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C O U N S E L L O R S   A T   L A W

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March 13, 2006

## **VIA ELECTRONIC FILING**

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street  
Washington, D.C. 20426

Re: Long-Term Firm Transmission Rights in Organized Electricity Markets; FERC  
Docket No. RM06-8-000. Comments of NEPOOL Participants Committee

Dear Secretary Salas:

The New England Power Pool (“NEPOOL”) Participants Committee hereby submits electronically its Comments in the above-referenced docket.

Respectfully submitted,

Eric K. Runge  
Counsel to the NEPOOL Participants  
Committee

cc: Persons identified on the Service List in the captioned docket



need for flexibility and avoidance of adverse impacts, subject to certain guidelines. NEPOOL supports the Commission’s opinion that the guidelines themselves be sufficiently flexible to allow the stakeholder process in each ISO, RTO or other transmission organization to determine what works best for its region, consistent with the requirements of the Federal Power Act and the Commission’s orders.<sup>2</sup>

Since March of 2003, New England has implemented a market system with core design elements of locational marginal pricing, multi-settlement, and financial transmission rights (“FTRs”). FTRs are available with up to a one year term. One hundred percent of the FTRs are allocated through an auction mechanism that provides for annual and monthly FTR auctions. The NEPOOL Participants and ISO-NE designed the FTR system so that the market would appropriately value one hundred percent of the FTRs through these auctions. The FTR auction mechanism also allows for the reconfiguration of FTRs on a monthly basis, thus providing market participants with the flexibility to meet their market needs as conditions change.

In addition to the auction allocation of FTRs, there are two other allocations of related rights in New England. Auction Revenue Rights (“ARRs”) are allocated directly to LSEs, and to other entities with certain long-term power supply arrangements. Qualified Upgrade Awards (“QUAs”) are allocated directly to entities that pay for transmission upgrades that increase transfer capability on the New England Transmission System. QUA recipients are entitled to an award of ARR in the ARR allocation. ARR holders can use the FTR auction revenues to obtain FTRs in the FTR auctions. New England’s FTR markets, along with its allocations of ARR and

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<sup>2</sup> See LTTR NOPR at P 43 (“Accordingly, the guidelines should provide enough flexibility to allow each region to develop, through its usual stakeholder process, a specific long-term firm transmission right design that fits the prevailing market design and best meets the needs of market participants in that region.”) (Emphasis added.)

QUAs, together are now a mature system, with almost three years of implementation experience behind them.

When NEPOOL and ISO-NE initially designed and implemented the system of FTRs and ARR for New England, they considered the possibility of offering long-term FTRs. At the time NEPOOL and ISO-NE decided not to try to offer such LTTRs, primarily for two reasons. First, there are a number of difficult issues associated with offering LTTRs, such as funding and transferability issues. Second, there was not a sufficient demand in New England among market participants for LTTRs to warrant their development. Most of New England had competitive retail access in place by the time the FTR system was developed and there simply was not much long-term power supply contracting being done that required long-term hedging mechanisms. Since then, however, a few Participants have expressed an interest in having LTTRs available to them.<sup>3</sup> NEPOOL and ISO-NE have initiated a working group (the “LTTR Working Group”) that will begin meeting in the near future to explore how best to offer LTTRs given the market design and conditions in New England.

These comments were developed in the course of three meetings of the New England stakeholders. The first was an informal meeting open to all, at which conceptual comments were developed. The second was a February 27, 2006 meeting of the NEPOOL Markets Committee, at which the comments, as modified at that meeting, were recommended to the Participants Committee by a vote of approximately 93% of the voting interests present.<sup>4</sup> The final meeting

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<sup>3</sup> Most of these Participants are public power entities.

<sup>4</sup> At the Markets Committee meeting, Participants considered revisions to the comments that would have indicated a preference on the part of some Participants for a direct allocation of LTTRs and, generally, less of an incremental approach to the design and implementation of a system of LTTRs for New England. Those proposed revisions were voted on and received only 39% support of the voting interests present.

was the March 3, 2006 meeting of the Participants Committee, at which the comments were approved by a 78% vote for filing.<sup>5</sup>

## II. COMMUNICATIONS

All correspondence and communications in this proceeding should be addressed to:

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## III. COMMENTS

### A. The LTTR Final Rule should minimize potential harm to existing markets and market participants by allowing for gradual, incremental change from existing market design in the development and offering of LTTRs.

