

124 FERC ¶ 61,061  
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.

Braintree Electric Light Department  
Hingham Municipal Lighting Plant  
Hull Municipal Lighting Plant  
Mansfield Municipal Electric Department  
Middleborough Gas & Electric Department  
Taunton Municipal Light Plant

Docket No. EL08-48-000

v.

ISO New England Inc.

ORDER ON COMPLAINT

(Issued July 18, 2008)

1. On March 28, 2008, Braintree Electric Light Department, Hingham Municipal Lighting Plant, Hull Municipal Lighting Plant, Mansfield Municipal Electric Department, Middleborough Gas & Electric Department and Taunton Municipal Light Plant (collectively, Massachusetts Public Systems or MPS) filed a complaint against ISO New England Inc. (ISO-NE). MPS contends that its members are being unjustly charged to ensure reliability in the Cape Cod region. In its complaint, MPS states that ISO-NE should implement Post First Contingency Switching (PFCS)<sup>1</sup> or a Special Protection System (SPS)<sup>2</sup> to reduce Local Second Contingency Protection Resources (LSCPR) charges. In the alternative, MPS alleges that the Southeastern Massachusetts (SEMA)

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<sup>1</sup> Post First Contingency Switching (PFCS) is the opening of various circuit breakers following the occurrence of the first contingency.

<sup>2</sup> A Special Protection System (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.

reliability region should be divided into two sub-regions, Upper and Lower SEMA. As discussed below, the Commission will deny MPS's request that ISO-NE utilize a PFCS or an SPS. However, the Commission will establish a refund effective date of March 28, 2008, and establish hearing procedures concerning cost allocation. The Commission will hold the hearing in abeyance and refer the cost allocation issue in SEMA to the ISO-NE stakeholder process. By July 17, 2009, ISO-New England is directed to submit a filing describing the stakeholder process used and how ISO-NE will address the cost allocation issue.

## **I. Background**

2. Mirant's Canal Units 1 & 2 in Cape Cod, Massachusetts (Canal Units), were originally designed, and are still operating, as the primary generation for Cape Cod.<sup>3</sup> According to ISO-NE, the total peak load in Cape Cod is 950 MW. The two units produce 1,126 MW. Four smaller generating plants within Cape Cod produce an additional 152 MW.

3. In 2006 the Canal Units became largely uneconomic due to increased oil prices. At that time, NSTAR Electric Company (NSTAR) requested that ISO-NE operate the Canal Units out-of-merit order for reliability purposes. ISO-NE, under the impression that NSTAR's request was to provide extra reliability above and beyond regional practices, dispatched the Canal Units as Special Constraint Resources, under which the costs were to be allocated solely to the requesting entity, NSTAR. When ISO-NE charged NSTAR the costs of operating the Canal Units, NSTAR objected, claiming that running the Canal Units as a LSCPR is necessary and the costs should be allocated to the applicable New England reliability region, in this case SEMA. ISO-NE agreed with NSTAR, and both retroactively and prospectively allocated such costs to the entire SEMA region. Affected entities disagreed with the LSCPR reclassification and settlement proceedings commenced.<sup>4</sup>

4. In the SEMA Settlement the parties agreed to: (i) a reimbursement by NSTAR and National Grid to load serving entities and municipals for charges related to running the Canal Units during 2006; and (ii) going forward principles for SEMA LSCPR charges. The SEMA Settlement also provided that, as of January 2008, municipalities may seek both relief from LSCPR charges for that portion of costs that would have been reduced if a PFCS or SPS arrangement had been implemented, and a change in the definition of the SEMA region.

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<sup>3</sup> Unit 1 began service in 1968 and Unit 2 began service in 1976.

<sup>4</sup> The settlement was approved by letter order on July 21, 2007 in Docket No. ER07-921-000 (SEMA Settlement).

## II. Complaint

5. MPS contends that its members have been overcharged approximately \$24 million in 2006 and 2007, and will be overcharged more than \$13.5 million in 2008. MPS argues that these costs were incurred to avoid the small chance of controlled load shedding on Cape Cod following a second contingency. MPS asserts that load shedding after a second contingency is permitted under the applicable reliability criteria. MPS asserts that it should not have to pay for reliability that exceeds the requirements. MPS does not insist that Cape Cod customers be exposed to those risks, but that the costs of avoiding those risks must be borne by those customers and not MPS.

