

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New England Power Pool

Docket No. ER04-1064-000

ORDER ACCEPTING AMENDMENTS TO THE RESTATED NEPOOL
AGREEMENT AND RELATED TARIFF REVISIONS

(Issued September 20, 2004)

1. In this order, the Commission accepts for filing changes to provisions of the Tariff of the New England Power Pool (NEPOOL) and the Restated NEPOOL Agreement (RNA) that implement the 106th Agreement amending the New England Power Pool Agreement. The 106th Agreement amends sections 15.1 and 16 of the RNA and Schedule 9 and Attachment F of the Tariff to provide a mechanism by which an entity that becomes a New Transmission Provider has an opportunity to recover its costs related to Pool Transmission Facilities (PTF) from transmission customers. This order benefits customers by encouraging new entry and competition in New England's transmission sector.

Background

2. On July 30, 2004, NEPOOL submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),¹ the 106th Agreement. NEPOOL states that the genesis of the 106th Agreement is a request by Florida Power & Light Company- New England Division (FPL-NED) to recover through NEPOOL's rates for regional network service (RNS)

¹ 16 U.S.C. § 824d (2000).

effective June 1, 2004 an initial revenue requirement equal to the PTF² support and ownership costs incurred by FPL-NED's merchant generator affiliate, FPL Energy Seabrook, LLC (FPLE Seabrook) between October 1, 2003 and December 31, 2003. After acquiring PTF assets and obligations from FPLE Seabrook, FPL-NED sought to qualify its Seabrook-Related PTF costs for recovery under the NEPOOL Tariff.

3. NEPOOL states that the Tariff was drafted in a way that contemplated recovery of PTF costs from Transmission Customers only by Transmission Providers and their Related Persons.³ The costs are established pursuant to a formula rate under which an RNS Rate is set each year based on the Transmission Provider's verifiable costs for the prior year. As a merchant generator, FPLE Seabrook could not qualify to recover its Seabrook-Related PTF costs under the Tariff so it transferred the PTF facilities and its rights and obligations to FPL-NED. FPL-NED has taken action to qualify as a Transmission Provider and to recover its PTF costs under the NEPOOL arrangements, including filing a local network service tariff with the Commission.⁴ In addition, FPL requested a Tariff interpretation from NEPOOL to permit recovery of PTF costs.

4. Although the NEPOOL Participants Committee approved the cost recovery request, and the decision was supported by an 80 percent vote, all of the Transmission Owners opposed the decision. The Transmission Owners appealed the decision to the

² The Restated NEPOOL Agreement defines PTF, in part, as the transmission facilities owned by Participants, rated 69 kV or above, required to allow energy from significant power sources to move freely on the New England transmission network. PTF does not include lines and associated facilities which are required to serve local load only and generator leads. The RNA states that the Reliability Committee shall review annually the status of transmission lines and related facilities and determine whether they constitute PTF.

³ Section 1.101 of the Restated NEPOOL Agreement defines Related Person in part, for Participants, as a corporation, partnership, business trust or other business entity (hereafter "entity") in which 10 percent of the stock or equity interest is owned, directly or indirectly, or under common control with the Participant, or any entity which owns directly or indirectly 10 percent or more of the stock or other equity interest in the Participant, or an entity which owns 10 percent or more of the stock or other equity interest of a business entity which also owns 10 percent or more of the stock or other equity interest in the Participant.

⁴ See Florida Power & Light Company- New England Division, 107 FERC ¶ 61,186 (2004).

NEPOOL Review Board. NEPOOL states in its filing that pursuant to the Review Board recommendations, the Participants Committee, at its June 30, 2004 meeting, adopted a series of revised resolutions and authorized balloting of the RNA and Tariff amendments, and the action was approved by an 80 percent vote, with all the Transmission Owners either opposing or abstaining on the vote.

The 106th Agreement

5. In the 106th Agreement, NEPOOL proposes to modify various provisions of the NEPOOL Tariff and the RNA to permit a new Transmission Provider to recover its Annual Transmission Revenue Requirement (ATRR) for PTF that it owns, and for PTF that it supports, without requiring that the New Transmission Provider have a Participant RNS rate⁵ or responsibility for a Network Load.

6. Section 15.1 of the RNA currently provides specifically for the recovery of a Related Person's costs to own PTF. It has been amended in the 106th Agreement to clarify that this section also provides for recovery of a Related Person's PTF support payments. Section 16 of the RNA has been amended to clarify that a Transmission Provider is entitled to recover its revenue requirement regardless of whether that Transmission Provider has its own individual Participant RNS rate. It has also been amended to recognize that a Transmission Provider may be responsible for serving the Network Load of another Transmission Provider.

