

107 FERC ¶ 61,183
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

Docket No. ER04-677-000

ORDER CONDITIONALLY ACCEPTING FILING

(Issued May 27, 2004)

1. In this order, the Commission accepts subject to conditions a filing by the New England Power Pool (NEPOOL) Participants Committee proposing to compensate Exelon New England Holdings, LLC. (Exelon) \$8.55 million for operating its Mystic 8 and 9 Units on January 15 and 16, 2004, pursuant to ISO New England Inc. (ISO-NE) dispatch instructions. We also require similar treatment for any requests for compensation by similarly situated generating resources. Our actions provide compensation to participants that operated generating units at the direction of ISO-NE to ensure short-term reliability through the payment of special compensation on a non-discriminatory basis.

I. Background

2. On March 29, 2004, NEPOOL filed a proposal to implement arrangements to compensate Exelon for costs it incurred in connection with the operation of its Mystic Units. NEPOOL states that during January 14 through 16, 2004, New England experienced an extreme cold snap that placed record winter peak electricity demands on the region and adversely impacted the availability of generating resources. NEPOOL also states that because of these extreme weather conditions, ISO-NE directed the cancellation of all economic outages of generators in New England and the dispatch of

virtually all operable generation to satisfy peak load conditions. During the cold snap period, ISO-NE requested Exelon to continue running its Mystic Units.¹

3. NEPOOL asserts that on the morning of January 14, 2004 Exelon submitted energy bids for Mystic Units 8 and 9. NEPOOL states that those units are natural gas fired, combined cycle units each with a minimum run time of 12 hours. NEPOOL also states that the Exelon bids reportedly reflected the very high cost of natural gas that resulted from the extraordinary natural gas demands during this cold snap. NEPOOL claims that Exelon's bids were high enough that neither of the Mystic Units was selected for dispatch in the day ahead market, and Exelon began preparations to shut down both Mystic Units that evening. NEPOOL states that shortly before midnight; however, ISO-NE contacted Exelon to request that the Mystic Units remain on for reliability purposes even though those units had not been selected in the day ahead market. NEPOOL asserts that Exelon complied with ISO-NE's request, as well as its subsequent dispatch instructions, and kept both of the Mystic Units running for the remainder of the cold snap. NEPOOL states that prior to this point the Mystic Units each had been running continuously for just over one month.

4. Following the cold snap, NEPOOL notes that Exelon reviewed initial settlement reports and discovered that, even though it operated at the direction of ISO-NE, it was not being compensated approximately \$8.55 million of expected payments for Operating Reserves. NEPOOL states that ISO-NE informed Exelon that, under NEPOOL Market Rule 1, Exelon was not eligible to receive Operating Reserve payments for its operating during the cold snap because Exelon initiated the continuous operation of both Mystic Units earlier with a Self-Scheduled output during the minimum run time period of those units' real-time commitment period. NEPOOL points out that ISO-NE referenced section 2.1 of Market Rule 1, Appendix F, and NEPOOL Manual M-28, which provides that generation resources with Self-Scheduled hours during the minimum run time of their real-time commitment period (periods of continuous operation bounded by a start up and the earlier to occur of a shut down or unit trip) are not eligible to receive Operating Reserve payments.

¹ A letter dated March 3, 2004 to the NEPOOL Markets Committee states the following: On the morning of January 14th, Exelon submitted cost-based bids for Mystic Units 8 and 9 in the day ahead market for January 15th based on Algonquin gas transactions that had taken place in the market that day. Neither of the Mystic Units was picked up in the day ahead market. Late in the evening on January 14th, Mystic Units 8 and 9 began preparation to shut down until ISO-NE called close to midnight and ordered that Mystic Units 8 and 9 remain on-line for the ISO. In accordance with the ISO-NE's instructions, Exelon did not take its generation off-line, but continued to generate and to provide Operating Reserves as instructed by the ISO-NE.