6. MPS raises two issues in its complaint: (1) whether ISO-NE should implement a PFCS or an SPS to reduce LSCPR charges; and (2) whether reliability costs that are incurred to protect Cape Cod should be allocated to the entire SEMA region or whether the region should be divided into two sub-regions, Upper and Lower SEMA.

7. Regarding the first issue, MPS asserts that implementing a PFCS or an SPS arrangement would reduce LSCPR charges. MPS states that ISO-NE has operated one or both of the Canal Units out-of-merit order and at inefficient output levels in order to satisfy post-contingency operating requirements. MPS believes that these requirements could be addressed at a fraction of the cost through the adoption of a PFCS arrangement or the installation of an SPS.<sup>5</sup> MPS contends that ISO-NE has acted contrary to its tariff by characterizing the unnecessary costs associated with running the Canal Units out-of-merit as LSCPR charges. MPS states that section III.6.1 of ISO-NE's Tariff defines LSCPRs as those resources that are "necessary" to fulfill second contingency requirements under applicable reliability standards. MPS asserts that additional and more expensive steps may be taken at the request of a Transmission Owner, but that such additional costs must be borne by that Transmission Owner and not by other systems in the reliability region

8. Regarding the second issue, MPS argues that the reliability costs that are incurred to protect Cape Cod should not be allocated to the entire SEMA region but that the region should be divided into two sub-regions, Upper and Lower SEMA and the costs should be allocated only to Lower SEMA (Cape Cod would be in Lower SEMA). MPS asserts that Upper SEMA customers, such as the MPS, do not create the need for ISO-NE to operate the Canal Units out-of-merit in lieu of using a PFCS to meet second contingency reliability criteria, and MPS derives no benefit from relying on the Canal Units instead of a PFCS or an SPS. MPS contends that, if the Canal Units were being operated out-of-merit to protect against New England-wide voltage collapse, then such charges should be allocated region-wide. However, MPS asserts that the Canal Units serve to protect only

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<sup>5</sup> ISO-NE states that it would take one year to install an SPS switching system.

Cape Cod from load shedding. Consequently, MPS argues that allocating LSCPR charges to MPS is unjust and unreasonable. Accordingly, MPS requests that SEMA be subdivided into two regions, Upper SEMA and Lower SEMA and that the out-of-merit Canal Unit's costs be properly allocated to Lower SEMA.

### **III. Notices and Interventions**

9. Notice of MPS's filing was published in the *Federal Register*, 73 Fed. Reg. 19,062 (2008), with answers, interventions and protests due on or before March 28, 2008. Answers to the complaint were filed by ISO-NE and the New England Power Pool Participants Committee (NEPOOL).

10. Cape Light Compact (Cape Light) and Consolidated Edison Energy, Inc., (Con Ed) filed motions to intervene and comments. NSTAR Electric Company (NSTAR) and the Massachusetts Attorney General filed motions to intervene and protests. TransCanada Power Marketing Ltd.; Dynegy Power Marketing, Inc., Casco Bay Energy Company, LLC, and Bridgeport Energy, LLC; Mirant Parties; Dominion Energy Marketing, Inc.; and National Grid filed motions to intervene. Maine Public Utilities Commission and Massachusetts Department of Public Utilities (Mass DPU) filed notices of intervention. Massachusetts Municipal Wholesale Electric Company filed a motion to intervene out-of-time. Massachusetts State Legislators, Representative Matthew C. Patrick and Senator Robert O'Leary filed a late motion to intervene and protest. MPS filed an answer in response to the answer and other pleadings submitted and ISO-NE and NEPOOL filed answers in response to MPS's answer.

11. ISO-NE argues that the complaint seeks to drastically reorder longstanding operating practices that support reliable operation of its system, and that are confirmed by Northeast Power Coordinating Council (NPCC) guidance. ISO-NE rejects MPS's assertion that generation dispatch is never truly necessary if load shedding is available.

12. ISO-NE contends that the SEMA Settlement provided MPS only two narrow exceptions to the comprehensive resolution of disputes regarding the Canal Units' dispatch for second-contingency protection: to advocate that a PFCS or an SPS could and should be used for second-contingency protection; and to advocate a change in the definition of the SEMA region. According to ISO-NE, MPS's argument that it should not share in LSCPR costs does not fall within either exception. ISO-NE states that MPS's assertion that allocating these costs to the entire SEMA region violates cost causation principles is belied by recent Commission precedent. ISO-NE argues that the zonal methodology utilized in the region is similar to that used by the Midwest Independent Transmission System Operator and accepted by the Commission; ISO-NE explains that the Commission recognized that a tariff provision is consistent with cost causation principles when assigning costs on a zonal basis, even though on some

occasions not everyone within the zone will benefit.<sup>6</sup> ISO-NE adds that, while the complaint has presented no justification for changing the boundaries of SEMA, a comprehensive reexamination of the boundaries of the New England load zones may be appropriate within a reasonable time frame, given other regional priorities.

