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The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Maine Public Utilities Commission v. ISO New England Inc.,
Docket No. EL07-38-000

Dear Secretary Bose:

Enclosed please find the Revised Amended Complaint of the Maine Public Utilities Commission ("MPUC") for filing in the above-referenced proceeding. The Revised Amended Complaint is being filed to remove the cost allocation sections of the Complaint in accordance with the Commission's approval of tariff revisions in Docket No. ER08-920.

The Revised Amended Complaint is subject to the Commission's Notice of Extension of Time issued July 30, 2008, which extended the time for filing answers to and including September 26, 2008, at which time a status report to the Commission or answers to the initial complaint are due to be filed.

The MPUC and ISO New England Inc. have separately requested that an extension of time be granted. The MPUC requests that the extension currently in effect remain in effect for the Revised Amended Complaint and the further requested extension in the instant docket also apply to the Revised Amended Complaint such that answers to the Revised Amended Complaint would be due on or before October 3, 2008.

Respectfully,

/s/ Lisa S. Gast

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cc: Parties of Record

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|------------------------------------|---|------------------------|
| Maine Public Utilities Commission, |) | Docket No. EL07-38-000 |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | |
| ISO New England, Inc. |) | |
| |) | |
| Respondent. |) | |

**REVISED AMENDED COMPLAINT
OF THE MAINE PUBLIC UTILITIES COMMISSION
AGAINST ISO NEW ENGLAND, INC., AND
MOTION FOR AFFIRMATION OF EXTENSION OF TIME AND EXPEDITED
CONSIDERATION**

Respectfully submitted,

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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| Maine Public Utilities Commission, |) | Docket No. EL07-38-000 |
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**REVISED AMENDED COMPLAINT
OF THE MAINE PUBLIC UTILITIES COMMISSION
AGAINST ISO NEW ENGLAND, INC., AND
MOTION FOR AFFIRMATION OF EXTENSION OF TIME AND EXPEDITED
CONSIDERATION**

Pursuant to Sections 206 and 306 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824e and 825e (2000), and Section 206 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2006), the Maine Public Utilities Commission (“MPUC”) hereby petitions the Commission for an order (1) finding that Schedule 2 of ISO New England, Inc.’s (“ISO-NE”) Open Access Transmission Tariff (“OATT”) is unjust and unreasonable; and (2) directing ISO-NE to modify Schedule 2 of its OATT as described in the instant Revised Amended Complaint.

The modification MPUC seeks is to replace the current and proposed capital cost (“CC”) component¹ of the Schedule 2 rate with the CC Rate Deadband Proposal described herein. As will be described fully below, the current and proposed² CC Component are unjust and unreasonable because the revenue streams provided by the CC component of the Schedule 2 rate, when combined with the payments provided to generators under the implementation of the Forward Capacity Market (“FCM”) Settlement in Docket No. ER03-563-060³ beginning December 1, 2006, result in a double recovery of capital costs by generators. The CC Rate Deadband Proposal is a remedy for the double recovery of capacity costs which arises from the combination of Schedule 2 CC rate payments and payments made in accordance with the FCM Settlement.

I. COMMUNICATIONS

MPUC requests that correspondence, pleadings and other documents with regard to this proceeding be served on the following, whose names are to be placed on the Commission’s official service list in accordance with Rule 203, 18 C.F.R. § 385.203 (2006):

¹ The CC component of the ISO-NE OATT Schedule 2 rate is defined as: “the capacity costs for the hour shall be the VAR Revenue Requirement determined as set forth herein divided by the number of hours in the month.” ISO-NE OATT, Original Sheet No. 737.

² ISO-NE has submitted for filing and acceptance a proposed rate increase for the CC component of the Schedule 2 rate in Docket No. ER07-397-000. In that filing, ISO-NE has not proposed any modification to the Schedule 2 methodology or formula. *See* ISO New England, Inc. and New England Power Pool Participants Committee Proposed Amendments to Schedule 2 - Reactive Supply & Voltage Control of the ISO New England, Inc. Open Access Transmission Tariff, Transmittal Letter (“Docket No. ER07-397-000 Joint Filing Transmittal Letter”) at 2, Docket No. ER07-397-000 (December 29, 2006).

