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VIA ELECTRONIC FILING

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street
Washington, DC 20426

Re: New England Power Pool, Docket Nos. ER02-2330-000, ER02-2330-001 and ER02-2330-002; Motion for Clarification or, in the Alternative, Request for Rehearing of the NEPOOL Participants Committee

Dear Secretary Salas:

Pursuant to Rules 212 and 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385-212 and 713 (2002), the New England Power Pool ("NEPOOL") Participants Committee hereby submits electronically its Motion for Clarification or, in the Alternative, Request for Rehearing of the Commission's December 20, 2002 order in the above-referenced dockets.

Respectfully submitted,

Jonathan M. Levine
Counsel to the NEPOOL Participants
Committee

Enclosure

cc: Persons identified on the Service Lists in the captioned dockets.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Pool)	Docket Nos. ER02-2330-000,
)	ER02-2330-001 and ER02-2330-
)	002

MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, REQUEST FOR
REHEARING OF THE NEPOOL PARTICIPANTS COMMITTEE
(January 21, 2003)

Pursuant to Rules 212 and 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 713 (2002), the New England Power Pool (“NEPOOL”) Participants Committee¹ requests that the Commission clarify, or in the alternative grant rehearing of, certain of its compliance directives in the December 20, 2002 order issued in the above-captioned dockets (the “Compliance Order”).² That order required NEPOOL to file revisions to its Load Response Program “to reflect the results of” the efforts by New England Demand Response Initiative (“NEDRI”) to develop demand response programs for New England.³ The Compliance Order also required ISO New England Inc. (“ISO-NE”) and NEPOOL to implement Nodal pricing where it is technically feasible to do so.⁴

¹ Capitalized terms used but not defined herein are intended to have the same meaning given to such terms in Section 1 of the Restated New England Power Pool Agreement (“Restated NEPOOL Agreement” or “Agreement”), Section 1 of the Restated NEPOOL Open Access Transmission Tariff (“NEPOOL Tariff” or “Tariff”) or Section 1.3 of Market Rule 1.

² New England Power Pool, 101 FERC ¶ 61,344 (2002). All citations to the Compliance Order are to the official slip opinion issued by the Commission.

³ See Compliance Order at P 47.

⁴ Id. at P 86.

Contemporaneous with this clarification and/or rehearing request, NEPOOL has submitted a compliance filing that includes specific revisions to the Load Response Program identified in preliminary recommendations made by NEDRI in the fall of 2002. As a precautionary matter, NEPOOL nevertheless still requests clarification of the Compliance Order's directive that it revise the Load Response Program to reflect the results of the NEDRI process. The Compliance Order does not clearly set forth the scope of the NEDRI revisions that NEPOOL must submit. As will be discussed in greater detail below, many NEDRI recommendations relate to issues beyond the scope of New England's wholesale demand response programs. Moreover, at the time the Commission issued the Compliance Order, the NEDRI process was ongoing. NEPOOL, therefore, was not able to consider recommendations that did not exist when the Compliance Order was issued and presumes that the Commission did not intend to require some continuing obligation to file NEDRI recommendations as part of any ongoing compliance obligations. To the extent that the Commission intended to require NEPOOL to submit NEDRI-based revisions to the Load Response Program beyond the specific NEDRI recommendations now proposed in NEPOOL's compliance filing, NEPOOL requests rehearing.

Also of concern to NEPOOL is language within the Compliance Order requiring ISO-NE and NEPOOL to implement Nodal pricing where it is technically feasible to do so. ISO-NE has indicated that there are practical, technical and logical impediments to allowing Nodal pricing and Zonal pricing simultaneously in the same geographic subregion. Accordingly, technical feasibility has been interpreted to mean implementation of Nodal pricing as soon as possible on a Zone-by-Zone basis, but not within an existing Zone. NEPOOL seeks

clarification that the Compliance Order does not require the implementation of Nodal pricing piecemeal within a Zone. If the Commission does intend such a result, the NEPOOL seeks rehearing. As demonstrated below, good cause exists to grant the relief requested by NEPOOL.