The LTTR NOPR recognizes that for regions such as New England that have well-established markets in place “*the most straightforward method to develop long-term firm transmission rights would be to extend the term of the auction revenue rights or FTRs that they currently allocate.*”<sup>6</sup> (Emphasis added.) NEPOOL urges the Commission to allow for such an approach in the LTTR Final Rule to avoid unnecessary adverse impacts.

One particular area, among others, in which this principle of allowing for incremental change should apply is with regard to how LTTRs are allocated. Guideline 7 of the LTTR NOPR states that: “The initial allocation of the long-term firm transmission rights shall not

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<sup>5</sup> A tabulation of the Participants Committee vote is included as Attachment 1 to these Comments. As reflected in Attachment 1, only three Participants voted against the comments. One of those Participants is a member of the Public Power Sector and the rest of that sector abstained, resulting in an opposition vote for the entire sector.

<sup>6</sup> LTTR NOPR at P 46.

require recipients to participate in an auction.” A requirement that LTTRs be directly allocated to LSEs has the potential to be especially disruptive to an organized market such as in New England, where there is a mature auction mechanism in place that allocates one hundred percent of the FTRs.

That same auction mechanism could be used to allocate LTTRs, along with all other FTRs, while still ensuring that LSEs are able to acquire the LTTRs they need. This protection of LSEs could be assured, for example, through a tie-breaker mechanism, under which, if an LSE with a long-term commitment and another market participant are bidding the same price for an LTTR, the LSE would have priority and would get the LTTR.<sup>7</sup>

In New England, LSEs receive a direct allocation of ARRs and would be able to use their ARR revenues to bid into the auction for LTTRs, thus providing them the ability, combined with a tie-breaker mechanism, to acquire the LTTRs they need. NEPOOL submits that this type of mechanism should meet any requirement in the Final Rule for an allocation of LTTRs that gives a priority to LSEs that have long-term power supply commitments and service obligations.

Other areas where this principle of allowing incremental change and avoiding adverse impact should apply include the following:

- where a market system has purely financial transmission rights, the Final Rule should not require the inclusion and use of physical rights;
- where a market system provides for multiple sources and sinks for its FTRs (including both nodes and zones), the Final Rule should allow the flexibility to offer LTTRs with the same source and sink characteristics (node-to-node, node-to-zone, zone-to-zone, etc.);

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<sup>7</sup> The allocation of LTTRs through an auction would also help to fund the LTTRs, which otherwise could be a major contentious issue that could result in significant delay in the development, implementation and maintenance of LTTRs.

- where a market system provides a right to receive FTR auction revenues to those entities that pay for transmission upgrades, that right could be sufficient to meet the requirement of Guideline 3 in the LTTR NOPR;<sup>8</sup>
- where a market system has sought to put all LSEs on the same footing with regard to hedging congestion risk-- especially in retail access regions such as New England-- the Final Rule should not require substantially different treatment among classes of those LSEs (such as between those with short-term and those with long-term power supply arrangements);
- where a market system offers FTRs only in the form of obligations, the Final Rule should neither require nor preclude the offering of LTTRs in the form of options; and
- where a market system does not now insure the full funding of its FTRs, the LTTR Final Rule should not require full funding of LTTRs.

NEPOOL believes that this principle of allowing for flexibility to make minimal changes necessary to provide LTTRs to those LSEs that need them is especially applicable in organized markets, such as New England, that have: (1) a comprehensive set of interrelated market design features in place that are intended to be congruent with one another; (2) relatively few LSEs seeking LTTRs; and (3) competitive retail access environments, in which supply obligations change frequently. While NEPOOL supports the offering of LTTRs to LSEs that need them, the design and implementation of LTTRs should be done in a way that minimizes harm to the existing markets and market participants.

**B. Compliance with the LTTR Final Rule will require stakeholders to address several difficult issues and could require significantly more than six months from the date of the Final Rule to implement.**

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<sup>8</sup> Guideline 3 in the LTTR NOPR states: “Long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization’s prevailing cost allocation methods for upgrades or expansions. The term of the rights should be equal to the life of the facility (or facilities) or a lesser term requested by the party paying for the upgrade or expansion.” In New England, entities that pay for such upgrades receive Qualified Upgrade Awards, which in turn give them the right to ARRs.

