105 FERC ¶ 61,300
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

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

ORDER ON COMPLAINT AND THE PROPOSED AMENDMENTS TO THE NEPOOL TARIFF AND THE RESTATED NEPOOL AGREEMENT

(Issued December 18, 2003)

1. In this order, the Commission accepts the proposed revisions to the New England Power Pool (NEPOOL) Tariff and the Restated NEPOOL Agreement to implement comprehensive revisions for transmission cost allocation for New England (TCA Amendments) filed by NEPOOL and ISO New England (ISO-NE) (together, Applicants). Further, the Commission rejects the Complaint filed by Maine Public Utilities Commission, et al. These revisions ensure that New England electricity customers receive reliable and efficient electric service, at just and reasonable rates, by promoting the construction of new transmission facilities.

Background

A. Docket No. ER03-1141-000

2. On July 31, 2003, NEPOOL and ISO New England Inc. jointly filed amendments to the NEPOOL Tariff and the Restated NEPOOL Agreement to implement comprehensive revisions for transmission cost allocation for the New England region. Applicants describe the TCA Amendments as providing an “objective, non-

discriminatory default cost allocation mechanism that is appropriate for New England."[1] Applicants state that the TCA Amendments call for participant-funding when a transmission upgrade is a private, market-based investment, when beneficiaries can be clearly identified, and in other delineated circumstances. Participant funding would apply to the following types of transmission upgrades: Elective Transmission Upgrades, Generator Interconnection Related Upgrades, Merchant Transmission Facilities, Local Benefit Upgrades[2] and Localized Costs.[3] Where 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.

3. The TCA Amendments, as proposed, call for a combination of participant funding[4] and regional cost support,[5] depending on the type of upgrade, modification or addition to the transmission system. Applicants state that transmission facilities rated 115kV and above would be eligible for regional cost support.[6] Applicants contend that facilities rated 115kV and above make up approximately 95% of the existing pool

---

[1] Applicants' July 31 Filing at 1.

[2] ISO-NE defines a Local Benefit Upgrade as an upgrade, modification or addition to the transmission system that is: (i) rated below 115kV, or (ii) rated 115kV or above and does not meet all of the non-voltage criteria for Pool Transmission Facilities (PTF) classification specified in Section 15.1 of the Agreement.

[3] Localized Costs are costs associated with Regional Benefit Upgrades and RTEP02 Upgrades (categories of Transmission Upgrades eligible for regional cost support, described further below) that ISO-NE determines are not reasonable to be supported on a regional basis as Pool-Supported Costs. ISO-NE further indicates that such costs could include, for example, incremental costs of "gold-plating" or the construction of transmission lines underground when such construction is not justified.

[4] According to ISO-NE, stakeholders understand participant funding to mean the payment for transmission by those entities that request, require or voluntarily undertake the building of new transmission in New England. As a practical matter, such entities create the costs and/or will derive the benefits of the new transmission.

[5] Regional cost support refers to the costs of the transmission facilities that will be rolled into the regional transmission rates paid by all network transmission customers under the NEPOOL Tariff.

[6] Applicants' July 31 Filing at 15.

transmission facilities in New England and that facilities rated below 115kV are generally used for local requirements and/or for distribution.

4. Applicants also explain that the proposed regional cost sharing plan would further apply to those upgrades that provide parallel looped capacity to transmission facilities. Applicants assert that regional cost support would benefit the region as a whole, citing an earlier Commission order which stated that the "upgrade of transmission networks often benefit essentially the entire grid rendering any specific cost assignment impractical because net benefits are too diffuse."[7]

5. Applicants argue that their proposed TCA Amendments are consistent with the Commission's Standard Market Design White Paper[8] in that the default cost allocation method applies only to upgrades identified in New England's transmission expansion planning process as Reliability Upgrades and Economic Upgrades.[9] As defined in the NEPOOL Tariff, Reliability Upgrades refer to those transmission upgrades that are "not required by the interconnection of a generator that are nonetheless necessary to ensure the continued reliability of the NEPOOL system, taking into account load growth and known resource changes . . ."[10] Applicants further state that Economic Upgrades, as defined in the planning process, are those that provide net economic benefits to the region.

6. To determine net economic regional benefit, the ISO analyzes, among other things, regional and local load projections, generator availability and fuel costs. Such rigorous analysis, Applicants contend, ensures that the only upgrades supported regionally are those that the ISO identifies as needed for regional reliability or those that are projected to provide net economic benefits for the New England region as a whole. Applicants contend that allocating costs regionally is appropriate as the New England Control Area is a tightly interconnected transmission network. ISO-NE and NEPOOL further assert that upgrades of a sufficient size to one part of New England "virtually always provide diffuse benefits throughout the integrated network, often immediately and certainly over the useful life of those facilities."[11]

---

[7] ISO New England Inc., 91 FERC ¶ 61,311 at 62,076-77 (2000).

[8] White Paper on Wholesale Energy Market Platform (April 28, 2003) White Paper.

[9] See Applicants' July 31 Filing.

[10] See Applicants' July 31 Filing at 7, citing § 1.106 of the NEPOOL Tariff.

[11] See Applicants' July 31 Filing at 13.

7. Applicants describe the default cost allocation as objective and non-discriminatory, which applies in the absence of participant funding of transmission, and is consistent with the principles of cost causation.[12] Applicants contend that these amendments to the tariff were developed collaboratively through "a fully inclusive and extensive stakeholder process." The proposed TCA Amendments are supported by approximately 78% of the NEPOOL Participants Committee. Further, Applicants argue, the TCA Amendments are consistent with Commission directives and policy.