7. Schedule 9 of the NEPOOL Tariff contains the formula for developing charges to Transmission Customers for RNS. It has been amended to explain the basis for PTF cost recovery by Transmission Providers that had not recovered costs pursuant to the NEPOOL Tariff prior to June 1, 2004 (new Transmission Providers), and municipal transmission owners that do not have a participant RNS rate. It has also been modified to allow a Transmission Provider responsible for serving load that is not located in its Local Network to include that load in its Participant RNS rate.

8. Attachment F has been modified to identify the documentation a new Transmission Provider must submit to support its ATRR as part of the NEPOOL rate calculation process. Also, the method for calculating the return on equity factor in the weighted cost of capital component of the ATRR calculation is provided in this filing.

⁵ Section 1.85 of the Restated NEPOOL Open Access Transmission Tariff defines Participant RNS Rate as the rate applicable to Regional Network Service to effect a delivery to Load in a particular Local Network, as determined in accordance with Schedule 9 of this Tariff.

9. NEPOOL requests a retroactive effective date of June 1, 2004, to reflect the fact that charges are adjusted as of June 1, 2004 each year. NEPOOL also requests a waiver of the Commission's regulations pertaining to prior notice.

Notice of Filings, Interventions and Protests

10. Notice of NEPOOL's filing was published in the *Federal Register*, 69 Fed. Reg. 50,378 (2004), with interventions, comments, and protests due on or before August 20, 2004. The Northeast Utilities Service Company (NUSCO) filed a motion to intervene on behalf of the NU Operating Companies and Select Energy, Inc. (collectively, NU). ISO New England, Inc. (ISO-NE), Fitchburg Gas and Electric Light Company (FG&E), FPL, and FPLE Seabrook filed motions to intervene and comments. Central Maine Power Company (Central Maine) and National Grid USA⁶ (National Grid) filed motions to intervene and consolidate and protests. The Connecticut Department of Public Utility Control (CT DPUC) filed a motion to intervene, protest, and motion for consolidation out-of-time. On September 7, 2004, NEPOOL and FPL filed answers to the protests and motions to consolidate.

11. ISO-NE states that it supports the 106th Agreement and requests that the Commission accept it as filed. FG&E states that it was an active participant in the discussions leading to the 106th Agreement and supports NEPOOL's proposal to add FG&E to the list of Local Networks in Attachment E to the NEPOOL Tariff.

12. FPLE Seabrook states that it supports the NEPOOL Filing. FPLE Seabrook states that the amendments will clarify how FPL and a limited number of other similarly situated entities may recover their PTF costs and Transmission Support Expenses for support of PTF. Also in support of the 106th Agreement, FPL states that under the 106th Agreement the NEPOOL Tariff and RNA will be amended to include the necessary mechanism by which FPL may be a Transmission Provider in NEPOOL and recover its costs related to the PTF facilities at the Seabrook transmission Substation.

13. National Grid states that the proposed amendments would create discriminatory cost shifts forcing New England transmission customers to subsidize FPL's purchase of the Seabrook Station. National Grid states that under longstanding Commission ratemaking precedent, facilities such as generator step-up transformers and generator lead lines are not considered transmission facilities, and may not be included in the transmission rate base used to derive transmission rates. National Grid states that FPL

⁶ National Grid filed on behalf of itself and its subsidiaries that are NEPOOL Participants. These include New England Power Company, Massachusetts Electric Company, the Narragansett Electric Company, and Granite State Electric Company.

cannot shift its Seabrook Interconnection costs to others. Further, National Grid states that parties to the sale of the Seabrook Station in November 2002 were aware that FPL was assuming the risk of recovering its portion of the Seabrook Interconnection costs through market-based rates and understood that the costs would not be passed on in regulated rates.

14. National Grid argues that there is little evidence from NEPOOL's filing that it has considered the larger implications of its proposed rule changes beyond the immediate assistance it wishes to provide to FPL. Additionally, National Grid states that the proposed amendments violate the rate design principles that form the basis of the present NEPOOL Tariff. National Grid states that the proposed amendments would allow FPL to immediately incorporate 100 percent of its Seabrook Interconnection costs into the regional transmission rates, bypassing the transitional phase-in mechanisms that were designed to ensure a gradual phase-in over time to a "postage-stamp" regional rate.

