

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc.

Docket No. ER04-798-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS AS MODIFIED AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 15, 2004)

I. Introduction

1. On April 30, 2004, ISO New England, Inc. (ISO-NE) made a filing, pursuant to section 205 of the Federal Power Act (FPA),¹ requesting that the Commission: (1) accept proposed revisions to Market Rule 1 that clarify procedures for correcting day-ahead market results, to become effective May 1, 2004,² and (2) “take notice” that the ISO-NE is correcting day-ahead market results for April 19, 2004. As discussed below, we accept ISO-NE’s proposed revisions to Market Rule 1 as modified, suspend them for a nominal period, to become effective May 1, 2004, subject to refund, and set for hearing and settlement judge procedures ISO-NE’s authority to correct the day-ahead market results for April 19, 2004 and what that correction, if called for, would be. This order benefits customers by accepting improvements to New England’s day-ahead market and by promoting consistency with ISO-NE’s filed rate.

II. Background

2. ISO-NE states that, on April 18, 2004, as it processed the April 19 day-ahead market, the ISO-NE market administrators delayed the closing of the market to allow additional time to investigate the reasons for unusually high locational marginal prices.

¹ 16 U.S.C. § 824d (2000).

² We note that on June 28, 2004, New England Power Pool (NEPOOL) Participants Committee filed a request to treat ISO-NE’s proposed revisions to Market Rule 1 as having been jointly filed by NEPOOL and ISO-NE pursuant to section 205 of the FPA.

ISO-NE states that, after nearly two hours, the market administrators accepted the April 19 day-ahead market results after reviewing outage schedules, bid parameters, and other data and finding no apparent errors.

3. ISO-NE states, however, that subsequent investigation revealed that ISO-NE calculated incorrect prices for the April 19 day-ahead market due to errors in the transmission outage schedule database.³ ISO-NE estimates that the net effect of correcting the locational marginal prices for those participants with zonal load obligations is approximately \$11.7 million.

4. ISO-NE explains that it advised state and federal regulators of the problems with the April 19 day-ahead market results on April 20 and 21. In addition, ISO-NE states that it has worked with and advised its stakeholders, market participants and the NEPOOL Markets Committee about the errors.

5. ISO-NE states that it has determined that the April 19 day-ahead market results should be corrected to conform to the provisions of Market Rule 1. It argues that, if uncorrected, these prices will be unjust, unreasonable, inequitable, and inconsistent with the filed rate. Moreover, ISO-NE argues that leaving the April 19 day-ahead prices uncorrected could also have several indirect negative effects such as damaging confidence in the market and increasing risk premiums that are reflected in supply offers and, ultimately, market prices.

6. Further, ISO-NE states that, on April 27, 2004, it circulated proposed revisions to Market Rule 1, intended to address the problem prospectively and requesting comments from stakeholders. (At its June 11, 2004 meeting, the NEPOOL Participants Committee

³ Specifically, ISO-NE explains that:

First, the outage schedule database incorrectly included data indicating that two specific transmission outages would occur simultaneously due to a delay in the completion of one of the outages. In fact, these two transmission outages were scheduled to occur sequentially (*i.e.*, the first outage would end before the second outage commenced). Second, after correcting the outage scheduling error described above, [ISO-NE] identified a further error caused by the transposition of numbers. Numbers identifying which circuit breakers required outages were submitted by a satellite control center with transposed digits: the submitted and approved outage application identified Circuit Breakers 1235 and 1236, but should have been for Circuit Breakers 2135 and 2136 at the same substation.

approved by an 83.5 percent vote ISO-NE's proposed revisions.)

7. In the instant filing, ISO-NE has filed proposed revisions to Market Rule 1 that are intended to correct prospectively what ISO-NE believes to be errors in the day-ahead market results for an Operating Day due to database, software or similar errors of the ISO-NE or its systems. ISO-NE states that the proposed revisions incorporate changes to reflect some of the stakeholder concerns raised in comments. ISO-NE also informs the Commission that it is correcting the day-ahead market results for April 19.

