

96 FERC ¶ 61, 317  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

New England Power Pool.	Docket No. ER01-2115-002
ISO New England, Inc.	Docket Nos. ER01-2192-001 and EL01-85-001
New England Power Pool	Docket No. ER01-2223-001
New England Power Pool ISO New England, Inc.	Docket No. ER01-2329-001
Regional Transmission Organizations	Docket No. RT01-99-002

ORDER GRANTING CLARIFICATION

(Issued September 17, 2001)

In this order, we grant the requests for clarification filed by ISO New England, Inc. (ISO-NE) and the New England Conference of Public Utilities Commissioners (NECPUC), and deny the request for rehearing filed by the New York Independent System Operator (NYISO), of our July 25, 2001 order dismissing as moot the Standard Market Design (SMD) Document jointly submitted by ISO-NE and the New England Power Pool Participants Committee (NEPOOL).<sup>1</sup>

Background

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<sup>1</sup>ISO New England Inc., 96 FERC ¶ 61,100 (2001) (July 25 Order).

On June 28, 2000, the Commission approved a Congestion Management System/Multi-Settlement System (CMS/MSS) for the New England market in Docket Nos. EL00-62-000, et al. (June 28 Order).<sup>2</sup> The June 28 Order required ISO-NE to expedite implementation of NEPOOL's CMS/MSS.

On June 19, 2001, NEPOOL and ISO-NE jointly filed a document entitled "Standard Market Design Document." The SMD Document provides the foundation upon which the details for SMD would be developed. SMD has the following features: a) as required by the June 28 Order, it replaces NEPOOL's current single system settlement with day-ahead and real-time markets; b) the energy market rules are virtually identical to those in PJM Interconnection, LLC (PJM) ; c) Regulation Service is maintained as a bid-based market and operated using the PJM design; d) as in PJM, operating reserves would not be traded initially through bid-based markets, pending further discussion on starting such markets with PJM; e) as required by the June 28 Order, congestion management is based on locational marginal prices; and f) as required by the June 28 Order, SMD includes a system of financial transmission rights.<sup>3</sup>

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<sup>2</sup>ISO New England Inc., 91 FERC ¶ 61,311 (2000).

<sup>3</sup>ISO-NE and NEPOOL noted that the parties continue to disagree on the "governance" question of whether ISO-NE or NEPOOL may make a filing under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994). They therefore asked the Commission to accept SMD as a rate schedule for the New England markets, but to defer ruling on the governance question.

In our July 25, 2001 Order, we commended NEPOOL, ISO-NE and PJM for their efforts and commitment to develop SMD. We stated, however, the question of a new market design solely for the New England region had been rendered moot by our issuance of the RTO Orders.<sup>4</sup> In Bangor Hydro-Electric, we had required the participants in the proceedings involving the three proposed RTOs in the northeastern United States -- New England, New York, and PJM -- to participate in mediation on forming a single Northeastern RTO.<sup>5</sup> We noted that these settlement discussions would include negotiation over the correct market design and congestion management system for the future Northeastern RTO, and a resolution to those issues that was appropriate for all three current Independent System Operators (ISOs). We therefore did not approve a new market design solely for the New England market, since we anticipated that in a relatively short amount of time, the new Northeastern RTO would be implementing a single market design applicable to NEPOOL, PJM and New York.<sup>6</sup>

#### Requests for Rehearing

On August 17, 2001, ISO-NE filed a request for expedited clarification or in the alternative rehearing of the July 25 Order. ISO-NE asks the Commission to clarify that under the July 25 Order, ISO-NE may continue to develop -- although not to implement, absent Commission approval -- the systems and other mechanisms which support use of the PJM market system and rules in New England. ISO-NE states that it is committed to working with NYISO and PJM to develop a single Northeastern RTO, but it is possible that, despite the parties' best efforts, the RTO negotiations may not result in a single market in the Northeast prior to early 2003 (when ISO-NE anticipates that it would be able to implement SMD). Further, ISO-NE asserts that the continued development of SMD in New England will be the most efficient and effective process to effectuate the transition from three separate markets to a single market for the Northeast. It thus seeks clarification that it may continue to develop the systems and other work products necessary to implement SMD (which is, in essence, PJM's market design and rules) for use in New England.

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<sup>4</sup>PJM Interconnection, LLC, 96 FERC ¶ 61,061 (PJM); Bangor Hydro-Electric Company, 96 FERC ¶ 61,063 (Bangor Hydro-Electric); PJM Interconnection, LLC, 96 FERC ¶ 61,060 (PJM West); New York Independent System Operator, 96 FERC ¶ 61,059 (NYISO) and Regional Transmission Organizations, 96 FERC ¶ 61,065 (Regional Transmission Organizations) (July 12, 2001) (collectively, the RTO Orders).

