

128 FERC ¶ 61.008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Braintree Electric Light Department
Hingham Municipal Lighting Plant
Hull Municipal Lighting Plant
Mansfield Municipal Electric Department
Middleborough Gas & Electric Department
Taunton Municipal Light Plant

Docket No. EL08-48-001

v.

ISO New England Inc.

ORDER ON REHEARING

(Issued July 2, 2009)

1. In this order, the Commission denies the separate requests for rehearing filed by Massachusetts Public Systems (Municipals),¹ on the one hand, and NSTAR Electric Company (NSTAR) and National Grid USA² (collectively, Transmission Owners), on

¹ The Municipals consist of Braintree Electric Light Department, Hingham Municipal Lighting Plant, Hull Municipal Lighting Plant, Mansfield Municipal Electric Department, Middleborough Gas & Electric Department and Taunton Municipal Light Plant. The Municipals filed the complaint that initiated this proceeding.

² National Grid's intervention was filed on behalf of itself and its New England electric utility operating subsidiaries: New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, Granite State Electric Company and Nantucket Electric Company.

the other, of the Commission's July 18, 2008 order, *Braintree Electric Light Department v. ISO New England Inc.*³

I. Background

2. As reported in the July 18 Order, Mirant's Canal Units 1 & 2 in Cape Cod, Massachusetts (Canal Units) were originally designed to serve, and, at the time of the complaint, were serving as the primary generation for Cape Cod.⁴ ISO New England Inc. (ISO-NE) reported the total peak load in Cape Cod as 950 MW. This load is served by the Canal Units, producing 1,126 MW, four smaller generating plants within Cape Cod producing 152 MW, and two 345 kV transmission lines.

3. In 2006, NSTAR requested that ISO-NE operate the Canal Units out-of-merit order for reliability purposes, because high oil prices made operation of the Canal Units otherwise uneconomic. At the time, ISO-NE dispatched the Canal Units as Special Constraint Resources, with costs allocated to NSTAR, based on the understanding that NSTAR requested dispatch above and beyond that required by regional reliability practices. NSTAR objected, claiming that running the Canal Units as a Local Second Contingency Protection Resources (LSCPR) was necessary and the costs should have been allocated to the Southeastern Massachusetts region (SEMA), the applicable New England reliability region. ISO-NE agreed and allocated such costs to the SEMA region retroactively and prospectively.

A. SEMA Settlement – Docket No. ER07-921-000

4. To resolve issues concerning classification of the Canal Unit charges under the LSCPR classification, Transmission Owners, ISO-NE, Municipals and other entities negotiated and executed the SEMA Settlement.⁵ The SEMA Settlement resolved all disputes and controversies between these parties regarding Canal Unit LSCPR charges in the SEMA area and the classification by ISO-NE of resulting costs, including out-of-merit dispatch charges, for the period January 1, 2006 through May 31, 2010, subject to the Municipals' right to pursue certain claims.⁶ The SEMA Settlement required

³ 124 FERC ¶ 61,061 (2008) (July 18 Order).

⁴ Unit 1 began service in 1968 and Unit 2 began service in 1976.

⁵ The settlement was approved by letter order on July 21, 2007 in Docket No. ER07-921-000 (SEMA Settlement).

⁶ SEMA Settlement, section 9.2.

Transmission Owners to reimburse load serving entities and municipals for 2006 Canal Unit charges and established going forward principles for review of then-future SEMA LSCPR charges.⁷ Relevant to this proceeding, the SEMA Settlement permitted the municipalities to seek two forms of relief: first, to challenge LSCPR charges that would have been reduced if NSTAR and ISO-NE had instead implemented a Post First Contingency Switching (PFCS)⁸ or Special Protection System (SPS)⁹ switching arrangement,¹⁰ and, second, to seek a change in the definition of the SEMA region -- the result of the re-definition being a change in the allocation of Canal Unit charges.¹¹

B. Municipals' Complaint

5. Subsequently, Municipals filed their March 28, 2008 complaint against ISO-NE. In their complaint, Municipals first sought a Commission directive that the Canal out-of-merit dispatch charges should be reclassified, because ISO-NE could have implemented PFCS or SPS arrangements to reduce LSCPR charges, or the SEMA reliability region

⁷ SEMA Settlement, section 4.1 states that, subject to the exceptions addressed in the July 18 Order and additional exceptions not relevant here, “no Party shall seek or support a different allocation mechanism prior to the end of the Moratorium Period, or seek or support reclassification of ISO-NE’s designation of Canal as an LSCPR for service during the Moratorium Period.” The SEMA Settlement, section 1 defines the moratorium period as running from Jan. 1, 2007 through May 31, 2010.

⁸ Post First Contingency Switching is the opening of various circuit breakers following the occurrence of the first contingency.

⁹ An SPS or Special Protection System is designed to detect abnormal system conditions and take automatic, pre-planned, corrective action. SPS actions may result in reduction in load or generation, or changes in system configuration to maintain system stability, acceptable voltages, or acceptable facility loading.

¹⁰ The SEMA Settlement, Section 7.1, states that MPS is not prevented “from seeking relief from SEMA [Net Commitment Period Compensation] Charges for LSCPR through litigation against ISO-NE or the Transmission Owners over whether consistent with Applicable Criteria as defined in Section 6.1(b) such charges could be or should be reduced through implementation of an SPS or Post-First Contingency Switching arrangement.”

