UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Devon Power LLC, *et al.* Docket Nos. ER03-563-047
EL04-102-007

ORDER ON REHEARING AND CLARIFICATION

(Issued March 23, 2005)

1. In these proceedings, the Commission is addressing a proposal by ISO New England, Inc. (ISO-NE), made in response to a Commission order, to establish a locational installed capacity (LICAP) mechanism in the New England market. On November 8, 2004, the Commission issued an "*Order on Rehearing and Clarification*"[1] of its June 2, 2004 Order,[2] which approved of the broad framework of ISO-NE's LICAP proposal, but set the specific details of the proposal for hearing procedures. In the *November 8 Rehearing Order*, the Commission denied rehearing, denied clarification in part, and granted clarification in part.

2. Several parties have requested rehearing and/or clarification of the *November 8 Rehearing Order*. As discussed further below, in this order the Commission will deny rehearing, deny clarification in part, and grant clarification in part of the *November 8 Rehearing Order*. In a separate order issued contemporaneously, the Commission will consider requests for rehearing of its November 8, 2004 Order amending the ISO-NE LICAP proposal to establish a separate Southwest Connecticut (SWCT) ICAP region.[3] The orders we issue today, in conjunction with the hearing procedures that are ongoing, will benefit customers by further clarifying and fully considering the issues surrounding the implementation of a LICAP market in New England.

---

[1] *Devon Power LLC, et al.*, 109 FERC ¶ 61,154 (2004) (*November 8 Rehearing Order*).

[2] *Devon Power LLC, et al.*, 107 FERC ¶ 61,240 (2004) (*June 2 Order*).

[3] *Devon Power LLC, et al.*, 109 FERC ¶ 61,156 (2004) (*November 8 SWCT Order*).

Background

3. As we have recounted in other orders in these proceedings,[4] the Commission has been addressing the structure of New England's capacity markets since early 2003. The events leading up to the *November 8 Rehearing Order* at issue here began with the Commission's rejection of several reliability must run agreements (RMR agreements) filed by ISO-NE and several generators.[5] These generators argued that New England Power Pool (NEPOOL) Market Rule 1 would not adequately allow their units (mostly older inefficient peaking units, all operating in the SWCT Designated Congestion Area) an adequate opportunity to recover their costs, due in part to the lack of a locational resource adequacy mechanism and the mitigation rules in place in Designated Congestion Areas.[6] In rejecting the RMR agreements, the Commission acknowledged a concern expressed by ISO-NE that its then-current market rules and mitigation policies would deny some generators that are needed for reliability and are located in Designated Congestion Areas an opportunity to recover their fixed and variable costs, threatening the future availability of the needed units.[7] While noting this concern, the Commission stated generally that the use of such agreements to keep units needed for reliability in operation were not in the best interests of the competitive market because they tend to raise prices, have effects on the operation of other suppliers, and make it more difficult for new generators to enter the market.[8]

4. As a short-term remedy for the compensation problems faced by certain generators in Designated Congestion Areas, the Commission directed ISO-NE to modify its market power mitigation rules to permit certain high cost but seldom run units in Designated Congestion Areas to raise their bids, to allow them to recover their costs through the market (called Peaking Unit Safe Harbor (PUSH) bidding).[9] To work toward developing a long-term solution, the Commission directed ISO-NE to file by March 1, 2004 "a

---

[4] *See June 2 Order* at P 5-8; *November 8 Rehearing Order* at P 2-5.

[5] *Devon Power LLC, et al.*, 103 FERC ¶ 61,082 (2003) (*April 25 Order*), *order on reh'g*, 104 FERC ¶ 61,123 (2003).

[6] *Id.* at P 7.

[7] *Id.* at P 28.

[8] *Id.* at P 27-32.

[9] *Id.* at P 32-33.

mechanism that implements location or deliverability requirements in the ICAP or resources adequacy market . . . so that capacity within [Designated Congestion Areas] may be appropriately compensated for reliability."[10]

5. ISO-NE made a March 1, 2004 Filing (March 1 Filing) in compliance with the Commission's directive in the *April 25 Order*. ISO-NE proposed a locational ICAP requirement (rather than a deliverability requirement) as a long-term solution to the compensation issues faced by capacity resources needed for reliability. ICAP obligations are currently imposed on load-serving entities, requiring them to procure a specified amount of ICAP each month to ensure that there is sufficient capacity to supply system peak load under all contingencies. ISO-NE's March 1 Filing proposed to add a locational element to the ICAP market and established four ICAP regions with separate ICAP requirements: Maine, Connecticut, Northeast Massachusetts/Boston (NEMA/Boston), and the remainder of New England (Rest of Pool). Under the proposal, capacity transfer limits would be established to limit the amount of ICAP that load-serving entities in one region could purchase from another region, and capacity transfer rights would be allocated to load or generators, depending on where they are located. Additionally, ISO-NE proposed to use a sloped demand curve in its monthly ICAP auctions which, in combination with the supply curve derived from suppliers' bids, would establish the monthly ICAP price.

6. In the *June 2 Order*, the Commission established hearing procedures regarding ISO-NE's compliance filing, and delayed the implementation of the LICAP mechanism from ISO-NE's proposed effective date of June 1, 2004 to January 1, 2006. Generally, the Commission approved of two broad concepts in the March 1 Filing. First, the Commission found it appropriate to establish separate ICAP regions, but questioned whether the regions proposed by ISO-NE adequately reflected where infrastructure investment is needed most, specifically noting the constrained area of SWCT. Second, the Commission approved of the overarching concept of a demand curve, but found that more information is necessary to develop appropriate parameters for the curve. As a result of these findings, the Commission directed ISO-NE to submit a further filing on whether to create a separate ICAP region for SWCT. The order also established a separate investigation and paper hearing in Docket No. EL04-102-000 to determine whether a separate energy load zone should be created for SWCT, and whether it should be implemented in advance of LICAP. Finally, the Commission established hearing procedures to determine the appropriate demand curve parameters, the proper method for

[10] *Id.* at P 37.

calculating capacity transfer limits, the appropriate method for determining the amount of capacity transfer rights to be allocated and the proper allocation of capacity transfer rights.

