

# 79 FERC ¶ 61,374

## UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
Vicky A. Bailey, and William L. Massey.

New England Power Pool ) Docket No. EC97-35-000

### ORDER CONDITIONALLY AUTHORIZING ESTABLISHMENT OF AN INDEPENDENT SYSTEM OPERATOR AND DISPOSITION OF CONTROL OVER JURISDICTIONAL FACILITIES

(Issued June 25, 1997)

#### I. Introduction

This order conditionally authorizes establishment of an Independent System Operator (ISO) by the New England Power Pool (NEPOOL). The order makes an interim finding that the transfer of control of transmission facilities owned by the public utility members of NEPOOL to the ISO is consistent with the public interest under section 203 of the Federal Power Act (FPA). 1/

#### II. Background

NEPOOL was initially organized in 1971 and presently has over 130 members. NEPOOL operates to assure that the bulk electric power supply of the New England region is provided reliably and economically through central dispatch of virtually all of the generation and transmission facilities in New England as a single control area. As the control area operator, NEPOOL has assumed responsibility for all aspects of the minute-to-minute operation of the region's bulk power system, including: regulating system frequency; maintaining system voltage; managing interchange between NEPOOL and neighboring power systems; dispatching NEPOOL generating capacity to meet NEPOOL load obligations and reserve requirements; managing the dispatch of the NEPOOL transmission system; and coordinating daily transmission and generation outages. NEPOOL has also provided many operational planning services in support of central dispatch (e.g., coordination of annual generator maintenance schedules, transmission facility outage scheduling, administration of

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1/ 16 U.S.C. § 824b (1994). We have designated NEPOOL's section 203 application as Docket No. EC97-35-000.

The Commission will examine other aspects of the NEPOOL restructuring proposal (i.e., the NEPOOL open access tariff and market provisions) at a later date.

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bilateral contracts between NEPOOL Participants and non-NEPOOL entities, and short-term and long-term load forecasting).

In Order No. 888, 2/ the Commission stated that public utilities who are members of a tight power pool (such as NEPOOL) must file, within 60 days of publication of Order No. 888 in the Federal Register an individual Final Rule pro forma tariff, and also must file, by December 31, 1996, a joint pool-wide Final Rule pro forma tariff, 3/ and required these public utilities to begin to take service under the pool-wide tariff for all pool transactions no later than December 31, 1996. 4/ The Commission also directed that the public utility members of tight power pools file reformed power pooling agreements no later than December 31, 1996. The Commission stated that the reformed power pooling agreements should establish open, non-discriminatory membership provisions and modify any provisions that are unduly discriminatory or preferential. The Commission further stated that the membership provision must allow any bulk power market participant to join, regardless of the type of entity, affiliation, or geographic location. 5/

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2/ Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), reh'g pending.

3/ FERC Stats. & Regs. ¶ 31,036 at 31,726-27.

4/ Id. at 31,727, 18 C.F.R. § 35.28 (c)(3)(iv) (1996). Subsequently, by notice issued September 27, 1996, Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Services by Public Utilities, and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 76 FERC ¶ 61,347 (1996), the Commission extended, by 60 days after filing, the date by which public utilities must begin to take service under new pool-wide tariffs. The Commission also directed that amendments to power pool agreements would take effect 60 days after filing unless otherwise ordered. 76 FERC at 62,647. The Commission stated that it would assign OA docket designations to the pool-wide compliance tariff filings and would notice the filings with a period of 30 days for interested entities to respond. The Commission stated that it would assign ER docket designations to amended power pool agreement filings. Id. at 62,647 nn.6 & 7.

5/ FERC Stats. & Regs. ¶ 31,036 at 31,727.