B. Docket No. EL03-222-000

8. In response to ISO-NE's and NEPOOL's TCA Amendments, on August 22, 2003, the Maine Public Utilities Commission, the Maine Public Advocate, the Rhode Island Public Utilities Commission, the Rhode Island Division of Public Utilities and Carriers, the Rhode Island Attorney General, Pinpoint Power, NRG Energy, Inc., and Gen Power, LLC (collectively, the Coalition) filed a complaint in Docket No. EL03-222-000. Complainants request that the Commission reject ISO-NE's and NEPOOL's proposal and direct NEPOOL to amend the NEPOOL tariff to implement the Coalition's proposed beneficiary funding cost allocation methodology. The Coalition argues that Applicants' TCA Amendments would provide regional cost support to all transmission upgrades, is incompatible with locational marginal pricing (LMP), and is an extension of the current unjust system. The Coalition's complaint refers to a number of Commission orders that were issued prior to the White Paper.[13] These orders generally favor an approach that allocates the costs of new transmission facilities to those who benefit from them.

9. The Coalition argues that its cost allocation model is based primarily on beneficiary funding cost methodology. Among other things, the Coalition's proposal calls for all regional plan-approved transmission facilities to have twenty-five percent (25%) of the project costs allocated regionally and seventy-five percent (75%) allocated to the locally-based primary beneficiaries.[14] The Coalition proposes to allocate 100% of costs regionally only when primary beneficiaries cannot be identified. The Coalition

---

[12] Applicants' July 31 Filing at 16.

[13] See ISO New England, Inc., 91 FERC ¶ 61,311 (2000), ISO New England, Inc., 95 FERC ¶ 61,384 (2001), ISO New England, Inc., 98 FERC ¶ 61,173 (2002), ISO New England, Inc., 100 FERC ¶ 61,029 (2002), New England Power Pool and ISO New England, Inc., 100 FERC ¶ 61,287 (2002), and New England Power Pool and ISO New England, Inc., 101 FERC ¶ 61,344 (2002).

[14] The Coalition argues that primary beneficiaries are easily identified, with "reasonable specificity" through the Regional Transmission Expansion Plan currently in place, as such identification is also a requirement of the NEPOOL Tariff.

surmises that allocating costs to the beneficiaries is more rational and equitable than a regional or socialized cost allocation since it does not require economically troubled areas to subsidize the costs of projects that will primarily benefit the more affluent areas of New England.[15] However, the Coalition states that, in recognizing that everyone in New England will, to some extent, benefit from major transmission upgrades and projects, some regional funding has been factored in, which it contends, is most equitable and is compatible with general pricing principles.[16]

10. The Coalition further contends that the Commission should apply their proposal to all projects not under construction as of March 1, 2003, the date that the Commission directed NEPOOL to implement a revised cost allocation methodology that is consistent with locational marginal pricing.[17]

C. The Commission-Issued Data Request

11. On September 29, 2003, the Commission issued a data request to ISO-NE and NEPOOL seeking answers to nine questions. The Commission requested further information with regard to, among others: 1) the 2002 and 2003 RTEP reports; 2) the estimated costs of burying transmission lines in conjunction with phases I and II of the SWCT 345 kV project (RTEP02 Ref. 4.26); 3) whether cost-benefit analyses had been performed with regard to upgrades; and 4) projects that will address export-constrained area of Maine.

12. On October 29, 2003, later amended on November 6, 2003, ISO-NE and NEPOOL jointly filed answers to the Commission's data request. According to Applicants' responses, all projects listed as RTEP02 Upgrades (and listed in Schedule 12B) were deemed to be reliability upgrades. All of the upgrades expected to be listed in the 2003 RTEP were needed for reliability as well. Applicants state that any cost estimates of projects listed in the RTEP02 and draft RTEP03 should be regarded as preliminary and subject to substantial change over the course of siting and construction. Applicants also indicated that no cost-benefit analyses had been performed with regard to the upgrades. Applicants note that the NEPOOL Tariff has never required NEPOOL or ISO-NE to conduct such an analysis to justify a reliability upgrade.

13. Applicants provided cost estimates regarding phases I and II of the Southwest Connecticut project, which identified the estimated costs of burial at $107.6 million

[15] Complaint at 21.

[16] Complaint at 23.

[17] Complaint at 24.

(phase I) and $209.7 million (phase II). ISO-NE and NEPOOL, however, are unable to answer the question of whether burial costs would be localized or regionalized as this, they state, would prejudge the Connecticut siting process that has just begun for phase II. Applicants also state that the TCA Amendments provide an opportunity for participants to challenge ISO decisions regarding localized costs but that there are no related procedures for challenging ISO-NE's determination of needed upgrades and the associated cost allocation. According to Applicants, the existence of multiple appeal rights would significantly undermine the value of the default pricing mechanism the Commission ordered NEPOOL and ISO-NE to adopt.

14. Finally, in response to the Commission's data request regarding projects to "unlock" Maine generation, Applicants identified two projects, which would address reliability-based concerns: 1) the reconductoring of the Three Rivers-Maguire Road 115 kV Line 250; and 2) the Three Rivers-Quaker Hill 115kV Line 197. Applicants further stated that eight other projects have been proposed in the Maine-New Hampshire regions which address a number of other concerns, but would have an ancillary impact on Maine.

