UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Pool and ISO New England, Inc.	Docket Nos. ER03-1141-000 ER03-1141-001 ER03-1141-002
Maine Public Utilities Commission, et al. v. New England Power Pool and ISO New England, Inc.	EL03-222-000 EL03-222-001 EL03-222-002

REQUEST FOR REHEARING OF MAINE PUBLIC UTILITIES COMMISSION, MAINE PUBLIC ADVOCATE, RHODE ISLAND PUBLIC UTILITIES COMMISSION, RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS, PINPOINT POWER, AND GENPOWER

In accordance with Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.713 (2002), the Maine Public Utilities Commission ("MPUC"), the Maine Public Advocate, the Rhode Island Public Utilities Commission, the Rhode Island Division of Public Utilities and Carriers, Pinpoint Power and GenPower (collectively MPUC) hereby request rehearing of the Commission's December 18, 2003 Order in the above-captioned dockets, *New England Power Pool et al*., 105 FERC ¶ 61,300 (2003) ("December 18 Order"). As discussed below, the December 18 Order suffers from a number of significant errors. Among these, the most significant are: (1) the Order impermissibly relies on a "head count" rather than an analysis of the transmission cost allocation proposals on their merits and (2) the Order fails to explain and justify its departure from prior (and current) policy relating to cost causation. In light of these errors, the Commission should reconsider its December 18 Order, reject the Transmission Cost Allocation (TCA) Amendments proposed by the New

England Power Pool (NEPOOL) and ISO-New England, Inc. (ISO-NE) as unjust and unreasonable and implement in their place the Coalition Proposal.[1]

BACKGROUND

On July 31, 2003, NEPOOL and ISO-NE (collectively "NEPOOL") filed proposed TCA amendments to the NEPOOL Tariff and the Restated NEPOOL Agreement. This filing was the result of numerous directives by the Commission, requiring the submission of a revised cost allocation methodology which would be consistent with the implementation on March 1, 2003 of Locational Marginal Pricing (LMP) in New England. On August 21, 2003, the Maine Public Utilities Commission, the Rhode Island Public Utilities Commission, the Rhode Island Division of Public Utilities and Carriers, the Rhode Island Attorney General, the Maine Public Advocate, Pinpoint Power, NRG Energy, Inc and GenPower, LLC (collectively referred to as the "Coalition Supporting Beneficiary Funding" or "Coalition") filed a protest to the proposed TCA Amendments. Also on August 21, 2003, the Coalition filed a Complaint against ISO-NE and NEPOOL proposing to replace the current cost allocation methodology with a new methodology that allocates the majority of upgrade costs to the primary beneficiary while allowing a smaller percentage (25 percent) of upgrade costs to be spread across the region.

On September 29, 2003, the Commission requested additional information from NEPOOL and ISO-NE that it found was required "in order for the Commission to have

[1] The Commission's order also refers to its decision in Docket No. ER02-2330, characterizing attempts to challenge the socialization of the upgrades in ISO-NE's 2002 Transmission Expansion Plan as efforts "to reopen the issue" addressed in its December 20, 2002 Order in Docket No. ER02-2330. December 18 Order at P. 37. The Commission, however, has not acted on the rehearings pending in that docket. The December 18 Order also states that, because it is accepting the filing in this case, "the issue of whether the SWCT and RTEP02 upgrades should be rolled in is not applicable." *Id*. MPUC reads this statement to suggest that the Commission sees the issue pending in ER02-2330 as moot. If, however, the Commission issues an order on rehearing in that docket, MPUC reserves its rights to seek judicial review of that order.

sufficient information to process [the NEPOOL-ISO TCA Amendment] filing. The same questions were issued in the Coalition Complaint docket, Docket No. EL03-222-000. On October 29, 2003, as corrected on November 6, 2003, NEPOOL filed responses to the questions and on November 19, 2003, the Coalition filed comments on NEPOOL's responses. On December 18, 2003, the Commission issued its Order accepting NEPOOL's proposed TCA Amendments and rejecting the Coalition Complaint.

