

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

**New England Power Pool                    )**                   **Docket No. ER02-2330-016**  
**and ISO New England Inc.            )**

**PROTEST OF THE MAINE PUBLIC UTILITIES COMMISSION**

On July 7, 2003, the New England Power Pool (NEPOOL) and ISO New England (ISO-NE) filed a joint Report of Compliance in response to the Commission’s June 6, 2003 Order. *New England Power Pool*, 103 FERC ¶ 61,304 (2002)(June 6 Order). In accordance with Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), and the July 10, 2003 Notice of Filing, the Maine Public Utilities Commission (MPUC) protests the Report of Compliance. We also will protest NEPOOL’s proposed transmission cost allocation methodology when it is filed at the Commission. As discussed below, the actions taken by ISO-NE and NEPOOL fail to comply with the Commission’s June 6, 2003 Order or prior orders.

**I. Background**

On June 28, 2000, the Commission issued an Order Conditionally Accepting Congestion Management and Multi-Settlement Systems. *ISO New England, Inc.* 91 FERC ¶ 61,311 (2000) (June 28 Order). Among other things, the Commission:

- directed the ISO to explore ways to implement LMP more quickly than its projected implementation time frame which would have had LMP in place between January and June 2002.
- directed ISO to file a revised default allocation mechanism for the costs of transmission expansion that assigns cost of upgrades to those who benefit to the extent they can be identified whether an upgrade is classified as an “economic” or a “reliability” upgrade.

In a subsequent order, the Commission found that NEPOOL had failed to comply with the Commission's June 28 Order regarding a transmission cost allocation methodology that allocated costs of transmission upgrades to those who benefited from the upgrade assuming beneficiaries can be identified. It stated:

The June 28 Order required ISO-NE to assign expansion costs to those parties who benefit from their expenditure, to the extent those parties can be identified. For costs that cannot be directly assigned, we directed ISO-NE (or NEPOOL) to develop an objective, non-discriminatory default mechanism for allocating transmission and expansion costs similar to the mechanism now in place for PJM.

NEPOOL in its compliance filing, *continues to insist that any cost associated with a quick fix project or a NEMA upgrade will automatically be regarded as a pool-wide expense that cannot be directly assigned. We reject NEPOOL's classifications as unsupported according to the principles in the June 28 Order.* NEPOOL describes quick fix projects and NEMA upgrades as projects that typically promote reliability by reducing the likelihood of congestion on its system. *NEPOOL does not explain how the NEMA and quick fix projects provide system-wide benefits that cannot be directly assigned to beneficiaries, nor does it explain how assigning costs for NEMA and quick fix projects to the pool corresponds to an objective, nondiscriminatory default cost allocation mechanism.*

*ISO New England*, 95 FERC ¶ 61,384 at P. 62,439 (2001) (emphasis added). The Commission directed NEPOOL to make a filing that is compliant with the June 28 Order. *Id.*

In spite of this language, NEPOOL persisted in incorporating the socialization of transmission upgrades in its compliance filing. The Commission accepted this socialization *on an interim basis only until the implementation of LMP*, and acknowledged that socialization of the costs of all transmission projects classified as *PTF* is inconsistent with a an LMP pricing methodology:

NEPOOL has chosen to use the distinction between PTF and non-PTF facilities as its default cost allocation mechanism. This is not identical to the mechanism used in PJM, but it is not entirely dissimilar.

*Further, the Commission is mindful that whatever mechanism is selected for New England now, that mechanism will be superseded once a standard market design is applied to the future Northeastern RTO. Thus, for this interim period until that market design is put into place, the Commission will accept NEPOOL's distinction between PTF and non-PTF facilities as a default cost allocation method for upgrades. The Commission recognizes that, as TransEnergy points out, this mechanism does not send price signals that would encourage the siting of new generation in congested areas. For this interim period until the development of a standard market design for the Northeast, however, all congestion costs will be socialized in any case: the financial incentive to site new generation in congested areas will not become meaningful until the imposition of LMP begins to allocate the costs of congestion to the parties who cause it. Thus, LMP and an appropriate default cost allocation method go hand in hand to use market forces to relieve congestion, and since we are currently in an interim period until LMP can be fully developed for New England, it makes sense also to accept NEPOOL's proposed PTF/non-PTF distinction solely for that same interim period.*