III. Notice of Filing, Interventions, Comments and Protests

8. Notice of ISO-NE's filing was published in the *Federal Register*, 68 Fed. Reg. 27,911 (2004), with comments, interventions, and protests due on or before May 21, 2004 (later extended to June 28, 2004). Timely motions to intervene were filed by USGen New England, Inc., Constellation Power Source, Inc., and Fitchburg Gas and Electric Light Company and Unitil Energy Systems, Inc. Timely motions to intervene and comments in support of ISO-NE's filing were filed by Dominion Retail, Inc. and Dominion Energy Marketing, Inc. (jointly, Dominion), NRG Companies, Northeast Utilities Service Company (NUSCO), New Hampshire Electric Cooperative, Inc., New England Power Pool Participants Committee, NSTAR Electric & Gas Corporation (NSTAR), and TransCanada Power Marketing Ltd. Timely motions to intervene and protests were filed by Mirant Parties, PSEG Energy Resources & Trade LLC, Vermont Public Power Supply Authority, FPL Energy (FPL), LLC, PPL Parties (PPL),⁴ Citadel Energy Products, L.L.C. (Citadel), Coral Power, L.L.C., DC Energy, L.L.C., and New England Conference of Public Utilities Commissioners (NEPUC).

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Market Rule 1 Proposed Revisions

⁴ PPL EnergyPlus, LLC, PPL Wallingford Energy LLC, PPL Maine, LLC, and PPL Great Works, LLC.

1. ISO-NE Description

10. ISO-NE states that the proposed revisions to Market Rule 1 supplement existing section 2.9 of Market Rule 1 to reflect the need for accuracy, promptness, and certainty in price calculations – from the day-ahead to the real-time market.

a. Section 2.9(b)

11. ISO-NE proposes to add section 2.9(b) which provides that day-ahead market results are generally final when published. ISO-NE states, however, that if the ISO-NE determines, based on reasonable belief, that there may be one or more errors in the day-ahead market results for an Operating Day due to database, software or similar errors of the ISO-NE or its systems, the ISO-NE will post on the ISO-NE website, by no later than 10:00 a.m. of the applicable Operating Day (or 4:00 p.m. for Operating Days prior to May 1, 2004), a "flagging" notice that the results are provisional and subject to correction. ISO-NE states that under section 2.9(b), any day-ahead market results for which no notice is posted by 10:00 a.m. of the applicable Operating Day will be final and not subject to correction or other adjustment. It further states that it will make best efforts to confirm within three business days of the close of the applicable day-ahead market whether there was an error in any provisional day-ahead market results and will post a notice stating its findings.

12. ISO-NE argues that the use of a short window for error identification fosters the goal of price certainty and that price accuracy is protected because significant errors will not go undetected and uncorrected.

13. In addition, ISO-NE believes that a time-based threshold is a more appropriate threshold for flagging than a specific numeric trigger, such as a percentage or dollar deviation from typical day-ahead prices. It states that an appropriate single numeric trigger is difficult to establish when the range of types of errors could provide a variety of contexts for judging the impact of such errors. Furthermore, ISO-NE states that using a specific numeric trigger could have a potentially inequitable impact on a single market participant or a small group of market participants.

14. Also, ISO-NE states that its proposal corrects only its own errors, and does not provide for price correction due to market participant errors. In the ISO-NE's view, price correction based on asserted market participant errors is inadvisable. It states that in practice, where a participant seeking price correction claims to be injured through its own market "error," it will be difficult to distinguish whether the asserted error is truly an inadvertent mistake or instead stems from the participant's intentionally speculative behavior or flawed bidding strategies. In addition, ISO-NE states that protection of pecuniary interests could encourage a market participant to assert that it has made an error, whereas ISO-NE has no pecuniary interests to protect and can assess objectively

whether its own actions constitute an error. It observes that most participant errors appear to be self-correcting, as they tend to harm the participant that made the error. Thus, ISO-NE concludes that there are strong incentives to avoid such errors. Moreover, it asserts that the market offers tools such as price-sensitive demand bidding and other forms of virtual bidding that participants may use to protect themselves from various types of errors by other market participants. ISO-NE states that some risk-averse market participants may also choose to protect themselves through longer-term bilateral contracts that transfer risk to other market participants that are better able to manage, or more willing to bear, the risk.

