

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Suffolk County Electrical Agency

Docket No. TX96-4-002

OPINION NO. 467-A

OPINION AND ORDER DENYING REHEARING

(Issued August 9, 2004)

1. This Opinion and Order denies requests for rehearings filed by Suffolk County Electrical Agency (Suffolk)¹ and Long Island Power Authority (LIPA)² of Opinion No. 467,³ which affirmed in part, dismissed in part, and reversed in part an Initial Decision issued in this proceeding⁴ concerning the appropriate rates, terms, and

¹ Suffolk is a municipal power agency created in 1983 by Suffolk County, New York. From its creation, Suffolk purchased hydropower from the New York Power Authority (NYPA), on an "as-available" basis, for resale to customers located within Suffolk County. This NYPA power was delivered to Suffolk's customers by Long Island Lighting Company (LILCO).

² Long Island Power Authority (Authority), a municipal subdivision of the State of New York, was created under the Long Island Power Act of 1986, N.Y. Pub. Auth. Law §§1020 *et seq.*, to acquire LILCO's securities and assets. A second Long Island Power Authority (LIPA), a wholly owned subsidiary of the Authority, acquired LILCO's transmission and distribution system in June 1998. On May 26, 1998, LIPA filed a notice of succession. For convenience, we will refer to LILCO, the Authority, and LIPA collectively as LIPA

³ Suffolk County Electrical Agency, 106 FERC ¶ 61,157 (2004) (Opinion No. 467).

⁴ Suffolk County Electrical Agency, 102 FERC ¶ 63,037 (2003) (Initial Decision).

conditions for Commission-directed service under section 211 of the Federal Power Act (FPA).⁵ We also address requests for clarification, and partially grant Suffolk's request for an extension of time in which to identify a supplier, so that Suffolk now must identify its supplier(s) within 45 days of the date of this order or we will dismiss this proceeding.

Background

2. This case has a long history, which we only briefly summarize here. On January 17, 1996, Suffolk applied to the Commission for an order, pursuant to sections 211 and 212⁶ of the FPA, directing LILCO, now LIPA, to provide transmission services, as well as certain ancillary, billing, and collection services, to allow Suffolk to purchase lower-cost power for resale to residential, commercial, and industrial customers.⁷ LIPA responded that Suffolk's request: (1) was a request for prohibited retail wheeling and/or a sham wholesale transaction; (2) was not in the public interest; and (3) threatened the reliability of LIPA's transmission and distribution system.

3. On December 31, 1996, the Commission issued a Proposed Order directing LIPA to provide transmission service to the extent necessary to accommodate Suffolk's proposed purchase and resale of power, and ordered further procedures to establish the rates, terms, and conditions of such transmission service.⁸ At the repeated requests of the parties, however, the Commission deferred further action.

4. On September 27, 2001, the Commission issued an order setting this case for hearing to determine the rates, terms, and conditions for transmission over facilities that might otherwise be characterized as distribution facilities, and to resolve charges for certain ancillary, billing, and collection services.⁹ On April 12, 2002, the Commission denied LIPA's motion to dismiss this proceeding.¹⁰

⁵ 16 U.S.C. § 824j (2000).

⁶ 16 U.S.C. § 824k (2000).

⁷ At that time, Suffolk expected to purchase power from Northeast Utilities and Enron Power Marketing, Inc.

⁸ Suffolk County Electrical Agency, 77 FERC ¶ 61,355 (1996) (Proposed Order).

⁹ Suffolk County Electrical Agency, 96 FERC ¶ 61,349 (2001) (Hearing Order).

¹⁰ Suffolk County Electrical Agency, 100 FERC ¶ 61,091 (2002) (Order Denying Motion to Dismiss).

5. The Initial Decision addressed these issues, and also both determined that the issue of unbundling LIPA's Retail Services Tariff was beyond the scope of this proceeding,¹¹ and rejected certain jurisdictional issues raised by LIPA.¹²
6. On February 17, 2004, the Commission issued Opinion No. 467, in which the Commission accepted, with modification, LIPA's proposed method for developing a charge for service to Suffolk and made certain other findings, which we will discuss below.
7. On March 18, 2004, Suffolk and LIPA filed requests for rehearing. Suffolk asks the Commission to reconsider its decisions on: (1) the acquisition adjustment; and (2) metering, billing, and collection services. Suffolk also requests that we extend the period for Suffolk to identify its supplier(s) until 90 days from the date of this order. LIPA seeks rehearing of the Commission's: (1) determination regarding its jurisdiction under sections 211 and 212; (2) exclusion of the so-called Constant Load Factor Methodology; and (3) rejection of LIPA's incremental cost recovery mechanism. In addition, LIPA seeks clarification that: (1) the determination that the Transmission Service Agreement enrollment procedures were moot was predicated on the decision that Suffolk must enroll customers; and (2) to the extent that there is cost causality between LIPA's provision of services and LIPA's acquisition of installed capacity reserves and/or excess fuel costs, such charges are appropriately included in LIPA's retail rates.

