

130 FERC ¶ 61,005  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc. and  
New England Power Pool

Docket No. ER07-397-004

ORDER ON CLARIFICATION

(Issued January 5, 2010)

1. On April 6, 2009, ISO New England Inc. (ISO-NE) requested clarification of the Commission's March 2009 Order<sup>1</sup> in this proceeding, arguing that it repeated a filing requirement that is now unnecessary. For the reasons discussed below, we deny the request for clarification.

**I. Background**

2. This proceeding stems from a December 29, 2006 joint filing by ISO-NE and the New England Power Pool (NEPOOL) in Docket No. ER07-397-000 of a comprehensive set of amendments to Schedule 2 of the ISO-NE's Open Access Transmission Tariff (OATT), including, in part, a proposal to update the Schedule 2 Capacity Cost (CC) rate to account for the addition of new generation to the mix of dynamic reactive resources in New England since 1998. The Maine Public Utilities Commission (MPUC) challenged the Schedule 2 Amendments, claiming, among other things, that the Schedule 2 CC payments resulted in double compensation in light of the payments to generators under the FCM Settlement.

3. In the resulting order,<sup>2</sup> the Commission found, inter alia, that amendments to Schedule 2 – Reactive Supply and Voltage Control for Generation Resources Service (reactive power) do not produce double recovery of capital costs for generating equipment used to generate energy and provide reactive service because Forward Capacity Market (FCM) transition payments, which are below the cost of new entry, do

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<sup>1</sup> *ISO New England Inc.*, 126 FERC ¶ 61,212 (2009) (March 2009 Order).

<sup>2</sup> *ISO New England Inc.*, 118 FERC ¶ 61,163 (2007) (February 2007 Order).

not compensate resources for their reactive power.<sup>3</sup> The Commission stated however that it was concerned that double recovery could occur during the first Forward Capacity Auction (FCA) because the FCA payments equal the cost of new entry. Accordingly, the Commission required ISO-NE to implement, prior to the commencement of the first FCA commitment year beginning June 1, 2010, tariff provisions to ensure that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation.<sup>4</sup>

4. Separately, on September 28, 2008, in Docket No. EL07-38-000, MPUC filed a revised amended complaint against ISO-NE, advancing essentially the same arguments regarding double recovery made in this proceeding. MPUC argued that the Schedule 2 CC rate results in double compensation of capital costs by generators when combined with the payments provided to generators under the FCM Settlement.<sup>5</sup> In response, ISO-NE filed a game theoretic analysis to demonstrate the absence of a double recovery issue. In its February 2009 order on MPUC's complaint, the Commission found that the Schedule 2 CC rate payments for reactive service do not result in double recovery.<sup>6</sup> The Commission also found that sellers in competitive FCA will have incentive to submit bids that take into account revenues from the CC Rate component and, as a result, "double recovery is not a concern."<sup>7</sup>

5. Shortly after issuing the February 2009 Order, the Commission issued the March 2009 Order in this proceeding, denying a request for rehearing on the basis that the Schedule 2 CC rate payments for reactive service and the capacity payments, whether transition payments or Forward Capacity Auction revenues, do not result in double recovery of capital costs.<sup>8</sup> However, the March 2009 Order repeated the directive from the underlying February 2007 Order that ISO-NE must implement, prior to the commencement of the first FCA commitment year, tariff provisions that ensure the

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<sup>3</sup> February 2007 Order, 118 FERC ¶ 61,163 at P 30.

<sup>4</sup> *Id.*

<sup>5</sup> MPUC September 25, 2008 Complaint, Docket No. EL07-38-000, at 5-6.

<sup>6</sup> *Maine Public Utilities Commission v. ISO New England Inc.*, 126 FERC ¶ 61,090 at P 39 (February 2009 Order), *order on reh'g*, 128 FERC ¶ 61,012 (July 2009 Order).

<sup>7</sup> *Id.* P 45.

<sup>8</sup> March 2009 Order, 126 FERC ¶ 61,212 at P 15.

resources eligible for CC rate payments for reactive service under Schedule 2 do not receive double compensation.<sup>9</sup>

## **II. Request for Clarification**

6. ISO-NE states that the March 2009 Order inadvertently restates the February 2007 Order requirement that it implement tariff revisions prior to the commencement of the first FCA Commitment Period (i.e., June 1, 2010) to prevent double recovery. ISO-NE argues that, in light of the Commission's findings in the February 2009 Order, the requirement in the February 2007 Order has already been addressed by ISO-NE's analyses filed in Docket No. EL07-38-000. ISO-NE seeks clarification that the tariff revisions are no longer required given the Commission's acceptance of these analyses.

7. ISO-NE also argues that the filing requirement appears to be an inadvertent restatement of the Commission's directive in the February 2007 Order. ISO-NE argues that its conduct and filing of its analyses comply with the February 2007 Order and demonstrate that the costs of reactive power capability qualified Generator Reactive Resources will not be reflected in the resources' capacity offers. It contends that the Commission reviewed ISO-NE's analyses in the February 2007 Order and correctly found that the capacity payments under the FCM settlement agreement and capability payments for reactive service under the Schedule 2 CC rate do not result in double recovery. It argues that the reference in the March 2009 Order to the requirement that ISO-NE implement tariff language to prevent double recovery was inadvertent and that no tariff revisions are required.

## **III. Commission Determination**

8. We deny the request for clarification. The Commission has held repeatedly that ISO-NE must file tariff provisions prior to the commencement of the first FCA Commitment Period to prevent double recovery.<sup>10</sup> Although our previous analyses have found that bidding incentives in the Forward Capacity Auctions make double recovery "highly unlikely,"<sup>11</sup> and that incentives to sellers to submit bids that take into account revenues from the capacity component make double recovery "*less of a concern*,"<sup>12</sup> such provisions remain necessary to provide certainty that double recovery of capital costs for

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<sup>9</sup> *Id.* P 22.

<sup>10</sup> February 2007 Order, 118 FERC ¶ 61,163 at P 30; March 2009 Order, 126 FERC ¶ 61,212 at P 22; July 2009 Order, 128 FERC ¶ 61,012 at P 19.

<sup>11</sup> February 2009 Order, 126 FERC ¶ 61,090 at P 44-45.

<sup>12</sup> July 2009 Order, 128 FERC ¶ 61,012 at P 12 (emphasis added).

generating equipment does not occur. This is consistent with our finding in the July 2009 Order, in which we stated while the Commission is not convinced that over-recovery is occurring, ISO-NE was nevertheless required to propose tariff language out of “an abundance of caution.”<sup>13</sup>

The Commission orders:

The request for clarification is denied as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>13</sup> *Id.* P 19.