

129 FERC ¶ 61,077  
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,  
Complainants

Docket No. EL08-48-002

v.

ISO New England Inc.,  
Respondent

ORDER ON COMPLIANCE FILING

(Issued October 28, 2009)

1. In this order, the Commission accepts ISO New England Inc.'s (ISO-NE) July 17, 2009 compliance filing responding to the Commission's directive in its July 18, 2008 order<sup>1</sup> to prepare a report through the stakeholder process addressing whether the Southeastern Massachusetts (SEMA) reliability region boundary provides for a just, reasonable, and not unduly discriminatory or preferential allocation of Canal Unit dispatch costs.<sup>2</sup> Applying criteria developed to review changes to ISO-NE reliability

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<sup>1</sup> *Braintree Electric Light Department v. ISO New England Inc.*, 124 FERC 61,061 (2008) (July 18 Order), *order on reh'g*, 128 FERC ¶ 61,008 (2009) (July 2 Rehearing Order).

<sup>2</sup> The Canal Units are Mirant's Canal Units 1 and 2 in Cape Cod, Massachusetts. The complaint that initiated this proceeding raised issues concerning the justness and reasonableness of relying on out-of-merit dispatch of these units and what customer groups should bear the resulting costs.

region boundaries, ISO-NE determined that the SEMA regional boundary resulted in just and reasonable cost allocations and that changes to the boundary were not justified either prospectively or retroactively.

## **I. Background**

2. The July 18 Order denied, in part, the Massachusetts Public Systems' (Municipals)<sup>3</sup> complaint, which alleged that the out-of-merit dispatch charges for the Canal Units should be reclassified, because ISO-NE could have implemented Post First Contingency Switching (PFCS)<sup>4</sup> or Special Protection System (SPS)<sup>5</sup> arrangements to reduce the Local Second Contingency Protection Resources (LSCPR) charges resulting from Canal Unit out-of-merit dispatch. The Commission also ordered ISO-NE to develop a process to resolve whether the SEMA reliability region should be subdivided into two sub-regions, "Upper" and "Lower" SEMA, with Canal Unit out-of-merit dispatch costs allocated to Lower SEMA.<sup>6</sup>

3. In the July 18 Order, the Commission reported that Mirant's Canal Units were originally designed to serve, and at the time of the complaint were serving as the primary generation sources for Cape Cod, producing 1,126 MW, while four smaller generating plants in Cape Cod produce 152 MW, and two 345 kV transmission lines providing power from the ISO-NE grid. The Commission directed ISO-NE to initiate a stakeholder process to determine whether the SEMA boundary resulted in just and reasonable allocations of Canal Unit out-of-merit dispatch costs. If not, ISO-NE and the stakeholders were to consider how SEMA should be divided or whether other means (except for implementation of a switching or special protection arrangement) could

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<sup>3</sup> The Municipals are 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.

<sup>4</sup> Post First Contingency Switching (PFCS) is the opening of various circuit breakers following the occurrence of the first contingency.

<sup>5</sup> 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.

<sup>6</sup> Municipals contended that redrawing the SEMA reliability region is appropriate to remedy unfairly allocating to its members the costs incurred to avoid shedding load on Cape Cod. Municipals argued that such costs should be borne solely by the Cape Cod systems in Lower SEMA that benefit from the Canal Unit dispatch.

resolve the underlying cost issues. The order directed ISO-NE to file a report presenting the determination developed through the stakeholder process. ISO-NE submitted this compliance filing on July 17, 2009.

**A. Municipals' Complaint**

4. According to the Municipals, the complaint was prompted by the 2006 out-of-merit dispatch of the Canal Units for reliability purposes. NSTAR Electric Company (NSTAR) requested out-of-merit dispatch to ensure the availability of the Canal Units after high fuel oil prices made operation of the Canal Units otherwise uneconomic. ISO-NE ultimately designated the dispatch costs under its LSCPR provisions and allocated the costs to the SEMA region, rather than to NSTAR as the entity requesting the dispatch, both retroactively and prospectively.