Discussion

A. Requests for Rehearing

Commission Jurisdiction

8. In Opinion No. 467, we stated:

LIPA misunderstands the extent of Commission jurisdiction in a section 211 case. As the Presiding Judge correctly pointed out, the Commission has determined that "we may order transmission services under section 211 even when they involve the use of 'local distribution' and 'generation' facilities that are otherwise non-jurisdictional." And section 212(a) of the FPA explicitly directs that "rates, charges, terms, and conditions [for Commission-directed transmission service

¹¹ Initial Decision at P 106.

¹² *Id.* at P 111.

under section 211] shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential." The Commission thus is obligated by section 212(a) to evaluate LIPA's rates at issue here to determine if they are, for this service, just and reasonable. That LIPA has turned to its retail rates to develop its proposed rates at issue here does not insulate the proposed rates from Commission review. Likewise, a Commission determination on the proposed rates at issue here does not constitute second-guessing retail rates. In sum, all that we are doing is what we are authorized to do: evaluate under section 212 what the appropriate rate should be for jurisdictional service under section 211.^[13]

9. On rehearing, LIPA reiterates its earlier arguments that it will continue to provide Suffolk's customers with retail distribution services, and that "[n]othing within FPA sections 211 or 212 extends the Commission's jurisdiction to the review of rates for retail distribution service."¹⁴ LIPA asks that we clarify that our assertion of review authority is limited to review of the rates necessary for the provision of transmission service over distribution facilities, and also that we now "disclaim jurisdiction over the establishment of rates for retail distribution services by LIPA as set forth in LIPA's SCI-SCEA rate schedule."¹⁵

10. We will deny LIPA's request for rehearing on this issue. It is self-evident that we do not have authority to review LIPA's retail distribution rates. We see no need to clarify that Opinion No. 467 made no attempt to review such rates; we stated that we were evaluating "LIPA's rates *at issue here* to determine if they are, *for this service*, just and reasonable."¹⁶ Regarding its claim that we should reconsider our jurisdictional determination, LIPA has raised no new arguments in its request for rehearing, and we are not persuaded to alter our determination that we have jurisdiction over rates for services provided pursuant to section 211.

¹³ Opinion No. 467 at P 9 (citations omitted).

¹⁴ LIPA Request for Rehearing at 6.

¹⁵ *Id.* at 7.

¹⁶ Opinion No. 467 at P 9 (emphasis added).

Acquisition Adjustment

11. In Opinion No. 467, we affirmed the Presiding Judge's determination that LIPA could properly recover the full \$194 million acquisition adjustment¹⁷ – the amount the Authority paid to acquire LILCO, less the original book value of LILCO's assets, less accumulated depreciation – as a separate surcharge in LIPA's rates, given that the acquisition adjustment was part of the LILCO purchase price. We concluded:

Having reviewed the record, the Initial Decision, and the parties' briefs, we reject Suffolk's argument that a stranded cost recovery test is required in this proceeding. As noted above, LIPA purchased LILCO and acquired its assets and liabilities, including the costs associated with decommissioning and disassembling Shoreham, under a settlement with the State of New York. Suffolk's retail customers, like other retail customers of LILCO's, benefited from that settlement in the form of lower rates. Therefore, it is appropriate that Suffolk continue to pay for the acquisition adjustment.[¹⁸]

12. On rehearing, Suffolk asks the Commission to revisit this determination. Suffolk reiterates its position that LIPA bears the burden of proof to show that the acquisition adjustment is recoverable under the Commission's stranded cost policy and claims that LIPA has not even attempted to make such a showing in this proceeding. Suffolk maintains that the Commission's approval of the sale of LILCO does not resolve whether, or to what extent, it is appropriate for LIPA to include the costs in an unbundled distribution rate, especially as the New York legislature characterized LILCO's Shoreham investment as "imprudent."¹⁹ Suffolk also argues that the Commission's decision is inconsistent with established precedent. In fact, Suffolk believes that Opinion No. 467 stands for the premise that, no matter how large a premium above book value is paid for a utility's assets, and no matter what the nature of the premium or what plant function it is related to, it can be fully included in the acquiring utility's distribution rate base, so long as the acquisition results in any level of savings to ultimate customers –