5. NEPOOL asserts that Exelon complied with ISO-NE's request to continue running its Mystic Units during the cold snap. However, NEPOOL explains that even though Exelon operated its Mystic Units at the ISO's direction Exelon was unable to receive Operating Reserve credits due to existing Market Rule provisions. As a result, the NEPOOL Participants Committee approved ISO-NE's proposal to revise the Market Rules to permit partially Self-Scheduled and partially Pool-Scheduled resource to qualify for Operating Reserve credits for all hours that are not Self-Scheduled. NEPOOL argues that had ISO-NE's proposed modifications been in place during the cold snap, Exelon would have been eligible to receive the \$8.55 million in Operating Reserve payments that it sought. NEPOOL states that in an attempt to rectify Exelon's multi-million dollar loss, ISO-NE suggested that the Markets Committee formally recommend that the NEPOOL Participants Committee approve the changes proposed by ISO-NE retroactively to January 14, 2004. NEPOOL notes that the Markets Committee agreed, and recommended by a vote of 80 percent that the NEPOOL Participants Committee approve the changes to become effective January 14, 2004.

6. NEPOOL states that, on February 20, 2004, the NEPOOL Participants Committee considered the proposed changes to Market Rule 1. NEPOOL notes that despite strong support among participants to address the severe financial impact on Exelon of its complying with ISO-NE directives during the cold snap, there was insufficient support, as a matter of policy, for a retroactive application of the rule change. Instead, NEPOOL explains that the NEPOOL Participants Committee voted to request an effective date of no later than March 1, 2004.² NEPOOL explains that members indicated to Exelon that, consistent with past precedent, they would support a special request, pursuant to section 7.5(g) of the Restated NEPOOL Agreement, to reimburse Exelon its costs that were not recovered under the Market Rule. Section 7.5(g) of the Restated NEPOOL Agreement states:

The Participants Committee shall have the duty and requisite authority to provide for the sharing by Participants, on such basis as the Participants Committee may deem appropriate, of payments and costs which are not otherwise reimbursed under this Agreement and which are incurred by Participants or under arrangements with Non-participants and approved or authorized by the Committee as necessary to meet or avoid short term deficiencies in the amount of resources available to meet the Pool's reliability objectives.

7. NEPOOL explains that the compensation is consistent with its existing Market Rule in section 7.5(g) of the Restated NEPOOL Agreement, because Exelon operated its

² The Commission accepted the proposal, to become effective March 1, 2004. See New England Power Pool, 107 FERC ¶ 61,135 (2004) (May 7 Order).

Mystic Units during a period of record breaking weather conditions to address a potential short-term reliability problem. In fact, NEPOOL notes that in Docket No. ER02-1449-000 it filed a request for Commission approval of arrangements to compensate Connecticut Municipal Electric Energy Cooperative \$38,149 pursuant to section 7.5(g) of the Restated NEPOOL Agreement for the operation of certain quick-start generation units which were brought on-line at the direction of ISO-NE to address a potential short-term reliability problem in Southwestern Connecticut.

8. The filing proposes that 50 percent of the costs be allocated “to pro-rata NEPOOL-wide Network Load,” and 50 percent to market participants that cause real-time load or generation obligation deviations. This is a departure from the allocation for Operating Reserve charges in Market Rule 1, Appendix F, which designates all costs to be borne by market participants that cause such deviations. NEPOOL states that some parties opposed the allocation of charges to network load, stating that this was a market-related cost and therefore should be borne by participants in the market. In contrast, NEPOOL states that others argued that this additional expense was being incurred to maintain reliability during extreme circumstances, and therefore allocation to network load was appropriate. Based on these competing arguments and several failed amendments, NEPOOL states that the Markets Committee recommended and the NEPOOL Participants Committee agreed as a compromise to allocate such costs “50 percent to pro-rata NEPOOL-wide Network Load, and 50 percent in accordance with the provisions of section 3.2.15 of Appendix F of Market Rule 1.”³

9. NEPOOL states that, in response to favorable indications from participants, Exelon prepared a request and supporting materials to receive reimbursement for complying with ISO-NE’s directives and operating during the cold snap. NEPOOL explains that the Markets Committee recommended by a vote of 76 percent that the NEPOOL Participants Committee approve Exelon’s request for compensation and allocate the costs to make those payments 50 percent to network load and 50 percent on the same basis as Operating Reserve credits are allocated among participants. NEPOOL asserts that the NEPOOL Participants Committee approved the Markets Committee recommendation by a 72 percent vote.