I. BACKGROUND

A. Description of NEPOOL

NEPOOL is a voluntary association organized in 1971 pursuant to the Restated NEPOOL Agreement, and it has grown to include more than 220 members. The Participants include all of the electric utilities rendering or receiving services under the Restated NEPOOL Agreement, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems and end users.

Pursuant to revised governance provisions accepted by the Commission in New England Power Pool, 88 FERC ¶ 61,079 (1999), the Participants act through the NEPOOL Participants Committee, which is comprised of members and alternates. The Participants Committee is authorized by Section 7.5(d) of the Restated NEPOOL Agreement to represent NEPOOL in proceedings before the Commission.

B. The Compliance Order

By order dated September 20, 2002, in Docket No. ER02-2330 (the “SMD Order”), the Commission conditionally accepted NEPOOL Market Rule 1 (“Market Rule 1”). Market Rule 1, which had been jointly filed by NEPOOL and ISO New England, Inc. (“ISO-NE”), is intended to embody a revised wholesale market design, commonly referred to in New England as the “standard market design” (“SMD”), for the implementation of locational marginal

pricing and a multi-settlement system within the NEPOOL Control Area. The SMD Order required ISO-NE and the NEPOOL Participants Committee to submit two compliance filings within 15 and 30 days after the date of the SMD Order to modify Market Rule 1 in accordance with the SMD Order. (See SMD Order at PP 42, 45, 46, 62, 85, 87, 98, 123, 140, 142 and 147.)

Regarding NEPOOL's Load Response Program, the SMD Order accepted the Program except for a requirement that NEPOOL submit changes to the eligibility requirement for the Program in the 30-day compliance filing. (See *id.* at PP 122-23.) In accepting the Load Response Program, the Commission considered and *rejected* arguments raised by third parties to extend the sunset date for the program beyond the proposed date of December 31, 2004 and to increase the minimum guaranteed payment to participants in the program, finding that these aspects of program, as proposed by NEPOOL and ISO-NE, were reasonable. (See *id.* at PP 123-24.)

With respect to Locational Pricing, which is also of significance to this motion, the SMD Order accepted NEPOOL and ISO-NE's Nodal/Zonal approach to Locational Pricing wherein during an initial transition period, generation receives Nodal Prices and load pays Zonal Prices. The SMD Order rejected requests by the NEPOOL Industrial Customer Coalition ("NICC") to require an immediate choice for load to pay Nodal or Zonal Prices, and found that the 18-month transition period is "an acceptable period of time to allow for distribution companies to prepare or modify existing data and metering infrastructure."⁵

⁵ SMD Order at P 72.

On October 7, 2002 and October 21, 2002, NEPOOL and ISO-NE jointly submitted the two compliance filings required by the SMD Order. In addition, on October 21, 2002, NEPOOL and ISO-NE filed a request for rehearing of the SMD Order.⁶ Also on October 21, 2002, NICC filed a separate request for clarification or, in the alternative, rehearing, requesting that the Commission clarify that: load must have the option to pay Nodal Prices no later than 18 months from the issuance of the SMD Order; (2) ISO-NE should file status reports every 90 days concerning the same; and (3) when and where the “market” is technologically ready to permit Nodal Pricing, this option should be made available.⁷

Subsequent to the filing of the NEPOOL and ISO-NE joint compliance filings, ISO-NE and NEPOOL considered a preliminary set of modifications to the Load Response Program that NEDRI had proposed.⁸ At its meeting on November 25, 2002, the NEPOOL Markets Committee considered and did not recommend Participants Committee adoption of the NEDRI

⁶ The joint motion sought clarification and/or rehearing that (1) the SMD Order’s requirement that “congestion paying entities” be removed from the allocation of Auction Revenue Rights (“ARRs”) does not mean that entities serving the load of Participants paying for long-term firm transmission service be prohibited from receiving ARR, so long as long-term firm transmission customers and all Excepted Transactions are also allocated their share of ARR; and (2) the provisions of the SMD Order concerning the allocation of transmission upgrade costs neither prohibit nor mandate any specific cost allocation arrangement prior to the submission of a proposal by ISO-NE and NEPOOL to the Commission.

