

132 FERC ¶ 61,248
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

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

v.

Docket No. EL08-48-003

ISO New England Inc.,
Respondent

ORDER DENYING REQUEST FOR REHEARING

(Issued September 21, 2010)

1. In this order, the Commission denies the request for rehearing filed by Massachusetts Public Systems (Municipals)¹ in response to the Commission's October 28, 2009 order accepting the ISO New England Inc. (ISO-NE) compliance filing in this proceeding.² Based on an ISO-NE compliance filing report, in the Compliance

¹ The Municipals consist of Braintree Electric Light Department (Braintree), 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 *Braintree Electric Light Department v. ISO New England Inc.*, 129 FERC ¶ 61,077 (2009) (Compliance Order).

Order, the Commission determined that the Southeastern Massachusetts (SEMA) reliability region boundary continues to provide for a just, reasonable, and not unduly discriminatory or preferential allocation of Canal Unit dispatch costs³ and that changes to the boundary were not justified either prospectively or retroactively.⁴

2. In the Compliance Order, the Commission found that the statements in the informational filing resolved the issues set for hearing in this proceeding and rejected Municipals' arguments seeking additional hearing procedures or refunds as either unnecessary or prohibited by the 2007 partial settlement that was previously accepted by the Commission and incorporated into the ISO-NE tariff (SEMA Settlement).⁵

I. Background

3. In the Order on Complaint, the Commission addressed the issues raised in the Municipals' March 28, 2008 complaint. The Commission rejected the Municipals' claim that costs for the out-of-merit dispatch of the Canal Units should be reclassified because ISO-NE could have implemented the switching or special protection arrangements, Post First Contingency Switching (PFCS)⁶ or Special Protection System (SPS),⁷ to reduce the

³ The Canal Units are Mirant's Canal Units 1 and 2 in Cape Cod, Massachusetts. The Municipals' complaint that initiated this proceeding raised issues concerning the justness and reasonableness of relying on out-of-merit dispatch of these units and which customer groups should bear the resulting costs.

⁴ The Commission directed ISO-NE to prepare the report through the stakeholder process and submit it to the Commission. *Braintree Electric Light Department v. ISO New England Inc.*, 124 FERC ¶ 61,061 (2008) (Order on Complaint), *order on reh'g*, 128 FERC ¶ 61,008 (2009) (Rehearing Order).

⁵ The SEMA Settlement was executed by the Municipals along with NSTAR Electric Company (NSTAR) and National Grid USA (collectively, ISO-NE Transmission Owners), ISO-NE and other entities, approved by July 21, 2007 letter order in Docket No. ER07-921-000, and accepted for filing as Attachment H to the ISO-NE Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3.

⁶ Post First Contingency Switching (PFCS) is the opening of various circuit breakers following the occurrence of the first contingency.

⁷ An SPS 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.

Local Second Contingency Protection Resources (LSCPR) charges resulting from the Canal Units' out-of-merit dispatch. The Commission stated 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, capable of producing up to 1,126 MW. According to the complaint, NSTAR requested out-of-merit dispatch to ensure the availability of the Canal Units when high fuel oil prices made operation otherwise uneconomic.

4. In the Order on Complaint, the Commission found that reliance on the switching arrangements advocated by Municipals (SPS and PFCS) was inconsistent with applicable reliability criteria and would permit an unacceptable risk of load shedding, including the possibility of loss of power to Cape Cod for up to 24 hours. In the Order on Complaint, the Commission set the Municipals' complaint for hearing to resolve the issue whether the cost allocations resulting from the boundaries of the current SEMA region are just and reasonable. The Commission suspended the hearing and directed ISO-NE to initiate a stakeholder process to address issues including, but not limited to, whether SEMA should be divided and, if so, how.⁸ In addition, the Commission stated that ISO-NE and the stakeholders could consider other means (except for implementation of a switching or special protection arrangement) to address Municipals' challenges to cost allocation in SEMA and indicated that stakeholders should consider the effects of any proposal on New England's markets or other regions in the ISO-NE footprint. The order directed ISO-NE to file a report presenting the resulting determination developed through the stakeholder process. ISO-NE submitted the compliance filing on July 17, 2009, which the Commission accepted in the Compliance Order described below.

II. Compliance Order

5. As described more fully in the Compliance Order, the Commission accepted the ISO-NE compliance filing that proposed to retain the existing SEMA reliability region boundary prospectively as well as during the period from the refund effective date of March 28, 2008 to the date of the ISO-NE compliance filing.⁹ The order noted that both

⁸ Order on Complaint, 124 FERC ¶ 61,061 at P 30.

⁹ The SEMA Settlement permitted Municipals to pursue the claims addressed in the Order on Complaint 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). SEMA Settlement, Section 9.2; Order on Complaint, 124 FERC ¶ 61,061 at P 4; Rehearing Order, 128 FERC ¶ 61,008 at P 4.

ISO-NE and Municipals agreed that redrafting the SEMA boundary prospectively became unnecessary with the completion of certain transmission system upgrades in July 2009 because NSTAR would no longer rely on out-of-merit Canal Unit dispatch and LSCPR charges would no longer be incurred.

6. The order rejected Municipals' protest claiming that the compliance filing should have resolved the cost allocation issues set for hearing, because the Municipals failed to recognize that the SEMA Settlement time-barred certain proposals, such as regionalization of LSCPR charges, as beyond the issue of how SEMA's boundary could be reconfigured.

7. The Commission also upheld ISO-NE's reliance on guidelines that it developed describing factors that would support changing regional boundaries.¹⁰ In doing so, the Commission noted that the Rehearing Order directed ISO-NE to support its determination with studies or analyses that were considered or developed in conjunction with ISO-NE's proposed plan of action. The Commission found that Municipals failed to demonstrate that the compliance filing or the stakeholder process failed to meet the standards of the Order on Complaint or identify any disputed material facts to warrant a hearing.

III. Request for Rehearing

8. In their November 30, 2009 request for rehearing, Municipals object to the Compliance Order, stating that the Commission should have provided some form of relief from the Canal Unit out-of-merit dispatch costs to upper SEMA. Municipals state that the Compliance Order unreasonably construes the SEMA Settlement as precluding them from seeking certain types of relief. The Municipals also claim that the Commission erred because it ignored cost-causation principles and failed to compare the burdens and benefits to Municipals of the Canal Unit operations, and also erred in finding that the Municipals had failed to identify any disputed material facts that would warrant a hearing. Municipals question the ISO-NE finding that a lower SEMA reliability region would be too small and contest reliance on the stakeholder process and the resulting ISO-NE Guidelines for boundary changes to support allocation of the LSCPR costs. Municipals also object to what they characterize as a Commission deferral to a "pre-ordained" outcome of the ISO-NE stakeholder process to find that Canal Unit LSCPR costs would not be re-allocated.