10. However, NEPOOL notes that some participants raised concerns regarding whether Exelon’s claim for \$8.55 million for operating its Mystic Units reflected the incremental costs of running the units, and they requested an independent audit. As a result, the market monitor conducted a review that clarified that Mystic Unit 8 would have entitled Exelon to an Operating Reserve payment of \$3,925,780 for operation on January 15, and \$852,452 for operation on January 16, while Mystic Unit 9 would have produced \$3,769,649 in Operating Reserve payments for operation on January 15.

³ Transmittal Letter at 6.

Consequently, participants were satisfied with the reasonableness of Exelon's reimbursement request and overwhelmingly rejected the request for an independent audit.

11. Additionally, NEPOOL notes that other generating resources were denied compensation on the same basis as Exelon during this time period; however, ISO-NE has estimated that the collective loss for these resources total approximately \$100,000. NEPOOL states that though the amount is not insignificant, it is substantially less than Exelon's loss of \$8.55 million and might explain why these resources have not pursued similar compensation arrangements.

12. NEPOOL requests that the Commission expedite its consideration of the proposal to compensate Exelon and permit it to become effective the first business day following Commission acceptance, but in no event later than May 28, 2004. NEPOOL asserts that good cause exists for waiver of the Commission's notice requirement here to permit the filing to become effective promptly after Commission action, and before the expiration of the 60-day notice period. NEPOOL states that as a result of its decision to answer ISO-NE's call, Exelon currently faces fuel bills for this period approaching \$8.55 million and the cash flow shortfall could affect continued operations of these Mystic Units.

II. Notice of Filing, Interventions and Protests

13. Notice of NEPOOL's filing was published in the Federal Register, 69 Fed. Reg. 18,895 (2004), with motions to intervene and protests due on or before April 19, 2004. Timely motions to intervene and comments were filed by PSEG Energy Resources & Trade LLC and Public Service Electric and Gas Company (PSEG Companies), NRG Companies (NRG),⁴ ISO-New England Inc (ISO-NE), Northeast Utilities Service Company (NUSCO) on behalf of Northeast Utilities Operating Companies⁵ and Select Energy, Inc. (Select Energy), United Illuminating Company (UI) and National Grid USA (National Grid). On April 20, 2004, NSTAR Electric & Gas Corporation (NSTAR) filed a motion to intervene out-of-time and protest. On May 4, 2004, NEPOOL filed an answer.

⁴ NRG Companies include NRG Power Marketing, Inc., Connecticut Jet Power LLC, Devon Power LLC, Middleton Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

⁵ The NU Operating Companies are: 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.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene of PSEG Companies, NRG Companies, ISO-NE, NUSCO, Select Energy, UI and National Grid serve to make them parties to this proceeding. We will grant NSTAR's motion to intervene out-of-time given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NEPOOL's answer because it has provided information that assisted us in our decision-making process.

B. Special Compensation

15. All parties that filed substantive comments (i.e., UI, National Grid, NRG Companies, ISO-NE, NU, PSEG and NSTAR) agree that Exelon should be paid Operating Reserve credits for operating its units pursuant to the ISO's dispatch instructions during the January cold snap (i.e., January 15-16, 2004).

16. For example, PSEG states that a tariff rule denying make-whole payments to the generator in these circumstances would be confiscatory, since the generating unit would not receive its bid price for providing a service that ISO-NE requested when market prices otherwise do not support the resource's operations. NU understands that NEPOOL's proposed payment compensates Exelon predominately for its cost of fuel to operate during the extreme emergency condition. However, NU states that in the future the Commission should ensure that generators seeking similar special compensation due to extreme emergencies when compensation is unavailable under the existing market rules should only receive their actual out-of-pocket costs, not necessarily their as-bid costs. NU states that generators that would otherwise be ineligible for any compensation under as-filed market rules may be made whole under the appropriate conditions, but should not be allowed to receive fixed or "opportunity" costs through NEPOOL's special compensation procedures.

17. NRG and PSEG complain that ISO-NE's market monitoring units should have proposed revisions to Market Rule 1, Appendix F, earlier. NRG states that they are troubled by the fact that the ISO failed to adhere to the requirements of its own Market Rules and that, as a result, the NEPOOL Participant Committee was forced to take the extraordinary step of granting Exelon relief it was already entitled to under the Market Rules.

