflected that interpretation.

Locational Forward Reserves Adjustment

38. NEPGA strongly supports the package of market reforms necessary to implement the Settlement Agreement but argues that, in one respect, the transition rules fall short. NEPGA argues that the transition rules as proposed create a redundant adjustment for forced outages and thus will result in too large a deduction to locational forward reserves market payments (an underpayment to forward reserve resources).²⁵ NEPGA estimates that the approach proposed by ISO-NE is likely to result in approximately \$5,000,000 per year in underpayment for forward reserve services. NEPGA argues that it is important that the deduction be made in a consistent manner. NEPGA further contends that to ensure fair and efficient compensation to generation resources, capacity payments should be treated consistently for the transition period.

39. NEPGA notes that a resource-specific capacity adjustment could become complicated and therefore, proposes that the capacity deduction from the forward reserve payment be based on the average effective system EFORD rate. NEPGA states that it is inappropriate to rely on adjustments of market participant behavior to correct errors in market design. Rather, NEPGA asserts that the market should be designed correctly and appropriately from the start.

40. NRG fully supports and incorporates by reference the comments filed by the NEPGA regarding the transition provisions of the Settlement Agreement.

ISO-NE's Position

41. ISO-NE states in the instant filing that the locational forward reserves market is a portfolio obligation. Thus, ISO-NE implies that matching resources across the capacity and locational forward reserves markets is not straightforward in practice. ISO-NE also

²⁵ NEPGA provides an example. The first transition payment as set out in the Settlement Agreement is the \$3.05/kW-month. Assuming a 10% average effective forced outage rate (EFORD) in the pool, this transition payment would be reduced to \$2.745/kW-month ($\$3.05 \times (1 - 0.10)$). However, NEPGA states that the full \$3.05/kW-month will be netted against the locational forward reserves market payment. NEPGA argues that this results in an underpayment of \$0.305 per kilowatt-month ($\$3.05$ minus $\$2.745$).

states that netting the transition payment from the locational forward market payment (“rate from rate approach”) was approved by stakeholders for inclusion in the transition rules.²⁶ ISO-NE also asserts that it is simpler and easier to implement. Moreover, ISO-NE argues that parties offering into locational forward reserves market understand that the full transition rate will be deducted from the locational forward reserves market payment, and as such should be able to build the expected availability deduction into their locational forward reserves market offer. ISO-NE argues that a supplier with high confidence in the availability of its portfolio can be expected to build a lower markup into the locational forward reserves market offer than a supplier expecting poorer availability, which is a desirable feature, given that the locational forward reserves market targets system reserves and security.

Discussion

42. The Commission acknowledges NEPGA’s and NRG’s concern regarding the relationship between the locational forward reserves market offset and the transition payment. In the June 16 Order, in fact, we noted our expectation that ISO-NE should carefully observe prices in the locational forward reserves markets and FCM markets and file to correct any problems.²⁷ The Commission agrees generally with NEPGA and NRG’s statement that the market should be designed correctly and appropriately from the start. However, we find that NEPGA’s proposed solution—to use a system-wide average of EFORD—does not represent a reasonable resolution. Using an average EFORD rate implies that certain generators with lower than average EFORD rates would still have a mismatch between net transition payments and locational forward reserve market offset; the same would be true for generators with higher than average rates. The Commission believes that while the process of making adjustments to locational forward market offers may not be a perfect solution, given the size of the estimated impact (\$5 million/year) and the size of the locational forward reserves market (approximately 2,000MW – 3,000MW out of a total of 32,000 MW of generation²⁸), it represents a just and reasonable proposal that will give generators the opportunity to recover appropriate revenues.

43. The Commission notes that ISO-NE recognizes that as the FCM is “substantially different from transition, the interaction between [the locational forward reserves market]

²⁶ September 1 filing of ISO-NE and NEPOOL at 16.

²⁷ June 16 Order at P 131.

²⁸ *Id.* at P 165.

will be reconsidered, and a different solution may be proposed.”²⁹ The Commission encourages ISO-NE, together with its stakeholders, to address this issue ahead of the implementation of the FCM.

Protest of Maine PUC

44. Maine PUC, referring to its comments opposing the Settlement Agreement and request for rehearing of the June 16 Order in this docket, argues that the transition payments proposed in the instant filing are not just and reasonable as they do not include a locational component, are not supported by record evidence and are not needed in Maine to ensure that there is sufficient capacity available. Maine PUC argues that for these reasons, the Commission should set the transition payments for hearing.

Discussion

45. Maine PUC’s objections to the transition mechanism are addressed in our order on rehearing of the June 16 Order, issued concurrently with this order. We will not address those objections here. We note that many parties that opposed the Settlement Agreement or portions thereof, like the Maine PUC and transmission owners located in Maine and Massachusetts, elected to abstain during the NEPOOL Participants Committee vote.

The Commission orders:

ISO-NE and NEPOOL’s filing is hereby accepted, effective December 1, 2006, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁹ September 1 filing of ISO-NE and NEPOOL at 16.