7. In the *November 8 Rehearing Order*, the Commission denied rehearing of the *June 2 Order* on several issues. Specifically, the Commission denied rehearing of its approval of the general concept of the use of a demand curve in the LICAP mechanism and its decision to set an implementation date for the LICAP mechanism of January 1, 2006. The Commission also granted certain requests for clarification in the *November 8 Rehearing Order*. Specifically, the Commission clarified that it found NEMA/Boston an appropriate ICAP region, and that the procedures in Market Rule 1 do not require a generating unit to apply to retire or cease operation under section 18.4 of the Restated NEPOOL Agreement as a prerequisite to negotiating an RMR agreement with ISO-NE.[11] Also, the Commission granted a motion to lodge filed by ISO-NE regarding its market power mitigation and delisting proposal, and added the issue of market power mitigation to those set for hearing in the *June 2 Order*.

Requests for Rehearing and Clarification and Commission Determinations

8. Timely requests for rehearing and or clarification were filed by Connecticut Department of Public Utility Control *et al.* (CT DPUC *et al.*),[12] Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, Wellesley Municipal Light, Reading Municipal Light Department and Concord Municipal Light Plant (CMEEC *et al.*), the Attorney General of Rhode Island and the Rhode Island Division of Public Utilities and Carriers (Rhode Island Parties), and the Maine Public Utilities Commission (MPUC). Answers to the requests for rehearing and clarification were filed by ISO-NE, Duke Energy North America, LLC (Duke), Milford Power Company, LLC (Milford) and the Dominion Companies.[13]

---

[11] Market Rule 1 is ISO-NE's Commission-approved electric tariff. The Restated NEPOOL Agreement is the agreement governing the relationship of the NEPOOL participants.

[12] CT DPUC *et al.* includes The Connecticut Office of Consumer Counsel, Richard Blumenthal, Connecticut Attorney General, The Connecticut Light and Power Company, Vermont Public Service Board, New Hampshire Public Utilities Commission, and Southwestern Area Commerce and Industry Association of Connecticut, Inc.

[13] Dominion Companies are Dominion Resources, Inc., Dominion Energy Marketing, Inc., and Dominion Nuclear Connecticut, Inc.

Procedural Matters

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[14] prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We will accept the answers filed here because they have provided information that assisted us in our decision-making process.

Commission Approval of the LICAP Mechanism Framework

10. As noted above, in the *November 8 Rehearing Order*, the Commission upheld its earlier statements accepting the broad framework of the LICAP mechanism. In particular, the Commission affirmed its approval of the use of a demand curve as a key feature of the LICAP mechanism, and sustained its decision to set the parameters of the demand curve for hearing. Several entities request rehearing and/or clarification of the Commission's statements on rehearing approving of the broad framework for the LICAP mechanism proposed by ISO-NE.

11. CT DPUC *et al.* filed a request for expedited rehearing, supported by the MPUC, arguing that the Commission "preordained that, regardless of the outcome of the upcoming hearing, 'the Demand Curve and other features of ISO-NE's LICAP proposal will produce just and reasonable rates that appropriately value and compensate capacity in constrained and unconstrained regions in New England.'"[15] CT DPUC *et al.* assert that the Commission has ruled, without an evidentiary foundation and in the abstract, that a demand curve price-setting mechanism is *per se* just and reasonable, and that ISO-NE's LICAP proposal will produce prices for capacity that are just and reasonable. Further, CT DPUC *et al.* contend that the Commission has not conducted a detailed analysis of alternatives to LICAP, and has made no evidentiary findings that LICAP is the best mechanism to produce capacity at the lowest possible prices.

12. CMEEC *et al.* make a similar argument on rehearing, arguing that notwithstanding the decision in the *June 2 Order* to initiate an evidentiary hearing with regard to the parameters of the demand curve, the Commission has summarily concluded without evidentiary foundation that the demand curve will lead to just and reasonable rates under all circumstances. CMEEC *et al.* specifically contend that there is no evidentiary support for the proposition that existing markets in New England (under ISO-NE's existing market rules) do not provide generators with a reasonable opportunity to recover their

[14] 18 C.F.R. § 385.213(a)(2) (2004).

[15] Request by CT DPUC *et al.* for Expedited Rehearing and Motion for Clarification at 16, *citing November 8 Rehearing Order* at P 44.

costs, nor is there adequate evidence to support a conclusion that the demand curve proposed by ISO-NE will produce just and reasonable rates. CMEEC *et al.* additionally assert that the data response prepared by ISO-NE and lodged as evidence in these proceedings in the *November 8 Rehearing Order*[16] constitutes an admission by ISO-NE that its proposed demand curve is not just and reasonable.

13. Rhode Island Parties seek clarification that the Commission's statements that it agrees with the demand curve concept fall short of the substantial evidence necessary to determine that the LICAP mechanism is just and reasonable. Alternatively, they seek rehearing, arguing that the record in this proceeding does not support a finding that the demand curve proposed by ISO-NE will produce a just and reasonable result. Rhode Island Parties contend that because the demand curve is intended to set a price for capacity that equals the cost of entry, over the long term, it is setting a floor price for generators. As a result, they argue that the Commission appears to have abandoned its original intent in these proceedings to develop a mechanism that will ensure that select generators needed for reliability have the opportunity to recover their costs through the market, and has instead created a non-competitive construct that is antithetical to Order No. 888.[17] Rhode Island Parties also assert that the Commission has satisfied none of the ratemaking principles that might apply, and that the refusal to consider alternatives to LICAP is arbitrary and capricious.

14. Commission Determination. The Commission will deny these requests for rehearing. The Commission did not "preordain" in the *November 8 Rehearing Order* that any specific demand curve or other features of the LICAP mechanism are *per se* just and reasonable in the manner suggested by CT DPUC *et al.* and CMEEC *et al.* These parties seem to suggest that we have made a final determination, under section 206 of the Federal Power Act (FPA),[18] that the LICAP rates will be just and reasonable. To the contrary, in the *June 2 Order* and *November 8 Rehearing Order*, the Commission stated that its preliminary analysis indicated that the overarching concept of the LICAP mechanism proposed by ISO-NE (including the proposal to use ICAP regions and an ICAP demand curve) will, when finalized and implemented, achieve a just and reasonable result. We set the details of that proposal, including the parameters of the proposed demand curve, for hearing to ensure that the complete LICAP mechanism,

---

[16] *See November 8 Rehearing Order* at P 17.