¹⁰ The resulting document, "Guidelines for Modifying Existing Reliability Regions," was provided in the July 17, 2009 ISO-NE Compliance Report, Attachment 2 (ISO-NE Guidelines).

9. According to Municipals, the Commission failed to challenge evidence provided in their complaint or protest showing that operating the Canal Units out of merit provided them no reliability or other benefit. Municipals cite their allegation that the Canal Units' out-of-merit dispatch cost approximately \$350 million during the period from January 1, 2006 through December 31, 2008, with \$48 million charged to Municipals. Municipals state that approximately \$20 million of those charges were incurred in the 15 months following the refund effective date, from March 28, 2008 through June 28, 2009. Municipals state that, in spite of these facts, the Compliance Order summarily accepted the "misallocation" of Canal LSCPR charges to Municipals.¹¹

IV. Discussion

10. We deny the Municipals request for rehearing for the reasons discussed below. 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. The Commission finds that running the Canal units as required by North American Electric Reliability Corporation (NERC) and Northeast Power Coordinating Council (NPCC) criteria was appropriate until new facilities could be constructed to ensure reliable electrical service in SEMA and therefore it is reasonable to not divide SEMA for the interim period. In addition, we find that Municipals have failed on rehearing to support their claims that refunds should be otherwise provided. In light of our determination that the SEMA Settlement permits Municipals to seek a change in the SEMA boundary, but not reallocation in the absence of such a change, we affirm our earlier denial of Municipals' request for an evidentiary hearing.

A. The SEMA Settlement Bar to LSCPR Reallocation

1. Compliance Order

11. As discussed in prior orders, the SEMA Settlement left open to Municipals two avenues of relief: first, to challenge LSCPR charges that would have been reduced if the ISO-NE Transmission Owners had instead implemented a switching or special protection arrangement (PFCS or SPS), and, second, "whether the Commission should direct a change in the ISO-NE definition of SEMA" (re-defining SEMA would result in a changed allocation of Canal Unit charges).¹² In the Compliance Order, the Commission

¹¹ Municipals, November 30, 2009 Request for Rehearing at 9 (citing Compliance Order, 129 FERC ¶ 61,077 at P 54).

¹² Order on Complaint, 124 FERC ¶ 61,061 at P 22. *See also* Rehearing Order, 128 FERC ¶ 61,008 at P 4; Compliance Order, 129 FERC ¶ 61,077 at P 6.

described the issues that were to be addressed in the stakeholder process as including, but not limited to, whether SEMA should be divided, and if so, how. The Commission noted its agreement with ISO-NE that the Municipals failed to recognize that the SEMA Settlement barred certain proposals, such as regionalization of LSCPR charges, as being beyond the issue of how SEMA's boundary could be reconfigured.¹³ Consequently, the Compliance Order found that the SEMA Settlement barred the Municipals from seeking reallocation of the Canal Unit LSCPR charges through the stakeholder process other than through a change in the SEMA boundary.¹⁴

12. In the Compliance Order, based on the information contained in the ISO-NE compliance filing, the Commission declined to order changes to the SEMA boundary. In addition, the Commission rejected Municipals' protest that the ISO-NE compliance filing failed to reallocate Canal Unit LSCPR charges incurred prior to the completion of the transmission upgrades.

2. Request for Rehearing

13. Municipals argue that the Commission's finding that the SEMA Settlement time-bars certain proposals is difficult to reconcile with the statement in the Order on Complaint that "stakeholders may also consider other means (except for implementation of the switching or special protection arrangements, PFCS or SPS) to address the issues regarding complainants' challenges to the cost allocation in SEMA."¹⁵ Municipals also cite the Rehearing Order in this proceeding as supporting a broader view of the scope of relief available.¹⁶

14. According to Municipals, Sections 4.1, 7.1, 7.2, and 8(c) of the SEMA Settlement¹⁷ permit them to seek a reallocation of Canal LSCPR costs based on the premise that the SEMA boundary "should have been changed in order to conform the Canal-related LSCPR charges to the cost-causation principles."¹⁸ Municipals also assert

¹³ Compliance Order, 129 FERC ¶ 61,077 at P 48.

¹⁴ *Id.* P 52.

¹⁵ *See* Order on Complaint, 124 FERC ¶ 61,061 at P 30.

¹⁶ Municipals, November 30, 2009 Request for Rehearing at 19 (referencing the Rehearing Order, 128 FERC ¶ 61,008 at P 54-60).

¹⁷ The text of these provisions is discussed more fully, below.

¹⁸ Nevertheless, the Municipals previously acknowledged that section 7.2 of the

that the SEMA Settlement permits them “to seek a reallocation of Canal LSCPR costs based on the premise that ISO-NE could have or should have implemented an SPS or PFCS arrangement.”¹⁹

15. Municipals claim without elaboration that their reading of the “subject to” language in Section 4.1 and the “other than as provided in Section 7” language in Section 8(c) is the only reading that is consistent with the settled principle that “no word in a contract (or settlement) is to be treated as surplusage or redundant if any reasonable meaning, consistent with the other parts, can be given it.”²⁰

16. Municipals also claim that language in the Rehearing Order and the original Order on Complaint in this proceeding indicates that at one time the Commission took a broader view of the scope of relief available to Municipals under the SEMA Settlement. Municipals conclude that the Commission’s holding in the Compliance Order “is inconsistent with both prior pronouncements and . . . the straightforward language of the SEMA Settlement Agreement.”²¹

3. Commission Determination

a. The Compliance Order Properly Interprets the Language of the SEMA Settlement

17. On rehearing, the Commission finds that Municipals fail to support their assertion that the SEMA Settlement permits Municipals to seek a reallocation of Canal LSCPR

SEMA Settlement precludes parties from proposing market rule modifications providing for new Canal Unit LSCPR allocations during the moratorium period running through June 1, 2010. *See* Municipals, August 18, 2008 Request for Rehearing at 28 n.28 summarized in the Rehearing Order, 128 FERC ¶ 61,008 at P 36 n.41.

¹⁹ Municipals, November 30, 2009 Request for Rehearing at 19. Municipals continue, in a footnote, “Seeking financial relief from an unjust cost allocation on the basis that ISO-NE could have avoided incurring the cost – but for its desire to limit certain beneficiaries from a small, criteria-permitted risk of loss of load – is not the same as advocating for implementation of the SPS or PFCS by which the costs could have been avoided.” *Id.* at 20 n.8.

²⁰ *Id.* at 20 (citing *Dominion Transmission Co. v. FERC*, 533 F.3d 845, 856 (D.C. Cir. 2008) (quotations omitted)).