¹¹ Section 7.2 states that Municipals “agree[s] not to seek a change (in NEPOOL or before the Commission) in the ISO-NE definition of the SEMA Reliability Region to become effective . . . no earlier than January 1, 2008.”

should be subdivided into two sub-regions, Upper and Lower SEMA, with Canal Unit out-of-merit dispatch costs allocated to Lower SEMA. Municipals contended that its members were overcharged for costs incurred to avoid shedding load on Cape Cod, and that the applicable reliability criteria permit such action. Municipals argued that the costs to avoid load shedding should be borne solely by the Cape Cod systems in Lower SEMA benefitting from the protection. Municipals argued that a PFCS or SPS arrangement would reduce LSCPR charges and characterized the costs associated with running the Canal Units out-of-merit as unnecessary. In the second claim in their complaint, Municipals challenged the cost allocation arguing that the charges should have been reclassified in such a way that the Municipals would not pay a portion of those charges as LSCPR charges through their rates. Instead, the charges would be allocated to customers located in the Cape Cod area, Lower SEMA.

C. July 18 Order

6. In its July 18 Order, the Commission rejected the Municipals' first claim and sought additional information concerning the second through the New England Power Pool (NEPOOL) stakeholder process. The Commission found that the SEMA Settlement narrowed the issues to be reviewed under the complaint to two: (1) whether or not a PFCS or an SPS arrangement can replace reliance on the Canal Units as an LSCPR, and (2) whether the Commission should direct a change in the ISO-NE definition of SEMA.¹² The Commission denied Municipals' request to find that ISO-NE should utilize a PFCS or an SPS arrangement instead of relying on the Canal Units as an LSCPR.¹³ While the Municipals focused on one sentence in an ISO-NE report that found that such a switching arrangement could be implemented, the Commission and ISO-NE found that doing so would expose Cape Cod to unacceptable risk of involuntary load shedding if a 345 kV transmission line were lost. The order found that if ISO-NE relied on a PFCS or an SPS arrangement, then the next step after a first contingency would be the involuntary shedding of firm load.¹⁴ The Commission found that such a scenario would inappropriately degrade reliability. Also, the Commission noted that a PFCS or an SPS arrangement has the potential to black out Cape Cod load for up to 24 hours, due to start-up characteristics of the Canal Units.

¹² July 18 Order, 124 FERC ¶ 61,061 at P 22 (citing SEMA Settlement, sections 7.1 and 7.2).

¹³ *Id.* P 24.

¹⁴ *Id.*

7. However, the Commission found that the SEMA regional boundary may no longer result in a just and reasonable allocation of the Canal unit dispatch costs, set the issue for hearing, established a refund effective date of March 28, 2008 and held the hearing procedures in abeyance to permit review of SEMA cost allocation issues through the ISO-NE stakeholder process. The Commission noted that under cost-causation principals, costs should be allocated to customers in a manner that reflects the costs of providing service to them, comparing costs assessed to benefits and burdens imposed on customers.¹⁵

8. In the July 18 Order, the Commission noted that the SEMA reliability region was adopted by ISO-NE from pre-existing NEPOOL regional boundaries, which were originally established by engineering analysis of interfaces and transmission constraints. However, the Commission also found that the SEMA regional boundary may no longer result in a just and reasonable allocation of Canal Unit dispatch costs. Specifically, the Commission found that whether or not the cost allocations resulting from the boundaries of the current SEMA region are just and reasonable raised issues of material fact that were not resolved on the record. In lieu of the suspended hearing procedures, the Commission referred the issues to the ISO-NE stakeholder process, including whether, and, if so how, SEMA should be divided, or whether other means (except for implementation of a PFCS or SPS arrangement) could address the issues regarding the cost allocation in SEMA. The Commission stated that the stakeholder process should consider the effects of any resulting proposal on New England markets or other regions in the ISO-NE footprint. In doing so, the Commission stated its expectation that the process is not an opportunity for stakeholders to seek changes to non-SEMA boundaries within the ISO-NE footprint or to address other issues not arising as a result of a proposed resolution.¹⁶

D. Requests for Rehearing and Responses

9. Two parties filed requests for rehearing of the July 18 Order. Municipals request rehearing of the Commission's rejection of its first avenue of relief, that Upper SEMA systems should not pay Canal Unit dispatch costs, because ISO-NE should or could have implemented an PFCS or an SPS. Municipals and Transmission Owners both seek rehearing and/or clarification concerning the Commission's actions on the second issue,

¹⁵ *Id.* P 27 (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004)).

¹⁶ ISO-NE's compliance filing responding to the July 18 Order, addressing the cost allocation issues and describing the stakeholder process is due July 17, 2009.

finding that the SEMA regional boundary may no longer result in a just and reasonable allocation of Canal dispatch costs and directing ISO-NE to address the issue through the stakeholder process.

10. As discussed in pertinent part below, NEPOOL Participants Committee (NEPOOL Participants) filed an answer to the Municipals' and Transmission Owners' requests for rehearing and Municipals filed an answer to the Transmission Owners' request for rehearing. Finally, Transmission Owners object to the Municipals' and NEPOOL Participants' answers, but seek consideration of a reply in the event that the other answers are accepted.

II. Discussion

A. Procedural Issues

11. Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713, prohibits answers to a request for rehearing. Accordingly, we will not accept NEPOOL Participants', Municipals' or Transmission Owners' answers.