[17] Rhode Island Parties also assert that the proposed demand curve, by setting a floor price, is not a "market" mechanism, and as a result the Commission should apply cost-based ratemaking principles.

[18] 16 U.S.C. § 824e (2000).

including demand curve and adjoining mitigation measures and transmission transfer limits and rights that we ultimately accept in this proceeding is just and reasonable. To the extent we were unclear in our earlier orders, however, we clarify that while we preliminarily find the use of ICAP regions and an ICAP demand curve as proposed by ISO-NE to be just and reasonable, no final just and reasonable determination under section 206 regarding the LICAP plan has been made and will not be made until the conclusion of the hearing procedures.

15. Further, contrary to CMEEC *et al.*'s contention, the Commission's finding that existing wholesale markets in New England do not provide certain generators with a reasonable opportunity to recover their costs is supported. The Commission stated in the *April 25 Order* (issued in these proceedings), after reviewing several RMR agreements submitted for filing, that the market rules "may not allow suppliers in [Designated Congestion Areas] an adequate opportunity to recover their costs and that a location-specific capacity requirement must be in place."[19] As a result, we directed that the PUSH mechanism be implemented on a temporary basis, and that ISO-NE file a long-term solution utilizing either a locational or deliverability requirement. The PUSH mechanism was designed to permit high cost but seldom run units the opportunity to recover their fixed and variable costs through the market. ISO-NE reported that although the PUSH mechanism allowed certain units to receive more revenue than they would have received under previous rules, the units were "unlikely" to "recover all of their fixed costs through the existing PUSH mechanism."[20] The Commission finds that LICAP will be an improvement on RMR agreements and the PUSH mechanism because it is a market-based structure that values capacity according to its location, provides the same opportunities the PUSH mechanism provides to high cost but seldom run units, and eliminates subsidies New England customers pay to support reliability in capacity-constrained regions.

---

[19] *April 25 Order* at P 31; *see also order on reh'g*, 104 FERC ¶ 61,123 at P 33 (confirming the Commission's findings, under section 206 of the FPA, that Market Rule 1 created an unjust and unreasonable result with regard to the disruption created by RMR agreements and that a different approach must be taken).

[20] ISO New England Inc., *A Review of Peaking Unit Safe Harbor (PUSH) Implementation and Results*, December 3, 2003 at p 33 (filed in Docket No. ER03-563-025).

16. Additionally, our findings regarding the existing New England markets are supported by the numerous applications for RMR agreements filed by generators in load pockets in New England over the past two years. In each of these cases, generators have been forced to negotiate out-of-market financial arrangements with ISO-NE because they could not earn sufficient revenues to justify continued operation, but were determined by ISO-NE to be necessary for reliability. [21] For example, in one of these cases, affiliates of NRG Power Marketing, Inc., reported that they earned revenues that were $47.3 million less than their costs of operation.[22] The Commission has in each of these cases accepted the agreements, despite our concerns about the effects they have on the markets, because they have been shown to be necessary.

17. ISO-NE has shown generally that a sloped demand curve is a just and reasonable approach to address the compensation issues plaguing the current ICAP market. First, we reiterate that to date in this proceeding, although we have stated our support for the demand curve concept, we set for hearing the proposed demand curve to develop facts concerning its specific parameters. The concept of an ICAP demand curve has merit because it would eliminate seams between ISO-NE and the New York Independent System Operator, Inc. (NYISO), which currently uses a similar mechanism, and because it would provide appropriate location-specific price signals, properly account for constraints on the transmission system and reduce price volatility.[23] In addition, a demand curve can produce a just and reasonable outcome with regard to capacity prices.[24]

---

[21] *See, e.g.*, *Devon Power LLC*, 106 FERC ¶ 61,264 (2004); *Mirant Kendall, LLC and Mirant Americas Energy Marketing, L.P.*, 109 FERC ¶ 61,227 (2004), *reh'g pending*; *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,020 (2005), *reh'g pending*. Additionally, these cases showed that while the temporary PUSH mechanism gave many generators the opportunity to recover their costs from the market, it was not effective for all generators, especially older units with low capacity factors.

[22] *See* January 16, 2004 Filing of Devon Power LLC, Middletown Power LLC, Montville Power LLC, and NRG Power Marketing Inc. in Docket No. ER04-464-000. The Commission accepted the RMR agreements for filing in that docket and set them for hearing and settlement judge procedures. *Devon Power LLC*, 106 FERC ¶ 61,264 (2004).

[23] *See generally June 2 Order* at P 57-60; *November 8 Rehearing Order* at P 22-24, 44.

[24] *November 8 Rehearing Order* at P 24, *citing New York Independent System*

(continued)

18. The Commission has considered alternative approaches, to the extent they have been presented through the course of this proceeding. In the *June 2 Order* the Commission noted that ISO-NE elected to propose a LICAP mechanism. The Commission considered a deliverability requirement but ultimately determined that the current transmission system in New England did not allow for deliverability across the entire region and that there was no firm indication as to when the system would be physically capable of supporting a deliverability requirement.[25] The Commission did indicate that it would consider any future proposal to implement a deliverability requirement.[26]

19. Contrary to CMEEC *et al.*'s argument that the ISO-NE data response lodged as evidence in this proceeding constitutes an admission, we again note that the demand curve parameters proposed by ISO-NE are the subject of the on-going hearing below. The Commission cannot make a just and reasonable determination regarding those parameters until the hearing procedures are completed.

20. In response to Rhode Island Parties' contention that we have abandoned our original intent in these proceedings, we reiterate that our goal has been, and continues to be, to establish a market mechanism to appropriately value capacity according to its location, and thus allow capacity resources to recover their costs through the market, as opposed to through non-market-based RMR agreements. Finally, the Commission reiterates its position that wide use of RMR agreements suppresses market clearing prices, limits the ability of other generators to earn competitive revenues and generally undermines the effectiveness of the market. The Commission believes that, rather than having significant levels of SWCT generation operating under RMR agreements, the New England markets should implement a market-based mechanism, like LICAP, that appropriately values capacity according to location and does not limit the ability of other generators to earn competitive revenues.

21. Finally, we reject Rhode Island Parties' contention that the demand curve sets a floor price for generators. In ISO-NE's original March 1 Filing, it proposed parameters for the demand curve that set the cost of new entry as the ICAP price at the point where the given ICAP region met its minimum capacity requirement—where it had no surplus capacity. Those parameters were set for hearing in the *June 2 Order*. Striving for a demand curve which establishes a price point in this manner does not establish a "floor

---

Operator, Inc., 103 FERC ¶ 61,201 (2003).

