

124 FERC ¶ 61,013
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.

ISO New England Inc.

Docket Nos. ER07-1289-002
ER07-1289-003
ER07-1289-004
ER07-1289-005

New Brunswick Power Transmission Corporation,
New Brunswick System Operator, and
Northern Maine Independent System Administrator

v.

EL08-56-000
(consolidated)

ISO New England Inc.

ORDER ON CLARIFICATION, CONSOLIDATING DOCKETS AND
ESTABLISHING HEARING PROCEDURES

(Issued July 2, 2008)

1. On April 22, 2008, Joint Movants¹ filed a motion to establish trial-type evidentiary hearing procedures in Docket No. ER07-1289-002, *et al.* (the MEPCO Roll-in Proceeding), after settlement judge procedures failed to resolve issues stemming from proposed tariff revisions to MEPCO's tariff that would accommodate a change in New England's transmission system that would result from the addition and operation of the North East Reliability Interconnection (NRI).² Separately, on April 23, 2008, New

¹ The Joint Movants comprise the following parties: New England Power Pool (NEPOOL) Participants Committee; ISO New England Inc. (ISO-NE); Maine Electric Power Company (MEPCO); H.Q. Energy Services (U.S.), Inc. (HQUS); and the Participating Transmission Owners Administrative Committee.

² The tariff provisions were initially accepted in *ISO New England Inc.*, 121 FERC ¶ 61,097 (2007) (October 29, 2007 Order).

Brunswick Power Transmission Corp. (NB Power), New Brunswick System Operator (NBSO), and Northern Maine Independent System Administrator (NMISA) (collectively, Complainants) filed a complaint against ISO-NE in Docket No. EL08-56-000, arguing that ISO-NE's decision to limit the transfer capabilities at the New Brunswick/New England external interface pending the outcome of the MEPCO Roll-in Proceeding was unjust, unreasonable and unduly discriminatory. For the reasons discussed below, we clarify the October 29, 2007 Order, consolidate the proceedings and set the consolidated proceeding for trial-type evidentiary hearing.

Background

2. In the October 29, 2007 Order the Commission conditionally accepted MEPCO's proposed tariff revisions designed to accommodate a change in New England's transmission system that would result from the addition and operation of the NRI. MEPCO currently has a 345 kV alternating current (AC) transmission line connected to Central Maine Power Company at the Maine Yankee Substation in Wiscasset, Maine and at the Maxcy Substation in Windsor, Maine, and is also connected both to Bangor Hydro-Electric Company at Orrington, Maine and, at its northern end (at the Canadian border at Orient Maine), to a 345 kV AC line owned by New Brunswick Power. MEPCO currently offers point-to-point transmission service in support of external transactions crossing the border between Maine and Canada and for internal transactions within the United States.

3. Prior to construction of the NRI, MEPCO was the only tie between the New England Control Area and eastern Canada. Unlike MEPCO's line, however, the NRI has been classified as pool transmission facilities (PTF) and ISO-NE will be able to use the NRI line to provide regional transmission service under the ISO-NE OATT. This means that, absent the revisions proposed in the MEPCO Roll-in Proposal, the two parallel lines would be administered with different types of transmission service, with the MEPCO line being administered as providing point-to-point transmission service, and the NRI being administered as providing regional transmission service.

4. Casco Bay Energy Company (Casco Bay), MEPCO's only internal transmission customer, protested, arguing that the MEPCO Roll-in Proposal effectively terminated Casco Bay's 25-year, 500 MW transmission service agreement (TSA). Casco Bay argued that its TSA serves as a hedge against congestion and marginal loss charges. ISO-NE and MEPCO disputed that assertion, arguing that the Casco Bay TSA does not provide any special protection against congestion or marginal loss charges. The Commission held that, although it was conditionally accepting the MEPCO Roll-in Proposal, ISO-NE and MEPCO were required to provide Casco Bay with a grandfathering option similar to that offered to MEPCO's external transmission customers, i.e., one that would preserve all of Casco Bay's existing rights, with the exception that Casco Bay would become subject to the same scheduling and curtailment provisions.