²¹ *Id.* at 21.

costs based on the premise that the SEMA boundary “should have been changed in order to conform the Canal-related LSCPR charges to the cost-causation principles.” The SEMA Settlement, Section 4.1 states that, “subject to” the exceptions provided in Section 7 (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.” Likewise, SEMA Settlement, Section 8(c) states (emphasis added):

No Party shall propose, or argue, either to the Commission or within the ISO-NE or NEPOOL process, or vote within either process, for Market Rule amendments that would provide for a different mechanism for allocation of NCPC Charges for LSCPR, or shall seek or support reclassification of ISO-NE’s designation of Canal as a LSCPR during the Moratorium Period *other than as provided in Sections 4, 5, or 7* of this Settlement. Except for amendments authorized by Section 4.2(a), the Parties shall oppose any Market Rule amendments that would provide for a different mechanism for allocation of NCPC Charges for LSCPR than provided in Section 4.1 and Sections 5.1 and 5.2 or reclassification of ISO-NE’s designation of Canal as a LSCPR during the Moratorium Period proposed by persons who are not Parties to the Settlement.

18. Thus, Sections 4.1 and 8(c) provide that Municipals cannot seek a different allocation of the Canal Unit LSCPR costs prior to the end of the Moratorium Period except as provided in Section 7.

19. Section 7.1 permits Municipals to seek relief from LSCPR charges because such charges could or should be reduced through implementation of a switching or special protection arrangement. Municipals did so, and their claims were fully addressed in the Order on Complaint as affirmed in the Rehearing Order.²²

20. Section 7.2 permits Municipals to seek a change in the ISO-NE definition of the SEMA reliability region.²³ The Commission likewise reviewed this claim, whether the

²² Order on Complaint, 124 FERC ¶ 61,061 at P 24; Rehearing Order, 128 FERC ¶ 61,008 at P 24-31; Compliance Order, 129 FERC ¶ 61,077 at P 9.

²³ The SEMA Settlement, Section 7.2 states in full:

(continued...)

Commission should direct a change in the definition of the SEMA region that would cause a change in the allocation of Canal Unit charges, in the Order on Complaint. In response to this claim, the Commission directed ISO-NE to submit the compliance filing under review in the Compliance Order, to address whether a change in the ISO-NE definition of the SEMA reliability region was needed.²⁴

21. Contrary to Municipals' assertion, neither Section 7.1 nor Section 7.2 contains language to permit reallocation of Canal LSCPR costs because the SEMA boundary "should have been changed," absent a change in the definition of the SEMA region. Consequently, we do not find Municipals' arguments on this issue convincing.

b. The Compliance Order is Consistent with Prior Orders in This Proceeding

22. Municipals cite the Order on Complaint statement that stakeholders may consider other means (except for the switching or special protection arrangements, SPS or PFCS) "to address the issues regarding complainants' challenges to the cost allocation in SEMA."²⁵ Municipals also maintain without elaboration that "the limits" espoused in the Compliance Order, Paragraphs 48 and 52, are difficult to reconcile with "assurances" in the Rehearing Order, Paragraphs 54 through 60.²⁶ Municipals conclude that the Commission's holding in the Compliance Order is inconsistent with the statements in the prior orders. We disagree and find no inconsistency.

23. In these proceedings, the Commission has consistently interpreted the SEMA Settlement as permitting Municipals to pursue the two claims described above to support

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.

²⁴ See, e.g., Rehearing Order, 128 FERC ¶ 61,008 at P 4; Compliance Order, 129 FERC ¶ 61,077 at P 6. In their August 7, 2009 Protest of the ISO-NE compliance filing (at 3 n.4), Municipals state that they are not seeking to modify the SEMA zone during the refund effective period, but instead are seeking refunds.

²⁵ Municipals, November 30, 2009 Request for Rehearing at 19.

²⁶ *Id.* (citing Rehearing Order, 128 FERC ¶ 61,008 at P 54-60).

their view that charging a share of the Canal Unit LSCPR charges to their members is unjust and unreasonable.²⁷ While it is true that the Order on Complaint allowed ISO-NE to consider other means to address the issues in this proceeding, nothing in the prior orders suggests that the Commission thereby authorized proposals that were inconsistent with the SEMA Settlement. In fact, the record in this proceeding demonstrates that ISO-NE was able to consider the fact that other means that are consistent with the SEMA Settlement were employed to address Canal Unit LSCPR charges, namely the Transmission Owners' and ISO-NE's efforts to complete the transmission upgrades that eliminated the need for Canal Unit out-of-merit dispatch.²⁸

24. Municipals' second claim of inconsistency likewise fails to establish that the Commission erred in the Compliance Order in finding that the SEMA Settlement limited the issues to be considered in this proceeding. Municipals cite the Rehearing Order, paragraphs 54 through 60, but nevertheless fail to identify any particular assurance in the Rehearing Order that should be reconciled with the statements in the Compliance Order, and we find no inconsistency. For instance, the Rehearing Order, paragraph 54 states:

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.

25. Far from expressing an intent to modify the relief available under the SEMA Settlement, in this statement we noted the need for stakeholders to ensure that any stakeholder proposals take the existing terms of the SEMA Settlement into consideration and be consistent with those terms.²⁹ Furthermore, the Rehearing Order noted that the

²⁷ Order on Complaint, 124 FERC ¶ 61,061 at P 22 (finding that the SEMA Settlement narrows the scope of the complaint to two issues, whether or not a PFCS or an SPS can replace the utilization of the Canal Units as an LSCPR and whether the Commission should direct a change in the ISO-NE definition of SEMA); Rehearing Order, 128 FERC ¶ 61,008 at P 24-25 (noting that it gave Municipals the "benefit of the doubt" in interpreting its cost reallocation claims to see if they provided facts to support the claims permitted by the SEMA Settlement); Compliance Order, 129 FERC ¶ 61,077 at P 9.

²⁸ Compliance Order, 129 FERC ¶ 61,077 at P 13.

²⁹ The SEMA Settlement was accepted as ISO-NE tariff, Attachment H in Docket

SEMA Settlement included a restriction that required the settling parties to oppose changes in allocation of Canal Unit out-of-merit charges during the Moratorium Period, but which placed no corresponding restriction on consideration of changes to the SEMA boundaries.³⁰ Again, we find nothing in the observation that the settling parties are free to consider changes to the SEMA boundary that is inconsistent with the Compliance Order's statement that the SEMA Settlement bars the Municipals from seeking reallocation of the Canal Unit LSCPR charges through the stakeholder process absent a change in the SEMA boundary.

26. The remaining paragraphs cited by Municipals address issues such as Transmission Owners' concerns with the effect of SEMA boundary changes on other systems³¹ and whether the Commission provided requisite notice of potential changes to the ISO-NE tariff pursuant to the Municipals' complaint.³² Municipals fail to explain how the cited statements relate to Municipals' reallocation claims or are inconsistent with the Compliance Order holding. Moreover, we did establish a refund effective date, as it is the Commission's practice to establish a refund effective date providing such notice even though refunds ultimately may not be ordered.³³ Therefore, such a statement does not prejudice the issue of whether a given remedy may be appropriate based on the Commission's ultimate determination. The Commission's statements cited by Municipals did not bind the Commission's consideration; we took care in the Rehearing Order to note that arguments attempting to anticipate the remedy to be proposed by ISO-NE and adopted by the Commission were premature.³⁴ Thus, they do not represent

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³⁰ Rehearing Order, 128 FERC ¶ 61,008 at P 52.