[25] *June 2 Order* at P 60.

[26] *Id.*

price" for generation. Under the general concept of a demand curve, regardless of the specific parameters, the price for ICAP resources will move lower or higher depending on the capacity situation (*i.e.*, oversupply or undersupply). Therefore, demand curve parameters that result in a specific price point in the event of a specific capacity situation would not establish any "floor price."

January 1, 2006 Implementation Date

22. In the *November 8 Rehearing Order*, the Commission upheld its establishment in the *June 2 Order* of a January 1, 2006 implementation date (deferred from ISO-NE's proposed June 1, 2004 implementation date) for the LICAP mechanism.[27] The Commission stated that deferring the implementation date would serve to provide participants with time to make progress in completing transmission infrastructure improvements and add generation resources to mitigate the rate impacts of the LICAP market.

23. CT DPUC *et al.* argue on rehearing that the Commission erred in relying on incentives to progress with transmission infrastructure improvements and incentives to add generation resources, in upholding the January 1, 2006 implementation date established in the *June 2 Order*. Specifically, they argue that the LICAP mechanism as proposed by ISO-NE will actually create a disincentive to complete transmission infrastructure upgrades, particularly in the constrained region of SWCT. In support of this assertion, CT DPUC *et al.* argue that completing Phase I of the SWCT Reliability Project (which will add 550 MW of transmission capacity between Connecticut and SWCT) will create substantial financial disincentives to complete other planned transmission upgrades. CT DPUC *et al.* argue that, according to a model presented by ISO-NE in prepared testimony to the hearing filed August 31, 2004, projections of annual LICAP costs to Connecticut prior to completion of Phase I are $24 million lower than those after completion of Phase I.[28] Additionally, they present an electronic message from an ISO-NE staff member which states that under ISO-NE's LICAP proposal, Connecticut would save $6 to $10 million by not implementing the SWCT Reliability Project transmission upgrade.[29] Further, CT DPUC *et al.* argues that the Commission erred by absolving ISO-NE of the responsibility to analyze the effect of transmission infrastructure upgrades on the continued need for the LICAP mechanism. Finally, CT

[27] *November 8 Rehearing Order* at P 31-32.

[28] CT DPUC *et al.* assert that this phenomenon also occurs when transmission capacity is upgraded between Rest of Pool and the NEMA/Boston region.

[29] This e-mail was obtained during discovery in the ongoing hearing below.

DPUC *et al.* notes that significant new generation cannot be added in SWCT until Phases I and II of the planned transmission upgrade projects are completed, which is expected to be no earlier than 2008, and that as a result, the Commission's reasoning that new generation resources will be incented is flawed.

24. Rhode Island Parties request that the Commission clarify "that the time period for the LICAP rates to take effect cannot be determined under [s]ection 206 until a final judgment has been made, on the basis of substantial evidence, as to the legality of the new rates."[30]

25. In its Answer, ISO-NE recommends that the Commission, in its rehearing order, not address the merits of the effect of its LICAP proposal on incentives to upgrade transmission because the issue is being addressed in the evidentiary hearing and thus is not ripe for decision by the Commission.

26. Commission Determination. CT DPUC *et al.* also assert in Docket Nos. ER03-563-048 and EL04-102-008 that a SWCT ICAP region will provide disincentives to completing transmission upgrades. We note that the projected cost impacts used by CT DPUC *et al.* were derived using the demand curve that ISO-NE proposed in its prepared testimony to the hearing. At this time, the Commission cannot address the evidence submitted in the hearing but will review the record in that proceeding after issuance of the initial decision.

27. We will confirm our ruling in the *November 8 Rehearing Order* and retain the LICAP implementation date of January 1, 2006. As noted above, we have been addressing the structure of New England's capacity markets since early 2003, and have sought a mechanism that would avoid the disadvantages of non-market-based solutions like RMR agreements. The Commission notes that ISO-NE estimates the 2005 costs of Connecticut RMR agreements (in effect and pending) at $240 million.[31] We directed ISO-NE to file a mechanism by March 1, 2004 that implements location or deliverability requirements in the ICAP or resource adequacy market so that capacity within Designated Congestion Areas may be appropriately compensated for reliability. The *November 8 Rehearing Order* states not only that we believe the implementation date

[30] Request for Clarification or, In the Alternative, Request for Rehearing of Rhode Island Parties at 10.

[31] ISO-NE, *Reliability and Operability Committee Update*, presentation given at Technical Conference regarding Connecticut Infrastructure, January 6, 2005. [http://www.ferc.gov/EventCalendar/Files/20050107114554-Whitley,%20ROC%20update.pdf].

will encourage the stakeholders to work toward completing necessary transmission upgrades to mitigate possible rate impacts, but also reasons that the implementation date should not be delayed further, to ensure that, in the event planned transmission upgrades are not in place by the appointed date, a mechanism is in place in New England to appropriately value capacity resources according to their locations, taking into account existing transmission constraints.[32] Having such a mechanism is a necessary step to help resolve the reliability compensation issues identified in the region.[33] With regard to CT DPUC *et al.*'s contentions regarding encouragement of significant new generation resources in SWCT, we note that LICAP is a region-wide mechanism that will, by appropriately valuing capacity resources according to their locations, give existing generators the opportunity to recover their costs through the market (as opposed to out-of-market arrangements), and also send price signals to the market regarding where new infrastructure is needed.[34] Regarding the capacity and transmission situation in SWCT specifically, as the Commission states in its companion order issued today in Docket Nos. ER03-563-048 and EL04-102-008, we did not state that implementing LICAP on January 1, 2006 (with a SWCT ICAP region) would result in the immediate addition of generation in SWCT. Rather, the Commission has stated that higher ICAP prices in a separate SWCT region would encourage existing generation capacity not to retire or seek

[32] *See November 8 Rehearing Order* at P 31. Additionally, in the separate order issued today in Docket Nos. ER03-563-048 and EL04-102-008, the Commission notes that the ultimate completion dates of planned transmission upgrades are still uncertain. We note that phases I and II of the SWCT Reliability Project have been moved back to the end of 2006 and 2009, respectively, providing that the project "can move forward expeditiously." *See* transcript of *Technical Conference on Connecticut Infrastructure*, January 6, 2005, Docket Nos. PL04-14-000 *et al.* at 82:1.

