UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc. **)** **Docket No. EL00-62-004*, et al.***

ANSWER OF VERMONT DEPARTMENT OF PUBLIC SERVICE AND MAINE PUBLIC UTILITIES COMMISSION IN SUPPORT OF REQUEST OF NRG POWER MARKETING INC. AND AFFILIATED COMPANIES FOR CLARIFICATION

In accordance with Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.213 (2000), the Vermont Department of Public Service ("VDPS") and the Maine Public Utilities Commission ("MPUC") hereby answer in support of the July 13, 2001 Request of NRG Power Marketing Inc. and Affiliated Companies for Clarification of Order ("NRG Motion") in the captioned proceeding. As set forth below, the Commission should grant NRG's request and clarify that the Commission's June 13, 2001 Order, *ISO New England Inc.*, 95 FERC ¶ 61,384 (2001) ("June 13 Order"), requires that interim transmission uplift costs be allocated first to the reliability regions where the congestion arises, and then allocated within each region based upon electrical load. As discussed below, the requested clarification is consistent with the Commission's previous finding in this docket that socialization of congestion costs is inappropriate. Further, adoption of the allocation approach supported by NRG will not unreasonably burden ISO New England Inc. ("ISO-NE" or "the ISO") because, according to NRG, the method can be implemented using existing ISO data.

I. BACKGROUND

In its June 13 Order, the Commission addressed, *inter alia*, the proper method for allocating and billing interim uplift costs. *See ISO New England Inc.*, 95 FERC at 62,428-30 The Commission

recognized two types of interim uplift costs: transmission-related uplift costs and energy-related uplift costs. *Id.* at 62,429. The Commission found that transmission-related uplift should continue to be allocated on the basis of electrical load, while finding that energy-related uplift should be allocated on the basis of a modified definition of electrical load that excludes loads not served by ISO-NE's energy markets. *Id.*

NRG's Motion focuses on the Commission's conclusion regarding allocation of transmission-related uplift. NRG requests clarification that interim transmission uplift costs be allocated first to the reliability regions where the congestion arises, and then allocated within each region based upon electrical load. NRG Motion at 2. NRG argues that allocation of congestion costs to the regions causing such costs: (i) is consistent with the Commission's cost causation principles; (ii) sends proper market signals to encourage construction of generation and transmission expansion; (iii) is possible to calculate using existing ISO-produced data; and (iv) is not inconsistent with allocating costs based upon electrical load. *See id.* at 2-4.

II. ANSWER

The Commission should grant the clarification requested by NRG. NRG is correct in observing that allocation of uplift costs to the regions that cause such costs is consistent with the Commission's cost causation principles. Indeed, in its June 28, 2000 Order in this proceeding, the Commission specifically explained that:

> [I]t is essential that the ISO implement a new CMS that relies on market mechanisms to establish price signals that will serve to allocate constrained transmission to the highest valued users and give generation an incentive to locate in appropriate areas. Given the circumstances in New England, *socialization of congestion costs does not send correct price signals* to transmission customers or market participants for the siting of new transmission facilities or new generation.

ISO New England Inc., 91 FERC ¶ 61,311 at 62,072 (2000) (emphasis added). Allocation of transmission-related uplift costs to the reliability regions that cause such costs will avoid the unfair socialization of costs and send the proper market signals to provide incentives for the construction of new generation and transmission.

VDPS/MPUC recognize that the Commission has previously denied requests that interim uplift costs be allocated first to the reliability regions where the congestion arises. The Commission's primary reason for deferring on this issue, however, was a concern that the ISO not be required to divert resources away from development of a permanent CMS/MSS proposal. *See ISO New England*, 91 FERC at 62,072. As NRG observes, however, ISO-NE's proposed implementation date of CMS/MSS has been chronically delayed, with the latest estimate no sooner that the first quarter of 2004. NRG cogently argues that "[t]he ISO-NE's 'interim' allocation methodology has become, as a practical matter, a semi-permanent feature." NRG Motion at 3. Further, NRG explains that only minimal ISO resources would have to be devoted to allocating transmission uplift costs to reliability regions because this allocation can be calculated using existing ISO-produced data. *Id.* at 4. Thus, given the Commission's previous findings that socialization of congestion costs is inappropriate, the now "semi-permanent" nature of the use of such an approach, and NRG's contention that implementation of a more reasonable approach would require minimal resources, the Commission should clarify that transmission uplift costs be allocated first to the reliability regions where the congestion arises.

MPUC/VDPS submit that neither the recent proposals by ISO and NEPOOL to implement a Standard Market Design ("SMD") nor the Commission's recently-mandated RTO mediation procedures obviate the need for the clarification sought by NRG and supported herein by MPUC/VDPS. In this regard, the Commission has now dismissed as moot the filings by NEPOOL and

ISO-NE proposing SMD. *See New England Power Pool, et al.*, 96 FERC ¶ 61,100 (July 25, 2001). The basis for this ruling was the implementation of the Northeast RTO mediation procedures. *Id.* Even if successful, however, the results of the Northeast RTO mediation will not be known, let alone implemented, for some time. In the meantime, the Commission must ensure that the interim market mechanisms, such as those for allocating interim transmission-related uplift costs, are just and reasonable. The Commission can meet this requirement here by granting the clarification requested by NRG.

WHEREFORE, the Commission should grant the request of NRG and its affiliated companies for clarification in the captioned docket, as discussed herein.

Respectfully submitted,

By: _____

Lisa Fink
State of Maine
Public Utilities Commission
242 State Street
18 State House Station
Augusta, ME 04333-0018
(207) 287-1389

Attorney for Maine Public Utilities Commission

Harvey L. Reiter
John E. McCaffrey
MORRISON & HECKER L.L.P.
1150 18th Street, N.W.
Suite 800
Washington, DC 20036
(202) 785-9100
(202) 785-9163 (fax)

Attorneys for Maine Public Utilities Commission and Vermont Department of Public Service