UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northeast Utilities Service Company and Select Energy, Inc.

v.

ISO New England Inc. and New England Power Pool

Docket No. EL03-216-000

ORDER DENYING COMPLAINT

(Issued October 24, 2003)

1. In this order, the Commission denies Northeast Utilities Service Company's (NUSCO[1]) and Select Energy, Inc.'s (Select Energy[2]) (collectively, Northeast Utilities[3]) complaint against ISO New England (ISO-NE) and New England Power Pool (NEPOOL) regarding the calculation, collection and distribution of the loss component of the locational marginal prices (LMP) under New England's standard market design (New England SMD). Our decision today benefits the Northeast by providing consistent and reliable standards within which power companies can operate.

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[1] NUSCO is a registered holding company and a service company subsidiary of Northeast Utilities.

[2] Select Energy is a wholly-owned subsidiary of NU Enterprises, Inc., which is a wholly-owned subsidiary of Northeast Utilities.

[3] Northeast Utilities filed on behalf of the Northeast Utilities (NU) Operating Companies. NU Operating Companies are: the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), and the Public Service Company of New Hampshire (PSNH).

Complaint

2. On July 23, 2003, Northeast Utilities filed a complaint against ISO-NE and NEPOOL, alleging that the ISO's formula and methodology for calculating transmission losses is "seriously flawed" and creates uncertainty in the New England energy market since it results in "over-recovering physically-based transmission loss costs by many millions of dollars a month."[4]

3. As Northeast Utilities explains, transmission losses occur when electricity is transmitted from a point of receipt to a point of withdrawal – the result of physical electrical resistance on transmission system wires.[5] Northeast Utilities argues that prior to March 1, 2003, when SMD was implemented in the Northeast, transmission losses were treated similarly to congestion costs, and were recovered on an average cost basis from all transmission customers.[6] Northeast Utilities contends that since NEPOOL adopted its new standard market design (Market Rule 1), the costs of transmission losses are now being calculated on a marginal cost basis, and are being collected as a component of LMP, based on calculations at each node.[7] Based on the ISO's implementation of Market Rule 1, those with load obligations pay a zonal price, which is the load-weighted average of the nodal LMP at each pricing node within a zone. The nodal LMP consists of three components: Energy, Congestion and Losses. Northeast Utilities describes the loss component as the marginal loss calculated to serve the next MW of load.[8]

4. Northeast Utilities states that generators are paid the nodal LMP at their pricing node. Northeast Utilities asserts that the use of marginal losses in the calculation of LMPs has resulted in collection of more revenues than are required to be paid to generators producing the energy. Therefore, Northeast Utilities explains, any surplus collected as a result of collecting marginal losses rather than average losses after generators are paid and congestion rents are settled goes into a loss revenue fund. According to Northeast Utilities, ISO-NE distributes the surplus loss revenues on a pro

[4] Complaint at 3.

[5] Id. at 4-5.

[6] Id. at 5.

[7] Id.

[8] Id.

rata basis, based on participants' net Real-Time Adjusted Load Obligations across all locations.[9]

5. Northeast Utilities contends that prior to New England SMD, losses were a relatively minor part of the total costs of electric service in NEPOOL.[10] Northeast Utilities alleges that the ISO has collected over $33 million in over-collections of transmission loss costs between March and June of this year.[11] These excess loss revenues, Northeast Utilities alleges, are not being refunded to those participants who overpaid, but instead are refunded to participants based on their net Real-Time Adjusted Load Obligations over all locations. Northeast Utilities explains that ISO-NE's reimbursement method for the excess marginal loss revenues results in some participants receiving a windfall, while others pay too much.[12]

6. Northeast Utilities alleges that ISO-NE and NEPOOL, in violation of the Commission's directives in its January 31 Order,[13] have not filed the formula and methodology for calculating the loss component of NEPOOL's locational marginal prices and therefore the prices charged have not been proven to be just and reasonable.[14] Northeast Utilities contends that the current Market Rule 1 contains only a general definition of the loss component and does not define a key feature of the calculation – the "reference point." It also complains that while more information is provided in Manual 28, the manual still includes only general accounting steps and descriptions. It further complains that Manual 28 is not on file with the Commission and that no full and transparent description of the calculation of the loss component and disbursement has ever been filed with the Commission.[15]

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[9] Northeast Utilities describes the Real-Time Adjusted Load Obligation as equal to the Real-Time Load Obligation adjusted by any applicable energy-related internal Real-Time bilateral transactions at that location. See Complaint at n. 12.

