

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

ISO New England Inc.

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Docket No. ER07-1289-\_\_\_\_

**ADDITIONAL REQUEST FOR CLARIFICATION AND REHEARING OF  
ISO NEW ENGLAND INC. AND MAINE ELECTRIC POWER COMPANY**

Pursuant to Section 313(a) of the Federal Power Act (“FPA”), 16 U.S.C. § 8251(a) (2000), and Rules 212 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 & 385.713 (2007), ISO New England Inc. (the “ISO”) and Maine Electric Power Company (“MEPCO”) request clarification and rehearing of the Order Conditionally Accepting Tariff Revisions, *ISO New England Inc.*, 121 FERC ¶ 61,097 (2007), issued October 29, 2007 (the “October 29 Order”).

On October 31, 2007, the ISO, MEPCO, and the Participating Transmission Owners Administrative Committee (“PTO AC”) (collectively, the “Filing Parties”) submitted an initial request for expedited clarification or rehearing presenting a single item for relief: a change in the November 1, 2007 effective date established by the October 29 Order to December 1, 2007.<sup>1</sup> The ISO and MEPCO submit this timely, additional request to address further issues that relate primarily to the October 29 Order’s compliance requirements.<sup>2</sup>

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<sup>1</sup> See Request for Expedited Clarification or, in the Alternative, Rehearing of ISO New England Inc., Maine Electric Power Company, and the Participating Transmission Owners Administrative Committee, Docket No. ER07-1289-001 (filed October 31, 2007). The Commission granted this request in an order issued November 19, 2007, in *ISO New England Inc.*, 121 FERC ¶ 61,186 (2007) (the “November 19 Order”).

<sup>2</sup> Although not required to do so, the ISO explicitly reserved in the October 31 Rehearing Request its right to submit an additional rehearing request. October 31 Rehearing Request at 1 (“By making this expedited filing, the ISO does not waive any rights it has  
(continued...)”)

This rehearing request is one of three related, contemporaneous submittals. The other two consist of the following:

- A joint expedited motion by the ISO and MEPCO seeking to delay the effective date for the “MEPCO Roll-in Proposal” from December 1, 2007 to February 1, 2008, and for the convening of a technical conference in the interim to facilitate resolution of the complex issues created by the findings in the October 29 Order.<sup>3</sup>
- A proposal to amend Market Rule 1<sup>4</sup> to implement a “Hold Harmless Mechanism” for Casco Bay Energy Company, LLC (“Casco Bay”) regarding certain marginal losses, filed by the ISO in accordance with its November 14, 2007 Informational Report in this docket and pursuant to the October 29 Order.

The ISO and MEPCO have provided a separate explanatory cover letter, intended to be read first, to provide an overview of the three submittals and their integrated nature. The three submittals should be considered in tandem.

In the October 29 Order, the Commission found, *inter alia*, that Casco Bay holds “hedges” against congestion and marginal losses pursuant to a transmission service agreement entered into between Casco Bay and MEPCO in 1999 (the “Casco Bay TSA”), and that the MEPCO Roll-in Proposal must include a grandfathering option for Casco Bay to preserve these hedges. The ISO and MEPCO dispute that finding, and its implementation would pose significant and unanticipated economic consequences. Nonetheless, the ISO and MEPCO continue to believe that, under appropriate provisions, a roll-in of the MEPCO transmission

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(...continued)

to file a second request for rehearing or clarification regarding the merits of the October 29 Order.”).

<sup>3</sup> In case the Commission denies the request to delay the effective date of the MEPCO Roll-in Proposal from December 1, 2007 to February 1, 2008, the ISO and MEPCO have included in their joint motion a Notice of Cancellation of the MEPCO Roll-in Proposal to take effect.

<sup>4</sup> Market Rule 1 is Section III of the ISO Tariff.

facilities as Pool Transmission Facilities (“PTF”) is the best solution to the integration of the Northeast Reliability Interconnection (the “NRI,” a second tie between New Brunswick and New England) into the New England RTO operational, transmission and market arrangements.