13. NSTAR argues that section 4.1 of the SEMA Settlement precludes MPS's objections to the tariff's LSCPR provisions and to ISO-NE's classification of the Canal Units as an LSCPR. NSTAR asserts that both PFCS and SPS involve curtailment of firm load, degradation of service reliability, violation of the standards that govern power system design and operation, and discrimination against Lower SEMA customers who would receive a lower quality of service than other ISO-NE consumers. NSTAR adds that it is building transmission enhancements that will improve reliability in the region and reduce the reliance on the Canal Units out-of-merit operation. NSTAR argues that these new facilities, rather than PFCS or SPS load shedding is the proper answer to maintain reliability and address MPS's cost allocation concerns. NSTAR states that the first phase of these new facilities will enter service in June 2008 and the final phase is due by late 2009.

14. NSTAR also asserts that the complaint is predicated on the acceptability of load shedding to maintain reliability after a second contingency. NSTAR contends that the PFCS and SPS proposed by MPS would prevent equipment damage, but would not maintain continuity of service to firm load. NSTAR maintains that the PFCS/SPS outages that MPS proposes would black out Cape Cod load if not all of Lower SEMA for as long as 24 hours.

15. Cape Light and Con Ed support pursuing technical solutions that would reduce the need for the out-of-merit operation of the Canal Units and encourage ISO-NE to review and report on near term transmission upgrades in the region. Cape Light and Con Ed oppose subdividing SEMA and assert that if the Commission grants financial relief to MPS, it should be prospective only and not for three months prior as indicated in the SEMA Settlement since MPS delayed filing its complaint for several months. NEPOOL opposes MPS's complaint arguing that MPS is proposing changes that could affect numerous parties, not just those who participated in the previous settlement. As such, NEPOOL asserts that MPS should take advantage of the stakeholder process to ensure that all possible solutions have been discussed and vetted among all affected entities. NEPOOL contends that after the stakeholder process, if necessary, MPS could file a complaint with the Commission.

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<sup>6</sup> ISO-NE Answer at 31 *citing Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172, at P 217 (2008).

16. Mass DPU requests that the Commission deny MPS's complaint arguing that utilizing a switching system would result in unacceptable load shedding similar to what occurred in December 2003 when due to a series of contingencies, a blackout ensued causing substantial harm to the region. Mass DPU also opposes MPS's request to have the Commission subdivide the SEMA region. Any reevaluation of the reliability regions, Mass DPU continues, should occur through the stakeholder process to ensure that all regional entities fully: (1) understand the engineering characteristics that may, or may not, support further division or merger of existing reliability regions; and (2) assess the implications for other areas within the New England Control Area.

17. In its answer, MPS asserts that during the past year the Canal Units have been unnecessarily committed, thereby exceeding the minimum reliability standards that ISO-NE is required to maintain. MPS argues that ISO-NE utilizes switching arrangements in other parts of New England, thereby approving the use of load shedding to meet second contingencies, but refuses to do so here. MPS maintains that the SEMA Settlement does not bar MPS from making its arguments in this complaint. MPS contends that classifying the Canal Units as LSCPR is inconsistent with the tariff. MPS asserts that its right to file this complaint in the SEMA Settlement did not include the precondition of pursuing these issues through the stakeholder process. Rather, in the SEMA Settlement it bargained for and reserved the right to bring this complaint before the Commission.

18. In its answer to MPS's answer, ISO-NE repeats its assertions that given the current system design, a switching system and load shedding are not appropriate operational responses to meet reliability needs when generation is available. ISO-NE states that its support for load shedding in other regions is due to several factual differences between those regions and SEMA. For example, ISO-NE states that reliance on load shedding in the NEMA Load Zone and in Southwest Connecticut only occurs when real time conditions warrant and is only implemented after a second contingency occurs. ISO-NE contrasts this approach with the approach advocated by MPS, of using a PFCS or an SPS, which ISO-NE states would rely on load shedding as the next step post-first contingency 365 days a year.

