

126 FERC ¶ 61,124  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Con Edison Energy, Inc.

Docket No. EL05-61-000

v.

ISO New England Inc. and New England Power Pool

ORDER GRANTING MOTION AND  
DISMISSING COMPLAINT AS MOOT

(Issued February 19, 2009)

1. On February 2, 2005, Con Edison Energy, Inc. (Con Ed) filed a complaint against ISO New England Inc. (ISO-NE) and New England Power Pool (NEPOOL). On April 1, 2005, the Commission issued an order holding the complaint in abeyance pending the outcome of a related hearing. On May 14, 2007, ISO-NE filed a motion requesting dismissal of the complaint. As discussed below, we grant ISO-NE's motion and dismiss the complaint as moot.

**A. Background**

2. In its complaint, Con Ed seeks review of NEPOOL Market Rule 1 and Revision 3 of the NEPOOL Manual 20 provisions pertaining to monthly unforced capacity (UCAP) deficiency auctions. Con Ed argues that these provisions bring about auction results that are not just and reasonable.

3. Con Ed argues that particular provisions of Market Rule 1<sup>1</sup> and Manual 20:<sup>2</sup> (1) conflict with *Devon Power LLC*,<sup>3</sup> where the Commission ruled that ISO-NE lacks the

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<sup>1</sup> Con Ed February 2, 2005 Complaint at 2 (citing sections 8.5.1(a) (ii), (iii) and (iv) of Market Rule 1) (complaint).

<sup>2</sup> *Id.* (citing section 4.12 of NEPOOL Manual for Installed Capacity, Manual M-20).

<sup>3</sup> 107 FERC ¶ 61,240, *order on reh'g*, 109 FERC ¶ 61,154 (2004), *orders on reh'g*, 110 FERC ¶ 61,313 (2005), 110 FERC ¶ 61,315 (2005).

authority to second-guess a generator's business decision whether to sell in the ICAP market; (2) do not comply with the express requirement under *Devon Power LLC* of voluntary capacity market participation; (3) conflict with the Court of Appeals decision in *Edison Mission Energy, Inc. v. FERC*<sup>4</sup> regarding automated mitigation procedures; (4) destroy any potential for the ISO-NE's UCAP Deficiency Auctions to derive market-based values for the affected capacity resources; and (5) by mandating that a value of zero be attributed to capacity resources not actually participating in the auctions, commandeer and confiscate the capacity resources of both auction participants and non-participants.<sup>5</sup>

## **B. ISO-NE's Motion to Dismiss**

4. On May 14, 2007, ISO-NE filed a motion requesting dismissal of the complaint arguing that the issues raised are now moot.<sup>6</sup> ISO-NE explains that ISO-NE and NEPOOL both filed answers to the complaint on February 23, 2005, in which they generally noted that the matters raised in the complaint had been explored numerous times in the stakeholder process and that the participants have consistently opposed changes to the UCAP deficiency auction sought by Con Ed. ISO-NE and NEPOOL also answered that Con Ed did not meet its burden under section 206 of the Federal Power Act (FPA) to show that the procedures complained about were unjust, unreasonable or unduly discriminatory or preferential.

5. ISO-NE states that on April 1, 2005, the Commission issued an order in this matter in which it found that the changes to the capacity markets were in hearing in the locational installed capacity (LICAP) proceedings in Docket No. ER03-563-030 and that the market power mitigation issue was being addressed in that hearing.<sup>7</sup> The Commission, therefore, deferred action on the instant complaint and held it in abeyance until the LICAP proceeding was completed.

6. ISO-NE explains that pursuant to the Commission's order in *Devon Power LLC*,<sup>8</sup> on March 1, 2004, it made a compliance filing proposing a LICAP mechanism that would add a locational element to the ICAP market and would establish four ICAP regions with

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<sup>4</sup> 394 F.3d 964 (D.C. Cir. 2005).

<sup>5</sup> See complaint at 2.

<sup>6</sup> Motion to Dismiss of ISO-NE, May 14, 2007 (Motion to Dismiss).

<sup>7</sup> Motion to Dismiss at 1 (citing *Con Edison Energy, Inc. v. ISO New England Inc.*, 111 FERC ¶ 61,001, at P 13 (2005)).