Notice of Filing, Interventions, Protests and Answers

15. Notice of Applicants' filing in Docket No. ER03-1141-000 was published in the Federal Register, 68 Fed. Reg. 48,604 (2003), with comments, protests, and interventions due on or before August 21, 2003. Notice of the Coalition's filing in Docket No. EL03-222-000 was published in the Federal Register, 68 Fed. Reg. 52,188 (2003), with comments, protests, and interventions due on or before September 5, 2003. Motions to intervene, comments in support of filings and protests in both dockets were filed by several entities, and are listed in Appendix A of this order. The comments and protests filed are discussed below.

16. On September 5, 2003, in Docket No. ER03-1141-000, National Grid, CT DPUC, and NU filed responses to the protests regarding the proposed Amendments. Also on September 5, 2003, Central Maine filed an answer in response to statements in various motions, interventions and comments filed by several entities.[18] In addition, NEPOOL and ISO-NE filed an answer to the protests filed by various parties. On September 22, 2003, the Maine Public Utilities Commission (MPUC), Maine Public Advocate (MPA) and Central Maine Power Company (Central Maine) filed a joint answer to the answers.

17. On September 5, 2003, NEPOOL and ISO-NE filed an answer, in Docket No. EL03-222-000, in response to the Coalition's complaint. The Connecticut Department of

[18] Central Maine states that its Answer responds primarily to comments of the Connecticut Department of Public Utility Control (CT DPUC) and joint comments of National Grid USA and United Illuminating Company (collectively, National Grid).

Public Utility Control filed a motion to dismiss the Complaint on September 5, 2003. On September 22, 2003, the Coalition filed an answer to the requests to dismiss their complaint and an answer to NEPOOL's and ISO-NE's answer.

18. As stated, on September 29, 2003, the Commission issued a data request to ISO-NE and NEPOOL seeking additional information. On October 29, 2003, later amended on November 6, 2003, ISO-NE and NEPOOL filed joint answers to the Commission data request. On November 12, 2003, VDPS and the Coalition[19] filed comments in response to ISO-NE's answer. On November 26, 2003, Central Maine Power Company (Central Maine) filed a protest to Applicants' response to the Commission's data request.

Discussion

A. Procedural Matters

19. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2002), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[20] given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant KeySpan-Ravenswood's, NRG Companies',[21] and Dominion Companies'[22] untimely, unopposed motions to intervene in Docket No. ER03-1141-000, and Vermont Electric Power Company, Inc.'s untimely, unopposed motion to intervene in Docket No. EL03-222-000.

---

[19] Joint comments were filed by Maine PUC, Pinpoint Power, the Maine Public Advocate, the Rhode Island Attorney General, the Rhode Island PUC, the Rhode Island Division of Public Utilities and Carriers, NRG Energy, Inc., and Gen Power.

[20] 18 C.F.R. § 385.214(d) (2002).

[21] NRG Power Marketing, Inc.; Connecticut Jet Power, LLC; Devon Power, LLC; Middletown Power, LLC; Montville Power, LLC; Norwalk Power, LLC; and Somerset Power LLC (collectively, NRG Companies).

[22] Dominion Resources, Inc.; Dominion Energy Marketing, Inc.; Dominion Retail, Inc.; Dominion Nuclear Connecticut, Inc.; and Virginia Electric & Power Company (collectively, Dominion Companies).

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[23] prohibits answers unless otherwise ordered by the decisional authority. We will accept the answers filed by National Grid, CT DPUC, NU, Central Maine, NEPOOL and ISO-NE, and MPUC, MPA and Central Maine in Docket No. ER03-1141-000, and NEPOOL and ISO-NE, and the Coalition in Docket No. EL03-222-000, because they have provided information that assisted us in our decision-making process. We will also allow VDPS', the Coalition's and Central Maine Power's comments to ISO-NE's and NEPOOL's joint response to the Commission's data request.

B. Commission Response

21. The Commission finds the TCA Amendments just and reasonable and is accepting them as proposed. The Commission has issued a number of orders over the past three to four years urging New England to develop a default mechanism that allocates the costs of transmission upgrades in an objective, non-discriminatory manner and respects the principle of cost causation. In those orders the Commission has consistently stated that this default allocation mechanism should apply where parties cannot agree on the beneficiaries. The Commission has, since an order issued December 20, 2002,[24] issued the Wholesale Power Market Reform White Paper. There, the Commission stated that it would "look to the RTO or ISO and the regional state committee to determine the appropriate regional approach for allocating the costs of new transmission."[25] Moreover, the White Paper stated that there may be regional differences over the level of participant funding. Finally, in Appendix A to the White Paper, the Commission stated that it would permit regional flexibility in determining the types of economic enhancements that would be recovered regionally. Also, the FERC Staff Paper on Regional Choices for Implementing the Elements of the White Paper stated that the decision to roll-in transmission costs 1) avoids the difficult task of determining project beneficiaries and 2) could facilitate the development of needed transmission infrastructure.[26]

22. Generally, the Commission has clearly indicated - in the White Paper, and appendix attached thereto - that it will give deference to regional choices, particularly the choices of the RSCs, on how to allocate the costs of transmission expansions. While an RSC has not yet been formed in New England, there has been extensive participation by

---

[23] 18 C.F.R. ' 385.213(a)(2) (2002).

[24] New England Power Pool and ISO New England, Inc., 101 FERC ¶ 61,344 (2002) (December 20 Order).

[25] White Paper at 6.