³ *See Devon Power, LLC*, 115 FERC ¶ 61,340 (June 16, 2006) (“Settlement Order”), FERC Docket Nos. ER03-563-030 and -055.

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II. STATEMENT OF ISSUES

Pursuant to Rule 203(a)(7) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(a)(7) (2006), MPUC specifies the following issues, to which it requests Commission determination:

1. Whether the rate which results from Schedule 2 of the ISO-NE's OATT is unjust and unreasonable because the CC component of the Schedule 2 rate results in generators receiving double recovery now that the Forward Capacity Market ("FCM") Settlement in Docket No. ER03-563-030 has been implemented?
2. Whether ISO-NE should be ordered to implement the CC Rate Deadband Proposal as a remedy for the double recovery of capacity costs which arises from the combination of Schedule 2 CC rate payments and payments made in accordance with the FCM Settlement?

III. DESCRIPTION OF MPUC AND ISO-NE

Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. *See* 35-A M.R.S.A. § 1.101(k) (2006). It is, therefore, a “state commission” under the Commission’s regulations, 18 C.F.R. § 1,101(k) (2006).

ISO-NE is the private, non-profit entity that serves as the regional transmission organization (“RTO”) for New England. ISO-NE operates the New England bulk power system and administers New England’s wholesale electricity markets pursuant to the Tariff and the Transmission Operating Agreements with the New England Transmission Owners. In its capacity as an RTO, ISO-NE has the responsibility to protect the short-term reliability of the New England Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council (“NPCC”) and the North American Electric Reliability Council (“NERC”).

IV. EXECUTIVE SUMMARY

This Revised Amended Complaint seeks an order finding that the rate which results from Schedule 2 of ISO-NE’s OATT is unjust and unreasonable, and requests that the Commission order ISO-NE to make modifications to Capital Cost (“CC”) component of Schedule 2.

With the implementation of the Forward Capacity Market (“FCM”) Settlement in Docket No. ER03-563-030,⁴ the CC Component of Schedule 2 results in generators receiving double recovery of compensation for capacity costs. The FCM Settlement provides for several billion dollars in capacity payments to generators from December 1,

⁴ *See Devon Power, LLC*, 115 FERC ¶ 61,340 (June 16, 2006) (“Settlement Order”), FERC Docket Nos. ER03-563-030 and -055.

2006 to May 31, 2010 (“Transition Payments”).⁵ After this period, generators will be paid an auction price for their capacity through a mechanism called the Forward Capacity Auction (“FCA”).⁶ Although the level of capacity payments paid to generators under the FCA is not yet known, for the first year of the market, 2010-2011, the auction price will have a floor of \$4.50 per kW month, and a ceiling of \$10.50 per kW month.⁷

The CC component of the Schedule 2 rate also provides a stream of revenues to generators to compensate for capital costs. Since the equipment needed to generate electricity is generally the same as that needed to provide reactive service,⁸ the effect of the two streams of revenue is a double recovery of capacity payments by generators. Therefore, one reasonable approach would be to eliminate the CC component of the Schedule 2 rate. However, in the spirit of compromise, MPUC took a middle ground in the stakeholder process and proposed a limited capacity compensation mechanism (the CC Rate Deadband Proposal). In the instant Revised Amended Complaint, MPUC continues to propose the CC Rate Deadband Proposal as a remedy for the double recovery of capacity costs which arises from the combination of Schedule 2 CC rate payments and payments made in accordance with the FCM Settlement, rather than requesting, as would be justified, that the CC component be eliminated.

The CC Rate Deadband Proposal would compensate generators to the extent they invest in *additional* equipment beyond that required to provide reactive service within the established power factor range (“deadband”) set forth in their interconnection agreements

⁵ *Id.* at P 30; *see also* Affidavit of Dr. Thomas Austin (“Austin Affidavit”) at ¶¶ 7-9. Dr. Austin’s affidavit is attached to the initial complaint submitted on February 26, 2007 as Attachment A.

⁶ *See* Settlement Order at P 16.