5. On November 28, 2007, ISO-NE and MEPCO filed a request for rehearing and clarification, a request to establish a technical conference and revised tariff sheets. On February 4, 2008, the Commission issued an order establishing settlement judge procedures,³ finding that the issues in the case “may be amenable to settlement.”⁴ On April 22, 2008, the Commission issued an order⁵ clarifying that the February 4, 2008 Order did not require the settlement judge to address additional issues raised by PPL Companies. However, on that same date, the settlement judge issued a report recommending termination of the settlement procedures. On April 23, 2008, the chief judge terminated the settlement judge procedures.

Motion for Hearing

6. On April 22, 2008, the Joint Movants filed a motion to establish trial-type evidentiary hearing procedures. Joint Movants argue that the settlement process made clear that there are issues of material fact that are outstanding, and that these issues relate to the nature and scope of Casco Bay’s purported rights under the TSA that would be grandfathered when the MEPCO Roll-in Proposal takes effect. Joint Movants note that Casco Bay suggested that a hearing would be appropriate in its September 6, 2007 protest.⁶ Joint Movants argue that issues of material fact exist with regard to the existence, nature and scope of the congestion and marginal loss hedges that Casco Bay has claimed are provided by its TSA. They contend that Casco Bay has not offered any particular evidence as to the nature and scope of the alleged congestion hedge, i.e., how it is specified in its TSA, how it has worked, or whether it has limitations.

7. Joint Movants argue that the difficulty in resolving these issues has been exacerbated by the lack of any precedent on which to determine the nature of Casco Bay’s rights, as Joint Movants contend that this is the first time in New England that the Commission has determined that the rights of a customer taking internal point-to-point transmission service should be grandfathered upon conversion to Regional Network Service. Joint Movants contend that when SMD was proposed in New England, some parties with existing transmission arrangements claimed special rights under SMD by virtue of such arrangements, and that the Commission rejected every one of these claims

³ *ISO New England Inc.*, 122 FERC ¶ 61,093 (2008) (February 4, 2008 Order).

⁴ *Id.* P 25.

⁵ *ISO New England Inc.*, 123 FERC ¶ 61,071 (2008) (April 22, 2008 Order).

⁶ Joint Movants April 22, 2008 Motion at 10 (citing Casco Bay’s September 6, 2007 Protest at 13 (Docket No. ER07-1289-000)).

as attempts to use a change in transmission and market regimes as an opportunity to gain new rights.⁷

8. Joint Movants also argue that the Commission should adopt an expedited hearing schedule that would result in a hearing before an administrative law judge (ALJ) no later than September 2008. Joint Movants contend that delay in resolving these issues has the potential to harm the entire region because the full import capacity at the New England/New Brunswick border over the NRI intertie is otherwise unavailable for market transactions. They explain that, while the reliability benefits of the line are available to the regions, the full commercial benefits of the additional transfer capability between New England and Canada are not being realized.

Responsive Pleadings

9. Casco Bay argues that Joint Movants' motion is an untimely request for rehearing of the October 29, 2007 Order. It contends that Joint Movants are simply rehashing, and attempting to supplement, arguments ISO-NE and MEPCO previously made that the October 29, 2007 Order was erroneously decided. Casco Bay argues that Joint Movants' motion is another attempt to convene a fact-gathering proceeding, even though a technical conference was rejected in the February 4, 2008 Order.

10. Casco Bay further argues that the Commission implicitly recognized in the October 29, 2007 Order and the February 4, 2008 Order that there are no issues of material fact that would justify a hearing.⁸ Casco Bay contends that it is undisputed that the Casco Bay TSA conveys to Casco Bay firm, point-to-point transmission rights over the MEPCO transmission system between the Orrington and Maine Yankee Substations. Casco Bay contends that the October 29, 2007 Order that maintained Casco Bay's hedge is consistent with a long line of orders in which the Commission has recognized that firm point-to-point transmission contracts outside of organized markets perform a hedging function because they permit transmission customers to pay a fixed price for transmission service that does not vary with congestion costs.⁹ Casco Bay argues that any emergency is one of the Joint Movants' own making, and that the Joint Movants have chosen not to proceed with the MEPCO Roll-in Proposal subject to affording a grandfathering option to Casco Bay that will preserve the hedge against congestion and marginal losses.