*As explained in the joint motion by the ISO and MEPCO submitted contemporaneously with this rehearing request, the Filing Parties are not proceeding to implement the MEPCO Roll-in Proposal as of December 1, 2007. Therefore, it will be necessary for the ISO to limit the transfer capabilities of the dual MEPCO/NRI interconnection to the transfer capabilities that are currently in place for the New England/New Brunswick external interface, namely, up to a maximum of 700 MW for imports from New Brunswick and 280 MW for exports to New Brunswick. This limitation of transfer capability across the New Brunswick external interface is inefficient from a market standpoint, providing further reason for expedited consideration.*

## **I. STATEMENT OF ISSUES**

In accordance with Rule 713(c)(2) of the Commission’s Rules of Practice and Procedure, the ISO and MEPCO request clarification and/or rehearing of the following issues:

1. The October 29 Order erred in finding that the Casco Bay TSA provides a hedge against congestion charges, and that “Casco Bay will become subject to congestion charges post Roll-In, if it is not provided with a grandfathering option.”<sup>5</sup>
2. The October 29 Order erred in finding that the Casco Bay TSA provides a hedge against losses.
3. The October 29 Order’s finding of “hedges” conflicts with Commission policy that measures adopted to protect existing customers through market transitions should not grant new rights. *See, e.g., New England Power Pool*, 102 FERC ¶ 61,112 (2003); *New England Power Pool and ISO New England Inc.*, 101 FERC ¶ 61,344, (2002).
4. The October 29 Order erred in imposing a compliance requirement – regarding scheduling and curtailment treatment – that cannot be satisfied consistent with the New England market system. *See, e.g., Preventing Undue Discrimination and Preference in Transmission*

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<sup>5</sup> October 29 Order at P 40.

*Service*, Order No. 890, 72 *Fed. Reg.* 12266 (March 15, 2007), *FERC Statutes and Regulations* ¶ 31,241 at P 158 (2007), *reh'g pending* (“Order No. 890”); *New England Power Pool and ISO New England Inc.*, 101 FERC ¶ 61,344 (2002).

5. The October 29 Order erred in prohibiting the deletion of Schedule 20B.

6. The Commission should clarify or, in the alternative, grant rehearing that the Order No. 890 compliance requirements imposed in the October 29 Order should be accomplished in the existing main body of the ISO Open Access Transmission Tariff (the “ISO OATT”),<sup>6</sup> and need not be incorporated in Schedule 20B.

## II. BACKGROUND

The August 16 filing in this proceeding (the “August 16 Filing”) presented the “MEPCO Roll-in Proposal” a fully integrated proposal, to amend the ISO OATT, the Transmission Operating Agreement, and the MEPCO Transmission Operating Agreement. The MEPCO Roll-in Proposal, *inter alia*, allows the ISO to provide service over the MEPCO transmission facilities through “Regional Transmission Service” by re-classifying the MEPCO transmission facilities under the ISO OATT as PTF rather than as Other Transmission Facilities (“OTF”). The proposal also provides that MEPCO’s transmission customers that have external Long-term Firm Point-to-Point MEPCO transmission service agreements will have the option to “grandfather” such agreements. The Filing Parties determined that the ISO OATT changes were necessary in order to eliminate the conflicts that would arise from providing Regional Transmission Service over the NRI transmission tie line in parallel with transmission service over the MEPCO transmission tie line.

The October 29 Order accepted the MEPCO Roll-in Proposal, effective November 1, 2007, conditioned upon certain changes to the proposal. Relevant to this rehearing request, the October 29 Order requires “the Filing Parties to provide Casco Bay a grandfathering option that

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<sup>6</sup> The ISO OATT is Section II of the ISO’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (the “ISO Tariff”).

will preserve all of Casco Bay’s existing rights”<sup>7</sup> – namely, “the benefit of having a hedge against congestion and marginal losses, a bargained-for benefit provided by Casco Bay’s TSA.”<sup>8</sup> Specifically, the October 29 Order found that “in exchange for its annual payment of \$800,000, [Casco Bay] receives a benefit in the form of a valuable hedge against congestion and marginal losses, and that the Roll-In Proposal will deprive Casco Bay of this hedge.”<sup>9</sup> The October 29 Order also rejected the request to delete Schedule 20B in its entirety and directed “ISO-NE to modify Schedule 20B in compliance with the provisions of Order No. 890.”<sup>10</sup>

On October 31, 2007, as noted above, the Filing Parties submitted an initial request for expedited clarification or rehearing to have the Commission change the November 1, 2007 effective date established by the October 29 Order to December 1, 2007. The Commission granted this request in the November 19 Order.

On November 14, 2007, the ISO submitted in this proceeding an informational report regarding its revision to the Loss Component<sup>11</sup> calculation at the Graham node (“Graham Node”), to which Casco Bay’s Maine Independence Station is interconnected.<sup>12</sup> Specifically, the ISO reported that it has ceased the practice of “mapping” the Graham Node Loss Component to

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<sup>7</sup> October 29 Order at P 41.

<sup>8</sup> *Id.* at P 39.

<sup>9</sup> *Id.*

<sup>10</sup> October 29 Order at P 35.

<sup>11</sup> Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the ISO Tariff.