[33] *See June 2 Order* at P 35.

[34] As we discussed in the *November 8 Rehearing Order*, infrastructure upgrades will be encouraged because when finalized, the LICAP mechanism will produce just and reasonable prices for capacity in New England by recognizing the locational value of capacity resources. Infrastructure additions will be encouraged as a natural, market-oriented result of this appropriate value being recognized. *November 8 Rehearing Order* at P 44.

out-of-market RMR agreements.[35] Those higher ICAP prices will encourage the prompt completion of needed transmission upgrades, as noted above, so that new generation resources may be added.

Responsibility for Resource Adequacy

28. CT DPUC *et al.* (supported by the MPUC) and the Rhode Island Parties argue that the Commission usurped the authority of states to determine the required level of generation capacity and reliability by approving the use of a LICAP demand curve to "'determine[e] the amount of capacity *required* . . . in each region' for 'maintaining the *required* reliability.'"[36] CT DPUC *et al.* and the Rhode Island Parties assert that the Commission has no jurisdiction to regulate resource adequacy or reliability and cannot compel the states to build a specific level of surplus capacity. They note that both Congress and the Commission itself have recently acknowledged this limitation on the Commission's jurisdiction. Furthermore, CT DPUC *et al.* note that a new proposal presented by ISO-NE in its initial testimony in the ongoing hearing includes provisions mandating certain increased levels of surplus capacity, and represents an attempt to circumvent state authority over resource adequacy. CT DPUC *et al.* request that the Commission confirm its lack of jurisdiction over resource adequacy and reliability, and affirm that it may not enforce requests by ISO-NE to dictate increased levels of surplus capacity.

29. Commission Determination. The Commission recognizes the scope of its jurisdiction under the FPA and cases cited by CT DPUC *et al.* over matters of resource adequacy and reliability. The LICAP mechanism does not change the jurisdiction of the Commission or the states. The LICAP mechanism, as accepted by the Commission and set for hearing, merely remedies a flaw in the design of the installed capacity market which is already in a Commission-filed tariff.

30. Currently, ISO-NE calculates capacity requirements in New England to achieve the "Objective Capability," or the total amount of capacity required by the system to meet peak load, plus a margin of reserve capacity to take into account contingencies and to maintain reliability. The Objective Capability is calculated by ISO-NE each year according to standards set by the Northeast Power Coordinating Council (NPCC). Once

[35] *November 8 SWCT Order at* P 28.

[36] *See* Request by CT DPUC *et al.* for Expedited Rehearing and Motion for Clarification at 7, *citing* November 8 Rehearing Order at P 38, 67 (emphasis in original).

the Objective Capability is determined, this capacity requirement is allocated among the load-serving entities in the region. Load-serving entities may then procure the capacity bilaterally, through self-supply or via ISO-NE-administered auctions.[37]

31. For many years, New England has chosen to include in its tariff an ICAP market to facilitate procurement of capacity to meet Objective Capability. Even before the formation of ISO-NE, NEPOOL required its member utilities to have, or pay for, their allocable share of the capacity needed to meet the region's demand. Under the current market rules, to the extent load serving entities have not satisfied their capacity obligations bilaterally, ISO-NE administers regularly scheduled monthly ICAP auctions to facilitate the procurement of capacity to satisfy the resulting residual individual and pool-wide Objective Capability requirements. As we have noted in the past, the current ICAP market on file with the Commission is flawed because generators needed for reliability and located in load pockets cannot earn sufficient revenues to justify continued operation, and because of wide price fluctuations that have been observed.[38]

32. The proposed LICAP mechanism and its demand curve feature will not change how resource adequacy determinations are made, and the issue here is not whether load serving utilities should be responsible for their share of the capacity needed to serve the region. Instead, the issue here is how prices for capacity are determined in the wholesale market, to remedy the flaws that have been identified. Currently, prices for ICAP are undifferentiated across New England; under LICAP, prices will reflect the reality that additional capacity is needed in some parts of New England more than in others. For example, ISO-NE states that SWCT specifically faces immediate threats to reliable and efficient electric service.[39] In essence, the effect of this proceeding is not to impose a regional resource adequacy requirement, but merely to change the pricing from being regionally uniform to prices that reflect local differences in supply and demand. This will minimize subsidies New England customers pay to support reliability in capacity-constrained regions. Under the LICAP mechanism, ISO-NE will continue to set the Objective Capability, and the demand curve will determine the amount of capacity

---

[37] *See* ISO New England, Manual for Installed Capacity, section 2.5.

[38] *See supra* at P 15, noting the compensation problems experienced by generators needed for reliability and their resulting requests for RMR agreements. *See also ISO New England, Inc.*, 91 FERC ¶ 61,311, 62,080 n.97 (2000), where the Commission cited to evidence received from ISO-NE regarding dramatic price spikes (from $0 to $10,000 per MW for a month) in the ICAP market.

[39] ISO New England, Inc., *Connecticut Energy Plan Framework: Recommended Solutions and Actions for the State of Connecticut*, January 4, 2005 (January 4 Report) at 6-7.

that load serving entities purchase each month. The prices that load will pay for capacity are a function of the demand curve parameters currently being addressed in the ongoing hearing, and are as yet undetermined. It may be that the demand curve that we ultimately approve will result in total bills to customers for procuring ICAP in amounts greater than Objective Capability are less than the total bills for procuring ICAP at Objective Capability. But these are the issues that the Commission set for hearing, and it is premature to anticipate a result.