### III. NEPOOL's Filing

On December 31, 1996, as supplemented February 14, April 18, May 1 and June 5, 1997, NEPOOL filed, under sections 205 and 206 of the FPA, a comprehensive restructuring proposal. 6/ This restructuring proposal is intended to: (1) comply with the requirements of Order No. 888; (2) transfer control of the NEPOOL transmission grid to an ISO; and (3) provide a more open, competitive market for wholesale sales and purchases of electric energy in the New England region through a combination of a robust bilateral market and a regional power exchange. 7/ The key elements of this restructuring proposal are: (1) a Thirty Third Amendment to the NEPOOL Agreement (33rd Amendment); (2) a restated NEPOOL Agreement (Restated Agreement); 8/ (3) a pool-wide open access transmission tariff submitted in compliance with the requirements of Order No. 888 (NEPOOL Tariff); and (4) an Interim ISO Agreement (ISO Agreement).

NEPOOL emphasizes that this restructuring proposal is the product of extensive negotiations and delicate compromises. NEPOOL emphasizes that the NEPOOL Participants which signed the 33rd Amendment did not agree on the separate components of the package in isolation, but on the package as a whole. While acknowledging the need for the Commission to review individual components of the restructuring proposal separately, NEPOOL urges

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- 6/ In MidContinent Area Power Pool, et al., 78 FERC ¶ 61,203 (1997) (MAPP), the Commission accepted for filing the NEPOOL restructuring proposal and made it effective, subject to refund, after a nominal suspension, on March 1, 1997. The Commission deferred action on the merits of the filings, and the responsive submissions of intervenors, pending further orders.
- 7/ NEPOOL represents in its December 31, 1996 filing that the proposed restructuring also qualifies NEPOOL as a Regional Transmission Group (RTG) and purports to include a section 205 filing of an RTG agreement. NEPOOL's RTG agreement consists of references to various parts of the Restated Agreement and the NEPOOL Tariff that purportedly meet the RTG requirements. Whether NEPOOL qualifies as an RTG as a result of the proposed restructuring will be addressed in a separate order.
- 8/ The Restated Agreement: (i) modifies the pool's governance and market provisions; (ii) modifies the transmission responsibilities of the NEPOOL Participants (*Participants*) so that the pool will perform the functions of an RTG and provide service to Participants and non-Participants under the NEPOOL open access tariff; and (iii) provides for activation of the ISO.

the Commission to give due consideration to the complete package when considering such individual components. NEPOOL notes that the governance provisions in the Restated Agreement were critical to achieving the consensus reflected in the instant filing. 2/

NEPOOL requests prompt action on its section 203 request to permit the transfer of responsibility for the NEPOOL Control Area to the ISO by July 1, 1997. 10/ According to NEPOOL, prompt Commission action is necessary to permit the ISO to administer the NEPOOL Tariff and to facilitate the development of an efficient and competitive market in New England.

#### A. ISO Proposal

NEPOOL maintains that its proposed ISO conforms with the principles established in Order No. 888, 11/ and that it has the support of NECPUC, and the six New England state regulatory

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2/ One Participant, Eastern Utilities Associates (EUA), while a signatory to the 33rd Amendment, has reserved its right to dispute two of the governance provisions if they cannot be resolved with the other Participants. EUA would expand the definition of the term "Related Persons" (section 1.76 of the Restated Agreement) to include affiliates that hold as little as 10 percent (rather than 50 percent) of the voting securities of other Entities. According to EUA, a change in definition is needed to reduce the potential for such affiliates to block proposed NEPOOL actions and to assure more parity in governance issues among Participants. EUA would also limit the vote that transmission owners have in the NEPOOL Management Committee such that their vote counts less when voting on rules that relate to the market and not to transmission. This modification would provide other Participants more voting weight on the NEPOOL Management Committee on issues unrelated to transmission.

10/ By joint motion filed May 8, 1997, the NEPOOL Executive Committee and the New England Conference of Public Utility Commissioners (NECPUC) seek expedited action on the section 203 application and other portions of NEPOOL's submissions relating to the formation of and transfer of responsibility to the ISO. On May 22, 1997, Massachusetts Municipal Wholesale Electric Company (MMWEC) filed a response to the motion. MMWEC opposes the joint request for expedition as being too narrow, and instead requests the Commission to expedite consideration of the ISO only if it also expedites consideration of the NEPOOL Tariff. On June 9, 1997, the NEPOOL Executive Committee filed an answer to MMWEC's response.