⁷ *See id.* at P 19.

and in Schedule 22 to the ISO-NE OATT (the Standard Large Generator Interconnection Procedures). The CC Rate Deadband Proposal has the benefit of reducing the degree to which generators are being compensated twice for the capital costs of the same equipment, while still providing generators an appropriate incentive to invest in equipment needed to increase the amount of reactive service provided outside of the deadband. In addition, the proposal to limit reactive service payment to the capability to provide reactive service only outside of the deadband is consistent with (although not required by) the provisions of Order No. 2003.⁹

V. BACKGROUND AND DESCRIPTION OF CURRENT METHODOLOGY

A. Schedule 2

Schedule 2 of the ISO-NE OATT sets forth the rules that govern eligibility for compensation and payment for reactive power supply and voltage control service in New England.¹⁰ To the extent a generation facility is directed by ISO-NE to produce or absorb reactive power, that facility is compensated under the Schedule 2 rate for its provision of reactive power and for the energy costs associated with the reactive power provided. The generator also is compensated for the capability to provide reactive service.

The existing rate design under Schedule 2 of the OATT consists of a fixed capacity cost (“CC”) component and three variable components: (1) Lost Opportunity Cost (“LOC”), which compensates a generator for the lost opportunity in the energy

⁸ Affidavit of Wayne Whittier (“Whittier Affidavit”) at ¶ 22. Mr. Whittier’s affidavit is attached to the initial complaint submitted on February 26, 2007 as Attachment B.

⁹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Reg., Regulations Preambles ¶ 31,146 at PP 540-42. (2003) (“Order No. 2003”).

¹⁰ See Schedule 2 to ISO-NE’s OATT at Original Sheet No. 735.

market when the generator would otherwise be economically dispatched but is directed by ISO-NE to reduce real power output to provide more reactive power; (2) the cost of energy consumed (“SCL”), which compensates for the cost of energy consumed by a generator solely to provide reactive power support;¹¹ and (3) the Cost of Energy Produced (“PC”) component which compensates a generator that was not economically dispatched when it is directed to come on line or increase power above its economic loading point to provide local reactive support. The PC component compensates the generator for the difference between the Locational Marginal Price (“LMP”) and its offer price, if the LMP is lower than the offer price, for each hour the generator provides reactive power. The PC component of the Schedule 2 rate was implemented prior to the beginning of standard market design, and thus pre-dates LMP in New England.

At the time the CC component was negotiated, the monthly capacity payment that would be applicable if the load serving entity had not purchased sufficient capacity through the bilateral market¹² was \$0.17/kW month.¹³ In the NEPOOL filing implementing the original negotiated CC component of the Schedule 2 rate, advocates for a reactive capacity charge asserted that “...the capital costs covered by the CC charge are not necessarily recoverable in the market-based real power markets and therefore it is appropriate to establish an administratively set rate to allow generators to recover such costs and be incentivized to provide VAR support capability and service.”¹⁴ In

¹¹ This Amended Complaint does not propose changes to the LOC or SCL components of Schedule 2.

¹² This payment was called the Installed Capacity (“ICAP”) deficiency charge.

¹³ *Sithe New England Holdings, LLC v. FERC*, 308 F.3d 71 (2002).

¹⁴ New England Power Pool Seventy-Third Agreement Amending the Restated NEPOOL Agreement, Docket No. ER01-2161-000 at 10 (May 29, 2001).

comparison to the \$0.17/kW month 2001 ICAP deficiency charge, the capacity Transition Payments under the FCM Settlement are in the range of \$3.05 to \$4.10 per kW month.¹⁵

B. The VAR Working Group

In December of 2004, the Transmission Committee established the VAR Working Group to review the rules in New England governing the provision of reactive power and voltage support, including eligibility of resources, compensation and testing to recommend whether those rules should change and, if so, how they should change. Cost allocation was one of the items that the group addressed. ISO-NE, in fact, questioned whether the current cost allocation under Schedule 2 could be improved. *See* Attachment C at 13, appended to the initial complaint.¹⁶

As described by ISO-NE and NEPOOL, the VAR Working Group was a stakeholder working group that met regularly to develop recommendations for the Transmission Committee:

The VWG held monthly meetings from January 2005 to April 2006 to review and develop recommendations with respect to the rules governing eligibility for reactive power compensation in New England. These meetings were well-attended by representatives of the various sectors of NEPOOL Participants, representatives of the ISO, state regulatory staff, reactive power equipment developers and other interested persons.¹⁷

Representatives of both Central Maine Power Company (“CMP”) and the MPUC participated in the VAR Working Group.