**B. SEMA Settlement**

5. Initially, the parties resolved certain issues concerning classification of the Canal Unit charges under the LSCPR methodology through a partial settlement executed by Municipals, ISO-NE, NSTAR and National Grid USA<sup>7</sup> (collectively, Transmission Owners), and other entities (the SEMA Settlement).<sup>8</sup> The SEMA Settlement permitted Municipals to pursue the claims addressed in the July 18 Order and otherwise resolved all disputes and controversies between these parties regarding Canal Unit LSCPR charges in the SEMA region 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 (the Moratorium Period).<sup>9</sup>

6. Relevant to the complaint, the SEMA Settlement permitted the Municipals 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 PFCS or SPS arrangement, and, second, to seek a change in the definition of the SEMA region and consequent reallocation of Canal Unit charges.

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<sup>7</sup> 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.

<sup>8</sup> The SEMA Settlement was approved by July 21, 2007 letter order in Docket No. ER07-921-000.

<sup>9</sup> SEMA Settlement, section 9.2; *see* July 18 Order, 124 FERC ¶ 61,061 at P 4; July 2 Rehearing Order, 128 FERC ¶ 61,008 at P 4.

**C. July 18 Order**

7. In the July 18 Order, the Commission reviewed the Municipals' challenges to the Canal Unit cost allocation permitted by the SEMA Settlement. The Commission rejected the Municipals' first claim, but sought additional information concerning the second through the New England Power Pool (NEPOOL) stakeholder process. The Commission described the SEMA reliability region as originating from pre-existing NEPOOL regional boundaries, established by engineering analyses of interfaces and transmission constraints, but found that the SEMA regional boundary may no longer result in a just and reasonable allocation of Canal Unit dispatch costs. Consequently, the Commission 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.

8. The Commission directed ISO-NE to use the stakeholder process to explore these issues and report its conclusions in a compliance filing. 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.

**D. July 2 Rehearing Order**

9. On rehearing, the Commission affirmed its finding that the SEMA Settlement permitted review of only two issues: (1) whether 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.<sup>10</sup> Furthermore, the Commission affirmed its finding that PFCS and SPS are not acceptable substitutes for out-of-merit Canal Unit dispatch, due to the reliability risks inherent in adjusting the system to prepare for load shedding under the proposed switching arrangements.<sup>11</sup> The Commission noted that a PFCS or an SPS arrangement could black out Cape Cod load for up to 24 hours, due to start-up characteristics of the Canal Units. Consequently, the Commission denied Municipals' request for rehearing, in which they argued that the Commission should have ordered refunds based on a misclassification of the Canal Unit costs as LSCPR.

10. The Commission rejected Transmission Owners' objections to refunds and allowing the stakeholder process to consider redrawing SEMA as premature. In addition,

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<sup>10</sup> July 18 Order, 124 FERC ¶ 61,061 at P 22 (citing SEMA Settlement, sections 7.1 and 7.2); July 2 Rehearing Order, 128 FERC ¶ 61,008 at P 24.

<sup>11</sup> July 18 Order, 124 FERC ¶ 61,061 at P 24; July 2 Rehearing Order, 128 FERC ¶ 61,008 at P 25.

the Commission affirmed its reliance on the stakeholder process over Municipals' and Transmission Owners' objections. The Commission described its expectation for the compliance filing:

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.<sup>12</sup>

11. On rehearing, the Commission reiterated its findings from the July 18 Order that redefining ISO-NE reliability region boundaries may affect other regions in ISO-NE and affirmed its decision to permit the other regions to participate and provide input on the factors that should determine whether and how each region may be modified through the ISO-NE stakeholder process. In addition, stakeholders were to review the effect of any proposal on New England markets or other regions in the ISO-NE footprint.<sup>13</sup> Finally, the Commission found nothing in the SEMA Settlement prohibiting reliance on the stakeholder process and noted that stakeholders are capable of reviewing rate proposals and consequent impacts.

## **II. ISO-NE Compliance Filing**

12. Following completion of the stakeholder process, ISO-NE submitted its compliance filing. In its report, ISO-NE states that it and the stakeholders determined that the SEMA region should not be bifurcated, merged or otherwise modified, either prospectively or for a period extending back to the refund effective date (March 28, 2008). ISO-NE reports that the stakeholders and the ISO developed guidelines to

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<sup>12</sup> July 2 Rehearing Order, 128 FERC ¶ 61,008 at P 33.

<sup>13</sup> July 18 Order, 124 FERC ¶ 61,061 at P 30.

determine what circumstances would warrant a change to reliability region boundaries. The guidelines include: (1) a twelve month notice period for zonal modification, including proposed effective dates and detailed boundary information; (2) triggering events prompting consultation among the ISO and market participants on zone modification or creation (including changed market conditions, resource additions or retirements, or certain transmission changes); and (3) changes that endure for a significant period of time, beyond the twelve-month notice period that justified modifying the zone.

