UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Pool	**)**	**Docket Nos. ER02-2330-001**
and	**)**	**and EL00-62-052**
ISO New England, Inc.	**)**	
	)	
New England Power Pool	**)**	**Docket Nos. ER02-2330-002**
and	**)**	**and EL00-62-053**
ISO New England, Inc.	**)**	
	)	
New England Power Pool	**)**	**Docket Nos. ER02-2330-003**
and	**)**	**and EL00-62-054**
ISO New England, Inc.	**)**	

ANSWER OF MAINE PUBLIC UTILITIES COMMISSION, MAINE PUBLIC ADVOCATE, RHODE ISLAND PUBLIC UTILITIES COMMISSION, RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS, AND THE ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND

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 (2002), the Maine Public Utilities Commission ("MPUC"), the Maine Public Advocate, the Rhode Island Public Utilities Commission ("RIPUC"), the Rhode Island Division of Public Utilities and Carriers, and the Attorney General of the State of Rhode Island (collectively "MPUC") hereby submit their answer in opposition to the January 15, 2003 Request to Reopen and for Reconsideration of the Connecticut Department of Public Utility Control ("CTDPUC"). As discussed below, the CTDPUC has failed to satisfy the Commission's stringent standards governing when it will reopen a closed record or consider additional evidence at (or beyond) the rehearing stage of a proceeding. The CTDPUC has not shown that the information it seeks to add to the record is even *relevant* to the Commission's decision regarding cost allocation of Reliability Must Run ("RMR") contracts, let alone that this is the type of information that would satisfy the

Commission's strict standards for reopening the record or receiving additional evidence on rehearing. Accordingly, the CTDPUC's Request should be denied.

BACKGROUND

On July 15, 2002, the New England Power Pool ("NEPOOL") Participants Committee, joined by ISO New England Inc. ("ISO-NE" or "the ISO"), submitted Market Rule 1 and related materials for filing at the Commission. Market Rule 1 implements a revised wholesale market design, commonly referred to in New England as the "standard market design" ("SMD"), the main features of which are locational marginal pricing ("LMP") and a multi-settlement system. The ISO expects to implement SMD on March 1, 2003.

Prior to the NEPOOL-ISO filing, the Commission had determined that socialization of RMR contract costs would end upon the implementation of LMP. *New England Power Pool*, 99 FERC ¶ 61,324 at 62,375 (2002). In spite of the Commission's order, the NEPOOL-ISO filing recommended two options: Option I, which allocates the cost of RMR contracts locally to the load served by the contracts; and Option II, which continues socialization of the RMR contract costs across the NEPOOL region.

In a filing made on July 22, 2002, ISO-NE recommended that such costs be assigned to the local congested regions. ISO-NE provided the following reasons for its recommendation:

> ? First, allocation of RMR costs to local reliability areas is consistent with the economic principle that efficiency is enhanced by requiring entities that cause costs to be incurred to pay those costs. In this case, the ISO must increase the output of relatively expensive generation to support load in a local area. It thus makes sense to allocate those costs to that load.
>
> ? Second, localized allocation is consistent with the tenets underlying the theory of locational marginal pricing

("LMP"): the right price signals are necessary for markets to run efficiently, and those signals must apply the costs to the local regions that cause them. The instant market rule changes include, as a large component, conversion to LMP pricing. It thus makes sense to allocate these costs locally as well.

? Finally, the current ISO market is proof of the problems that can arise when price signals are hidden in socialized uplift and a single regional clearing price. *Local consumers will only face an incentive to reduce consumption (or allow additional generation or transmission to be sited through local siting processes), if they are required to bear the costs of not reducing consumption or taking other actions to minimized congestion.*

Comments of ISO-New England at 3-4 (July 22, 2002) (emphasis added).

The MPUC filed a protest to the NEPOOL-ISO filing in which it argued that the Commission's prior order on the cost allocation of RMR contracts supported only Option I. The MPUC also agreed with the ISO's analysis in supporting Option I. The CTDPUC did not file any comments on the NEPOOL-ISO filing.

In its September 20, 2002 Order in this proceeding, the Commission again rejected socialization of RMR costs in an LMP system. It found that:

> RMR fixed costs represent costs of relieving congestion in specific regions and therefore should be reflected in the cost of energy in those regions. Numerous Commission orders, noted by the intervenors, indicate that the socialization of costs is inconsistent with an economically efficient market.

New England Power Pool, 100 FERC ¶ 61,287 at P 61 (2002) ("September 20 Order"). The Commission specifically rejected the Connecticut Attorney General's assertion that the RMR agreements improve grid reliability, stating that "RMR costs represent the known (and short-term) costs of addressing congestion in identified regions during a specified time period." *Id.* at P 58.

In the Commission's December 20, 2002 Order, the Commission rejected requests for rehearing of its decision that RMR costs should no longer be socialized upon the implementation of LMP. It stated:

> In the September 20 Order, the Commission found Option 1, which allocates RMR fixed costs to the local reliability area to be the only option consistent with the underlying tenets of LMP market design, and CTAG and VPPSA have presented no new arguments to make us reconsider this ruling. Without proper market price signals, no long-term solution to the plight of load pockets such as Southwest Connecticut will be forthcoming.