B. Requests for Rehearing

12. In their August 18, 2008 request for rehearing, Municipals state that their complaint raised two claims: first, that ISO-NE improperly allocated the Canal out-of-merit dispatch costs under its Tariff when it characterized those costs as LSCPR costs; and, second, that, if the Tariff permitted ISO-NE to characterize the Canal dispatch costs as LSCPR charges that are paid by all SEMA customers, then the tariff was not just and reasonable.¹⁷ Municipals seek rehearing of the Commission's disposition of the first claim, arguing that ISO-NE's allocation of the costs as LSPCR costs was improper, because out-of-merit dispatch was not "necessary" as required by the tariff. According to Municipals, PSCF and SPS arrangements represent alternative, comparable means of serving the load while addressing applicable reliability criteria. Municipals also fault the Commission's reliance on the stakeholder process to resolve issues relating to allocation of Canal out-of-dispatch costs as lacking in detail and representing an improper delegation of Commission authority.

13. Transmission Owners also seek rehearing of the Commission's second holding, arguing that the Commission should clarify that it will adhere to its policies disfavoring retroactive changes to rate design and accompanying refunds. Transmission Owners request rehearing of the July 18 Order on two additional grounds: first, the

¹⁷ Municipals request for rehearing at 9.

Commission's establishing a refund effective date is improper to the extent that it implies that LSCPR revenues are subject to refund on a retroactive basis prior to ISO-NE's filing of a rate change affecting such allocation; and second, the Commission's directive to ISO-NE to utilize a stakeholder process to resolve cost allocation in SEMA is overly restrictive because it provides for division of the SEMA region based on cost allocation criteria, rather than reliability criteria, and because it is limited to consideration of dividing the SEMA Region into two or more parts, to the exclusion of expansion or contraction of SEMA or merger with another ISO-NE reliability region.

1. Reliance on PFCS or a SPS as Alternative to Local Second Contingency Protection Resource Charges.

14. In the July 18 Order, the Commission rejected any claim brought under the first grounds permitted by the Settlement: that Municipals are entitled to relief because ISO-NE could or should utilize a PFCS or SPS arrangement instead of relying on the Canal Units as an LSCPR. The Commission noted that the complaint focused on the ISO-NE report finding that a switching arrangement could be implemented.¹⁸ However, the Commission emphasized the report's related finding that doing so would expose the system to an unacceptable risk of involuntary load shedding, contrary to an NPCC reliability objective for responding to emergency operating conditions "[t]o avoid, to the extent possible, the interruption of service to firm load."¹⁹ The Commission noted that a PFCS or an SPS arrangement has the potential to black out Cape Cod for up to 24 hours, while the Canal Units are brought on-line from a cold start.

a. Municipals' Request for Rehearing

15. According to Municipals, the Commission erred in the July 18 Order by reviewing their first claim as seeking operational changes, rather than challenging the allocation of the Canal dispatch costs as LSPCR costs. According to Municipals, the Commission failed to respond to the central contention of their claim, which relies on a reading of the ISO-NE tariff as permitting allocation of LSPCR costs on a region-wide basis only if those costs are "necessary" to meet applicable reliability criteria.²⁰ Municipals state that

¹⁸ July 18 Order, 124 FERC ¶ 61,061 at P 23-24.

¹⁹ *Id.* P 25.

²⁰ Municipals request for rehearing at 9-10 (citing ISO-NE tariff, section III.6.1 (Definition): "Local Second Contingency Protection Resources' [LSCPR] are those Resources identified by the ISO on a daily basis as necessary for the provision of Operating Reserve requirements and adherence to NERC, NPCC and ISO reliability criteria over and above those Resources required to meet first contingency reliability

(continued...)

their pleadings and supporting material prove their claim that the Canal out-of-merit dispatch costs were not necessary to meet the applicable reliability criteria, because ISO-NE could have instead relied on a PFCS or SPS arrangement. Therefore, Municipals conclude that dispatch of the Canal Units was not necessary, and the resulting charges should not have been allocated on a SEMA-wide basis, but instead should have been borne by the applicable transmission owner. Municipals state that their claim “is – and always has been – a cost allocation claim based on existing tariff language.”²¹

16. Municipals also claim that the Commission misinterpreted their claims as seeking a determination that ISO-NE should implement a PFCS or SPS arrangement instead of dispatching the Canal Units. Municipals state that the Commission should have concluded that ISO-NE was precluded under the tariff from allocating Canal out-of-merit dispatch costs to the SEMA region as LSCPR costs, or set the issue for hearing.

17. Municipals allege that the Commission erred because it failed to acknowledge or set for hearing several factual issues that support its claim. Municipals rely on ISO-NE findings in the ISO-NE report to the effect that “a switching arrangement could be implemented” and disputes the Commission’s finding that doing so would violate reliability criteria.²² According to Municipals, the Commission improperly found that a PFCS or SPS arrangement involves the potential for involuntary load shedding following a first contingency, rather than a second contingency.

18. Municipals acknowledge that the NPCC criteria reflect a preference for readjustment of generation following a first contingency. However, Municipals fault the Commission for indicating that the preference favors a pre-first contingency commitment of generation to avoid potential post-second contingency load shedding. Municipals characterize the Commission’s July 2008 Order as invoking an objective to maintain service to firm load “at all costs.”²³

19. Municipals continue to rely on the ISO-NE report as concluding that a PFCS arrangement could be implemented in accordance with applicable reliability criteria, in

criteria within a Reliability Region.”).

²¹ *Id.* at 12.

²² *Id.* at 14 (referencing July 18 Order, 124 FERC ¶ 61,061 at P 24-26).

