

118 FERC ¶ 61,163
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
NEPOOL Participants Committee

Docket No. ER07-397-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 28, 2007)

1. In this order we accept for filing ISO New England Inc. (ISO-NE) and New England Power Pool (NEPOOL) Participants Committee jointly filed amendments to ISO-NE's Open Access Transmission Tariff (OATT) Schedule 2 - Reactive Supply and Voltage Control from Generation Resources Service (reactive power) and a Schedule 2 VAR Payment Implementation Rule, suspend it for a nominal period, subject to refund, and establish hearing and settlement judge procedures.

Background

A. Reactive Power Pricing

2. In Order No. 888¹ the Commission concluded that reactive power is one of six ancillary services that transmission providers must include in their OATT.² The

¹ *Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. Regulations Preambles January 1991-June 1996 ¶ 31,036 at 31,705-06 and 31,716-17 (1996), Order No. 888-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² Order No. 888 at 31,705. The *pro forma* OATT includes six schedules that set forth the details pertaining to each ancillary service. The details concerning reactive power are included in Schedule 2 of the *pro forma* OATT. *Id.* at 31,960.

Commission noted that there are two ways of supplying reactive power and controlling voltage: (1) installing non-dynamic reactive power devices on the transmission system and (2) using generation facilities. The Commission concluded that the costs of non-generation devices would be recovered as part of the cost of basic transmission service and thus, would not be a separate ancillary service.³ The second method (using generation facilities), however, would be considered a separate ancillary service that must be unbundled from basic transmission service. The Commission stated that, in the absence of proof that the generator lacks market power in providing reactive power, rates for this ancillary service should be cost-based and established as price caps, from which transmission providers may offer a discount.⁴

3. In Opinion No. 440,⁵ the Commission approved a method presented by American Electric Power Service Corp. (AEP) to compensate generators for providing reactive power. AEP identified three components of a generation plant related to the production of reactive power: (1) the generator and its exciter, (2) accessory electric equipment that supports the operation of the generator-exciter, and (3) the remaining total production investment required to provide real power and operate the exciter. Because these plant items produce both real and reactive power, AEP developed an allocation factor to sort the annual revenue requirements of these components between real and reactive power production.⁶ Subsequently, the Commission determined that all generators should use the AEP method when seeking to recover reactive power costs.⁷

4. The Commission later issued an order accepting a proposal by PJM Interconnection, LLC (PJM),⁸ that would allow non-affiliated generators to be

³ Supplying reactive power and voltage control by installing facilities as part of the transmission system is not at issue in this proceeding.

⁴ Order No. 888 at 31,720-21.

⁵ *American Electric Power Service Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) (*AEP*).

⁶ The factor for allocating reactive power, developed by AEP, is $Mvar^2 / MVA^2$, where Mvar is megavolt amperes reactive capability and MVA is megavolt amperes capability at a power factor of 1.

⁷ *WPS Westwood Generation, LLC*, 101 FERC ¶ 61,290 at 62,167 (2002) (*WPS Westwood*).

⁸ *PJM Interconnection LLC*, Docket No. ER00-3327-000, September 25, 2000 (unpublished letter order).

compensated for providing reactive power. The Commission explained that a transmission owner must compensate a non-affiliated generator for providing reactive power to the extent that the transmission owner compensates an affiliated generator for providing reactive power.⁹

5. Order No. 2003, requires generators to maintain a power factor range of 0.95 leading (absorbing) and 0.95 lagging (supplying), with the understanding that the transmission provider could establish a different power factor range under certain circumstances. The Commission also determined that the transmission provider must compensate the interconnection customer for reactive power during an emergency where the interconnection customer provides reactive power outside the power factor range. In Order No. 2003-A, the Commission clarified that if a transmission provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the interconnection customer.¹⁰

B. ISO-NE's Schedule 2

6. In order to maintain transmission voltages on the New England Transmission System within acceptable limits, the ISO-NE may direct generators to produce or absorb reactive power. Schedule 2 sets forth the rules that govern eligibility for compensation and payment for reactive power supply and voltage control service in New England. Under the existing Schedule 2, Reactive Supply and Voltage Control is to be provided from Generation Sources Service through the ISO, and the transmission customer must purchase the voltage support capability service through the ISO when the ISO or the applicable Local Control Center dispatching center determines.