¹⁵ *See Devon Power, LLC*, 115 FERC ¶ 61,340 at P 30 (June 16, 2006) (“Settlement Order”), FERC Docket Nos. ER03-563-030 and -005 at P 30.

¹⁶ Specifically, ISO-NE asked the following questions: “Are some of the current generator VAR costs sub-regional in nature, such that certain elements of these costs should be charged to the sub-region of New England in which the generator is located? For example, should: CC costs be charged regionally, and PC, LOC and SCL charged sub-regionally?” *Id.* at slide 13.

¹⁷ Docket No. ER07-397-000 Joint Filing Transmittal Letter at 19 n.31.

On December 19, 2005, CMP proposed a change in cost allocation for the PC component of the Schedule 2 rate. *See* Attachment D, appended to the initial complaint. CMP proposed that VAR uplift costs should be allocated each month to the local area or reliability region causing the out-of-merit payments. This proposal was later identified as the Reliability Region Cost Allocation proposal.

On April 25, 2006, the VAR Working Group presented to the Transmission Committee its report on the various compensation and allocation issues with which it had been tasked.

On June 6, 2006, the MPUC provided the chair of the VAR Working Group an alternative proposal for CC compensation. This proposal, which was later identified as the CC Rate Deadband Proposal, stated as follows:

The “Base VAR Rate” shall be zero for reactive support provided by generators between a .95 leading and a .95 lagging power factor. For power factors below .95 leading or .95 lagging, the “Base VAR Rate” shall be \$2.32/kVAR-yr commencing January 1, 2007. The .95 power factor exclusion shall not apply to non-generator sources of reactive support. The Base VAR Rate shall be examined no later than July 1, 2011 to determine whether the Base VAR Rate is still appropriate or whether it should be changed commencing January 1, 2012.

See Attachment E at 2, appended to the initial complaint.

On September 19, 2006, the Transmission Committee voted on the various proposals, including the Reliability Region Cost Allocation proposal developed by CMP and the CC Rate Deadband Proposal developed by the MPUC.

On October 13, 2006, the NEPOOL Participants Committee voted on changes to the Schedule 2 rate, including MPUC’s and CMP’s proposed amendments to address PC cost allocation and CC double recovery concerns. CMP’s Reliability Region Cost

Allocation proposal received 57.59% of the vote¹⁸ while the MPUC's CC Rate Deadband Proposal failed on a show-of-hands vote. The NEPOOL Participants Committee approved a rate increase to the CC component of Schedule 2.

On December 29, 2006, in a joint filing at the Commission, ISO-NE and NEPOOL proposed the increase to the CC component of the Schedule 2 rate which had been approved by the NEPOOL Participants Committee at the October 13th NEPOOL meeting. The proposed rate would increase the original negotiated rate from \$1.05 to \$2.32/kVAR-year.¹⁹ The MPUC, CMP and the New Hampshire Public Utilities Commission protested the CC component rate increase.²⁰ The MPUC also protested the fact that the cost allocation of the PC component had not been changed despite repeated advice by the IMMUC to do so.²¹ ISO-NE and NEPOOL responded to the protest on the cost allocation by asserting that eventually they would consider the cost allocation issue through another stakeholder process.²²

¹⁸ See ISO New England, Inc. and the New England Power Pool, Motion for Leave to Answer and Answer ("Joint Answer to Protests") at 6, Docket No. ER07-397-000 (February 5, 2007).

¹⁹ Docket No. ER07-397-000 Joint Filing Transmittal Letter at 3.

²⁰ See Notice of Intervention and Protest of the MPUC, Notice of Intervention and Protest of the New Hampshire Public Utilities Commission, and Motion to Intervene and Protest of the Central Maine Power Company in Docket No. ER07-397-000.