Even if the LTTR Final Rule requires relatively small incremental changes from the current market design for some regions such as New England, there are a number of difficult issues that stakeholders and the ISOs/RTOs will have to grapple with before LTTRs can be implemented. The Commission should allow sufficient time for the work-through of these issues, including the following:

- the level of funding of LTTRs;
- the transferability of LTTRs and what happens to an LTTR with specified points of receipt and delivery when the LSE transfers its service obligation to another LSE with different supply sources during its long-term service obligation;
- the potential for sham transactions, or overstatement of projected load growth, designed to obtain LTTRs, and how to protect against such gaming of the system;
- the enactment of legislation designed to obtain LTTRs for LSEs serving load in a particular state and how to protect against its potential to adversely affect the markets;
- the extent to which LTTRs should be factored into a regional system plan<sup>9</sup> for the expansion of the transmission system, and whether the offering of LTTRs should require any expansion of the transmission system and, if so, who pays for that expansion;
- potential restrictions, if any, that should be placed on secondary market trading of LTTRs, and the extent to which the transmission organization should, if at all, facilitate such trading;
- the implications of LTTRs on financial assurance requirements; and
- the extent to which significant software changes will be required to enable the offering of LTTRs.

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<sup>9</sup> In the LTTR NOPR at P 89 the Commission seeks comment on whether transmission organizations (such as ISO-NE) should be required to file their regional system plans and planning procedures. NEPOOL recommends against such a requirement for several reasons: (1) the plans and procedures are extremely detailed and are not the “rates, terms and conditions” contemplated by the Federal Power Act as the subject of filings; (2) filing the plans would invite unnecessary and undesirable regulatory litigation over their contents and would tend to push the Commission into the role of system planner; (3) the filing of the plans and procedures would be extremely cumbersome; (4) the plans and procedures are evolving documents that change relatively frequently; and (5) the plans sometimes contain information that would be inadvisable to make public given the critical energy infrastructure to which it pertains.

Given these difficult issues and others that must be addressed in complying with the Final Rule, NEPOOL recommends that the Commission allow stakeholders and their transmission organizations adequate time to comply with the Final Rule. Adequate time to comply might include allowing more than six months to make a compliance filing of tariff amendments as well as allowing additional time to implement the proposed design.

#### **IV. CONCLUSION**

NEPOOL respectfully requests that the Commission accept these comments as solicited by the February 2, 2005 LTTR NOPR and give them due consideration in the development of the LTTR Final Rule.

Respectfully submitted,

NEW ENGLAND POWER POOL  
PARTICIPANTS COMMITTEE

By: \_\_\_\_\_

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Its Attorneys

Dated: March 13, 2006

**NEPOOL PARTICIPANTS COMMITTEE  
MARCH 3, 2006 MEETING  
VOTE TALLY  
COMMENTS ON FERC LTTR NOPR**

**TOTAL**

<b>SECTOR</b>	<b>VOTE</b>
GENERATION	15.51
TRANSMISSION	14.63
SUPPLIER	17.07
ALTERNATIVE RESOURCES	14.67
PUBLICLY OWNED ENTITY	0.00
END USER	17.07
<b>% IN FAVOR</b>	<b>78.94</b>

**GENERATION SECTOR**

Participant Name	Vote
ANP Funding I, LLC	F
Boston Generating, LLC	F
Consolidated Edison Energy, Inc.	F
Dominion Energy Marketing, Inc.	F
Duke Energy North America, LLC	O
Entergy Nuclear Generation Company	A
FPL Energy LLC	F
Lake Road Generating Company, LP	F
Milford Power Company, LLC	F
Millennium Power Partners	F
Mirant Energy Trading, LLC	F
TransCanada Power Marketing Ltd.	F
IN FAVOR (F)	10
OPPOSED (O)	1
TOTAL VOTES	11
ABSTENTIONS ( A)	1