13. Applying these guidelines, the ISO-NE stakeholders declined to modify the SEMA boundary. In particular, the stakeholders found that temporary modification of the zone boundary would be inappropriate since imminent transmission upgrades would largely eliminate out-of-merit generation dispatch.<sup>14</sup> ISO-NE asserts that interim relief, in the form of refunds, is inappropriate, since the prospect of these imminent transmission upgrades along with ongoing changes in the resource mix resulted in a dynamic set of system changes. And, since there is no need for interim relief, there likewise would be no need to eliminate or modify the SEMA region.

14. In the report, ISO-NE notes that work has been ongoing since 2006 to bolster the transmission system in the lower SEMA area. ISO-NE lists system upgrades with short implementation times that were originally described in the ISO-NE Short Term Report, dated July 17, 2007, issued pursuant to the Settlement.<sup>15</sup> According to ISO-NE, these upgrades will increase the load level at which ISO-NE may reliably operate the system without load shedding to 20,000 MW in summer and 24,000 MW in winter. According to ISO-NE, the upgrades permit reliance on limited load shedding through the use of a switching arrangement. This limited load shedding is in contrast to the load switching earlier considered as an alternative to running the Canal Units, which would have relied on shedding the entire Cape Cod service area for twenty-four hours under high load conditions.

15. ISO-NE believes that the upgrades reduce the overloads relieved by the Canal Unit dispatch; therefore limited load shedding becomes a viable option. As a result, ISO-NE reports, Canal generation is no longer being regularly operated out of merit for second contingency protection.

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<sup>14</sup> An ISO-NE trade publication reports that the upgrades were completed in July 2009. *See* ISO-NE, Outlook: A Wholesale Electricity Industry Update, p. 4 (Sept. 2009), available at [www.iso-ne.com](http://www.iso-ne.com).

<sup>15</sup> The ISO-NE Short Term Report is referenced in the July 18 Order, 124 FERC ¶ 61,061 at P 24.

16. In the compliance filing, ISO-NE describes the stakeholder process that reviewed various approaches for resolving the Canal Unit cost allocation dispute. ISO-NE notes that Municipals suggested several approaches for shifting the cost allocation: (a) allocating the Canal out-of-merit dispatch costs incurred to avoid voltage collapse to the entire New England region; (b) allocating Canal Unit LSCPR redispatch charges to the entire New England region; and (c) allocating the Canal out-of-merit dispatch charges to the load at risk of being shed. ISO-NE counsel advised the stakeholders that parties to the SEMA Settlement would not be able to support a change to ISO-NE's designation of Canal generation as LSCPR or to the allocation methodology for LSCPR to take effect during the moratorium period (which runs through June 1, 2010) established in the Settlement.

17. ISO-NE also made a presentation to the stakeholders on SEMA boundary review, including reliability criteria and the impact of transmission upgrades, concluding that the upgrades in conjunction with revisions to transmission operating protocols may resolve out-of-merit cost issues in SEMA. ISO-NE discussed with the stakeholders how the reliability region boundaries were originally established. ISO-NE reports that, in general, boundaries were originally determined based on several factors including: (i) zones should not be too small in terms of MW load or number of buses; (ii) zones should have relatively little internal congestion; (iii) zones should not cross state boundaries; and (iv) zones should be reasonably small in number. ISO-NE states that a primary consideration in setting the SEMA boundary was the presence of transmission constraints that limited exports from SEMA. ISO-NE cites the tariff criteria for reconfiguring reliability regions "as necessary over time to reflect changes to the grid, patterns of usage, changes in local . . . [thirty-minute operating reserve] contingency response requirements and intrazonal congestion."<sup>16</sup>

18. ISO-NE notes that the eight reliability regions serve two functions in the RTO: to aggregate costs for pricing energy for load and to allocate reliability costs, including certain uplift and other out of market costs. ISO-NE states that the zones generally encompass the service territory located within a single state, or, as is the case of Massachusetts, the zones consist of a smaller territory to reflect constraints.<sup>17</sup>

19. In support of the guidelines for changing zonal boundaries, ISO-NE states that a significant notice period is desirable, so that market participants may take future changes

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<sup>16</sup> ISO-NE compliance filing at 20-21 (citing ISO-NE tariff § III.2.7(g)).