[10] Complaint at 7.

[11] Id. at 8, 15.

[12] Id. at 15-16.

[13] See New England Power Pool, 102 FERC ¶ 61,112 (2003) (January 31 Order).

[14] Complaint at 9-10.

[15] Id. at 10 - 11.

7. Northeast Utilities further argues that NEPOOL, in submitting its SMD filing, claimed that Market Rule 1 was an improvement on the PJM model which offers pricing which includes transmission losses that provide more precise locational pricing measures.[16] However, Northeast Utilities contends, material provided to participants in preparation for SMD did not include the potential impact on prices of the loss component, but rather emphasized the impact on locational prices of congestion.[17]

8. Northeast Utilities therefore asks that the Commission order ISO-NE to desist from collecting marginal loss costs until ISO-NE and NEPOOL file "clear and descriptive tariff language addressing transmission losses" and also provide support for the just and reasonableness of the allocations to customers of excess loss revenues.[18] Northeast Utilities also requests that the Commission require ISO-NE to provi de a full accounting of loss collections and disbursements to date.[19] Based on such a filing, if the Commission determines that the charges are not just and reasonable, Northeast Utilities contends that the Commission should order refunds, retroactive to March 1, 2003, the date SMD was implemented in ISO-NE.[20]

Notice of Filing, Interventions and Protests

9. Notice of Northeast Utilities' filing was published in the Federal Register, 68 Fed. Reg. 44,935 (2003), with comments, protests, and interventions due on or before August 12, 2003. Motions to intervene without substantive comments were filed by Chicopee Municipal Lighting Plant and South Hadley Electric Light Department, Duke Energy North America LLC, Exelon Corporation, PSEG Energy Resources & Trade LLC, and Massachusetts Municipal Wholesale Electric Company. Calpine Energy Services L.P. (Calpine), FPL Energy LLC (FPL Energy), and United Illuminating Company (United Illuminating) filed motions to intervene and comments in support of the complaint. Connecticut Department of Public Utility Control (CT DPUC) also filed a notice of intervention and comments in support of the complaint. The Dominion

[16] Id. at 6.

[17] Id. at 7.

[18] Complaint at 4, 17.

[19] Id. at 4, 18.

[20] Id.

Companies[21] and Morgan Stanley Capital Group, Inc. (Morgan Stanley) filed motions to intervene and protests. Maine Public Utilities Commission (Maine PUC) filed a notice of intervention and protest.

Answers to Complaint

10. On August 12, 2003, ISO-NE and NEPOOL filed separate answers to Northeast Utilities' complaint. ISO-NE and NEPOOL contend that each of Northeast Utilities' arguments is without merit and that the Commission should reject Northeast Utilities' complaint.[22] ISO-NE contends that the marginal loss methodology is not flawed, and that it complied with the Commission's directives and the major provisions of the marginal loss methodology, which were filed in sufficient and acceptable detail, and were accepted by the Commission in its September 20 Order.[23] ISO-NE and NEPOOL argue that no party, including Northeast Utilities, protested the then-proposed Market Rule 1, nor did they question the sufficiency of details under the Federal Power Act.[24] They also assert that no party raised any concerns through the stakeholder process or with the Commission prior to the Commission's acceptance of Market Rule 1.[25] In fact, ISO-NE contends, Northeast Utilities had access to information about marginal losses prior to implementation of New England SMD and has therefore forfeited any right to request retroactive changes to the marginal loss calculations.[26] ISO-NE further contends that Northeast Utilities is essentially seeking rehearing of the September 20 Order by trying to circumvent the 30-day time limitation for rehearing.[27] ISO-NE also argues that neither

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[21] Dominion Resources, Inc. ("Dominion Resources"), Dominion Energy Marketing, Inc. ("Dominion Energy Marketing"), Dominion Retail, Inc. ("Dominion Retail"), Dominion Nuclear Connecticut, Inc. ("Dominion Nuclear Connecticut") and Virginia Electric & Power Company ("Dominion Virginia Power") (collectively, the Dominion Companies).