²¹ See Notice of Intervention and Protest of the MPUC at 6-7.

²² Joint Answer to Protests at 7. Specifically, ISO-NE and NEPOOL stated:

Nevertheless, the ISO and NEPOOL agree that this [57.59%] level of support justifies further review of the current cost allocation methodology through the stakeholder process. If a change acceptable to ISO and/or NEPOOL emerges from that process, the VAR costs allocation methodology can be modified accordingly in a Section 205 filing. The ISO, NEPOOL, and the New England Conference of Public Utility Commissioners, Inc. ("NECPUC") already have created a working group to address certain cost allocation methodologies reflected in the Tariff. The ISO will ask the working group to address the VAR cost allocation issue following the conclusion of the working group's ongoing review of the cost allocation for Local Second Contingency Protection Resources. Specifically, the ISO will discuss the VAR cost allocation issue with the working group to evaluate the current and potential alternative methods, the underlying policies and implementation requirements for allocating Schedule 2 costs, and whether any changes

VI. THE PROPOSAL

In light of the substantial payments from the FCM Settlement that are and will continue to be made to generators to compensate them for generator capital costs, one reasonable approach would be to eliminate the CC component of Schedule 2. However, the MPUC requests that because double recovery of capacity costs arises from the combination of Schedule 2 CC rate payments and payments made in accordance with the FCM Settlement, the Commission order ISO-NE to modify the CC component such that it will provide compensation only for capability to provide reactive service *beyond* the level the generator is required to provide under Order Nos. 2003 and 2003-A. The language to implement this proposal is appended to the initial complaint as Attachment E.

As set forth in the Affidavit of Waine Whittier, the same equipment necessary for running the generator and for providing reactive service within the required power range.

In order to be part of a power system network, a synchronous generator must be built with equipment necessary to provide voltage control and reactive power. The generator must have an exciter and the generator's windings must be sized to carry reactive current, as must be the associated step-up transformer and substation equipment. Even when producing power at unity power factor (no reactive power), a synchronous generator must have an exciter to provide the direct current to create an electromagnetic field necessary for producing the alternating current of the generator.²³

Thus, the proposal to limit capacity payments to capability outside the required deadband will curtail the double recovery of capital costs for the same equipment, but to the extent the generator owner has invested in equipment that provides for capability

should be proposed to the current just and reasonable method for allocating such costs within New England.

outside of the required power range, the proposal will provide compensation. The CC Rate Deadband Proposal is estimated to reduce CC payments from the current level of approximately \$12.2 million annually²⁴ (which NEPOOL and ISO-NE in Docket ER07-397-000 propose to increase to an amount that could reach \$31 million annually),²⁵ to approximately \$6 million annually.²⁶

VII. REVISED AMENDED COMPLAINT

A. The CC Component of Schedule 2

1. The CC Component of the Schedule 2 Rate Is Unjust and Unreasonable Because It Results in a Double Recovery of Capital Cost Compensation for Generating Equipment Used to Generate Energy and Provide Reactive Service.

The implementation of the FCM Settlement now provides for several billion dollars²⁷ in capacity payments to generators during the Transition Period alone.²⁸ These payments to generators compensate for investment in generation equipment²⁹ which is

²³ Whittier Affidavit at ¶ 22.

²⁴ See Docket No. ER07-397-000 Joint Filing Transmittal Letter at 13.

²⁵ See Whittier Affidavit at 20. In Docket No. ER07-397-000, ISO-NE and NEPOOL suggest that the proposed rate increase will raise the annual charge to approximately \$27.3 million annually. See Joint Transmittal Letter at 13. However, in their estimate, they have not accounted for the addition of any of the 9,000 MW of new generation that is in the generation interconnection queue as of January 2007. See ISO-NE Exhibits to Testimony Provided to the Maine Utilities and Energy Committee of the Maine Legislature. These exhibits can be found at the following link. http://www.iso-ne.com/pubs/pubcomm/pres_spchs/2007/iso_new_england_exhibits_to_testimony_maine_legislature.pdf.

²⁶ Whittier Affidavit at ¶ 19.