<sup>12</sup> ISO New England Inc., Informational Report on Revision to Loss Component Calculation at Graham Node (filed Nov. 14, 2007) (“Informational Report”).

the Maine Yankee Node, and is instead calculating the Graham Node Loss Component in a manner consistent with its physical location on the PTF system.<sup>13</sup>

Contemporaneously with this filing, the ISO and MEPCO move to delay the effective date for the MEPCO Roll-in Proposal from December 1, 2007 to February 1, 2008, and for the convening of a technical conference in the interim, along with a Notice of Cancellation in case the request to change the effective date is denied. Also submitted contemporaneously with this filing is the ISO's Market Rule 1 revised tariff sheets reflecting the mechanism developed by the ISO as described in the Informational Report to hold Casco Bay "harmless" from the affects of the ISO's November 14 "Loss Component Revision," which revises how the ISO maps the Loss Component at the Graham pnode ("Graham Node") to which Maine Independence Station is interconnected.

### **III. REQUEST FOR CLARIFICATION AND REHEARING**

#### **A. The Commission Should Modify the October 29 Order's Rulings Concerning the Rights of Casco Bay**

As described above, Casco Bay argued, without citing any supporting evidence, that the Casco Bay TSA provides certain rights that the MEPCO Roll-in Proposal – as filed – would have terminated, including a hedge against congestion between Orrington and Maine Yankee and a hedge against marginal losses over the same path.<sup>14</sup> The October 29 Order adopts without explanation Casco Bay's position.<sup>15</sup> The October 29 Order (at P 39) also finds that "the failure of Filing Parties to provide to Casco Bay an option comparable to the grandfathering option

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<sup>13</sup> *Id.* at 7.

<sup>14</sup> Casco Bay Protest at 4.

<sup>15</sup> October 29 Order at P 40 (emphasis added).

provided to all of MEPCO's other long-term firm point-to-point transmission customers is unduly discriminatory ....”

These findings are arbitrary, capricious, and not supported by substantial evidence, because the record is devoid of any evidence that the Casco Bay TSA provides any such hedges, and the agreement and the MEPCO Open Access Transmission Tariff (“MEPCO OATT”) under which it was issued in 1999 contain no language that even *suggests* a hedge. The lack of such language makes perfect sense, because New England's Standard Market Design (“SMD”) would not be in place until nearly four years later, neither MEPCO nor Casco Bay envisioned, or could have envisioned, that the Casco Bay TSA would provide a hedge in a yet-to-be contemplated Locational Marginal Price (“LMP”) framework. Clearly, at the time the parties entered into the TSA, Casco Bay did not do so thinking it had bargained for a hedge in a non-existent market.<sup>16</sup> In contrast to the clear lack of evidence addressing Casco Bay's claim that its TSA contemplated such a hedge, the MEPCO Roll-in Proposal included testimony demonstrating that the MEPCO Roll-in Proposal would have virtually no impact on internal MEPCO transmission customers such as Casco Bay:

The MEPCO Roll-in Proposal replaces the internal firm and non-firm MEPCO point-to-point transmission service with the firm regional transmission service construct. This change will have little or no impact on existing internal MEPCO transmission customers and regional transmission customers. Under regional transmission service, the existing internal MEPCO transmission customers will still be able to utilize the MEPCO Transmission Facilities, but will not have to pay the MEPCO internal point-to-point transmission service rate; the MEPCO revenue requirement will instead be incorporated into the Regional Network Service rate. Other than the impact on the Regional Network Service Rate, market-based generation and load assets should be indifferent to

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<sup>16</sup> Only after the implementation of SMD could a party even envision the existence of such a hedge.

the MEPCO Roll-in Proposal because the treatment of the MEPCO Transmission Facilities as PTF will not impact the way that generation and load assets are dispatched and cleared in the New England markets.<sup>17</sup>

The October 29 Order's reliance on unsupported assertions of Casco Bay and its failure to address this testimony constitute reversible error.

Furthermore, the October 29 Order's finding of hedges is inconsistent with the Commission's long-standing policy that any measures adopted to protect existing customers through transitions in market or transmission regimens be designed to preserve existing rights, and not to grant new rights.<sup>18</sup> Using the conversion of the MEPCO transmission facilities from OTF to PTF status to grant Casco Bay new value, as the October 29 Order in effect requires, would conflict with this policy. As interpreted by the courts, the Administrative Procedure Act requires the Commission to acknowledge a change in policy and to justify the change before implementing it.<sup>19</sup> The October 29 Order does not meet that requirement.

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<sup>17</sup> August 16 Filing, Attachment 2 (Kay Testimony) at pp. 16-17; *see also id.* at p. 22 (indicating that the MEPCO Roll-in Proposal would have “no impact on the dispatch and settlement of internal generation and load”).