³¹ Rehearing Order, 128 FERC ¶ 61,008 at P 56.

³² *Id.* P 57-59 (citing *Dominion Resources Servs. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,025, at P 35 (2008)).

³³ *See id.* P 57 (citing *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); *Anaheim v. FERC*, 558 F.3d 521 (D.C. Cir. 2009) (discussing Commission authority under section 206)).

³⁴ Likewise, application of the Commission's refund policies was premature absent a proposal that included refunds. *See Union Electric Co.*, 64 FERC ¶ 61,355 (1993); *Southern California Edison Co.*, 50 FERC ¶ 61,138 (1990).

a definite holding that reallocation could or should be ordered to resolve SEMA border issues.

B. Cost Causation

1. Compliance Order

27. The Compliance Order noted that the completion of transmission system upgrades in summer 2009 mitigated the need for Canal Unit out-of-merit dispatch. Furthermore, the Compliance Order reviewed and rejected Municipals' assertion that a failure to order reallocation of the Canal Unit LSCPR charges is contrary to cost-causation principles, because such principles permit spreading the costs of efforts to protect reliability in the region. Finally, we noted that cost-causation principles do not require project-by-project cost allocation. We found that the use of reliability regions appropriately balances cost causation with the cost and effort to modify zones and the impact on commercial arrangements.

28. In the Compliance Order, we distinguished the facts in this proceeding from those involving large scale transmission upgrades, because the current facts instead concern local reliability planning and operations. We found that such planning and operations serve, over time, to benefit all customers in the region with stable pricing and reliable service. The Commission also affirmed allocation of a share of the operating costs of the Canal Unit charges because they represent facilities needed to ensure that the transmission system that serves them operates reliably. Furthermore, we affirmed the holding in the Order on Complaint that operation of the Canal Units was appropriate to meet the applicable reliability criteria.³⁵

2. Request for Rehearing

29. Municipals characterize the Compliance Order as deliberately avoiding consideration of the Canal Unit out-of-merit dispatch costs and any benefits provided to the Municipals. Municipals state that the Compliance Order inquiry, "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," reformulates the issue in this proceeding.³⁶

³⁵ Compliance Order, 129 FERC ¶ 61,077 at P 54.

³⁶ Municipals, November 30, 2009 Request for Rehearing at 10 (citing Compliance Order, 129 FERC ¶ 61,077 at P 54).

30. Municipals object to paying \$20 million during the refund period for operating the Canal Unit facilities and claim that such operation “did not benefit them at all.” Municipals cite precedent stating that compliance with the cost-causation principle requires “comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.”³⁷ Municipals claim that no benefit from the Canal Unit out-of-merit dispatch may be ascribed to them because each of the Municipals is located outside of the load pocket affected by the transmission system deficiency that ISO-NE chose to protect with such dispatch. Municipals quote *Illinois Commerce Commission v. FERC* for the proposition that the Commission “is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members.”³⁸ Municipals assert that any benefits attributed to its members from the Canal Unit out-of-merit dispatch are trivial in relation to the costs.

31. Municipals characterize the Compliance Order as making generalized claims of system-wide benefits that are insufficient to satisfy the requirements of cost causation.³⁹ Municipals acknowledge, however, that cost-causation principles permit spreading the costs of efforts to protect reliability in the region and do not require the kind of project-by-project allocation that the Municipals advocate for the Canal Unit LSCPR costs.⁴⁰ Nevertheless, Municipals claim that the use of cost spreading does not obviate the need “for the Commission to demonstrate that the proposed cost allocation mechanism is justified.”

32. Municipals state that their loads, and other loads located outside of the lower SEMA interface, would experience no harm in the event of a concurrent outage of the two 345 kV lines serving lower SEMA. Municipals state that the Commission is relying on unsupported claims advanced by ISO-NE that, without operation of the Canal Units, loss of the two 345-kV lines feeding Cape Cod could result in voltage collapse. In

³⁷ *Id.* at 9 (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (*Midwest ISO Transmission Owners*)).

³⁸ *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) (*Illinois Commerce*).

³⁹ Municipals, November 30, 2009 Request for Rehearing at 11 (citing *Illinois Commerce*, 576 F.3d at 476; *Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1313 (D.C. Cir. 1991); *Transcontinental Gas Pipe Line Corp.*, 112 FERC ¶ 61,170, at P 109-10 (2005)).

⁴⁰ *Id.* at 11 n.3.

addition, Municipals conclude that they have received no benefit from the operation of the Canal Units out of economic merit to protect against such an outage, which they characterize as “extremely remote.”⁴¹

33. Municipals characterize any benefit actually received as indistinguishable from generic benefits of a reliable system provided to all users of the transmission system. Municipals claim that, even if an event as unlikely as voltage collapse were to occur, it would affect an area far larger than SEMA. Municipals conclude that operating the Canal Units benefits them no more than other upstream customers elsewhere in New England, and, therefore, it would be unreasonable and unduly discriminatory to require Municipals to bear a share of the Canal LSCPR costs, while excluding other upstream customers who benefit equally.⁴²

3. Commission Determination

34. Contrary to Municipals’ assertion, the Commission did not improperly avoid comparing the cost and benefits of the Canal Unit out-of-merit dispatch costs. Rather, the Commission did not find it necessary to review such issues, because the SEMA Settlement, to which Municipals are party, barred reallocation except: (1) based on the argument that the Transmission Owners could or should have implemented a switching arrangement, which was rejected in the Order on Complaint; and (2) through a change in the ISO-NE definition of the SEMA reliability region.⁴³

35. The Commission has previously explained that the total peak load in Cape Cod is 950 MW and, if one of the two 345 kV lines transporting power into Cape Cod is lost, ISO-NE states that it can transport a maximum of only 400 MW to Cape Cod via the second 345 kV line. ISO-NE has correctly followed NPCC criteria in running the two Canal units because reliance on the switching or special protection arrangements, SPS or PFCS, carries the risk of load shedding and, therefore, is inappropriate. In the Compliance Order, the Commission noted its agreement with ISO-NE that lower SEMA load should not be exposed to such a risk since use of an SPS or PFCS would degrade reliability and result in load being shed.⁴⁴ NPCC Document A-03 states that one of the seven basic objectives in formulating plans related to emergency operating conditions is

⁴¹ *Id.* at 12.

⁴² Municipals, November 30, 2009 Request for Rehearing at 11.

⁴³ Compliance Order, 129 FERC ¶ 61,077 at P 9, 48, 52.