¹⁷ The acquisition adjustment essentially allows LIPA to recover the write-off of the Shoreham Nuclear Generating Plant (Shoreham), as well as elimination of deferred federal income taxes held by LILCO at the time of the acquisition, under a settlement with the State of New York. Opinion No. 467 at P 12.

¹⁸ *Id.* at P 15.

¹⁹ Suffolk Request for Rehearing at 4.

even in this case, where the savings are entirely attributable to the tax-advantaged status of the acquiring utility.²⁰

13. Finally, Suffolk again argues that, even if the Commission determines that costs related to the acquisition adjustment are recoverable in rates, the cost recovery should be allocated across all utility functions (generation, transmission, and distribution) that benefited from acquisition-related cost reduction, and not entirely to distribution. In support, Suffolk argues that LIPA's own witness acknowledged that acquisition and refinancing-related savings were realized on LIPA's share of the Nine Mile Point II nuclear plant and on LIPA's transmission system, as well as on the distribution system.²¹

14. We will deny rehearing on this point. This is not a case of stranded cost recovery by a company that incurred costs to serve customers and now finds that they are stranded by its customers' departure. LILCO, the entity that originally incurred the costs at issue, no longer exists. From the perspective of the Authority and LIPA, the costs are now an acquisition adjustment. The Authority bought LILCO's assets (and costs) pursuant to a state-brokered arrangement.²² We will not upset this state-brokered arrangement, and the balancing of costs and benefits that resulted by allowing Suffolk to wholly escape its obligations by changing suppliers.

15. With regard to the allocation of costs across functions, since Suffolk will no longer be taking certain services from LIPA, it is appropriate that the costs of this state-brokered arrangement be assessed as proposed, lest Suffolk escape even in part its obligation to pay its share of the acquisition adjustment.

Billing Services

16. In Opinion No. 467, the Commission said:

Upon consideration, we no longer believe it appropriate to require LIPA to provide these billing services. At the time we issued the Proposed Order, LILCO was transmitting power from NYPA to Suffolk's customers, and providing the associated billing services. However, that transmission

²⁰ Suffolk's claim in this regard is overstated; we did not in Opinion No. 467 and do not here claim that the mere fact that there were savings to ultimate customers was or is determinative.

²¹ *Id.* at 10 (*citing* Tr. 321:11; 323:4-5; 323:17).

²² Indeed, the Authority was created by the state for precisely this purpose.

service has now terminated, so LIPA is no longer able to seamlessly offer such billing services for Suffolk's customers. In these circumstances, we decline to require the transmission provider of a wholesale purchase to provide billing services for the retail customers of that wholesale purchase. Therefore, Suffolk, like any other load-serving entity, should now have to provide its own retail billing to its own retail customers. Accordingly, we will dismiss this portion of the Initial Decision.^[23]

17. Suffolk believes that the Commission's action, in reversing the determination in the Proposed Order (and reaffirmed in the Hearing Order and the Order Denying Motion to Dismiss) that LIPA is required to provide metering, billing, and collection services, cannot be justified either legally or procedurally. In support, Suffolk states that there was no legitimate issue on exceptions to the Initial Decision as to whether Suffolk is entitled to billing services. Suffolk also argues that the expiration of Suffolk's power purchase agreement with NYPA does not justify the Commission's decision, pointing out that section 212(h)(2) of the FPA requires that an applicant was providing electric service to the ultimate consumer on October 24, 1992, not "on October 24, 1992 and 'continuously' or 'seamlessly' thereafter."²⁴ Finally, Suffolk states that its plans have been predicated upon LIPA's providing these services, and that it is more efficient and desirable to have a single billing system apportion each customer's usage between LIPA-supplied and Suffolk-supplied energy, and issue a single bill to the customer for both, as has been done historically.