⁷ See Request for Clarification or, In The Alternative, Rehearing of the NEPOOL Industrial Customer Coalition, October 21, 2002, Docket No. ER02-2330-000 and EL00-62-039 at 2.

⁸ The preliminary recommendations made by NEDRI were as follows: (1) an increase in the duration of the program to three years; (2) an increase in the minimum guaranteed payment to participants in the 30 minute Real-Time Demand Response Program from \$150/MWh to \$500/MWh and the minimum guaranteed payment to participants in the 2 hour Real-Time Demand Response Program from \$100/MWh to \$350/MWh; and (3) a reduction from \$5000 to \$500 of the annual fee assessed on non-Participants that take part in the program.

recommendations. NEPOOL subsequently filed additional revisions to the Load Response Program with the Commission under Section 205 of the Federal Power Act on December 27, 2002, and did not include the preliminary NEDRI recommendations with those proposed revisions.⁹

On December 20, 2002, the Commission issued the Compliance Order, which granted in part and denied in part NEPOOL and ISO-NE's request for rehearing, and accepted the two compliance filings. The Compliance Order required the NEPOOL Participants Committee and ISO-NE to make a number of modifications to Market Rule 1. In response to NICC's request for clarification regarding Zonal Price issues, the Commission "direct[ed] ISO-NE and NEPOOL to offer nodal pricing to customers where it is technologically feasible to do so."¹⁰ In its discussion of issues raised on rehearing by various parties regarding the Load Response Program proposed in Appendix E to Market Rule 1, the Commission noted the ongoing efforts of NEDRI to develop demand response programs. Although none of the NEDRI-proposed revisions to the Load Response Program were before the Commission in this proceeding and no

⁹ At a high level, many Participants at the Markets Committee opposed the NEDRI recommendations out of a belief that they simply sought to increase the payments (through increases to the floor prices) made to load reductions requested pursuant to a non-market, reliability-based program otherwise inconsistent with the competitive markets designed for SMD. Concerns were also expressed that extending such a program, as recommended by NEDRI, may preclude the implementation of necessary improvements or modifications to the program. Finally, the Markets Committee did not consider NEDRI's recommended change in the annual fee for non-Participants at its November 25 meeting because ISO-NE did not recommend this change as appropriate for a wholesale program. Also, as discussed in more detail in Part II.2 below, the Commission had already considered and rejected similar proposals to the sunset date and minimum guaranteed payment changes proposed by NEDRI and had rejected such proposals in the SMD Order. (See SMD Order at P 123-24.)

¹⁰ Compliance Order at P 86.

party submitting comments to the NEPOOL/ISO-NE compliance filings commented on or requested approval of those preliminary NEDRI recommendations, the Commission ordered NEPOOL “to make a filing revising its demand response programs to reflect the results of the NEDRI process by February 1, 2003.”¹¹ While it is still ongoing, the NEDRI process resulted in a final report that was subsequently issued on January 15, 2003.¹² The report reflects a vote of those who were invited to participate in NEDRI but did not include all suggestions made in that process.

During NEPOOL’s review of the preliminary NEDRI recommendations following the issuance of the December 20th Compliance Order, many Participants expressed concern and/or objection to the Commission’s sweeping statement that NEPOOL should revise its demand response programs to reflect the results of unspecified recommendations of another organization. Those objections stemmed in part from the fact that the Commission had already

¹¹ Compliance Order at P 47.

¹² Despite its earlier statement that it did not expect the final proposals to vary from its preliminary proposals, NEDRI included one new proposal in its final January 15 recommendations. NEDRI proposed that the Load Response Program be revised to permit participants in the Day-Ahead Demand Response Program to also participate in the Real-Time Demand Response Program, if they qualify. As discussed below, NEPOOL does not believe that the Commission has made the necessary, legally-required findings to order NEPOOL to revise the Program and is seeking clarification or rehearing to the extent the Compliance Order required NEPOOL to submit changes beyond those included in its January 21, 2003 compliance filing, including this new proposal. NEPOOL will consider NEDRI’s additional recommendation within the ISO-NE –NEPOOL consultative process, as it did with respect to all prior recommendations arising out of the NEDRI process, and will file corresponding revisions to the Program pursuant to Section 205 of the Federal Power Act if the recommendations are adopted. Because, however, the final recommendations were not released until January 15, 2003 and due to NEPOOL’s Commission-approved governance process, which includes strict Committee notice requirements, NEPOOL could not consider