b. Section 2.9(c)

15. ISO-NE states that, under proposed section 2.9(c), as soon as practicable after posting a notice confirming any errors in the day-ahead market results for an Operating Day (and prior to issuing any billing statements if feasible), ISO-NE will publish corrected day-ahead market results. It states that corrected day-ahead clearing prices will be posted in their normal, public form consistent with current market rules, and market participants will subsequently see individual results in their normal billing statements and settlement reports. ISO-NE states that it will also publish a statement describing the nature of any error and the method used to correct the results and that it will not publish confidential data relating to individual market participants.

16. ISO-NE asserts that while it is optimal to publish the corrected results quickly, as a practical matter it may take a number of days to identify the precise nature of the error and calculate the appropriate corrections. Therefore, it requests that the Commission accept an "as soon as practicable" standard - rather than imposing an unequivocal deadline.

c. Section 2.9(d)

17. ISO-NE states that proposed section 2.9(d) provides that if ISO-NE determines, in accordance with section 2.9(c), that the day-ahead market results for an Operating Day contain one or more errors, the ISO will calculate corrected day-ahead market results by determining and substituting (for the initial results) final results that reasonably reflect how the results would have been calculated but for the errors. It states that, to the extent that it is reasonably practicable and appropriate to do so, ISO-NE may specify an allocation of any costs that are not otherwise allocable under applicable provisions of Market Rule 1. ISO-NE explains that it will use the corrected results for purposes of settlement.

18. ISO-NE argues that, because the nature and impact of potential errors can vary widely, it is not feasible to express in the day-ahead proposal a specific price correction method that will be appropriate for all circumstances. Therefore, ISO-NE argues that a "but for" approach to recalculation premised on a reasonable reconstruction by the ISO is

appropriate. This approach would, for example, encompass resettlement of FTR target allocations affected by the correction of day-ahead market results.

d. Section 2.9(e)

19. ISO-NE states that for every change in the day-ahead market results made pursuant to section 2.9, ISO-NE will pursuant to proposed section 2.9(e) prepare and submit, as soon as practicable, an informational report to the Commission describing the nature of any errors, the precise remedy adopted, and the method of determining corrected prices and allocating any costs. ISO-NE also states that it will report on remedial actions taken to avoid similar errors in the future. ISO-NE argues that this section will ensure accountability of the ISO-NE for its corrections, remedial actions, and cost allocations arising from pricing-related errors.

2. Protests

20. Several protestors argue that ISO-NE's proposed revisions to Market Rule 1 should be rejected. They state that ISO-NE should not correct prices whenever it discovers that it has made an error in the day-ahead results. Protestors argue that giving ISO-NE such authority will result in instability and uncertainty which will directly and adversely affect market efficiency, predictability, and liquidity and will result in greater risk premiums for market participants. Moreover, protestors argue that it will not be possible to change generator unit commitments, forward transactions and financial market activities after the fact.

21. If the Commission were to accept ISO-NE's proposed revisions to Market Rule 1, however, protestors argue that certain provisions be modified. There is a difference of opinion among the protestors, though, as to the timing of when ISO-NE should notify market participants of a possible error, when should day-ahead market results be released after an error has been detected, and at what point correction to the day-ahead market results should be made. For instance, FPL suggests that if ISO-NE is unable to release what it believes are accurate results by 6:00 p.m. on the day prior to the Operating Day, ISO-NE should dispense with the day-ahead market results for the Operating Day and permit all settlements to occur based on real-time market results. PPL suggests that the time frame to flag any errors be shortened to 12:00 a.m. of the Operating Day, while Citadel argues that the deadline should be set during the evening immediately following the close of the day-ahead market.