⁴⁴ *Id.* P 9.

“[t]o avoid, to the extent possible, the interruption of service to firm load.”⁴⁵ We also noted that the NERC Standard TOP-002-2 (Normal Operations Planning) specifies in Requirement R6 that “[e]ach Balancing Authority and Transmission Operator shall plan to meet unscheduled changes in system configuration and generation dispatch (at a minimum N-1 Contingency planning) in accordance with NERC, Regional Reliability Organization, subregional, and local reliability requirements.”⁴⁶

36. ISO-NE properly used the Canal Units as LSCPR to address NERC and NPCC reliability issues while additional facilities were being constructed to reduce dependency on the Canal units. Constructing new facilities takes time, but that is the practical reality of design and construction. If ISO-NE had relied on the switching or special protection arrangements, SPS or PFCS, as Municipals demand, and one or more contingencies had occurred, a substantial portion or all of lower SEMA could have been without electricity for up to 24 hours. ISO-NE’s witness Peter T. Brandien stated that the approach advocated by the Municipals would have ISO-NE rely on setting up to disconnect the Cape Cod area as the next step post-first contingency 365 days a year. Thus, contrary to Municipals claim that the Commission is relying on unsupported claims by ISO-NE that, without operation of the Canal Units, loss of the two 345-kV lines feeding Cape Cod could result in voltage collapse, ISO-NE’s claim is supported by its witness. Municipals, on the other hand, have provided no engineering analysis to support their view that they would experience no harm in the event of a concurrent outage of the two 345 kV lines serving lower SEMA.⁴⁷

37. In *FPC v. Hope Natural Gas Company*, the Supreme Court stated that the Commission’s ratemaking function allows pragmatic adjustments to achieve a just and reasonable outcome:

We held in *Federal Power Commission v. Natural Gas Pipeline Co.* that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its ratemaking function, moreover, involves the making of “pragmatic adjustments.” And when the Commission’s order is challenged in the courts, the question is whether that order, “viewed in its entirety,” meets the requirements of the

⁴⁵ Order on Complaint, 124 FERC ¶ 61,061 at P 25.

⁴⁶ *Id.*

⁴⁷ ISO-NE, April 28, 2008 Answer, Docket No. EL08-48-000, Testimony of Peter T. Brandien at 25.

Act. Under the statutory standard of “just and reasonable,” it is the result reached, not the method employed, which is controlling.⁴⁸

38. The construction of new facilities has reduced dependency on the Canal Units, which were used in the interim to maintain electrical stability and reliability in SEMA. Running the Canal Units as required by NERC and NPCC criteria was a pragmatic adjustment until new facilities could be constructed to ensure reliable electrical service in SEMA.

39. Contrary to Municipals’ assertion, the Commission did not improperly avoid consideration of Canal Unit out-of-merit dispatch costs and resulting benefits. As described above, in the Compliance Order, the Commission did not review such issues because we found that the SEMA Settlement, to which Municipals are a party, barred reallocation and, in the compliance phase, no party continued to advocate a change in the definition of the SEMA boundary as permitted by the SEMA Settlement, section 7.2. Consequently, we affirm the finding in the Compliance Order that Municipals have failed to justify refunds or reallocation of the Canal Unit LSCPR charges in this proceeding.

40. The Commission did not avoid the cost causation issues as Municipals claim. Instead, the Commission noted its policy that permits spreading reliability costs in the region, rather than the project-by-project cost review advocated by Municipals. In addition, the Commission was not persuaded by the precedent cited by Municipals and noted that the current facts instead concern local reliability planning and operations, not the large scale transmission upgrades at issue in the precedent cited by Municipals.⁴⁹

41. Municipals cite *Midwest ISO Transmission Owners* for the proposition that compliance with the cost-causation principle requires comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.⁵⁰ In the Compliance Order, we determined that the Municipals were appropriately allocated a share of the Canal Unit costs, which were incurred to provide for long-term reliability and meet the requirements of the NERC reliability standards.⁵¹ Thus, allocation of a

⁴⁸ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (internal citations omitted).

⁴⁹ Compliance Order, 129 FERC ¶ 61,077 at P 54.

⁵⁰ Municipals, November 30, 2009 Request for Rehearing at 10 (citing *Midwest ISO Transmission Owners*, 373 F.3d at 1368).

⁵¹ Compliance Order, 129 FERC ¶ 61,077 at P 54.

portion of the Canal Unit LSCPR charges to Municipals is appropriate, because they benefit from service from the Canal Units, consistent with those criteria. This determination is fully consistent with past Commission orders finding that reliability costs are properly allocable to all customers of the utility that incurs them.⁵² In fact, the court in the *Midwest ISO Transmission Owners* case cited by Municipals affirmed our finding that all transmission customers benefitted from the independent system operator's operational and planning responsibilities, as well as from increased grid reliability of the transmission system, and affirmed cost allocations on that basis.⁵³

42. On rehearing, we affirm the Compliance Order and reject Municipals reliance on *Illinois Commerce*. The 7th Circuit's findings in *Illinois Commerce* relied on the cost-causation principle that "all approved rates must reflect to some degree the costs actually caused by the customer that must pay them." Consistent with this principle our Compliance Order relied on its prior finding that the incurrence of Canal Unit out-of-merit dispatch costs ensures that the transmission system that serves all SEMA customers operates in a reliable manner consistent with NERC and NPCC reliability standards.⁵⁴ Contrary to Municipals' claim, we do not find these critical reliability benefits to be trivial.⁵⁵ The *Illinois Commerce* proceeding addressed a proposed allocation of system

⁵² See *Maine Pub. Serv. Co. v. FERC*, 964 F.2d 5, 9 (D.C. Cir. 1992) ("[T]he key is whether the system is actually integrated. If it is, some benefit is assumed, a policy we have approved."); accord *City of Holyoke Gas & Elec. Dep't v. FERC*, 954 F.2d 740, 743 (D.C. Cir. 1992).

⁵³ *Midwest ISO Transmission Owners*, 373 F.3d at 1369 (observing that "upgrades designed to preserve the grid's reliability constitute system enhancements that are presumed to benefit the entire system" (punctuation omitted)).

⁵⁴ Compliance Order, 129 FERC ¶ 61,077 at P 54; see also Order on Complaint, 124 FERC ¶ 61,061 at P 25.

⁵⁵ Municipals argue that, to the extent they receive generalized benefits, those benefits justify allocation of Canal Unit costs to a larger pool of customers. See Municipals, November 30, 2009 Request for Rehearing at 11. The Commission notes that, although Municipals raised this issue in the stakeholder process, they failed to advocate reallocation to a larger ISO-NE region in their August 7, 2009 Protest responding to the compliance filing. See ISO-NE Compliance Report at 17. The Commission looks with disfavor on parties raising new issues on rehearing. In any event, allocation of local reliability costs to the entire ISO-NE region after implementation of locational marginal pricing was rejected in *New England Power Pool*, 100 FERC ¶ 61,287, at P 61 (2002).

expansion costs to all zones across the multi-state PJM system.⁵⁶ It did not concern costs associated with generation facilities needed to reliably meet the demands of the local zone.⁵⁷ Therefore, we do not see that case as suggesting that the Commission should revisit its long-standing precedent for pricing zonal facilities operated by a utility to serve its customer load.