As to quick fixes and NEMA upgrades, *given that the Commission is now revisiting this particular issue for the third time*, what has become apparent is that (a) NEPOOL and/or ISO-NE are unwilling or unable to state any more clearly than they already have why quick-fix and NEMA upgrades benefit the entire pool, and (b) even parties such as TransEnergy, who oppose pool support for quick-fix and NEMA upgrades, do not dispute that these upgrades will benefit the entire pool. *In fact, because these quick fixes and NEMA upgrades have relieved congestion in New England and congestion costs are currently being socialized across the pool, all of the participants have benefited from the quick fix and NEMA upgrades.*

The Commission also notes that in its February 23 Order, it has already ruled that the costs of quick fixes should be recovered “in the same manner as congestion costs are currently recovered,” *i.e.* socialized throughout the pool. Since the February 23 Order, circumstances have not changed—LMP has not yet been implemented, and congestion costs continue to be socialized. *Under these circumstances, in order to bring closure to this contentious issue, the Commission will allow socialization of quick fix and NEMA costs during this interim period.*

*ISO New England, Inc.*, 98 FERC ¶ 61,173 at 61,647 (2002) (emphasis added).

Upon the motion for clarification filed by the MPUC and the Vermont Department of Public Service (VDPS) asking that the Commission clarify that it meant

that the interim period would be over upon implementation of a standard market design in New England if that happened before one was implemented as part of a Northeastern RTO, the Commission stated:

The Commission grants the request filed by MPUC/VDPS, and finds that the interim default cost allocation mechanism for transmission cost upgrades should be reviewed when *LMP in New England is proposed*, but in an appropriate Section 205 or Section 206 proceeding. *We agree that continuation of NEPOOL's socialized cost allocation methodology may be inappropriate once LMP is implemented, as LMP does not socialize costs, but allows parties to see and respond to market signals in planning and locating transmission upgrades. Accordingly, we will require ISO-NE and/or NEPOOL to propose a revised default cost allocation methodology in ISO-NE's or NEPOOL's SMD filing consistent with an LMP scheme.*

*ISO New England, Inc.*, 100 FERC ¶ 61,029 at 61,078 (2002) (emphasis added). The Commission also rejected the request for rehearing sought by the CTDPUC in which it sought a ruling that the SWCT upgrades should be socialized. The Commission found that the proper time to consider such an issue was in a separate 205 filing by a public utility. *Id.*

When neither ISO-NE nor NEPOOL filed the required *revised* cost allocation methodology for transmission upgrades as part of their SMD filing as required by the Commission's July 3, 2002 order, the MPUC protested the filing and asked the Commission to order the ISO-NE or NEPOOL to file a new cost allocation methodology consistent with an LMP scheme. The Commission granted the MPUC request:

The Commission will grant the Maine Commission's request. Now that NEPOOL is implementing LMP, parties will be able to see more readily which areas would most benefit from transmission upgrades, and what party or parties will most benefit. It is, therefore appropriate to require those parties to bear the costs of these new upgrades. NEPOOL has in fact stated that it anticipates eliminating the socialization of the costs of transmission upgrades to provide for a mechanism for cost allocation that is consistent with LMP. As we have previously stated in our CMS/MSS orders, we will require ISO-NE to

develop a mechanism which, in situations where the parties cannot agree as to who benefits from the upgrade, provides an objective non-discriminatory default cost allocation mechanism that is consistent with cost causation.

100 FERC at 62,285-86.

In its December 20 Order, the Commission clarified that *at that time* it would not foreclose any particular cost allocation methodology because of NEPOOL and ISO's representation that they would try to resolve stakeholders differences in approaches through a stakeholder process. However, the Commission noted that where it had allowed cost socialization in certain circumstances, that this was a deviation from its cost allocation principles. *New England Power Pool and ISO New England, Inc.* 101 FERC ¶ 61,344 at P. 51 (2002) (December 20 Order).

In the December 20 Order, the Commission considered cost treatment of proposed Southwest Connecticut (SWCT) upgrades separately from a general cost allocation methodology. It was concerned about the allegation of the Connecticut Department of Public Utility Control ("CTDPUC") that "LMP would raise Connecticut's costs by \$125-\$375 million per year." *Id.* at P. 34. While the Commission denied the CTDPUC's request to delay the implementation of LMP, it nevertheless was "sympathetic to the concerns of CTAG and Connecticut PUC regarding the effects of LMP on Connecticut consumers." Accordingly it determined that "as a matter of equity, it would be reasonable to adopt measures that could moderate the financial impact of LMP and to assign a portion of the upgrade cost to other New England customers." *Id.* at P. 35.