⁷ Joint Movants April 22, 2008 Motion at 12 (citing *New England Power Pool*, 101 FERC ¶ 61,344 at P 76 (2002)).

⁸ Casco Bay May 2, 2008 Answer at 6.

⁹ *Id.* at 9.

11. Commission Trial Staff (Trial Staff) agrees with Joint Movants that a hearing will enable all of the participants to engage in a thorough analysis of the genuine issues of material fact that exist in the case. Trial Staff contends that there is indeed a factual dispute over the nature and scope of the alleged hedges, and that Casco Bay needs to provide probative evidence showing how the 1999 TSA contains congestion and loss hedges or otherwise explain how those issues were raised and resolved in that negotiation.¹⁰

12. Trial Staff also concurs with Joint Movants that an expedited procedural schedule is warranted if an evidentiary hearing is ordered. Trial Staff agrees with the Joint Movants that a schedule which provides for the commencement of the evidentiary hearing in September 2008 is appropriate since it will allow all of the participants adequate time to conduct discovery as well as prepare direct testimony designed to address the issues in the instant case.

13. PPL Companies contend that any hearing should not serve as a forum to relitigate decided issues. They argue that all issues that are pending rehearing should be addressed by the Commission in a rehearing or other order and not be subject to any potentially inconsistent result. PPL Companies also argue that Joint Movants made representations in their motion that are misleading. They note that Joint Movants represent that certain transmission service that has been provided by MEPCO pursuant to Schedule 20B will be terminated if the MEPCO Roll-In Proposal is implemented even though the Commission rejected the ISO-NE proposal to terminate Schedule 20B in a prior order in this proceeding.¹¹ PPL Companies argue that an Order No. 890¹² compliance filing should be made promptly by ISO-NE and MEPCO relating to the currently effective Schedule 20B. PPL Companies contend that, although MEPCO requested a temporary waiver of the requirement to comply with Order No. 890 while the Roll-in Proposal was pending before the Commission, the Commission has not granted that waiver request.

14. NEPOOL and HQUS respond that the motion is not a request for rehearing and does not challenge the holding of the October 29, 2007 Order that the MEPCO Roll-in Proposal be conditioned on the grandfathering of Casco Bay's existing rights. NEPOOL

¹⁰ Trial Staff May 2, 2008 Answer at 4.

¹¹ PPL Answer at 4 (citing the October 29, 2007 Order, 121 FERC ¶ 61,067 at P 35).

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

and HQUS argue that, instead, the motion seeks a hearing to determine what those existing rights are because there is no record in this proceeding that answers that question. NEPOOL and HQUS argue that these issues must be resolved before the region can move forward with integrating MEPCO's line and the NRI into the regional transmission system. NEPOOL and HQUS also argue that, by setting the matter for settlement judge procedures, the Commission implicitly acknowledged that there were genuine issues of material fact.

Docket No. EL08-56-000

Summary of Filing

15. On April 18, 2008, Complainants filed a complaint against ISO-NE under section 206 of the Federal Power Act (FPA),¹³ arguing that the Commission: should find that ISO-NE's limiting the transfer capability of the New Brunswick/New England interface to 700 MW and 280 MW, north to south and south to north, respectively, is unjust, unreasonable, and unduly discriminatory; order ISO-NE to raise the limit it has imposed on the transfer capacity of the interface to a maximum of 1000 MW, north to south, and 550 MW, south to north, to recognize the economic and operational benefits of the operation of the NRI 345 kV transmission line; and establish fast track hearing procedures.¹⁴

16. Complainants argue that ISO-NE's unilateral decision to limit the transfer capability is unjust, unreasonable and unduly discriminatory because it arbitrarily deprives New England of the economic and security benefits that could be provided by NRI despite the imposition of the cost of the second tie line on the market. Complainants state that MEPCO's Roll-in Proposal is not the only method available to ISO-NE for recognizing the full transfer capabilities made available by the NRI/IPL interconnect. Complainants point to ISO-NE's "stop-gap" measure, proposed at the December 13, 2007 NEPOOL Transmission Committee meeting, as an acceptable remedy.