43. Municipals fault the Commission's justification for its decision, stating that generalized claims of system-wide benefits are insufficient to satisfy the requirements of cost causation and do not obviate the need "for the Commission to demonstrate that the proposed cost allocation mechanism is justified."⁵⁸ However, Municipals' claim misstates the burden of proof in this proceeding. To prevail in a proceeding under section 206 of the FPA, a complainant must demonstrate both that the existing rate is not just and reasonable and that its alternate proposal is just and reasonable.⁵⁹

44. Municipals have not met this burden. The Compliance Order found that the existing structure was just and reasonable. The Compliance Order found that the existing structure is just and reasonable because it allocates to each customer, including Municipals, a share of the costs to ensure that the transmission system which was planned and built to serve their loads and to which they are interconnected is operated in a reliable manner.⁶⁰ In addition, the Compliance Order rejected facility-by-facility review, and

⁵⁶ Under a postage-stamp rate design, all transmission service customers in a region pay a uniform rate per unit-of-service, based on the aggregated costs of all transmission facilities in the region

⁵⁷ *Illinois Commerce*, 576 F.3d at 473.

⁵⁸ Municipals, November 30, 2009 Request for Rehearing at 11.

⁵⁹ 16 U.S.C. § 824(e)(b) (2006); *Blumenthal v. FERC*, 552 F.3d 875, 881 (D.C. Cir. 2009) (citing *Atl. City Electric Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002)).

⁶⁰ *California Dep't of Water Resources*, 489 F.3d at 1038 (quoting *Otter Tail Power Co.*, 12 FERC ¶ 61,169, at 61,420 (1980) (citations omitted):

Commission precedent strongly favors use of the rolled-in method of transmission allocation. Given a finding that the system operates as an integrated whole, transmission costs have generally been rolled-in, absent a finding of special circumstances. The principal reason behind adoption of this methodology is that an integrated system is designed to achieve maximum efficiency and reliability at a minimum

(continued...)

found that the existing reliability region boundary was appropriate in that it served over time to spread the costs of multiple projects to customers within the zone.

45. To demonstrate that the current cost allocation system is not just and reasonable, Municipals attempt to show that such costs were higher than in prior years and dispute the reliability benefits received as being too general.⁶¹ However, Municipals provide no analysis of whether their overall transmission rate remains just and reasonable,⁶² but instead focus on a single cost component, the Canal Unit LSCPR charges.⁶³

46. Furthermore, Municipals have not provided sufficient support to demonstrate that their proposed alternative reallocation, based on hypothetical or after-the-fact bifurcation of the SEMA region, would be just and reasonable. In the Compliance Order, the Commission found that rate changes to allocate temporary cost increases more precisely would be unworkable and would result in risk premiums added to contracts that would increase costs to consumers. Municipals claim unconvincingly that no risk premiums would be imposed because the contracts at issue are in the past and have already been performed.⁶⁴ However, this position fails to recognize that the Commission's concern with retroactive refunds is forward looking; if the Commission were to allow retroactive reallocation of costs in this case, suppliers will demand risk premiums due to the possibility of future changes and as a result of litigation over rates.⁶⁵ This proceeding

cost on a systemwide basis. Implicit in this theory is the assumption that all customers, whether they be wholesale, retail or wheeling customers, receive the benefits that are inherent in such an integrated system.

⁶¹ Municipals, August 7, 2009 Protest, Attachment, "SEMA Municipals' Presentation to Markets Committee on Lower SEMA LSCPR Charges 2006-2008," at 5.

⁶² The Commission's policy is to evaluate the end result of the rates charged, not individual components. *Southern Company Services, Inc.*, 86 FERC ¶ 61,057, at 61,194-95 (1999).

⁶³ See Municipals, August 7, 2009 Protest at 6 (stating that Municipals "did not challenge the reasonableness of the load zone boundaries generically" but "the justness and reasonableness of the resulting allocation to them of Canal LSCPR costs").

⁶⁴ Municipals, November 30, 2009 Request for Rehearing at 16.

⁶⁵ Compliance Order, 129 FERC ¶ 61,077 at P 50 (accepting current allocation and relying on ISO-NE assertion that "trying to more precisely allocate temporary system charges would be unworkable and would result in risk premiums added to contracts that

(continued...)

does not present a situation where costs were incurred or charges allocated in error or on the basis of some misconduct or mistake or otherwise in an unjust and unreasonable manner. Instead, the facts in this proceeding demonstrate that the tariff performed correctly – the costs at issue in this proceeding were incurred due to an increase in the price of oil needed to run the Canal Units.⁶⁶ In addition, neither the cost of running the Canal Units nor ISO-NE’s decision to utilize the Canal Units is at issue at this stage of the proceeding. The ISO-NE tariff structure operated properly to provide price signals that permitted ISO-NE to identify and alleviate a transmission system problem.⁶⁷

47. Municipals rely on *Illinois Commerce* to support reallocation of the Canal Unit costs. However, as noted above, this proceeding does not present the same circumstances that were present in *Illinois Commerce*, where the issue was the allocation of the costs of large-scale transmission system expansions among a group of utilities located several hundred kilometers apart. Instead, in this proceeding, we revisit the allocation of costs of operating vintage generation according to an allocation mechanism that we previously accepted. Indeed, the accepted methodology has only come into question due to the temporary high cost of running the Canal Units when fuel costs were high. Based on the record in this proceeding, we do not find this temporary economic situation a sufficient justification to revisit a long-accepted allocation methodology. To do so would invite uncertainty and endless litigation.

48. When determining whether a rate is just and reasonable, the Commission is not required to select an alternate proposal to address the rate issues in the proceeding, but is required to ensure that the rate is just and reasonable.⁶⁸ The Commission has previously

would increase costs to consumers”).

⁶⁶ *Id.* P 4.

⁶⁷ *Cf. Blumenthal v. FERC*, 552 F.3d at 883 (accepting market rates that are higher than normal during times of scarce supply and approving LMP pricing as including price signals encourage new development to increase supply); *New England Power Pool*, 100 FERC ¶ 61,287, at P 61 (2002) (approving locational marginal price and allocation of reliability costs to reliability region zones); *ISO New England, Inc.*, 91 FERC ¶ 61,311, at 62,067 (2000) (accepting allocation of out-of-merit “uplift” charges to local reliability regions).