The December 20 Order appears to envision a process through which the ISO should determine with input from stakeholders which specific set of transmission upgrades will actually reduce congestion costs in SWCT and thus "moderate the

increases in LMP in Connecticut.” *Id.* Then, the ISO should propose some sort of cost sharing mechanism that would spread a portion of these costs across the New England region if these projects are operational in 2005. Finally, the ISO’s proposal would be presented to the Commission for its consideration. We asked the Commission to clarify that this is what it had in mind in its December 20 Order.

At each stakeholder workshop convened by the ISO to determine the general cost allocation methodology, the Maine Commission and a number of generators expressed concern with the current system of socializing 100% of PTF upgrades and suggested alternatives to the current socialization system. The product put forth by ISO-NE at the end of the stakeholder process, however, continued the current system of socializing the costs of transmission upgrades.

On June 6, 2003, the Commission deferred ruling on motions for clarification and requests for rehearing of the December 20 Order on issues of transmission cost allocation because the New England Conference of Public Utility Commissioners (NECPUC) had recently represented that it would try to reach agreement on this issue. *New England Power Pool*, 103 FERC at P. 56. The June 6 Order also required ISO-NE or NEPOOL to file within thirty days of the Order a stakeholder process to determine an appropriate set of transmission upgrades for SWCT to receive socialized cost treatment, and an appropriate percentage to be socialized of the cost of each such project. *Id.*, Ordering Paragraph (C). In response to the June 6 Order, the Maine and Rhode Island Commissions proposed to the other New England Commissions and NEPOOL a settlement offer to resolve the issue of the cost treatment of all upgrades not under construction as of March 2003. However the proposal did not lead to agreement among

the state commissions and there was no reason to believe that further efforts would bear fruit. NEPOOL approved the major components of the ISO-NE proposal at its June 25, 2003 meeting. On July 7, 2003, NEPOOL and ISO jointly filed a report of compliance in response to the Commission's June 6 Order.

In their July 7, 2003 filing, NEPOOL and ISO (referred to collectively as "NEPOOL") aver that the transmission cost allocation amendments approved by NEPOOL on June 25, 2003 comply with the June 6 Order because they address the SWCT upgrades that were identified in the 2002 Regional Transmission Expansion Plan. They address the SWCT upgrades by providing for the socialization of 100 percent of the Phase I and Phase II proposed upgrades.<sup>1</sup>

## **II. Protest**

We will respond to NEPOOL's proposed transmission cost allocation amendments when they are filed. In particular, we will demonstrate that they fail to comply with the Commission's directives set forth in its numerous orders on this subject. The purpose of this protest, however, is simply to make the obvious point that the NEPOOL report in no way complies with the Commission's June 6 or December 20 directives. Both in its December 20 Order and its June 6 Order, the Commission appears to envision separate treatment for SWCT which would (1) determine which upgrades are eligible for socialized cost treatment (presumably because they would significantly moderate the impact of LMP on Connecticut ratepayers) and (2) of these eligible upgrades what portion of the cost it would be equitable to socialize across the pool.

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<sup>1</sup> In addition, the proposal provides for the socialization of all the projects listed in section 11 of RTEP-02 plus all projects mentioned in Appendix 13.11 to RTEP-02 (some of which have not even progressed far enough in the planning process to have firm dollar amounts associated with them) and also continues the current NEPOOL system of socializing the costs of transmission upgrades.

If certain SWCT upgrades are eligible to have a portion of the project costs socialized, only because of the impact of LMP, it follows that the general cost allocation mechanism was not expected to simply continue to socialize the costs of transmission upgrades. Thus, NEPOOL has failed to comply with the Commission's Orders in two ways. First, it has failed to consider cost allocation of SWCT upgrades separately based on the impact of LMP, determining which upgrades are eligible for socialization and what portion of these upgrade costs it would be equitable to socialize. Second, as we will discuss in our comments on NEPOOL's proposed transmission cost allocation methodology, the proposal is inconsistent with the Commission's principles for allocating transmission upgrades when an LMP pricing system is in effect. In short, having adopted a generally applicable cost allocation methodology that is inconsistent with repeated FERC pronouncements, NEPOOL compounds its error by invoking that methodology as justification for not establishing a process, as required by the Commission's December 20 and June 6 Orders, for determining the extent to which the impact of locational pricing on Connecticut warrants socializing some of the costs of transmission upgrades in that area. That does not constitute compliance with the Commission's directives.



July 28, 2003

Respectfully submitted,

/s/ Lisa Fink

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing Protest on the official service list compiled by the Secretary in the proceeding.

Dated at Washington, D.C., this 28th day of July, 2003.

/s/ M. Denyse Zosa

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M. Denyse Zosa