

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New England Power Pool

Docket Nos. ER03-210-002
and ER03-210-003

ORDER ON REHEARING AND COMPLIANCE

(Issued July 10, 2003)

1. In this order, the Commission denies rehearing of a prior order addressing issues related to the Cross Sound Cable (CSC), and accepts a compliance filing also ordered in that prior order. Our action here promotes the development of competitive power markets and the benefits that flow from such markets.

I. BACKGROUND

2. The New England Power Pool Participants Committee (NEPOOL) and ISO New England, Inc. (ISO-NE) have implemented their Standard Market Design for New England (NE-SMD).¹

3. On November 22, 2002, NEPOOL filed further changes to the NEPOOL Open Access Transmission Tariff (NOATT), including provisions relating to the CSC, which the Commission accepted on January 31, 2003.² On March 3, 2003, the Long Island Power Authority (LIPA) filed a request for rehearing of the January 31 Order. On March 28, 2003, NEPOOL and ISO-NE filed a joint response to LIPA's rehearing request.

¹The standard market design submitted here for New England is similar to, but not identical to, the design contained in the Notice of Proposed Rulemaking issued by the Commission on July 31, 2002 in Remediating Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,536 (2002) (SMD NOPR).

²New England Power Pool, 102 FERC ¶ 61,112 (January 31 Order).

4. Also on March 3, 2003, NEPOOL made a compliance filing as directed in the January 31 Order. Notice of the November 22, 2002 filing was published in the Federal Register,³ with interventions and protests due on or before March 24, 2003. LIPA filed timely comments supporting that compliance filing.

II. DISCUSSION

A. Procedural Issues

5. Under Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(2003), an answer may not be made to a request for rehearing. We will reject NEPOOL's and ISO-NE's joint answer to LIPA's request for rehearing.

B. Analysis

1. Scheduling Priority for Interfaces between the CSC and PTF Facilities.

6. The CSC is a Merchant Transmission Facility (MTF) providing service between New Haven, Connecticut and Shoreham, New York, constructed and owned by the Cross Sound Cable Company. All of the capacity on the CSC has been purchased by LIPA.

7. In its protest to ISO-NE's filing, LIPA stated that its right to firm service on the CSC would be degraded by Section 25D of Market Rule 1, which provides that customers seeking transmission at external interfaces (such as the interface between an MTF facility such as the CSC, and NEPOOL's PTF⁴ facilities) would receive scheduling priority based on economic merit. LIPA also argued that its right to firm service on the CSC would become less meaningful if it could not, by virtue of that right, also obtain firm

³68 Fed. Reg. 12062 (2003).

⁴"Pool Transmission Facilities" or "PTF" are the pool transmission facilities defined in Section 15.1 of the Agreement, and any other new transmission facilities which the Reliability Committee determines, in accordance with criteria approved by the Participants Committee and subject to review by ISO-NE, should be included in PTF. The costs of PTF facilities are recovered from all NEPOOL members, based on the understanding that they serve all members. All other facilities are non-PTF, including merchant transmission projects such as the CSC.

reservations at the interface with NEPOOL's PTF. The Commission rejected this argument, stating that:

[P]hysical rights on the CSC do not give any special rights to the use of NEPOOL PTF facilities or the NEPOOL system itself. LIPA's rights to deliver energy to New Haven in order to reach the CSC (or conversely to get power from the CSC into New England) are the same as that of all other NEPOOL participants. LIPA is asking the Commission to grant it rights that are superior to the rights of other market participants, and we deny its request on that basis.⁵

8. In its rehearing request, LIPA notes that Section 25D(c) of the NOATT provides that, with regard to the scheduling of external transactions on interfaces with MTF or non-PTF facilities, "scheduling of External Transactions which satisfy reservation requirements for service shall be based on economic merit order in accordance with NEPOOL System Rules." LIPA claims that, under this rule, if one party holds a firm reservation over the CSC and another party holds a non-firm reservation over the CSC, the scheduling priority between their requests for service at the CSC/NEPOOL PTF interface will be decided based on economic priority. LIPA argues that this provision will deprive LIPA, the holder of all of the firm transmission rights on the CSC, of the benefit that it bargained for when it purchased all the capacity on the CSC, and that this provision is inconsistent with the Commission's policy of allowing parties to retain their bargained-for contractual rights. LIPA also asserts that, in terms of the Commission's policy of furthering merchant transmission, this provision may "chill the willingness of customers to commit to an initial subscription" for a merchant facility's transmission capacity.⁶

Commission Conclusion

9. We will deny LIPA's request for rehearing on this issue. LIPA has made no new arguments that would persuade us to change our original conclusion and grant LIPA scheduling rights on PTF facilities that are superior to those of other market participants.

10. The scenario that LIPA appears to fear is that, despite having purchased firm capacity on the CSC, it might on some occasions be unable to use that capacity because it could not move its energy to the CSC. But LIPA can self-schedule transactions on the CSC and on the CSC/NEPOOL PTF interface, in which case its transaction would also

⁵January 31 Order at P 14.