18. PSEG Companies states that market participants have entrusted ISO-NE and its advisors with the responsibility of proactively identifying problems with the tariff and proposing solutions. PSEG states that, in this case, proactive administration of the tariff would have prevented the necessity of NEPOOL taking action in this case to correct a situation that was avoidable.

19. NRG, National Grid and PSEG argue that parties (e.g., NRG) denied Operating Reserve credits under Market Rule 1, Appendix F should be justly compensated. In addition, National Grid and NRG contend that circumstances requiring the dispatch of Exelon's units were not unique.

20. National Grid states that extreme weather, high gas prices, and high energy demand are neither unique nor even particularly unusual circumstances. National Grid also points to NRG's complaint filed in Docket No. EL04-82-000 and comments that the sole difference between the two cases is that in NRG's case the extreme temperatures were high rather than low. National Grid recalls that during the NEPOOL Market Committee's consideration of Exelon's compensation, ISO-NE informed the Committee that the circumstances faced by Exelon were representative of the normal economic dispatch and commitment process, and that the payments due Exelon must be considered economic Operating Reserve payments.

21. NRG states that, while NEPOOL characterizes the service provided by Exelon as extraordinary, the service for which Exelon would be compensated under NEPOOL's proposal is indistinguishable (except for the fact that Exelon's loss was \$8.5 million and NRG's loss was \$1.5 million) from the service provided by the NRG Companies in July and August 2003 and January and February 2004. NRG argues that in its complaint it established that, like Exelon, its generating units responded to the ISO's instructions to provide Operating Reserves for several Operating Days, that the ISO directed NRG to provide Operating Reserves on the basis of its as-bid costs and system reliability needs, that neither Exelon nor NRG were at liberty to ignore the ISO's directives, and that the ISO's refusal to pay NRG's Operating Reserve credits resulted in the units' failure to recover their costs to operate. NRG believes that the appropriate manner in which to ensure that Exelon is adequately compensated for the Operating Reserve it provided is to grant NRG's complaint in Docket No. EL04-82-000, but that regardless of whether the Commission grants NEPOOL's current proposal with respect to Exelon, it is clear that both NRG and Exelon are entitled to relief.

22. NRG argues that NEPOOL must provide comparable treatment for similarly situated participants in awarding relief under the Restated NEPOOL Agreement. NRG also argues that section 5.1 of the Restated NEPOOL Agreement provides that NEPOOL is required to work to "create and maintain open, non-discriminatory" markets and "provide for equitable sharing of the resulting responsibilities, benefits and costs." NRG states that, in this case, the decision of the Participants Committee cannot shield

NEPOOL or the Commission from adhering to fundamental principles of non-discrimination in granting relief under the Restated NEPOOL Agreement and the Federal Power Act.

23. PSEG states further that if any other market participant in New England can demonstrate that it failed to receive Operating Reserve credits for the same reasons at any time before the Commission acts upon the prospective revisions to Market Rule No. 1 in Docket No. ER04-623-000, the Commission should clarify that NEPOOL should allow special compensation to that market participant under section 7.5(g) of the Restated NEPOOL Agreement in order to sustain a level playing field in New England.

24. In its answer, NEPOOL responds that members voted to provide special compensation to Exelon pursuant to section 7.5(g) of the Restated NEPOOL Agreement after receiving a formal request by Exelon and a comprehensive disclosure of the extraordinary conditions surrounding its operation in January and the resulting financial burden it incurred. NEPOOL claims that the option to make a similar request remains available to any participant. NEPOOL argues that it has clearly demonstrated a willingness to consider such requests, and will continue to do so in the future if asked. As a result, NEPOOL contends that it would be inappropriate for the Commission to eliminate NEPOOL's ability to consider such requests by issuing an order that predetermines the request's outcome based on the record in these proceedings.

25. Finally, NEPOOL points out that NRG is currently pursuing a claim in Docket No. EL04-82-000 for Operating Reserve credits in excess of \$1.5 million that it was deemed ineligible to receive by ISO-NE and argues that, in light of NRG's decision to pursue litigation, it should not be afforded the opportunity to end-run the NEPOOL process and seek the same relief by way of a protest in these proceedings.