[26] FERC Staff Paper on Regional Choices for Implementing the Elements of the White Paper at 3 (July 7, 2003) (Staff Paper).

state representatives including state commissions in the regional discussions that led to both the proposal of ISO-NE and NEPOOL and the counter proposal contained in the Complaint. It is clear from the pleadings in this case that there is no consensus among the state representatives on the transmission cost allocation approach that should be used. The proposal submitted by ISO-NE and NEPOOL is supported by state representatives from Massachusetts and Connecticut. State representatives from Maine and Rhode Island are sponsors of the alternative proposal contained in the Complaint. Vermont has proposed another approach to cost allocation.

23. While there is no consensus among the state representatives there is widespread consensus among the market participants for the proposal filed by ISO-NE and NEPOOL. The proposal was approved by approximately 78% of NEPOOL. The cost of facilities that provide only local benefits, merchant transmission projects, and generator interconnection costs would be recovered through participant funding. The proposal rolls in the costs of upgrades for reliability and upgrades that provide net economic benefits to the region as a whole when participant agreement does not occur. The Commission considers the proposal submitted by ISO-NE and NEPOOL to be a clear, transparent, and non-discriminatory method for allocating these costs and consistent with the principles of open access transmission service. 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. We will address specific comments of the intervenors below.

1. Regional Cost Allocation

24. Several parties, namely PSEG, Exelon, the Coalition, and Central Maine, assert that ISO-NE and NEPOOL have not actually proposed a new transmission cost allocation methodology. Rather, they argue, the TCA Amendments constitute a repackaging of the current methodology, which does not assess the locational benefits of any upgrade. PSEG and the Coalition submit that the TCA Amendments preserve an allocation scheme that the Commission accepted on an interim basis.[27] Exelon asserts that virtually all new transmission would receive regional cost support if the TCA Amendments are accepted. The Coalition asserts that Applicants have failed to show that regional cost support is just and reasonable. The VDPS and the Coalition assert that, under the TCA Amendments,

[27] "For this interim period until the development of a standard market design for the Northeast, however, all congestion costs will be socialized in any case: the financial incentive to site new generation in congested areas will not become meaningful until the imposition of LMP begins to allocate the costs of congestion to the parties who cause it." ISO New England Inc. et al., 98 FERC ¶ 61,173 at P 60 (2002).

load in several sub-regions may be forced to pay for an economic upgrade from which they may derive no benefit. Central Maine characterizes the proposal as unfair and inequitable to transmission customers.

25. The Commission recognized in the White Paper that the 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 to changing beneficiaries over time. These factors support the regional choice made here.

26. Applicants explain that the RTEP process is designed to first identify and provide information as to where market opportunities exist on the bulk power system to address reliability or market efficiency concerns. Only if the market fails to respond to these concerns will ISO-NE identify needed transmission upgrades. And even if needed upgrades are identified in the RTEP process, ISO-NE can subsequently remove them if market solutions have come forward. The Commission is satisfied that the Regional Benefit Upgrade criteria together with the Localized Cost review mechanism 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.

2. Alternatives

27. Central Maine, Exelon, the Coalition and PSEG assert that the proposal will favor transmission solutions rather than alternatives - for example, new generators and customer-initiated load response - as they cannot compete against transmission upgrades whose costs are subsidized by consumers throughout New England. Central Maine argues that project developers and lenders will be leery of market-based solutions if forced to compete against socialized transmission. Central Maine also argues that, as socialized transmission projects inhibit generator solutions in congested areas, Reliability Must Run contracts will become the norm.

28. As stated, Applicants have shown that only in the event that a market-based resource does not first address a transmission need will a project be eligible for regional cost support. Although there are benefits and liabilities associated with each financing alternative, it is clear that adequate transmission is required to support uninterrupted power service and market efficiency. To achieve adequate transmission, regulatory certainty is needed. In the opinion of Applicants and 78% of NEPOOL, regional cost support for regional benefit upgrades is the cost allocation method most likely to provide transmission investment certainty.

3. Consistency with New England's Market Design

29. Several intervenors, namely PSEG, the Coalition and Central Maine, argue that the TCA Amendments are neither consistent with New England's market design nor with cost causation principles. PSEG asserts that cost allocation rules should, at a minimum, require participant funding for all economically-driven upgrades, which would send more efficient price signals to the market. Should the Commission accept some form of cost socialization, PSEG asserts that a prior proposal, which would have required economic benefits in "each and every" NEPOOL zone before allocating economic upgrade costs regionally, would be more appropriate.[28] The Coalition argues that an ISO should facilitate project financing that allows those vulnerable to high congestion costs or reduced reliability to decide whether planning results are sufficient to warrant investment in a proposed solution.

30. Responding to suggestions that costs should be allocated regionally only in cases when LMP signals are insufficient to bring about new investment, Central Maine argues that there is no indication that LMP signals would fail to encourage investment in New England. Central Maine argues that, based on CT DPUC estimates of increased congestion costs in Southwest Connecticut, savings in reduced energy costs would more than justify the proposed upgrades.[29]

31. The Commission has stated that:

> There are instances in which an upgrade marked as economic today may in the future be considered as reliability. Thus, many (if not all) upgrades serve both purposes to various degrees. Particular cost responsibility does not necessarily follow from the stated purpose of the upgrade.[30]

---

[28] In June, 2003, the Tariff Committee sent to the Participants Committee an allocation methodology that would have allocated costs of reliability upgrades regionally, but would have allocated regionally the costs of economic upgrades only if they provided economic benefits to each and every sub-area within New England. The Participants Committee was concerned that such a requirement would lead to time consuming debates for each upgrade, and would eliminate the advantages of any default cost allocation. The Participants Committee modified the proposal, resulting in the proposal that ISO-NE filed.

