

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc.
and New England Power Pool

Docket No. ER06-1465-001

ORDER DENYING REHEARING

(Issued April 13, 2007)

1. On November 29, 2006, the Maine Public Utilities Commission (Maine PUC) filed a request for rehearing of the Commission's October 31, 2006 order in the above-captioned docket.¹ In the October Order the Commission accepted the changes ISO New England, Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) jointly submitted, amending section III of the ISO-NE Transmission, Markets and Services Tariff (Market Rule 1) to implement transition provisions of the Forward Capacity Market (FCM) Settlement Agreement (Settlement Agreement). In this order, the Commission denies Maine PUC's request for rehearing.

I. Background

2. On September 1, 2006, ISO-NE and NEPOOL jointly submitted a filing implementing the transition provisions of the FCM Settlement Agreement. In the earlier June 16 Order, the Commission accepted that Settlement Agreement which resolved all issues in Docket No. ER03-563-030.² In that proceeding, the Commission addressed a proposal by ISO-NE to establish a locational installed capacity (LICAP) mechanism in New England; the Commission later instituted settlement judge procedures to allow the parties to attempt to reach agreement on an alternative to LICAP.³ On March 6, 2006, a broad group of the parties in Docket No. ER03-563-030 submitted a proposed settlement

¹ *ISO New England, Inc.*, 117 FERC ¶ 61,132 (2006) (October Order).

² *Devon Power LLC*, 115 FERC ¶ 61,340 (2006) (June 16 Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006) (October Rehearing Order).

³ A more detailed history of Docket No. ER03-563-030 is included in the June 16 Order.

containing an alternative to LICAP – the FCM – which in the June 16 Order the Commission approved.

3. When fully implemented, the FCM will establish annual auctions for capacity. These auctions will procure capacity three-plus years in advance of a commitment period. The first FCM auction will be held in first quarter of 2008 for the commitment period of June 1, 2010 to May 31, 2011.⁴

4. The Settlement Agreement also contains a transition period prior to the first commitment period of this FCM. During this transition period – which began December 1, 2006 and ends June 1, 2010 – fixed payments will be made to all installed capacity resources. Under the terms of the Settlement Agreement, the payments are made by load-serving entities holding unforced capacity obligations. The Settlement Agreement also stipulates that the transition payments are to be adjusted downward to account for availability.⁵ The Settlement Agreement requires ISO-NE to file tariff changes to implement the transition period on or before October 1, 2006.

5. In the June 16 Order, the Commission accepted the Settlement Agreement, concluding that, as a package, it presented a just and reasonable outcome that is consistent with the public interest. The Commission also analyzed issues raised in the comments, including issues regarding the transition mechanism.⁶ The Commission concluded that the transition payments, as part of the overall package represented by the Settlement Agreement, “serve as a reasonable transitory mechanism that enables the New England region to shift to the FCM.”⁷

6. On October 31, 2006, the Commission denied rehearing of June 16 Order. In that order, the Commission addressed Maine PUC’s arguments that the transition payments were not just and reasonable since they did not include a locational component, were not supported by record evidence and were not needed in Maine to ensure that there is sufficient capacity available.⁸

⁴ Further details on the design of the FCM are included in the June 16 Order.

⁵ This adjustment will be made using a modified equivalent demand forced outage rate (EFORD) measurement. *See* June 16 Order at P 31.

⁶ *See id.* at P 74-108.

⁷ *Id.* at P 89.

⁸ October Rehearing Order at P 47; *see also id.* at P 71-76.

7. In the October Order, the Commission stated that Maine PUC's objections to the transition mechanism were addressed in the October Rehearing Order which was issued concurrently with the October Order. The Commission added that many parties that opposed the Settlement Agreement or portions thereof, like the Maine PUC and transmission owners located in Maine, elected to abstain during the NEPOOL Participants Committee vote.⁹

II. Rehearing Request

8. In its rehearing request, Maine PUC repeats arguments raised in its request for rehearing of the June 16 Order, *i.e.*, that the transition payments are not just and reasonable since they do not include a locational component, are not supported by record evidence, and are not needed in Maine to ensure that there is sufficient capacity available during the transition period because Maine is export-constrained. For these reasons, Maine PUC asserts that there was insufficient evidence for the Commission to find that the transition payments were just and reasonable, and that the Commission erred in failing to set the transition payments for hearing procedures.

III. Discussion

9. We will deny Maine PUC's request for rehearing. As we previously stated in the June 16 Order, the transition mechanism and the rates under that mechanism are one component of a greater package of just and reasonable rates and terms, and the transition payments serve as a reasonable bridge to the FCM.¹⁰

10. Contrary to Maine PUC's assertion, and as we have previously stated, the lack of an express locational element in the transition payments does not make them irreconcilable with the Commission's prior determinations in this case; the Commission has emphasized that the transition mechanism is just that – a temporary mechanism to serve as a bridge until the FCM is fully implemented in 2010.¹¹ And in the June 16 Order, the Commission concluded that the FCM itself appropriately recognizes location.¹² The lack of an express locational element in this temporary transition period

⁹ October Order at P 45.

¹⁰ June 16 Order at P 89; *accord* October Rehearing Order at P 47; *see also id.* at P 33-34, 37.

¹¹ October Rehearing Order at P 47.

¹² June 16 Order at P 122.

thus does not invalidate our conclusion that the Settlement Agreement as a package, including the transition mechanism and the FCM, is just and reasonable.

11. In the June 16 Order, the Commission determined that while the transition payments contained in the Settlement Agreement were not ideal standing alone, the payments represented a single element of a package of reforms embodied in the Settlement Agreement, and that package, in the sum of its parts, is just and reasonable.¹³ The Commission also fully explored and explained in a detailed finding, that the contesting parties would not reach a more favorable result through continued litigation.¹⁴ Subsequently, in the October Rehearing Order, the Commission restated the fact that the record contained “substantial relevant evidence supporting the Commission’s determination that the Settlement Agreement, and particularly the transition period, is just and reasonable.”¹⁵ The Commission identified and discussed record evidence addressing the cost of new entry, as evidence of capacity costs that is directly relevant to determining just and reasonable capacity rates.¹⁶

12. Finally, the October Rehearing Order addressed Maine PUC’s concern that Maine is export-constrained. The Commission explained that its responsibility in approving the Settlement Agreement is not to determine whether or not Maine is export-constrained.¹⁷ Rather, the Commission’s responsibility is to ensure that rates are just and reasonable.

The Commission orders:

Maine PUC’s request for rehearing is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary

¹³ *See id.* at P 89-106.

¹⁴ *See id.*; *see also id.* at P 60; *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998), *order on reh’g*, 87 FERC ¶ 61,110 (1999).

¹⁵ October Rehearing Order at P 35.

¹⁶ *Id.* at P 35 & n.43.

¹⁷ October Rehearing Order at P 72.