

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

ISO New England Inc.)	Docket No. RT04-2-000
)	
Bangor Hydro-Electric Company)	Docket No. ER04-116-000
)	
Central Maine Power Company)	
)	
NSTAR Electric & Gas Corporation, on behalf of its affiliates:)	
Boston Edison Company)	
Commonwealth Electric Company)	
Cambridge Electric Light Company)	
Canal Electric Company)	
)	
New England Power Company)	
Northeast Utilities Service Company, on behalf of its operating company affiliates:)	
The Connecticut Light and Power Company)	
Western Massachusetts Electric Company)	
Public Service Company of New Hampshire)	
Holyoke Power and Electric Company)	
Holyoke Water Power Company)	
)	
The United Illuminating Company)	
)	
Vermont Electric Power Company)	

**PROTEST AND NOTICE OF INTERVENTION
OF THE MAINE PUBLIC UTILITIES COMMISSION**

INTRODUCTION AND EXECUTIVE SUMMARY

Pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 and 214, and the Commission's Notices in these dockets dated November 12 and 19, 2003, the Maine Public Utilities Commission hereby gives

notice of its intervention in this proceeding and protests certain features of the underlying filing in the case.¹ The MPUC adopts all of the positions set forth in the Protest of the New England Conference of Public Utilities Commissioners (NECPUC). In addition, the MPUC makes the following points: (1) the provisions relating to cost allocation of transmission upgrades should be modified in accordance with the position set forth by the MPUC and others in Docket Nos. ER03-1141 and ER03-222 and (2) the Commission should require that the RSP be filed for approval at the Commission.

NOTICE OF INTERVENTION

The MPUC designates the following persons for service and communications with respect to this matter and requests that their names be placed on the official service list for this proceeding:

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Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. *See* 35-A M.R.S.A. § 101 *et seq.*

¹ This proceeding was initiated with a filing made on October 31, 2003 (“the October 31 Filing”) by ISO-New England (“ISO-NE”) and the New England transmission owners (“TOs”) (together, the “Filing Parties”) in support of the creation of an RTO pursuant to Order No. 2000. *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh’g, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), appeal dismissed, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000).

PROTEST

A. Schedule 12 of the OATT and Related Provisions That Preserve Socialization of the Costs of Transmission Upgrades Should Be Replaced With the Proposal Advanced in Docket EL03-222.

The Petitioners state that the “RTO-NE Tariff incorporates the changes to the NEPOOL OATT proposed in the 100th Agreement amending the RNA, and will be conformed based on the Commission’s ultimate determination of new transmission cost allocation issues in Docket No. ER03-1141.” Transmittal Letter at 112. The MPUC requests that these provisions be replaced with the methodology set forth in the Complaint of the Coalition Supporting Beneficiary Funding against the New England Power Pool (NEPOOL) and ISO New England, Inc. (ISO-NE) in Docket No. EL03-222 for all the reasons set forth in the Coalition pleadings in that docket and in their related protest in Docket ER03-1141.

B. The Regional System Plan Should Not Be Allowed to Become a Vehicle to Avoid Commission Review of the Cost of Projects Included in the RNS.

The RTO-OATT sets forth a planning process that produces a Regional System Plan (RSP), (formerly called the Regional Transmission Expansion Plan or RTEP).² The MPUC requests that the OATT be modified to require the filing of the RSP at the Commission for its approval, because, as discussed below, inclusion of projects in the RSP has a direct impact on rates. As an alternative, the Commission should articulate clearly that the inclusion of a project in the RSP does not preclude meaningful Commission review of the need for, or costs of, that project in setting rates.

² Until 2003, ISO-NE produced a Regional Transmission Expansion Plan (RTEP). At NECPUC’s urging, the word transmission was removed, to make clear that more than transmission should be considered when studying the needs of the system and potential solutions to its problems.

The stated purpose of the RSP is to “identify system reliability and market efficiency needs and types of resources that may satisfy such needs so that Market Participants may provide efficient market solutions (*e.g.* demand-side projects, distributed generation and/or merchant transmission) to identified needs.” Transmittal Letter at 133. An additional purpose of the RSP is to “assess the ability of proposed market solutions to address identified needs with due cognizance of the operational characteristics of those proposed market solutions and to identify a regulated transmission solution to be built by one or more PTO(s) in the event that market responses do not meet identified needs or that additional transmission infrastructure may be required to facilitate the market.” Proposed RTO-NE OATT § 11.48.1.

If a transmission upgrade is included in the RSP, the Transmission Owner designated by RTO-NE as the appropriate entity to construct and own or finance the transmission upgrade has an obligation to build that upgrade subject to certain conditions set forth in the Transmission Operating Agreement (TOA). Transmittal Letter at 90-92. All the costs of the project, if it meets the standards set forth in Schedule 12³ (except those excluded by the RTO as localized costs in accordance with Schedule 12(C)), are included as Pool-Supported Pool Transmission Facilities (PTF). The Tariff further states that the “Transmission Revenue Requirements for each PTO will reflect the PTO’s costs with respect to Pool Supported PTF. ” Attachment F Implementation Rule. In addition, the Tariff provides for a formula rate which requires only an information filing every year.

³As thoroughly discussed in the Coalition pleadings in Docket No. ER03-1141, the standards set forth under Schedule 12 allow for virtually all projects to be included as Pool Supported PTF. A project must meet the 115 kV threshold and must provide for two-way traffic. As we noted in that docket, there were no projects in the RTEPs that would fail to meet these criteria.

The information filing will show, among other things, any additions or retirements to PTF. According to Attachment F, however, the “filing of the information filing does not re-open the formula rate [set forth in Attachment F] for review but rather is *contestable only with respect to the accuracy of the information contained in the informational filing.*” (Emphasis added). Moreover, the information filing does not contain any of the analysis, findings or conclusions in the RSP. Instead, the filing would contain the calculation based on the formula set forth in schedule F to which the cost of the upgrade would be an input. Because the OATT does not itself provide for the RSP to be filed for approval at the Commission, it therefore appears that there is no opportunity to challenge either the RTO’s inclusion of a project in the RSP or the analysis upon which the inclusion is made even though inclusion of a project in the RSP has a direct impact on the regional rate.

The MPUC believes there should be a formal opportunity for stakeholders to raise their concerns with the Commission over the Plan’s contents. This can be done by requiring that each RSP or modification to an RSP be filed with the Commission for Commission approval, with an opportunity for participants to raise issues with the findings or conclusions of the RSP. This is consistent with the statutory scheme under FPA Section 205, which requires the filing, not only of all rates and charges, but also of all contracts or practices that affect or relate to such rates and charges. It is critical that parties have an opportunity to be heard at the Commission about concerns over projects that may have a substantial rate impact. A new RSP or an amendment to the RSP is a change in rate and should be subject to scrutiny under Section 205, where the burden of proving the reasonableness of the change will be on the filing utility (the RTO). Parties

should not have to file a section 206 Complaint to bring these issues before the Commission and face a burden that should be borne by the RTO. In the alternative, should the Commission conclude that the RSP itself need not be filed, the Commission should clarify that parties nonetheless will be given a full opportunity to review and challenge in a Commission proceeding the inclusion of the costs of any project at the time transmission charges are modified to reflect the costs of such project.

Respectfully submitted,

MAINE PUBLIC UTILITIES
COMMISSION

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Its Attorneys

Dated: December 8, 2003

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 8th day of December, 2003

/s/ Harvey L. Reiter