<sup>18</sup> *See New England Power Pool*, 102 FERC ¶ 61,112, at P 21 (2003); *New England Power Pool and ISO New England Inc.*, 101 FERC ¶ 61,344, at P 76 (2002).

<sup>19</sup> Through either rulemaking or adjudication, the Commission “may change its policy only if it provides ‘a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.’” *Michigan Public Power Agency v. FERC*, 405 F.3d 8, 12 (2005) (quoting *Greater Boston Television Corp. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970)). In fact, “a new rule constituting a departure from past policy or practice amplifies the need for adequate explanation.” *Simmons v. ICC*, 829 F.2d 150, 156 (D.C. Cir. 1987). As the Supreme Court has explained, such a change in policy “must be clearly set forth so the reviewing court may understand the basis for the agency’s action and so may judge the consistency of the action with the agency mandate.” *Atchison, T. & S.F. Ry. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973).

**Section III.A.1** below further explains that the Casco Bay TSA and the MEPCO OATT under which it was issued could not have been designed to provide hedges against the location-based congestion or marginal loss components introduced by the ISO several years later with the implementation of the SMD markets in New England on March 1, 2003. **Section III.A.2** explains why the language of the Casco Bay TSA and the tariff under which it was issued does not provide a congestion hedge, and why the Commission is incorrect in its finding that the MEPCO Roll-in Proposal will make Casco Bay “subject to” implicitly new congestion charges or methodologies. **Section III.A.3** explains why the Casco Bay TSA does not provide a marginal loss hedge. Finally, **Section III.A.4** explains why Casco Bay should not be subjected to the same scheduling and curtailment provisions as the MEPCO *external* transmission customers being provided a grandfathering option and how, in any event, it would be infeasible to do so.

**1. The Casco Bay TSA Predates, and, Therefore, Could Not Have Been Designed to Provide a Hedge Against, LMP-Related Charges**

The very premise of Casco Bay’s argument – that MEPCO executed a TSA designed to provide a hedge for Casco Bay against LMP-related congestion and marginal losses – must be rejected. The TSA was executed years before the ISO designed and implemented its SMD markets or became an RTO. The Casco Bay TSA, executed in 1999 and effective April 1, 2000, was entered into during a period in which the New England markets had a single region-wide energy clearing price, rather than pricing based on the *location* of generating resources and load within that region. Therefore, locational-based congestion charges and locational marginal losses did not exist as pertinent concepts at the time, and therefore could not have been “hedged” through contractual provisions.

By way of background, and as the Commission is well aware, the LMP-based SMD day-ahead and real-time markets were introduced as New England’s “Market Rule 1”<sup>20</sup> on March 1, 2003, and provide a market-based approach to manage the efficient use of the transmission system when congestion occurs on the bulk power grid. Congestion arises when one or more restrictions on the transmission system prevent the economic, or least expensive, supply of energy from serving the demand. LMP includes the cost of supplying the more expensive electricity in those locations, thus providing a precise, market-based method for pricing energy that includes the “cost of congestion.” Unlike the original market in New England, in which there was only one energy clearing price for all of New England, under SMD, the ISO calculates prices at three types of locations: nodes, load zones and the hub. Offers and bids are submitted, markets settle, and LMPs are calculated at these locations.

Under SMD, prices are first calculated at more than 900 locations throughout New England called nodes, which represent places on the system where generators (such as the Graham Node on the PTF system to which Maine Independence Station is connected) inject power into the system or where load withdraws from the system. The nodal LMP consists of three components: energy, congestion and losses. The Congestion Component (*i.e.*, the transmission congestion cost) is calculated at a node and reflects the cost of delivering an additional increment of energy serving an additional increment of load at that node versus a delivery to servicing load at the reference bus whose price is reflected in the Energy Component of the LMP. The Congestion Component can also be negative in export-constrained areas where there is more generation than demand. The “Loss Component” is “the component of the nodal LMP at a given Node or External Node on the PTF that reflects the [marginal] cost of losses at

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<sup>20</sup> Market Rule 1 is Section III of the ISO Tariff.

that Node or External Node relative to the reference point.”<sup>21</sup> This component of the nodal LMP accounts for the *marginal* cost of losses of the next increment of load served at a location. If the system was entirely unconstrained and there were no losses, all of the LMPs would be equal and would reflect only the energy price of the marginal resource. The nodal LMP prices are paid to Resources such as Casco Bay’s Maine Independence Station.