SPECIFICATION OF ERRORS

1. The Commission erred by substituting a count of votes for consideration of the proposals on their merits.
2. The Commission erred in failing to explain and justify its departure from current policy in favor of cost causation and beneficiary funding.
3. The December 18 Order fails the reasoned decision-making and substantial evidence tests.
4. The Commission erred by relying on the integrated nature of the New England System as a basis for its decision.
5. The December 18 Order fails to articulate what appeal rights exist under the TCA Amendments.
6. The Commission mischaracterized the nature of the proposed TCA Amendments.

ARGUMENT

1. The Commission Erred by Substituting a Count of Votes for a Consideration of the Proposals on their Merits.

At the heart of the December Order is the Commission's determination to let a majority of Market Participants decide the cost allocation methodology for New England.

In approving the NEPOOL proposal, it states:

> The clear guidelines will provide greater certainty to entities investing in transmission by providing certainty on cost recovery. As such, *given the widespread support among market participants, the Commission believes that the proposal submitted by ISO-NE and NEPOOL is an acceptable example of regional choice and therefore the Commission accepts ISO-NE's and NEPOOL's transmission cost allocation proposal.*

Order P. 23 (emphasis added). *See also,* Order P. 34 ("the Commission considers the Participants Committee – which is comprised of five separate sectors: generation, transmission, supplier, end-user and publicly-owned entities—to be broadly representative. . . .The Commission will not disturb the regional choice."). The Federal Power Act, however, does not permit the Commission to delegate its responsibility to determine whether a rate is just and reasonable to market participants or even to the independent system operator. The majority's error is succinctly stated by Commissioner Brownell:

> Deference to regional choice, moreover, can not substitute for our responsibility under the Federal Power Act to determine whether this cost allocation proposal is just and reasonable. Even if there were consensus among the states about the appropriate allocation methodology, the Commission would still need to explain how the proposal satisfied the just and reasonable standard. The order does not provide a reasoned explanation because, in fact, it cannot.

Dissent at 5. *See also, Exxon Company, U.S.A. v. FERC,* 182 F.3rd 30, 50 (D.C. Cir. 1999) (FERC cannot simply take a head count in resolving contested settlements; "[p]arties raising legitimate legal objections cannot be overlooked simply because they are outnumbered."); *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1003 (D.C. Cir. 1990) (same). Here there is only a conclusion that the NEPOOL proposal is just and reasonable. Missing from the Order is any analysis supporting the conclusion and missing from the record is substantial evidence that would support such a conclusion.

Other than deferring to so called "regional" choice, the Commission makes only a few entirely unsupported conclusions. For example, the Commission finds that the TCA amendments "ensure that New England electric ity customers receive reliable and efficient electric service, at just and reasonable rates, by promoting the construction of new transmission facilities," December 18 Order P.1, but fails to explain how the TCA amendments provide any such assurance. Similarly, the Commission finds that the TCA Amendment's "clear guidelines will provide greater certainty to entities investing in transmission by providing certainty in cost recovery," *Id.* P.23, but does not address or rebut the Coalition's arguments that cost recovery is just as certain with some level of beneficiary funding because the costs would be recovered in a local FERC tariff rather than the regional tariff. Coalition Protest at 30, n. 13.

In addition, the Commission concludes, without any analysis or supporting documentation, that "[a] cost allocation scheme that targets costs to today's beneficiaries can result in prolonged disputes when the beneficiaries can change over the life of the upgrades." Order P.39. This tentative statement can hardly be called a finding.[2] At most, it concludes that, even if "today's beneficiaries" can be identified, costs should nonetheless be socialized because there is a *possibility* that beneficiaries might change over time and that *if* this happens, prolonged disputes *could* result. In any event, the statement is unsupported and is in direct conflict with the Commission's longstanding policy in favor of cost causation. Indeed, this abandonment of linking cost recovery to costs causation conflicts with the Commission's own clear finding that "[n]ow 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 would most

[2] To the extent that this statement is considered a finding, it appears to concede that identifying "today's beneficiaries" is indeed possible.

benefit." *New England Power Pool and ISO New England, Inc*., 100 FERC ¶ 61,287 at 62,285-86 (2002) (*SMD Order*).

