

122 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket Nos. ER07-1289-002
ER07-1289-003
ER07-1289-004
ER07-1289-005

ORDER ESTABLISHING SETTLEMENT JUDGE PROCEDURES

(Issued February 4, 2008)

1. On November 28, 2007, ISO New England, Inc. (ISO-NE) and Maine Electric Power Company (MEPCO) submitted multiple filings in response to the Commission's order issued on October 29, 2007,¹ which conditionally accepted proposed tariff sheets to implement what is referred to as the "MEPCO Roll-in Proposal" (Roll-in Proposal). The filings include a request for rehearing, a motion to delay the effective date of the Roll-in Proposal and convene a technical conference, and a hold-harmless mechanism required by the October 29, 2007 Order.² On January 22, 2008, ISO-NE and MEPCO filed a request to further delay the effective date of the Roll-in Proposal until March 1, 2008. In this order, we set the case for settlement judge procedures to give the parties an opportunity to resolve issues surrounding the Roll-in Proposal, and grant the request to extend the effective date pending the result of the settlement judge procedures.

I. Background

2. In the October 29, 2007 Order, the Commission conditionally accepted MEPCO's proposed tariff revisions designed to accommodate a change in New England's transmission system that will result from the addition and operation of the North East Reliability Interconnection (NRI). MEPCO currently has a 345 kV alternating current (AC) transmission line connected to Central Maine Power Company at the Maine Yankee Substation in Wiscasset, Maine and at the Maxcy Substation in Windsor, Maine, and is also connected to Bangor Hydro-Electric Company at Orrington, Maine and at its

¹ *ISO New England Inc.*, 121 FERC ¶ 61,097 (2007) (October 29, 2007 Order).

² ISO-NE and MEPCO also filed an informational report (Informational Report) on November 14, 2007.

northern end (at the Canadian border at Orient Maine) to a 345 kV AC line owned by New Brunswick Power. MEPCO currently offers point-to-point service in support of external transactions crossing the border between Maine and Canada and for internal transactions within the United States.

3. Prior to construction of the NRI, MEPCO was the only tie between the New England Control Area and eastern Canada. Unlike MEPCO's line, the NRI has been classified as pool transmission facilities (PTF) and ISO-NE will be able to provide regional transmission service via the ISO-NE OATT. This means that, absent the revisions proposed in the Roll-in Proposal, the two parallel lines would need to be administered with different types of transmission service, with the MEPCO line being administered as providing point-to-point service, and the NRI being administered as providing regional transmission service.

4. Casco Bay Energy Company (Casco Bay) protested, arguing that the Roll-in Proposal effectively terminated Casco Bay's 25-year, 500 MW transmission service agreement (TSA). Casco Bay argued that its TSA serves as a hedge against congestion. The Commission held that, although it was conditionally accepting the Roll-in Proposal, ISO-NE and MEPCO were required to provide Casco Bay with a grandfathering option similar to that offered to MEPCO's external transmission customers, i.e., one that would preserve all of Casco Bay's existing rights, with the exception that Casco Bay's rights will become subject to the same scheduling and curtailment provisions.

II. Responses to the October 29, 2007 Order

5. Following issuance of the October 29, 2007 Order, ISO-NE filed with the Commission five relevant pleadings: (1) an Informational Report; (2) revised tariff sheets including a hold harmless mechanism with respect to the loss component calculation for Casco Bay; (3) a request for rehearing; (4) a request to extend the effective date and convene a technical conference; and (5) a request to further delay the effective date of the Roll-in Proposal. Comments regarding the Informational Report were due on or before December 5, 2007. Casco Bay filed comments. Notice of ISO-NE's revised tariff sheets was published in the *Federal Register*, 72 Fed. Reg. 70,321 (2007), with comments due on or before December 19, 2007. Casco Bay filed comments and a protest. ISO-NE and MEPCO filed answers. Casco Bay, the Participating Transmission Owners Committee and the PPL Companies³ filed answers to the request for a technical conference. New Brunswick Power Transmission Corporation (New Brunswick) and H.Q. Energy Services (U.S.) Inc. (HQUS) both filed motions to intervene out of time that included an objection.