<sup>17</sup> The ISO-NE reliability regions include three Massachusetts regions, SEMA, Northeast Massachusetts (NEMA) and West Central Massachusetts (WCMA), and the Maine, New Hampshire, Vermont, Rhode Island, and Connecticut reliability regions.

into account during contract negotiations. Otherwise, the risk of market reconfiguration is likely to be built into the contract price, to the detriment of consumers. The ISO-NE market committee suggested twelve months as an appropriate notice period.

20. The market committee also identified certain triggering events justifying zone modification such as changes in market conditions, resource additions or retirements, and transmission system changes that cause a sub-region of a state to experience market conditions on par with other regions or cause a sub-region to no longer experience the conditions that justified separate treatment. The guidelines state that such conditions should be expected to persist beyond the twelve month notice period, due to the effort required to modify zones, including modification of software and computer models, and the short-term nature of many system conditions.

21. The guidelines described in the compliance filing explain that state sub-divisions will be considered based on significant interfaces and the potential for meaningful market differences, either locational marginal prices or uplift, between subdivided areas. Potential subdivisions will be assessed based on whether the proposed subdivision has a reasonably high expectation of periodically experiencing congestion or requiring out-of-merit dispatch to meet reliability criteria. In addition, the subdivision should be sufficiently large to provide a reasonably predictable pricing zone for energy, including the potential for reliability cost allocations, and should encompass a sufficient number of resources to effectively meet reliability needs. ISO-NE states that a sufficiently large zone promotes stable energy pricing because more load can bear reliability costs. ISO-NE states that while the costs to address particular reliability issues may be attributable to different portions of a zone other costs will be incurred in other areas over time. ISO-NE states that “perfect” cost causation is not achievable on a zonal basis, and pursuit of such a goal would require ISO-NE to constantly alter zone boundaries. Furthermore, ISO-NE notes that zones should be of sufficient size to permit competition among resources within a zone.

22. ISO-NE states that it reviewed the design process that produced the original SEMA boundary and discusses the application of the guidelines developed in the stakeholder process. ISO-NE also reviewed NSTAR’s long-term report, which demonstrated that recent transmission upgrades have a significant impact on the need for dispatch of the Canal Units, such that NSTAR could rely on post-second contingency switching arrangements in the future. As a result, ISO-NE predicts that SEMA should not require further out of merit dispatch, following completion of the upgrades.<sup>18</sup> ISO-

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<sup>18</sup> ISO-NE also notes minimal reliance on redispatch during May and June 2009.

NE characterizes the reliability needs leading to the Canal Unit dispatch that prompted the complaint as existing for a “limited amount of time” and not persisting beyond the 12-month period proposed in the guidelines for boundary changes.

23. Based on these facts, the ISO-NE markets committee determined not to modify the SEMA boundary prospectively. Furthermore, the ISO-NE recommends that the zone not be changed for the interim period back to March 28, 2008. ISO-NE points out that the SEMA zone was created to reflect certain transmission constraints, voltage issues, and generation resources existing at a point in time. ISO-NE states that the transmission infrastructure has been continually changing on a regional basis to reduce or eliminate congestion constraints and improve efficiency and lists multiple transmission upgrade projects that have been implemented since the zone was established. ISO-NE notes that it had not proposed changing the zone boundaries to merge SEMA with another zone in response to these transmission upgrade projects.

24. ISO-NE states that it objects to bifurcating the SEMA zone because the resulting zone may be too small to provide a reasonably predictable pricing zone to permit structuring long-term energy contracts. Furthermore, ISO-NE recommends (via the guidelines) that zone boundaries only be changed after sufficient notice to market participants, including specifying the boundaries to be used and the length of time the change would apply, in order to permit parties to consider the changes in contractual negotiations. ISO-NE advocates adhering to these guidelines to protect market participants who relied on the existing market structures and to prevent market participants from incorporating uncertainty risk factors into their negotiations, which ISO-NE believes would increase costs to consumers.

### **III. Notice, Interventions and Responsive Pleadings**

25. Notice of ISO-NE’s compliance filing was published in the *Federal Register*, 74 Fed. Reg. 37701 (2009), with interventions and protests due on or before August 7, 2009.