²⁷ See Austin Affidavit at ¶ 8.

²⁸ In Docket No. ER07-397-000, ISO-NE and NEPOOL suggest that the FCM transition rates may be below the cost of new entry and thus the transition payments may not be adequate to cover “the actual cost of providing both installed capacity and VAR.” Docket No. ER07-397-000 Joint Answer to Protests at 12. These claims fail to consider that in determining the actual costs, sources of revenue must be considered and that here the two streams of revenue compensate for the same equipment. Moreover, the Commission's finding that the transition payments provide just and reasonable compensation for existing generation undercuts the concern about inadequate capital cost compensation. *Devon Power, LLC*, 115 FERC ¶61,340 at P 89.

²⁹ See Settlement Order at P 30.

used to both produce energy and to provide reactive service.³⁰ Because these payments already provide a compensatory revenue stream, one reasonable approach would be to eliminate the capacity component from Schedule 2 to prevent a double recovery of capacity payments. As discussed below, use of the CC Rate Deadband Proposal to remedy the double recovery of capacity costs which arises from the combination of Schedule 2 CC rate payments and payments made in accordance with the FCM Settlement does not eliminate the CC component, but instead limits it to the capability provided by generators outside of the range required by Order No. 2003-A.

2. Order No. 2003-A Makes Clear that Generators Are Not Entitled to Payment for Providing Reactive Service within the Deadband.

Generators that receive capacity payments under the FCM Settlement are already required to provide reactive service within a specified power range. This requirement is specified in Order No. 2003³¹ and in Schedule 22 to the ISO-NE OATT.³² In *Calpine*

³⁰ See Whittier Affidavit at ¶ 22; see also *Calpine Oneta Power, L.P.*, 113 FERC ¶ 63,015 at P 115 (2006). In the Initial Decision, the ALJ made the following findings:

All synchronous generators are built with reactive power capability. ..There is no evidence to suggest that it is possible to build a synchronous generator without that capability or even that the capability to produce reactive power can be enhanced in constructing the generator. And, certainly, there was no evidence submitted in this proceeding that there was an enhanced reactive power capability built into any reactor on the SPP system. The only expenditure made during construction of generators that was directed towards reactive power capability was a *minor* one, on the Automatic Voltage Regulator, used to *control* reactive power, rather than produce it.

Id. (internal citations omitted). In its Order on the Initial Decision, the Commission neither adopted nor rejected these findings, concluding that the issue to which they were addressed was outside of the scope of issues set for hearing. *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 (2006).

³¹ See Order No. 2003 at P 546 (“We agree that the Interconnection Customer should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation.”) Order No. 2003-A clarified that if a transmission provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the interconnection customer. Order No. 2003-A at P 416.

³² See ISO-NE OATT Schedule 22 § 9.6.1:

Oneta Power, L.P., the Commission, in reviewing its policy on reactive power compensation, stated:

The Commission has emphasized that an interconnecting generator should *not* be compensated for reactive power when operating *within* the established power factor range, since it is *only* meeting its obligation. Generators interconnected to a transmission provider's system need only be compensated where the transmission provider directs the generator to operate *outside* the established power factor range.³³

While an RTO or ISO may *choose* to allow compensation, a generator is not entitled to the compensation except when the transmission provider compensates its own affiliated generators for reactive power within the range.³⁴ In *Calpine* the Commission also

Power Factor Design Criteria. Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the System Operator or Interconnecting Transmission Owner has established different requirements that apply to all generators in the Control Area on a comparable basis and in accordance with ISO New England Operating Documents, Applicable Reliability Standards, or successor documents. The requirements of this paragraph shall not apply to wind generators.

³³ *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 at P 26 (2006) (emphasis in original).