approved the Load Response Program and did not in any way consider whether the approved Program was unjust or unreasonable. Against this backdrop, the NEPOOL Markets Committee again reviewed NEDRI's preliminary recommendations and again failed to recommend that the Participants Committee adopt these recommendations.

Subsequent to the review of the Markets Committee, all of the proposed compliance-related changes to Market Rule 1, this time including the preliminary NEDRI recommendations, were brought to the NEPOOL Participants Committee on January 10, 2003. At that meeting, the Participants discussed NEDRI's preliminary recommendations that had been identified thus far. Although the identified proposed changes were expected to remain unchanged following NEDRI's issuance of its complete set of recommendations on January 15, 2003, Participants were nonetheless concerned that further unknown recommendations may subsequently be issued and were unwilling to be bound by a requirement to file any such proposals.¹³

Despite these concerns, at its January 10, 2003 meeting, the Participants Committee voted to revise Market Rule 1 to "reflect the results of the NEDRI process" and approved revisions to Appendix E consistent with NEDRI's preliminary recommendations, as directed by the Commission. The vote was expressly conditioned on the understanding that Participants were voting to comply with the Commission's directives without prejudice to their challenging those directives or the individual recommendations. Further, the vote was conditioned on the

this new recommendation in sufficient time to include the results of that consideration within the February 1, 2003 compliance deadline.

Markets Committee considering and recommending, as appropriate, additional refinements to Appendix E based on lessons learned from the New York programs which reportedly formed the basis of the NEDRI preliminary recommendations. Finally, the Participants Committee, to preserve its broader rights, decided that a motion for clarification or, in the alternative, request for rehearing be filed to the extent NEPOOL's identified changes were considered not to be fully compliant with the Compliance Order.

II. MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, REQUEST FOR REHEARING

A. Load Response Program

Because NEPOOL has already submitted the changes arising from NEDRI's preliminary recommendations that it concluded were required, NEPOOL only seeks clarification or rehearing of the Compliance Order to the extent that the Commission's directive pertained to additional NEDRI-proposed revisions. It is unclear whether the Compliance Order requires NEPOOL to submit more than these preliminary recommendations, and specifically to include other provisions that are not related to the Load Response Program or any or all proposals that ultimately may arise from the NEDRI process, whenever issued. NEPOOL also seeks clarification that NEPOOL's adoption of NEDRI's extension of the sunset date for the Load Response Program does not preclude NEPOOL and ISO-NE from refining the Program prior to this date.

¹³ Indeed, as discussed above in footnote 12, the final NEDRI recommendations released on January 15, 2003 included an additional proposal.

1. The Compliance Order is unclear regarding the scope of NEDRI-proposed changes that NEPOOL is required to file

The Compliance Order directs NEPOOL “to make a filing revising its demand response programs to reflect the results of the NEDRI process by February 1, 2003.”¹⁴ At the time the Commission issued the Compliance Order, however, NEDRI had only preliminary recommendations regarding NEPOOL’s Load Response Program. A final report was published on January 15, 2003. It is therefore unclear whether the Commission, in the Compliance Order, was requiring NEPOOL to submit the preliminary recommendations or all proposals sight unseen, that ultimately were to arise from the NEDRI process. NEPOOL requests clarification that the Compliance Order only required NEPOOL to revise its Load Response Program to reflect the preliminary recommendations related to its Program, which were reflected in the NEDRI report that existed at the time of the Compliance Order.