15. National Grid cites *Great Bay*⁷ in support of its argument. National Grid states that like FPLE Seabrook, Great Bay Power Corporation was also a generator that owned a portion of the Seabrook plant. Great Bay did not have the costs associated with its share of the Seabrook substation reimbursed, while all the other substation co-owners were permitted such reimbursement through their transmission rates. National Grid states that Great Bay was distinguished from the other co-owners because Great Bay participated in NEPOOL as a generator and did not take RNS service and pay RNS charges. All the other Seabrook co-owners besides Great Bay were also NEPOOL RNS transmission customers, and not permitting these other co-owners to pass on their support expenses would have forced them to pay these costs twice (once via the Transmission Support Agreement and again via the RNS transmission service they paid for). Great Bay, participating in NEPOOL as a generator only, was not exposed to double-payment. Thus, National Grid believes that FPL, like Great Bay, must be denied cost recovery for similar reasons.

16. Central Maine states that the 106th Agreement is not carefully crafted and instead represents a series of conflicting revisions to the RNA drafted to memorialize a series of ad-hoc resolutions approved by the Participants Committee that were specifically designed to provide recovery for FPL-NED as of June 1, 2004. Central Maine contends that if FPL-NED is a Local Network Service Transmission Provider in NEPOOL and if the amendments proposed in this proceeding are accepted for filing by the Commission,

⁷ See New England Power Pool, 88 FERC ¶ 63,006 (1999); *aff'd* 101 FERC ¶ 61,306 (2002) (*Great Bay*).

FPL-NED will be able to recover, under the NEPOOL Tariff, transmission support payments paid by a generating facility for transmission service. Central Maine states that similarly situated generators in New England are unable to pass on their costs via regulated rates, and accepting the 106th Agreement would allow FPL to be treated differently than similarly situated customers.

17. Central Maine states that there are inconsistent and conflicting provisions in the 106th agreement. Specifically, the 106th Agreement does not assign a specific RNS rate or network load to FPL-NED in order to avoid assigning any cost responsibility to FPL-NED because FPL-NED has no transmission customers from whom to recover those costs. Central Maine also states that FPL-NED, an investor-owned utility, is treated as a publicly owned entity for some purposes but not for others. Last, Central Maine maintains that the amendments to the NEPOOL Tariff Attachment F and Attachment F Implementation Rule conflict and create competing requirements.

18. National Grid, Central Maine, and the CT DPUC request that the Commission consolidate this docket with ER04-714-000, FPL-NED's LNS Tariff filing. National Grid states that FPL-NED's LNS proceeding in that docket has no significance outside the instant proceeding. Central Maine is concerned that the filing in Docket ER04-714-000 combined with the proposed regional tariff amendments in this docket could result in regional transmission ratepayers subsidizing the interconnection costs of FPLE Seabrook. The CT DPUC states it is concerned that the 106th Agreement will permit unjust and unreasonable rate recovery by allowing New England merchant generators to unbundle and transfer their interconnection facilities to artificially-constructed transmission affiliates.

Discussion

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to the proceeding. We accept the motion to intervene out-of-time of the CT DPUC given its interest in this proceeding, the early stage of this 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 or to an answer unless otherwise ordered by the decisional authority. We will accept the answers of NEPOOL and FPL because they have provided information that assisted us in our decision-making process.

20. The Commission hereby accepts the changes to the NEPOOL Tariff and the RNA submitted in this proceeding, to become effective June 1, 2004. In the 106th Agreement, NEPOOL proposes to modify these documents to permit a new Transmission Provider to recover its ATRR for PTF that it owns and for PTF that it supports, without requiring that

the New Transmission Provider have a Participant RNS rate or responsibility for a Network Load. The ability to obtain relief from PTF support payments, coupled with the removal of responsibility to have a Participant RNS rate and serve network load, constitutes a new form of transmission ownership in NEPOOL. The Commission agrees with a majority of the participants in NEPOOL that this reduction in ownership criteria is acceptable and justified. The Commission finds that FPL-NED's interest in cost recovery as a Transmission Provider highlights the need for corrective changes, as set forth in the 106th Agreement, to facilitate new ownership and accommodate the potential for similar new owners in the future.

21. The current NEPOOL Transmission Owners believe that the inclusion of this new type of ownership interest in NEPOOL will raise transmission rates for all transmission customers in New England. NEPOOL's Tariff Committee, however, states that the resulting impact from including Seabrook-related PTF costs in RNS would be relatively small, an approximate increase in rates of 1.5 percent. The former owners of the Seabrook Nuclear Station recovered the costs being discussed in this proceeding and these costs were already rolled into the region-wide NEPOOL rate. NEPOOL states that, "[a]ll of the Transmission Provider entities transferring to FPLE Seabrook their ownership interests in the Seabrook Substation and their obligations under the TSA to financially support the Seabrook Lines recovered under the NEPOOL Tariff both their Seabrook Substation ownership costs and their support payments."⁸ The Commission agrees that FPL-NED has the right to the same benefits received by the previous owners of the associated facilities by way of PTF-related cost recovery through NEPOOL rates, as does any similarly situated entity. The benefit provided by reducing barriers to entry in the transmission sector may offset the negative impact of a rate increase.