11/ FERC Stats. & Regs. ¶ 31,036 at 31,730-32.

commissions, and the Massachusetts Division of Energy Resources. The following is an outline of NEPOOL's ISO proposal, including NEPOOL's arguments regarding compliance with the ISO principles outlined in Order No. 888.

NEPOOL proposes to transfer operational control of the New England bulk power system to the ISO which will be created (as a non-profit corporation) in 1997. 12/ The ISO's primary responsibilities, pursuant to the Interim ISO Agreement (not yet executed), will be to ensure system reliability, administer the NEPOOL Tariff, and oversee the NEPOOL Power Exchange. 13/ NEPOOL maintains that combining the ISO and the power exchange maximizes the potential for reliable, fully competitive bulk power operations in New England.

According to NEPOOL, the ISO will have a Board of Directors (Board) selected by the NEPOOL Executive Committee from a list of candidates submitted to it by a ten-member nominating committee, 14/ which was established by the NEPOOL Executive Committee and reflected the diversity of the NEPOOL Participants, with input from state regulators. 15/ The ISO Board will not be controlled by or affiliated with NEPOOL Participants. After it is initially established, the ISO Board will thereafter be self-perpetuating, with vacancies filled by action of the remaining ISO Board members with no further input from NEPOOL. 16/

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12/ The facilities, control of which are to be transferred to the ISO, are known as Pool Transmission Facilities (PTF). They include transmission facilities rated 69 kV or above (except for generation leads and certain radial lines) owned by certain NEPOOL Participants.

13/ Initially, the ISO's employees will be the same employees that currently operate the NEPOOL Control Center.

14/ The nominating committee comprised ten members, with two members drawn from each of the following groups of NEPOOL Participants: (i) large investor-owned utilities (IOUs); (ii) smaller IOUs; (iii) municipally-owned and cooperatively-owned utilities; (iv) non-utility generators; and (v) power marketers, brokers and load aggregators.

15/ The candidates reviewed by the nominating committee were furnished to it by Heidrick & Struggles, described as an independent professional search organization specializing in the identification and selection of *candidates for* executive, managerial and board positions.

16/ Interim ISO Agreement, § 5.1(d). On May 8, 1997, NEPOOL  
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### B. Interim ISO Agreement

Under the Interim ISO Agreement (which is a contract between the ISO and NEPOOL), the ISO will have extensive authority to act independently. Section 1.2 of the Interim ISO Agreement provides that the ISO Board will have the opportunity to negotiate changes to the Agreement as it may deem appropriate; any such changes the ISO and NEPOOL agree to will be incorporated in a final ISO agreement. Section 1.4 of the Interim ISO Agreement acknowledges that, for the ISO to achieve sufficient independence to operate effectively, the ISO must have authority (1) over its budget, 17/ and (2) to plan for and operate the NEPOOL system in accordance with the System Rules and Procedures provided in the Agreement. 18/

The Interim ISO Agreement also provides that the ISO will appoint an advisory committee (Advisory Committee) composed of representatives of special interest groups that will provide the ISO Board with input from a broad range of interests. These interests include New England state regulatory authorities, residential consumer interests, commercial and industrial

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16/ (...continued)  
filed a Joint Motion indicating, among other things, that nine of the initial ISO directors have been elected by the NEPOOL Executive Committee. See also Transmittal Letter at 25-26.

17/ Pursuant to section 8.10 of the Interim ISO Agreement, NEPOOL and the ISO will, to the extent practicable, develop transaction-based or fee-based funding for the ISO subject to Commission approval. The application provides for an initial budget for the ISO, and NEPOOL commits to fund the ISO until an alternate funding method is in place.