[22] NEPOOL Answer at 2.

[23] Id. at 2, 17-18.

[24] Id. at 2, 6; also at 3.

[25] ISO-NE Answer at 11.

[26] Id. at 12-15.

[27] Id. at 15, 16.

the Federal Power Act nor the Commission's regulations require more detailed filings than those made by ISO-NE and accepted by the Commission.[28]

11. NEPOOL argues that, absent any evidence that ISO-NE improperly administered the filed rate, the Commission should not grant Northeast Utilities' request to order ISO-NE to cease collecting marginal losses while the filed rate is in effect since they complied with both Commission and FPA requirements.[29] NEPOOL states that while it shares Northeast Utilities' concern about the magnitude of the marginal losses, both NEPOOL and ISO-NE are working on changes to improve the current methodology, but will continue to adhere to the filed rate until any changes are filed and accepted by the Commission.[30] Moreover, they oppose any refund obligation, asserting that the existing LMP loss rate (including refunds) methodology was approved by the Commission and, as ISO-NE is a cash-flow conduit, it has no money to refund.

Northeast Utilities' Answer

12. On August 27, 2003, Northeast Utilities submitted an answer to ISO-NE and NEPOOL's answers. Northeast Utilities maintains that it filed its complaint in a timely manner.[31] Northeast Utilities argues that since NEPOOL's new methodology is a complex new market design that has been in effect only since March 1, 2003, the parties could not have anticipated the problems that have arisen with the loss component of the LMP.[32] However, Northeast Utilities argues, it acted "promptly and responsibly" since the losses issue was discovered for the first time in April, 2003, after ISO-NE issued its first bills under New England's SMD, at which time Northeast Utilities met with and expressed its concerns to senior ISO management.[33] Northeast Utilities also contends that the issue was revisited at the June 16, 2003 Markets Committee meeting. Northeast Utilities argues that its initial "silence" on the adequacy of the filing does not forfeit its rights nor does it invalidate requirements of the Federal Power Act.[34]

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[28] Id. at 8. See also NEPOOL Answer at 6.

[29] NEPOOL Answer at 2, 6, 10, 13.

[30] Id. at 8, 9.

[31] Northeast Utilities Answer at 2.

[32] Id. at 3.

[33] Id. at 3, 4.

[34] Id. at 5, 6.

Protests

13. Several protestors argue that the Commission should dismiss the complaint. Morgan Stanley concurs that "there is room for improvement in [ISO-NE's] current price calculation formula," but it argues that it is not economically advisable to disband the formula in place and revert back to the old methodology.[35] Morgan Stanley believes that the most effective way is to review the loss calculation methodology in conjunction with a review of the scarcity and congestion pricing mechanism.[36] Morgan Stanley contends that the Commission should not order retroactive refunds as Northeast Utilities requests because such action would be detrimental to ISO-NE's financial markets.[37]

14. Maine PUC argues that the complaint is tantamount to a collateral attack on the Commission's September 20, 2002 approval of marginal loss calculations as a part of the New England SMD changes.[38] Maine PUC further argues that Northeast Utilities had ample opportunity to challenge Market Rule 1 prior to the Commission's approval.[39] Maine PUC concludes that since there is a filed rate in effect for the marginal loss calculations, there is no basis for the Commission to order refunds unless the rate was improperly applied.[40]

15. Dominion Companies states that while it generally supports the complaint and believes that some concerns Northeast Utilities has raised have merit, ordering the ISO to cease collection of transmission loss costs until a new methodology is approved would have a detrimental impact on the stability of the New England electric market.[41] However, Dominion Companies contends that the Commission should order ISO-NE and NEPOOL to implement revisions to the current method of allocating refunds of excess

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[35] Morgan Stanley Protest at 4, 6.