²³ *Id.* (citing July 18 Order, 124 FERC ¶ 61,061 at P 25).

particular for loads below 17,000 MW.²⁴ Specifically, Municipals characterize the report as concluding:

The switching would need to be implemented as quickly as possible following the first contingency, but in all cases within 30 minutes. To meet the 30-minute redispatch requirement, the NSTAR system operator would have to configure the system for post-second contingency load shedding by . . . postur[ing] the transmission system for load shedding. The Applicable Criteria, such as NPCC Document A-2, requires that the opening of those circuit breakers to solve the 345 kV contingencies not expose the transmission system to . . . problems for any other contingency.^[25]

20. Municipals suggest that the Commission conclusion that a PFCS arrangement would not satisfy applicable reliability criteria was unsupported in light of the ISO-NE report finding that a PFCS arrangement would satisfy the criteria at New England load levels below 17,000 MW. Municipals characterize the Commission's holding as assuming a PFCS arrangement involves the potential for post-first contingency load shedding. Municipals also claim that the Commission erroneously interpreted the applicable criteria as expressing a preference for commitment of out-of-merit generation over a scheme that permitted the possibility of post-second contingency load shedding.

21. According to Municipals, the Commission's analysis is incomplete insofar as it considers the potential impacts to the system of contingencies if the Canal Units are not utilized, but does not consider such impacts as if a PFCS arrangement were in place.²⁶ Municipals suggest that a PFCS or SPS arrangement would provide protection under the applicable reliability criteria that is comparable to running the Canal Units upon the occurrence of a first contingency.

22. Municipals fault the July 18 Order for failing to recognize that a PFCS or SPS arrangement is a permissible alternate reliability strategy that could be implemented, consistent with the applicable criteria. According to Municipals, since a PFCS or SPS arrangement could be implemented, the Canal redispatch costs were improperly allocated

²⁴ See July 18 Order, 124 FERC ¶ 61,061 at P 24.

²⁵ Municipals request for rehearing at 15-16 (citing ISO-NE report at 14-15) (notes omitted).

²⁶ *Id.* at 18.

under the ISO-NE tariff, because redispatch of the Canal Units was not a logical necessity, as required by ISO-NE tariff section III.6.1 for allocating LSCPR costs. In short, Municipals allege that the Commission erred in failing to conclude that ISO-NE improperly allocated the Canal Unit out-of-merit costs as LSCPR costs under the tariff, because it was not necessary to operate the Canal Units out-of-merit order to satisfy the applicable criteria.

23. Municipals request the Commission to grant rehearing and order ISO-NE to reallocate the LSCPR costs, because operation of the Canal Units out of merit order was not necessary, or set the issue for hearing.²⁷

b. Commission Determination

24. The Commission denies Municipals' request for rehearing concerning re-allocation of Canal Unit LSCPR costs. On rehearing, Municipals repeat arguments concerning the Canal Unit out-of-merit dispatch charges, claiming that the Commission failed to address its claims in the July 18 Order. On the contrary, the July 18 Order acknowledged Municipals' position, and found that all Canal out-of-merit cost allocation issues were resolved by the SEMA Settlement, save the two remaining claims resolved in the July 18 Order.²⁸

25. The Commission reviewed the SEMA Settlement and found that the issues were resolved among the SEMA Settlement parties. Giving Municipals the benefit of the doubt, the Commission reviewed Municipals' pleadings to ensure that they did not support the cost claim permitted by the SEMA Settlement, that refunds might be justified if it could be demonstrated that the charges "could or should be reduced through implementation of an SPS or [PFCS] arrangement," consistent with applicable criteria.²⁹ The Commission rejected Municipals' complaint on this issue finding that Municipals failed to demonstrate that either SPS or PFCS represented an acceptable alternative. The Commission found the SPS and PFCS plans lacking because they involved an unacceptable risk of forced outage after the first contingency, and would be inconsistent with applicable planning criteria. Furthermore, the resulting blackout could extend unacceptably long, due to the Canal Units' 24-hour start up time.

²⁷ *Id.* at 24-25.

²⁸ July 18 Order, 124 FERC ¶ 61,061 at P 7.

²⁹ *Id.* P 23-25; SEMA Settlement, section 7.1.

26. Municipals attempt to reargue their claims to the effect that the hypothetical possibility of use of an SPS or PFCS arrangement demonstrates that the charges were incorrectly allocated, because LSCPR costs are defined in the ISO-NE tariff as “resources identified by the ISO on a daily basis as necessary for the provision of Operating Reserve requirements and adherence to NERC, NPCC and ISO reliability criteria.” However, the SEMA Settlement resolves the issue of classification of the Canal Unit out-of-merit dispatch costs as LSCPR: “If approved by the Commission, this Settlement Agreement will resolve all disputes and controversies as between the Parties regarding the NCPC Charges for LSCPR including the ‘out-of-merit’ dispatch of the Canal Units in the SEMA area and the classification of ISO-NE of such costs.”³⁰ The SEMA Settlement also states that the Canal Unit LSCPR charges shall be allocated pursuant to the allocation mechanisms in section III of the ISO-NE tariff, and limits Municipals’ right to challenge such allocation, stating:

[N]o Party shall seek or support a different allocation mechanism prior to the end of the Moratorium Period, or seek or support reclassification of ISO-NE’s designation of Canal as an LSCPR for service during the moratorium period.^[31]

27. On rehearing, Municipals state explicitly that its claim “is – and always has been – a cost allocation claim based on the existing tariff language.”³² Municipals seek a finding that the Canal Units are not “necessary” in order to support their claim that the Canal Unit out-of-merit dispatch costs should be classified as something other than LSCPR. We affirm our earlier holding that Municipals’ claims are precluded by the SEMA Settlement because they seek reclassification of the ISO-NE’s designation of Canal as an LSCPR, during the moratorium period running January 1, 2007 through May 31, 2010.³³ The SEMA Settlement was filed and accepted by the Commission as Attachment H to the ISO-NE tariff. As such, it resolves, as among the settling parties, including the Municipals, the issue of classification of the Canal out-of-merit dispatch costs under the filed rate during the moratorium period.