⁶LIPA request for rehearing at 6.

have priority on the interface. (While such self-scheduling might, of course, require LIPA to pay congestion charges for congestion on the CSC/NEPOOL PTF interface, LIPA could protect itself from those charges through the purchase of FTRs, like all other New England market participants). Thus, it is within LIPA's power to ensure that the scenario it fears will not take place. In light of this option to self-schedule, we also are not persuaded that acceptance of Section 25D will chill the willingness of other parties to purchase the initial subscription of firm transmission capacity on other MTF.

2. Adoption of Specific Procedures and Criteria for the Designation of External Nodes.⁷

11. LIPA also states in its rehearing petition that, in its protest to NEPOOL's filing, it did not seek the designation of a separate new node for the CSC, and that ISO-NE has already designated a separate external node for the CSC. LIPA stated that the real purpose of its protest was to seek the establishment of a standard for ISO-NE's designation of external nodes and to ensure that ISO-NE would file that designation with the Commission. LIPA claims that current Section 2.7(e) of Market Rule 1 does not contain sufficient criteria or standards for the designation of external nodes, and does not require the filing of designations of external nodes with the Commission.⁸ LIPA asks the Commission to direct ISO-NE to adopt specific criteria upon which the designation of external nodes will be based, and to file with the Commission its initial designation and any future changes to external nodes.

⁷An external node is a proxy bus or buses used for establishing a Locational Marginal Price (LMP) for energy received by or delivered to a neighboring control area, or for establishing LMP associated with energy delivered through the NEPOOL control area by non-participants for use in calculating Non-Participant Congestion Costs and loss costs. Thus, designation of a node as internal or external can make a significant difference to the LMP for the energy delivered to or from that node.

⁸Section 2.7(e) provides:

External Nodes are the nodes at which External Transactions settle. As appropriate and after consulting with Participants, the ISO will establish and re-configure External Nodes taking into consideration appropriate factors, which may include: tie line operational matters, FTR modeling and auction assumptions, market power issues associated with external contractual arrangements, impacts on Locational Marginal Prices, and inter-regional trading impacts.

Commission Conclusion

12. The Commission will deny LIPA's request for rehearing. We find that the consultative process expressly provided in Market Rule 1 enables NEPOOL participants to participate in ISO-NE's redesignation of external nodes, while at the same time enabling ISO-NE to take swift action when necessary to redesignate nodes so that they reflect the changing physical realities of the system.

3. Provisions for unused capacity on the CSC

13. In the January 31 Order, the Commission stated that, because New England, including such non-PTF facilities as the CSC, was not yet part of a Regional Transmission Organization (RTO),

we are concerned that unused CSC capacity may be withheld from the market. Because the CSC does not currently have an open access tariff on file, and the CSC as a non-PTF does not come under the NEPOOL tariff, there is no vehicle for ensuring that unscheduled capacity is made available to others. Therefore, we will direct ISO-NE to make a filing within 30 days of the date of this order that addresses our concerns.⁹

14. ISO-NE, in its compliance filing, states that existing provisions of the NOATT already ensure that unscheduled capacity on the CSC is available to eligible customers. ISO-NE states that Section 5, Schedule 18 currently provides that "the MTF Provider shall furnish to the System Operator . . . rules setting reservation, Interruption and Curtailment priorities for Firm and Non-Firm MTF Service," and that if such reservation rules are not furnished to ISO-NE, "such rules, reservation, Interruption and Curtailment priorities for Firm and Non-Firm MTF Service shall be the same as those established under the Tariff for Firm and Non-Firm Point-to-Point Transmission Service over the PTF."¹⁰ Thus, ISO-NE states, until the Cross-Sound Cable Company (CSCC) obtains approval for new rules which would ensure the release of otherwise unscheduled firm service, ISO-NE will administer service over the CSC just as it administers point-to-point transmission service over the NEPOOL PTF. LIPA supports ISO-NE's position on this issue.

⁹January 31 Order at P 18.

¹⁰Compliance filing at 5-6.

15. Further, on March 3, 2003, in Docket No. ER03-600-000, the CSCC filed revised procedures for customers to reassign their firm transmission rights on the CSC. On April 25, 2003, the CSCC requested that the Commission defer action on this filing to enable CSCC to confer with ISO-NE and the New York Independent System Operator (NYISO) regarding some of the issues those parties raised in their protests. It is our understanding that those discussions are continuing.

Commission Conclusion

16. Given that Schedule 18 of the NOATT currently provides for the reassignment of unscheduled capacity, and that the CSCC has made a filing which will further address this question, we find that ISO-NE has complied with the compliance obligation we placed upon it and NEPOOL in the January 31 Order, and we accept the filing.

The Commission orders:

(A) LIPA's request for rehearing of the January 31 Order is hereby denied, as discussed above.

(B) ISO-NE's March 3, 2003 compliance filing is hereby accepted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.