22. Several protestors also raise concerns that the current proposal gives ISO-NE an open ended amount of time to fix day-ahead market results. Mirant states that rather than allowing ISO-NE to have three business days just to confirm that an error occurred, ISO-NE should use the three business days to correct the error and post the final results and details of the error. Citadel suggests that ISO-NE should be required to conduct its investigation and post a notice stating such findings and the final adjusted prices not more

than two business days after the day-ahead market in question. In general, the arguments for allowing less time than ISO-NE proposes, whether it is for the initial notification of an error or to correct day-ahead market results, are that it will provide more certainty to the market and limit changes to significant errors.

23. Many protestors argue that ISO-NE must more clearly articulate the criteria it will apply and types of errors that may result in “flagging” prices. In fact, VPPSA states that the proposed revisions may be unduly discriminatory or preferential, to the extent that they give ISO-NE control over whether faulty prices that resulted from a database or software error may be corrected and to the extent that they bar correction of pricing resulting from market participant errors that may reflect attempts at market manipulation.

24. Other suggestions by protestors include: (1) requiring ISO-NE to file an allocation methodology if there are costs left over after recalculating the day-ahead prices that are not otherwise allocable under the applicable provisions of Market Rule 1; (2) make appropriate changes to address the situation where an ISO-NE error causes the unit commitment schedule to be increased in error, resulting in unneeded operating uplift; (3) the submittal of any reports made in conjunction with section 2.9(e) within 15 days of the recalculation of the revised final day-ahead prices and that market participants should be allowed to comment and protest the results if the market participant believes that ISO-NE has committed an error in any part of the process; and (4) require ISO-NE to replace FTR auctions with a scheme that allocates FTRs to customers.

3. Commission Determination

25. The Commission views ISO-NE’s proposal, as modified below, as an effective and fair approach that balances the goals of price certainty and accuracy. The modifications discussed below are intended to provide a specific timeframe in which ISO-NE can correct day-ahead market results. This will alleviate prolonged uncertainty about the specific operating day results, and encourage ISO-NE to fix results in an efficient and timely manner.⁵

26. We order ISO-NE to make the following revisions in order to provide a more timely framework for correcting database, software, or other similar errors associated with Day Ahead Market results. Proposed section 2.9(b) of Market Rule 1 states that “the ISO shall make best efforts to confirm within three business days of the close of the applicable Day-Ahead Energy Market whether there was an error in any provisional Day-Ahead Energy Market results and shall post a notice stating its findings,” and proposed

⁵ We note that NEPOOL will submit, at a later date, a FPA section 205 filing proposing to clarify the language in section 2.9(d) of Market Rule 1 to provide that ISO-NE will only specify an allocation method for costs stemming from a correction of the day-ahead market results if such method is not already provided for in Market Rule 1.

section 2.9(c) states that “as soon as practicable after posting a notice confirming any errors in the Day-Ahead Energy market results for an Operating Day (and prior to issuing any billing statements if feasible) the ISO will publish corrected Day-Ahead Energy Market results.” We find that this language gives ISO-NE an open ended timeframe to confirm if an error has occurred and to publish the corrected results. Although we will allow ISO-NE to correct day-ahead market results in the situations provided for in the proposed revisions, the errors must be identified and corrected and the day-ahead market results re-posted within a specific timeframe to promote price certainty in the market. Therefore, we order ISO-NE to submit revised language that requires ISO-NE to confirm and correct errors and post corrected day-ahead market results within three business days of the applicable operating day in question, or the results of the day-ahead market for the operating day in question will stand.