³⁰ SEMA Settlement, introductory paragraph.

³¹ SEMA Settlement, section 4.1 (emphasis added).

³² Municipals request for rehearing at 12.

³³ *See id.* at 12-13, 21-25 (seeking ruling that pre-complaint allocations of Canal Unit out-of-merit charges were inconsistent with tariff).

28. In response to Municipals' claims that they will be exposed to unreasonably high charges for Canal out-of-merit charges, the Commission is mindful of the costs of operating out-of-merit generation for reliability purposes and notes that the Municipals also appear to have mitigated the risk of such costs through the SEMA Settlement, which provides relief from LSCPR costs upon the occurrence of certain triggering events.³⁴

29. As part of their claim seeking reallocation of the Canal out-of-merit dispatch costs, Municipals dispute the Commission's finding that implementation of an SPS or PFCS is inconsistent with the applicable reliability criteria. Assuming *arguendo* that this argument is not precluded by the SEMA Settlement (because it is ultimately part of Municipals' claim seeking reallocation of LSCPR costs during the moratorium period), the Commission finds that Municipals have failed to point to sufficient record evidence to overturn the Commission's determination. Municipals merely repeat their contentions that use of an SPS or PFCS arrangement is consistent with the applicable criteria, by reference to the ISO-NE report. However, as reported in the July 18 Order, Municipals fail to adequately address accompanying findings in the report that reliance on a switching arrangement would expose Cape Cod to the risk of involuntary load shedding if a 345 kV transmission line were lost.³⁵ Running the Canal Units protects the region from involuntary load shedding under both N-1 (first) and N-2 (second) contingencies. As noted in the ISO-NE report, an acceptable solution must avoid exposing the system to problems from other contingencies.

30. Municipals attempt to demonstrate that a switching arrangement could be implemented under certain load conditions, but fail to address the fact that, by posturing the system for load shedding on the occurrence of a first contingency when there is high load in Cape Cod, such an arrangement runs afoul of the applicable reliability criteria preference for generator redispatch over load shedding.³⁶ While the Municipals attempt to distinguish the relative risks of load shedding under various circumstances and also voice their disagreement with the Commission's conclusions, Municipals fail to present evidence on rehearing that convinces us to reconsider our finding that a switching

³⁴ SEMA Settlement, section 5.1 (providing for rate reduction if LSCPR costs exceed both six percent of real time prices and 200% of 12-month LSCPR cost average). Tariff revisions implementing the triggering events and reduction were filed with the SEMA Settlement on May 18, 2007 and accepted via the Commission's Jun. 21, 2007 letter order in Docket No. ER07-921-000.

³⁵ July 18 Order, 124 FERC ¶ 61,061 at P 24-25.

³⁶ *See id.* P 25.

arrangement, which postures the system for load shedding upon the occurrence of even a first contingency, carries an unacceptable risk of load shedding, contrary to the preference in the reliability criteria.³⁷ In this regard, as well, Municipals' assertion is unsupported by data demonstrating the frequency of such low-load situations or the benefits of implementing a switching arrangement tailored to such low-load situations.

31. Consequently, the Commission denies rehearing on this issue.

2. Use of Stakeholder Process to Consider Allocation of SEMA Reliability Costs

32. In the July 18 Order, the Commission found that the SEMA reliability region was adopted by ISO-NE from the existing electric regional boundaries of NEPOOL, which were originally established by engineering analysis of interfaces and transmission constraints. However, citing transmission cost allocation factors, the Commission found that the SEMA regional boundary may no longer result in a just and reasonable allocation of the Canal out-of-merit costs. To address such issues, the Commission set Municipals' complaint for hearing and held the hearing in abeyance to permit the issues set for hearing to be addressed in the ISO-NE stakeholder process.³⁸ The Commission stated that the issues to be addressed in the stakeholder process include, but are not limited to, whether SEMA should be divided, and, if so, how. The Commission explained that stakeholders may also consider other means (except for implementation of a PFCS or SPS arrangement) to address cost allocation in SEMA, taking into consideration the effects of any proposal on New England's markets or other regions in the ISO-NE footprint.

33. In the ordered compliance filing, ISO-NE was directed to describe the stakeholder procedures undertaken in response to the order. The Commission intended that the compliance filing report how ISO-NE will address the cost-allocation issues set for hearing. In its description of the procedures, ISO-NE should support any determination on how to proceed with any methodology or criteria, including supporting studies or analysis, that were considered or developed in support of ISO-NE's proposed plan of action. Such supporting materials should reflect ISO-NE's consideration of alternate means of addressing the SEMA cost-allocation issues, including estimates of effects on markets or costs within and outside of SEMA. These supporting materials should be of sufficient detail and scope to permit the Commission to independently review the results of the stakeholder process.

³⁷ See *id.* P 24.

³⁸ July 18 Order, 124 FERC ¶ 61,061 at P 30.

34. The Commission anticipated that such effects should be addressed in any proposal, but clarified that we did not expect the process to be an opportunity for stakeholders to seek changes to non-SEMA boundaries within the ISO-NE footprint or address other issues not related to any proposed resolution of SEMA cost allocation issues. The Commission directed ISO-NE to submit the July 17, 2009 compliance filing addressing the SEMA cost allocation and describing the stakeholder process used to develop the proposal. The Commission established a refund effective date of March 28, 2008, the date the complaint was filed and the earliest date allowed by statute.³⁹

a. Municipals' Request for Rehearing

35. Municipals object to use of the stakeholder process to resolve the matters set for hearing as an improper delegation of their claim of unjust and unreasonable rates against ISO-NE. Municipals argue that the Commission should instead have referred the issues to the Commission's own hearing and settlement judge procedures.