18. We will deny rehearing. Regarding Suffolk's procedural argument, we note that Suffolk is correct that this issue was not properly before the Presiding Judge, and thus not a legitimate issue on exceptions to the Initial Decision. Accordingly, the Presiding Judge was correct in finding that "the Commission has determined that [LIPA] is to bill for these services."²⁵ However, notwithstanding that the issue was not before us as an exception to the Initial Decision, because we had not yet issued a Final Order in this proceeding, the Proposed Order remained and remains just that, proposed and not final

²³ Opinion No. 467 at P 27 (citation omitted).

²⁴ Suffolk Request for Rehearing at 15. Suffolk also maintains that nothing has happened since the NYPA contract expired that would impede LIPA's ability to provide the requested billing and collection services.

²⁵ Initial Decision at P 74.

and thus properly before us.²⁶ And, as we explained in Opinion No. 467, after further reflection, we have decided that Suffolk should be no more entitled to exemption (in the absence of an agreement among the parties to the contrary) from having to provide the same billing and related services as any other load-serving entity; Suffolk has no intrinsic right to “lean” on LIPA to provide these services and Suffolk, if it wishes to be a load-serving entity, must conduct itself as do other load-serving entities. Suffolk is perhaps correct that forcing LIPA to provide these services could result in efficiencies. However, these efficiencies could equally well be more than offset by the unfair competitive advantage Suffolk would receive vis-à-vis other load-serving entities and LIPA itself (a competitor for this partial requirements service), if we allow Suffolk to lean on LIPA, *i.e.*, by requiring LIPA to provide billing and related services to a competitor’s, Suffolk’s, retail customers. Finally, we note that we are not imposing such a great burden on Suffolk; Suffolk is already providing billing and collection services on behalf of its economic incentive (industrial and commercial) customers.²⁷

19. Regarding Suffolk’s legal arguments, Suffolk appears to misunderstand the scope of the grandfathering provision in section 212(h)(2)(B) of the FPA. As we discussed in the Proposed Order, Congress was concerned that entities would attempt to use section 211 of the FPA to expand upon, rather than continue, existing retail relationships. Accordingly, when Congress enacted section 212(h) of the FPA, to prohibit mandatory retail wheeling and sham wholesale transactions, Congress explicitly exempted entities who were providing retail service on the date this section was enacted (*i.e.*, October 24, 1992).²⁸ Therefore, because Suffolk was providing retail service on that date, we found that Suffolk was grandfathered and entitled to obtain a transmission order under section 211 to serve all potential retail customers within the class it had been serving. And this grandfathering continues today, even though Suffolk’s contract with NYPA has expired; Suffolk had a pre-existing relationship (that competed with LILCO) with retail customers, so that Suffolk would not be utilizing section 211 to practice a “subterfuge” to “divert retail customers away from LILCO.”²⁹

20. However, section 212(h) of the FPA does not discuss metering, billing, or collection services, and neither does section 211. Rather, section 212(c)(1) provides that, before the Commission issues a final order under section 211, it should first issue a proposed order

²⁶ See section 212(c)(1) of the FPA (“Such proposed order shall not be reviewable or enforceable in any court”).

²⁷ See Proposed Order at 62,549 n.16.

²⁸ *Id.* at 62,549.

²⁹ *Id.* (citations omitted).

and give the parties the opportunity to negotiate the rates, terms, and conditions for the transmission service. As discussed above, while, in 1996 in the Proposed Order, we determined that it would be appropriate for LILCO to bill for those services (with appropriate compensation, of course), in 2004 upon reflection, we determined that this is no longer appropriate.

Constant Load Factor Methodology

21. In Opinion No. 467, we held that, because we were no longer requiring LIPA to provide metering, billing, and collection services, there was no need to address the issue of the so-called Constant Load Factor Methodology.³⁰

22. On rehearing, LIPA argues that Suffolk's assumption of billing responsibility does not negate the need for a mechanism to measure Suffolk's actual energy deliveries, and that the Constant Load Factor Methodology "creates an administratively easy mechanism by which to identify a specific amount of energy to be delivered to each residential meter in a manner that is consistent with the fundamental requirements of transmission service."³¹ LIPA further asserts that, notwithstanding that the Presiding Judge found that this methodology was appropriate, "Opinion No. 467 reverses the [Initial Decision] with respect to a Constant Load Factor, but fails to provide a reasoned explanation of such reversal that is supported by the record evidence."³²

23. Our determination that a Constant Load Factor Methodology was no longer necessary was based on the fact that we were changing our decision on billing services.³³ As the Presiding Judge's evaluation of this methodology was based on the premise that LIPA would be required to provide such services, and that was now no longer the case, we, in fact, did offer a sufficiently "reasoned explanation of such reversal" of the Initial Decision.