**TRANSMISSION SECTOR**

Participant Name	Vote
Bangor Hydro-Electric Company	F
Boston Edison Company	F
Central Maine Power Company	F
New England Power Company	F
Northeast Utilities System Companies	F
The United Illuminating Company	F
Vermont Electric Power Company, Inc.	O
IN FAVOR (F)	6
OPPOSED (O)	1
TOTAL VOTES	7
ABSTENTIONS (A)	0

**SUPPLIER SECTOR**

Participant Name	Vote
BOC Energy Services, Inc.	F
Citadel Energy Products, LLC	F
Constellation Energy Commodities Group, Inc.	F
Cross Sound Cable Company, LLC	A
Edison Mission Marketing and Trading	F
El Paso Merchant Energy, LP	F
Energy America, LLC	F
Epic Merchant Energy, L.P.	F
Exelon Generation, LLC	F
H.Q. Energy Services (U.S.) Inc.	F
LIPA	A
NRG Power Marketing, Inc.	F
PPL EnergyPlus, LLC	F
PPM Energy Inc.	F
Strategic Energy Ltd.	F
Unitil Corporation Participant Cos.	F
IN FAVOR (F)	14
OPPOSED (O)	0
TOTAL VOTES	14
ABSTENTIONS (A)	2

**ALTERNATIVE RESOURCES SECTOR**

Participant Name	Vote
<b>Renewable Generation Sub-Sector</b>	
Calpine Energy Services, LP	F
Gas Recovery Systems, Inc.	F
Indeck Maine	F
Ridgewood Rhode Island	F
<b>Distributed Generation Sub-Sector</b>	
Pinpoint Power LLC	F
Seneca Energy II, LLC	F
<b>Load Response Sub-Sector</b>	
Conservation Services Group	F
Energy Federation Inc.	F
IN FAVOR (F)	8
OPPOSED (O)	0
TOTAL VOTES	8
ABSTENTIONS (A)	0

**NEPOOL PARTICIPANTS COMMITTEE  
MARCH 3, 2006 MEETING  
VOTE TALLY  
COMMENTS ON FERC LTTR NOPR**

**PUBLICLY OWNED ENTITY SECTOR**

Participant Name	Vote
Ashburnham Municipal Light Plant	A
Belmont Municipal Light Department	A
Boylston Municipal Light Department	A
Braintree Electric Light Department	A
Chicopee Municipal Lighting Plant	A
Concord Municipal Light Plant	A
Conn. Municipal Electric Energy Cooperative	A
Danvers Electric Division	A
Georgetown Municipal Light Dept.	A
Groton Electric Light Department	A
Hingham Municipal Lighting Plant	A
Holden Municipal Light Department	A
Holyoke Gas & Electric Department	A
Hudson Light and Power Department	A
Hull Municipal Lighting Plant	A
Ipswich Municipal Light Department	A
Littleton (MA) Electric Light Department	A
Mansfield Municipal Electric Department	A
Marblehead Municipal Light Department	A
Mass. Municipal Wholesale Electric Co.	A
Middleborough Gas and Electric Dept.	A
Middleton Municipal Electric Dept.	A
North Attleborough Electric Department	A
Pascoag Utility District	A
Paxton Municipal Light Department	A
Peabody Municipal Light Plant	A
Rowley Municipal Lighting Plant	A
Shrewsbury's Electric Light Plant	A
Sterling Municipal Electric Light Dept.	A
Taunton Municipal Lighting Plant	A
Templeton Municipal Lighting Plant	A
Vermont Public Power Supply Authority	O
Wakefield Municipal Gas and Light Dept	A
West Boylston Municipal Lighting Plant	A
Westfield Gas & Electric Light Dept.	A
IN FAVOR (F)	0
OPPOSED (O)	1
TOTAL VOTES	1
ABSTENTIONS (A)	34

**END USER SECTOR**

Participant Name	Vote
Associated Industries of Massachusetts	F
Connecticut Office of Consumer Counsel	F
Energy Management Inc.	F
Harvard Dedicated Energy Limited	F
Industrial Energy Consumer Group	F
J&L Electric	F
Maine Skiing, Inc.	F
NH Office of Consumer Advocate	F
Texas Instruments	F
The Energy Consortium	F
The Energy Council of Rhode Island	F
UPC Wind Management, LLC	F
IN FAVOR (F)	12
OPPOSED (O)	0
TOTAL VOTES	12
ABSTENTIONS (A)	0