[29] In the October 16, 2002 Request for Clarification and/or Rehearing, the Connecticut Department of Public Utility Control stated: "The ISO NE has forecasted that LMP will raise costs in Connecticut by 125 to 375 million dollars per year (Regional Transmission Expansion Plan 02, September 11, 2002, Section 7)."

[30] ISO New England, Inc., 91 FERC ¶ 61,311 at 62,076-77.

The TCA amendments establish the same cost allocation rule for both types of upgrades. Where there is a New England region-wide benefit from a reliability or economic upgrade identified as needed in the RTEP and no market-based resource addresses the need, the costs would be supported regionally. The Commission concurs with this approach and supports the regional choice in this matter.

4. Stakeholder Process

32. The VDPS asks that the Commission reject the Applicants' proposal with respect to economic transmission upgrades because the Participants Committee modified the stakeholder-supported proposal.[31] The VDPS asks the Commission to require ISO-NE and NEPOOL to implement the proposal produced by the stakeholder process.

33. The Coalition and Central Maine argue that NEPOOL used the stakeholder process to promote broad regional cost support of transmission upgrades rather than to promote consensus building. Central Maine asserts that the absence of a discussion on allocating project costs to beneficiaries "is a clear indication that the majority of the participants in the stakeholder process had little interest in anything other than rationalizing continued socialization."[32] Central Maine notes that Public Utilities Commissions do not vote at NEPOOL, so their opposition is not reflected in the approval percentage.

34. The Commission is approving the TCA Amendments based on the record before us. There is nothing in the record to indicate that the stakeholder process did not work in the way it is intended. None of the commenters argues that proper stakeholder procedures were not followed. Applicants indicate that the stakeholder working group process was thorough and consisted of four workshops, follow-on meetings at the NEPOOL Tariff Committee to draft specific tariff language, and then final approval at the NEPOOL Participants Committee. 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. According to Applicants, the alternate approach to economic upgrades that VDPS and PSEG supported was expressly considered and discussed but ultimately rejected by the Participants Committee. The Commission will not disturb that regional choice.

---

[31] The agreed-upon language in the stakeholder process with respect to an economic upgrade would have allocated costs to all loads in the region if that upgrade could have been shown to provide benefits to each and every NEPOOL reliability region. (See fn 29.)

[32] Central Maine protest at 24-25.

5. Grandfathered list to the TCA Amendments

35. ISO-NE and NEPOOL state that, consistent with the December 20 Order, all upgrades included in the 2002 RTEP report appropriately receive regional cost support. Exelon, however, argues that ISO-NE and NEPOOL have interpreted the Commission's order in the broadest possible way in order regionalize the costs of these projects. Exelon argues, as does the Coalition, that the list of these upgrades (contained in Schedule 12B of ISO-NE and NEPOOL's July 31 filing, which includes the Southwest Connecticut project) represents a list of everything being evaluated in the planning process rather than projects "planned or under construction." Moreover, Exelon takes issue with the lack of detail provided for certain projects[33] and argues that such projects are "far too indefinite" to qualify for regional cost support.

36. The Coalition argues that the list of upgrades is inconsistent with the Commission's December 20 Order. Central Maine argues that the list of projects to be socialized in Schedule 12B is missing critical details, without which, assessing system-wide benefits sufficient to justify regional cost allocation is impossible. Central Maine argues that the ISO erroneously re-designated as reliability projects some 13 projects that were designated economic upgrades in the RTEP02.

37. The Commission will not grant protests from Exelon and the Coalition and will accept Schedule 12B as submitted by ISO-NE and NEPOOL. The Commission will deny the protests that seek to reopen the issue of whether the cost of upgrades for Southwest Connecticut should be included in the regional transmission rate. In the December 20 Order the Commission encouraged ISO-NE and market participants to cooperate on identifying and constructing transmission upgrades into Southwest Connecticut and to "spread among customers throughout New England" the costs of such upgrades. In a connected footnote, the Commission stated that the same rate treatment would apply to those upgrades "already planned or under construction as of the date of this order, such as the transmission upgrades in ISO-NE's 2002 Transmission Expansion Plan."[34] The Commission is accepting ISO-NE and NEPOOL's proposal and thus the issue of whether the SWCT and RTEP02 upgrades should be rolled-in is not applicable.

6. Administrative Convenience

38. Central Maine argues that improperly allocating high costs of transmission projects only exacerbates the already difficult state and local regulatory and

[33] Specifically, Exelon refers to the list of "NEMA/Boston Long-term Reliability Reinforcements" at 4 of Schedule 12B.

[34] ISO New England 101 FERC ¶ 61,344 at fn 15 (2002).

environmental approvals processes. Moreover, Central Maine argues that the approach suggested by ISO-NE and NEPOOL will virtually guarantee that new transmission cannot be sited and built.[35] Central Maine is sympathetic to ISO-NE's reticence to join contentious proceedings to identify beneficiaries; however, Central Maine asserts that the ISO as an independent party "must be willing and able to make the tough decisions that lead to long-term market efficiency."[36] PSEG argues that socializing the costs of economic projects would be just as cumbersome and politically charged as the process of determining the particular beneficiaries of an expansion project, thus eliminating any perceived benefits from socializing costs.[37]

39. There is no cost allocation approach that will eliminate litigation entirely. But the approach that evolved through the stakeholder process and approved by the Participants Committee will help to minimize litigation and encourage actual needed transmission investment. The Commission agrees with Applicants that financial commitments to transmission infrastructure improvements require certainty of recovery. 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. In these circumstances, the Commission again supports the regional choice made here.