17. Complainants argue that the transfer capacity limitations will have unreasonable and unnecessary negative impacts on New England energy markets, and potentially on the Northern Maine energy market. Complainants point to ISO-NE's report to the NEPOOL Reliability Committee in 2004, which showed that the NRI's increased capacity was expected to decrease New England power production costs by \$31 million

¹³ 16 U.S.C. § 824(e) (2006).

¹⁴ Complainants' April 18, 2008 Complaint at 23.

during each of the first six years of operation, and would translate into an overall cost savings to consumers of \$99 million during the six-year period.¹⁵

18. Complainants contend that because of the complexity of the issues involved in the MEPCO Roll-in Proceeding (Docket No. ER07-1289), and the breadth of the dispute between the parties, a resolution of that proceeding may be many more months away. Therefore, Complainants request the Commission to grant their request for fast track processing, to find that ISO-NE's limitation imposed on the transfer capability of the NRI is unjust, unreasonable and unduly discriminatory, and to order ISO-NE to raise the transfer limitations by 300 MW north to south, and by 270 MW south to north.¹⁶

Notice and Responsive Pleadings

19. Notice of the complaint was published in the *Federal Register*, 73 Fed. Reg. 23,222 (2008), with answers, protests or interventions due on or before May 8, 2008. ISO-NE filed an answer. The Maine Public Utilities Commission (MPUC) filed a notice of intervention. Casco Bay, Integrys Energy Services, Inc. (Integrys) and Maine Public Advocate's Office (Maine Public Advocate) filed motions to intervene and comments. PSEG Energy Resources & Trade, LLC, NEPOOL, Bangor Hydro-Electric Company, Northeast Utilities Service Company, MEPCO, and Constellation Energy Commodities Group filed motions to intervene. NEPOOL filed a motion to consolidate. Casco Bay and the Complainants filed answers to the motion to consolidate.

20. ISO-NE states that the Complaint is facially insufficient under section 206 of the FPA and that the Complaint does not claim, identify, or provide any evidence of ISO-NE's violation of any applicable statutory standard, regulatory requirement, transmission operating agreements, or ISO-NE's tariff.¹⁷ ISO-NE states that it must maintain the transfer capability limitations in order to comply with the February 4, 2008 Order, which required ISO-NE to continue to administer the interface pursuant to Schedule 20B, which governs the MEPCO Transmission Facilities. ISO-NE states that "[u]nder Schedule 20B, MEPCO offers and sells up to 700 MW (North to South) and 280 MW (South to North) of transmission service to and from the New England/New Brunswick external interface,"¹⁸ and that ISO-NE must act consistent with this requirement. ISO-NE adds

¹⁵ *Id.* at 14 (citing to ISO-NE Economic Analysis of Second NB Tie, July 12, 2004).

¹⁶ *Id.* at 10.

¹⁷ ISO-NE May 8, 2008 Answer at 8.