7. As initially filed in 1996, the costs for providing reactive power from generators in the NEPOOL Control Area are recovered by the generators exclusively through Schedule 2 and shared by transmission customers on a pro rata basis according to their shares of regional network load and reserved capacity for Through or Out Service. Schedule 2 has provided for reactive power compensation based on three cost components: (1) the lost opportunity cost (LOC) component, which compensates for the value of a generator's lost opportunity in the energy market in situations in which a generator that would otherwise be economically dispatched is instead directed by the ISO to reduce real power output to provide more reactive power; (2) the cost of energy consumed component, which compensates for the cost of energy consumed by a generator solely to provide reactive power support; and (3) the capacity cost (CC) component, which compensates the generator for the fixed capital costs it incurs with the installation and maintenance of

⁹ *Michigan Electric Transmission Co.*, 97 FERC ¶ 61,187 at 61,853 (2001) (METC).

¹⁰ Order No. 2003-A at P 416.

equipment necessary to provide reactive power. The charge for the CC component was originally set at \$0 to reflect an agreement among the parties.

8. In 2001, the Schedule 2 compensation formula was revised to include an additional component labeled PC (cost of energy produced) which is defined as the portion of the amount paid to Market Participants for the hour of energy produced by a generating unit that is considered under Schedule 2 to be paid for VAR support. The PC component addresses circumstances where a generator, that was not economically dispatched, is directed by the ISO to come online or to increase its output above its economic loading point to provide reactive power. The PC component also compensates the generator for the difference between the locational marginal price (LMP) and its offer price, if the LMP is lower than the offer price, for each hour the generator provides reactive power. Also in 2001, NEPOOL filed the Schedule 2 CC component rate to allow for a non-\$0 charge to compensate a Qualified Generator for maintaining its capability to provide reactive power support.

ISO-NE and NEPOOL's Filing

9. On December 29, 2006, ISO-NE and the NEPOOL filed the revised Schedule 2. ISO-NE and the NEPOOL state that the revised Schedule 2 will: (1) extend the current compensation for reactive power and voltage support to include non-generator dynamic reactive power resources; (2) clarify the eligibility criteria for all dynamic reactive power resources, including both generator and non-generator resources; (3) update the CC component of the rate design to account for changes in the cost-basis and mix of reactive power resources in New England since 1998; (4) expand the current testing program to include testing for leading capability for the purpose of using both leading and lagging VAR capability to determine the CC Rate payment; and (5) identify alternative means under the OATT by which a non-generator dynamic reactive power resource can receive payment if it does not elect to recover its costs under Schedule 2.

10. ISO-NE and the NEPOOL also state that the revised Schedule 2 will be phased-in. For example, Cross Sound Cable¹¹ (CSC) will be accepted as a Qualified Non-Generator Reactive Resource eligible for the CC Rate payment on March 1, 2007, provided that it has satisfied all criteria specified in Schedule 2, section II.B including a requirement that operating protocols for the provision of reactive power voltage support from its equipment have been agreed to in writing between ISO-NE and CSC. On June 1, 2007, the CC Rate will be increased from \$1.05/kVAR-year to \$2.32/kVAR-year for all Qualified Reactive Resources providing reactive power support into the system. ISO-NE

¹¹ The CSC is a bi-directional high voltage direct current transmission link between Connecticut and Long Island. The facility has two converter stations at each end. Each converter station can provide voltage stabilization by acting as a Static VAR Compensator (SVC).

and NEPOOL also note that during this time all Qualified Generator and Non-Generator Reactive Resources seeking to be compensated under Schedule 2 will be required to provide the appropriate data necessary to test for leading capability.¹² Beginning January 1, 2008, all Qualified Generator and Non-Generator Reactive Resources having both leading and lagging capability to supply or absorb reactive power will be eligible to receive the new CC component rate of \$2.32/kVAR-year. ISO-NE and NEPOOL note that the other non-CC rate elements – (e.g., lost opportunity cost, cost of consumed energy, and cost of energy produced) for Qualified Non-Generator Reactive Resources; however, will be determined on a case-by-case basis, and if approved, will require a section 205 filing.