18/ Section 2.33 of the Interim ISO Agreement defines System Rules and Procedures as follows:

The criteria, rules, standards and procedures to be developed pursuant to this Agreement for operation of the [NEPOOL] System and administration of the transmission and market arrangements under the [NEPOOL] Tariff and the [Restated] Agreement. Upon the Effective Date of this Agreement, the [Criteria, Rules and Standards for administration of the NEPOOL Agreement and operation of the NEPOOL System] and Operating Procedures then in effect shall constitute the System Rules and Procedures until modified, replaced or supplemented pursuant to the procedures set forth in Section 6.17 [of the ISO Agreement].

Docket No. EC97-35-000

- 7 -

customer interests, environmental interests, public interest groups, and economic, engineering and academic interests.

### C. ISO Authority

Under the Interim ISO Agreement the ISO will assume responsibility for direction and control of the operation of the NEPOOL system consistent with proper standards of reliability including those established by the North American Electric Reliability Council (NERC) and Northeast Power Coordinating Council (NPCC). The ISO's administration of the NEPOOL Tariff and Power Exchange must be consistent with the requirements of the Commission.

The Interim ISO Agreement provides that the ISO has: (1) authority to independently conduct system assessment and planning as it may deem necessary or as requested by NEPOOL, and (2) propose or adopt new System Rules and Procedures as it may deem necessary or desirable to implement its recommendations. 19/ In addition, the ISO has: (1) primary responsibility for ensuring short-term reliability of the NEPOOL System consistent with NERC and NPCC standards; 20/ (2) authority to direct any Participant to take any action necessary to preserve the reliable operation of the NEPOOL Control Area; 21/ (3) authority to procure emergency power on behalf of NEPOOL; 22/ and (4) responsibility for overseeing the scheduling of maintenance of NEPOOL transmission and generation facilities. 23/

Section 6.17 of the Interim ISO Agreement provides that the ISO shall initially operate the NEPOOL control center in accordance with procedures currently in effect. It further provides that NEPOOL and the ISO shall have joint responsibility to develop new or changed rules as needed for the ISO to carry out its obligations. It contemplates that new or changed rules will, in the ordinary course, be developed through the appropriate NEPOOL committees with ISO participation through representation on these committees, with the ISO having the right

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19/ Interim ISO Agreement, § 6.3. For example, the ISO must engage in transmission planning in accordance with its responsibility to administer the NEPOOL Tariff. Under section 6.4, the ISO would also have similar authority with respect to NEPOOL market operations.

20/ Interim ISO Agreement, § 6.6.

21/ Id.

22/ Id., § 6.7.

23/ Id., § 6.8.

to initiate the development of new rules at any time on any matter through its committee representative. Section 6.17 provides further that if the applicable NEPOOL committee fails to adopt a new or changed rule proposed by the ISO, the ISO can appeal to the NEPOOL Management Committee. If the NEPOOL Management Committee denies the ISO's appeal, the ISO may then submit the matter to the ISO Board for determination. If the ISO Board determines (within sixty days of submission by the ISO) that the rule or change should be adopted, then the rule or change may be implemented by the ISO sixty days from delivery to the Management Committee of notice of the ISO Board determination (subject to Commission approval where necessary). If the ISO implements the new rule or change, then the Management Committee may request that the matter be submitted to the Alternative Dispute Resolution (ADR) process or directly to the Commission. Section 6.17 provides that the rule or change shall continue in effect during the appeal process. If the ISO is dissatisfied with the result of the ADR process, the ISO may promptly notify NEPOOL of its disagreement and in such event the rule or change shall continue to remain in effect. Upon such notification, NEPOOL may submit the matter to the Commission for final resolution.