19. In NEPOOL's response to MPS's answer, NEPOOL reiterated its arguments that any decision to divide the SEMA region should occur among the stakeholders, not by Commission directive.

20. Representative Patrick and Senator O'Leary request that a comprehensive load shedding program or more aggressive demand side response program be implemented to reduce regional energy costs. They also concur with the Massachusetts AG's request that the Commission direct the parties to develop cost-effective, long-term upgrades to eliminate the need for the Canal Units.

#### IV. Discussion

##### A. Procedural Issues

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2008), the Commission will grant Massachusetts Municipal Wholesale Electric Company and the Massachusetts State Legislators Patrick and O'Leary's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the answers of MPS, ISO-NE and NEPOOL because they have provided information that assisted us in our decision-making process.

##### B. Substantive Matters

22. The SEMA Settlement narrows the scope of the complaint to two issues: (1) whether or not a PFCS or an SPS can replace the utilization of the Canal Units as an LSCPR<sup>7</sup> and (2) whether the Commission should direct a change in the ISO-NE definition of SEMA.<sup>8</sup>

##### 1. Reliance on Post First Contingency Switching or a Special Protection System to Reduce Local Second Contingency Protection Resource Charges.

23. The Commission denies MPS's request to utilize a PFCS or an SPS instead of relying on the Canal Units as an LSCPR.

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<sup>7</sup> Section 7.1 of the SEMA Settlement states that MPS is not prevented "from seeking relief from SEMA [Net Commitment Period Compensation] Charges for LSCPR through litigation against ISO-NE or the Transmission Owners over whether consistent with Applicable Criteria as defined in Section 6.1(b) such charges could be or should be reduced through implementation of an SPS or Post-First Contingency Switching arrangement."

<sup>8</sup> Section 7.2 of the SEMA Settlement states that MPS "agree[s] not to seek a change (in NEPOOL or before the Commission) in the ISO-NE definition of the SEMA Reliability Region to become effective...no earlier than January 1, 2008."

24. The SEMA Settlement suggests that ISO-NE will examine implementing a PFCS or an SPS arrangement instead of relying on the Canal Units. In this instant complaint, MPS focuses on the resulting report's finding that a switching arrangement could be implemented. However, that report also found that such reliance would expose Cape Cod to the risk of involuntary load shedding if a 345 kV transmission line was lost. According to ISO-NE, the total peak load in Cape Cod is 950 MW. ISO-NE states that if one of the two 345 kV lines transporting power into Cape Cod is lost, then it can only transport a maximum of 400 MW to Cape Cod via the second 345 kV line. Thus, under low load conditions in Cape Cod, the second 345 kV line protects against the involuntary shedding of load under N-1 (first) contingency, while running a single Canal Unit protects against the involuntary shedding of load under N-2 (second) contingencies. Under high load conditions in Cape Cod, running both Canal Units protects against involuntary shedding of load under N-1 and N-2 contingencies.

25. NPCC Document A-03 states that one of the seven basic objectives in formulating plans related to emergency operating conditions is: "[t]o avoid, to the extent possible, the interruption of service to firm load." NPCC Document A-2, Basic Criteria for Design and Operation of Interconnected Power Systems provides guidance to ISO-NE for proper post-contingency operations. Under that NPCC guidance, there is a preferred sequence of contingency-related actions that favors "readjustment of generation" over other measures such as shedding of firm load. In this regard, we note that the North American Electric Reliability Corporation (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," which justifies reliance on NPCC Document A-2.<sup>9</sup>

26. ISO-NE thus has properly followed NPCC guidance by running the two Canal Units, a total of 1,126 MW. As ISO-NE states, reliance on a PFCS or an SPS arrangement would make the involuntary shedding of firm load the next step after a first contingency, which we agree would inappropriately degrade reliability. We also note

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<sup>9</sup> In addition, with respect to NERC Standard TPL-002-0 (System Performance Following Loss of a Single Element), the Commission has stated that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency. The Commission further explained that consequential load is the load that is directly served by the elements that are removed from service as a result of the contingency. *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1794, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

that a PFCS or an SPS arrangement has the potential to black out Cape Cod load for up to 24 hours, because it would take that long to bring the Canal Units on-line from a cold start.