The Commission under these circumstances has not made the necessary finding to require changes to the Load Response Program. To require any changes at this time, the Commission first must find that the previously-approved Load Response Program is unjust and unreasonable. NEPOOL respects the Commission’s concurrence with the preliminary recommendations that arose from the NEDRI process and its desire to implement those recommendations in New England. For that reason, it has approved and is filing the preliminary recommendations as directed. To the extent that the Commission intended NEPOOL to submit revisions different from or in addition to those filed by NEPOOL in its January 21 compliance filing, NEPOOL objects to such an order and respectfully requests

¹⁴ Compliance Order at P 47.

rehearing of this issue based on the grounds set forth in Part 2 below. As discussed therein, such an interpretation of the order would violate the Commission's authority under the Federal Power Act.

2. To require NEPOOL to revise the Load Response Program, the Commission must find that the Load Response Program as it exists is unjust or unreasonable

Sections 205 and 206 of the Federal Power Act governs the Commission's authority to alter a utility's rates, terms and conditions of service. Pursuant to Section 206, the Commission has the power to order NEPOOL to modify its Load Response Program, but only upon establishing that specific aspects of the program are unjust and unreasonable.¹⁵ The Commission has made no such finding that the Load Response Program is unjust, unreasonable or unduly discriminatory, and indeed, effectively concluded only three months earlier that it was just and reasonable. Given that the Program has yet to be even implemented, three months of no experience hardly forms record upon which to conclude that formerly reasonable Program provisions have suddenly become unjust and unreasonable.

¹⁵ Section 206(a) provides, in pertinent part:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affected such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

16 U.S.C. § 824e(a).

“A finding that the existing provision is ‘unjust, unreasonable, unduly discriminatory or preferential’ is a condition precedent to the Commission’s exercise of its power to fix a just and reasonable provision.” New York State Elec. & Gas Corp. v. FERC, 638 F.2d 388, 394 (1980) (citing FPC v. Sierra Pacific Power Co., 350 U.S. 348, 353, 76 S. Ct. 368, 371, 100 L. Ed. 388 (1956)); see also Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348, 353, 76 S. Ct. 368, 100 L. Ed. 388 (1956) (“The condition precedent to the Commission’s exercise of its power under § 206(a) is a finding that the existing rate is unjust, unreasonable, unduly discriminatory or preferential.”). The power to initiate rate changes rests with the utility and cannot be appropriated by the Commission in the absence of a finding that the existing rate was unjust and unreasonable.

The courts have repeatedly held that FERC has no power to force public utilities to file particular rates unless it first finds the existing filed rates unlawful. See Pub. Serv. Comm’n v. FERC, 275 U.S. App. D.C. 286, 866 F.2d 487, 488-89 (D.C. Cir. 1989) (interpreting parallel provision of the Natural Gas Act, 15 U.S.C. § 717d) (“On four occasions in the last three years this court has reviewed [FERC] efforts to compromise § 5’s limits on its power to revise rates. On each the court has repelled [FERC]’s gambit. This is number five.”); Western Res., Inc. v. FERC, 304 U.S. App. D.C. 9, 9 F.3d 1568, 1578 (D.C. Cir. 1993) (“We now make it an even six.”); see also Consumers Energy Co. v. FERC, 226 F.3d 777, 780 (6th Cir. 2000) (Natural Gas Act); Louisiana v. Federal Power Comm’n, 503 F.2d 844, 861 (5th Cir. 1974) (same).

Atlantic City Electric Co. v. Federal Energy Regulatory Comm’n, 295 F.3d 1, 23-24 (2002).

The Commission reviewed the Load Response Program in connection with its broader review of NEPOOL’s Market Rule 1 filing. After considering NEPOOL’s proposal and the protests that were raised by other parties, the Commission accepted the Load Response Program as proposed, conditioned only upon NEPOOL’s submission of specified changes to the eligibility requirement for the Program. (See SMD Order at PP 122-23.) Unless somehow

the Commission can provide some factual basis or some reasoned explanation to support a finding that the Load Response Program accepted by the Commission in the SMD Order is now unjust and unreasonable in some respect, the Commission may not – and has no reason to – order modifications to the Program.