³⁰ Opinion No. 467 at P 28 (citation omitted).

³¹ LIPA Request for Rehearing at 9 (emphasis added). We note that the focus of the parties' arguments before the Presiding Judge was on developing a methodology to apply when billing individual customers. *See* Initial Decision at P 86-91 & nn.58-64. Indeed, the Presiding Judge herself recognized that the relevance of the Constant Load Factor Methodology was tied to LIPA's billing individual customers. *See* Initial Decision at P 92.

³² *Id.* at 9-10.

³³ Opinion No. 467 at P 28.

24. LIPA no more need to have in place a Constant Load Factor Methodology for service to Suffolk (and its load) than it does to provide service to any other load-service entity (and its load), or than other utilities need to have so that they may provide transmission service to LIPA (and its load). The simple fact is that, so long as LIPA is providing service to Suffolk and billing Suffolk – and not individual customers – for that service, the issue of the Constant Load Factor Methodology is moot. We are not persuaded that any other result is called for here.

Recovery of Incremental Costs

25. In Opinion No. 467, we dismissed the portion of the Initial Decision that discussed the payment of incremental costs, explaining that:

Most of the enumerated costs have been eliminated by our determination that LIPA is not required to provide billing services. Any remaining costs would be recovered through other portions of LIPA's rates, and to the extent those rates are not adequate, LIPA can propose to revise them to ensure full costs recovery.^[34]

26. On rehearing, LIPA argues that the Commission erred, because, even without the provision of pass-through billing services, LIPA will incur incremental costs to initiate start-up and ongoing support of Suffolk's Commission-directed transmission service. In support, LIPA states that its proposal to charge separately for incremental costs, start-up and support costs, does not expose Suffolk to anything more than the actual incremental costs that LIPA itself incurs, as the billing of estimated incremental costs is subject to a final true-up.

27. We will deny rehearing on this issue. In Opinion No. 467, we recognized that not all of the costs enumerated as incremental costs were eliminated by our decision that LIPA is not required to provide the billing services. Moreover, we did not find that LIPA could not recover costs appropriately incurred for start-up and Commission-directed transmission service. Rather, we concluded that LIPA could and should recover any such costs through other portions of its rates rather than through a separate, stand-alone charge and, to the extent those rates are not adequate, LIPA could propose to revise them to ensure full cost recovery. On rehearing, LIPA has not disputed that it can fully recover its costs through other portions of its rates, and has not persuaded us to alter our determination that an additional, stand-alone incremental cost recovery mechanism is unnecessary.

³⁴ *Id.* at P 30 (citation omitted).

B. Requests for Clarification

Individual Customer Enrollment

28. In Opinion No. 467, we held that, because we were no longer requiring LIPA to provide metering, billing, and collection services, there was no need to address the issue of Individual Customer Enrollment.³⁵

29. LIPA now asks the Commission to clarify two matters, that: (1) Suffolk's billing responsibility inherently requires Suffolk to enroll customers; and (2) Suffolk must still provide notice to LIPA of each customer that enrolls.

30. We disagree that clarification is required here. Regarding the need for Suffolk to enroll customers, LIPA itself states that it "is inconceivable that [Suffolk] enrollment is not a fundamental element of any billing responsibility."³⁶ Similarly, the need for Suffolk to provide notice to LIPA of each enrolled customer is self-evident. As LIPA itself notes, "[a]n inherent part of transmission service is the identification of both a point of delivery and a receiving party that takes possession of delivered energy."³⁷

Local Installed Capacity

31. In Opinion No. 467, the Commission held:

While Suffolk ultimately will need to pay for local installed capacity, to the extent it is a load serving entity, Suffolk has no obligation to choose LIPA as the local installed capacity provider. Unless and until Suffolk chooses LIPA as the provider, LIPA may not include a local installed capacity charge in the rate it charges Suffolk.^[38]

32. On rehearing, LIPA states that it purchases on-island capacity not only to meet any NYISO requirements for load-serving entities, but also to provide the resources necessary to act as a provider of last resort, meet peak load and energy requirements, manage overall customer load profiles on a real-time basis, and fulfill other retail distribution

³⁵ *Id.* at P 28 (citation omitted).

³⁶ LIPA Request for Rehearing at 13.

³⁷ *Id.* at 14 (emphasis in original).