2. **Whether Reliability Costs That Are Incurred to Protect Cape Cod Should Be Allocated to the Entire SEMA Region or Whether the Region Should Be Divided Into Two Sub-regions, Upper SEMA and Lower SEMA**

27. Costs should be allocated to customers in a manner that reflects the costs of providing service to them; the U.S. Court of Appeals for the D.C. Circuit has stated that cost causation principles compare the costs assessed to the benefits drawn or the burdens imposed.<sup>10</sup> The Commission is not required to allocate costs with “exacting precision,”<sup>11</sup> but the benefits must not be “insubstantial, limited or purely speculative.”<sup>12</sup> Thus, costs can be allocated on a zonal basis even if not all entities within that zone receive the same level of benefits.<sup>13</sup>

28. In Order No. 890, the Commission established several factors to consider when allocating costs for new transmission projects: specifically, whether a cost allocation proposal: (1) fairly assigns costs among participants, including those who caused them to be incurred and those who benefit from them; (2) provides adequate incentives to

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<sup>10</sup> *E.g. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004).

<sup>11</sup> *Sithe/Independence Power Partners L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir 2002).

<sup>12</sup> *California Indep. Sys. Operator Corp.*, 113 FERC ¶ 63,017, at P 42 (2005), *opinion and order on initial decision*, 117 FERC ¶ 61,348 (2006).

<sup>13</sup> *See generally Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172, at P 217 (2008); *AEP Service Corp. v. Midwest ISO*, 122 FERC ¶ 61,083 (2008); *SW Power Pool, Inc.*, 111 FERC ¶ 61,118, *order on reh’g*, 112 FERC ¶ 61,319 (2005); *New England Power Pool and ISO New England, Inc.*, 105 FERC ¶ 61,300 (2003), *order on reh’g*, 109 FERC ¶ 61,252 (2004).

construct new transmission; and (3) is generally supported by state authorities and participants across the region.<sup>14</sup> While not specifically applicable here, these factors nevertheless can provide helpful guidance.

29. The SEMA reliability region was adopted by ISO-NE from the existing electric regional boundaries of NEPOOL; it was originally established by engineering analysis of interfaces and transmission constraints. However, the SEMA regional boundary may no longer result in a just and reasonable allocation of the costs at issue here.

30. We find that whether or not the cost allocations resulting from the boundaries of the current SEMA region are just and reasonable raises issues of material fact that cannot be resolved on the record before us. We therefore will set MPS's complaint for hearing. However, we will hold the hearing in abeyance because we conclude at this point that the issues set for hearing and raised in the responses regarding SEMA are more appropriately addressed in the ISO-NE stakeholder process. The issues to be addressed in the stakeholder process include, but are not limited to, whether SEMA should be divided, and if so, how. The stakeholders may also consider other means (except for implementation of PFCS or SPS) to address the issues regarding complainants' challenges to the cost allocation in SEMA. The stakeholder process should consider the effects, if any, of any proposal on New England's markets or other regions in the ISO-NE footprint.<sup>15</sup> We require the ISO-NE to submit a filing to the Commission no later than July 17, 2009 indicating how the ISO-NE will address the cost allocation issues set for hearing. That filing will describe the stakeholder procedures undertaken as a result of this order.

31. Where, as here, the Commission institutes a Federal Power Act section 206 investigation on a complaint, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint.<sup>16</sup> We will set the statutory

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<sup>14</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007).

<sup>15</sup> For example, if data show that the proposed resolution impacts the markets or costs for regions other than SEMA, those issues should be considered in any proposed resolution. However, we do not expect the process to be an opportunity for stakeholders to seek changes to non-SEMA boundaries within the ISO-NE footprint or other issues that do not arise as a result of the proposed resolution.

<sup>16</sup> 16 U.S.C. § 824e (2006).

refund effective date at the earliest date allowed, March 28, 2008, the date the complaint was filed.

32. Section 206(b) also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. We conclude at this time that the issue is best addressed in the stakeholder process. We want to ensure that the stakeholder process is meaningful and, therefore, will provide the ISO-NE to July 17, 2009 to come up with a regional and long-term solution. We expect a final decision in this case shall be issued within six months of when the ISO-NE submits the filing as directed above.

The Commission orders:

(A) MPS's request that ISO-NE utilize a PFCS or an SPS arrangement is hereby denied.

(B) The statutory refund effective date established pursuant to section 206(b) of the FPA is March 28, 2008, the date of the filing of the complaint.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. EL08-48-000 concerning SEMA cost allocations. However, the hearing will be held in abeyance as described in the body of this order.

(D) ISO-NE is hereby directed to make a filing no later than July 17, 2009, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.