⁶⁸ *New England Power Pool*, 109 FERC ¶ 61,252, at P 28 (2004). According to the SEMA Settlement, the transmission upgrades that reduce reliance on the Canal Units are to be classified as “Reliability Transmission Upgrades” in ISO New England’s Regional System Plan and would be eligible for ISO-NE-wide cost allocation. *See*

(continued...)

accepted the ISO-NE tariff practice of allocating reliability costs within the current reliability region boundaries.⁶⁹

C. Use of the Stakeholder Process and Reliance on the ISO-NE Rationales

1. Compliance Order

49. The Compliance Order rejected Municipals' objections to ISO-NE's reliance on the ISO-NE Guidelines, noting that the Rehearing Order stated that ISO-NE should support its determination with such studies or analyses that were considered or developed in conjunction with ISO-NE's proposed plan of action. The Commission found that the compliance filing and stakeholder process met the standards of that order.

2. Request for Rehearing

50. Municipals object to the outcome of the ISO-NE stakeholder process, claiming it was a foregone conclusion and did not provide a just and reasonable resolution to disputed matters. Municipals cite the SEMA Settlement, Section 7.2, which provides that parties, other than the Municipals, agree not to seek a change in the ISO-NE definition of the SEMA reliability region to become effective prior to June 1, 2010, but which permits Municipals to seek the changes that resulted in this proceeding.⁷⁰

51. According to Municipals, the Commission's conclusions in the Compliance Order attempt to invest the ISO-NE process with a deliberative function that it was never capable of fulfilling. Municipals question the Commission's acceptance of the July 17,

SEMA Settlement, Section 6.1(a)(iii).

⁶⁹ *New England Power Pool*, 100 FERC ¶ 61,287 at P 61 (rejecting Braintree proposal to continue allocating reliability costs to entire ISO-NE region finding that proper price signals are needed to promote transmission projects, generation resources, and infrastructure improvements), *order on reh'g*, 101 FERC ¶ 61,344 (2002), *order on reh'g*, 103 FERC ¶ 61,304, *order on reh'g*, 105 FERC ¶ 61,211 (2003).

⁷⁰ Municipals also note that the SEMA Settlement contains provisions limiting the settling parties from seeking reallocation of the Canal Unit out-of-merit dispatch costs. Municipals, November 30, 2009 Request for Rehearing at 12-13 (citing SEMA Settlement, Section 4.1, "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.").

2009 ISO-NE Compliance Report in light of the findings in the Commission's Rehearing Order as to the efficacy and fairness of the stakeholder process.⁷¹

52. Municipals object substantively to the stakeholder conclusions as being at odds with cost causation requirements. Municipals press their claims that statements in the Rehearing Order are inconsistent with the Commission's holding in the Compliance Order and cost-causation principles.⁷²

3. Commission Determination

53. We reject Municipals' objections to ISO-NE's reliance on the ISO-NE Guidelines. The Commission's 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. In the Compliance Order, the Commission agreed with ISO-NE that Municipals failed to demonstrate that the compliance filing or the stakeholder process fails to meet the standards of the Order on Complaint. The Commission continues to believe that its assessment is correct.

54. The Rehearing Order addressed similar issues as raised by Municipals and Transmission Owners. There we found that no impermissible delegation was present because the Commission itself would ultimately review and act on any resulting proposal. Furthermore, Municipals and other interested parties had the opportunity to comment on the proposal, prior to the Compliance Order. We also noted that the SEMA Settlement was supported by the Municipals and permitted use of the NEPOOL stakeholder process, and found that the option was not a nullity. In addition, use of the NEPOOL process permitted participation by a broader range of market participants who were able to review and respond to Municipals' proposal.⁷³ Contrary to Municipals' assertion, we find nothing in the Rehearing Order's affirmation of the stakeholder process that is inconsistent with the Compliance Order. For these reasons, we find that we adequately responded to Municipals' concerns with the stakeholder process in the Rehearing Order.⁷⁴

⁷¹ Municipals, November 30, 2009 Request for Rehearing at 13 (citing Rehearing Order, 128 FERC ¶ 61,008 at P 50-55).

⁷² *Id.* (citing *Illinois Commerce*, 576 F.3d at 475).

⁷³ ISO-NE Compliance Report at 28, 31.

⁷⁴ *Id.*

D. Bifurcation of SEMA During the Refund Period

1. Compliance Order

55. In the Compliance Order, the Commission accepted ISO-NE's allocation of the Canal Unit LSCPR charges based on the existing SEMA regional boundary, noting that no party advocated a permanent change to the SEMA boundary. We noted the impracticability of allocating temporary system charges after the fact, and the effect on market negotiations, resulting in risk premiums. We agreed a smaller zone may not provide a reasonably predictable pricing zone.

56. We also rejected Municipals' argument that, because the lower SEMA region is used to determine locational marginal prices and financial transmission rights, it could be a separate reliability region. On the contrary, we distinguished locational marginal prices and financial transmission rights because they 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.⁷⁵

2. Request for Rehearing

57. Municipals argue that the Commission's rationale in the Compliance Order "for accepting ISO-NE's 'no action' recommendation on allocation of Canal-related LSCPR charges lacks record support and does not comport with reasoned decision making." Municipals assert that the Commission should grant rehearing, vacate the Compliance Order, and direct the allocation of Canal-related LSCPR charges during the refund period to a lower SEMA Load Zone.

58. According to Municipals, the Compliance Order failed to provide reasoned decision making when it accepted the ISO-NE guideline document, which Municipals characterize as an attempt to "justify misallocation of Canal LSCPR charges" to the Municipals. Municipals acknowledge that ISO-NE is free to propose criteria for delineating or altering the interchangeable concepts of load zones or reliability regions. However, Municipals object to use of the ISO-NE Guidelines to resolve a cost allocation dispute after the dispute has arisen.

59. According to Municipals, neither of the rationales proffered by ISO-NE to justify the decision to not bifurcate the SEMA region withstands scrutiny.⁷⁶ Municipals contest

⁷⁵ Compliance Order, 129 FERC ¶ 61,077 at P 53.

⁷⁶ *But see* Municipals, August 7, 2009 Protest at 3 n.4 (clarifying that Municipals are not seeking to modify the SEMA zone during the refund effective period).

the first rationale that a lower SEMA load zone would be too small. Municipals state that there is no minimum size criterion associated with the establishment of a load zone or reliability region, according to the related definitions.

60. Municipals contest the ISO-NE's conclusion, stated in the Compliance Order, 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."⁷⁷ Relying on their claim that they reserved a right to contest cost allocation for the refund period extending from March 28, 2008 through June 28, 2009, Municipals argue that it is "far from self-evident why protecting market participants that relied on existing market structures is more deserving of protection under the FPA than [Municipals'] right to have costs allocated in accordance with cost-causation principles."⁷⁸

61. Municipals also question the second rationale proffered by ISO-NE, that inadequate notice of a change in zonal boundaries could lead marketers providing standard offer service to include risk premiums in their contracts. According to Municipals, this rationale lacks support in both record evidence and logic. Municipals state that this proceeding features a locked-in refund period (extending from March 28, 2008 through June 28, 2009) and Municipals are the only parties serving load in SEMA to have reserved the right to litigate the allocation of Canal Unit LSCPR charges. Based on these facts, Municipals conclude that there is no opportunity to insert risk premiums in contracts that have already been performed.