36. Municipals argue that the Commission's reliance on the stakeholder process is arbitrary and capricious because the SEMA Settlement precludes ISO-NE and other parties from "seeking a change in the configuration of SEMA prior to mid-2010."⁴⁰ Therefore, Municipals argue that the stakeholder discussions cannot represent a free and open exchange of positions. Municipals cite the SEMA Settlement, section 7.2, which states:

The Parties, other than the Municipals, agree not to seek a change (in NEPOOL or before the Commission) in the ISO-NE definition of the SEMA Reliability Region to become effective prior to June 1, 2010; provided that the Municipals may seek such a change to become effective no earlier than January 1, 2008.^[41]

³⁹ 16 U.S.C. § 824e (2006).

⁴⁰ Municipals request for rehearing at 28, 30 (citing SEMA Settlement, §§ 4.1, 7.1(c)). Municipals note that the parties to the SEMA Settlement include ISO-NE, Municipals, a substantial number of suppliers and load serving entities, and the Transmission Owners.

⁴¹ Furthermore, the Municipals assert that section 8(c) precludes the SEMA Settlement parties from proposing market rule modifications providing for new Canal Unit LSCPR allocations during the moratorium period running through June 1, 2010.

37. Municipals also fault the use of the stakeholder process as permitting the continued allocation of Canal Unit out-of-merit costs to Upper SEMA systems, while negotiations continue. Municipals argue that the Commission's decision to hold the hearing in abeyance for one year pending conclusion of the stakeholder process is unreasonable because it fails to take into account the fact that the statutory refund effective period will expire at the end of June 2009 (15 months following the March 28, 2008 refund-effective date), while the report on stakeholder negotiations is not due until July 2009. Municipals contend that this process exposes customers to continued and unwarranted charges.

38. Municipals ask the Commission to remedy this situation by granting rehearing to permit them to terminate the stakeholder process prior to July 2009 in order to participate in hearing procedures. Alternatively, Municipals ask that the stakeholder process be shortened.⁴²

b. Transmission Owners' Request for Rehearing

39. Transmission Owners ask the Commission to clarify the July 18 Order to specify that no retroactive refunds, or refunds inconsistent with the SEMA Settlement, will be required to reflect cost allocation or rate design changes (including SEMA reconfiguration), or in the alternative seek rehearing. In addition, Transmission Owners assert that any stakeholder process to consider SEMA reconfiguration should be open-ended, consistent with the SEMA Settlement and the ISO-NE tariff, and permit consideration of any changes to SEMA or adjacent reliability regions, in light of ongoing transmission enhancement efforts in southern New England.

40. Transmission Owners initially ask for clarification that, in establishing a March 28, 2008 refund effective date, the Commission did not pre-judge the question whether refunds would be appropriate relief in this case in light of long standing policy against giving retroactive effect to changes in cost allocation and rate design in a section 206 proceeding. Transmission Owners assert that the July 18 Order erred if it intended to provide for retroactive refunds in violation of Commission policy. Transmission Owners state that the Commission should have provided assurances that it may establish a refund effective date "even if no refunds are forthcoming or likely or even possible given the nature of the complaint" or "the Commission does not see a need

⁴² Municipals request for rehearing at 34. Municipals also ask that the Commission clarify that interested parties will be provided an opportunity to comment on any ISO-NE proposal or report developed through the stakeholder process.

for refunds in the particular case.”⁴³ Transmission Owners state that the Commission should have provided assurances that refunds will not be required when it establishes a refund effective date to fulfill its statutory obligation.

41. Transmission Owners support their request stating that the Commission’s policies prohibit refunds or other retroactive relief when it directs changes in rate design or cost allocation and asserts that the only issues in this proceeding concern LSCPR rate design and cost allocation issues.⁴⁴ Transmission Owners predict substantial rate consequences of retroactive reallocation of the Canal Unit LSCPR costs to Lower SEMA customers and state that directing retroactive refunds would disrupt market decisions.⁴⁵ Transmission Owners point out that, in the past, Lower SEMA customers have paid charges for reliability service located in Upper SEMA, that presumably would have been allocated solely to that region had SEMA been split.⁴⁶

42. Transmission Owners object to allowing the stakeholder process to consider redrawing SEMA as inconsistent with the ISO-NE tariff. According to Transmission Owners, the ISO-NE tariff describes the term Reliability Region based exclusively on electric system operations and constraint criteria, not cost causation.⁴⁷ Transmission Owners defend the current scheme as one in which electric system criteria drive the design of the Reliability Regions, with cost allocations resulting from the underlying system design.⁴⁸ Transmission Owners also reference section III.2.7(g), which states that ISO-NE may reconfigure Reliability Regions to reflect changes to the grid, patterns of usage, changes in contingency response or congestion.

⁴³ Transmission Owners request for rehearing at 6-7 (citing *Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,321 (2003); *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,233 (2004)).

⁴⁴ *Id.* at 7-8 (citing *Union Electric Co.*, 64 FERC ¶ 61,355 (1993); *Southern California Edison Co.*, 50 FERC ¶ 61,138 (1990) and court cases).

⁴⁵ *Id.* at 10-12.

⁴⁶ *Id.* at 16.

⁴⁷ The ISO-NE tariff, Market Rule 1, section III.1.3 defines Reliability Region as “any one of the regions identified on the ISO’s website. Reliability Regions are intended to reflect the operating characteristics of, and the major transmission constraints on, the New England Transmission System.”

⁴⁸ Transmission Owners request for rehearing at 16-17.