¹⁸ *Id.* at 12-13 (citing to ISO-NE's November 28, 2007 Cover Letter and Attachments 1 and 2 to its August 16, 2007 Filing).

that the NRI is still providing the benefit it was constructed to provide as a Reliability Transmission Upgrade, and that the ISO's regional transmission customers are receiving the reliability benefit for which they paid, thus producing a just and reasonable rate.¹⁹

21. ISO-NE further explains: to raise the interface limit would violate the filed rate doctrine; ISO-NE's OATT does not contain any provisions governing the scheduling or curtailment of an interface containing both other transmission facilities (OTF) and pool transmission facilities (PTF); and, if the Commission were to grant the Complaint, ISO-NE could not implement it in a manner consistent with its OATT. ISO-NE further explains that Complainants fail to demonstrate that the measure ISO-NE discussed with stakeholders is just and reasonable, that it constituted only a basic concept that has not been fully developed, and ISO-NE does not have unilateral authority to implement it.²⁰ ISO-NE further explains that the measure would entail MEPCO requiring its transmission customers to provide an advance reservation to cover only 70 percent of an import and 50 percent of an export, rather than the 100 percent currently required. It claims that, under the measure, MEPCO would have to: (i) agree to not treat excess deliveries as "unauthorized use" for exceeding their reservations by more than ten percent (because Schedule 20B provides MEPCO the discretion to penalize its customers for such unauthorized use);²¹ (ii) define what additional MEPCO transmission service would be required (if any) in support of the portion of the external transaction not covered by the 70 percent import/50 percent export advance reservation requirement; and (iii) determine what service would be available when MEPCO Transmission Facilities are out of service.

22. Integrys, MPUC and the Maine Public Advocate filed comments in support of the Complaint, arguing that increasing transfer capability would decrease production costs and provide net benefits to Maine ratepayers.

23. PPL Companies states that ISO-NE has not implemented the proposal at least in part because ISO-NE and MEPCO have been unable or unwilling to comply with the Commission's October 29, 2007 Order. PPL Companies urges the Commission to find that the alternate proposal discussed by the Complainants is a viable long-term alternative to the MEPCO Roll-in Proposal, and institute a settlement process to develop and implement the proposal.

24. NEPOOL contends that the Complaint in Docket No. EL08-56-000 should be consolidated with Docket No. ER07-1289-002, *et al.* NEPOOL argues that each case

¹⁹ *Id.* at 11-12.

²⁰ *Id.* at 2.

²¹ *Id.* at 14.

involves the resolution of identical issues of fact and law regarding the Casco Bay dispute. NEPOOL explains that resolution of the Casco Bay issues is a prerequisite for the MEPCO Roll-in Proposal to proceed, thereby opening up the full transfer capability of the NRI. NEPOOL further argues that, unless these dockets are consolidated, the parties will spend time, effort and expense developing the record twice. NEPOOL argues that consolidation at this time is particularly appropriate because the Commission has before it a motion to establish expedited hearing procedures in the MEPCO Roll-in Proceeding.

25. Casco Bay comments that it does not oppose the relief requested in the complaint. With regard to the motion to consolidate, Casco Bay argues that the motion should be denied. Casco Bay argues that a record in the other proceeding has already been developed, and that if the Commission denies rehearing and rejects NEPOOL's motion to establish hearing procedures in the MEPCO Roll-in Proceeding, that proceeding will be closed at the administrative level. Casco Bay also argues that the MEPCO Roll-in Proceeding and the instant docket do not seek the same relief. Casco Bay notes that the MEPCO Roll-in Proposal is not the only method available to ISO-NE for recognizing the additional transfer capability, so the instant proceeding is not necessarily linked to the MEPCO Roll-in Proceeding. Casco Bay also argues that NEPOOL's request for consolidation is premature because it presumes that the Commission will grant rehearing in the MEPCO Roll-in Proceeding and then establish an evidentiary hearing in that proceeding.

26. Complainants respond that their complaint is appropriate because ISO-NE's limits on transfer capabilities constitutes an unjust, unreasonable and unduly discriminatory act or practice within section 206 of the FPA. Complainants argue that ISO-NE is incorrect that Complainants, at this early stage, bear the burden of proving a just and reasonable alternative as part of stating a claim under section 206. However, they add that they have alleged an "alternative" to the transfer limits, namely using the full capacity of the NRI. Complainants contend that they have raised issues of material fact that warrant examination in an evidentiary hearing.²²

27. Complainants dispute NEPOOL's assertion in its motion to consolidate that resolution of the Casco Bay issues in the MEPCO Roll-in Proposal is a necessary precondition or the sole avenue for resolving their instant Complaint. However, Complainants state that they do not oppose the motion insofar as consolidation does not delay or prejudice resolution of the Complaint.²³

²² Complainants' May 25, 2008 Answer at 9

²³ Complainants' May 23, 2008 Answer at 17.