7. Localized Costs

40. The Connecticut Attorney General states that the proposal is well-suited for New England. However, CTAG argues that, where the proposal includes a provision that does not allocate Localized Costs[38] on a regional basis, the cost allocation proposal would

---

[35] Central Maine submits that, in Maine for instance, a proposed major new transmission line cannot obtain a Certificate of Public Convenience and Necessity unless it can be demonstrated that Maine consumers benefit.

[36] Central Maine protest at 22.

[37] Applicants, in their transmittal letter state, at page 5, "a requirement that every proposed regional upgrade be proved to benefit every sub-region in New England undoubtedly would lead to extensive and time consuming debates for each upgrade over the issue of whether every sub-region benefits from that upgrade. Such a requirement, Participants argued, would effectively eliminate the advantages of any default cost allocation, since every allocation would be exposed to challenge. This would in turn delay or even prevent projects that provide net benefits to the region."

[38] ISO-NE states that Localized Costs are those costs associated with certain, regionally supported upgrades that ISO-NE determines to be unreasonable to be supported as pool-supported costs. The ISO would not consider local siting requirements to be dispositive of whether or not localized costs exist.

allow ISO-NE to second-guess state and local siting authorities who have the difficult responsibility to actually site the very transmission projects that will benefit the entire region. The CTAG submits that ISO-NE should not be allowed to substitute its judgment as to the reasonableness of project costs that have been approved by state and local siting authorities after their consideration and careful balancing of factors such as need, cost, reliability and environmental impact.

41. The Commission will not grant CTAG's protest. CTAG asserts that the TCA Amendments as proposed would allow ISO-NE to "second-guess" state and local siting authorities with respect to transmission projects. The proposed Schedule 12C describes the procedures by which the system operator will determine localized costs for Regional Benefit Upgrades and RTEP02 Upgrades. The Commission finds it reasonable for the ISO to determine localized costs. Under the proposal, costs of certain transmission projects and upgrades will be allocated regionally through the regional transmission charge. The Commission believes that there must be an independent body to ensure and determine that costs associated with such projects are reasonable. This provision does not second guess the decisions of local siting authorities. Rather, it determines whether certain costs should be included in the transmission rate charged to all customers within the region or only to customers within a portion of the region.

8. Generation Interconnection and Elective Upgrades

42. Calpine argues that the ISO-NE and NEPOOL proposal unduly penalizes interconnection consumers and entities who take on elective transmission upgrades. Calpine argues that the rationale offered by ISO-NE and NEPOOL with regard to participant funding of interconnection and elective transmission upgrades is unsupported, insofar as ISO-NE and NEPOOL have not demonstrated that the costs of those or similar upgrades would never have been identified in a subsequent NEPOOL Transmission Plan. Calpine requests that the Commission require NEPOOL and ISO-NE to revise the cost treatment for these upgrade categories to be consistent with the cost treatment requested for Regional Benefit Upgrades.

43. The Commission will not grant Calpine's protest. The Commission does not believe changing the existing allocation mechanism for generation interconnection and elective upgrades is warranted. The Commission has in previous orders accepted "ISO-NE's proposal to assign 100 percent of costs associated with direct interconnection and MIS upgrades to all interconnecting generators."[39] Moreover, ISO-NE has indicated that any generation interconnection project that truly provided benefits to the system as a whole would be recognized as providing those benefits and thus would be treated as a Regional Benefit Upgrade. In its answer, ISO-NE states that Schedule 11, §5 of the

---

[39] ISO New England, Inc., 95 FERC ¶ 61,384, at P 24 (2001).

Restated NEPOOL Open Access Transmission Tariff contains a provision that would treat as a reliability upgrade an interconnection-related upgrade that "provides benefits to the system as a whole as well as to particular parties." As this provision remains unchanged as a result of the TCA Amendments, it appropriately addresses Calpine's concerns.

9. Challenging Cost Determinations

44. Central Maine argues that a party that is unfairly allocated costs of a project may file an FPA Section 206 complaint but has no other avenue of redress. Central Maine argues that this approach shifts the burden of establishing the justness and reasonableness of a rate associated with a new facility or upgrade from the party filing the rate to the customer.

45. The Coalition states that the only means to challenge the inclusion of a project in regional rates is through the RTEP process. However, the only forum for challenging the ISO's final RTEP determination is an FPA Section 206 complaint. The Coalition argues that the result is fundamentally unfair and contravenes Commission policy governing the permissible scope of a formula rate.

46. Participants do have rights to challenge Localized Costs determinations. 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 decisions.

47. With respect to regional upgrades, Applicants point out that an extensive review and feedback process from participants, regulators, and the general public is provided through the Transmission Expansion Advisory Committee and an annual public meeting before the final RTEP report is presented for approval by the ISO-NE Board of Directors. Applicants also state that no procedure for challenging ISO-NE's determination of needed upgrades and the associated cost allocation was considered by the participants because any rights participants currently have to challenge the default cost determination mechanism or its implementation would continue in the future. We agree that multiple appeal rights would significantly undermine the value of the default pricing mechanism. The TCA Amendments do not diminish existing rights of customers to appeal from NEPOOL cost allocation decisions.

The Commission orders:

(A) NEPOOL and ISO-NE's proposed TSA Amendments to the NEPOOL Tariff and hereby accepted, as discussed in the body of this order.