Finally, the majority states that it is "satisfied that the Regional Benefit Upgrade criteria together with the Localized Cost review mechanisms contained in the TCA Amendments ensure that only needed upgrades that provide a region-wide benefit will be paid for by regional network service customers in the event that market-based resources (such as merchant generation, merchant transmission, or demand-side management) otherwise do not first address or mitigate the needs." December 18 Order P.26. Again, this conclusion is without any analysis or support in the record.

The record, in fact, supports the opposite conclusion. The Coalition provided unrebutted evidence from the RTEPs that the projects primarily are proposed to address *local* reliability or economic needs.[3] Further, the Coalition and other parties demonstrated that the TCA Amendments are unjust and unreasonable because they propose, in contravention of basic principles of rate design, that one group of consumers should subsidize the costs of projects that benefit another set of consumers. *See*, Coalition Protest at 27-28. They also pointed out that the subsidization that will result from the TCA Amendments is particularly egregious because in many cases, such as in the case of the proposed SWCT upgrades, the need for the upgrades results from greater economic development. "Simply put, as we do not socialize the fruits of that [economic] development, we fail to see any reason to socialize its cost. To do so is to create a needs-based subsidy for which only the affluent qualify." Coalition Protest at 36. For all of the reasons stated above, the Commission should reconsider its approval of the TCA

[3] NEPOOL's answers to the Commission's deficiency notice simply underscore the lack of analysis supporting NEPOOL's claim that everyone benefits from a reliability upgrade. NEPOOL states that no cost benefit analysis is performed or required for a reliability upgrade.

Amendments based on a "head count" of NEPOOL Market Participants and instead find that the NEPOOL proposal is unjust and unreasonable.

2. The Commission Erred in Failing to Explain and Justify its Departure from Current Policy in Favor of Cost Causation and Beneficiary Funding.

The Commission relies on portions of its prior orders to support the assertion that the Commission sought only a clear and objective default cost allocation methodology that was not based on the distinction between economic and reliability upgrades as a basis for cost allocation. This reliance, however, ignores the context in which those statements were made. The Commission plainly required more than a clear and objective default cost allocation methodology. NEPOOL's current cost allocation methodology—socializing upgrade costs unless someone volunteers to pay them—already meets those criteria.[4] If this had been all that NEPOOL was required to do, there would have been no need to change a methodology, which socializes all upgrade costs that are not voluntarily paid by some entity. The existing methodology already provided a transparent cost allocation methodology. Nevertheless, the Commission found that the existing methodology would be inconsistent with cost causation principles and with locational marginal pricing. The Commission required NEPOOL to *change* its cost allocation methodology to one based on cost causation rather than socialization.

The Coalition in its Protest and Complaint provided the Commission with all of its statements from prior orders relating to the Commission's direction to NEPOOL to adopt a *new* cost allocation methodology - one based on cost causation - upon the implementation of LMP in New England. For example, in accepting with conditions, ISO-NE's SMD proposal, the Commission stated:

[4]Commissioner Brownell's point that, "the proposed cost allocation method is clear and objective only because it does not require any analysis of the beneficiaries of a project," Dissent P.5, is equally applicable to the current methodology since there is no significant difference between the old and the new.

> 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.

SMD Order, 100 FERC at 62,285-86. Similarly, the Coalition cited the Commission's decision in *PJM Interconnection, LLC,* 104 FERC ¶ 61,124 (2003) (issued after the date of the Commission's White Paper) in which PJM is to identify customers from whom it will collect the cost of the upgrade as indicating that the Commission has not found identifying beneficiaries impossible or even difficult. *See*, Coalition Protest at 25-26.