26. Cape Light Compact (Cape Light), Massachusetts Department of Public Utilities (Mass DPU), and New England Power Pool Participants Committee (NEPOOL Participants) each filed comments in support of the compliance filing recommendation not to make changes to the SEMA boundary.<sup>19</sup> Municipals filed a protest requesting the

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<sup>19</sup> Cape Light and Mass DPU include, respectively, a motion to intervene and notice of intervention with their comments. However, their earlier interventions, filed in response to the Municipals’ complaint, make them parties to this proceeding to review the compliance filing. July 18 Order, 124 FERC ¶ 61,061 at P 21.

Commission to institute hearing procedures. ISO-NE and the Transmission Owners each filed an answer in response to the Municipals' protest.

**A. Supportive Pleadings**

27. Mass DPU supports the ISO-NE recommendation. Mass DPU notes that the short term upgrades leave little need for upgrades going forward. Mass DPU objects to Municipals' refund proposal as not being just and reasonable, given market participants' reliance on the existing rules and boundaries, when making contractual commitments. Mass DPU states that a retroactive change could severely disrupt New England markets, adding significant risk of retroactive rule changes, and argues that a significant notice period should precede any boundary changes.

28. NEPOOL Participants states its support for the ISO-NE recommendations, while not unanimous, is shared by many different participants from various sectors. The NEPOOL Participants voted eighty-two percent to adopt the markets committee's recommendation not to alter the SEMA region definition, either retroactively or prospectively, without prejudice to any future recommendations.<sup>20</sup>

29. Cape Light supports the ISO-NE recommendation as equitable and consistent with the terms of the ISO-NE tariff. Cape Light notes that the stakeholder process considered planned upgrades and the feasibility of technical solutions in arriving at its determination and indicates that shifting LSCPR charges to one subset of customers that did not cause and cannot mitigate the charges would be unfair and inappropriate.

**B. Municipals' Protest**

30. In their protest, Municipals complain that the compliance filing does not provide for refunds of their share of "staggering" LSCPR charges. Municipals ask the Commission to reinstate the hearing procedures held in abeyance in the July 18 Order regarding the justness and reasonableness of the Canal Unit charges allocated to the SEMA zone. Municipals seek to preserve their position that their allocation of the staggering charges should instead be allocated to the lower SEMA region (which would continue to be responsible for its original share of charges).<sup>21</sup>

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<sup>20</sup> NEPOOL Participants note that the Publicly Owned Entity Sector opposed the recommendations and there were several abstentions.

<sup>21</sup> Municipals' presentation to the ISO-NE markets committee also proposed regional allocation of Canal Unit dispatch needed to prevent regional voltage collapse.

31. Municipals claim that the compliance filing fails to resolve outstanding issues concerning whether the cost allocations resulting from the current SEMA boundary are just and reasonable. In particular, Municipals fault the compliance filing for failing to develop proposals to resolve the cost allocation issues set for hearing. Municipals state that the compliance filing does not contain a proposal addressing cost allocation issues and provides no basis for terminating the hearing held in abeyance in the July 18 Order.

32. Municipals reiterate the objections to the stakeholder process they raised in their August 19, 2008 petition for rehearing, arguing that the stakeholder process was unreliable because some of the stakeholders had agreed in the SEMA Settlement not to support changes to the SEMA boundary prior to the moratorium expiration in 2010.

33. Municipals acknowledge that the short term upgrades and related changes in system operations resolve prospective cost issues with respect to Canal Unit dispatch. However, Municipals continue to object to bearing Canal Unit LSCPR costs incurred from March 28, 2008 through the date on which the upgrades effectively eliminated the need to rely on Canal Unit dispatch and object to the compliance filing because it does not address Municipals' claims prior to the upgrades.

34. Municipals object to the guidelines, which, they argue, provide no basis for resolving their claim to refunds based on unjust and unreasonable allocation of Canal Unit LSCPR costs. Municipals state that the guidelines fail to satisfy the legal requirement that rates reflect the costs to serve each class or individual customer.<sup>22</sup> Municipals claim that they have been required to pay tens of millions of dollars of LSCPR charges in order to avoid a small risk of load shedding in lower SEMA.

