

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

ISO New England Inc.

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Docket No. ER05-715-000

**REQUEST FOR REHEARING
OF THE NEW ENGLAND
CONFERENCE OF PUBLIC UTILITIES COMMISSIONERS**

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission"), 18 C.F.R. § 385.713 (2004), the New England Conference of Public Utilities Commissioners ("NECPUC") hereby requests rehearing of the Commission's May 9, 2005 Order Accepting, As Modified, Proposed Installed Capacity Requirements for the 2005/2006 Power Year, *ISO New England Inc.*, 111 FERC ¶ 61,185 (2005) ("May 9 Order"). While NECPUC applauds the Commission's decision to require ISO New England ("ISO-NE" or "ISO") to calculate IC requirements for the 2005/2006 Power Year based on tie benefits of 2000 MW, NECPUC submits that the Commission should rehear the May 9 Order in order to address the following errors: (1) the Commission failed to consider the effect of the changed IC requirement on locational installed capacity ("LICAP") rates and the effect of the ISO's proposed shortage hour proposal on the appropriate level of IC requirements; (2) the Commission failed to offer a reasoned basis for rejecting NECPUC's position that the Commission should set the proposed IC requirements for hearing so they could go into effect prior to LICAP implementation in January 2006 and the expected impact of the new availability criteria that may be developed in the LICAP proceeding can thereby be incorporated into the IC requirements and (3) the Commission approved IC requirements that were developed without

any input from the New England states about the proper level of OC for determining IC Requirements.

The dramatic increase in IC Requirements that would result under the May 9th Order will produce sharply higher LICAP costs from January through May 2006. The Commission should rehear its May 9th Order and determine the proper IC requirements methodology in a manner that recognizes the connection between IC Requirements and LICAP and allows adjustment of the OC levels to be consistent with determinations made in the LICAP proceeding.

I. BACKGROUND

ISO-NE filed the proposed 2005/2006 IC Requirements on March 21, 2005. In its filing ISO-NE asserted that the only substantive differences between the assumptions used in the development of the 2005/2006 IC requirements and the previous year's requirements (formerly called Objective Capability or OC), "are the use of 1800 MW and not 2000 MW as the measure of tie benefits, and the use of the Equivalent Forced Outage Rate Demand (EFORd) generator availability metric instead of the Equivalent Forced Outage Rate ("EFOR") availability metric." Transmittal Letter at 2. NECPUC protested both the use of the 1800 MW rather than 2000 MW as the measure of tie benefits and also the use of the EFORd generator availability metric -- without any adjustment for the increase in generator unit availability that is expected to result from the ISO's shortage hour proposal if it is adopted -- for the period beginning January 1, 2006 (when LICAP will be implemented). The Commission determined in the May 9th Order that 2000 MW was the proper measure of tie benefits but approved the use of the EFORd availability metric for the purpose of determining IC requirements. The Commission did not address NECPUC's request that the IC requirements be rejected or accepted subject to refund and set for

hearing so that the Commission would have adequate time to set the appropriate IC requirements consistent with whatever LICAP methodology it ultimately adopts.

II. SPECIFICATIONS OF ERROR

Pursuant to Rule 713(c)(1), 18 C.F.R. § 385.713 (2004), NECPUC respectfully submits that the Commission erred in its May 9th Order by:

1. Arbitrarily and capriciously failing to consider the effect of the proposed IC requirements on the LICAP rates and the effect of the ISO's proposed shortage hour proposal on the appropriate level of IC requirements.
2. Arbitrarily failing to address NECPUC's suggestion that setting the IC requirements for hearing would allow the rates to go into effect subject to refund while allowing time to develop the proper methodology to go into effect in 2006.
3. Failing to require the ISO to receive input from the states on matters directly related to reliability.

III. ARGUMENT

A. The Commission Erred By Failing To Consider The Impact Of Increasing The IC Requirements On LICAP Rates And Also Failing To Consider The Effect Of The ISO's Proposed Shortage Hour Availability Metric On The Appropriate Level Of IC Requirements.