(B) The Coalition's Complaint is hereby rejected, as discussed in the body of this order.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A

INTERVENORS

Docket No. ER03-1141-000

Intervened without substantive comments:

Bangor Hydro-Electric Company (Bangor)
Connecticut Municipal Electric Energy Cooperative (CMEEC)
Dominion Companies*
Duke Energy North America, LLC (Duke Energy)
Electric Power Supply Association (EPSA)
GenPower, LLC (GenPower)
KeySpan-Ravenswood, LLC (Key-Span) *
Massachusetts Division of Energy Resources (DOER)
Massachusetts Municipal Wholesale Electric Company (MMWEC)
NRG Companies (NRG Companies)
Pinpoint Power, LLC (Pinpoint)
Vermont Electric Power Company (VELCO)*

Comments in Support of ISO-NE and NEPOOL:

Associated Industries of Massachusetts (AIM)
Connecticut Department of Public Utility Control (CT DPUC)
Massachusetts Department of Telecommunications and Energy (MADTE)
National Grid USA and the United Illuminating Company (National Grid)
NEPOOL Industrial Customer Coalition (NICC)
Northeast Utilities Service Company (NU) **
NSTAR Electric & Gas Corporation (NSTAR)

Protests:

Attorney General for the State of Connecticut CTAG)
Calpine Eastern Corporation and Calpine Energy Services, LP (Calpine)
Central Main Power Company (Central Maine)
Exelon Corporation (Exelon)
Maine Public Advocate ***
Maine Public Utilities Commission, the Maine Public Advocate,

Rhode Island Public Utilities Commission, the Rhode Island Division of Public Utilities, the Rhode Island Attorney General, Pinpoint Power, NRG Energy, Inc., and Gen Power, LLC (collectively, the Coalition)
PSEG Energy Resources & Trade, LLC (PSEG ER&T)
Sacramento Municipal Utility District (SMUD)*
Vermont Department of Public Service (VDPS)

Docket No. EL03-222-000

Intervened without substantive comments:
KeySpan-Ravenswood, LLC
PSEG Energy Resources & Trade, LLC

Comments in Support of Complaint:
Central Maine Power Company
Exelon Corporation
Sacramento Municipal Utility District*

Protests:
Attorney General for the State of Connecticut
Braintree Electric Light Department, et al. ****
Calpine Eastern Corporation and Calpine Energy Services, LP
Connecticut Department of Public Utility Control
Connecticut Municipal Electric Energy Cooperative
Green Mountain Power Corporation
Massachusetts Municipal Wholesale Electric Company
National Grid USA
Northeast Utilities Service Company
NSTAR Electric & Gas Corporation
United Illuminating Company

* Intervened out-of-time
** Northeast Utilities Service Company filed on behalf of NU Operating Companies (The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire (collectively, NU Operating Companies)), and Select Energy, Inc.
*** Intervened in support of Maine Public Utilities Commission
**** Braintree Electric Light Department, Reading Municipal Light Department and Taunton Municipal Lighting Plant (collectively, Braintree Electric)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Pool and
ISO New England, Inc.

(Issued December 18, 2003)

BROWNELL, Commissioner, dissenting:

1. I believe the costs of reliability upgrades should be socialized. I also believe that the costs of economic upgrades should be borne by the beneficiaries of those projects. What is required is a rigorous cost benefit analysis based on fundamental cost causation principles. The transmission cost allocation proposal of NEPOOL and ISO-NE is to socialize the cost of any type of transmission system expansion (115kV or higher). In the view of NEPOOL and ISO-NE, all transmission system upgrades either provide some reliability benefit or will provide some reliability benefit in the future. Therefore, under the proposed methodology, 100 percent of the costs of the projects in the Regional Transmission Expansion Plan (RTEP) for 2002 and 2003 will be socialized, estimated to be at least $1.3 billion. I believe this is too broad a definition of reliability.

2. The majority cites to the statements in the Wholesale Power Market Reform White Paper (White Paper) and Staff Paper on Regional Choice that the Commission "will give deference to regional choices, particularly the choices of the RSCs [regional state committees], on how to allocate the costs of transmission expansions" as the basis for finding the proposed allocation methodology just and reasonable. In this case, there is no consensus among the affected state commissions to defer to. I also believe that NEPOOL and ISO-NE have not shown that the proposed cost allocation methodology is just and reasonable. Therefore, I will dissent.

3. The White Paper states that RSCs should have primary responsibility for determining regional proposals for cost responsibility, including whether, and to what extent, participant funding is used within a region for transmission enhancements. (See White Paper, Appendix A at page 17). I support this statement in the White Paper. Here, however, an RSC does not exist. In fact, the states of Maine, Rhode Island and Vermont oppose the proposed allocation methodology. These states represent half the states covered by the proposal of NEPOOL and ISO-NE. In my view, where an RSC does not exist and there is strong state opposition, deference is not warranted, particularly given

the lack of a rigorous cost benefit analysis based on fundamental cost causation principles.

4. I believe approval of a methodology opposed by half the states in the region will lead to decreased transmission investment. In fact, the Commission's very rationale for giving deference to RSCs was that state siting authorities have little interest in siting a line that benefits a particular generator or distant load in another state when the load of the constructing public utilities' system is required to pay for the new facilities. The state authorities, at a minimum, need assurance that the costs of that expansion will be paid for by those who benefit from the expansion in order to have sufficient incentive to site the new facilities. The states of Maine and Rhode Island have confirmed this concern in their comments, "[u]nder a scheme that provides for 100 percent socialization, it is extremely unlikely that a state regulatory commission could find a 'need' for a project that (1) its consumers had to pay for and (2) caused prices to consumers to increase. Thus, the likelihood of a project being built to relieve a generation pocket under the TCA [transmission cost allocation] amendments is very slim indeed" (Coalition Comments at pages 26-27).

