

the Commission shorten to four business days (through and including Thursday, October 13) for parties to file comments in response to this motion, and rule on this motion expeditiously thereafter.

I. STATEMENT OF ISSUES

The Commission should appoint Judge Lawrence Brenner as Settlement Judge in this proceeding in accordance with Rule 603(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603(e) (2005), require a report as requested, and expedite the process and consideration of this Joint Motion.

II. REQUEST

This request is consistent with prior suggestions of the parties in the captioned proceeding and the Commission in oral arguments on September 20, 2005. During those arguments, a number of parties presented proposals they considered to be alternatives to the proposal by ISO New England Inc. (the "ISO") for Locational Installed Capacity ("LICAP"). The ISO expressed a willingness to consider these proposals and assist in their further development, and all other parties expressed a willingness to explore the proposals in confidential settlement discussions. A number of parties, however, including the ISO, emphasized the need for expeditious consideration of any proposals and the possibility that these proposals may be complementary to, and not a replacement for, LICAP. At the conclusion of oral arguments, Chairman Kelliher urged the parties to meet and attempt to settle this matter, and invited the parties to accept the services of a settlement judge to hold settlement discussions, perhaps in the Boston area.³

³ See Transcript from Oral Argument, pp. 252-53.

Future progress in improving wholesale markets in New England depends on resolution of the ongoing litigation over LICAP. In most circumstances, NEPOOL has provided the vehicle for discussion and achievement of consensual resolution of many contested matters, but it has not been able to take an organizational position to date on the substance of LICAP. NEPOOL is a voluntary association organized in 1971 pursuant to an agreement among entities doing business in New England. It has grown to include more than 260 members, including all of the electric utilities rendering or receiving services under the ISO Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, end users, demand response providers, and a merchant transmission provider. Its members, however, do not include the State public regulatory commissions, Attorneys Generals, or the New England Conference of Public Utilities Commissioners, Inc. (“NECPUC”), which have been active in the LICAP proceeding.

Because LICAP is actively being challenged in litigation, there is little chance of resolving this matter outside of confidential settlement discussions that are conducted under Subpart F of the Commission’s Rules of Practice and Procedure. Moreover, prior experience has demonstrated that, when parties are deeply divided, as they are in the LICAP proceeding, a Settlement Judge substantially increases the possibilities of consensual resolution.

Under these circumstances, the Movants together submit that good cause exists to appoint a Settlement Judge, and formally requests that Judge Brenner be appointed as Settlement Judge. Judge Brenner has repeated experiences with the parties to this proceeding, and has history in assisting resolution of heavily contested matters in New England. That experience and history increase the likelihood for prompt progress toward resolving or narrowing issues. There is a limited amount of time to hold settlement discussions, and Movants emphasize that this Joint

Motion does NOT include any request for delay or extension of the current schedule for this proceeding. They do, however, agree that it would be important that the Commission require that, to the extent not otherwise ordered by the Commission, the Settlement Judge's first report include a statement on prospects for any future settlement discussions and identify a date certain for completion of any such future discussions.

Movants have shared these requests with Trial Staff and all other parties in this proceeding. They are authorized to represent that, in addition to the Movants, the request for a Settlement Judge (although not necessarily support for all statements contained in this request) is either supported or not opposed by the following parties: Commission Trial Staff; Connecticut Department of Public Utility Control; Maine Public Utilities Commission; Massachusetts Department of Telecommunications and Energy; Rhode Island Division of Public Utilities and Carriers; New Hampshire Public Utilities Commission; Vermont Department of Public Service; Vermont Public Service Board; American National Power, Inc.; Associated Industries of Massachusetts; Central Maine Power Company; Concord Municipal Light Plant; Connecticut Municipal Electric Energy Cooperative; Consolidated Edison Energy, Inc.; Constellation Energy Commodities Group; Dominion Resources, Inc., Dominion Energy Marketing, Inc., and Dominion Nuclear Connecticut, Inc.; Duke Energy North America, LLC; EnerNOC, Inc.; Entergy Nuclear Generating Company, LLC and Entergy Nuclear Vermont Yankee, LLC; Exelon Generation Company, LLC and Exelon New England Holdings, LLC; Fitchburg Gas and Electric Light Company, Unitil Energy Systems, Inc. and Unitil Power Corp.; FPL Energy, LLC; Industrial Energy Consumer Group; Lake Road Generating Company, L.P.; Long Island Power Authority and LIPA; Massachusetts Municipal Wholesale Electric Company; Mirant Americas Energy Marketing L.P., Mirant New England, LLC, Mirant Canal, LLC, and Mirant Kendall,

LLC; Mystic Development, LLC, Mystic I, LLC and Fore River Development, LLC; National Grid USA; NEPOOL Industrial Customer Coalition; New Hampshire Office of Consumer Advocate; Northeast Utilities Service Company, on behalf of The Connecticut Light and Power Company and Western Massachusetts Electric Company; NRG Devon Power, LLC, Middleton Power LLC, Norwalk Harbor, LLC, and NRG Power Marketing; NSTAR Electric & Gas Corporation; PPL EnergyPlus, LLC and PPL Wallingford Energy, LLC; PSEG Energy Resources & Trade LLC; Reading Municipal Light Department; Select Energy Inc.; TransCanada Power Marketing Limited; The United Illuminating Company; Vermont Electric Power Company; Vermont Public Power Supply Authority; Wellesley Municipal Light Plant.

A draft of this Joint Motion has been circulated to all parties via the ListServe, and a number of other parties have indicated that they are still considering the request. As of this time, no party has indicated that it opposes the request for a Settlement Judge.

Movants request a shortened response period and expedited order on this Joint Motion given the extensive communications preceding this motion, and the desire to maximize the time available to explore settlement proposals. Movants are hopeful that an initial settlement conference can be arranged in Boston later this month or early next month if the Commission grants the motion.

III. CONCLUSION

WHEREFORE, for good cause shown, Movants request that the Commission (1) appoint Judge Lawrence Brenner as Settlement Judge in this proceeding, in accordance with Rule 603(e), 18 C.F.R. § 385.603(e) (2005), (2) in the event the Commission does not rule upon specific reporting and termination deadlines for settlement, order that the first report by the Settlement Judge identify subsequent process and deadlines for any additional settlement discussion, and (3) that the Commission expedite the processing and consideration of this Joint Motion, all as discussed more fully herein.

Respectfully submitted,

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Date: October 7, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Hartford, Connecticut this 7th day of October, 2005.

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