New England Power Pool, 101 FERC ¶ 61,344 at P 32 (2002) ("December 20 Order").

ARGUMENT

I. CTDPUC's Request to Reopen Alleges No Facts Relevant To The Commission's Decision

The CTDPUC states that "[n]ew information that demonstrates that Connecticut's RMR generators are needed to ensure reliability of the New England regional grid system has come to light since the Commission's September 20 Order." Request at 2. The CTDPUC further alleges that "based on this new information, the CT DPUC believes that the Commission must reach a different conclusion with respect to the cost allocation rule for RMR generator contracts in New England. In particular, the Commission should order New England to adopt Option 2 and spread these costs across all New England load." *Id.* at 2-3 (footnote omitted). Alternatively, the CTDPUC states that the Commission should retain Option I as the general rule but allow socialization of RMR contracts where the RMR generators provide benefits to the entire region. *Id.* at 3, n.1. The information that the CTDPUC now seeks to add to the record is irrelevant to the Commission's determination that socializing RMR costs is inconsistent with an LMP system.

The information that the CTDPUC seeks to add to the record in this case consists of the following:

1. The fact of a negotiation process going on primarily between an owner of generation facilities in SWCT and Connecticut load interests for special rate treatment of approximately 2000 MWs of Connecticut generation "on the basis that these generators are needed to maintain reliability," *id.* at 3; and
2. A preliminary study performed by the ISO which the CTDPUC states concludes that "all of the approximately 7000 MWs of Connecticut generation are necessary for reliability in Connecticut." *Id.*

The CTDPUC asserts that, "based on these new facts, the Commission should find that the magnitude of the reliability issue that could involve between 2000 to 7000 MWs of Connecticut generation is one that would effect [sic] the reliability of the New England electric system which is comprised of approximately 31000 MWs of capacity with a of [sic] summer peak load demand of over 24,000 MWs." *Id.* (footnote omitted).

The information that the CTDPUC asks the Commission to now consider is of no relevance to the Commission's determination that socializing the costs of RMR contracts will not send the proper signals to consumers in load pockets to reduce demand, build additional generation and/or underwrite the construction of transmission upgrades if the upgrades are the most economic option for consumers in the load pocket. The fact that RMR contract negotiations in Connecticut involve a large number of megawatts in no way affects the Commission's rationale that socializing these costs will not send the proper price signals. If anything, it supports the ISO's statement that:

> [T]he current ISO market is proof of the problems that can arise when price signals are hidden in socialized uplift and a single regional clearing price. *Local consumers will only face an incentive to reduce consumption (or allow additional generation*

> *or transmission to be sited through local siting processes), if they are required to bear the costs of not reducing consumption or taking other actions to minimized congestion.*

Comments of ISO-New England at 3-4 (July 22, 2002) (emphasis added).

The CTDPUC asks the Commission to now adopt a standard that rewards consumers who fail to appropriately respond to price signals. Under the CTDPUC standard, if consumers in a load pocket ignore price signals for a long enough period by failing to: (1) reduce demand; (2) site new generation; and (3) upgrade transmission facilities if they are necessary and economic, with a resultant significant increase in the magnitude of the congestion or reliability costs faced by the load pocket, they can be assured that they will only have to pay a fraction of the cost of their failure to respond to the price signals. Thus, the fact that the number of megawatts provided to Connecticut customers through RMR contracts may now be in the range of 2000 MWs provides additional support for the Commission's conclusion that Connecticut consumers need to do what is necessary to eliminate the need for the RMR contracts (whether it is reducing demand, siting generation or building transmission) and that socializing RMR costs will delay such actions. *See* December 20 Order at P 32.

Further, there is no relevance to the allegation that "all of the approximately 7,000 MWs of Connecticut generation are necessary for reliability in Connecticut." Request at 3. In making this allegation the CTDPUC implies that there may be RMR contracts for more than 2000 MWs, perhaps even up to 7000 MWs. It goes on to suggest that "[i]f 2000 MWs *or more* of Connecticut's generation was [sic] retired or deactivated, this *could* have a substantial, highly adverse, system-wide impact on reliability throughout New England." *Id.* (emphasis added). From this suggestion, which amounts to nothing more than conjecture, the CTDPUC concludes that "the entire New England grid benefits

from RMR contracts that keep *certain* Connecticut generators operating." *Id.* (emphasis added). Thus, the CTDPUC argues, "given that there are system-wide reliability benefits, it would not be just and reasonable for RMR rates that could be approved for *potentially thousands of MWs of Connecticut generation* to be borne solely by Connecticut ratepayers." *Id.* at 4 (emphasis added).