In considering whether the Load Response Program remains just and reasonable, it is important to note that the Commission considered and *rejected* proposals analogous to two of the three NEDRI-based Load Response Program revisions that NEPOOL is now submitting in its compliance filing. The Commission rejected one party’s argument that the termination date for the Program should be extended beyond the date proposed by NEPOOL, stating:

“NEPOOL’s proposed date of December 31, 2004 provides sufficient time for participants to experience the Market Rule 1’s demand side management plan.” (SMD Order at P 123.) The Commission also rejected challenges to NEPOOL’s proposals regarding “dollar-level floors and ceilings”, including minimum guaranteed payments, under the Program. (Id. at P 124.) In fact, the Commission specifically stated that “it accepts NEPOOL’s responses to issues concerning dollar-level floors and ceilings.” (Id.)

The Commission rightly noted that NEPOOL should revise any aspects of the Load Response Program, including the current dollar-value floors and ceilings and the Program sunset date, “if later experience demonstrates portions of [the Program] to be ineffective.” (Id.) Market Rule 1, including the Load Response Program, will not become effective until March 1, 2003. NEPOOL understands that upon implementation, it will be necessary to evaluate Market Rule 1 and the Program on a regular basis, particularly in the early stages.

At the time the Commission issued the Compliance Order on December 20, 2002, NEPOOL had not submitted any revisions to the Load Response Program based on NEDRI's deliberations. Nobody, including the NEPOOL Participants that filed protests aimed at certain aspects of the Load Response Program, filed a protest or a request for rehearing or clarification with respect to the changes proposed by NEDRI. Thus, there was not chance for the Commission to identify from the record what recommendations it was referring to or to receive or consider any input concerning those recommendations. Under these circumstances, the Commission's order is legally deficient and needs to be modified if the Commission intended any changes to the Load Response Program beyond those contained in NEPOOL's compliance filing.

3. The Compliance Order is unclear regarding the ability of NEPOOL and ISO-NE to revise the Load Response Program prior to the NEDRI-proposed extended sunset date

When reviewing the substance of the existing NEDRI recommendations, some concerns were raised regarding the proposal to extend the program's life from two to three years. Some Participants were concerned that this extension may preclude ISO-NE's and NEPOOL's ability to file with the Commission any potential adjustments to these programs should any flaws be uncovered or other potential improvements developed. More specifically, Participants noted that the NYISO has more recent experience with demand response program implementation in a multi-settlement system employing locational marginal pricing, and that NEPOOL and ISO-NE should consider New York's experience in conjunction with a review of the Programs

proposed for New England.¹⁶ To address the concern about recent flaws in the NYISO program, the Participants Committee directed the Markets Committee to consider the experiences of New York. NEPOOL did not interpret the Order to mean that the extension of the effective time period of the Program would preclude further prospective modifications during this time period. Such a requirement would prevent improvements to the Program based on actual lessons learned versus theoretical debate. Accordingly, NEPOOL seeks clarification from the Commission that the NEDRI-proposed extension of the sunset date for the Load Response Program does not preclude NEPOOL and ISO-NE from making any necessary corrections or improvements to the Program prior to the expiration of this date. This clarification is necessary so that ISO-NE and NEPOOL do not waste valuable resources developing near-term improvements to these programs if it is the Commission's intent that any modifications are prohibited.

B. The Implementation of Nodal Pricing

NEPOOL seeks clarification or, in the alternative, rehearing of the Commission's requirement that ISO-NE and NEPOOL offer Nodal pricing to customers where it is technologically feasible to do so. As noted above, although NEPOOL will comply with the Commission's directive that it move towards making Nodal pricing available as soon as

¹⁶ One Participant pointed out that the NYISO had identified problems with improper market clearing prices as a result of their demand response program implementation and that the NYISO, in consultation with Dr. David Patton, their independent market advisor, had developed appropriate solutions to allow scarcity pricing to be reflected when appropriate. NEPOOL understands that reforms to the NYISO demand response programs have begun pursuant to a filing with the Commission in Docket No. ER03-303-000 and that a subsequent filing related to the NYISO's proposed changes in this docket will soon be made that specifically addresses these scarcity pricing problems.

possible, NEPOOL seeks clarification that the Compliance Order does not require the implementation of Nodal pricing piecemeal within a Load Zone. ISO-NE has interpreted the Commission's "technologically feasible" requirement to mean when all Nodes within a specific Load Zone are capable of Nodal pricing and not to require Nodal pricing at an individual Node when other Nodes in a Load Zone are not equipped for such pricing. If the Commission intended to require Nodal pricing to occur on a different basis, then NEPOOL seeks rehearing on this issue.