11. ISO-NE and NEPOOL state that the existing CC Rate is based in part on pre-1998 cost data, and a negotiated settlement. They state that the VAR Working Group (VWG) recommended revising the CC Rate through a negotiated rate based on a weighted-average blend of the costs of older generators in New England and the costs of newer generators as reflected in the AEP methodology filings by PJM. The VWG recommended that the ratio for the blend of those costs would be two-thirds old generation to one-third new generation, which would reflect the approximate ratio of megawatts of older generators in New England (roughly 20,000 MWs) and added newer generators (roughly 10,000 MWs) currently existing in New England. They also state that most of the new generation that has been added in New England is combined cycle gas-fired technology, and because it has been built under a market-based rate regime, cost data related to the new generators was not easily accessible. So, the VWG used data available for generators located in PJM since 2000 as a proxy because these generators are similar in vintage and technology and in most cases have the same manufacturer as the majority of post market generators in New England and the cost data for these generators have already undergone the Commission's scrutiny through the FERC approval process.

12. ISO-NE and the NEPOOL state that the proposed CC Rate will remain in effect for five years and will be reviewed near the end of the period to determine whether another rate adjustment is needed in light of any changes to the mix of Qualified Generator and Non-Generator Reactive Resources in New England. They also recognize that there may be an issue of double payments between the CC Rate and the Forward Capacity Market (FCM) in the future but that any measures needed to resolve this issue will be undertaken in the final FCM rules.

13. ISO-NE and NEPOOL request the Commission accept the Schedule 2 amendments, without modification, to become effective on March 1, 2007.

¹² Currently, Schedule 2 compensates generators for VAR capacity based on lagging capability only.

Notices, Interventions, Protests, and Responsive Pleadings

14. Notice of ISO New England's filing was published in the *Federal Register*, 72 Fed. Reg. 1,506 (2007) with interventions or protests due on or before January 19, 2007. NRG Companies,¹³ Casco Bay Energy Company, LLC, Bridgeport Energy, LLC, Millennium Power Partners, L.P., Northeast Utilities Companies,¹⁴ and the Department of Telecommunications and Energy of the Commonwealth of Massachusetts filed timely motions to intervene. CSC, LLC, Mirant Parties,¹⁵ and Long Island Power Authority and Long Island Lighting Company (Long Island Parties) filed timely motions to intervene and comments in support of the filing. Central Maine Power Company (CMP) and the Maine Public Utilities Commission (MPUC) filed timely motions to intervene and protest. The New Hampshire Public Utilities Commission (NHPUC) filed a motion to intervene out-of-time and comments supporting in part MPUC's protest.

A. Cost Justification

15. CMP, NHPUC and MPUC argue that ISO-NE's proposed Schedule 2 amendments have not been shown to be just and reasonable. CNP and MPUC complain that the filing contains no cost support other than certain cost data related to a mix of generators providing reactive power support in PJM which is not relevant to the type of generators and non-generator reactive resources providing this service in New England. CMP contends that ISO-NE and NEPOOL do have access to specific cost data for generators located in New England and should therefore be required to provide cost data from these generators to justify the proposed CC Rate.

B. Double Payments and Deadband Capacity Proposal

16. CMP complains that the proposed CC rate will more than double the existing rate and is inappropriate in light of other compensation generators receive as a result of the settlement approved in Docket No. ER03-563 (FCM Settlement).¹⁶ They complain that the capacity payments provided by the recently approved FCM Settlement fully

¹³ NRG Power Marketing Inc., Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

¹⁴ The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire.

¹⁵ Mirant Energy Trading, LLC, Mirant Canal, LLC, and Mirant Kendall, LLC.

¹⁶ CMP Protest at 3 (citing *Devon Power LLC*, 115 FERC ¶ 61,340 (2006)).

compensate generators to produce or absorb reactive power within a predefined range. CMP contends that the proposed CC Rate would permit generators to double recover the cost of providing reactive power within the predefined range and that ISO-NE has provided no justification for this double payment.

