

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

**New England Power Pool and  
ISO New England Inc.**

**Docket No. ER01-2329-000**

**MOTION TO INTERVENE AND COMMENTS OF THE  
NEW ENGLAND CONFERENCE OF PUBLIC UTILITIES COMMISSIONERS**

In accordance with Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> the New England Conference of Public Utilities Commissioners (“NECPUC”) hereby submits its motion to intervene and comments in the captioned proceeding.<sup>2</sup>

**I.**

All correspondence and communications regarding this matter should be addressed to the following:

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<sup>1</sup> 18 C.F.R. § 385.214 (2000).

<sup>2</sup> Individual members of NECPUC may also be filing separate interventions.

## II.

NECPUC is a not-for-profit corporation comprising public utility commissioners of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Formed fifty years ago and funded by the New England states, NECPUC's mission is the promotion of regional cooperation and effective communication on all public utility matters within New England. As a representative of New England's interests concerning the electric industry, NECPUC has a vital stake in the operation of the New England Power Pool ("NEPOOL") and ISO New England Inc. ("ISO-NE" or "the ISO").

## III.

On June 19, 2001, the New England Power Pool Participants Committee and ISO New England Inc. (the Joint Filers) made a joint filing requesting the Commission to accept as a rate schedule for the New England Markets the substance of the standard market design (SMD) that ISO New England and NEPOOL had *both* included in their dueling filings in Docket Nos. ER01-2192 (May 31, 2001) and ER01-2223 (June 4, 2001) respectively. Concurrent with their joint filing, NEPOOL and the ISO filed a motion, since granted, (1) asking that the Commission defer until September 15, 2001 the date by which interventions in their respective cases must be filed and (2) asking that the Commission not take action on their filings until after the extended comment period. The Joint Filers state in explanation of their joint filing that both were desirous of implementing SMD at the earliest practicable date and that the filing was "drafted not to implicate the underlying issues that have resulted in alternative SMD filings by the two organizations." Transmittal letter at 1.

NECPUC is sympathetic to the Joint Filers' desire to see early implementation of SMD and has so

stated in its June 12, 2001 intervention in *New England Power Pool*, Docket No. ER01-2115. The joint filing, however, is ambiguous. Joint Filers state that they have filed “a document entitled Standard Market Design Document” and ask the Commission to accept this “SMD Document” for filing as “a rate schedule.” (Id.) (emphasis added). They do not state, however, *whose* rate schedule the Commission is being asked to accept. The Commission only has the authority to accept rate schedules filed by public utilities subject to its jurisdiction and therefore some public utility must identify itself as the filing utility. This, of course, does not preclude the ISO and NEPOOL from submitting a joint rate schedule. See 18 CFR § 35.1(a). If the Commission is to give the filing effect, therefore, it must treat the filing as a single rate schedule attributable to both ISO New England and NEPOOL. Treating the filing this way, however, creates another issue regarding the still-pending SMD filings that must be resolved.

While the Joint Filers state that their joint filing was “drafted not to implicate the underlying issues that have resulted in alternative SMD filings by the two organizations,” (Transmittal letter at 1), it is not clear that this has been accomplished. It is a settled Commission policy that two sets of tariff sheets governing the same service cannot be effective at the same time. *Texas Gas Transmission Corp.*, 64 FERC ¶ 61,204 at 62,592 (1993). The filing in this case is the *third* filing governing SMD. In the ordinary course, the ISO’s first-in-time filing would have been given effect and the subsequent NEPOOL filing in Docket No. ER01-2223 and the joint filing in this case would have been rejected. *See Texas Gas, supra.*

It is plain to NECPUC, as it must have been to the Joint Filers, that the instant filing does not resolve the governance issue posed by their dueling filings. While both the ISO and NEPOOL agree on the *initial* form of SMD, they do not agree on how *changes* in SMD are to be effectuated, whether by Market Rule amendments that the ISO can file or by changes to the Restated NEPOOL Agreement that only NEPOOL can file. In the short run there should be no issue because the immediate and common concern of the ISO and NEPOOL is getting SMD into effect. It is for that reason, and that reason alone, that NECPUC can support implementation of the joint filing in this docket. If the Commission accepts the joint filing and places it into effect August 1, 2001, however, it must make the filing effective subject to resolution of the governance issues posed in Docket Nos. ER01-2192 and ER01-2223. The Commission will have to resolve the governance issue in the other filings reasonably soon, moreover, if there is to be a process, as there has to be, for making changes to SMD as they become necessary.<sup>3</sup>

### CONCLUSION

For the reasons stated above, NECPUC supports acceptance of the ISO New England and NEPOOL Standard Market Design Document (1) if it is treated as a joint rate schedule; and 2) if it

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<sup>3</sup> NECPUC has recently expressed support (in Docket No. ER01-2115) for putting SMD into the Market Rules and not leaving changes to SMD solely within NEPOOL's province. A regional markets board, such as NECPUC has advocated in Docket No. RT01-88, would resolve the problem of dueling SMD filings submitted by ISO-NE and NEPOOL.

is accepted on an interim basis, subject to the prompt resolution of the governance issues posed in Docket Nos. ER01-2192 and ER01-2223.

Respectfully submitted,

NEW ENGLAND CONFERENCE OF PUBLIC  
UTILITIES COMMISSIONERS

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Dated: July 3, 2001

Its Attorneys

**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 3<sup>rd</sup> day of July, 2001.

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Harvey L. Reiter

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