

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

Electricity Market Design and Structure

Docket No. RM01-12-000

**COMMENTS OF THE MAINE PUBLIC UTILITIES COMMISSION  
ON WHOLESALE MARKET ACTIVITIES**

The Maine Public Utilities Commission (MPUC) files these comments on market monitoring and mitigation in accordance with the Commission's Notice of Extension of Time and Opportunity to Submit Comments on Regional Transmission Organization Issues Discussed at Workshops, issued on October 30, 2001. The following comments specifically address the market monitoring and mitigation questions posed by the Commission for discussion during RTO week.

**1. For which markets should an RTO market monitor take responsibility?**

The market monitor should have responsibility for all the energy and reserve markets operated by the RTO or ISO. It also should have authority to investigate behavior in the bilateral markets that are related to the markets operated by the RTO or ISO.

**2. What is FERC's role in supervising an RTO market monitor?**

The RTO or ISO Board should have supervisory authority over the market monitor. However since the Commission has authority over wholesale electric rates and transmission rates, the Commission would have authority to act on any complaints about actions taken by the market monitor.

**3. What is FERC's role to monitor and police RTO markets independent of the roles and responsibilities of an RTO market monitor?**

The Commission has a responsibility under the FPA to ensure just and reasonable rates. The Commission must ensure that the market structure results in a competitive market. To satisfy this obligation, the Commission should: First, resolve matters relating to market structure in a fair and efficient manner; second, ensure that the market monitor has sufficient authority to mitigate exercises of market power; and third, grant deference to the market monitor's mitigation actions and act quickly on any challenges to exercises of the market monitor's authority. The Commission has stated that "abuse of market power cannot and will not be tolerated." *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 95 FERC ¶ 61,418 at p. 62,548 (2001). The market monitor, properly constituted and given adequate authority, can help the Commission implement its "zero tolerance" policy.

**4. Should the RTO be able to levy penalties or should these be referred to the Commission?**

The market monitoring division of the RTO or the ISO should be able to levy penalties as well as mitigate prospectively. Under the NEPOOL market rules, the ISO has the authority to sanction Market Participants for "certain violations of Participants' obligations under the NEPOOL Agreement, the Interim Independent System Operator Agreement, the NEPOOL Tariff and NEPOOL Rules." NEPOOL Market Rules § 13.1(a). The sanction provision should not be the primary method used to ensure that the markets are competitive; however, the Market Rules recognize that there is a need for "an efficient deterrent to noncompliance by Participants of their Participant Obligations." Market Rule § 13.1(d). The sanction or penalty should be stringent enough to actually deter noncompliant behavior, and the RTO or the ISO should use its authority under the sanction rule as necessary to deter such activities as physical withholding, a failure to

provide information requested by the RTO or the ISO or any other behavior that is inconsistent with the market rules, agreements or tariffs that delineate Participant obligations in the competitive electricity markets.

**5. What are the appropriate roles of the states and other regulatory agencies in establishing, supervising, and receiving information from an RTO's market monitor?**

The state commissions should have an advisory role with respect to the market monitor. The Commission should consider carefully the views of the state commissions regarding the constitution of the market monitor, because state commissions, unlike market players, can provide unbiased advice concerning the makeup, resources, and degree of independence appropriate to the market monitor. The market monitor should also have the obligation to consider input of the state commissions, though we do not envision a direct supervisory role.

Finally, state regulatory commissions should have a significant role in working with the market monitor and the Commission to ensure that markets are functioning properly, to identify and eliminate market power abuse and to identify and eliminate market flaws. This role cannot be fulfilled without unfettered access to all market information. The Commission has repeatedly recognized that state regulatory commissions share an interest in market monitoring and mitigation because flaws in the wholesale markets directly affect prices paid by retail consumers, especially in states, such as those in New England, which have embraced the development of competitive retail electric markets. *Regional Transmission Organizations*, FERC Statutes and Regulations ¶ 31,089 at 31,156 (1999). *See also, Pacific Gas and Elec. Co. and Southern California Edison Co., et al.*, 81 FERC ¶61,122 (1997); *Central Hudson Gas & Elec. Corp., et al.*, 88 FERC ¶ 61,137 at 61,397 (1999). The Commission should ensure full state regulatory

commission access (under appropriate protective orders) to market data in the possession of the ISO for the purpose of monitoring wholesale electricity markets.

**6. How should an RTO's market monitoring unit be organized and operated?**

**a. How independent from the RTO should the market monitor be?**

The MPUC believes that the market monitoring unit should report directly to the RTO or ISO Board rather than to any operations divisions. This issue was more extensively addressed in the New England Conference of Public Utilities Commissioners' (NECPUC) February 22, 2001 protest in Docket No. RT01-86:

NECPUC believes that the only way to meet the goals and standards set forth by the Commission is to have a market monitoring and mitigation unit (MMU) that is part of the Board's operations. This function would be fully staffed and capable of meeting the Commission's standards. Structural independence of the MMU from ISO-NE operations is crucial to truly effective market monitoring and mitigation.

The MMU envisioned by NECPUC would be funded without the need to obtain approval of NEPOOL and would have sufficient resources to fill the positions identified by the Board with qualified and experienced personnel. The Board would be empowered to take action if necessary to remedy a market problem, even if market participants are opposed.

The MMU would advise the Board of the necessity for rule changes and would work closely with the Board in drafting new rules relating to monitoring and mitigation. While the MMU should be organizationally separate from ISO-NE operations, there should be a feedback loop between ISO-NE and the MMU so that ISO-NE operational staff can communicate with the MMU regarding the market and participants' market behavior.