62. Municipals argue that the filing of the SEMA Settlement on May 17, 2007 provided actual notice to all parties interested in serving load in SEMA that there was a rate schedule on file with the Commission stating that the SEMA boundaries could be changed. According to Municipals, this notice provided time for market participants to adjust their market positions to reflect a potential SEMA boundary change. According to Municipals, the record furnishes no basis for concluding that any further adjustments would or could be undertaken.

63. Municipals cite Paragraph 59 of the Compliance Order as confirming that there can be no sustainable claim of reliance on rates that are set for hearing and made effective subject to refund.⁷⁹ Municipals interpret the Compliance Order to suggest that avoidance

⁷⁷ Municipals, November 30, 2009 Request for Rehearing at 15 (citing Compliance Order, 129 FERC ¶ 61,077 at P 51).

⁷⁸ *Id.* at 15 (citing Compliance Order at P 51) (internal citations and formatting omitted).

⁷⁹ *Id.* at 16-17 (citing *Alliant Energy Corp. v. FERC*, 253 F.3d 748, 754 (D.C.

of hypothetical risk premiums is a benefit to them, but find such an interpretation “unfounded,” noting that “as a result of remaining vertically integrated, the allocators used by ISO-NE for the billing of uplift charges related to LSCPR under Market Rule 1 will inevitably track directly to municipal loads.”⁸⁰ Municipals conclude that there is no risk assumed by a seller to any of the Municipals with respect to LSCPR charges to justify a risk premium.

64. According to Municipals, the Compliance Order failed to respond to the suggestion that use of the lower SEMA interface was justified as a load zone or reliability region, since the lower SEMA region is used for the allocation of financial transmission rights and to set locational marginal prices.

65. Municipals indicate that a lower SEMA region would “reflect the operating characteristic of, and major transmission constraints on, the New England Transmission System,” consistent with the Market Rule 1 definition of a load zone or reliability region. Municipals claim that there was a lower SEMA interface for at least 42 months, from January 2006 through June 2009, which caused the incurrence of roughly \$350 million in Canal Unit out-of-merit dispatch costs. Municipals state that the Compliance Order “fails to come to grips with this issue, perhaps because the inherently arbitrary language of Market Rule 1 fails to provide any reasoned basis for a response.”

3. Commission Determination

66. ISO-NE stated that a larger zone provides stability for reliability cost allocations: with a larger area, more load can share the costs of reliability cost allocations. Conversely, a reduction in the size of a zone could concentrate these costs and make them more burdensome to individual market participants. ISO-NE also indicated that, while different costs may be located in one part of a zone in a given instance, other costs are likely to be incurred in other areas over time. In the Compliance Order, the Commission agreed and found that perfect cost causation is not achievable on a zonal basis and that pursuit of that aspiration would involve the constant alteration of zones, a result that is impracticable and would negatively affect markets. We affirm these findings on rehearing.

Cir. 2001); *Dominion Resources Servs. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,025, at P 35 (2008); *S. Natural Gas Co.*, 46 FERC ¶ 61,084, at 61,375 (1989) (regulated entity “foregoes its ordinary entitlement to rely on filed rates when it chooses to go ahead and collect rates that have not yet been finally approved.”)).

⁸⁰ *Id.* at 17.

67. Municipals do not advocate temporary bifurcation of the SEMA region, but, similar to their earlier claims, seek reallocation of Canal Unit charges.⁸¹ As with the cost allocation issues addressed above, we reject Municipals' claims.

68. ISO-NE justified allocating 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 explaining 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. As discussed above, ISO-NE cites the possibility of retroactive change in load zones as leading to the inclusion of risk premiums in stakeholder standard offer contract prices to reflect the potential of not being able to rely on existing cost allocation rules.

69. If the interests of individual stakeholders and the regional (SEMA) interest are diametrically opposed, individual stakeholders naturally will seek solutions that are in their interests but that are not in the best interests of the region. That is the case here. But we find that it is not reasonable to divide SEMA for the interim period given that ISO-NE followed NERC and NPCC reliability criteria while additional facilities were under construction to address the high cost of running the Canal Units.

E. Evidentiary Hearing

1. Compliance Order

70. In the Compliance Order, we found that the Municipals fail to point to any disputed material facts warranting a hearing and rejected Municipals' request for additional procedures. We based our holding on the fact that 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.

2. Request for Rehearing

71. Municipals state that the ISO-NE Guidelines document, in which ISO-NE declined to recommend any change to the SEMA boundary, offers no contribution to the factual record before the Commission and no principled basis for resolving their claim to

⁸¹ See Municipals, August 7, 2009 Protest at 3 (“[Municipals] are not seeking to modify the SEMA zone during the refund effective period.”).

refunds based on unjust and unreasonable allocation of Canal Unit out-of-merit dispatch costs.⁸² Municipals cite as issues that require an evidentiary hearing: (1) the nature and extent of any benefits received by Municipals as a result of ISO-NE's decision to operate the Canal Units out of economic merit order; and (2) a comparison of those benefits to costs imposed as a result of retaining the current SEMA boundary. Municipals also state that, to the extent that it is claimed that notice of the change to the SEMA boundary advocated by Municipals for the locked-in period is deemed inadequate, the evidentiary basis for such a determination would need to be brought forward and subjected to discovery and cross-examination.

72. Municipals claim that there is no evidentiary record at present to support "any" of the conclusions of the Compliance Order, and that the Commission's determinations are therefore arbitrary.

3. Commission Determination

73. The Commission finds that running the Canal units as required by NERC and NPCC criteria was a pragmatic practice until new facilities could be constructed to ensure reliable electrical service in SEMA. As discussed above, the Commission disagrees with Municipals that the Compliance Order and the ISO-NE Compliance Report, when considered in light of our existing rate policies, do not resolve all material issues of fact that are involved in this proceeding. Therefore, Municipals' request for an evidentiary hearing is denied.⁸³

⁸² See the ISO-NE Guidelines summarized in the ISO-NE Compliance Report at 22-26.

⁸³ The decision whether to grant an evidentiary hearing is a matter of the Commission's discretion. The Commission need only hold an evidentiary hearing when a genuine issue of material fact exists, and, even then, only if the disputed issues cannot be adequately resolved on the written record. *Sacramento Mun. Util. Dist. v. FERC*, 474 F.3d 797, 804 (D.C. Cir. 2007); *Cajun Elec. Power Co-op, Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994).

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.