

153 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Fore River Development, LLC
Mystic I, LLC
Mystic Development, LLC
Boston Generating, LLC
Constellation Mystic Power, LLC

Docket No. EC10-85-002

ORDER DENYING REHEARING

(Issued October 15, 2015)

1. On January 21, 2011, NSTAR Electric Company (NSTAR) filed a request for rehearing of the Commission's December 22, 2010 order¹ in this proceeding. As discussed below, we deny NSTAR's request for rehearing.

I. Background

2. On August 18, 2010, as supplemented on October 8, 2010,² Fore River Development, LLC, Mystic I, LLC, Mystic Development, LLC (Mystic Development), Boston Generating, LLC (collectively, the Boston Companies) and Constellation Mystic Power, LLC (Mystic Power) (together with the Boston Companies, Applicants) filed an application under section 203(a)(1) of the Federal Power Act (FPA)³ requesting Commission authorization for the Boston Companies to transfer to Constellation Holdings, Inc. or its designee, Mystic Power (collectively, Constellation), five generating

¹ *Fore River Dev., LLC*, 133 FERC ¶ 61,248 (2010) (December 22 Order).

² On September 24, 2010, Commission staff issued a deficiency letter in response to Applicants' filing. On October 8, 2010, Applicants filed their response to the deficiency letter that included a delivered price test (DPT) of the ISO New England Inc. (ISO-NE) market and the Connecticut submarket.

³ 16 U.S.C. § 824b (2012).

facilities, including associated electric interconnection facilities, and certain other assets (Transaction).⁴ The assets transferred pursuant to the Transaction included, among others, two 690.9 megawatt (MW) (summer) natural gas facilities owned by Mystic Development located in Everett, Massachusetts within the ISO-NE market (the Mystic Facilities).⁵

3. NSTAR protested the Application. It argued that both the Boston Companies and Constellation have a significant presence in the New England market, are rival sellers of power, and that the Transaction's elimination of one of the rivals could cause significant harm.⁶ It also alleged that Constellation avoided showing long-term contractual rights it had to ISO-NE capacity due to a technicality in the relationship between ISO-NE market structure and the Commission's market power analyses, the latter of which require capacity information under long-term contracts defined as a year or more in duration.⁷ NSTAR argued that because indirect retail load responsibilities through contracts with local distribution utilities are typically six months in duration in New England, Constellation would be able to satisfy its retail load responsibilities through back-to-back contracts defined as short-term for purposes of the Commission's market power analysis. According to NSTAR, Constellation could thus exercise control over a substantial share of the generating capacity in ISO-NE through direct ownership and contractual rights.⁸ NSTAR asked the Commission to subject approval of the Transaction to a list of conditions, which NSTAR stated were analogous to certain code of conduct conditions embodied in section 35.39 of the Commission's regulations (Proposed Conditions).⁹

⁴ August 18, 2010 Application at 1 (Application).

⁵ *Id.* at 4.

⁶ NSTAR Sept. 8, 2010 Protest at 6 (NSTAR Protest).

⁷ *Id.* at 8.

⁸ *Id.*

⁹ *Id.* at 7.

4. NSTAR also asked the Commission to assure compliance with the terms of a December 28, 2006 settlement agreement,¹⁰ which, according to NSTAR, bound the Boston Companies to address and remediate reliability issues associated with the Mystic Facilities.¹¹ NSTAR claimed that these reliability issues arise as a result of a common mode failure problem “involving the [Mystic Facilities’] gas supply from Distrigas of Massachusetts LLC . . . through a common header system that can cause the simultaneous tripping of both units” (common mode failure reliability condition).¹² It argued that this problem can increase the amount and cost-of-reserve requirements on Northeastern Massachusetts (NEMA) ratepayers, because ISO-NE must plan for the simultaneous outage of both units.¹³ NSTAR asked the Commission to condition its approval of the Transaction on Constellation’s acceptance of the Settlement Agreement obligations and the additional condition that the Transaction not eliminate the Boston Companies’ obligations to remediate the reliability issues.¹⁴