³⁴ *Id.* In their Joint Answer to Protests in Docket No. ER07-397-000, ISO-NE and NEPOOL assert that Order No. 2003 and *Calpine Oneta* support continuation of the CC rate because this case does not *prohibit* an RTO from allowing compensation for capability within the deadband. However, the issue here and in Docket No. ER07-397-000 is whether continuing the payment for capacity within the deadband is just and reasonable, when there is now a revenue stream that compensates generators for their capital costs to produce energy and meet the interconnection standard required under Order 2003. ISO-NE and NEPOOL also appear to cite *Calpine Oneta* for the proposition that *as an RTO*, the Southwest Power Pool, ("SPP") was required to compensate the generator for capability within the established power range. This is not the holding of *Calpine Oneta*. In *Calpine Oneta*, the requirement for the reactive service payment was based on the *comparability* holding of Order 2003-A. SPP's Schedule 2 allowed the generators of the parent of the utility to which Calpine was interconnected to receive compensation within the established power factor range. Under the *comparability* principle of Order 2003-A, the generator seeking reactive service payments was entitled to compensation. In fact in *Calpine Oneta*, the Commission recognized that under certain circumstances, alternative approaches might be more appropriate. SPP has recently filed a proposal that does *not* allow compensation within the 0.95 leading/0.95 lagging power factor deadband. See *Southwest Power Pool, Inc.* Docket No., ER07-371-000 and *Calpine Oneta Power, L.P.*, Docket No. ER03-765-000, Transmittal Letter of Southwest Power Pool to Submission of Tariff Revisions, dated December 26, 2006.

expressed a willingness to consider new approaches on a going forward basis.³⁵ Here, a new approach is warranted because of the double recovery of capacity revenues from the implementation of the FCM Settlement and the CC component of Schedule 2.

3. The CC Rate Deadband Proposal Is a Reasonable Remedy for the Double Recovery of Capacity Costs.

The CC Rate Deadband Proposal is a reasonable remedy for the double recovery of capacity costs which arises from the combination of Schedule 2 CC rate payments and payments made in accordance with the FCM Settlement. It is also an alternative to eliminating the CC component of the Schedule 2 rate. Another alternative, one that would require more extensive litigation (which the MPUC does not submit as the preferred alternative), would be to determine the cost-of-service for each generator seeking reactive service payments. Determining the cost-of-service for each generator seeking reactive service payments would allow each generator to recover its net capital costs for the provision of reactive service, but would require a revenue requirement determination for each generator (including information on both costs and revenues) and a determination of what portion of the revenue requirement should be allocated to reactive service. While these proceedings might be time consuming, they would, at least, address ISO-NE's and NEPOOL's concern expressed in their Joint Answer to Protests in Docket No. ER07-397-000 that under the CC Rate Deadband Proposal generators will under-recover the capital costs of generation equipment needed to produce energy and provide reactive service.³⁶ The CC Rate Deadband Proposal provides a less administratively burdensome approach to address the double recovery problem.

³⁵ *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 at P 50 (2006).

³⁶ Docket No. ER07-397-000 Joint Answer to Protests at 12.

The just and reasonable course, however, cannot be to simply ignore the substantial new revenue stream from the FCM Settlement capacity payments and simply *assume* that there is no double recovery (during the Transition Period) as suggested by ISO-NE and NEPOOL.³⁷ The substantial FCM capacity payments must be accounted for in some way in determining the just and reasonable level of CC payments under the existing CC rate, or the CC rate increase proposed in Docket No. ER07-397-000.

VIII. DISPUTE RESOLUTION PROCEDURES

The MPUC has not used the Commission's Enforcement Hotline or Dispute Resolution Service with respect to this matter. As this Revised Amended Complaint reflects, MPUC has already spent substantial effort and resources attempting to effect a mutually agreeable resolution of its dispute with ISO-NE. The MPUC has also worked through the stakeholder process in developing and presenting the CC Rate Deadband Proposal. The MPUC believes that Dispute Resolution under the Commission's supervision is unlikely to assist the parties in their efforts to resolve the issues set forth in this Revised Amended Complaint, nor does MPUC believe that mediation of this legal issue would be effective.

IX. OTHER INFORMATION REQUIRED BY RULE 206(b)

To the extent not already provided above, the MPUC provides the following information required by Rule 206(b):

- Rule 206(b)(6) -- As explained in detail above, the issues presented are pending in an existing Commission proceeding, Docket No. ER07-397-000. However, as the instant Revised Amended Complaint seeks to modify the existing methodology used

³⁷ *Id.*

in Schedule 2 of the ISO-NE OATT, and ISO-NE is requesting a Schedule 2 rate increase without a change in the methodology, resolution in that forum can not be achieved.