35. Municipals reject ISO-NE's claim that a lower SEMA zone would be too small. Municipals state:

[A]n expansion (or non-contraction) of zonal boundaries in order to avoid market concentration problems does not render it automatically reasonable to impose out-of-market reliability costs on customers in the expanded zone that are upstream of the relevant transmission constraint, are unaffected by the

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<sup>22</sup> Municipals protest at 8 (citing *Ala. Elec. Coop., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982); *Ill. Commerce Comm'n v. FERC*, No. 08-1306, 576 F.3d 470, at 9 (7<sup>th</sup> Cir. 2009)).

reliability issues resulting from that constraint, and receive no benefit from costs incurred to operate generation to compensate for transmission system weaknesses.<sup>23</sup>

36. Municipals contend that there is no minimum size criterion associated with zone boundary selection, citing ISO-NE's market rules. Municipals state that the region is not too small, given that the lower SEMA boundary was used from 2006 to 2009 to determine locational marginal prices and to value financial transmission rights. Municipals argue that there is no reason why the lower SEMA region should be considered too small to allocate Canal Unit LSCPR charges, if it can be used for the other purposes. Municipals maintain that the need to rely on LSCPR dispatch to avoid load shedding in lower SEMA should be an operating characteristic of the New England transmission system to be reflected in the reliability region boundaries.

37. Municipals also object to the twelve month notice guideline, because it focuses on changing boundaries, rather than providing for refunds of unjustly allocated costs. Municipals state that the guidelines exaggerate the effect that granting refunds will have on other market participants. Furthermore, Municipals claim that the filing of the SEMA Settlement should have provided adequate notice to market participants of the possibility of refunds or boundary changes. Thus, market participants should have had time to account for that possibility in contract negotiations.

### C. ISO-NE Answer

38. In its answer, ISO-NE provides updated cost allocation figures, with Municipals paying approximately \$19.7 million of \$143.5 million total SEMA day-ahead and real-time LSCPR charges in 2008, and approximately \$1.9 million of \$13.9 million in 2009 (through June 2009).

39. ISO-NE argues that the Municipals do not demonstrate that the compliance filing or the stakeholder process fails to meet the Commission's standards, or justify refunds or resumption of hearing procedures. ISO-NE objects to the Municipals' criticism of the stakeholder process as failing to provide them with refunds of LSCPR charges, noting that the Municipals ignore the constraints imposed on stakeholders, including the Municipals, by the SEMA Settlement. ISO-NE states that many of the Municipals' proposed options (included in the earlier protest) – such as the regionalization of LSCPR charges – are precluded by the SEMA Settlement. ISO-NE concludes that the stakeholder process was properly focused on the justness and reasonableness of the

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<sup>23</sup> *Id.* at 11.

existing SEMA boundary or modifications thereto, consistent with the July 18 Order. ISO-NE states that a focus on generally applicable guidelines regarding modification of reliability region boundaries was appropriate and what the Rehearing Order intended.

40. ISO-NE rejects Municipals' claims that allocation of the LSCPR charges is not just and reasonable noting that the uplift was for an identified locked-in period, there were concerns with price certainty and risk premiums if zones were subject to retroactive change, and there should be prior notice for boundary changes when negotiating commercial arrangements. ISO-NE reports that all these factors led to the conclusion that, on balance, the current SEMA boundary should remain the same.

41. ISO-NE states that the Municipals are barred by the SEMA Settlement from advocating that LSCPR charges accruing during the Moratorium Period be allocated in a manner contrary to the current ISO tariff (to load in the pertinent reliability region). ISO-NE states that its modeling of a constraint within SEMA for locational marginal price or financial transmission rights purposes does not by itself support the argument that a zone should be subdivided based on that constraint. ISO-NE explains that a number of constraints are modeled throughout New England for purposes of security-constrained dispatch and associated unit commitment; moreover, these constraints vary over time based on transmission upgrades and generation development.

42. As for Municipals' concerns that the stakeholder process was not well attended or did not adequately consider their refund requests, ISO-NE provides stakeholder meeting minutes that, it asserts, demonstrate that the proceedings were well attended and Municipals' refund request considered. Furthermore, ISO-NE rejects Municipals' assertion that no adverse market consequences would arise from the retroactive refunds. ISO-NE cites stakeholder concerns that care be taken in changing reliability region boundaries or load zones, especially retroactively, because such changes could affect standard offer contracts, resulting in high risk premiums. Other stakeholders asserted that suppliers should not bear the cost of retroactive changes and that contracts may have been entered into before any refund exposure was known.<sup>24</sup>