17. Likewise, MPUC states that there is no recognition of the significant revenues that generators are already receiving under the FCM Settlement, and to ignore these revenues is to allow a double recovery of the generators' revenue requirement. According to MPUC, the FCM payments already compensate generators for their investment in generation equipment, which is used to produce energy and to provide reactive power service. MPUC suggests that eliminating the CC Rate would be a reasonable approach to prevent a double recovery of capacity payments. MPUC argues that, at the very least, if a cost of service approach is used to determine the CC Rate, the transition payments and later FCM auction revenues should offset the revenue requirement used in determining the reactive power charge. MPUC contends that a failure to consider the transition payment revenues in determining whether any reactive service capacity charges are justified would result in a double recovery by the generators. MPUC also maintains that as an alternative to the proposed rate increase generators should not be paid for providing reactive power support within the power factor ranges required by interconnection agreements (deadband capacity proposal). MPUC argues that recent Commission case law supports this alternative approach to VAR compensation.¹⁷ MPUC requests that the Commission either reject the proposed CC Rate or suspend the effective date of the rate increase and set the matter for hearing.

18. NHPUC adds that generators seeking the increased reactive power capacity payments will receive approximately \$5 billion in capacity payments over the term of the transition period. NHPUC urges the Commission to put a mechanism in place to credit capacity payments to generators in order to determine rates needed for reactive supply and voltage control.

¹⁷ MPUC Protest at 9 (citing *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 (2006). "The Commission has emphasized that an interconnecting generator should not be compensated for reactive power when operating within the established power factor range, since it is only meeting its obligation. Generators interconnected to a transmission provider's system need only be compensated where the transmission provider directs the generator to operate outside the established power factor range"). The exception to this rule is when the transmission provider compensates its own affiliated generators for reactive power within the range. *Id.*

C. Socialization

19. MPUC argues that ISO-NE should adopt the Independent Market Monitor's (IMM) recommendation that uplift costs for local VAR support be allocated to the load in the affected area. MPUC states that in the IMM's "Assessment of the Electricity Markets in New England" for 2004, the IMM found that "97 percent of the uplift costs for voltage support was incurred from committing units in NEMA/Boston, but since these costs are shared by all network load, only 27 percent of the charges are assessed there."¹⁸ MPUC also notes that in both the 2004 and 2005 assessment of the markets, the IMM recommended that the ISO consider allocating the costs of voltage support commitments to the affected area. MPUC states that in the stakeholder process, MPUC and CMP recommended that ISO-NE adopt the IMM's recommendation. MPUC states that there is no justification for a rate design that is inconsistent with locational principles and does not encourage demand response where it is most needed.

20. Likewise, CMP argues that socialization of the CC Rate is not just and reasonable. CMP states that the allocation of reactive power costs on a regional basis is a serious design flaw of the current wholesale electricity market in New England and sends the wrong market signal for investment decisions that would otherwise minimize or eliminate uneconomic reactive power costs. According to CMP, the Commission's recent Staff Report,¹⁹ recognizes that VARs cannot travel far due to high reactive power losses in transmission lines, and as a consequence, reactive power must be procured from suppliers located close to where voltage support is needed. Socialization of reactive power costs throughout the region, CMP continues, eliminates the incentive to address voltage support needs in particular areas. CMP also argues that socialization is inconsistent with how other out-of-merit reliability-related charges are allocated in New England.²⁰ These out-of-merit reliability-related charges are not socialized, and are all charges that support reliability within the local area or reliability region. CMP notes that ISO-NE also appears to share CMP's concern regarding socialization of costs, as expressed in footnote 35 of the filing (indicating the formation of a working group to address the issue). CMP proposes using a Reliability Region approach where reactive power costs would be allocated to the Regional Network Load and Reserved Capacity of those transmission customers within the Reliability Region in which a resource was determined by ISO-NE

¹⁸ 2004 Market Assessment at 55.

¹⁹ See FERC, "Principles for Efficient and Reliable Reactive Power Supply and Consumption," Docket No. AD05-1-000, (Feb. 4, 2005) (Staff Report).

²⁰ Examples include Second Contingency Commitments, Reliability Must Run Fixed Costs and Special Constraint Resources.

to be needed for VAR support.²¹ CMP states that this approach is consistent with cost allocation for other reliability-related out-of-merit payments under the OATT and also with cost causation principles because it assigns cost responsibility to the cost causer.²² CMP requests that the Commission reject the proposed CC Rate or, alternatively, direct ISO-NE to develop a new method for allocating reactive power costs to those customers needing VAR support.