The Commission's directive within paragraph 86 of the Compliance Order arose from requests by NICC advocating accelerated opportunities to receive the option of paying Nodal prices. More specifically, NICC asked that "when and where the market is technologically ready to permit load to see and pay nodal prices, the option must be made available to those customers."¹⁷ NICC's reference to a "market" may appropriately reflect a specific Load Zone and not a specific Node. In other words, the intent of this compliance requirement has been read to mean that Nodal pricing must be established within any Zone where the technical requirements to permit Nodal prices at all Nodes in such Zone have been met. Although NICC would clearly prefer that customers be provided a Nodal pricing option as soon as its specific Node was capable of providing the same, the NEPOOL and ISO-NE interpretation is a fair reading of the Compliance Order.

¹⁷ See Request for Clarification or, In The Alternative, Rehearing of the NEPOOL Industrial Customer Coalition, October 21, 2002, Docket No. ER02-2330-000 and EL00-62-039 at 2.

Implementation of simultaneous Nodal and Zonal pricing for load will create enormous opportunities for gamesmanship and abuse of the market and will make it difficult if not impossible to reliably calculate Zonal Prices.¹⁸ Such a result clearly is not required by the Federal Power Act. Accordingly, NEPOOL seeks clarification that while the Compliance Order requires the implementation of Nodal pricing on a less than New England-wide basis where technically feasible, such pricing should be implemented on a Zonal basis so that all customers within such Zone are treated equally. If the Commission requires more than this, and rejects New England's deliberate, reliable and calculated transition to a Nodal/Nodal regime despite the fact that NEPOOL and ISO-NE are moving towards Locational Marginal Pricing faster than much of the nation, then NEPOOL requests rehearing on this issue.

¹⁸ Allowing some loads within a Load Zone to price energy on a Nodal basis while others are not capable of receiving similar treatment is patently unfair and may result in potentially volatile Zonal prices. Consider for example the situation of two large consumers of power who take power at two different Nodes both within lower cost areas of a particular Load Zone. Although each would prefer to escape higher Zonal prices by paying the Nodal price, only one Node is "technically feasible" to provide this option. If the Commission were to permit this outcome, the customer without the Nodal price option is not only prejudiced by the lack of a similar Nodal pricing opportunity, but also may suffer a higher Zonal price as a result. This is because Zonal prices represent the load-weighted average of the Locational Marginal Prices ("LMPs") for the Nodes within the Zone. If lower cost LMPs are settled on a Nodal basis, the Zonal price increases. This is fundamentally unfair. Similar customers should be treated similarly, and the appropriate way to accomplish this is to allow for Nodal pricing within a Load Zone when all the Nodes within such Load Zone are technically feasible of permitting Nodal pricing. Permitting a piecemeal approach to Nodal pricing within a Load Zone could prove even more harmful to residential customers, who are bound to see increases in Zonally-priced standard offer arrangements if larger commercial and industrial customers obtain competitive service from suppliers paying Nodal prices. As a general matter, retail competition has proven far more successful for larger power customers and, at least in the near term, residential customers have significantly fewer competitive options. In other words, Nodally-priced options, if made available piecemeal, would likely benefit larger customers to the detriment of residential customers.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the NEPOOL Participants Committee respectfully requests that the Commission clarify the above-mentioned portions of the Compliance Order in accordance with the interpretations set forth herein. Absent clarification as requested, NEPOOL requests that the Commission grant rehearing of the Compliance Order and modify that Order as discussed above.

Respectfully submitted,
New England Power Pool Participants Committee

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Dated: January 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2003, I caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Hartford, Connecticut this 21st day of January 2003.

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