27. In addition, we agree with the concerns raised by protesters that the 10:00 a.m. deadline to flag suspected errors is unreasonable. Consistent with our conclusion concerning the April 19 day-ahead market results addressed below, we will not accept changes once the operating day in question begins. The 10:00 a.m. deadline occurs ten hours into the operating day in question, and therefore any change at this point is considered unreasonably late, thus giving market participants inadequate notice of possible price corrections. To strike a balance between giving ISO-NE adequate time to flag errors and to ensure timely advance notice to market participants, we order ISO-NE to revise proposed section 2.9(a) to establish a 12:00 a.m. (prior to the start of the operating day in question) deadline to notify market participants that the day-ahead market results are provisional and subject to correction.

C. April 19 Day-Ahead Results

1. ISO-NE’s Arguments

28. ISO-NE argues that, because Market Rule 1 requires day-ahead prices to be calculated based on accurate information regarding scheduled transmission outages, the April 19 day-ahead market results must be corrected to adhere to the filed rate. Specifically, ISO-NE notes that section 2.3 of Market Rule 1 states that “[i]n calculating day-ahead prices, the [ISO-NE] shall base the system conditions on the expected transmission system configuration and the set of offers and bids submitted by Participants,”⁶ and that section 2.6 states that the day-ahead calculations “shall be made for each hour in the day-ahead energy market by applying a linear optimization method to minimize energy, congestion and transmission loss costs, given scheduled system conditions, *scheduled transmission outages, and any transmission limitations that may*

⁶ Market Rule 1, section 2.3.

exist.”⁷ ISO-NE states that day-ahead results that are based on a transmission outage configuration that was not actually scheduled, but that resulted from errors in the outage schedule database, do not conform to the requirements of Market Rule 1, and should be corrected. ISO-NE argues that the "expected system configuration" for April 19, 2004 should have reflected correct circuit breaker numbers, and should have considered the two outages in question as sequential, rather than simultaneous.

29. In addition, ISO-NE argues that correcting the April 19 day-ahead market results is consistent with Commission precedent regarding adherence to filed rates. ISO-NE states that the Commission has denied requests to limit ISO-NE’s authority to modify market prices to instances of data entry error or failures of market support technology,⁸ and that the Commission has stated that “the filed rate doctrine already provides the [ISO-NE] with the authority to correct errors in charging the filed rate.”⁹

30. Also, ISO-NE states that some market participants that benefited from the incorrect calculation of the April 19 day-ahead market results have cited portions of section 3.7.2 of Market Rule 1 to argue that the ISO is prohibited from correcting the results. Section 3.7.2 of Market Rule 1 states:

Calculations made by scheduling or dispatch software, operational decisions involving ISO discretion which affect scheduling or real-time operation, and the ISO's execution of mandatory dispatch directions, such as self-schedules or external contract conditions, are not subject to retroactive correction and resettlement. The ISO will settle and bill day-ahead market as actually scheduled and the real-time market as actually dispatched. Any post-settlement issues raised concerning operating decisions related to these markets will be corrected through revision of operations procedures and guidelines on a prospective basis.

31. ISO-NE differs with those market participants and argues that, when placed in context, section 3.7.2 is not intended as a bar to any correction of the April 19 day-ahead market results. In fact, ISO-NE argues that section 3.7.2 deals with the settlement and billing adjustment process, while the process for calculating day-ahead prices is set forth in section 2 of Market Rule 1. Further, ISO-NE states that the appropriate interpretation of section 3.7 is that the settlement and billing adjustment process is not the proper procedural forum for correcting price formation issues. It states that section 3.7 is

⁷ Market Rule 1, section 2.6 (emphasis added in ISO-NE’s filing).

⁸ *Citing* New England Power Pool and ISO New England, Inc., 100 FERC ¶ 61,287 at P 74 (2002).

⁹ ISO New England, Inc., 90 FERC ¶ 61,141 at 61,423-24 (2000).

intended to apply to adjustments that arise regarding the application of the settlement process itself (*e.g.*, adjustments concerning Operating Reserve eligibility and other calculations of charges and credits pursuant to the settlement process). The ISO-NE concludes that because the April 19 day-ahead market results have not gone to settlement, section 3.7.2 is not applicable.