Discussion

Procedural Matters

28. 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 entities that filed them parties to the proceedings in which they moved to intervene. 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 Complainants' answer because it has provided information that assisted us in our decision-making process.

Commission Determination

29. We agree with Joint Movants that sufficient factual information about the existence, nature and scope of Casco Bay's alleged loss and congestion hedges does not currently exist, and accordingly will grant Joint Movants' request for trial-type evidentiary hearing procedures. A hearing is necessary to determine whether Casco Bay possesses congestion and loss hedges as a result of a 25 year, 500 MW TSA for firm point-to-point transmission service it entered into with MEPCO in 1999, what those rights are, and whether ISO-NE can accommodate grandfathering internal transmission customers and if so, how.

30. In the October 29, 2007 Order the Commission conditionally accepted ISO-NE and MEPCO's filing to accommodate the physical change in the New England transmission system that would result from the addition and operation of the NRI.²⁴ In that order, the Commission found that the filing parties were required to provide Casco Bay with a grandfathering option that would preserve Casco Bay's existing rights, with the exception that it would become subject to scheduling and curtailment on an economic basis.²⁵ However, we now find that more process is needed in order for us to understand the existence, nature and scope of Casco Bay's rights, and, accordingly, we establish trial-type evidentiary hearing procedures discussed below to examine the existence, nature and scope of any hedges possessed by Casco Bay in its TSA with MEPCO, and whether and how ISO-NE can accommodate grandfathering Casco Bay's TSA.

31. Contrary to Casco Bay's contention, it was not our intention to explicitly state that Casco Bay possesses hedges against congestion and marginal losses. To the extent

²⁴ October 29, 2007 Order, 121 FERC ¶ 61,097 at P 29-41.

²⁵ *Id.* P 40.

necessary, we clarify here that the October 29, 2007 Order did not conclude that Casco Bay possessed hedges against congestion and marginal losses. Rather, the order sought only to preserve any rights that Casco Bay may possess under the TSA.

32. PPL Companies argue that the Commission should clarify that Schedule 20B will remain in effect notwithstanding the MEPCO Roll-in Proposal. PPL Companies further argue that the Commission should require ISO-NE and MEPCO to file the compliance filing ordered by the Commission in the October 29, 2007 Order. However, we explained in an order issued subsequent to PPL Companies' filing that MEPCO and ISO-NE's rehearing request to delete Schedule 20B was still before the Commission and might be resolved in the then-pending settlement discussions.²⁶ Although settlement judge procedures have been terminated, that issue is more appropriately addressed in the hearing ordered below. Therefore, we will not determine whether MEPCO must revise Schedule 20B at this time.

33. PPL Companies also contend that they have outstanding issues before the Commission. Some of these issues, such as the amount of advance notice that will be provided for the effective date of the MEPCO Roll-in Proposal and whether the deadline for MEPCO customers to select grandfathered treatment in light of any future changes to the MEPCO Roll-in Proposal, are directly related to the hearing below and may be addressed there.

34. We will not in this order grant the request to establish an expedited procedural schedule. Although an expeditious resolution of this case may prove to be in the best interest of all parties, under the present circumstances such motions are best made to the ALJ, and we defer to the ALJ to determine an appropriate and efficient hearing schedule.

35. Complainants in Docket No. EL08-56-000 argue that ISO-NE's unilateral decision to limit the transfer capability at the New England/New Brunswick interface is unjust, unreasonable and unduly discriminatory because it arbitrarily deprives New England of the economic and security benefits that could be provided by the NRI despite the imposition of the cost of the second tie line on the market. ISO-NE's practice of limiting the transfer capabilities of the NRI raises issues of material fact that cannot be resolved based on the record before us (and that are more appropriately addressed in the hearing procedures ordered below),²⁷ and Complainant's claims suggest that ISO-NE's practice

²⁶ *ISO New England Inc.*, 123 FERC ¶ 61,133, at P 68 (2008).