Additionally, the ISO has the right to appeal any other actions of any NEPOOL committee in the process of developing rules to the NEPOOL Management Committee. If such appeal is denied by the Management Committee, the ISO may submit the matter to the ISO Board for determination. The proposed NEPOOL committee action is suspended indefinitely pending resolution of the matter. If the ISO Board decides against NEPOOL, the Management Committee can pursue the courses described above. 24/

Finally, if the ISO determines in good faith that: (1) failure to immediately implement a new rule or a modification would substantially and adversely affect system reliability or security or the competitiveness or efficiency of the NEPOOL Market; and (2) invoking the procedures of the relevant NEPOOL committee would not allow for timely redress of the ISO's concerns, the ISO may promulgate and implement the new rule or modification unilaterally upon written notice to the NEPOOL Executive Committee, subject to Commission approval if required. 25/

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24/ Id., § 6.17(d).

25/ Id., § 6.17(e).



Docket No. EC97-35-000 - 9 -

D. The Restated Agreement

1. NEPOOL Membership

Section 3 of the Restated Agreement addresses membership in the restructured NEPOOL. Current NEPOOL Participants will continue to be Participants, and any other entity engaged in or proposing to engage in the wholesale or retail electric business in New England may become a Participant in the restructured NEPOOL upon compliance with "such reasonable conditions as the Management Committee may prescribe," deposit of an executed counterpart of the Restated Agreement and a certified copy of the vote of that entity's board of directors authorizing its execution with the secretary of the NEPOOL Management Committee, and payment of a \$500 application fee (or other amount prescribed by the Management Committee). 26/

2. NEPOOL Management Committee

Structure and Duties. The Management Committee is the highest NEPOOL committee. Each NEPOOL Participant is entitled to appoint a member to the Management Committee. Section 6.12 of the Restated Agreement provides that the Management Committee, after review of reports or actions of the ISO and other planning committees, may establish or approve proper standards of reliability for the bulk power supply of NEPOOL, consistent with NERC and NPCC directives. This section also provides for periodic review of such standards by the Management Committee and revisions where appropriate.

Section 6.14 of the Restated Agreement outlines other duties of the Management Committee. These include the duty to:

- (1) administer, enforce, and interpret the provisions of the Restated Agreement to accomplish the objectives of NEPOOL;
- (2) provide for facilities, materials and supplies needed by the Management Committee to carry out the provisions of the Restated Agreement;
- (3) establish or approve, after consultation with other NEPOOL committees and the ISO, consistent standards with respect to any aspect of arrangements between Participants and Non-Participants which it determines may adversely affect the reliability of NEPOOL and to review such arrangements to determine compliance with such standards;

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26/ Restated Agreement, § 3.1.

- (4) act on behalf of all Participants in carrying out any action properly taken pursuant to the Restated Agreement, including executing any agreements with the ISO and representing NEPOOL in proceedings before the Commission;
- (5) set monthly, after consultation with other NEPOOL committees and the ISO, the NEPOOL Objective Capability; review at least annually the anticipated NEPOOL Participants' load and NEPOOL installed capability; and make adjustments in the NEPOOL Objective Capability as necessary;
- (6) establish or approve schedules fixing payments by Participants and Non-Participants for expenses incurred in furnishing some or all of the services furnished by NEPOOL either directly or through the ISO;
- (7) provide for sharing by Participants of payments and costs not otherwise reimbursed under the Restated Agreement to meet or avoid short-term deficiencies in the amount of resources available to meet the pool's reliability; and
- (8) act on appeals from the actions of other NEPOOL committees and appoint a special committee to administer NEPOOL's ADR procedures.

Voting Procedures. Section 6 of the Restated Agreement outlines voting by members of the NEPOOL Management Committee. Under sections 6.1 and 6.3 of the Restated Agreement, each member has one vote. The value of each member's vote (*i.e.*, its Voting Share) is determined by a six-factor formula that allocates voting shares on the basis of peak and energy load responsibilities, generation ownership, transactions and transmission ownership. <sup>27/</sup> Additionally, the formula allocates 5 percent of the total Voting Shares (on a per capita basis) to entities that do business as power brokers or who are too new to the market to have established a market share. Based on the formula, a Participant with relatively high peak load and energy and owning a significant amount of transmission facilities will have more Voting Shares than a Participant with relatively lower peak load and energy and a lesser amount of transmission facilities.