Commission Determination

26. We find NEPOOL's proposal to provide Exelon special compensation pursuant to section 7.5(g) of the Restated NEPOOL Agreement reasonable. The proposal to compensate Exelon is consistent with section 7.5(g) of the Restated NEPOOL Agreement, because it permits the payment of costs which were incurred as a result of Exelon following ISO-NE's dispatch instructions and provisions that prevented ISO-NE from providing Exelon Operating Reserve credits.⁶ Given the fact that Exelon operated its Mystic Units pursuant to ISO-NE's dispatch instructions to address a short-term deficiency in the amount of resources available to meet the Pool's reliability objectives

⁶ Our May 7 Order accepted market rule changes that provide for compensation in similar circumstances, effective as of March 1, 2004.

during periods of low temperatures, it is appropriate to utilize an existing market rule provision to recover Exelon's operating costs. Additionally, the proposal to reimburse Exelon for these reliability-related costs received broad stakeholder support, and we approve of the use of existing market rules to provide special compensation to Exelon. Accordingly, we accept NEPOOL's filing to implement arrangements to compensate Exelon, to become effective May 28, 2004, as requested.⁷ We direct ISO-NE to compensate Exelon as part of its next available scheduled billing cycle, and to file a refund report with the Commission within 30 days thereafter recording that payment.

27. With respect to the other generators denied Operating Reserve credits under Market Rule 1, Appendix F, we find that NRG and other similarly situated entities that operated their units pursuant to ISO-NE's dispatch instructions to address a short-term deficiency in the amount of resources available to meet ISO-NE's reliability objectives during periods of either low or high temperatures should have the opportunity to receive make-whole payments (or out-of-pocket costs), as Exelon will. To find otherwise would be unduly discriminatory and could dampen participation in ISO-NE's energy markets. The reimbursement for reliability-related costs as between Exelon, NRG and other similarly situated entities must be consistent. Thus, any other generators⁸ that wish to pursue similar compensation should utilize the same process under section 7.5(g) of the Restated NEPOOL Agreement, and NEPOOL must treat any such requests consistent with this order and in a not unduly discriminatory manner.

C. Cost Allocation

1. Comments Against

28. Some parties (i.e., UI, National Grid and NSTAR) disagree with ISO-NE's allocation of Exelon's compensation, which assigns 50 percent of the costs to network load and 50 percent to market participants who experienced deviations between their day ahead and real-time schedules.

29. UI, National Grid, and NSTAR argue that ISO-NE fails to provide sufficient support to justify the cost allocation methodology proposed. UI argues that under Federal

⁷ See Central Hudson Gas and Electric Corp., 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1993).

⁸ We refer specifically to those generators whose resources were initially Self-Scheduled during the real-time commitment period and later on another Operating Day were directed by ISO-NE to operate as Pool-Scheduled resources before a shut down or unit trip.

Power Act section 205, an applicant must demonstrate that the rates or charges it wishes to impose on customers are just and reasonable. UI and National Grid argue that a compromise vote by the NEPOOL Participants Committee does not analyze the impact of the charge on all customers.

30. UI contends that the allocation to network load is clearly wrong and is a departure from the current market rules. National Grid argues that permitting NEPOOL to diverge arbitrarily from established market rules in this way would undercut the predictability of the financial arrangements relied upon by New England market participants in their planning and decision making. National Grid also argues that such rule-based predictability is a key feature of the New England electric markets. National Grid argues that if NEPOOL's cost allocation methodology is allowed to stand, at least some network load without any real-time energy deviation – and thus not leaning on real-time Operating Reserves – will nevertheless be allocated the costs of such reserves, in violation of both the allocation rule itself and the policy behind it. National Grid believes that if NEPOOL wishes to give Exelon payment for real-time Operating Reserves, these must be allocated among the market participants responsible for these real-time economic Operating Reserve charges as provided in NEPOOL's market rules.