- Rule 206(b)(7), (8) -- The specific relief requested is as set forth in more detail in the body of this Revised Amended Complaint. Documents supporting the facts set forth herein include the Affidavits of Mr. Wayne Whittier and Dr. Thomas Austin, and other supporting documents.

X. MOTION FOR AFFIRMATION OF NOTICE OF EXTENSION OF TIME AND EXPEDITED CONSIDERATION

The original Complaint filed in this docket on February 26, 2007 is subject to the Commission's Notice of Extension of Time issued July 30, 2008, which extended the time for filing answers to and including September 26, 2008, at which time a status report or an answer to the Complaints due to be filed. In addition, on September 23, 2008, the MPUC and ISO-NE sought an extension of time to file an answer to this Complaint. The request was based on the recent determination that ISO-NE and the MPUC would not be able to resolve the double recovery issue. Therefore, additional time is needed to allow stakeholders and regulators to file an answer to the Revised Amended Complaint. Thus, the MPUC, with the concurrence of ISO-NE, requests that the extension of time granted in the instant docket remain in effect for this Revised Amended Complaint and that the further requested extension be granted and apply to the Revised Amended Complaint. The MPUC requests expedited consideration of this request so that ISO-NE, stakeholders, and regulators will have until October 3, 2008 to file answers to the Revised Amended Complaint.

XI. REQUEST FOR RELIEF

The MPUC respectfully requests that the Commission find the current ISO-NE OATT Schedule 2 rates unjust and unreasonable insofar as they include a double recovery of reactive power capacity costs. The MPUC further requests that the Commission order ISO-NE as a remedy for the double recovery of capacity costs which arises from the combination of Schedule 2 CC rate payments and payments made in accordance with the FCM Settlement, replace the rate methodology for the CC component of Schedule 2 with the CC Rate Deadband Proposal. Additionally, pursuant to FPA Section 206(b), 16 U.S.C. § 824(e) (2000 and West Supp. 2006), the MPUC respectfully requests that the Commission set a refund effective date of the date of the filing of this Revised Amended Complaint.

The MPUC, with the concurrence of ISO-NE, also requests that the extension of time granted in the instant docket remain in effect for this Revised Amended Complaint and that the further requested extension be granted and apply to the further Revised Amended Complaint.

XII. CONCLUSION

Wherefore, for these reasons stated above, the MPUC requests that the Commission find the ISO-NE OATT Schedule 2 rates unjust and unreasonable and order ISO-NE to implement the modifications to Schedule 2 of its Open Access Transmission Tariff described herein above.

Dated: September 25, 2008

Respectfully submitted,

/s/ Lisa S. Gast

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Maine Public Utilities Commission,)
)
 Complainant,)
)
 v.)
) Docket No. EL07-38-000
 ISO New England Inc.,)
)
 Respondents.)

NOTICE OF REVISED AMENDED COMPLAINT

()

Take notice that on September 25, 2008, the Maine Public Utilities Commission filed a Revised Amended Complaint against ISO New England Inc. pursuant to Sections 206 and 306 of the Federal Power Act, 16 U.S.C. §§ 824e and 825e (2000), and Section 206 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2006), alleging that a component of the ISO-NE Open Access Transmission Tariff Schedule 2 is unjust and unreasonable and should be modified.

The Maine Public Utilities Commission certifies that copies of the Revised Amended Complaint were served on the contacts for ISO New England Inc. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the

protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary

CERTIFICATE OF SERVICE

Pursuant to the requirements of Rule 206(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206(c), I hereby certify that I have, contemporaneously with the filing of the foregoing document, caused to be served a copy of the foregoing document upon the Respondent by electronic mail. I have also caused to be served a copy of the foregoing document by electronic mail, upon the Representatives of the Public Utilities Commissions of the New England States and the parties of record in this proceeding.

Dated at Washington, DC this 25th day of September, 2008.

/s/ Harry A. Dupre
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