In the pre-SMD market, loss and congestion costs were absorbed by all load, or demand, across the New England system, regardless of these customers’ location or contribution to the transmission constraint. Since no LMP markets were in place in New England in 1999, the year in which the Casco Bay TSA was negotiated and executed, it is manifestly clear that the terms of the Casco Bay TSA could not have provided a hedge against locational congestion or marginal loss charges to be imposed in a market that had not even been formulated or implemented in a tariff. For the same reason, neither could the MEPCO OATT in effect at the time, and under which the Casco Bay TSA was issued, have created such hedges. Casco Bay’s claim that MEPCO agreed to a hedge in 1999, well before anyone in New England even envisioned that the ISO would implement LMP with a Congestion Component some four years later, is simply untenable.

**2. There Is No Evidence in the Record Even *Suggesting* That the Casco Bay TSA Contains Language Creating a “Hedge” Against Congestion Charges, and the MEPCO Roll-in Proposal Creates No New Congestion Charges Against Which Casco Bay Must Be Protected Through a Hedge**

The October 29 Order is arbitrary, capricious, and not supported with substantial evidence with respect to its findings that: (i) the Casco Bay TSA provides a “hedge” against congestion charges (impliedly with respect to the treatment of Maine Independence Station’s

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<sup>21</sup> Section III.1 of the ISO Tariff.

output for purposes of the New England market system); and (ii) such a “hedge” is necessary to protect against new congestion charges inaugurated as part of the MEPCO roll-in.

First, the October 29 Order’s finding of a TSA-based congestion hedge relies *entirely* on a conclusory, unsupported and unsworn assertion contained in Casco Bay’s protest of the MEPCO Roll-in Proposal: as summarized in the October 29 Order, “Casco Bay explains that the Casco Bay TSA has provided benefits to Casco Bay in the form of a hedge against congestion.”<sup>22</sup> In turn, Casco Bay’s protest states – without citation or explanation – that “the Casco Bay TSA has provided benefits to Casco Bay in the form of a hedge against congestion between Orrington and Maine Yankee.”<sup>23</sup> The protest fails to cite *any language or provision* through which a congestion hedge is provided to Casco Bay in either the Casco Bay TSA or the MEPCO OATT under which the TSA was issued.<sup>24</sup> There is simply nothing in the record upon which the Commission may rely to find a hedge. Moreover, in these circumstances, as explained above in Section III.A, a finding of a congestion hedge violates Commission policy prohibiting the creation of a new right for existing customers in a tariff transition.

Second, there is no evidentiary support for the Commission’s finding that “Casco Bay will become subject to any new, altered or additional congestion charges post Roll-In, if it is not

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<sup>22</sup> October 29 Order at P 19.

<sup>23</sup> Casco Bay Protest at 4.

<sup>24</sup> *Atlantic City Elec. Co., et al.*, 77 FERC ¶ 61,144 (1996) (accepting, subject to additional revisions, the non-rate terms and conditions of MEPCO OATT in compliance with Order No. 888). The MEPCO OATT was unchanged from the date of Casco Bay TSA execution through the inauguration of the SMD markets in 2003 and until March 1, 2005. That is, the MEPCO OATT was not modified in response to the advent of locational congestion or marginal loss charges with the SMD markets and thus cannot be a source of a hedge.

provided with a grandfathering option.”<sup>25</sup> The nodal price of Casco Bay’s Maine Independence Station has been “subject to” a Congestion Component ever since the advent of the SMD markets. Neither Casco Bay nor the Commission points to any provision filed as part of the MEPCO Roll-in Proposal that would subject Casco Bay to some sort of new or altered congestion charges or calculation methodology for which a hedge is needed. Therefore, the finding is clearly unsupported as a matter of record.<sup>26</sup> Moreover, Casco Bay has never raised an objection with the ISO about being “subject to” congestion charges during the *four years* between the introduction of LMP markets and the formulation of the MEPCO Roll-in Proposal. Nor did Casco Bay protest the SMD market rules – when filed with the Commission by the ISO and NEPOOL in 2002 – as improperly failing to recognize a TSA-based congestion hedge.<sup>27</sup>

Casco Bay’s position that it is protected against LMP congestion charges is directly contradicted, moreover, by the language of the ISO OATT, which became applicable to Casco Bay once the MEPCO OATT was converted to ISO OATT Schedule 20B, effective March 28, 2005. Casco Bay became a “Transmission Customer” as defined in Section I.2.2 of the ISO Tariff at that time. As a Transmission Customer, Casco Bay was deemed to be taking service pursuant to the ISO OATT and therefore was subject to the provisions of Section II.41 of the ISO OATT, which provides in relevant part:

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<sup>25</sup> October 29 Order at P 40.

<sup>26</sup> *Id.* at P 40 (“Casco Bay will become subject to congestion charges post Roll-In, if it is not provided with a grandfathering option.”).