The issuance of the White Paper (which, as a staff document, is neither a rule nor an order and does not even rise to the level of a non-binding FERC policy statement, much less establish binding standards) does not permit the Commission to abandon its own precedent. Even when the Commission applies an *adopted* policy statement "in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued." *Pacific Gas and Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974). And, where the policy is new, the Commission is also obliged to acknowledge its departure from existing precedent and offer a reasoned explanation for the departure. *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970). The December 18 Order utterly fails to address the cost causation-beneficiary funding standard established by the Commission in prior orders and instead tries to brush

away the need to reconcile its decision with its settled cost causation standards[5] by referring to the intervening White Paper: "The Coalition's complaint refers to a number of Commission Orders that were issued prior to the White Paper." December 18 Order at 6.

The Commission cannot rely on its general preference for "regional choice" concerning transmission cost allocation methodology to overturn the well established, and well-grounded principles of linking cost to cause. As Commissioner Brownell recognized, there must be limits on the deference the Commission can give to "regional choice" even when that choice is clearly a consensus (which this is obviously not). At the very least, the Commission must fairly assess whether the purported "regional choice" comports with important market principles established by the Commission under governing law. It has failed to do that here.

While the December 18 Order does contain a section entitled "Consistency with New England's Market Design," nowhere in this section or anywhere else in the Order does it address its earlier statements (*e.g.*, 100 FERC at 62,285-86) that socialization is inconsistent with locational marginal pricing. Nor is there any discussion of the arguments showing that socialization is inconsistent with locational marginal pricing or the analysis provided by Dr. William Hogan that was presented to the Commission on this point. Had the Commission addressed these arguments, it would be clear that the

[5] The Commission recently confirmed that it still considers cost causation a fundamental ratemaking principle. *See, New England Power Pool*, 105 FERC ¶ 61,317, P.21 (2003) (Commission cost causation principles require that rates should as closely as practicable reflect the costs to serve each class of customers), citing *Public Service Company of N.H. v. FERC,* 600 F.2d 944,959 (D.C. Cir.), *cert. denied,* 444 U.S. 990 (1979) and *Alabama Electric Coop, Inc. v. FERC,* 684 F.2d 27 (D.C.Cir. 1982) ("rates should provide revenues from each class of customers which match, as closely as practicable the costs to serve each class or individual customer."); *See also* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,741 (1996) (if the Commission did not "allow direct assignment of the expansion costs to the customer causing the expansion, then other customers would subsidize the new customer's use of the transmission system.")

TCA Amendments are unjust and unreasonable because they are inconsistent with locational marginal pricing and with the Commission's own cost causation rate design principles.

The Commission, thus, erred by failing to explain and justify its departure from its earlier stated and long-standing policy. *See, Greater Boston Television Corp. v. FCC, supra,* 444 F.2d at 852. (If the Commission announces a new standard which departs from earlier standards, the departure must be stated and explained**;** *See also, Mountain Communications, Inc, v. FCC*, 2004 WL 66770 (D.C. Cir. January 16, 2004), Slip. Op. at 3. (FCC acted arbitrarily when it changed direction, without explanation and without even acknowledging the change and acted contrary to the policy set forth in its own regulations).

3. The December 18 Order Fails the Tests for both Reasoned Decision-making and Substantial Evidence.

The process of reasoned decision-making requires that **"**an agency engage the arguments raised before it." *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992). The related "substantial evidence" test requires that the agency consider the record taken as a whole. The agency cannot rely solely on evidence supportive of a position, but "must take into account whatever in the records fairly detracts from its weight." *Universal Camera Corporation v. NLRB*, 340 US 474, 488 (1951). The December 18 Order fails both the tests of reasoned decision-making and substantial evidence.