D. Other Comments

21. Several parties filed comments in support of ISO-NE and NEPOOL's filing. CSC urges the Commission to approve the revised Schedule 2. CSC contends that the proposed revisions provide the necessary incentives for reactive power sources to provide needed reliability and voltage support services to the New England power grid. The Long Island Parties support the proposed extension of VAR support payments to qualified non-generator dynamic reactive power sources. They state that the extension will ensure Non-Generator Reactive Resources will be treated the same as Qualified Generator Reactive Resources. Both CSC and the Long Island Parties request an effective date of March 1, 2007.

E. ISO-NE's Response to Protests

22. On February 5, 2007, ISO-NE and NEPOOL filed a response to the protests of CMP and MPUC. ISO-NE and NEPOOL complains that CMP and MPUC have impermissibly asked the Commission to use this proceeding to change the ISO OATT's existing CC Rate. They argue that absent a section 205 filing to change the method for calculating the rate,²³ the CC Rate can only be changed pursuant to section 206 of the FPA. They argue that because the instant filing does not change the method for computing the CC Rate and neither CMP nor MPUC have filed a complaint under section 206, their request should be rejected. ISO and NEPOOL agree that further review of the current method for computing the CC Rate is justified, but argue that it should be done through the stakeholder process using the existing working group process. They contend that this approach will provide the best means for stakeholders and the ISO to work together to determine whether the current cost allocation methodology should be changed and, if so, how to make such changes without creating any unforeseen adverse impacts.

²¹ There are eight Reliability Regions in New England: Connecticut, Maine, Northern Massachusetts and Boston, New Hampshire, Rhode Island, Southeastern Massachusetts, Vermont and West Central Massachusetts.

²² See *New England Power Pool*, 105 FERC ¶ 61,317, at 22 (2003).

²³ 16 U.S.C. § 824d (2000).

23. With regard to MPUC's proposal to disallow compensation to generators providing reactive power within the prescribed power factor range, ISO-NE and NEPOOL state Schedule 2 already provides that all qualified generators are compensated for providing reactive power, including within the prescribed power factor range. They contend that the instant filing does not seek to change this aspect of the CC Rate, and any attempt by the MPUC to eliminate such compensation is impermissible and should be rejected for the reasons discussed above.

24. ISO-NE and NEPOOL state that MPUC's concerns that the CC Rate will allow reactive power resources to be compensated twice for the same service due to FCM payments will be considered prior to the implementation of the first Forward Capacity Auction (FCA) in 2010. According to ISO-NE and NEPOOL, the FCM transition payments, which resources began to earn as of December 1, 2006, do not suggest any double compensation concerns. They argue that the compensation that resources earn through the FCM transition payments is based on a negotiated rate agreed to in the FCM Settlement, not a market-based measure. They contend that over the course of the transition period, the FCM transition payment rate will increase, but not to a level equal to the cost of new entry to be used in the first FCA. Further, ISO-NE and NEPOOL contend that as a result, the FCM transition payments will likely be at a level below the actual cost of providing both installed capacity and reactive power; therefore the FCM transition payments do not compensate resources for their reactive power capabilities.

25. ISO-NE and NEPOOL state that in 2010, FCM payments will reflect the actual cost of new entry as revealed by resources entering the market. They state that to the extent that these resources will be required to meet minimum reactive power requirements, the cost of that capability could be reflected in the resources' capacity offers and that any CC Rate payments could therefore result in double compensation. ISO-NE states that, prior to the implementation of the FCA in 2010, it proposes OATT revisions that will ensure that resources eligible for the proposed CC Rate payments will not receive double compensation.

Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the 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 Procedure, 18 C.F.R. § 385.213(a) (2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer, as it provides information that assisted us in our decision-making process. We will also grant NHPUC's motion to intervene out-of-time, given its

interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay.

B. Commission Review

27. The Commission agrees with ISO-NE that eligibility for compensation under Schedule 2 should be broadened to include Qualified Non-Generator Reactive Power Resources.²⁴ However, ISO-NE has not met its burden of proof that the proposed CC Rate is just and reasonable. ISO-NE and NEPOOL propose using cost data of certain generating facilities located in PJM to support the proposed CC Rate. In *WPS Westwood*,²⁵ the Commission determined that if a merchant generator did not have actual cost data available, it was appropriate for it to rely upon the cost data of a similar type generating facility as a proxy. In order for ISO-NE and NEPOOL to use the cost data for generating facilities located in PJM as a proxy for ISO-NE units, we will require in the hearing ordered below, a demonstration that; 1) reliable cost data for the ISO-NE units is unavailable and 2) the units chosen by ISO-NE and NEPOOL are an appropriate proxy for the recently built Generator and Non-Generator Reactive Power Resources in New England.