<sup>27</sup> Other entities actively commented and protested the SMD filing, seeking to protest assertedly pre-existing rights. *New England Power Pool and ISO New England Inc.*, 101 FERC ¶ 61,344 at PP 70-71 (2002) (summarizing requests to preserve certain allegedly pre-existing rights); *id.* at P 76 (rejecting those requests because the requests did not in fact involve pre-existing rights, but instead attempted to obtain new rights).

When Congestion exists, the Congestion Costs shall be reflected in Locational Marginal Prices calculated in accordance with Market Rule 1. *Congestion Cost shall be recovered from Transmission Customers taking service under the OATT pursuant to Market Rule 1.* (emphasis added)

Accordingly, assuming that Casco Bay's use of the service described in the Casco Bay TSA has been for transmission of the output of its Maine Independence Station, it was subject to the payment by Casco Bay of Congestion Costs pursuant to Market Rule 1 stemming from the units' injections into the PTF system at Graham Node, the location of the Maine Independence Station.

In summary, because no evidence of a hedge was offered by Casco Bay, and because no language in the Casco Bay TSA suggests a hedge, the Commission should grant rehearing. There is nothing in the MEPCO Roll-in Proposal that justifies creating a hedge where none existed in 1999 when the Casco Bay TSA was executed, nor in March 2003 when the LMP-based market was implemented, nor today prior to MEPCO's addition to PTF. The asserted hedge simply does not exist, and none is needed to protect against new or altered congestion charges or methodologies.

### **3. The Casco Bay TSA Does Not Provide a Hedge Against Losses**

The October 29 Order is arbitrary, capricious, and not supported with substantial evidence with respect to its finding that the Casco Bay TSA provides a "hedge" against marginal losses (impliedly with respect to the treatment of Maine Independence Station's output for purposes of the New England market system) calculated as an element of nodal pricing for generators under the ISO's Market Rule 1. As with the erroneous finding of a congestion hedge, the loss hedge is not supported by the record, and is based on Casco Bay assertions not reflected in the language of the Casco Bay TSA or other Commission-filed documents. Casco Bay cites no contractual or tariff provision in support of its assertion. In these circumstances, as explained

above in Section III.A, a finding of a loss hedge violates Commission policy prohibiting the creation of a new right for existing customers in a tariff transition.

The Casco Bay TSA is totally silent on the subject of marginal losses. Meanwhile, Section 26 of Schedule 20B (carried forward from a corresponding provision in the MEPCO OATT) to Section II of the ISO Tariff provides that Casco Bay can be subject to real power losses:

MEPCO is not obligated to provide Real Power Losses. Real power losses across the MEPCO Transmission System shall be allocated solely to Transmission Customers that use the MEPCO Transmission System. *The Transmission Customer will be responsible for the losses associated with MEPCO Transmission Service, in addition to any losses associated with other transmission service under the OATT.* The applicable Real Power Losses will be calculated according to procedures set by the Control Area Operator. In cases where the Control Area Operator does not allocate MEPCO losses, such losses shall be set at 2.8 percent in the direction of predominant power flow.<sup>28</sup>

Thus, by the terms of the filed and governing documents, Casco Bay has to date received no protection against losses on either the MEPCO transmission system or against locational marginal losses on the PTF system. In fact, as discussed above in Section III.A.1, neither MEPCO nor the ISO could not have provided Casco Bay a hedge against marginal losses at the time when the Casco Bay TSA was executed because the ISO did not implement its LMP-based system (in which energy prices include a locational Loss Component) until 2003.

It is possible that Casco Bay's assertions of a loss "hedge" spring from the fact (as discussed in the Informational Report) that it has not been charged for real power losses on the MEPCO system to date. It is also possible that Casco Bay's assertion of a loss "hedge" may

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<sup>28</sup> Emphasis added. To date, the ISO has not been responsible for the allocation of MEPCO losses.

stem from the fact that, until November 14, 2007, the ISO had been mapping the Loss Component of the Graham Node to the Maine Yankee Node. As a result of these two facts, Casco Bay's Maine Independence Station, which is interconnected to the Graham Node, has not been assessed any charges for losses over either the PTF system or the MEPCO facilities for the transmission of power from the Graham substation to the Maine Yankee substation.<sup>29</sup>

As described in the Informational Report, the ISO staff preparing the MEPCO Roll-in Proposal was not aware of this until it investigated the matter in response to comments made by Casco Bay during the stakeholder review process of the MEPCO Roll-in Proposal. On November 14, the ISO revised its network system model to map losses at the Graham Node in a manner consistent with its physical location on the PTF system (the "Loss Component Revision"). The ISO is filing contemporaneously with this rehearing request revised tariff sheets to hold Casco Bay "harmless" from the impacts of the Loss Component Revision, subject to refund and pending action on this rehearing request. Although the ISO has developed this mechanism to hold Casco Bay "harmless" in a manner it believes consistent with the intent of the October 29 Order, the ISO and MEPCO seek rehearing of this finding so that this new tariff provision providing Casco Bay with special and discriminatorily favorable treatment at the expense of other Market Participants may be removed.