2. Protests

32. Several protestors argue that the ISO-NE may not change the April 19 day-ahead market results on a *post hoc* basis because these results constitute the filed rate. They argue that Market Rule 1 requires settlement to be consistent with the actual day-ahead market schedule. Protestors explain that day-ahead energy prices are the product of the day-ahead market, which itself consists of the schedule under which market participants purchase and sell energy, pay congestion charges, and pay for system losses. In other words, protestors argue that the day-ahead prices calculated under section 2 of Market Rule 1 are the prices that will be used in section 3.7.2 for purposes of billing market participants and settlement. They also argue that section 3.7.2 of Market Rule 1 prohibits retroactive price correction in the day-ahead market and the revision of information submitted by market participants. Protestors argue that 3.7.2 prohibits ISO-NE from correcting calculations based on the alleged errors in its outage database, and ISO-NE must settle the day-ahead market for April 19 consistent with its schedule, whether or not ISO-NE formulated the applicable schedule with partially incorrect data.

33. In addition, protestors argue that provisions of section 1.10 of Market Rule 1 make it clear that, absent an emergency and notice, the day-ahead market must be posted by 4:00 p.m. on the day preceding the day of operations and that the resulting locational marginal prices are binding.

34. Also, protestors argue that Commission precedent does not support ISO-NE's proposal to correct the April 19 day-ahead market results. They assert that, although the Commission denied requests to limit ISO-NE's authority to modify market prices to instances of data entry error or failures of market support technology, this finding only applied to the calculations of real-time prices and not day-ahead prices and, further, only to lengthy delay in posting the real-time prices. With regard to ISO-NE's assertion that the Commission has stated that ISO-NE already possesses authority under the filed rate doctrine to "correct errors in charging the filed rate," protestors point out that this finding also applied only to the real-time market and that it was made in reference to the predecessor to Market Rule 1, Market Rule 15, which, unlike Market Rule 1, included provisions that provided specific, defined circumstances in which ISO-NE could correct prices.

3. Commission Determination

35. Section 2 of Market Rule 1 deals with the calculation of locational marginal prices and section 3 of Market Rule 1 deals with accounting and billing. As the protestors note, day-ahead prices are calculated pursuant to section 2. However, section 3.7.2 (quoted earlier) prohibits retroactive correction and resettlement of “[c]alculations made by scheduling or dispatch software, operational decisions involving ISO discretion which affect scheduling or real-time operation, and the ISO’s execution of mandatory dispatch directions, such as self-schedules or external contract conditions.” The errors at issue here were in the transmission outage schedule database used to calculate the day-ahead market results. It is not clear whether section 3.7.2 prohibits these errors from being corrected. Moreover, if these errors are not part of the “prohibited corrections” of section 3.7.2, it is not clear how the re-calculation of the day-ahead market results would proceed. Therefore, we will set these issues for hearing and settlement judge procedures, as discussed below.

D. Hearing Procedures

36. Our preliminary analysis indicates that ISO-NE’s filing has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept ISO-NE’s filing as modified, suspend it for a nominal period, make it effective May 1, 2004, as requested, subject to refund, and set the following issues for hearing and settlement judge procedures: (1) whether section 3.7.2 prohibits the correction of the day-ahead market results by correcting errors in the transmission outage schedule database; and (2) if such corrections are not prohibited, how the re-calculation of the day-ahead market results would proceed.

37. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief

¹⁰ 18 C.F.R. § 385.603 (2004).

¹¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission’s website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) ISO-NE's proposed revisions to Market Rule 1 are hereby accepted for filing as modified, suspended for a nominal period, to become effective May 1, 2004, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning: (1) whether section 3.7.2 prohibits the correction of the day-ahead market results by correcting errors in the transmission outage schedule database; and (2) if such corrections are not prohibited, how the re-calculation of the day-ahead market results would proceed. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.