³ PPL EnergyPlus, LLC; PPL Maine, LLC; PPL Great Works, LLC; and PPL Wallingford Energy, LLC.

A. Informational Report**1. Summary of Filing**

6. On November 14, 2007, ISO-NE filed its Informational Report to explain the revision it implemented that day to the loss component calculation for the Graham Node. In the Informational Report, ISO-NE explains how it had been mapping the loss component price calculated for the Maine Yankee Node to the Loss Component for the Graham Node in order to avoid any double collection for losses since the inception of Standard Market Design. ISO-NE states that this treatment had resulted in deeming for loss component calculation purposes the injection of the output of the Maine Independence Station into the PTF system only at the Maine Yankee Substation, which is at the Southern end of the MEPCO line, instead of approximately eighty-eight miles to the north to the 115-kV PTF system in the vicinity of the Graham substation where Maine Independence Station is located.

7. ISO-NE states that it became aware of the loss mapping after investigating claims raised by Casco Bay during the stakeholder discussions regarding its marginal loss hedge. ISO-NE states that as a result of this investigation, it deemed it appropriate to revise the loss component mapping at the Graham Node in a manner consistent with its physical location on the PTF system.

8. ISO-NE explains that the Informational Report is related to the October 29, 2007 Order because it found that a loss hedge could stem not from the Casco Bay TSA, but from the fact that ISO-NE had been mapping the loss component at the Graham Node to the Maine Yankee Node.

2. Responsive Pleadings

9. Casco Bay states that it does not necessarily object to modification of the calculation of loss component, but contends that ISO-NE's implementation of Casco Bay's hedge has been imprecise and deprives Casco Bay of the benefit of its bargain to pay \$800,000 annually for a hedge against both congestion and marginal losses between the Orrington and Maine Yankee Substations. Casco Bay contends that ISO-NE and MEPCO have failed to implement the congestion hedge altogether, with the result that Casco Bay has been paying \$800,000 annually for the firm transmission of energy and capacity on the Orrington/Maine Yankee Path and then paying again through a congestions component of Locational Marginal Pricing (LMP) at the Graham Node that includes congestion on the same path.

B. Revised Tariff Sheets**1. Summary of Filing**

10. ISO-NE filed tariff sheets to revise Market Rule 1 to hold Casco Bay harmless from marginal losses between the Orrington and Maine Yankee Nodes (Hold Harmless Mechanism). ISO-NE explains that this is necessitated not only by the October 29, 2007 Order, but also by ISO-NE's November 14, 2007 revision of the loss component calculation for the Graham Node.⁴ ISO-NE states that pursuant to section III.3.2(e)(i) of Market Rule 1, Casco Bay will receive a charge for MEPCO facility real power losses at the 2.8 percent loss factor.⁵ It states that Casco Bay will receive a charge for each hour equal to the Orrington 115kV Node Real-Time LMP times the MEPCO transmission facility real-power loss quantity, which is Real-Time MWh of energy generated from the Maine Independence Station (capped at 500 MWh per hour) for that hour times the predefined 2.8 percent real power loss factor.

11. ISO-NE states that pursuant to proposed section III.3.2(e)(ii) of Market Rule 1, Casco Bay will receive a credit for the marginal losses over the MEPCO facilities. This credit will offset the real power losses which are charged to Casco Bay under section III.3.2(e)(i) and capped at 500 MWh. ISO-NE explains that this change is intended to avoid double billing Casco Bay for real and marginal losses over the MEPCO transmission facilities between Orrington and Maine Yankee, as specified in the Casco Bay TSA.