Nevertheless, there is *no basis* in the Casco Bay TSA or Schedule 20B to provide Casco Bay a special hedge against losses. Like any other generator, it is subject to the Loss Component calculated at the point at which it is connected to the PTF system (*i.e.*, the Graham Node, and not the Maine Yankee Node).

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<sup>29</sup> Informational Report at 6.

**4. The October 29 Order Was Incorrect in Subjecting Casco Bay to the Same Scheduling and Curtailment Provisions as Other Grandfathered Agreements, and This Would Be Infeasible to Implement Within New England’s LMP-Based Market System, In Any Event**

The October 29 Order requires “the Filing Parties to provide Casco Bay a grandfathering option that will preserve all of Casco Bay’s existing rights, *with the exception that it will become subject to the same scheduling and curtailment provisions as other grandfathered agreements.*”<sup>30</sup>

The discussion above addresses the erroneous nature of the Commission’s finding of “existing rights.” The error is compounded by the requirement to apply scheduling and curtailment provisions reflected in “other grandfathered agreements.”

While it is possible that the Commission intended the ISO to treat the Casco Bay TSA in a manner analogous to grandfathered “internal” Excepted Transactions (such as those included in Attachment G to the OATT), such a result would mean that there would be no special scheduling or curtailment provisions for Casco Bay or its generator (the Maine Independence Station), with dispatch occurring on the basis of economics of Supply Offers. This would be the best reading, because the Maine Independence Station – as an internal generator – has always been treated as other internal generators, with no requirements for the submission of transmission schedules, etc. Indeed, to impose such a requirement would be detrimental to Casco Bay and operation of the Maine Independence Station.

Furthermore, there is no way for the ISO to provide Casco Bay special rights for internal transactions under the ISO’s system of financial, and not physical, transmission rights. The ISO provides Regional Network Service over PTF, pursuant to which the output of resources are

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<sup>30</sup> October 29 Order at P 41.

delivered over those facilities to load on the basis of economic-based generation dispatch.<sup>31</sup> Hence, the ISO OATT does not offer point-to-point service over PTF, nor does it contain any provisions to accommodate such service over PTF.<sup>32</sup> The Commission is mistaken, moreover, in its assertion that there is *internal* point-to-point service that can accommodate the continued implementation of the Casco Bay TSA. The Schedule 20B service to which the Commission points is *external* point-to-point service not offered over PTF or administered by the ISO. Similarly, the ISO's hardware and software that implements the ISO Tariff do not have the capability to accommodate point-to-point service over PTF. Under a bid-based financial market concept, internal transactions do not require separate transmission service beyond that offered under and covered by Regional Network Service. Thus, the October 29 Order can be read to arbitrarily and capriciously require the ISO to provide some sort of an internal physical transmission service that conflicts with its existing financial-based market system, without explaining how the ISO should implement it in a way that would respect its current ISO Tariff provisions. The October 29 Order also conflicts with the Commission's determination in Order

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<sup>31</sup> See *New England Power Pool and ISO New England Inc.*, 101 FERC ¶ 61,344 at PP 65-74 (2002) (recognizing the absence of physical rights for internal transactions as transactions internal to the ISO are scheduled on an economic basis rather than on the basis of physical scheduling priorities).

<sup>32</sup> See, e.g., *ISO New England Inc., Participating Transmission Owners, the Participating Transmission Owners Administrative Committee, Cross-Sound Cable Company, LLC, the Schedule 20A Service Providers, the Maine Electric Power Company Inc., and the New England Power Pool, Amendments to the ISO New England Inc. Transmission, Markets and Services Tariff in Compliance with Order No. 890, Docket No. ER08-54-000, Transmittal Letter at 18-19 (filed Oct. 11, 2007) ("ISO Order No. 890 Compliance Filing")* (explaining how the ISO generally does not provide point-to-point service as designed in the *pro forma* OATT). Certain limited point-to-point services continue to exist under the ISO-NE OATT for use of non-PTF facilities.