43. ISO-NE supports use of the SEMA reliability region for allocating costs; even though the allocation is not precise. ISO-NE states that, while circumstances may arise in which costs could be allocated in a different manner to more closely track cost causation principles it is not "practicable to constantly shift the zones in a never-ending quest for

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<sup>24</sup> ISO-NE answer at 10.

the perfect allocation.” ISO-NE justifies the use of zones as providing an appropriate balance of relying on cost causation principles while recognizing the practical limits to precision.<sup>25</sup>

44. ISO-NE supports the need for advance notice of a specific proposal for a change to a zonal boundary to permit market participants to account for the change in their transactions. ISO-NE argues that notice of a potential and unspecified boundary change – even assuming that it were provided, as asserted by the Municipals – is far different from notice of an actual future change, much less notice of any specific change to a zonal boundary.

#### **D. Transmission Owners’ Answer**

45. Transmission Owners state that there is no need for an evidentiary hearing as Municipals request because there are no material facts in dispute. Transmission Owners claim that the ISO-NE compliance filing is true to the spirit and letter of the Commission’s July 18 Order and comprehensively reviews the various factors pertinent to SEMA configuration. Transmission Owners state that ISO-NE appropriately concluded that the SEMA reliability region should remain intact, that the facts did not justify transforming lower SEMA into a separate reliability region, and that any changes in the boundaries of any reliability region, including SEMA, should be made only prospectively with twelve months prior notice to avoid market disruptions. Transmission Owners state the SEMA Settlement precludes the Municipals’ requests for refunds and a SEMA reconfiguration to avoid an allegedly unjust allocation of Canal Unit LSCPR charges. Transmission Owners believe that SEMA, as currently constituted, provides a more efficient generation supply that benefits all SEMA customers and lower SEMA customers have stood, and continue to stand, ready to cushion upper SEMA customers from upper SEMA related reliability costs. Transmission Owners state the Municipals have not demonstrated that, prior to 2006, they voiced any objection to SEMA’s boundary and the reciprocal sharing among all customers within SEMA of the benefits and burdens that the boundary entails.

### **IV. Discussion**

#### **A. Procedural Issues**

46. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the ISO-NE’s and Transmission Owners’ answers because they have provided information that assisted us in our decision-making process.

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<sup>25</sup> *Id.* at 11.

**B. Commission Determination**

47. The Commission accepts ISO-NE's compliance filing. We agree with ISO's proposal to retain the existing SEMA reliability region boundary prospectively and during the retroactive period (the refund effective date to present). Both ISO-NE and Municipals agree that prospectively redrafting the SEMA boundary is unnecessary due to upgrades to the transmission system. The completion of these upgrades mitigates the need for out-of-merit dispatch of the Canal Units and the resulting LSCPR charges that are the subject of this dispute.

48. Municipals fault the compliance filing for failing to develop proposals to resolve the cost allocation issues set for hearing. The Commission's Order of July 18 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 agrees with ISO-NE that the Municipals fail to recognize that the SEMA Settlement time-bars certain proposals, such as regionalization of LSCPR charges, that are beyond the issue of how SEMA's boundary could be reconfigured.

49. We reject Municipals' objections to ISO-NE's reliance on the guidelines. The Commission's July 2 Rehearing Order stated that ISO-NE should support its determination on how to proceed with such studies or analyses that were considered or developed in conjunction with ISO-NE's proposed plan of action. The Commission agrees with ISO-NE that Municipals fail to demonstrate that the compliance filing or the stakeholder process fails to meet the standards of the July 18 Order. The Commission also agrees with the Transmission Owners that the Municipals fail to point to any disputed material facts warranting a hearing.

50. ISO-NE justifies allocation of the Canal Unit LSCPR charges based on the existing SEMA regional boundary, noting that no party advocates a permanent change to the boundary (after the construction of the transmission upgrades in 2009) and asserting that trying to more precisely allocate temporary system charges would be unworkable and would result in risk premiums added to contracts that would increase costs to consumers. ISO-NE's identification of several past system conditions, which did not result in regional boundary changes or cost reallocations, demonstrates that the temporary incurrence of high costs within a region need not lead to changes in regional boundaries.