43. Transmission Owners state that the Commission cannot authorize a redefinition of SEMA based on cost allocation criteria without modifying the tariff. Furthermore, they argue that the Commission may only order such a modification prospectively, and that the Commission has not instituted a section 206 proceeding concerning section III of the tariff.

44. Transmission Owners suggest that the July 18 Order is discriminatory, based on the Commission's expectation that the stakeholder process need not be an opportunity for stakeholders to seek changes to non-SEMA boundaries. According to Transmission Owners, the July 18 Order thus implies that the SEMA boundaries may be based on different criteria than the boundaries of all other regions, which are based on electric system criteria. According to Transmission Owners, any adoption of different design criteria for SEMA than for other regions would be discriminatory and unlawful under the Federal Power Act (FPA).⁴⁹

45. Like their civic counterparts, the Transmission Owners object to the Commission's direction to ISO-NE to use the stakeholder process because the Settlement parties, including ISO-NE, are precluded from seeking a change to the SEMA configuration in NEPOOL or before the Commission. Transmission Owners state that no SEMA Settlement party may seek a change in SEMA configuration effective prior to the June 1, 2010 date established in the Settlement. According to Transmission Owners, use of the stakeholder process to develop a change in SEMA configuration effective before June 1, 2010 would violate the settlement and run afoul of the filed rate doctrine.⁵⁰ Transmission Owners specify that they do not claim that the Commission is bound by the *Mobile-Sierra* standard from requiring "otherwise permissible" changes in SEMA, based on Municipals' factual representations. Instead, the *Mobile-Sierra* standard precludes the Commission from relying on the stakeholder process, because ISO-NE and the other SEMA Settlement parties (aside from Municipals) are prohibited from recommending or otherwise seeking a change in SEMA boundaries that would pre-date the June 1, 2010 SEMA Settlement moratorium. Transmission Owners also characterize the Commission's directive as a misuse of the stakeholder process, because ISO-NE's stakeholders are asked to evaluate cost allocation and refund claims for an individual party, and not on terms of general applicability within the ISO.

⁴⁹ 16 U.S.C. § 824d (2006).

⁵⁰ Transmission Owners request for rehearing at 20 (citing *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*)).

46. Transmission Owners likewise object to the July 18 Order directive that stakeholders consider “other means” to address Municipals’ cost allocation claims. Such means, Transmission Owners argue, are equally subject to *Mobile-Sierra* and cannot include a pre-June 2010 boundary change, LSCPR cost-allocation changes or a challenge to ISO-NE’s classification of the Canal dispatch costs as LSCPR charges.

47. In addition, Transmission Owners object to the stakeholder process because the Commission’s directive would preclude stakeholders from considering changes to the boundaries of regions other than SEMA or changes to SEMA boundaries that would affect other regions (such as expansion or combination). According to Transmission Owners, stakeholders should be able to consider combining Upper and Lower SEMA into other ISO-NE Reliability Regions. In such a case, Transmission Owners argue that the July 18 Order refund requirement is improper, because the order does not anticipate resulting cost reallocations with the neighboring Reliability Regions.

48. Transmission Owners support an open-ended stakeholder process to consider reconfiguration of the ISO-NE reliability regions, including a post-June 1, 2010 SEMA reconfiguration (or elimination). Transmission Owners note that ISO-NE transmission owners are adding new transmission infrastructure that may render obsolete the existing reliability regions in southern New England.

c. Commission Determination

49. The Commission denies the Municipals’, and Transmission Owners’ requests for rehearing concerning use of the stakeholder process, as discussed below.

i. Reliance on Stakeholder Process

50. Contrary to Municipals’ request, the Commission does not find reliance on the stakeholder process to be an impermissible delegation of authority. The Commission may refer, and has referred, a matter to a stakeholder process in any number of circumstances. In particular, a stakeholder process is appropriate when unresolved issues may be better addressed in a forum featuring broad stakeholder input,⁵¹ and where a solution can be better tailored to meet regional needs through broad input from interested participants that may not otherwise participate in a Commission proceeding.⁵² Because

⁵¹ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,038, at P 19 (2008); *Pepco Energy Servs. v. PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,008, at P 24 (2008).

⁵² Cf., *PSC of Wis. v. FERC*, 545 F.3d 1058, 1063 (D.C. Cir. 2008) (affirming Commission referral to open stakeholder process allowing extensive participation).

the Commission will ultimately review and act on any resulting proposal, there is no issue with respect to delegation of Commission authority.⁵³ As the Commission found in the July 18 Order, redefining ISO-NE reliability region boundaries may affect other regions in ISO-NE. Therefore, it is appropriate to permit those regions to participate and provide input on the factors that should determine whether and how the region is adjusted, as well as the effect of any proposal on New England markets or in other regions in the ISO-NE footprint.⁵⁴

51. Municipals and Transmission Owners both argue that reliance on the stakeholder process is improper because certain of the SEMA Settlement parties may not “seek” a change in SEMA boundaries during the moratorium period. The Commission does not find this fact a sufficient ground to grant rehearing. Initially, the Commission notes that a rate moratorium typically precludes a party from seeking a change in the filed rate before the Commission – that is, from making a filing to change filed rates, terms and conditions for the timeframe established for the rate moratorium. Thus, the Commission’s primary concern when approving or applying a rate moratorium is with the filed rate and jurisdictional rates, terms and conditions, and proceedings before the Commission to change the filed rate. While a rate moratorium typically precludes a party from seeking a change to the applicable rate (the rate on file) through a section 205 or section 206 filing, the Commission does not generally interpret a rate moratorium to prevent any person from considering, or discussing or even taking a position outside a Commission proceeding on any particular rate change to take effect after the moratorium period.