28. The Commission rejects MPUC's proposal that generators should not be paid for providing reactive power support within the power factor ranges required by interconnection agreements because it is outside the scope of this proceeding. Nevertheless, the Commission has held that compensation for reactive power within the established power factor range is based on comparability and thus, if the transmission provider compensates its own or its affiliated generators for reactive power *within* the established range, it *must* also pay the interconnecting generator.²⁶ ISO-NE has stated that it compensates all generators providing reactive power within the established power

²⁴ Where appropriate, demand response may be a Non-Dynamic Reactive Resource, and be eligible for cost recovery, as described in section II.C of Schedule 2.

²⁵ *WPS Westwood*, 101FERC ¶ 61,290 at P 15.

²⁶ *See, e.g., METC*, 97 FERC ¶ 61,187 at 61,852-53 (2001) (the need to treat all generation interconnection customers comparably underlies the need for a *pro forma*. To that end, it is hardly consistent to allow an affiliate to have different and/or superior terms and conditions for interconnection than non-affiliates . . . we direct Michigan Electric to compensate Generators for providing reactive power to the same degree that it will compensate its affiliate, Consumers, for providing reactive power); *see also* Order No. 2003-A at P 416 (comparability of compensation); *accord* Order No. 2003-B at P 113, 119; October 14, 2005 Order, 113 FERC ¶ 61,040 at P 22-24, 38-39.

factor range on a comparable basis; therefore ISO-NE's existing approach is consistent with Commission policy in Order Nos. 2003 and 2003-A.

29. CMP requests that ISO-NE be directed to submit to the Commission a proposal to end the socialization of reactive power costs and determine a just and reasonable cost allocation methodology consistent with the existing market structure in New England. MPUC and CMP state that ISO-NE should adopt the IMM's Recommendation that uplift costs for local voltage support be allocated to the load in the affected area. The Commission finds that these requests are outside the scope of this proceeding and amount to a collateral attack on an existing rate methodology that has been found to be just and reasonable by the Commission. CMP and MPUC should seek changes to the existing rate methodology through ISO-NE's stakeholder process or file a complaint under section 206 of the FPA.

30. MPUC and NHPUC state that there is no recognition of the significant revenues that generators are already receiving under the FCM Settlement, and to ignore these revenues is to allow a double recovery of the generators' revenue requirement. The Commission agrees with ISO-NE that transition payments do not compensate resources for their reactive power capabilities since they are below the cost of new entry; however the Commission is concerned that double recovery can occur during the first FCA since the payments equal the cost of new entry. The ISO commits to proposing, for implementation prior to the first FCA commitment year, Tariff provisions to ensure that Resources eligible for CC payments under Schedule 2 for providing reactive supply and voltage control do not receive double compensation.²⁷ Accordingly, the Commission will require ISO-NE to implement, prior to the commencement of the first FCA commitment year beginning June 1, 2010, tariff provisions to ensure that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation.

C. Hearing and Settlement Judge Procedures

31. ISO-NE's proposed rate schedule raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

32. Our preliminary analysis indicates that ISO-NE's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept ISO-NE's proposed rate schedule for filing, suspend it for a nominal period, make it effective March 1, 2007, subject to refund, and set it for hearing and settlement judge procedures.

²⁷ ISO-NE Answer at 13.

33. While we are setting the matters discussed herein for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁸ If the parties choose, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁹ The settlement judge shall report to the Chief Judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or he may initiate a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed rate schedule is hereby accepted and suspended for a nominal period, to become effective March 1, 2007, subject to refund, as discussed in the body of this order.

(B) ISO-NE must implement prior to the commencement of the first FCA commitment year beginning June 1, 2010, tariff provisions to ensure that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning ISO-NE's proposed rate schedule for reactive power and voltage control services. However, the hearing will be held in abeyance to give the parties time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

²⁸ 18 C.F.R. § 385.603 (2006).

²⁹ If the parties decide to request a specific judge, they must make their joint request to the chief Judge in writing or by telephone a (202) 502-8500 within five days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.FERC.gov –click on Office of Administrative Law Judges).

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.