<sup>5</sup>Bangor Hydro-Electric, 96 FERC at 61,261.

<sup>6</sup>July 25 Order, 96 FERC at 61,396.

On August 24, 2001, NECPUC filed a request for expedited rehearing of the July 25 Order. NECPUC states that the Commission's dismissal of SMD will result in delay in implementing needed market reforms, without which New England consumers will continue to bear the costs of serious market flaws. NECPUC points to estimates by the three Northeastern ISOs that the implementation of a single Northeast market (which would presumably contain some form of congestion management system) could take between 38 and 50 months from the date it is approved by the Commission, and states that, absent some form of CMS/MSS, New England customers will continue to bear the brunt of congestion costs. NECPUC also states that the Commission's finding that the SMD proposal is consistent with the goal of developing a broad Northeastern market should argue in favor of continuing the SMD process, not terminating it. Finally, NECPUC states that the Commission impermissibly dismissed ISO-NE's section 205 filing without making any finding that it was unjust and unreasonable.

On August 24, 2001, NYISO filed a request for rehearing or in the alternative for clarification on a single point. NYISO asks the Commission to reconsider its assertion in the July 25 Order that "in a relatively short amount of time, the new Northeastern RTO will be implementing a single market design applicable to NEPOOL, PJM and New York."<sup>7</sup> NYISO believes that it is erroneous to assume that a single Northeastern market will be in place in advance of 2003, and it therefore asks the Commission to reconsider its view that any further development of SMD will shortly be mooted by the implementation of a single Northeastern market.

### Responsive Pleadings

Notice of ISO-NE's request for clarification was published in the Federal Register, 66 Fed. Reg. 44611 (2001), with answers due on or before August 27, 2001. Answers were timely filed by PJM, Certain New England Publicly-Owned Entities (Publicly-Owned Entities), Northeast Utilities Service Company and Select Energy, Inc. (NUSCO), the Mirant Companies (Mirant), PPL EnergyPlus, LLC (PPL) and Sithe New England Holdings, LLC (Sithe). NEPOOL filed a timely motion to intervene.<sup>8</sup> The Governor of the State of Connecticut (Connecticut) filed a motion for reconsideration of the Commission's earlier ruling.

The majority of parties filing answers support ISO-NE's filing. Connecticut asks the Commission to allow ISO-NE to go ahead with the development of SMD in order to provide

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<sup>7</sup>July 25 Order, 96 FERC at 61,396.

<sup>8</sup>NEPOOL is already a party to most of the dockets at issue here. See July 25, Order, 96 FERC at 61,393-94.

the benefits of CMS/MSS to New England consumers sooner than would otherwise be the case. Sithe does not oppose ISO-NE's request to continue development of SMD, but asks the Commission to stress that any such development be consistent with the design of the future Northeastern RTO. PPL states that it supports ISO-NE's request. PJM states that it supports ISO-NE's requested clarification, and that it believes that if ISO-NE proceeds with SMD, the date for achieving a single Northeastern market could be advanced. NUSCO makes similar arguments, and points out that absent the clarification requested by ISO-NE, there is a significant risk that the employees and vendors working on SMD will become unavailable unless ISO-NE can continue with developing SMD now.<sup>9</sup>

Three parties oppose ISO-NE's filing. NRG asserts that ISO-NE's request is contrary to the Commission's recommendation that ISO-NE direct its resources solely toward the development of a Northeastern RTO rather than a market design for New England. NRG also alleges that ISO-NE's position here is contrary to the position taken in ISO-NE's May 31, 2001 filing, in which it asked the Commission to approve actual implementation of SMD, and that mere approval of the development of the design would not provide sufficient certainty to New England. Publicly-Owned Entities argue that expenditure of additional funds by ISO-NE on SMD at this point will inappropriately burden New England consumers when it is not clear that development of SMD will ultimately result in the creation of anything of value to New England consumers, and that consumers should not have to pay simultaneously for development of SMD and development of a single Northeastern RTO. Mirant argues that ISO-NE should not spend a year and a half developing a market design that will not further the development of a single Northeastern market, and it also notes that the NEPOOL Participants Committee does not support continued development of SMD.

### Discussion

The Commission will grant the clarification requested by ISO-NE and NECPUC, and dismiss as moot their requests for rehearing.