RMR Agreements

33. In the *June 2 Order*, the Commission delayed the implementation of the LICAP mechanism to January 1, 2006.[40] To ensure just and reasonable rates in the interim period prior to LICAP implementation, the Commission stated that the PUSH mechanism would remain in place, and that it would consider the renewal of existing RMR agreements or additional RMR agreements negotiated with ISO-NE and filed under section 205 of the FPA, for a single term expiring when the LICAP mechanism is implemented.[41] In the *November 8 Rehearing Order*, the Commission clarified that under the currently-filed NEPOOL tariff provisions, there is no rigid requirement that a generator apply to retire or cease operation under section 18.4 of the Restated NEPOOL Agreement before negotiating an RMR agreement with ISO-NE.[42]

34. CT DPUC *et al.*, CMEEC, and the Rhode Island Parties submitted requests for rehearing of this clarification. CT DPUC *et al.* and CMEEC both state that the longstanding policy understood by New England market participants has been that RMR agreements are entered into in situations where, without the out-of-market agreement, the generator would retire or cease operation. They both note that this policy is reflected in section 2.3 of the *Pro Forma* Cost of Service Agreement in Market Rule 1, which requires the generator signing the RMR agreement to affirm that it is currently evaluating whether to retire or shut down the subject units after the agreement expires. CT DPUC *et al.* contends that a generator should not be able to justify an RMR agreement on the basis that it is "not satisfied" with the revenues it is earning in the market, and that under the Commission's clarification nearly all generation in SWCT would be eligible to negotiate RMR agreements, because those generators are "not satisfied" with their revenues.

---

[40] *June 2 Order* at P 1.

[41] *Id.* at P 72.

[42] *November 8 Rehearing Order* at P 27.

35. CMEEC asserts that requiring an application pursuant to section 18.4 of the Restated NEPOOL Agreement is more consistent with the Commission's characterization of RMR agreements as a "last resort." CMEEC also argues that not requiring a section 18.4 application eliminates the opportunity for stakeholder input, and also eliminates the analysis and review by NEPOOL participants of intervening events and changed circumstances that may impact ISO-NE's reliability determination. Further, CMEEC argues that the Commission, and not ISO-NE, should make the determination that out-of-market financial arrangements are required for a generator needed for reliability. In a related argument, CT DPUC *et al.* state that ISO-NE has not fulfilled the "gatekeeper" role to determine when RMR agreements are necessary that the Commission envisioned for it in the *November 8 Rehearing Order*. Additionally, both CMEEC and CT DPUC *et al.* contend that the Commission's clarification has "gutted" the limitations on RMR agreements and "opened the floodgates" for generators to choose RMR agreements as a pricing option instead of as a "last resort." Finally, Rhode Island Parties contend that the Commission's clarification will allow generators to "swing" back and forth between market-based rates and cost-based rates.

36. In the alternative, CMEEC asserts that the Commission should clarify the standards that ISO-NE must apply when determining whether an RMR agreement should be negotiated with a generator.

37. ISO-NE, Duke Energy North America, LLC (Duke Energy) and Milford Power Company, LLC (Milford Power) filed answers regarding this issue. ISO-NE states that it makes the same reliability determination whether or not the generator files an application to retire or shut down. Given this, and the fact that the section 18.4 application does not require the applicant to follow through with the retirement or deactivation, ISO-NE states that submitting the application will not provide an additional hurdle to negotiating an RMR agreement as the parties seeking rehearing suggest. In response to CMEEC's alternative request for clarification, ISO-NE states that it intends to apply the same planning procedure provisions as those applicable to section 18.4 applications.

38. Duke Energy states that although generators operating under market-based rates are not guaranteed a rate of return, the rates produced by the markets must give market-based generators a reasonable opportunity to earn a compensatory return. According to Duke Energy, since the Commission found that the current market structure is not permitting generators to recover their costs (and is thus not a workably competitive market capable of producing compensatory revenues), it was correct to permit RMR agreements as an interim compensation measure. Duke Energy and Milford add that given this state of the market structure, it would be unjust and unreasonable to force generators to endure the non-compensatory rates produced by the market while participating in the section 18.4 application process. Duke Energy further states that

Market Rule 1, the current filed-rate, does not require generators to apply to retire before negotiating RMR agreements, and that imposing an implied obligation to do so contravenes both the filed rate and Commission precedent. Milford echoes this statement, and also states that in its order accepting Market Rule 1, the Commission noted ISO-NE's flexible authority to negotiate RMR agreements and rejected calls to narrow that authority. Duke Energy and Milford argue that to the extent CMEEC is asking the Commission to limit or alter ISO-NE's authority to negotiate RMR agreements, their request should be denied as a collateral attack on the Commission's acceptance of Market Rule 1. Finally, both Duke Energy and Milford assert that CMEEC's alternative request for clarification is outside the scope of the Commission's clarification in the *November 8 Rehearing Order*, and thus should be rejected.

39. Commission Determination. The Commission is not persuaded to revisit its interpretation in the *November 8 Rehearing Order* of the relevant tariff provisions concerning the execution of RMR agreements between ISO-NE and generators needed for reliability. As we stated there, the tariff provisions in Market Rule 1, Appendix A (particularly Exhibit 2) do not require that a generator negotiating an RMR agreement with ISO-NE first apply to retire under the provisions of the Restated NEPOOL Agreement. The parties requesting rehearing do not direct us to any tariff provisions or language in the Restated NEPOOL Agreement that contradicts our earlier conclusion. CT DPUC *et al.* and CMEEC *et al.* both argue that article 2.3 of the Form of Cost-of-Service Agreement, which requires the parties to the agreement to acknowledge and agree that the generator "is currently evaluating whether to either retire, mothball, decommission, or otherwise shut-down," underscores the longstanding policy that a generator must apply to retire or shut-down before negotiating an RMR agreement. Article 2.3 does not, however, specifically require that a generator actually submit an application to retire and participate in a retirement process. Therefore, that provision does not support the argument that generators must file retirement applications under the NEPOOL Agreement. Absent a proposal submitted pursuant to the applicable NEPOOL rules to alter the RMR provisions in the currently-filed tariff, the Commission will not alter such provisions.

40. The Commission has stated on several occasions that it shares the concerns expressed again here by CT DPUC *et al.* and CMEEC *et al.* that RMR agreements not proliferate as an alternative pricing option for generators, and that they are used strictly as a last resort so that units needed for reliability receive reasonable compensation.[43] As we stated in the *November 8 Rehearing Order*, the existing tariff provisions provide safeguards against undue expansion of the use of such agreements. For example, as noted above, article 2.3 of the Form Cost-of-Service Agreement in the ISO-NE tariff

[43] *See November 8 Rehearing Order* at P 28; *April 25 Order* at P 31.

requires the generator to acknowledge and agree that it is evaluating a retirement, shut-down, or decommissioning. Furthermore, under Market Rule 1, Appendix A, Exhibit 2, ISO-NE must determine, in consultation with the Independent Market Advisor, that a generating resource is necessary for reliability before it can negotiate an RMR agreement with that resource. Moreover, under section 3.3 of Market Rule 1, Appendix A, Exhibit 2 (applying to resources previously selling under market-based rates), ISO-NE must make the information on which it based its reliability determination available to the NEPOOL Markets Committee. Finally, ISO-NE states that it has and will continue to use the same review provisions applicable to section 18.4 applications when considering RMR agreements. All of these procedures in the ISO-NE tariff help to guard against an unwarranted proliferation of RMR agreements. However, given the distressed infrastructure situation in certain areas of New England, and especially SWCT, it may be that a certain amount of RMR contracts will be warranted during the interim period until a new market structure can be implemented.