In the May 9 Order, the Commission noted that "the IC Requirements are inputs to the LICAP determinations," May 9th Order P 33, but then concluded that "issues related to the LICAP determinations, and the rates applied to LICAP requirements should be addressed in that proceeding." *Id.* Having noted that the IC requirements are inputs to the LICAP determinations, it was arbitrary for the Commission to refuse to consider the possible cost impacts of adopting a

higher IC requirement as it has done. Indeed, NECPUC asserted that the cost impact of higher IC requirements would be dramatic and would not improve reliability:

IC Requirements will play a much more important role beginning January 1, 2006, with the start-up of the untried and uncertain LICAP market. Beginning on January 1, 2006, ISO's proposed IC Requirements will substantially increase LICAP prices throughout New England with no demonstrated improvement in reliability. While IC Requirements are currently the basis for assigning capacity requirements to LSEs in the UCAP market, the impact of a change in the IC Requirements does not create as great an impact as it will under LICAP. UCAP clearing prices are generally very low (in the range of \$0.60 per kW-month, LICAP Tr. 1308:19-20) and LSEs are not currently required to buy more than is needed to meet their capacity obligations (March 1 Filing at 18). Increasing IC Requirements, as the ISO is proposing in this filing, will impose an unwarranted rate increase on New England ratepayers.

Because ISO has ignored the cost of its proposed increase in IC Requirements when the Commission implements LICAP, it has not provided sufficient information to determine precisely what those added costs will be under any LICAP demand curve being considered. Using ISO's proposed demand curve parameters, however, the CT DPUC's economist, Dr. Carl Pechman, has estimated very roughly that the filed IC Requirements will increase average LICAP prices in New England by about 24% or \$1.80 per kW-month. See Pechman Aff. ¶ 38, attached to CT DPUC Request to Reject and Protest filed today in the above captioned proceeding. When multiplied by the approximate installed capacity in New England, ISO's proposed increases in IC Requirements, if approved, would mean that LSEs will have to pay between \$200 million and \$300 million more for LICAP in only the five months of Power Year 2005/2006 when LICAP will be in force (January 2006 through May 2006). *Id.* ¶¶ 39-40.

NECPUC Protest at 10-11.

Further, the ISO's shortage hour proposal if adopted is expected to improve generation availability as we noted in our protest. *See* NECPUC protest at 7-8. The Commission should not adopt a generator availability metric for the purpose of determining IC requirements that does not take into account the improvement in availability that the ISO's own analysis indicates will result from its proposed LICAP availability metric (i.e., the shortage hours proposal).

The Commission should take into account in determining IC levels for January through May 2006 the increase in availability that ISO projects will result from its proposed availability

metric. In the May 9 Order, the Commission failed to discuss the relationship of the shortage hours proposal to the IC requirements and also failed to address, as discussed below, why it could not adopt the ISO's proposed IC requirements methodology for the period from June to December 2005 while developing a methodology that will be consistent with the LICAP program and take into account the cost impacts of higher IC requirements on LICAP prices. Such a course will not result in any delay in implementing the IC requirements but will avoid arbitrarily using an availability metric for determining IC requirements that may be inconsistent with that adopted for the LICAP program.

The Commission's conclusion that matters relating to LICAP should be determined in the LICAP proceeding leaves consumers without a remedy for adjusting the IC requirements to (1) address the cost impact of these requirements on LICAP prices and (2) incorporate the improvements in availability that the ISO has asserted will result from its shortage hour proposal. Once the IC requirements are determined in this case, the ISO will no doubt assert that these are res judicata in the LICAP proceeding. Moreover the record is closed in that case. Accordingly it was arbitrary for the Commission to suggest that these issues could be addressed in the LICAP proceeding. While it is possible that the Commission meant to state that the IC requirements could be reopened in the LICAP case, it is difficult to understand how this could be accomplished without reopening the record in that case. The more efficient route is simply to set for hearing the IC requirements for the period from January 1 2006 to May 31, 2006. In this way the Commission will be able to determine the cost impact of the IC requirements on LICAP prices and incorporate into the IC requirements any improvements to reliability resulting from the availability metric ultimately adopted by the Commission in the LICAP case.