31. UI argues that, pursuant to section 3.2.3(h) of Market Rule 1, Appendix F,⁹ real-time Operating Reserve credits paid to generators, in this case the payments to the Mystic Units, are allocated to market participants that incurred real-time load obligation deviations or real-time generation obligation deviations (e.g., demand needing more energy in real time than was purchased day ahead, or generating resources producing less energy in real time than was committed to in the day ahead market, respectively). UI contends that, in other words, under Market Rule 1, if generating units are committed and dispatched after the close of the day ahead market to provide for the forecasted real-time loads, the market participants that cause the deviations in real time are expected to pay for the Operating Reserves provided by such units.

⁹ Market Rule 1, section 3.2.3(h) states, in part:

The non-synchronized condensing and synchronized condensing Operating Reserve charge for the Real Time energy market for each Operating Day shall be allocated and charged to each Participant in proportion to the sum of the absolute values of its (i) Real Time Load Obligation Deviations in MWh during that Operating Day.... For the purposes of calculating generation deviations, if a generation resource has been scheduled in the Day Ahead energy market and the ISO determines that the unit should not be run in order to avoid a Minimum Generation Emergency, the generation owner will be responsible for all Real Time Energy Market Deviation Energy Charges but will not incur generation related deviations for the purpose of allocating Real Time Operating Reserve Charges.

32. NSTAR explains that when units are dispatched and operated in these circumstances, the market participants must be responsible for 100 percent of the Operating Reserve payments. NSTAR states that allocating 50 percent of the payments to network load is inappropriate. NSTAR also states that if NEPOOL is allowed to continue to diverge from established market rules, network load without any real-time energy deviation will be charged for services it does not use.

33. NSTAR contends that the only charges that possibly should be applied to network load are those which are constant charges that do not vary with market conditions, such as fixed costs associated with reliability must run contracts. NSTAR states that charges that vary with market conditions, such as real-time load obligation deviations, must stay in the market and be assigned to wholesale load. NSTAR argues that market participants caused the need to dispatch the Exelon Mystic Units, and benefiting both from having those units available to supply their real-time energy needs and from the fact that the real-time prices were depressed when the Exelon Mystic Units were at their low operating limits and ineligible to set the clearing prices.

2. Comments In Support

34. ISO-NE, PSEG and NU support the cost allocation methodology as proposed. ISO-NE contends that the service provided by Exelon's Mystic Units was essential for maintaining reliability in New England during this period of intense cold and system demand. ISO-NE states that, therefore, it believes that the arrangements to compensate Exelon for operation of its Mystic Units on January 15 and 16, 2004, proposed by NEPOOL are appropriate.

35. NU contends that Exelon's compensation was not approved under any as-filed market rules but was only agreed to by NEPOOL under section 7.5(g) of the Restated NEPOOL Agreement, where an allocation methodology for such compensation is not defined. NU states that since Exelon's operation of its Mystic Units benefited all New England customers as well as all market participants, it was fair and reasonable for the cost of the compensation to be allocated widely to include all entities that benefited from Exelon's operation. NU states that the NEPOOL compromise allocation is a fair allocation of the costs to all the benefiting parties, given these circumstances.

36. PSEG commends NEPOOL for recognizing that the costs incurred by compensating Exelon had little to do with market participant behavior and therefore that allocating these costs entirely to those who deviated from their day ahead schedules would be inappropriate. PSEG states that, in this case, ISO-NE's system operators called upon Exelon's Mystic Units to maintain the appropriate level of reliability for transmission system support during an extreme weather event. PSEG explains that, thus, these out-of-market actions and the concomitant costs should not be borne solely by

market participants through deviation charges. PSEG states that, rather, the costs from such out of market actions by ISO-NE to support system reliability on January 15 through 16, 2004, are more appropriately allocated to network load – since Exelon provided a reliability service for the primary benefit of network load.

37. Regarding the assertion that the compromise achieved violates Market Rule 1, section 3.2.3(h) and is therefore contrary to Commission precedent, NEPOOL observes that as a threshold matter, if these costs are in fact eligible for compensation as Operating Reserve credits, then allocation in accordance with section 3.2.3(h) of Market Rule 1 would certainly be just and reasonable. However, NEPOOL argues that section 3.2.3(h) specifies only how Operating Reserve credits are allocated among participants, and ISO-NE concluded that Exelon was ineligible for such payments. Thus, the provision does not rule.