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<sup>27/</sup> In the pre-existing NEPOOL Agreement, only those entities that served wholesale and retail load had a vote. By adding generation ownership and transactions to the formula, NEPOOL has granted voting rights to independent power producers and power marketers, whether or not they have firm load responsibilities.

NEPOOL indicates that the mechanics of the voting formula were designed to strike a balance in the voting strength of the larger and smaller Participants. 28/ This balance is accomplished in the Restated Agreement by reducing the number of votes required to adopt an action of the Management Committee from 75 percent to 66 percent of the aggregate voting shares. In addition, the number of votes that may be cast by any Participant and its "Related Persons" 29/ may not exceed 25 percent of the aggregate voting shares of all Participants. 30/

Similarly, the number of negative votes required to block an action has been increased from 15 percent cast by two or more members to 20 percent cast by three or more members (which are not Related Persons) in the Restated Agreement. Finally, the maximum number of negative votes that may be cast by a Participant and its Related Persons is limited to 18 percent. 31/ The intended effect of these limitations is to prevent any single Participant and its Related Persons from blocking an action of the Management Committee. 32/

### 3. NEPOOL Executive Committee

The NEPOOL Executive Committee continues to have all of the powers and duties of the Management Committee except for the

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28/ The voting formula is important because the allocation of Voting Shares it produces determines, among other things, whether the various NEPOOL Participants, as members of other NEPOOL committees, have full voting rights on those other committees, or are relegated to so-called sector voting discussed below.

29/ A Related Person refers to an affiliate of the Participant that is either directly or indirectly owned by, or owns, or otherwise controls, or is controlled by the Participant. An entity is considered a Related Person if the ownership threshold under either of the above scenarios is 50 percent or more. Restated Agreement, § 1.76.

30/ Even if the voting formula would allocate 30 percent of the total voting shares to one Participant, that Participant's vote will only count as 25 percent.

31/ Even if the voting formula allocates a Voting Share in excess of 18 percent to one Participant, its Voting Shares are capped at 18 percent of the total voting shares if that Participant votes against a proposed action.

32/ See Transmittal Letter at 15; Restated Agreement, § 6.4.

power to establish the NEPOOL budget. 33/ Membership on the Executive Committee is determined as follows: each Participant whose Voting Shares exceed 3 percent of the aggregate (determined by the six-factor formula discussed above) can appoint a member to the Executive Committee. Participants whose Voting Shares are less than 3 percent of the aggregate will become a member of one of five groups of Participants, and each of the five groups can appoint one voting member to the Executive Committee (sector voting). 34/ Finally, the ISO can also appoint a non-voting member to the Executive Committee and have an active role in the consideration of any actions originating in this committee. Any action taken by the Executive Committee will only take effect if it receives at least 60 percent of the votes of those voting members present.

#### 4. Other NEPOOL Committees

The Restated Agreement replaces the current NEPOOL Operations and Policy Planning Committees with: (a) a Regional Market Operations Committee; (b) a Regional Transmission Operations Committee; (c) a Market Reliability Planning Committee; and (d) a Regional Transmission Planning Committee. These committees, like the Executive Committee, provide for representation by power marketers, independent power producers and transmission-only companies. Members are designated in the same manner as member designation for the Executive Committee, i.e., each Participant whose Voting Shares exceed 3 percent of the aggregate can appoint a member to these committees. Participants with less than 3 percent are relegated to sector voting as described above. 35/ The ISO can appoint a non-voting

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33/ See Restated Agreement, § 7. The Executive Committee exercises the powers and duties of the Management Committee when the Management Committee is not in session. Id.