5. The Commission reviewed the Transaction under the Merger Policy Statement and authorized the Transaction as consistent with the public interest.¹⁵ The Commission found that the Transaction did not raise horizontal or vertical market power concerns, did

¹⁰ Mystic Development LLC, Settlement Agreement, Uncontested Offer of Settlement, Request for Expedited Approval, and Conditional Motion for Interim Rate Relief, Docket No. ER06-427-000 (filed Dec. 28, 2006) (Settlement Agreement). The Commission accepted the Settlement Agreement on February 21, 2007. *Mystic Dev. LLC*, 118 FERC ¶ 61,144 (2007).

¹¹ NSTAR Protest at 3-4.

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.* at 5-6.

¹⁵ See *Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008) (Supplemental Policy Statement). See also *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh’g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh’g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006). On January 4, 2011, Mystic Power informed the Commission that Applicants had consummated the Transaction.

not impair state or federal regulation, and did not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. The Commission found that the analysis submitted in Applicants' October 10, 2010 response to the deficiency letter was complete, accounted for all the generation that the Boston Companies and Constellation Holdings and its subsidiaries own or control in ISO-NE, and demonstrated that the Transaction would not create horizontal market power concerns.¹⁶ The Commission also stated that Applicants need not include in their analysis the short-term contracts described by NSTAR and that NSTAR had provided no evidence to support its allegations pertaining to those contracts.¹⁷ Additionally, the Commission found that, absent a showing of harm arising from the Transaction, the imposition of conditions on the Transaction was unnecessary.¹⁸

6. With regard to NSTAR's arguments concerning the Settlement Agreement, the Commission noted that under section II, Paragraph 19 of the Settlement Agreement the Settlement Agreement is "binding upon . . . the Parties and their successors and assigns, including any entity that purchases Mystic Unit 8 or 9."¹⁹ The Commission found that because the configuration of the plants and the common mode failure reliability condition pre-existed the Transaction, the Transaction would not affect the status quo. The Commission concluded that there were no grounds for establishing additional requirements.²⁰

II. Request for Rehearing

7. In its request for rehearing, NSTAR asserts that the December 22 Order aggrieves NSTAR by its refusal to require Constellation to initiate correction of the common mode failure reliability condition. With regard to "Constellation's incentive and ability to exploit the common mode failure reliability condition," NSTAR argues that the Commission erred by: (1) determining that "[c]onsummation of the . . . Transaction would not affect the status quo, and thus there are no grounds for establishing requirements beyond those that currently exist,"²¹ (2) relying on Constellation's market

¹⁶ December 22 Order, 133 FERC ¶ 61,248 at PP 27-28.

¹⁷ *Id.* P 29 n.38 (citing 18 C.F.R. § 33.3(c)(4)(i)(A)).

¹⁸ *Id.* P 30.

¹⁹ *Id.* P 44 (citing Settlement Agreement at P 19).

²⁰ December 22 Order, 133 FERC ¶ 61,248 at P 44.

²¹ NSTAR Rehearing Request at 6 (citing December 22 Order, 133 FERC ¶ 61,248 at P 44).

power analyses showing a lack of concentration in the New England generation markets as a whole;²² and (3) failing to recognize that Constellation, not NSTAR, has the burden of proof. NSTAR also asserts that the Commission erred in the December 22 Order because it erroneously refused to adopt the Proposed Conditions, which, NSTAR argues, are the minimal conditions necessary to protect the public interest.