38. In addition, NEPOOL states that it does not dispute claims that Market Rule 1, section 3.2.3(h) could provide a just and reasonable method for allocating the costs in question. NEPOOL states that this does not undercut in any way the justness and reasonableness of the allocation approved by NEPOOL in compromise. NEPOOL states that Commission precedent makes clear that there may be more than one just and reasonable approach, and the Commission need only determine if the approach voluntarily approved and filed by NEPOOL is just and reasonable.

3. Commission Determination

39. We give serious consideration to the results reached via stakeholder processes, and note that stakeholders reached a compromise on the cost allocation methodology. However, the Commission concludes that requiring 50 percent of the costs to be paid for transmission through an allocation to network load is inconsistent with the rationale included in Market Rule 1, section 3.2.3(h) that market participants that cause the deviations in real time are expected to pay for the Operating Reserves provided by such units. Thus, we find NEPOOL's allocation proposal inconsistent with the market rules for allocating costs pursuant to Market Rule 1 and with the Commission's cost causation principles. In an order related to the Standard Market Design for New England, the Commission determined that a critical principle in Operating Reserves is that those who may have caused the need for additional resources to be committed should share in the charges.¹⁰ There, the Commission agreed with ISO-NE's and NEPOOL's argument that participants have a variety of contractual instruments at their disposal to hedge or shift the risks of their obligation to serve load, including Internal Bilaterals for Market (IBM)

¹⁰ See *New England Power Pool and ISO New England, Inc.*, 105 FERC ¶ 61,211 at P 50 (2003) (November 2003 Order).

and Internal Bilaterals for Load (IBL).¹¹ In the November 2003 Order, the Commission stated:

If a load serving entity purchases sufficient energy on a day ahead basis to serve its load, it will largely be able to avoid having to transact in the real-time market, and will thus be able to avoid any real-time Operating Reserve costs. (While unforeseen circumstances, such as load unexpectedly taking more energy than anticipated, might force a load serving entity to purchase a limited amount of energy in the real time market, a load serving entity seeking to insulate itself against this possibility would have contractual instruments available to it, including Internal Bilaterals for Load.)

40. Therefore, we find that market participants that cause load or generation deviations in real time should pay for the Operating Reserves provided by such units. Load serving entities seeking to insulate themselves from unexpectedly taking more energy than anticipated due to unforeseen circumstances have a variety of contractual instruments available to hedge or shift the risks of their obligation to serve load, including Internal Bilaterals for Load and Internal Bilaterals for Market. Accordingly, we will deny the proposal to allocate 50 percent of the reimbursement costs to network load.

41. Finally, we find NUSCO's argument that generators on a prospective basis seeking special compensation for Operating Reserve costs should only receive their actual out-of-pocket costs and not necessarily their as-bid costs to be premature. The proposal presented to the Commission in the instant filing addresses a specific set of factual circumstances and existing market rules, and it would be premature to determine the appropriateness of a compensation methodology prior to the filing of a specific proposal to the Commission. Therefore, we reject NUSCO's request regarding this matter.

¹¹ Using Internal Bilaterals for Market (IBMs energy only) or Internal Bilaterals for Load (IBLs), parties can structure their arrangements to include transferring the Operating Reserve obligations to one another. In the November 2003 order, the Commission states that both bilateral transactions are purely contractual and have no impact of the physical dispatch of the power system. A load serving entity entering into an IBM transfers only the responsibility for providing energy to its load; conversely, an load serving entity entering into an IBL transfers both the obligation to provide energy to load and the obligation to provide associated ancillary services, including Operating Reserve costs.

The Commission orders:

(A) NEPOOL's proposed request to reimburse Exelon for costs incurred pursuant to ISO-NE's dispatch instructions is hereby conditionally accepted, to become effective on May 28, 2004, as discussed in the body of this order.

(B) The ISO is hereby directed to provide compensation to Exelon, as discussed in the body of this order, as part of the ISO's next available scheduled billing cycle following issuance of this order. The ISO is directed, within 30 days thereafter, to file a refund report.

By the Commission.

(S E A L)

Linda Mitry.
Acting Secretary.