Motion to Intervene and Protest of the New England Conference of Public Utilities Commissioners, Docket No. RTO1-86 (February 22, 2001).

**b. Should the market monitor also audit the operation of the RTO?**

A market monitor that reports directly to the ISO or RTO Board and is independent of any of the other divisions of the organization may audit whether it is operating the markets

consistent with the market rules.<sup>1</sup> However, the Commission has authority to determine the structure of the RTO or the ISO, and to review decisions made by the independent board. Therefore, a special entity to monitor the ISO and RTO is duplicative and unnecessary. Moreover, a separate monitoring board with authority over the ISO or RTO board would hamper the ability of the ISO or RTO to respond efficiently to needed changes in the market rules.

**7. What measures, if any should be taken by the RTO to mitigate market power?**

The Commission directed ISO-NE and NEPOOL to develop more explicit thresholds to determine when the ISO would mitigate exercises of market power.<sup>2</sup> The ISO developed these thresholds, and the Commission approved them. At the time these changes were filed, NECPUC expressed some reservations about whether the thresholds were too lax and may result in unmitigated, but significant exercises of market power. These issues still concern the MPUC. Thus, in developing mitigation rules for the RTO or the ISO, the Commission should study the effectiveness of the current rules and determine whether additional or tighter mitigation measures are necessary. In particular, the market monitor should have the ability to intervene, and mitigate price, whenever the market clearing price is within the control of one or more market participants (as, for example, in situations caused by capacity shortages where a generator knows that its bid must be accepted for reliability reasons).

**8. What measures should be taken by federal or state government authorities and what measures should be taken by the Commission?**

The Commission must ensure that the wholesale electric rates are just and reasonable. In the context of competition in the wholesale electric markets, this means that the FERC must

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<sup>1</sup> ISO-NE now has a Market Advisor that performs this function.

<sup>2</sup> *NSTAR Services Co. v. New England Power Pool*, 92 FERC ¶ 61,065 at 61,204-205 (2000).

ensure that the markets are operating in a manner that is truly competitive and guard against exercises of market power or anticompetitive behavior. The FERC has recently stated its recognition that this is one of the challenges before it:

In today's electric industry, the Commission is faced with power and energy sales markets that are increasingly interstate in nature and increasingly dependent upon one another, and with power and energy sales markets that are in varying stages of transition to competition at the wholesale and, in numerous states, the retail level. We have a responsibility under the FPA to monitor wholesale markets to ensure that jurisdictional rates in the markets remain within a zone of reasonableness. Our responsibility is to ensure that sellers not charge unjust and unreasonable wholesale rates, and that the market structures and market rules governing public utility sellers nationwide, and affecting the wholesale rates of such public utility sellers, do not result in, or have the potential to result in wholesale rates that are unjust, unreasonable, unduly discriminatory, or preferential.

*Order on Triennial Market Power Updates and Announcing New, Interim Generation Market Power Screen and Mitigation Policy*, 97 FERC ¶ 61,219, slip op at 3 (November 20, 2001).

The Commission's mandate to protect consumers from having to pay unjust or unreasonable electric rates is not limited to market monitoring and mitigation or insuring that an effective market monitoring and mitigation system is in effect in each Regional Transmission Organization (RTO). It must ensure that the market rules within each region do not produce rates that are unjust and unreasonable. In order to do this, it must develop a high degree of technical expertise *within each region* to fully understand the implications of market rule changes proposed by the RTO or the ISO. Thus we view the development and application of such expertise in an expeditious, coherent, consistent and equitable manner as the most significant challenge faced by FERC in carrying out its statutory mandate. Further, while the FERC's efforts to eliminate seams that impede trading between regions in the market must be one of the FERC's objectives, the FERC cannot ignore its obligation to protect consumers from having to pay unjust and unreasonable wholesale rates due to market flaws or exercises of market power. Such flaws

can derive from the absence of needed market features such as a congestion management system, a multisettlement system and effective load response programs. However, they can also spring from rulings laying down new approaches that are hastily implemented without sufficient consideration or understanding of their implications or feasibility.

The Commission thus has oversight over market monitoring to ensure that the market rules are structured properly to ensure just and reasonable rates. It also must ensure that the ISO or RTO has sufficient authority to mitigate exercises of market power.

Because the wholesale markets have a direct effect on retail electricity prices and flawed wholesale markets threaten the viability of competitive retail programs in the states, states have a strong interest in monitoring wholesale markets to ensure that they are competitive.<sup>3</sup> As discussed above, the Commission has acknowledged that the states have a vital role in this area in a number of orders. In approving any RTO, the Commission should clearly affirm the role of state regulatory commissions in market monitoring and make clear that such agencies should have access, for market monitoring purposes, to market data within the possession of the ISO.

**9. What is the relationship between the RTO, the RTO market monitor and the Commission?**

See responses to questions three and six above.

**10. What conditions or events should trigger the mitigation?**

See response to question seven above.

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<sup>3</sup> Recently the Massachusetts Attorney General, the MPUC and ISO New England undertook a study of the New England energy markets to determine whether these markets are workably competitive. We expect to file the study with the Commission by the beginning of the new year.

Respectfully Submitted,

The Maine Public Utilities Commission

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Dated: January 7, 2002

### **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 lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C., this 7<sup>th</sup> day of January, 2002.

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Harvey L. Reiter