B. The Commission's Rejection of NECPUC's Request that the IC Requirements for the Period from January through May 2006 Be Set For Hearing Was Arbitrary and Capricious.

In its protest, NECPUC stated that it understood the need to have IC Requirements in effect on June 1, 2005. However, we observed that:

[T]he need to have rates in effect on June 1, 2005 should not have the effect of distorting LICAP prices when the market goes into effect in January 1, 2006. Further the time constraints should not set in place for the whole power year IC Requirements that are unjust and unreasonable. Therefore, the Commission should either reject the filing or accept the rates subject to refund and set the case for hearing.

NECPUC Protest at 11. Rather than explaining why this middle ground approach is unworkable or why it is preferable to impose a methodology for determining IC requirements after January 2006 that may understate generator availability and therefore increase IC requirements, the Commission simply rejected the request. The Commission's failure to consider NECPUC's middle ground proposal was arbitrary and capricious.

C. The Commission erred by Failing to Require the ISO to Consult with the States in Developing Reliability Criteria

While the ISO sought input from (and yielded to the wishes of) the Market Participants, it did not consult with the New England state regulators or seek any advisory input from them.¹ ISO's failure to obtain state input conflicts with the Commission's guidance in these areas.²

¹ The position of the Connecticut Department of Public Utility Control's (CT DPUC), the New Hampshire Public Utilities Commission, the Vermont Public Service Board, the Vermont Department of Public Service, and the Rhode Island Public Utilities Commission addressed in their protest filed in this proceeding is that states' role in setting resource adequacy standards is greater than providing advisory input. The CT DPUC, et al, believe that only the states, not ISO-NE or the Commission, have legal authority to set resource adequacy levels.

² See *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, 1999-2003 FERC Stats. & Regs., Regs. Preamble ¶ 32,563 at P 490, noting that traditionally the level of resource adequacy had been made by load serving entities under state oversight and that the state oversight role should continue. The Commission reasoned that states should continue to have a strong role in determining the level for resource

The question of how much generation capacity is needed to maintain resource adequacy and reliability in New England is one that the Commission has found to involve state policy determinations. *See Devon Power LLC*, 109 FERC ¶ 61,154 at P 47 (Nov. 8, 2004) at P 47 (“Resource adequacy is a matter that has traditionally rested with the states, and it should continue to rest there.”)

The Commission’s failure to require ISO to seek input from the states on resource adequacy issues was not only inconsistent with the Commission’s earlier guidance on the role of states in resource adequacy, but also left a crucial viewpoint out of the development of this critical input for determining LICAP prices. Neither ISO nor the NEPOOL Participants’ Committee adequately represents the interests of the New England states on the policy questions related to determination of resource adequacy. The Commission should try to remedy this failure by setting the case for hearing even though states views should have been sought at the beginning rather than the end of the process of determining IC requirements.

IV. CONCLUSION

For the above-stated reasons, the Commission should grant rehearing of the May 9 Order and set the IC requirements for the period from January through May 2006 for hearing.

adequacy “because a higher level provides greater reliability and also incurs higher costs that affect most retail customers. State representatives are in the best position to determine on behalf of retail customers the trade-off between the cost to the customers of extra generation and demand response reserves and the difficult-to-quantify benefits to the customers of increased reliability and reduced exposure of the region to the effects of a power outage.”

Respectfully submitted,

/s/ Harvey L Reiter
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Dated: June 8, 2005

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that I have this day served, via electronic mail or first class mail, the foregoing document upon each party designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 8th day of June 2005.

/s/ Harvey L. Reiter
Harvey L. Reiter