The Commission's order fails the test of reasoned decision-making because it lacks any analysis of the issues and evidence raised in protest to the TCA proposal and in support of the Coalition Complaint. It is not enough simply to parrot conclusions supplied by one of the parties, yet this is all that the Commission has done here.

The Commission's order also fails the substantial evidence test. The Coalition explained that beneficiaries of projects are easily identified through the RTEP process and through state siting proceedings. While the majority did not address this evidence, Commissioner Brownell points out its importance to the question of developing a rational transmission cost allocation policy based on cost causation:

> The states of Maine and Rhode Island explain that beneficiaries of projects can be, and have been, identified as part of the RTEP process. They claim that in all but one of the project descriptions in RTEP-02 the beneficiaries are specifically identified. For example, they cite the description of one project in southwest Connecticut, SWCT 345 kV Project, in RTEP-02 as follows: "[T]his reliability Upgrade is required to provide an adequate transmission infrastructure in the southwestern region of Connecticut . . . Although Phase I and Phase II result in little reduction in forecasted congestion costs, those reliability and congestion modeling analyses do not reflect the myriad problems internal to SWCT that this project is designed to solve." In addition, they note that state siting processes also identify beneficiaries by determining whether there is a need for a project. Adherence to the principle that there should be some nexus between cost responsibility and cost causation demands beneficiary funding for some or all of the costs of these projects.

Dissent at P.8. The requirements both of substantial evidence and of reasoned decision-making demand some analysis of the evidence presented by the Coalition and other parties, but no mention of this evidence is even made, much less analysis provided, by the majority. The Commission has thus impermissibly crossed the line that separates "the tolerably terse" from "the intolerably mute." *Greater Boston, supra.*

Similarly, the Coalition proffered alternatives to the abandonment of cost causation policies to address possible concerns about changing beneficiaries over time. These alternatives included (1) allowing 25 percent of the costs of an upgrade to be spread across the region and (2) allowing for a reopener to address changing beneficiaries. The Coalition also pointed out that neither of these suggestions reduced certainty of recovery because costs would be recovered either through the regional or

local tariff. The Coalition further pointed out that throwing out cost causation because in the future there *may* be different beneficiaries is illogical and unsupportable:

> NEPOOL concludes that because there is the *possibility* that some sub-areas may sometime in the future get a "free ride" from the transmission upgrade, it is unreasonable to ever assess the costs to those areas for whose benefit the project is built. This argument turns traditional notions of rate design upside down. NEPOOL suggests that it is more equitable and rational to *allow the known beneficiaries a free ride* because there is the *possibility* that over time other entities, zones, or sub-zones may benefit in some way from the upgrade. Not only is this exactly contrary to the Commission's cost causation rate design principles, but it cynically proposes that one group of consumers should subsidize the costs of projects that benefit another set of consumers under the guise of *avoiding free riders.*

Coalition Protest at 28 (emphasis in original). Although the Commission majority erred by failing to address these arguments, Commissioner Brownell recognized the fallacy of basing a cost allocation methodology on the possibility that beneficiaries may change over time:

> NEPOOL and ISO also can not avail themselves of the argument that, even if beneficiaries can be identified, conditions might change over time in such a way that there may be different beneficiaries in the future. *There is no rate making principle that justifies creating a subsidy for current beneficiaries of a project on the possibility that there may be different beneficiaries in the future.*

Dissent P.10. (emphasis added).

The Coalition and other parties provided extensive analysis, including that of Dr. William Hogan, on the inconsistency of broad socialization of upgrades with locational marginal pricing. Commissioner Brownell recognized, as the Commission had in previous orders, the link between cost causation and LMP:

> LMP is designed to provide undistorted market signals about the cost of congestion in order for the market to respond with the most economic solution: either new generation, transmission upgrades or demand response or some combination. For example, if the cost of relieving congestion in a high-cost congested area is higher for a transmission upgrade solution than for a new generation solution, the state regulatory

> authority in the congested area may opt for the higher cost solution because the beneficiaries of the project would only have to pay for a portion of the cost.