2. Responsive Pleadings

12. Casco Bay responds that it objects to the failure of ISO-NE and MEPCO to give full effect to its congestion hedge while ISO-NE uses the October 29, 2007 Order as a justification for "clawing back" benefits Casco Bay received as a result of the imprecise implementation of the losses hedge.⁶ Casco Bay argues that ISO-NE and MEPCO have done nothing to ensure that Casco Bay receives the full benefit of its congestion hedge. Casco Bay argues that the Commission should make clear that it will not allow selective compliance with the requirements of the October 29, 2007 Order.

13. ISO-NE and MEPCO filed answers arguing that Casco Bay has no hedge against congestion. ISO-NE contends that Casco Bay is using its protest to make new arguments to assert that even in a pre-Roll-in context, ISO-NE must take additional steps to

⁴ ISO-NE Revised Tariff Sheets at 1.

⁵ This is the percentage currently reflected in section 26 of Schedule 20B to section II of the ISO-NE Tariff.

⁶ Casco Bay Protest at 3.

implement a congestion hedge. ISO-NE also contends that Casco Bay's arguments regarding a congestion hedge are not germane to a filing that involves only marginal loss issues, and that Casco Bay is improperly attempting to advance a section 206 complaint.

14. MEPCO contends that there is no conceivable mechanism that can maintain the firm and non-firm transmission rights of the MEPCO transmission customers to access the MEPCO transmission facilities pursuant to Schedule 20B and maintain the firm transmission rights of regional transmission customers to access the NRI project pursuant to the current ISO-NE OATT. MEPCO states that it is willing to move forward with the Roll-in Proposal under terms it can administer, but that it cannot alone implement the terms imposed by the Commission's order.

C. Request for Rehearing

Summary of Filing

15. ISO-NE and MEPCO request rehearing of several aspects of the October 29, 2007 Order. They contend that the Casco Bay TSA does not provide for a hedge against congestion and marginal losses, and argue that the lack of such language should be expected because New England's Standard Market Design wasn't in place until four years after the Casco Bay TSA was in place. They also argue that it is infeasible to provide Casco Bay a grandfathering option similar to the grandfathered external agreements, and that it would be infeasible to implement within New England's LMP-based market system. ISO-NE and MEPCO request the Commission to clarify, or in the alternative grant rehearing, of its order with regard to the prescribed treatment of Casco Bay.

16. ISO-NE and MEPCO further argue that the Commission's finding of hedges conflicts with Commission policy that measures adopted to protect existing customers through market transitions should not grant new rights. ISO-NE and MEPCO state that the October 29, 2007 Order erred in prohibiting the deletion of Schedule 20B and that compliance requirements should be addressed in the existing body of the ISO-NE OATT.

D. Request for Technical Conference

1. Summary of Filing

17. ISO-NE and MEPCO request expedited consideration of a request to delay the effective date for the MEPCO Roll-in Proposal from December 1, 2007 to February 1, 2008, and for the convening of a technical conference in the interim to facilitate

resolution of the issues.⁷ In the alternative, if the Commission denies the request to delay the effective date, ISO-NE and MEPCO have provided a notice of cancellation of the August 16 filing, with a requested effective date of November 30, 2007.

18. ISO-NE and MEPCO further state that its filing will not delay the NRI becoming operational in December 2007 as PTF under the ISO-NE Tariff. However, ISO-NE and MEPCO contend that because they are not proceeding to implement the MEPCO Roll-in Proposal as of December 1, 2007, it will be necessary for ISO-NE to limit the transfer capabilities of the dual MEPCO/NRI interconnection to the transfer capabilities that are currently in place for the New England/New Brunswick external interface, namely, up to a maximum of 700 MW for imports from New Brunswick and 280 MW for exports to New Brunswick. ISO-NE and MEPCO state that this limitation of transfer capability across the New Brunswick external interface is inefficient from a market standpoint, providing further reason for expedited consideration.

2. Responsive Pleadings

19. Casco Bay responds that they do not object to a technical conference intended to facilitate the development of alternatives to the Roll-in Proposal, but argue that ISO-NE and MEPCO should not be allowed to submit evidence in support of their pending rehearing request.