No. 890 to respect and leave in tact the financial transmission rights utilized by many ISOs and RTOs.<sup>33</sup>

**B. The Commission Erred in Prohibiting the Deletion of Schedule 20B, Because MEPCO Will No Longer Provide Transmission Service Pursuant to Schedule 20B, and Any Compliance Requirements Should Be Addressed in the Existing Body of the ISO OATT**

The Commission also erred in rejecting the Filing Parties' request to delete Schedule 20B. Specifically, the October 29 Order provides:

All parties electing grandfathered treatment who currently take transmission service under Schedule 20B will continue to be subject to the terms and conditions of Schedule 20B, except as modified for provisions regarding scheduling and curtailment, which will be provided for pursuant to the ISO-NE OATT. Customers electing grandfathered treatment will continue to receive point-to-point service under Schedule 20B until expiration of their existing agreements, and ISO-NE will be required to make the requisite Order No. 890 filings to modify its OATT under which transmission service for all existing customers is currently provided. Therefore, ISO-NE should not delete Schedule 20B in its entirety, and we direct ISO-NE to modify Schedule 20B in compliance with the provisions of Order No. 890.<sup>34</sup>

The August 16 Filing includes a proposal to delete Schedule 20B because MEPCO will not longer provide service to any customers pursuant to Schedule 20B once the MEPCO transmission facilities become PTF. Schedule 20B will become obsolete, because none of MEPCO's transmission customers will continue to receive Point-to-Point transmission service.

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<sup>33</sup> Order No. 890 at P 158 (acknowledging that “many ISOs and RTOs use bid-based locational markets and financial rights to address transmission congestion, rather than the first-come, first-served physical rights model set forth in the pro forma OATT,” and that “nothing in this rulemaking is intended to upset the market designs used by existing ISOs and RTOs”).

<sup>34</sup> October 29 Order at P 35; *see also id.* at P 37 (“As noted above, we will require ISO-NE to comply with all Order No. 890 requirements that affect the MEPCO tariff provisions applicable to grandfathered agreements.”).

The MEPCO Roll-in Proposal requires the ISO to provide MEPCO’s long-term firm customers – both external and internal – Regional Transmission Service over the MEPCO transmission facilities. This is true even for external customers electing grandfathered treatment (by obtaining a MEPCO Grandfathered Transmission Service Agreement, or “MGTSA”), for they will take Regional Transmission Service subject to the special scheduling and curtailment provisions of Sections II.44(a) and (b) of the ISO OATT accepted in the October 29 Order. The same is true for MEPCO’s sole long-term firm internal transmission customer (*i.e.*, Casco Bay). Regardless of whether the proposal were to provide an internal customer grandfathering option, Schedule 20B would be inapplicable. Thus, there is no purpose to maintaining Schedule 20B as a filed rate—particularly when it would not be made available to any new customers.

**C. The Commission Should Clarify that the Order No. 890 Compliance Requirements Imposed in the October 29 Order Can Be Accomplished in the Existing Main Body of the ISO OATT, and Need Not Be Incorporated in Schedule 20B**

In addition to rejecting the Filing Parties’ request to delete Schedule 20B in its entirety, the October 29 Order directs “ISO-NE to modify Schedule 20B in compliance with the provisions of Order No. 890.”<sup>35</sup> Although the ISO and MEPCO do not seek rehearing of the requirement to comply with the relevant Order No. 890 provisions, they seek clarification or, in the alternative, rehearing of the requirement that Schedule 20B be modified. The Commission should make clear that Schedule 20B need not be amended to incorporate the Order No. 890 compliance requirements. Instead, the ISO can simply amend the provisions in the main body of the ISO OATT (specifically, in Section II.45.1) that the October 29 Order found to conflict with

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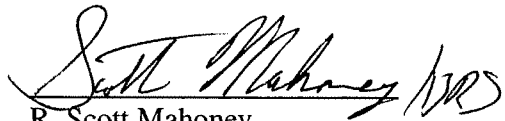
<sup>35</sup> October 29 Order at P 35.

Order No. 890. The remainder of the ISO OATT already has been amended to comply with Order No. 890.<sup>36</sup>

#### IV. CONCLUSION

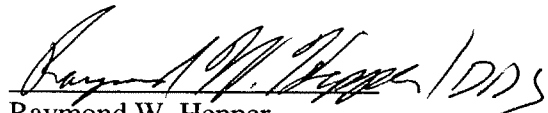
For the reasons stated herein, the ISO and MEPCO ask the Commission to grant the requested clarification and/or rehearing of the October 29 Order.

Respectfully submitted,



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November 28, 2007


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<sup>36</sup> See ISO Order No. 890 Compliance Filing.

**CERTIFICATE OF SERVICE**

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

Dated at Washington, D.C., this 28<sup>th</sup> day of November, 2007.



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