Dissent P.6. The majority is "intolerably mute" on how socialization of transmission upgrades is consistent with LMP. By failing to address these issues substantively, the Commission committed reversible error.

4. The Commission Erred by Relying on the Integrated Nature of the New England System as a Basis for its Decision.

The Commission states in support of its decision to continue the socialization of transmission upgrade costs:

> The Commission recognized in the White Paper that RTOs and ISOs are in a unique position to discern regional needs and address factors inhibiting investment in transmission and generation. We agree with Applicants that the New England grid is highly integrated. A needed reliability or economic upgrade on one part of New England's grid provides diffuse network benefits to other parts of the grid, both immediately and in changing beneficiaries over time. These factors support the regional choice made here.

Order P.25. The Commission's statement simply adopts, almost verbatim, language from NEPOOL's filing,[6] but fails to explain or support the statement. As Commissioner Brownell states:

> This rationale is simply insufficient to form the basis of a just and reasonable finding. At best, this argument only requires a periodic reexamination of the cost benefit analysis, possibly 3 to 5 years. The absence of any cost benefit analysis, although it is only a tool, does not foster an informed finding.

Dissent P.7. *See also, Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1312 (D.C. Cir. 1991). ("Absent evidence of specific system-wide benefits, the Commission's declaration that a [transmission system] is 'integrated' provides no basis for rolling in

[6] NEPOOL stated, "*Needed Upgrades of a sufficient size to one part of the New England grid virtually always provide diffuse benefits throughout the integrated network, often immediately and certainly over the useful life of those facilities.*" NEPOOL filing at 13 (emphasis added).

facilities cost.") *Id.* at 1313. Here, the only specific findings that could be made, based on the RTEP, would lead to the opposite conclusion—that there are discrete and identifiable beneficiaries even though the system is tightly integrated.

Moreover, the majority simply ignored the Coalition's argument that the integrated nature of the transmission system is not a valid basis for failing to follow the Commission's direction to adopt a beneficiary funding cost allocation methodology. The Coalition explained:

> Finally, there is no merit to the claim that an integrated transmission system requires a socialized cost allocation methodology. At its core, this argument simply describes the nature of electricity transmission. The recent blackout underscores the fact that integration of the transmission system extends beyond control areas. If the integrated transmission system is a basis for socialization, then, logically, the costs of upgrades should be socialized across the nation and perhaps the continent. Of course, as discussed above, despite the fact that NEPOOL has an integrated bulk power system, there *are* identifiable beneficiaries for each project and these beneficiaries are described in the process of justifying the need for the project. Further, NEPOOL fails to explain that neither PJM nor the New York control areas socialize costs of transmission upgrades across the control area. Both control areas have license plate rates and these rates have been approved by the Commission, [and] are consistent with LMP and the development of competitive power markets.

Coalition Protest at 24. The Coalition also provided examples in the RTEP document that supported a conclusion that the projects were built primarily to benefit a local area, but, as discussed above, the Commission failed to address these arguments.[7] That failure was arbitrary and capricious.

[7] Although the Commission itself had found in a September 29 deficiency letter that the NEPOOL/ISO-NE filing did not contain sufficient information to support their proposal, its order contains no analysis of the adequacy of the responses to its data requests. This is particularly noteworthy since the Commission itself questioned the absence of any analytic support for the NEPOOL/ISO-NE claim that the upgrades provided systemwide benefits, not local benefits and since the data responses themselves deviated, without disclosure, from the responses provided to NEPOOL by one of the transmission owners, Central Maine.