8. With regard to its contention that the Commission was incorrect in finding that the Transaction would not change the status quo, NSTAR argues that “[t]he principal error in the December 22 Order is its failure to recognize that the Transaction changes the status quo and gives rise to the Commission’s [s]ection 203 authority to protect the public interest.”²³ According to NSTAR, before the Transaction, the Boston Companies had a restricted role in the New England generation and wholesale sales markets and an extremely limited or non-existent incentive and ability to manipulate the common mode failure reliability condition to their commercial advantage. NSTAR asserts that, in contrast, Constellation is a major participant in all facets of New England’s power sales market.²⁴

9. To support this assertion, NSTAR states that it estimated that Constellation’s presence in the New England market through long-term and short-term power entitlements could include as much as 6,180 MW representing approximately 19 percent of the ISO-NE installed capacity of 32,000 MW.²⁵ NSTAR contends that “Constellation would obviously have the ability to focus a large amount of this market power on NEMA/Boston.”²⁶ NSTAR reasons that the change in the status quo “is both obvious and proved in the record.”²⁷ NSTAR adds that the Commission’s finding of a continuation of the status quo may be based on the fact that the common mode failure reliability condition pre-dates and is not created by the Transaction. According to NSTAR such rationale would be mistaken, because in its view, the status quo change does not stem from a change in the physical characteristics of the common mode failure reliability condition but from the change of ownership of the Mystic Facilities from the Boston Companies to Constellation.

²² *Id.*

²³ *Id.* at 9.

²⁴ *Id.*

²⁵ *Id.* at 10.

²⁶ *Id.*

²⁷ *Id.*

10. Next, in support of its allegation that the Commission's reliance on the market power analysis provided by Constellation was misplaced, NSTAR states that the market manipulation made possible by the Transaction "has nothing to do with market conditions outside NEMA/Boston."²⁸ NSTAR contends that "Constellation never provided any effective rebuttal to NSTAR's NEMA/Boston contentions."²⁹ According to NSTAR, the December 22 Order found that short-term entitlements need not be included in the competitive screen analysis required by the Commission's merger regulations.³⁰ NSTAR asserts that this "ruling is correct, but not relevant to NSTAR's contentions which do not focus on the New England market as a whole but on the common mode reliability condition and its NEMA/Boston impacts."³¹

11. In addition, NSTAR asserts that in the December 22 Order, the Commission "faults NSTAR for having 'provided no evidence to support its allegations pertaining to these [Constellation's] contracts.'"³² NSTAR contends that it satisfactorily discharged whatever burdens it has and that Constellation, not NSTAR, has the burden of proof, "which is not satisfied by evidence showing [that Constellation] lacks market power in the market as a whole."³³ NSTAR also argues that Constellation has the burden of proof because it has private and exclusive knowledge of its contracts, which are not available to NSTAR and that Constellation is "the proponent of the Transaction and therefore has the obligation to prove the consistency of the Transaction with the public interest in a reliable and reasonably priced power supply."³⁴

12. NSTAR also asserts that the December 22 Order apparently compartmentalized and segregated NSTAR's common mode failure and reliability contentions and its market power contentions when NSTAR never intended such a separation.³⁵ NSTAR states that it has "always had as its primary objective correction of the [common mode failure] reliability condition, and has always regarded as its principal concern Constellation's

²⁸ *Id.* at 6.

²⁹ *Id.* at 11.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* (citing December 22 Order, 133 FERC ¶ 61,248 at P 29 n.38).

³³ *Id.*

³⁴ *Id.* at 12.

³⁵ *Id.*

ability to exercise market power to exploit the [common mode failure] reliability condition within NEMA/Boston.”³⁶ Additionally, NSTAR states that Constellation may lack the ability to exercise market power in New England as a whole, but Constellation has failed to prove its inability to manipulate the price of power within the narrow confines of NEMA/Boston.³⁷

13. Regarding its assertion that the Commission erred by not adopting the Proposed Conditions, NSTAR argues that the Commission routinely adopts conditions so that otherwise unlawful transactions will be consistent with the public interest. Specifically, NSTAR states that in approving the Transaction, the Commission should have adopted the following Proposed Conditions:

- i. Retention of Commission jurisdiction over the Transaction for the specific purpose of evaluating Constellation’s progress toward correction of the common mode failure reliability condition;
- ii. Constellation’s submission to the Commission within 12 months of the rehearing order of a detailed report on the common mode failure reliability condition reflecting ISO-NE’s, NSTAR’s, and its own views and recommendations analyzing options and costs for correcting the condition, and proposing corrective action or justifying its view that no action should be taken;
- iii. Establishment of a period for affected parties to comment on Constellation’s submission;
- iv. Issuance of a Commission order within a reasonable period following the close of the comment period providing such relief as to the common mode failure reliability condition as the Commission deems appropriate and necessary to protect the public interest; and
- v. As interim relief until either issuance of a Commission order or correction of the common mode failure reliability condition, in order to ensure fair and competitive practices while the common mode failure reliability condition exists, require Constellation to operate the generation acquired as a result of the Transaction separately and independently from its other New England businesses.^[38]

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 5.

14. According to NSTAR, the Proposed Conditions would create a process that would result in the definitive resolution of the common mode failure reliability condition and thereby eliminate the detriment to the public interest resulting from the Transaction.³⁹ NSTAR adds that the design and structure of the Proposed Conditions protect Constellation from any unreasonable burdens and deprive Constellation of any justifiable objection to those conditions.

15. NSTAR requests that the Commission grant its request for rehearing “to determine that the Transaction harms the public interest in a reliable and reasonably priced electric supply in the NEMA/Boston area” and “to require correction of that harm through adoption of the five [Proposed Conditions].”⁴⁰

III. Discussion

A. Procedural Matters

16. On June 3, 2011, NSTAR filed a letter to inform the Commission that a common mode failure reliability condition event occurred on April 22, 2011. On June 20, 2011, Mystic Power filed a letter requesting that the Commission disregard NSTAR’s June 3, 2011 letter.

17. Rule 713(d) of the Commission’s Rules of Practice and Procedure prohibits answers to requests for rehearing.⁴¹ Therefore, we will reject NSTAR’s June 3, 2011 letter and Mystic Power’s June 20, 2011 letter.

B. Substantive Matters

18. On rehearing, NSTAR takes issue with the use of the ISO-NE generation market in Constellation’s market power analyses, the Commission’s statement regarding NSTAR’s failure to provide evidence for its allegations concerning Constellation’s contracts, the Commission’s determination that the Transaction would not affect the status quo, and the Commission’s determination that the Proposed Conditions were unnecessary for approval of the Application. For the reasons discussed below, we deny rehearing.

³⁹ *Id.* at 13.

⁴⁰ *Id.* at 17.

⁴¹ 18 C.F.R. § 385.713(d) (2015).

19. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.⁴² FPA section 203(a)(4) also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."⁴³ In the December 22 Order, the Commission reviewed the Transaction under this framework and found it to be consistent with the public interest.

20. NSTAR argues that the Commission mistakenly relied on market power analyses of the ISO-NE market as a whole. As noted, the first factor of the Commission's analysis examines a proposed transaction's effect on competition. Under this analysis, the Commission determines whether the proposed transaction raises any horizontal market power concerns. The Commission's long established method for analyzing horizontal market power effects resulting from the consummation of an FPA section 203 transaction is set forth in Appendix A of the Merger Policy Statement. There the Commission detailed a "standard analytic method . . . to allow [it] to quickly determine whether a proposed [203 transaction] presents market power concerns."⁴⁴ To demonstrate that a transaction is consistent with the public interest, applicants under FPA section 203 typically perform an Appendix A analysis that includes a DPT to determine the pre- and post-transaction market shares from which the market concentration or Herfindahl-Hirschman Index (HHI) change can be derived.⁴⁵ Where the DPT guidelines adopted for analyzing horizontal competition "are not exceeded, no further analysis need be provided in the application."⁴⁶

⁴² Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

⁴³ 16 U.S.C. § 824b(a)(4) (2012).

⁴⁴ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,128.

⁴⁵ *Id.* at 30,129; *see also Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109 (2012) (affirming the Commission's use of the thresholds adopted in the Merger Policy Statement).

⁴⁶ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,120.