34/ These five groups are: (1) municipals and cooperatively-owned utilities; (2) "unregulated" owners/operators selling generator output within the NEPOOL control area; (3) "unregulated" entities engaged in the NEPOOL control area in a business other than owning or operating generation or PTF facilities; (4) PTF owners not engaged in electric generation or distribution and that do not participate in the wholesale bulk power market and are not a Related Person of any other Participant; and (5) IOUs and other entities not qualified to be included in any other group.

35/ The one exception is the Regional Market Operations Committee. The appointment of members to this committee, including the appointment of the ISO's non-voting member, and voting within this committee are the same as the other

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member to each of these committees so that the ISO will have an active role in the consideration of any actions which originate there. Any action taken by these committees will only take effect if it receives at least 60 percent of the votes of those voting members present.

The Restated Agreement provides for split voting in these committees in recognition that a member may be representing both a transmission interest and a market interest or may be representing a group. The reconfigured committee structure, coupled with the provision for split voting rights, is intended to recognize the Commission's policy on separation of marketing and transmission functions.

Responsibilities of the New Committees. The Market Reliability Planning Committee is responsible for generation reliability planning, including directing and coordinating generation studies. 36/ The Regional Transmission Planning Committee is responsible for NEPOOL transmission planning, including providing overall direction, coordination, and planning of transmission facilities and the tasks necessary to achieve that goal. 37/ The Regional Market Operations Committee is responsible for developing market operation rules, monitoring the operation of NEPOOL generation, and administering the NEPOOL settlement system. 38/ Finally, the Regional Transmission Operations Committee is responsible for developing transmission rules, monitoring the operation of NEPOOL transmission, and administering the NEPOOL Tariff prior to activation of the ISO. The ISO, once activated, will assume principal responsibility for many of these activities. 39/

According to NEPOOL, the most significant change in the structure and membership of these committees is the substantial reduction of the authority of the NEPOOL committees by the transfer of such authority to the ISO upon its activation.

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35/ (...continued)  
committees except that each Participant having a Voting Share exceeding 15 percent of the aggregate may appoint an additional voting member.

36/ Restated Agreement, § 8.

37/ Id., § 9.

38/ Id., § 10.

39/ Id., § 11.

### E. Amendments

The Restated Agreement modifies the voting requirements for amendments to the NEPOOL Agreement. Previously, an amendment had to be approved by Participants having 85 percent of the aggregate Management Committee voting power. The Restated Agreement reduces this to 70 percent. The 25 percent limit on voting power of any one Participant and its Related Persons with respect to Management Committee voting also applies to amendments. Also, under the Restated Agreement, an amendment cannot be effective if it is opposed in writing by two or more Participants having at least 20 percent of the aggregate voting power. The 18 percent limit on the negative vote of any one Participant and its Related Persons with respect to Management Committee voting is also made applicable to amendments.

NEPOOL states that these changes eliminate the power of the two largest Participants (the NU system companies and the NEES system companies) to individually block amendments. 40/ Under the new rules, with only 70 percent support required to make an amendment effective, and with the Voting Share percentage of each Participant and its Related Person capped at 25 percent, no individual Participant can block an amendment.

### IV. Interventions

Notices of the NEPOOL filings were published in the Federal Register, 62 Fed. Reg. 4,039 and 24,906 (1997), with comments, protests or interventions due on or before May 13, 1997. The parties listed in the Appendix to this order filed notices of intervention and timely motions to intervene, protests, comments and other responsive pleadings.

Several intervenors seek changes to the ISO proposal for governance and staffing, arguing that the proposal will not produce an ISO with sufficient independence. 41/ Intervenors argue that the budget provisions of the Interim ISO Agreement will result in an ISO that is dominated by, and subservient to,

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40/ The prior 85 percent requirement for passage of an amendment had the practical effect of requiring that both of the two largest NEPOOL Participants support the amendment, since each had a voting share of over 15 percent.

41/ NICC Motion at 14-22; Connecticut Office Motion at 11-13; Braintree Motion at 47-48; IECG Motion at 3; Maine Advocate Motion at 3; MASSPOWER Motion at 34-37; ECI Motion at 5; Montaup Motion at 7-8; EPSA Motion at 6-7.