5. The Order Fails to Articulate What Appeal Rights Exist Under the TCA Amendments.

In the December Order, the Commission dismisses the Coalition and CMP's concerns about the ability of a party to appeal to the Commission the ISO's RTEP analysis and NEPOOL's inclusion of RTEP-approved upgrade costs in its formula rate. Apparently, the basis for the dismissal of these concerns is that (1) "Schedule 12C of the TCA Amendments contains an express dispute resolution provision for localized cost determinations made by ISO-NE and an express provision for a participant's rights to challenge those determinations." December 18 Order P. 46, and (2) requiring FERC approval of the RTEP or the ability to challenge NEPOOL's inclusion of such costs in its formula rate would constitute "multiple appeal rights" which would "significantly undermine the value of the default pricing mechanism." *Id*. The Commission also states that the TCA Amendments do not diminish existing rights of customers to appeal from NEPOOL cost allocation decisions, but fails to explain what, if any, these rights are. These statements fail to acknowledge the Coalition's concerns about (1) whether there is an opportunity to appeal from the NEPOOL cost allocation decisions given the existing formula rate provisions and (2) the proposal's limitation of dispute resolution procedures of localized cost determinations to only those applicants to whom a localized cost determination is made. The Order also fails to explain why the relief requested by the Coalition would constitute "multiple appeal rights." If there is already an opportunity to appeal (1) either the inclusion of a project in the RTEP or (2) NEPOOL's decision to include the cost of a project in the regional rate, the Commission should have specified what these rights are. If no such rights exist, the Commission's finding about rejecting *multiple* appeal rights makes no sense.

6. The Commission Mischaracterized the Nature of the Proposal

The Commission erred in its description of the TCA Amendments. In describing the NEPOOL proposal it states that "[w]here beneficiaries could not be clearly identified, transmission upgrades that produce regional benefits would receive regional cost support, and transmission upgrades that provide only local benefits would receive local cost support." This is incorrect. The TCA Amendments socialize costs *even when beneficiaries can clearly be identified as they are in the RTEP and in state siting proceedings*. A correct characterization would be that if no party *volunteers* to pay for the upgrade, the cost of that upgrade (if it is a reliability upgrade, meets the kV threshold and in not a radial line—criteria met by all upgrades listed in RTEP-03), will be socialized. While it is unclear how this incorrect description affected the Commission's analysis (since there is very little, if any, analysis demonstrated in the December 18 Order), the Order should clearly describe the proposal before the Commission, so that the parties and the reviewing court can be sure of the basis upon which the Commission made its decision. *KN Energy, supra*, 968 F.2d at 1303 (an agency decision can be upheld "only if we can discern a reasoned path from the facts before the [agency] to the decision it reached.")

CONCLUSION

For all the reasons stated above, the MPUC respectfully requests rehearing of the Commission's December 18 Order.

Respectfully submitted,

MAINE PUBLIC
UTILITIES COMMISSION

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

RHODE ISLAND PUBLIC
UTILITIES COMMISSION

/s/ Elia Germani, Chair__
Elia Germani
Rhode Island Public Utilities
Commission
89 Jefferson Blvd.
Warwick, RI 02888

RHODE ISLAND DIVISION
OF PUBLIC UTILITIES AND CARRIERS

/s/ John Spirito, Jr. General Counsel__
John Spirito, Jr.
Rhode Island Division
Of Public Utilities And Carriers
89 Jefferson Blvd.
Warwick, RI 02888

MAINE PUBLIC ADVOCATE

_/s/ Stephen Ward_____
Stephen Ward
Public Advocate
112 State House Station
Augusta, ME 04333

PINPOINT POWER

_/s/Thomas E. Atkins_____
Thomas E. Atkins
Pinpoint Power
440 Commercial Street
Boston, MA 02109

GENPOWER

_/s/ John A. O'Leary_____
John A. O'Leary
Vice Chairman and Managing Director
GenPower, LLC
1040 Great Plain Avenue
Needham, MA 02492

January 20, 2004

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 20th day of January, 2004.

/s/Claudia Whitley
Claudia Whitley