20. The Participating Transmission Owners Administrative Committee supports the motion to defer the effective date of the Roll-in Proposal in order to allow time to clarify and resolve issues arising from the October 29, 2007 Order. The New England Power Pool Participants Committee submitted comments supporting the request for expedited treatment.

21. The PPL Companies respond that they do not object to the request to delay or cancel the Roll-in Proposal, but request that the Commission clarify that the pre-existing MEPCO schedule 20B tariff provisions governing service over the MEPCO transmission line remain in full force and effect until such time as the Roll-in Proposal may take effect. They also contend that the Commission should ensure that the customers who made elections and commitments based on the previously-announced effective date be held harmless as a result of the delay.

22. New Brunswick and HQUS object to the imposed limit on transfer capacity mentioned by ISO-NE, arguing that it will harm markets and parties that seek to export to New England through New Brunswick. New Brunswick requests that the Commission

⁷ As discussed *infra* at P 23, the request to delay the effective date to December 1 has been superseded by a subsequent pleading requesting an effective date of March 1, 2008.

issue an order prohibiting ISO-NE and MEPCO from limiting the transfer capabilities of the NRI line. New Brunswick also questions ISO-NE and MEPCO's ability to unilaterally cancel the Roll-in Proposal after it has been accepted by the Commission.

E. Request to Delay Effective Date

23. ISO-NE and MEPCO request that the effective date for the Roll-in Proposal be delayed from December 1, 2007 to March 1, 2008. They contend that due to a number of lead-time requirements to implement the Roll-in Proposal, a March 1, 2008 effective date cannot be met if the necessary orders are not issued by the Commission on or before February 18, 2008. ISO-NE and MEPCO explain that they require a lead time of at least eleven calendar days due the need for software migration and to provide proper notice to the market participants of the effective date and the associated market system changes. They also state that the MEPCO Roll-in Proposal implementation must become effective on the first of a month in order to eliminate any issues related to overlapping regional and MEPCO transmission service requirements.

III. Commission Determination

A. Procedural Matters

24. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214(d) (2007), the Commission will grant the late-filed motions to intervene of New Brunswick and HQUUS submitted in response to the request for a technical conference, given their interest in the proceeding, the early stage of the Commission's consideration of ISO-NE's proposed limitations of transfer capabilities of the MEPCO/NRI Interconnection, and the absence of undue prejudice and delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE and MEPCO because they have assisted us in our decision-making process.

B. Discussion

25. ISO-NE, MEPCO and Casco Bay disagree as to whether the Casco Bay TSA provides a hedge against congestion and/or a hedge against losses. ISO-NE and MEPCO request a technical conference, arguing that such a conference would facilitate the formulation of a solution to this and other issues stemming from the Roll-in Proposal. While we disagree that it is necessary to convene a technical conference, we do find that the issues presented here may be amenable to settlement. We also find that the involvement of a settlement judge may assist the parties in reaching a mutually agreeable resolution of this matter. Accordingly, we encourage the parties to make every effort to settle their dispute. To aid the parties in their settlement efforts, we direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of

Practice and Procedure.⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall decide whether to provide the parties with additional time or whether to terminate settlement judge procedures.

26. We express no opinion on the merits of the issues at this time. However, we do clarify, as requested by the PPL Companies, that the pre-existing MEPCO Schedule 20B tariff provisions governing service over the MEPCO transmission line remain in full force and effect until such time as the Roll-in Proposal may take effect.

27. Finally, at ISO-NE's request, we will defer the effective date for the Roll-in Proposal to a future date yet to be determined in order to allow parties the flexibility, in their settlement discussions, to choose a workable effective date.

The Commission orders:

(A) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), 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.

(B) 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 terminate the settlement judge procedures, if appropriate. If settlement discussions

⁸ 18 C.F.R. § 385.603 (2007).

⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.