<sup>8</sup> *Id.* at 4 n.16 (citing *Devon Power LLC*, 103 FERC ¶ 61,082, at P 37, *order on reh'g*, 104 FERC ¶ 61,123 (2003))

separate ICAP requirements. ISO-NE further explains that in a June 2, 2004 Order,<sup>9</sup> the Commission agreed with some of the broad concepts in ISO-NE's proposal and established hearing procedures regarding the compliance filing. Following the hearing, the issuance of an Initial Decision, the filing of briefs on exceptions and oral argument before the Commission, on March 6, 2006, a broad group of the parties to the proceeding filed a proposed settlement (Settlement Agreement) that would resolve all the issues in this matter. The Settlement Agreement reflects an alternative to LICAP, called the Forward Capacity Market (FCM) and the Commission accepted the Settlement Agreement finding that, as a package, it presented a just and reasonable outcome consistent with the public interest.<sup>10</sup>

7. ISO-NE explains that in general terms, the FCM establishes: (1) annual actions for capacity, as well as seasonal and monthly reconfiguration auctions; (2) a capacity product to be sold on a per-megawatt of deliverable capacity basis; (3) that capacity resources, regardless of type, will receive the same auction clearing price; and (4) the Forward Capacity Auctions (FCA), which will procure capacity three-plus years ahead of the commitment period.<sup>11</sup> The amount of capacity procured in the FCAs will be that amount required to maintain the installed capacity requirement. ISO-NE explains that the FCM proposal contains a locational component and before each auction ISO-NE will determine capacity zones based on an identification of transmission limits.

8. ISO-NE further explains that on October 31, 2006, the Commission accepted ISO-NE's and NEPOOL's proposed changes to the ISO-NE Tariff, to implement the transition provisions of the FCM Settlement Agreement.<sup>12</sup> Furthermore, as part of these changes, resources now receive ICAP Payments rather than participate in UCAP auctions and deficiency auctions.

9. On February 15, 2007, ISO-NE made a filing in Docket Nos. ER07-546-000 and ER07-547-000 implementing the FCM Settlement Agreement. On April 16, 2007, the Commission conditionally accepted the changes filed in Docket ER07-546-000.<sup>13</sup>

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<sup>9</sup> *Id.* at 5 n.18 (citing *Devon Power LLC*, 107 FERC ¶ 61,240, *order on reh'g and clarification*, 109 FERC ¶ 61,154 (2004), *reh'g denied*, 110 FERC ¶ 61,315 (2005)).

<sup>10</sup> *Id.* n.19 (citing *Devon Power LLC*, 115 FERC ¶ 61,340, *reh'g denied*, 117 FERC ¶ 61,133 (2006)).

<sup>11</sup> *Id.* n.20.

<sup>12</sup> Motion to Dismiss at 6 n.25 (citing *ISO New England Inc.*, 117 FERC ¶ 61,132 (2006) (October 31 Order), *reh'g denied*, 119 FERC ¶ 61,044 (2007)).

<sup>13</sup> *ISO New England Inc.*, 119 FERC ¶ 61,045, *order on reh'g*, 120 FERC ¶ 61,087 (2007). On June 6, 2007, subsequent to the filing of the motion to dismiss, the

(continued...)

10. ISO-NE argues that this complaint addresses UCAP deficiency auction provisions that were contained in section III.8.5.1 of Market Rule 1 and related Manual language. But due to the changes accepted by the Commission in the October 2006 Order, the UCAP deficiency auction is no longer conducted in New England. ISO-NE further argues that the changes accepted in the October 2006 Order replace section III.8 of Market Rule 1 in its entirety, effective December 1, 2006. ISO-NE argues, therefore, that the Zero-Bid Rule and all other associated provisions governing the UCAP auctions are no longer in effect and the provisions found objectionable by Con Ed no longer exist.<sup>14</sup>

11. Consequently, ISO-NE argues that the complaint is moot and should be dismissed. ISO-NE's motion to dismiss was unopposed.

**C. Determination**

12. The Commission will grant ISO-NE's motion and dismiss the complaint as moot because the concerns raised by Con Ed were resolved through the creation of the FCM and subsequent Commission orders approving its implementation.

The Commission orders:

The motion to dismiss filed in Docket No. EL05-61-000 is hereby granted and the complaint is dismissed, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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Commission accepted the remaining changes filed in Docket No. ER07-547-000. *ISO New England Inc.*, 119 FERC ¶ 61,239 (2007), *reh'g denied*, 122 FERC ¶ 61,171 (2008).

<sup>14</sup> Motion to Dismiss at 7.