21. In the October 8, 2010 supplement to the Application, Applicants properly complied with these guidelines by submitting a DPT analysis of the relevant geographic market, ISO-NE, including an analysis of the Connecticut submarket to take into account a planned 620 MW combined-cycle facility that was not yet operational at the time. Applicants analyzed these geographic markets because Applicants' generation overlap only occurred in these markets.⁴⁷ Based upon this analysis, the Commission determined that the Transaction would not create horizontal market power concerns because the post-transaction markets remain unconcentrated in all periods except the summer off-peak period of the Connecticut submarket analysis, and the HHI changes resulting from the Transaction were well below the Commission's thresholds. Consequently, the Commission found that no further analysis was necessary.⁴⁸

22. Regarding NSTAR's contention that the Commission erroneously relied on evidence "related to the ISO-NE market as a whole as opposed to NEMA/Boston," NSTAR appears to be arguing that the Commission should have considered NEMA/Boston the relevant geographic market for the Applicants to use in their DPT analysis.⁴⁹ However, NSTAR did not propose the use of NEMA/Boston as the relevant geographic market in its protest or in response to Applicants' DPT analysis. The Commission looks with disfavor on parties raising issues for the first time on rehearing because other parties are not permitted to respond to a request for rehearing.⁵⁰ In any event, there is nothing in the record to support using anything other than the ISO-NE market. When the assets combined pursuant to an FPA section 203 transaction are located in a regional transmission organization (RTO) or Independent System Operator (ISO), the Commission will typically consider the geographic region under the control of the RTO/ISO as the default relevant geographic market for the purposes of the Appendix A analysis "unless the Commission already has found the existence of a submarket."⁵¹

⁴⁷ December 22 Order, 133 FERC ¶ 61,248 at P 28.

⁴⁸ *Id.* P 29.

⁴⁹ NSTAR Rehearing Request at 7.

⁵⁰ *Calpine Oneta Power, L.P. v. American Elect. Power Serv. Corp.*, 114 FERC ¶ 61,030, at P 7 (2006); 18 C.F.R. § 385.713(d) (2015).

⁵¹ *See Wis. Energy Corp.*, 151 FERC ¶ 61,015, at P 35 (2015) (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 235, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom.*

(continued...)

Proposals to use an alternative geographic market, such as NEMA/Boston, must include a demonstration regarding whether there are frequently binding transmission constraints during historical seasonal peaks and other competitively significant times that prevent competing supply from reaching customers within the proposed alternative geographic market.⁵² This demonstration can be made by providing evidence of binding transmission constraints and/or price separation data.⁵³ Thus, even if NSTAR had proposed an alternate geographic market, which it did not, it would have been required to provide evidence of such an alternative market. NSTAR provided no such evidence. Consequently, we affirm the finding that Applicants' DPT analyses satisfactorily demonstrated that the Transaction would have no adverse effect on competition.

23. In addition, we disagree with NSTAR that the Commission erred in finding that NSTAR failed to provide evidence for its allegation concerning Constellation's short-term contracts. NSTAR is correct that Applicants, who are the proponents of their application under section 203(a)(1), must demonstrate that the Transaction is consistent with the public interest, in accordance with the Merger Policy Statement and the Commission's regulations. However, as NSTAR acknowledges, the Commission's regulations do not require the inclusion of short-term contracts in an applicant's analysis,⁵⁴ which is what NSTAR argued for in its protest.⁵⁵ The Commission noted that

Mont. Consumer Counsel v. FERC, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012)).

⁵² *Exelon Corp.*, 138 FERC ¶ 61,167, at P 32 (2012); *see also Ameren Energy Generating Co.*, 145 FERC ¶ 61,034, at P 55 (2013); *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 52 (2010) (*First Energy*).

⁵³ *See FirstEnergy Corp.*, 133 FERC ¶ 61,222 at P 52.

⁵⁴ 18 C.F.R. § 33.3(c)(4)(i)(A) (2015). Section 33.3(c)(4)(i)(A) provides, in relevant part:

Economic capacity means the amount of generating capacity owned or controlled by a potential supplier with variable costs low enough that energy from such capacity could be economically delivered to the destination market. Prior to applying the delivered price test, the generating capacity meeting this definition must be adjusted by subtracting capacity committed under long-term firm sales contracts and adding capacity acquired under long-term firm purchase contracts (i.e., contracts with a remaining commitment of more than one year).