[36] Id. at 5.

[37] Id. at 6.

[38] See New England Power Pool and ISO New England, Inc., 100 FERC ¶ 61,287 (2002) (September 20 Order).

[39] Maine PUC's Protest at 2-3.

[40] Id. at 5.

[41] Dominion Companies Protest at 6.

losses, as presented at the August 1, 2003 NEPOOL Participants Committee meeting, as soon as possible.[42]

Discussion

A. Procedural Matters

16. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2003), the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant PSEG's and FPL Energy's untimely, unopposed motions to intervene.

17. Further, 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 an answer unless otherwise ordered by the decisional authority. We will accept Northeast Utilities answer because it has assisted us in our decision-making process.

B. Commission Conclusion

18. The Commission finds that Northeast Utilities has not shown that the inclusion of marginal losses in LMP or the refund mechanism for over-recovered losses is no longer just and reasonable. Therefore the Commission denies its complaint. ISO-NE and NEPOOL submitted its SMD proposal on July 15, 2002, with the Commission issuing its first ruling on September 20, 2002.[43] Marginal losses and the refund mechanism were part of the Commission-accepted LMP calculations and are currently part of the rate on file with the Commission.[44]

19. Northeast Utilities argues that marginal losses over-recover physically based transmission losses. The Commission does not dispute that. Marginal losses typically are in excess of the average losses as marginal losses tend to be in excess of the average

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[42] Id.

[43] September 20 Order.

[44] Id. at P 64. We note that Northeast Utilities did not seek rehearing of the September 20 Order and that its current arguments with respect to the methodologies for marginal losses and refunds are essentially a collateral attack on that order.

as load increases. This is nothing new and was know at the time the Commission accepted the use of marginal losses. Northeast Utilities also argues that marginal loss costs have been greater than expected. However, Northeast Utilities points to nothing in the New England SMD proceeding that gave an indication of what marginal loss costs were expected. Marginal losses are a physical indicator of the load on a transmission system. High marginal losses may be an indication of a high load on the transmission system, and a price signal to investors and load that opportunities are present. The marginal loss costs may be greater than Northeast Utilities expected, but that is not a basis to reject a methodology that the Commission previously accepted and is on file with the Commission.

20. Northeast Utilities argues that the currently effective loss refund mechanism results in refunds not being paid to participants who overpaid. As a result, Northeast Utilities believes, some participants receive a windfall. The Commission has found that LMP is the appropriate pricing mechanism for ISO-NE.[45] The purpose of LMP is to calculate the locational marginal price (cost) of energy. Losses are an important component of that calculation, as power losses increase at a rate greater than the increase in load.[46] As marginal power losses are in excess of average power losses, marginal loss revenue is in excess of actual loss costs. Marginal loss revenues in excess of actual losses are refunded by ISO-NE to the NEPOOL participants. Refunding of excess loss revenues can be done in many ways, but it should not be done in a manner that undermines the LMP calculation. Refunding excess loss revenues to the participants who incurred the losses would undermine the usefulness of including marginal losses in the LMP calculation. This is because, if excess LMP revenues are to be refunded to those who paid the marginal losses, then these purchasers would no longer be paying the marginal cost for energy, which is the basis of LMP. If that were to occur, the price signal incentives to investors and load that the Commission wishes to see from LMP would be undermined. The net result would be system-wide pricing for losses. System-wide pricing of power was what the Commission spent several years directing ISO-NE to abandon and which ISO-NE did abandon with its filing of New England SMD.[47]

21. Northeast Utilities argues that the ISO-NE and NEPOOL tariffs do not clearly state the marginal loss calculation or the mechanism by which it is calculated. It requests that the Commission require the calculation or mechanism to be put into the tariff, and to require the collection of marginal losses to be made subject to refund. The Commission denies Northeast Utilities' request. ISO-NE and NEPOOL have met the requirements of

[45] Id. and related cites in n.4 (2002).