³⁸ Opinion No. 467 at 19.

functions. LIPA asks the Commission to clarify that, to the extent that its local installed capacity reserves support its retail services to Suffolk's customers, rather than obligations under the NYISO, the Commission did not intend to preclude LIPA's recovery of such legitimately incurred capacity costs.

33. Again, we do not see the need to clarify our holding. As we explained in Opinion No. 467, Suffolk had argued, and we agreed, "that LIPA's rate for local installed capacity should be unbundled," notwithstanding that LIPA disputed that unbundling.³⁹ In agreeing with Suffolk, we were agreeing to unbundle the rate for local installed capacity, and that the provider of local installed capacity to Suffolk was the entity that was entitled to charge Suffolk for that service.

Fuel and Purchased Power Cost Adjustment

34. In Opinion No. 467, the Commission noted that "Suffolk does not object to paying the [Fuel and Purchased Power Cost Adjustment Rider (FPPCA)], but to paying it for some extended period," and that "LIPA anticipates that adjustments to the FPPCA will need to be made to reflect the fact that certain energy-related costs will no longer be incurred by LIPA on their behalf."⁴⁰ Accordingly, the Commission adopted a suggestion by LIPA to have each participating customer pay the full FPPCA for twelve months following its date of enrollment, to "match the cost causality inherent in the deferred fuel cost recovery mechanism."⁴¹

35. In its request for clarification, LIPA states that the assumptions regarding the appropriateness of a twelve-month time period have been modified "[s]ince completion of the administrative hearing," with the effect "being that, beginning in 2004, the FPPCA now recovers actual fuel and purchased power costs on a calendar year basis *and* deferred excess costs from 2003 over a ten-year amortization period."⁴² Thus, LIPA explains, the twelve-month limitation would result in the customer avoiding charges for which it should be responsible. Accordingly, LIPA asks the Commission to clarify that Suffolk's customers should be subject to all FPPCA charges that recover costs of providing retail energy or other services to such customer (including deferred excess fuel costs from 2003), which are being amortized over the period 2004-2013.

³⁹ *Id.* at 17, 18.

⁴⁰ *Id.* at 23 (citation omitted).

⁴¹ *Id.* (citation omitted).

⁴² LIPA Request for Rehearing at 17-18 (emphasis in original).

36. In light of the changed circumstances, we will grant LIPA's request for clarification on this issue. LIPA is correct that our concern was "cost-causality."⁴³ If costs are now amortized over ten years rather than 12 months, rate recovery should change accordingly.

C. Request for Partial Stay

37. Finally, Suffolk requests that the Commission stay the requirement that Suffolk identify a wholesale power supplier within 90 days of the date of issuance of Opinion No. 467, such that the 90-day window will not commence until the issuance of this order on rehearing. In support, Suffolk argues that it "cannot design a request for proposals (RFP) to supply wholesale power and ancillary services – much less enter into a binding commitment to purchase such products – until the Commission has resolved the issues raised on rehearing (including any issues raised by LIPA)."⁴⁴ Suffolk also argues that the delays that occurred in this proceeding after the filing of Final Briefs in July 1997, which "were completely beyond Suffolk's control,"⁴⁵ resulted in the expiration of the long-term power supply commitments that Suffolk had negotiated in 1996.

38. We will in part grant Suffolk's request. While we disagree that the delays in this proceeding were "completely beyond Suffolk's control," we do agree that Suffolk is not alone responsible for the delays. Nevertheless, in light of the fact that Suffolk has been on notice since February 17, 2004, the date we issued Opinion No. 467, that it would need to select a supplier or suppliers, we do not believe an additional 90 days from the date of the issuance of this order is necessary. Accordingly, we will give Suffolk an additional 45 days from the date of issuance of this order to identify its supplier(s) or we will dismiss this proceeding.

The Commission orders:

- (A) LIPA's request for rehearing is hereby denied.
- (B) LIPA's requests for clarification are hereby denied in part and granted in part, as discussed in the body of this Opinion and Order.
- (C) Suffolk's request for rehearing is hereby denied.

⁴³ *Id.* at 18.

⁴⁴ Suffolk Request for Rehearing at 19.

⁴⁵ *Id.* at 20.

(D) Suffolk is hereby directed to identify to the Commission, within 45 days of the date of issuance of this Opinion and Order, the supplier or suppliers from whom it intends to purchase power, along with the amount of power it intends to purchase.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.