⁵⁵ NSTAR Protest at 7-8.

“Applicants state that their analysis included all capacity that the Boston Companies own in ISO-NE and all the generation that Mystic Power and its affiliates own or control under long-term purchase contract in ISO-NE,”⁵⁶ and that they “need not include in their analysis the short-term contracts described by NSTAR.”⁵⁷ Accordingly, by providing an analysis consistent with the Commission’s policies and regulations, Applicants satisfied their burden of proof to demonstrate that the Transaction would have no adverse effect on competition. On the other hand, NSTAR provided no evidence to support its allegation that “Constellation could through direct ownership and contract rights exercise control over a very substantial share of ISO-NE generating capacity” sufficient to require the Commission to consider contracts for capacity with remaining commitments of under one year, contrary to the Commission’s regulations.⁵⁸

24. With regard to NSTAR’s argument that the Commission erroneously found that the Transaction would not affect the status quo, we find that NSTAR misconstrues the Commission’s statement. NSTAR asserts that the Commission erred by determining that consummation of the Transaction would not affect the status quo.⁵⁹ According to NSTAR, the change in the status quo stems from the change of ownership of the Mystic Facilities, which NSTAR contends enables Constellation to exercise market power within NEMA/Boston. NSTAR misconstrues the Commission’s determination, which directly addressed NSTAR’s request that the Commission ensure that Constellation would be bound by the terms of the Settlement Agreement.⁶⁰ We affirm the Commission’s determination that, by its terms, the Settlement Agreement is “binding upon . . . the Parties and their successors and assigns” and thus, in this regard, the Transaction did not affect the status quo.⁶¹ Furthermore, we find NSTAR’s argument that the change in

⁵⁶ December 22 Order, 133 FERC ¶ 61,248 at P 29.

⁵⁷ *Id.* n.38.

⁵⁸ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,119 (“Unsupported, general claims of harm are insufficient grounds to warrant further investigation of an otherwise comprehensive analysis developed by the applicants. Intervenors may also file competitive analysis, accompanied by appropriate data, to support their arguments”).

⁵⁹ NSTAR Rehearing Request at 6, 9 (citing December 22 Order, 133 FERC ¶ 61,248 at P 44).

⁶⁰ December 22 Order, 133 FERC ¶ 61,248 at PP 40-41 (citing NSTAR Protest at 5-6).

⁶¹ *Id.* P 44 (citing Settlement Agreement at P 19).

ownership of the Mystic Facilities changed the status quo to enable Constellation to have “the ability to focus a large amount of this market power on NEMA/Boston,”⁶² to be a continuation of its arguments about the Transaction’s effect on competition, which we have addressed above.

25. Finally, NSTAR asserts that the Commission erroneously failed to impose the Proposed Conditions to “create a process that would result in the definitive resolution of the common mode failure reliability condition.”⁶³ We affirm, however, that imposing conditions, such as those NSTAR proposed in its protest, are unnecessary. The Commission evaluated the Transaction under the requirements of section 203(a)(1) of the FPA and the Merger Policy Statement and found Applicants’ supporting evidence to be sufficient to determine that the Transaction was consistent with the public interest. NSTAR has presented no argument to support reconsideration of that determination, and as the Commission found in the December 22 Order, the Proposed Conditions, which address the common mode reliability condition, are irrelevant to our analysis under section 203 of the FPA.⁶⁴ Accordingly, we deny rehearing.

The Commission orders:

NSTAR’s request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶² NSTAR Rehearing Request at 10.

⁶³ *Id.* at 13.

⁶⁴ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,127; *see also SUEZ Energy North America, Inc.*, 125 FERC ¶ 61,188, at P 46 (2008) (stating that issues related to hydroelectric relicensing proceedings are wholly separate from, and unrelated to, the Commission’s section 203 analysis).