[46] Central Hudson Gas & Electric Corp., et al., 103 FERC ¶ 61,142 at P 5 (2003).

[47] September 20 Order at P 2, n 4.

the Federal Power Act and the Commission's regulations with respect to their filings with the Commission. Section 205 of the FPA requires that provisions that significantly affect rates, terms and/or conditions of service should be filed with the Commission. In this regard, the Commission applies a "rule of reason" in making this determination. As the Commission has explained:

> [t]here is an infinitude of practices affecting rates and service. The statutory directive [of section 205(c)] must reasonably be read to require the recitation of only those practices that affect rates and services significantly, that are realistically susceptible of specification, and that are not so generally understood as to render recitation superfluous.[48]

The Commission determined that ISO-NE and NEPOOL provided sufficient specificity in its tariff with respect to Market Rule 1. While the transmission loss calculations were provided in filed Market Rule 1, ISO-NE and NEPOOL took further steps by stating in their transmittal letter that the inclusion of marginal losses in the calculation of LMPs may result in an over-collection of losses, which they determined would be allocated proportionally to participants that were obligated to serve the real-time load.[49] In addition, the Commission, in the order approving the New England SMD, addressed what provisions of Market Rule 1 should be filed as part of ISO-NE's tariff.[50] Finally, we note that NEPOOL has provided further detail in its Manual M-28 and ISO-NE has included further information on its website regarding, among other things, the mathematical formula describing the calculation of marginal losses.[51]

22. Northeast Utilities also has not met the requirements of section 206 of the Federal Power Act to warrant a change in the marginal loss procedures accepted and on file with the Commission.[52] As discussed above, it has not shown that the currently effective LMP

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[48] See Public Service Co. of Colorado, 67 FERC ¶ 61,371 at 62,267 (1994) (quoting City of Cleveland v. FERC, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (emphasis in original); see also Atlantic City Electric Company, 89 FERC ¶ 61,225 (1999) (allowing details to be included in manuals and on websites).

[49] See New England Power Pool and ISO New England Inc., NEPOOL: Standard Market Design, Transmittal Letter at 15-16, Docket No. ER02-2330-000 (July 15, 2002).

[50] Id. at P 145-47.

[51] See ISO-NE Answer at 8.

[52] See, e.g., Occidental Chemical Corp. v. PJM Interconnection, L.L.C. and Delmarva Power and Light Co., 102 FERC ¶ 61,275 at P 18 (2003); Western Resources,

marginal loss rate and refund methodology are no longer just and reasonable. In addition, it has not made or supported a just and reasonable proposal to replace the currently effective method.[53]

23. Moreover, the fact that Northeast Utilities could not have anticipated the problems with the loss component of LMP, does not require that the Commission order ISO-NE to cease collecting marginal loss costs and order refunds retroactive to March 1, 2003. Even if Northeast Utilities could demonstrate that the marginal loss approach was unjust and unreasonable, it has failed to demonstrate that retroactive refunds would be appropriate in this proceeding. There are only limited circumstances under which the Commission can require refunds of unjust and unreasonable rates charges prior to a date 60 days after the filing of a complaint, e.g., where sellers have charged a rate other than the filed rate or where an appellate court has found that the Commission committed legal error.[54] None of those circumstances are present here.

The Commission orders:

Northeast Utilities' Complaint is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Inc. v. FERC, 9 F.3d 1568, 1577-80 (D.C. Cir. 1993) (discussing an analogous section under the Natural Gas Act).

[53] With respect to the methodology for refunding excess loss revenue to market participants, we note that ISO-NE and NEPOOL explain that they are working through a stakeholder process, to develop an improved allocation methodology.

[54] San Diego Gas & Electric v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, et al., 96 FERC ¶ 61,120 at 61,504-08 (2001).