

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Devon Power LLC, *et al.*

Docket Nos. ER03-563-030
ER03-563-053

ORDER GRANTING CLARIFICATION

(Issued October 12, 2005)

1. On August 31, 2005, ISO New England, Inc. (ISO-NE) filed a motion for clarification of the Commission's August 10, 2005 Order in Docket No. ER03-563-030.¹ ISO-NE asks that the Commission clarify when a separate energy load zone must be implemented for Southwest Connecticut (SWCT). As discussed below, in this order the Commission clarifies that it will not direct the implementation of a SWCT energy load zone on January 1, 2006.

Background

2. In these proceedings, the Commission is considering a proposal by ISO New England, Inc. (ISO-NE) to implement a locational installed capacity (LICAP) mechanism in New England. In a June 2, 2004 Order, the Commission accepted two broad concepts in ISO-NE's proposal (establishing installed capacity (ICAP) regions and the use of a demand curve for pricing capacity), but set for hearing certain details of the proposal, including the parameters of the demand curve and issues related to capacity transfer limits and capacity transfer rights.² In that order, the Commission also delayed the implementation date of the LICAP mechanism from June 1, 2004 to January 1, 2006.

¹ Devon Power, 112 FERC ¶ 61,179 (2005) (August 10 Order).

² *Devon Power LLC, et al.*, 107 FERC ¶ 61,240 (June 2 Order), *order on reh'g*, 109 FERC ¶ 61,154 (2004), *order on reh'g*, 110 FERC ¶ 61,315 (2005).

3. In the June 2 Order the Commission initiated further proceedings regarding the adequacy of the four ICAP regions proposed by ISO-NE.³ Specifically, the Commission stated, based on reliability assessments conducted by the State of Connecticut and ISO-NE, that a separate SWCT ICAP region might be appropriate. Accordingly, the Commission directed ISO-NE to submit a further filing addressing whether the Commission should revise its LICAP proposal to create a separate ICAP region for SWCT.⁴ Also, the Commission noted ISO-NE's statement that it could not create a separate ICAP region for SWCT without also creating a separate SWCT energy load zone. Stating that a separate energy load zone could have significant benefits even in advance of the implementation of LICAP, the Commission instituted an investigation and paper hearing pursuant to section 206 of the Federal Power Act regarding whether a separate energy load zone should be created for SWCT, and whether it should be implemented in advance of the implementation of LICAP.⁵

4. On July 2, 2004, ISO-NE submitted a response to the Commission's inquiries regarding the implementation of a separate SWCT ICAP region and energy load zone. In its response, ISO-NE concluded that it would be appropriate to establish a SWCT ICAP region, and reiterated that establishing such an ICAP region would require that a separate SWCT energy load zone be established. ISO-NE recommended, however, that the separate load zone be established simultaneously with the implementation of LICAP, because it could not practically implement the load zone much before the then-scheduled January 1, 2006 implementation date for the LICAP mechanism, and because energy price differentials alone did not justify establishing the separate energy load zone at that time.

5. On November 8, 2004, the Commission issued an order addressing ISO-NE's July 2 response.⁶ In that order, the Commission found that ISO-NE had justified the creation of a separate SWCT ICAP region, and directed that ISO-NE establish such a

³ ISO-NE had proposed the following four ICAP regions: Maine, Connecticut, NEMA/Boston and Rest of Pool.

⁴ June 2 Order at P 51.

⁵ *Id.*

⁶ *Devon Power LLC, et al.*, 109 FERC ¶ 61,156 (2004) (November 8 SWCT Order), *order on reh'g*, 110 FERC ¶ 61,313 (2005).

region on the effective date of the LICAP market.⁷ Additionally, the Commission found that ISO-NE had justified the creation of a separate SWCT energy load zone, “effective the same day the LICAP mechanism becomes effective, by January 1, 2006.”⁸ Based on the fact that ISO-NE could not implement a SWCT energy load zone much before the then-scheduled January 1, 2006 LICAP implementation date, and ISO-NE’s analysis that the energy price differentials and price signals created by a separate load zone were not substantial enough to justify establishing the zone early, the Commission concluded “that it would be advantageous to implement both the separate ICAP region and separate energy load zone on the same date.”⁹

6. On June 15, 2005, the presiding Administrative Law Judge issued an Initial Decision in these proceedings.¹⁰ In the August 10 Order, the Commission granted various requests for oral argument concerning the Initial Decision, and also stated that “the implementation of the LICAP mechanism, if it proceeds, will not be earlier than October 1, 2006.”¹¹