52. In this case the SEMA Settlement, section 9.2, provides that settlement parties, other than Municipals, shall oppose changes in allocation of Canal Unit out-of-merit charges during the moratorium period, while preserving Municipals’ rights under section 7.2 to seek relief from LSCPR charges and change in the ISO-NE definition of the SEMA region. Consequently, we find that, while SEMA Settlement parties may be precluded from taking a position in favor of reallocation of LSCPR charges under the tariff, the parties applied no such proscription to the second avenue of relief permitted under the Settlement, namely seeking a change in SEMA boundaries.⁵⁵

⁵³ *See id.* at 1064.

⁵⁴ *See* July 18 Order, 124 FERC ¶ 61,061 at P 30.

⁵⁵ *See also* SEMA Settlement, section 7.1(c), providing that parties may oppose Municipals’ arguments in favor of LSCPR reallocation or remain silent. There is no corresponding provision addressing the positions to be taken in response to Municipals’ arguments in favor of SEMA boundary changes under section 7.2.

53. Furthermore, the SEMA Settlement, which was supported by Municipals and Transmission Owners as just and reasonable, explicitly allows the Municipals to seek a change before NEPOOL during the moratorium period (after January 1, 2008). This fact responds to the parties' claims that the Settlement provisions preclude use of the NEPOOL process. Since the SEMA Settlement itself anticipated Municipals' use of the NEPOOL process to pursue its claims, the Commission does not believe that the remaining terms of the SEMA Settlement serve to make that option a nullity. It is true that some parties bargained for and obtained the moratorium in the SEMA Settlement. But this fact does not compromise the stakeholder process, since it merely suggests that those parties would be unlikely to support the disputed changes in the stakeholder process.

54. Thus, the Settlement does not prohibit a party from providing a reasoned analysis of the benefits and costs of a proposed rate structure, nor does it prohibit others from considering the issues and providing input. We note that stakeholders are familiar with the need to weigh new rate proposals for consistency with existing tariff provisions and contractual commitments. Therefore, the effect of the SEMA Settlement on issues to be discussed in the stakeholder process neither is particular to this proceeding nor justifies a departure from the Commission's practice of relying on stakeholder input when appropriate.

55. Therefore, the Commission affirms its decision to rely on the stakeholder process as an independent forum to consider the issues in this proceeding – one that will supplement deliberations before the Commission. The Commission declines to grant rehearing of its decision to direct ISO-NE to hold stakeholder discussions to gather information and develop a proposal to address the issues in this proceeding.

ii. Scope of Stakeholder Review

56. As for Transmission Owners' concern that limiting the stakeholder process to consider changes to SEMA boundaries is unduly discriminatory, we affirm the statements in the July 18 Order and deny rehearing. Limiting the stakeholder process is not unduly discriminatory because consideration of changes to the SEMA boundaries has been directed based on evidence in this proceeding that the SEMA boundaries may no longer be just and reasonable under the FPA. To the extent that the stakeholder process results in the development of generally applicable principles that lead to reconsideration of the boundaries of other reliability regions, application of such principles to other regions can be pursued, but should be pursued through a separate process, since seeking changes for other regions is beyond the scope of this proceeding. To the extent that Transmission Owners' request for rehearing suggests that the Commission's statement precludes changes to neighboring region boundaries, we clarify that nothing in the July 18 Order limits any party's rights under sections 205 or 206 to seek to change other boundaries.

iii. Miscellaneous

57. Initially, the Commission concludes that Transmission Owners' arguments which attempt to anticipate the remedy to be proposed by ISO-NE and adopted by the Commission are premature. The Commission has not ordered refunds, tariff changes or reliability region redesign at this point in this proceeding.⁵⁶

58. The Commission disagrees that our directive in the July 18 Order is inconsistent with cost causation principles.⁵⁷ There is no inconsistency between our cost causation principles and the fact that the reliability regions were designed based on system operation and constraint criteria. While system design is necessarily based on engineering criteria, the system is nevertheless designed to serve customers whose rates should reflect the cost of providing them service.

59. The Commission rejects Transmission Owners' suggestion that the Commission failed to provide adequate notice of the possibility of changes to the ISO-NE tariff to effectuate the change. Both the complaint and the prior SEMA Settlement provided notice to interested persons of the possibility that the SEMA boundaries may be adjusted to address the Municipals' concerns. The complaint in this proceeding and Transmission Owners' participation in the SEMA Settlement preparation and execution have provided them with sufficient notice that the ISO-NE regional designations that determine SEMA cost allocations might be altered.⁵⁸

60. The Commission reiterates that we do not expect the stakeholder process to be an opportunity for stakeholders to seek changes in this proceeding to non-SEMA boundaries within the ISO-NE footprint or address other issues not related to any proposed resolution of SEMA cost allocation issues. Such changes and issues are beyond the scope of this proceeding.

⁵⁶ *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator*, 127 FERC ¶ 61,121 (2009) (stating that FPA section 206 requires the Commission to establish a refund effective date, but it does not require that the Commission order refunds in every instance) (citing cases); *Anaheim v. FERC*, 558 F.3d 521 (D.C. Cir. 2009) (discussing Commission authority under section 206).

⁵⁷ *See, e.g., New England Power Pool*, 105 FERC ¶ 61,317, at P 22 (2003) (“[O]ur cost causation principle requires that rates should as closely as practicable reflect the costs to serve each class of customers . . .”).

⁵⁸ *See Dominion Resources. Servs. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,025, at P 35 (2008).

The Commission orders:

The requests for rehearing are hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.