It is clear from the succession of assumptions made by the CTDPUC that the only basis for introducing the allegation that all 7000 MWs of Connecticut generation are needed for reliability in Connecticut is to suggest that down the road there may be RMR contracts for more than 2000 MW, and that, eventually, if RMR contracts were required for all 7000 MWs, this *could* be a pool-wide rather than a local reliability problem.[1] Because this allegation is introduced only to suggest that Connecticut's reliability problem could get more severe than it is at the present, this allegation adds nothing of value to the Commission's analysis. Moreover, even if the allegation had some nexus to the determination of the current scope of Connecticut's reliability problems, it would only support the Commission's determination that Connecticut consumers should take necessary actions to respond to the problem.

[1] Thus, for example, in its request for relief, the CTDPUC states: "Connecticut is now faced with a large portion of its generation being designated RMR, *with the real possibility of more to come.*" CTDPUC Request at 4 (emphasis added).

II. The CTDPUC Request Fails To Meet The Commission's Standards for Reopening The Record Under Rule 716 Or For Accepting Additional Evidence On Rehearing

Rule 716 permits the Commission to reopen the record if it has reason to believe that doing so "is warranted by any changes in conditions of fact or of law or by the public interest." 18 C.F.R. § 385.716(c) (2002). In applying this rule, the Commission has made clear that it will only reopen a record to consider purported changed conditions of fact or law where the changes rise to the level of extraordinary circumstances. *See, e.g.*, *East Texas Elec. Coop., Inc.*, 94 FERC ¶ 61,218 at 61,800-01, *reh'g denied*, 95 FERC ¶ 61,066 (2001); *CMS Midland, Inc.*, 56 FERC ¶ 61,177 at 61,624, *reh'g denied*, 56 FERC ¶ 61,361 (1991); *Public Serv. Co. of New Mexico*, 21 FERC ¶ 61,334 at 61,894-95 (1982). The party proposing to reopen the record "must demonstrate a change in circumstances that is more than just material – it must be a change that goes to the very heart of the case." *CMS*, 56 FERC at 61,624.

The CTDPUC has failed to show that the purported changes in fact are material, let alone that they go to the very heart of the Commission's decision such that they justify reopening the record under Rule 716. *See id.*; *see also Central Nebraska Public Power and Irrigation District*, 52 FERC ¶ 61,339 (1990) (motion to reopen denied where the new evidence would not compel or persuade a contrary result); *San Diego Gas & Electric Co. v. Alamito Co.*, 46 FERC ¶ 61,363 (1989) (party had not shown any changes in fact or law relevant to the initial decision); *Power Authority of the State of New York*, 25 FERC ¶ 61,084 (1983) (denying staff motion to reopen record to admit new studies where new studies were not significant to the proceeding). As discussed above, the information for which the CTDPUC now asks the Commission to reopen the proceeding

is simply not relevant to the Commission's decision that the costs of reliability must run contracts should be allocated to the local load served by the RMR units.

While the CTDPUC has failed to demonstrate that any of the alleged changes in facts are relevant to or would change the Commission's decision, it also has failed to show that the public interest would be served by reopening the record. *See* 18 C.F.R. § 385.716(c) (2002). The Commission's December 20 Order was the third order addressing cost allocation of RMR contracts. The CTDPUC did not even comment on cost allocation of RMR contracts in response to the NEPOOL/ISO filings, even though the issue was squarely raised in those filings. Further, granting the motion to reopen would allow LMP to go into effect while socialization of RMR costs continued even though the Commission has already found this cost allocation methodology to be inconsistent with LMP. As a result, consumers in load pockets, even after LMP, would have little incentive to make decisions necessary to solve local congestion and reliability problems while consumers in areas that do not have such problems would pay (perhaps indefinitely) for the delay in resolving such local problems. It would be unjust and unreasonable for the CTDPUC's vague and conjectural arguments to result in consumers in other regions continuing to pay for Connecticut reliability problems while it tries to make a case for socialization of RMR contract costs even after the Commission has thrice determined that this methodology is unjust and unreasonable after LMP implementation.

Finally, the fact that the CTDPUC is seeking to introduce new evidence even after the rehearing stage of the proceeding also militates against granting the CTDPUC's request. The Commission does not ordinarily accept evidence included in a request for

rehearing, and, as discussed above, the CTDPUC offers no good reason why it should do so now. [2]

[2] As the Commission explained in *Koch Gateway Pipeline Co.*, 75 FERC ¶ 61,132 at 61,456 (1996):

> The submission of additional factual evidence in a request for rehearing is not appropriate. A request for rehearing provides the parties with a final opportunity to present arguments to the Commission, based on the evidence in the record at the time, in light of the Commission's order in the proceeding. It is the final step in the processing of a case before the Commission. Accepting additional evidence in a request for rehearing would require that the Commission provide other parties with an opportunity to respond to the new evidence, which could involve the submission of more new evidence to contradict the evidence proffered in the request, necessitating another opportunity to respond, *ad infinitum.*

CONCLUSION

For the reasons set forth above, the Commission should deny the January 15, 2003 Request to Reopen and for Reconsideration of the Connecticut Department of Public Utility Control.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document by first class mail upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 30th day of January, 2003.

/s/
John E. McCaffrey