5. 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 regional consensus among the states about the appropriate allocation methodology, the Commission would still need to explain how the proposal satisfies the just and reasonable standard. The order does not provide a reasoned explanation because, in fact, it can not.

6. The fundamental principle of regulatory ratemaking is that cost responsibility follows cost causation. In this particular proceeding, the Commission stated:

> 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. 100 FERC at 62,285-86

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. The states of Maine and Rhode Island argue that this is not a hypothetical problem. For example, they state that at the RTE-02 Stakeholder review session in the summer of 2002 the Connecticut Municipal Electric Energy Cooperative represented that it could not secure project financing for developing its own combustion turbine since congestion relief might be provided by the SWCT Upgrades funded by socialized cost recovery (Coalition Comments at 17, fn. 6).

7. The proposed cost allocation method is clear and objective only because it does not require any analysis of the beneficiaries of a project. Pursuant to the definition of Regional Benefit Upgrades (RBU), all transmission facilities rated 115kV or higher are deemed to provide regional benefits (Transmittal Letter at 12). Since these facilities are defined as RBUs, NEPOOL and ISO-NE claim that no cost-benefit analysis is required nor should it be (Response to Staff Data Request No. 1(d)). NEPOOL and ISO-NE support this bright line test by asserting that transmission upgrades often serve both reliability and an economic purpose. They also assert that socialization is appropriate because a project may benefit one area today, but some other area in the future. 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.

8. 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 345kV Project, in RTEP-02 at 178 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 NEPOOL wide LOLE improvement and 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" (Coalition Comments at 23). 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.

9. With regard to the particular upgrades for southwest Connecticut (SWCT Upgrades), we directed NEPOOL and ISO-NE to determine a defined set of SWCT Upgrades that should be socialized and what portion of the costs of the subset should be socialized. (Ordering Paragraph (C) 103 FERC 61,304 at 62,191). I am particularly troubled by the majority approving the proposed cost allocation methodology and effectively relieving NEPOOL and ISO-NE of their obligation to justify socializing the SWCT Upgrades because the cross-subsidization of the costs of the SWCT Upgrades is significant. The level of cross-subsidization that results from the proposed methodology can be best illustrated by comparing who bears the costs of the SWCT 345 kV Project if those costs are socialized or participant funded. Some estimates of the costs for the projects described in the RTEP-02 and RTEP-03 that would be socialized under the proposed allocation methodology total $1,300,000,000, including $600,000,000 for the SWCT 345 kV Project. If the $1,300,000,000 were apportioned based on annual power sales, and I will use 2001 annual sales for illustrative purposes, the total cost responsibility of the state of Connecticut would be only $338,000,000. If the cost of the SWCT 345 kV Project were borne by the state of Connecticut, the beneficiary, and the remaining costs ($700,000,000) were socialized, the cost responsibility of the state of Connecticut would be $782,000,000. Table A below illustrates my point:

Table A

2001 Annual Sales		All Costs 100% Socialized	SWCT Participant Funded	Non-SWCT Costs Socialized	Total
Ma	43%	$559,000,000	$0	$301,000,000	$301,000,000
NH	9%	$117,000,000	$0	$63,000,000	$63,000,000
CT	26%	**$338,000,000**	**$600,000,000**	**$182,000,000**	**$782,000,000**
ME	10%	$130,000,000	$0	$70,000,000	$70,000,000
RI	7%	$91,000,000	$0	$49,000,000	$49,000,000
VT	5%	$65,000,000	$0	$35,000,000	$35,000,000

10. NEPOOL and ISO-NE 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. In Order No. 2000 at 511, the Commission stated that it was not "abandoning the fundamental underpinnings of our traditional transmission pricing policies, i.e., that transmission prices must reflect the

costs of proving the service," citing Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 1591 (1944); Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923). It is simply inequitable and unjust and unreasonable to charge for a service that is not being provided.

11. I believe the costs of reliability upgrades should be socialized. However, the definition of reliability used by NEPOOL and ISO-NE is too broad. If pursuant to a rigorous cost benefit analysis, it was shown that transmission system expansions serve a reliability purpose as well as an economic purpose to various degrees that may or may not change over time, the equitable and balanced approach would be to require some portion of the costs of projects where the beneficiary can be identified to be socialized. This is exactly what we asked NEPOOL and ISO-NE to do with regard to the SWCT Upgrades. The quotation we have used in numerous orders is that "[c]ost allocation is not a matter for the slide-rule". 324 U.S. 581; 65 S.Ct.829, 89 L.Ed. 1206 (1945). The Commission has a long history of exercising its judgment to balance competing interests in an equitable manner. For example, the Commission reasoned that pipeline capacity costs should be treated equally as peak and annual equally because the pipeline was built for both peak and annual service and neither predominated. Atlantic Seaboard, 11 FPC 43. In this proceeding, the states of Maine and Rhode Island, NRG Energy and Gen Power have proffered an alternative methodology that would regionally allocate 25 percent of the costs of projects where the beneficiary can be identified on the basis that transmission upgrades do have a reliability purpose to some extent. They have offered an alternative that provides for an equitable distribution of cost responsibility. I think their proposal has a lot of merit.

For these reasons, I respectfully dissent.

____

Nora Mead Brownell
Commissioner