Motion for Clarification

7. ISO-NE asks the Commission to clarify when the separate energy load zone for SWCT must be implemented, in light of the delay of any implementation of the LICAP mechanism until October 1, 2006. According to ISO-NE, the August 10 Order created “considerable uncertainty regarding the timing of this substantial market change.”¹²

8. ISO-NE states that it takes no position as to when a SWCT load zone should be implemented. ISO-NE notes that in its July 2 filing regarding the creation of a separate SWCT ICAP region, it explained that while establishing such a separate ICAP region would require the creation of a SWCT energy load zone, energy prices alone did not justify the creation of such a load zone prior to the implementation of LICAP. According to ISO-NE, that recommendation was based on the extensive statistical analysis presented

⁷ November 8 SWCT Order at P 25-26.

⁸ *Id.* at P 37.

⁹ *Id.* at P 38.

¹⁰ *Devon Power LLC, et al.*, 111 FERC ¶ 63,063 (2005).

¹¹ August 10 Order at P 5.

¹² Motion for Clarification at 1.

in a July 1, 2004 report regarding alternatives to full nodal pricing.¹³ ISO-NE states that given the depth of this major report and the time required to update the analysis, it cannot provide more recent price information. Without this new evidence, ISO-NE asserts that “the need for the [separate] SWCT [l]oad [z]one in advance of the potential implementation of LICAP is a policy matter most appropriately decided by the Commission.”¹⁴

9. ISO-NE also included information regarding reliability costs, including the costs of reliability must-run (RMR) contracts in Connecticut. It states that upon creating and implementing a SWCT energy load zone, a coterminous Reliability Region for SWCT must also be formed to ensure consistency with its existing cost allocation rules, and to ensure that it can accurately track and account for load among various regions. ISO-NE notes that certain reliability costs, including the costs of RMR contracts, resources procured under the Connecticut “Gap RFP,”¹⁵ and Daily RMR costs are allocated to load in the Reliability Region where they are incurred. Currently, these costs are allocated to Connecticut, since it comprises a single Reliability Region. According to ISO-NE, the information it provides regarding reliability costs shows a significant increase in reliability costs in Connecticut and that most of that increase is associated with SWCT.

10. In its motion for clarification, ISO-NE describes two timing considerations with regard to the establishment of a SWCT energy load zone. First, ISO-NE stated that the annual financial transmission rights (FTR) auction (scheduled for November 2005) requires that the configuration of energy load zones be established in advance, because that configuration will impact the value of any individual FTR. Because the FTRs purchased in this auction cover an entire year, ISO-NE states that a new SWCT energy load zone could only be reasonably implemented on the first day of a year. Second, ISO-NE explains that a separate SWCT ICAP region may only be implemented coincident with or after the establishment of a SWCT energy load zone. As a result, according to ISO-NE, a LICAP mechanism with a SWCT ICAP region could be implemented on

¹³ ISO New England, “Alternatives to Full Nodal Pricing for Load,” filed July 1, 2004 in Docket No. ER02-2330-029.

¹⁴ Motion for Clarification at 3.

¹⁵ In the “Gap RFP,” ISO-NE issued a Request for Proposals seeking resources (including generation resources and/or demand response) to remedy reliability concerns in SWCT on a short-term basis. *See* ISO New England, “Request for Proposals For Southwest Connecticut Emergency Capability,” December 1, 2003 (available at http://www.iso-ne.com/genrtion_resrcs/rfps/SWCT_GAP_RFP_2003-12-01.pdf).

October 1, 2006 only if a SWCT energy load zone is implemented on January 1, 2006. Otherwise, a LICAP mechanism with a SWCT energy load zone could not be put into place until January 1, 2007. ISO-NE notes, however, that a LICAP mechanism without a separate SWCT ICAP region could be implemented on October 1, 2006, with a SWCT energy load zone and ICAP region incorporated on January 1, 2007 or the first day of any year thereafter.

11. ISO-NE initially asked the Commission to provide clarification within 60 days, so that market participants and ISO-NE would have an understanding of the configuration of load zones in advance of the annual FTR auction in November, and so that modeling assumptions for that auction could be posted. ISO-NE stated that in the absence of clarification within this time period, it would continue treating Connecticut as a single energy load zone for the purposes of the FTR auction.