41. The parties requesting rehearing also assert that by not requiring an application for retirement under the Restated NEPOOL Agreement the Commission has eliminated the opportunity for stakeholder input, and eliminated analysis by NEPOOL of changed circumstances that may impact ISO-NE's reliability determination. Further, they argue that the Commission, rather than ISO-NE, should determine whether or not out-of-market financial arrangements are necessary for a generator needed for reliability. In response, we first note that the *June 2 Order* stated our expectation that to the extent RMR agreements are needed in this interim period until the LICAP mechanism is implemented, they would be filed under section 205 of the FPA, which gives market participants an opportunity to provide input and present evidence contradicting ISO-NE's determinations.[44] Second, as noted here and elsewhere, the currently-filed tariff provisions in New England give ISO-NE flexible authority to make reliability determinations and negotiate RMR agreements.[45]

---

[44] *June 2 Order at P 72*. Additionally, the Commission remains committed, as it stated in the *June 2 Order* and *November 8 Rehearing Order*, to comprehensively considering "the need for these contracts, and the justness and reasonableness of the rates proposed therein, as they are filed." *See June 2 Order* at P 72. This provides further safeguards against an unwarranted expansion of RMR contracts.

[45] *See New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287 at P 50 (2002).

Compensation for ICAP Resources under the LICAP Mechanism

42. CT DPUC *et al.* and the Rhode Island Parties request clarification regarding whether the Commission intended that all generators should receive identical LICAP payments, or whether such payments may be different based on the level of compensation necessary to keep the generator receiving the payment in operation. CT DPUC *et al.* assert that if existing generators (including those generators who were previously regulated and recovered depreciation and stranded costs through regulated rates) receive the same LICAP payments as newer facilities, ratepayers will have paid for the existing capacity twice. CT DPUC *et al.* states that it understands the Commission's conclusion in the *November 8 Rehearing Order* to be that existing generators must be compensated sufficiently such that they will be economically able to stay in operation and provide necessary reliability.[46] Therefore, CT DPUC *et al.* and Rhode Island Parties contend that the existing generators who were fully or partially paid for under the regulated rate regime will receive greater compensation (and a higher rate of return) than is necessary to ensure that they will be economically able to stay in operation.

43. Dominion Resources, Inc., Dominion Energy Marketing, Inc., and Dominion Nuclear Connecticut, Inc. (Dominion Companies) submitted an answer addressing these issues. They contend first that the arguments regarding disparate treatment for existing and new generators raised by CT DPUC *et al.* (who they note oppose virtually all aspects of the LICAP proposal) are untimely, because they were not raised in response to ISO-NE's March 1 Filing, nor were they raised on rehearing of the *June 2 Order*. Regardless, Dominion Companies also state that the Commission addressed similar arguments in the *November 8 Rehearing Order*,[47] that the Presiding Judge struck testimony on the issue based on the Commission's *November 8 Rehearing Order*, and that the testimony sponsors did not seek review of the Presiding Judge's decision. Further, Dominion Companies assert that CT DPUC *et al.*'s contentions are without merit, because they have not shown that the level of cost recovery needed to maintain an existing unit is a function of the prior owners' initial investment. Dominion Companies note that existing units may have low net book values but higher operating costs, given increased operation and maintenance costs, or may have unusually high investment costs (in the case of nuclear units). They argue that the value of existing generation is affected

[46] *See* Request by CT DPUC *et al.* for Expedited Rehearing and Motion for Clarification at 23, *citing November 8 Rehearing Order* at P 67.

[47] Dominion Companies' Answer to Motion for Clarification of CT DPUC *et al.* at 4-5, *citing November 8 Rehearing Order* at P 67.

significantly by the cost of new construction, instead of the original investment costs, and that the proposed LICAP market will provide suppliers an opportunity to recover the market value of capacity, reflected in the cost of new entry. Finally, Dominion Companies argue that CT DPUC *et al.* are essentially asking the Commission to evaluate the historical unit-specific costs of existing generation to determine the minimum revenue necessary to keep them in operation, and that to do so would undermine the Commission's goal of establishing a market for capacity because it would effectively create a system of cost-based RMR contracts (which the Commission has already rejected).

44. Commission Determination. In response to CT DPUC *et al.* and the Rhode Island Parties, we reiterate that under the LICAP mechanism, all generators in a LICAP region that are accepted in the LICAP auction at a given time should receive the same price. The Commission rejects CT DPUC *et al.*'s assertion that paying existing generators the same price will result in ratepayers paying for existing capacity twice, and their related argument (joined by Rhode Island Parties) that units fully or partially depreciated under a regulated rate regime will be over-compensated. CT DPUC *et al.* and Rhode Island Parties have not shown how existing capacity resources will be over-compensated, or how ratepayers will pay for the same capacity twice. Existing capacity resources are currently operating in an auction-based market, and will continue to do so under the LICAP mechanism. When operating in a market, units are not guaranteed any particular level of compensation, and accept the risk that they will receive low revenues in exchange for the opportunity to earn higher revenues. Furthermore, generating units providing capacity, regardless of their level of depreciation, will still be entitled to the opportunity to recover their fixed costs plus a rate of return. This is an ongoing process in both a cost-based and auction-based market regime.

45. Finally, we note that paying all such generators the same market-clearing price creates incentives to minimize costs, because a generator's cost reductions are retained by the generator and thus increase its profits. By contrast, a system of cost-based payments can blunt incentives to minimize costs, because (except for regulatory lag) cost reductions serve to reduce the generator's prices, and thus, fail to increase its profits. We agree with Dominion Companies that paying different amounts to different generators based on the level of compensation needed to keep the generator in operation would create a unit-specific cost-based system and undermine the advantages of a market for capacity.