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<sup>9</sup>NUSCO also urges the Commission to encourage the development of ancillary services markets for the Northeast.

In the July 25th Order, the Commission did not approve a new market design for the New England market, or require ISO-NE and NEPOOL to expend significant resources on implementing that design, given that in a relatively short amount of time, the new Northeastern RTO would be implementing a single market design applicable to NEPOOL, PJM and New York. At the same time, however, the Commission did not rule on the merits of SMD as filed by ISO-NE and NEPOOL when it dismissed the SMD filing. In its July 25 Order, the Commission was opting not to grant or even address pre-approval of any particular market design, given the expected changes in governance, structure and market scope that would occur during the creation of the Northeastern RTO.

This action, however, was not intended to stop ISO-NE's or any other parties' efforts that might further the objectives of developing and implementing a regional market in the Northeast. The Commission has already identified many aspects of such a market that it expects to see: e.g., congestion management through locational marginal pricing, and day ahead and real time markets. These elements are likewise present in SMD. It thus was not the intention of the Commission that parties should stop work altogether. Continuation of ISO-NE's efforts at developing the software and related products necessary to implement SMD would, in fact, be a positive step toward ultimately developing a single Northeastern market. We note, however, that as it continues with the development of SMD, ISO-NE should be mindful of the ultimate goal of a single Northeastern market design. We thus urge ISO-NE to continue with development of SMD in every aspect, including software, in a sufficiently flexible manner so that any products developed for SMD may be readily adaptable to whatever market design is ultimately proposed for the Northeastern RTO.

The Commission denies NYISO's request for rehearing or clarification. It is apparently NYISO's view that authorizing ISO-NE to continue with the development of SMD is inconsistent with the development of a market design for the new Northeastern RTO. But, as stated above, these two goals are not in conflict: ISO-NE may continue its development efforts with regard to SMD in the short term, as a means of furthering the longer-term goal of developing a single Northeastern market. We strongly encourage NYISO to continue to consult with the other Northeastern ISOs on developing SMD.

The Commission orders:

ISO-NE's and NECPUC's requests for clarification are granted and their requests for rehearing are dismissed as moot, and NYISO's request for rehearing or clarification is denied, as discussed in the body of this order.

By the Commission. Commissioner Breathitt concurred with a separate statement attached.

Docket No. ER01-2115-002, et al.

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( S E A L )

David P. Boergers,  
Secretary.

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Breathitt, Commissioner, concurring:

I am generally pleased with the guidance we offer to ISO New England and the New England State Commissioners, through NECPUC, in today's order. It is important that ISO-NE continue its efforts to develop a standard market design; therefore, I support this clarification. It is also important that any market design developed by ISO-NE be adaptable to market designs that could ultimately be implemented by a Northeastern RTO.

I write separately to present my thoughts on an issue raised by the New York ISO in its petition for rehearing or clarification in this proceeding. In its August 24, 2001, petition, the NYISO asks the Commission to reconsider its statement in our July 25, 2001 order that "in a relatively short amount of time, the new Northeastern RTO will be implementing a single market design applicable to NEPOOL, PJM and New York." The NYISO is rightly concerned about the timing of such a Northeastern RTO and about the Commission's expectations in that regard. This is an issue that has concerned me since the issuance of our multiple RTO orders on July 12, 2001, including our orders pertaining

to RTOs in the Northeast region.<sup>1</sup> I issued a partial dissent in those orders expressing my concerns about the Commission's stated intention of forming four specific RTOs in the country. I further elaborated on my concerns regarding scope and timing in a partial dissent in Minnesota Power, Inc.,<sup>2</sup> issued on July 27, 2001. I continue to view the policy stated in the July 12 orders as a significant departure from the voluntary RTO formation process we adopted in Order No. 2000. I feel that such an approach would have little regard to the status and timing of RTO formation efforts in various regions of the country.

My reading of our order today on page 6 is that we acknowledge, in our response to NYISO's concern, that the development of a single Northeastern RTO will not necessarily occur in the near future, but will likely be a longer-term process. I concur with this clarification and interpretation and am pleased that the NYISO raised this valid concern.

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<sup>1</sup>PJM Interconnection, LLC, 96 FERC ¶ 61,061(2001); Bangor Hydro-Electric Company, 96 FERC ¶ 61,063 (2001); PJM Interconnection, LLC, 96 FERC ¶ 61,060 (2001); and New York Independent System Operator, 96 FERC ¶ 61,059(2001).

<sup>2</sup> Minnesota Power, Inc., 96 FERC ¶ 61,153 (2001).



Linda K. Breathitt  
Commissioner