51. Furthermore, reliance on the regional structure for allocation appropriately spreads costs among customers within a region and prevents price fluctuations due to such temporary conditions. We agree with ISO-NE that use of a smaller zone may not provide a reasonably predictable pricing zone to permit the long term contract structuring that facilitates standard offer service. We also agree with ISO-NE that keeping the boundary intact will protect market participants that relied on existing market structures and

prevent market participants from incorporating a risk premium into their contracts, representing the potential, unknown costs of regional boundary changes, to reflect uncertainties in regional cost allocation.

52. We also reject Municipals' request for additional procedures. The SEMA Settlement bars the Municipals from seeking reallocation of the Canal Unit LSCPR charges through the stakeholder process other than through a change in the SEMA boundary. For these reasons, we find that reliance on the stakeholder process is appropriate.

53. Municipals argued that, because the lower SEMA region is used to determine locational marginal prices and financial transmission rights, it could be a separate reliability region. We disagree. Locational marginal prices and financial transmission rights are used to address short-term congestion and related costs on the system, whereas the regional structure is intended to provide a stable platform for allocating long-term reliability costs. Furthermore, ISO-NE reports that the lower SEMA region cannot stand alone because it lacks export capability. All of these factors support reliance on the current SEMA boundary as the appropriate platform for allocating reliability costs over the long term.

54. Finally, we do not believe that our holding in this proceeding is contrary to cost causation principles. These principles permit spreading the costs of efforts to protect reliability in the region and do not require the kind of project-by-project cost allocation that Municipals advocate for the Canal Unit LSCPR costs. The use of reliability regions appropriately balances cost causation with the cost and effort associated with modifying software and computer models and accounting for the impact on commercial arrangements. This proceeding does not involve large scale transmission upgrades, but instead concerns local reliability planning and operations that serve, over time, to benefit all customers in the region with stable pricing and reliable service. Although the Municipals complain that they are required to pay for the operation of units that serve other customers, in reality the issue is whether the Municipals should be required to pay a share of the operating costs of facilities needed to ensure that the transmission system that serves them operates reliably. In the July 18 Order we found that operation of the Canal Units was appropriate to meet the applicable reliability criteria, and we now find that Municipals are properly allocated a share of the costs to meet the criteria.

The Commission orders:

The ISO-NE compliance filing is accepted, as discussed in the body of this order.

By the Commission. Commissioner Moeller concurring with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Docket No. EL08-48-002

v.

ISO New England Inc.,  
Respondent

(Issued October 28, 2009)

MOELLER, Commissioner, *concurring*:

The ISO-NE's Markets Committee has determined that it is unnecessary to bifurcate the SEMA zone based on pre-existing import constraints into lower SEMA because the uplift caused by the Canal Units' out-of-merit operation has been virtually eliminated.<sup>1</sup> These constraints and the congestion that adversely affected lower SEMA have been largely alleviated by the completion of certain transmission upgrades (referred to as "Short Term Upgrades") including the Carver and Barnstable transmission projects.<sup>2</sup>

While the Commission previously declined to award rate incentives to these transmission projects (finding the projects to be "routine in nature" and thus making them ineligible for ROE incentives under Order No. 679), I disagreed with the majority and their conclusion that these projects would "have limited regional reliability impacts."<sup>3</sup>

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<sup>1</sup> ISO-NE's Compliance Report at 28.

<sup>2</sup> *Id.* at 12.

<sup>3</sup> *NSTAR Elec. Co.*, 125 FERC ¶ 61,313 at P 68 (2008) (Moeller, Comm'r, dissenting in part; Wellinghoff, Comm'r, dissenting in part; Kelly, Comm'r, concurring in part and dissenting in part), *order on reh'g*, 127 FERC ¶ 61,052 (2009) (Moeller, Comm'r, dissenting in part; Kelly Comm'r, concurring in part).

Now, with these transmission projects in service and the question of whether to split the SEMA zone being averted, I believe that the regional benefits of these valuable projects are beginning to be recognized (albeit without the transmission developer receiving an incentive for building them).<sup>4</sup>

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Philip D. Moeller  
Commissioner

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<sup>4</sup> ISO-NE's Compliance Report at Attachment 4, *Executive Summary Excerpt of the SEMA Long-Term Report* (January 20, 2009) at 4 ("[T]he completion of the short term upgrades will significantly improve system performance in the lower SEMA area. The short term upgrades significantly reduce the level of the overloads . . . [and] result in not needing to have a Canal generating unit on-line until regional load levels exceed a level of 20,000 MW in the summer and 24,000 MW in the winter....")