Miscellaneous Issues

46. Rhode Island Parties assert that the *November 8 Rehearing Order* contains certain inconsistencies, and requests clarification. First, they argue that the Commission was inconsistent in stating that ISO-NE filed its LICAP proposal at the direction of the Commission, and stating that ISO-NE elected to file the LICAP proposal in response to

Commission directives. Second, Rhode Island Parties contend that the Commission inconsistently states that the LICAP mechanism will encourage investment, while also ruling that it is not an incentive rate proposal. Rhode Island Parties also question whether ISO-NE's filing can be viewed as a compliance filing, given that the current proceeding is taking place under section 206 of the FPA.

47. Additionally, Rhode Island Parties request that the Commission clarify the scope of its order accepting ISO-NE's motion to lodge additional evidence into the record regarding it market power mitigation proposal and delisting. That motion included a data response by ISO-NE describing its revised proposal for addressing delisting and market power concerns. In the *November 8 Rehearing Order*, the Commission granted the motion, and added the issue of market power mitigation to those already set for hearing.[48] Rhode Island Parties request that the Commission clarify that its grant of the motion to lodge does not prescribe certain ISO-NE proposals contained in the data response included in the motion.

48. Finally, Rhode Island Parties argue that the Commission has violated the notice and comment requirements of the Administrative Procedure Act (APA). Specifically, they assert that the instant proceedings have been transformed from a "discreet inquiry into how to compensate units seldom run in merit order needed for reliability" to "a rulemaking to establish a floor price for all generation in New England that equals the cost of entry."[49] They contend that the Commission has violated the APA by failing to notice this "proposed rulemaking" and is instead considering the issue in the context of a compliance filing. They also contend again that the Commission has limited comment on the LICAP mechanism, in violation of the APA.

49. Commission Determination. In response to Rhode Island Parties' assertions regarding inconsistencies in the November 8 Rehearing Order, we note that in the *April 25 Order*, the Commission "direct[ed] ISO-NE to file . . . a mechanism that implements location ***or*** deliverability requirements in the ICAP ***or*** resource adequacy market."[50] In other words, while the Commission directed that ISO-NE file a proposed mechanism to address the compensation problems faced by capacity resources, it gave ISO-NE the choice of mechanisms to file. ISO-NE ***elected*** to file a mechanism implementing a location requirement in the ICAP market to satisfy this ***direction*** from

---

[48] *November 8 Rehearing Order* at P 17.

[49] Request for Clarification or, in the Alternative, Request for Rehearing of the Rhode Island Parties at 22.

[50] *April 25 Order* at P 37 (emphasis added).

the Commission. Therefore, "directed" and "elected" were appropriately used. Additionally, Rhode Island Parties' argument regarding the ability to submit a compliance filing in a section 206 proceeding is inaccurate. The Commission can, and frequently has, instituted section 206 proceedings and required further compliance filings as part of a process to arrive at a just and reasonable result, and has significant discretion in managing its own dockets.[51]

50. The Commission addressed in the *November 8 Rehearing Order* the Rhode Island Parties' request for clarification concerning whether the LICAP mechanism will encourage investment and its holding that LICAP is not an incentive rate proposal. As we said there, the LICAP mechanism concerns cost recovery, and we expect that once finalized in these proceedings it will encourage existing generation to remain in the markets and encourage construction of new transmission and generation facilities because, when finalized, it will produce just and reasonable rates, which have been unavailable in the New England ICAP market for many generators.[52] Once a mechanism that properly values capacity based on its location is finalized and in place, capacity resources will be able to recover their costs and earn consistent reasonable rates of return, encouraging them to stay in the market instead of retiring or shutting down. But, as we also noted in the *November 8 Rehearing Order*, this does not lead to the conclusion that the LICAP mechanism is an incentive rate proposal, as defined by the courts, because it does not provide direct added incentives aimed specifically at increasing energy supplies.[53] Instead, we expect that the mechanism (when finalized) will stabilize prices at appropriate rates, based on the supply and transmission situation in the relevant region.[54]

51. In response to Rhode Island Parties' request for clarification regarding our order granting ISO-NE's motion to lodge, we clarify that by granting the motion, we did not intend to predetermine or prescribe that ISO-NE's proposals (in the data response forming the basis of the motion) are appropriate, are just and reasonable, or should necessarily be adopted. We set the matter for hearing to allow the issue of market power mitigation and delisting to be more fully explored.

---

[51] *See, e.g., Duke Power, a Division of Duke Power Corp.*, 109 FERC ¶ 61,270 (2004); *see also Florida Municipal Power Agency v. FERC*, 315 F.3d 362, 366 (2003) (regarding agency discretion in managing its own proceedings.)

[52] *November 8 Rehearing Order* at P 43.

[53] *Id.* at P 44.

[54] *Id.*

52. Finally, the Commission has not violated the APA in this proceeding as the Rhode Island Parties contend. First, this proceeding is considering specific proposed tariff provisions that, when finalized and implemented, will govern the operation of ICAP markets in New England. These provisions will have specific applicability to participants in the New England ICAP markets, and will not be rules of general applicability "designed to implement, interpret, or prescribe law or policy" that normally invoke rulemaking procedures under the APA.[55] Furthermore, the Commission is not limited to notice and comment rulemaking in developing policy, and like other agencies, is generally permitted discretion to choose whether to proceed by rulemaking or adjudication.[56] Thus, to the extent it is argued that the Commission is developing a more general policy on New England's ICAP markets in this proceeding, the Commission is permitted to do so through these adjudicated proceedings. Finally, we note that the Commission has provided notice at several points during these proceedings, and provided the parties with several opportunities to comment.

The Commission orders:

(A) The requests for rehearing are hereby denied, as discussed in the body of this order.

(B) The requests for clarification are granted in part, and denied in part, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

[55] *See* 5 U.S.C. §§ 551(4), 551(5) (2000) (APA definitions of "rule" and "rulemaking.")

[56] *See AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026 at P 187 (2004), *citing SEC v. Chenery*, 332 U.S. 194, 202-03 *reh'g denied*, 332 U.S. 747 (1947); *NLRB v. Beech Nut Lifesavers, Inc.*, 406 F.2d 253, 257-58 (2d Cir. 1968), *cert. denied*, 394 U.S. 1012 (1969).

Linda Mitry,
Deputy Secretary.