22. Contrary to National Grid's argument, recovery of PTF costs has not always depended on Local Network designation and assignment of a Participant RNS rate. As noted by NEPOOL,⁹ each Municipal Transmission Owner that owns or supports PTF in New England collects an ATRR related to that ownership interest or support obligation. Yet, these entities are not subject to many of the eligibility criteria for publicly-owned, Commission-jurisdictional utilities such as designation as a Local Network, and assignment of a Participant RNS rate. This also accentuates the principle that an entity

⁸ Transmittal Letter at p. 11, 12.

⁹ Transmittal Letter at p. 9.

owning PTF is entitled to recovery of ownership and support costs for those facilities; this principle has historically been in place for municipal transmission owners in NEPOOL.

23. The Commission does not find accurate National Grid's claim that the 106th Agreement was drafted for the purpose of providing arbitrary assistance to FPL-NED. According to NEPOOL, the agreement clarifies "how new Transmission Providers similarly situated to FPL-NED may recover their PTF-related ownership and support costs under the NEPOOL Tariff."¹⁰ The provisions are for the purpose of providing a mechanism by which *any* new Transmission Provider has an opportunity to recover its PTF costs as the current owners recover them. While the agreement will provide immediate benefit to FPL-NED, similarly situated entities could be eligible for these benefits as well.¹¹

24. National Grid refers to concerns over economic efficiency and an introduction of uncertainty into NEPOOL rates. Specifically, National Grid believes that the amendments of the 106th Agreement would alter the current rate design, and would allow FPL to bypass phase-in mechanisms that were designed to converge to a "postage-stamp" rate. FPL-NED was not a party to the Tariff Docket Settlement that implemented the restructuring of NEPOOL in response to Order No. 888. The restructuring was configured to establish transitional, phase-in mechanisms to eventually reach a postage-stamp, regional rate. These transition mechanisms applied to the existing, historic Transmission Providers in NEPOOL. Any new Transmission Provider would not be subject to the old parameters of this settlement, but rather to the current tariff language. National Grid has not demonstrated how the 106th Agreement would alter current rate design principles.

25. With respect to National Grid's argument regarding facilities such as generator step-up transformers and generator lead lines, issues relating to the identification and classification of FPL's specific facilities are being addressed in Docket No. ER04-714-000 and are not to be addressed here.

26. The facts in the *Great Bay* case cited by National Grid are distinguishable from the facts here. There, although Great Bay was a NEPOOL participant, it was an Exempt Wholesale Generator and was not a Transmission Provider. Here, FPL-NED has become

¹⁰ Transmittal Letter at p. 18.

¹¹ *Id.*

a Transmission Provider by following the prescribed NEPOOL procedures. Therefore, the Commission's decision in *Great Bay* is distinguishable from the instant proceeding.

27. Central Maine has not supported or adequately explained its argument that there are inconsistent, conflicting, and illogical provisions in the 106th agreement. Central Maine states that FPL-NED is treated as a publicly owned entity for some purposes and as an investor owned utility for others without supporting this contention. Additionally, Central Maine offers no explanation as to how the proposed amendment to Attachment F and the Attachment F Implementation Rule conflict and create competing requirements.

28. The Commission denies the requests to consolidate ER04-714-000 with the instant docket. The proceedings in ER04-714-000 have independent significance aside from their impact on the issues under consideration here. In ER04-714-00, the Commission is addressing the specifics of FPL-NED's LNS Tariff, the formula rate determining the ATRR, and the return on equity. There are no issues of material fact regarding the 106th Agreement that would appropriately be resolved in the ongoing hearing proceedings in that docket.

29. We will grant NEPOOL's request for waiver of the 60-day notice requirement consistent with Commission precedent.¹²

The Commission orders:

(A) The 106th Restated NEPOOL Agreement and related tariff revisions are hereby accepted for filing to become effective June 1, 2004.

(B) The Central Maine, National Grid and CT DPUC motions for consolidation of Docket No. ER04-1064-000 with Docket No. ER04-714-000 are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹² Central Hudson Gas and Electric Corp., 60 FERC 61,106, *reh'g denied*, 61 FERC 61,089 (1992).