²⁷ Our usual practice is to require both hearing and settlement judge procedures. However, settlement judge procedures have already proven unsuccessful in Docket No. ER07-1289, *et al.*, and, as discussed *infra*, Docket No. EL08-56-000 is being consolidated with that docket.

of limiting the transfer capabilities of the NRI may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will set these claims for hearing pursuant to FPA section 206 as ordered below.

36. In addition, the difficulties identified by Complainants stem directly from the MEPCO Roll-in Proceeding, and Complainants concede in their answer that there are related questions of fact and law.²⁸ We find that consolidation of Docket No. EL08-56-000 with Docket No. ER07-1289-002, *et al.* for purposes of hearing and decision is the most effective and efficient way to proceed. Motions to consolidate are granted when there are common questions of law or fact and consolidation will result in “greater administrative efficiency.”²⁹ Consolidation will allow the parties to develop a single, comprehensive record and effect a more expeditious resolution of the issues. It will also avoid redundant hearings and repetitive discovery. Accordingly, we will grant NEPOOL’s motion to consolidate.

37. As discussed above, our analysis indicates that hearing procedures are warranted to examine the existence, nature and scope of Casco Bay’s rights and to examine ISO-NE’s practice of limiting transfer capability at the New England/New Brunswick interface. Therefore, we will set for hearing pursuant to FPA section 206 these and related issues stemming from the MEPCO Roll-in Proposal.

38. Pursuant to FPA section 206(b), for Complainants the Commission must establish a refund effective date that is no earlier than the date of the complaint and no later than five months subsequent to the date of the complaint.³⁰ For an FPA section 206 investigation on its own motion, the Commission must establish a refund effective date that is no earlier than the date of publication of notice of the Commission’s instituting a proceeding, and no later than five months subsequent to that date. In this consolidated hearing, which results both from a complaint and from a determination by the Commission to institute an FPA 206 proceeding to investigate issues stemming from the

²⁸ Complainants’ May 23, 2008 Answer at 16.

²⁹ *Startrans IO, LLC*, 122 FERC ¶ 61,306, at P 64 (2008).

³⁰ However, in a case involving changes in market design, we generally exercise our discretion and do not order refunds that require re-running a market, and would expect to implement any change resulting from this hearing on a prospective basis. *See Bangor Hydro-Electric Co. v. ISO New England Inc.*, 97 FERC ¶ 61,139 (2001) (finding that re-running markets even when an error was made would do more harm to electric markets than is justifiable).

MEPCO Roll-in Proposal, we will set the refund effective date for both as the date of publication of the notice of the Commission's instituting an investigation.³¹

39. Section 206(b) of the FPA also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Based on our review of the record, the presiding judge should be able to render a decision within nine months of the commencement of hearing procedures or April 1, 2009. We thus estimate that we would be able to issue our decision within approximately four months of the filing of briefs on exceptions and briefs opposing exceptions or by October 1, 2009.

The Commission orders:

(A) Docket Nos. ER07-1289-002, ER07-1289-003, ER07-1289-004, ER07-1289-005 and EL08-56-000 are hereby consolidated for purposes of hearing and decision as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, 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 concerning the existence, nature and scope of Casco Bay's rights and concerning ISO-NE's practice of limiting transfer capability at the New England/New Brunswick interface and related issues stemming from the MEPCO Roll-in Proposal.

(C) A presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

³¹ This date falls within the range allowed for refund effective dates for both the complaint and the Commission acting on its own motion.

(D) The refund effective date established pursuant to section 206(b) of the FPA, will be the date of publication in the Federal Register of the notice ordered in Ordering Paragraph (E) below.

(E) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of proceedings under section 206 of the FPA in the consolidated dockets.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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