12. On September 26, 2005, ISO-NE filed a motion for expedited consideration of the motion for clarification, urging the Commission to provide clarification by October 11, 2005, should it intend that ISO-NE implement the SWCT energy load zone on January 1, 2006. ISO-NE states that it is concerned about the operational reliability of the New England system during the upcoming winter, given the potential effects of hurricanes Katrina and Rita on fuel supplies and tightening supplies of natural gas in the northeast generally. ISO-NE asserts that “significant internal resources” are required to assess the potential impacts of such developments and to undertake any projects necessary to mitigate their effects and ensure reliability and that it has shifted resources and suspended work on the implementation of a SWCT energy load zone.

Responsive Pleadings

13. Answers to ISO-NE’s motion for clarification were filed by the Connecticut State Movants,¹⁶ PSEG Energy Resources & Trade LLC (PSEG) and Duke Energy North America, LLC (Duke).

14. Connecticut Movants and PSEG argue that the Commission should, consistent with its prior rulings, confirm that a separate SWCT energy load zone should be implemented only if and when a LICAP mechanism with a separate SWCT ICAP region is implemented. Connecticut Movants and PSEG state that they understood that, given

¹⁶ Connecticut State Movants are the Connecticut Department of Public Utility Control, the Connecticut Office of Consumer Counsel, and Richard Blumenthal, Attorney General for the State of Connecticut.

the Commission's decision to postpone the implementation of LICAP until no earlier than October 1, 2006, that a separate energy zone for SWCT would be postponed as well. They contend that the Commission's August 10 Order and prior orders in this proceeding do not support another conclusion.

15. Duke contends that to ensure that implementation of a LICAP market is not delayed beyond the earliest opportunity (October 1, 2006), the Commission should clarify that ISO-NE should establish a separate SWCT energy load zone as of January 1, 2006. Duke asserts that without a SWCT energy load zone in place by January 1, 2006, LICAP implementation may be delayed until January 1, 2007, at the earliest. Duke argues that, given the urgent need for a solution to the reliability compensation issues in SWCT, the Commission should not take any actions that could unnecessarily delay the implementation of the LICAP mechanism. Duke also argues that the record reveals no sound reasons for not implementing a separate SWCT energy load zone on January 1, 2006, and that while ISO-NE found that early implementation of the energy load zone would not provide substantial benefits under earlier circumstances, it did not find any adverse impacts from implementing a SWCT energy load zone in advance of LICAP implementation.

Discussion

16. The Commission will not direct ISO-NE to implement a separate energy load zone for SWCT on January 1, 2006. In the November 8 SWCT Order, the Commission agreed with the analysis and arguments of ISO-NE that a separate energy load zone should be created to match the SWCT ICAP region and directed ISO-NE to create a separate SWCT energy load zone to become effective with the proposed LICAP mechanism which, at the time, was anticipated to begin on January 1, 2006.¹⁷ As the Commission found in that order, the LICAP mechanism, if implemented, would benefit from the addition of a SWCT energy load zone. However, given the decision to defer implementation of LICAP, if it proceeds, until no earlier than October 1, 2006,¹⁸ the value of creating a separate SWCT energy load zone in the absence of the LICAP mechanism would offer limited benefits. ISO-NE concluded in its July 2, 2004 filing in this docket that energy price differentials alone did not justify establishing the separate energy load zone, and there is no evidence to suggest that this conclusion has changed. The Commission is aware that there are market enhancements other than LICAP currently under development in New England, some of which possess locational

¹⁷ November 8 SWCT Order at P 37.

¹⁸ August 10 Order at P 5.

components. If ISO-NE determines that implementation of a future market enhancement requires a SWCT energy load zone, it should make an appropriate filing with the Commission.

The Commission orders:

The Commission hereby grants clarification, as discussed in the body of this order.

By the Commission. Commission Brownell dissenting with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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BROWNELL, Commissioner, dissenting:

I would have continued to require the creation of a separate SWCT load zone to begin on January 1, 2006. The record reveals no adverse impacts that would result from an early implementation. In fact, the order issued today acknowledges that creating a separate SWCT load zone would provide benefits, although more limited, than if the separate zone was accompanied by LICAP. Furthermore, delaying the creation of a separate SWCT zone may have timing consequences for the implementation of market enhancements other than LICAP currently under development.

For these reasons, I respectfully dissent.

Nora Mead Brownell
Commissioner