NEPOOL. 42/ Intervenors also contend that the influence of the NEPOOL committees in the ISO process of developing rules is excessive and will impede the independence of the ISO. 43/ They claim that the four largest investor-owned utilities will control all decision-making and usurp the functions of the ISO. 44/ Specifically, intervenors object to the provisions in section 6.4 of the Restated Agreement that provide for Management Committee action on a 66 percent vote rather than the previous 75 percent requirement, and to the provision in section 21.11 of the Restated Agreement that provides for approval of an amendment on a 70 percent vote rather than the previous 85 percent requirement.

They further contend that the proposed NEPOOL committee structure is unnecessary, and that the allocation of voting shares to transmission providers is excessive. 45/ Intervenors suggest that NEPOOL adopt "sector voting" in order to prevent NEPOOL transmission owners from dominating NEPOOL voting. 46/ They claim that these provisions facilitate domination of NEPOOL by the largest investor-owned utilities. In addition, Intervenors claim that the ISO does not have independence in the areas of performing system assessment and planning, constructing new facilities or owning assets, controlling existing facilities, and filing its own tariff for the purpose of recovering its own costs. 47/

Intervenors: (i) express concern that the Interim ISO Agreement does not contain specific provisions for an ADR process

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42/ NICC Motion at 20-21; Competitive Coalition Motion at 14-16; New Hampshire Office Motion at 2.

43/ Competitive Coalition Motion at 10-13; Stakeholder Coalition Motion at 21-22; Maine Advocate Motion at 3; Conservation Foundation Motion at 3.

44/ MMWEC Motion at 68; Braintree Motion at 52-53. The four largest NEPOOL participants are the NU system companies, the NEES system companies, Boston Edison and Central Maine.

45/ Competitive Coalition Motion at 4, 7-8; IECG Motion at 3; MMWEC Motion at 66-69; Braintree Motion at 4, 51-53; MASSPOWER Motion at 32; Montaup Motion at 8-9.

46/ EPSA Motion at 6; Conservation Foundation Motion at 2.

47/ MASSPOWER Motion at 34,37; Braintree Motion at 49-51; Connecticut Office Motion at 14-15; NICC Motion at 21.

open to non-participants aggrieved by actions of the ISO; 48/ (ii) object to the Interim ISO Agreement's provision for termination of the ISO by NEPOOL in the event the ISO fails to perform, as impinging upon the ISO's independence; and (iii) raise concerns regarding the dissemination of information by the ISO. 49/

NEPOOL filed a Consolidated Answer to the protests and requests for other relief. NECPUC also filed an Answer to requests by intervenors to revise the Interim ISO Agreement. NICC filed a motion to strike NEPOOL's Consolidated Answer and NECPUC's Answer.

## V. Discussion

### A. Procedural Matters

Under Rule 214 of the Commission's Rules of Practice and Procedure, 50/ the notices of intervention and the timely, unopposed motions to intervene of the parties listed in the Appendix serve to make them parties to this proceeding.

We will deny the NICC motion to strike those portions of NEPOOL's Consolidated Answer and NECPUC's Answer. While our regulations generally prohibit answers to protests, in view of the ongoing development of issues in these proceedings, we believe that the record should be as complete as possible. Moreover, these answers have assisted us in understanding the issues raised.

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48/ Competitive Coalition Motion at 18. While arguing that its filing contains a provision that permits non-participants to access the ADR process in regard to transmission service, (Restated Agreement, § 21.1; NEPOOL Tariff § 12.1), NEPOOL agrees that in the event of a dispute between a non-participant and the ISO unrelated to transmission service (such as a dispute concerning market operations), the ADR process should be available to non-participants. NEPOOL states that it is preparing a standard service agreement setting forth the rights and obligations of the ISO and non-participants, which all non-participants and the ISO will enter into before non-participants participate in the market in the NEPOOL control area. NEPOOL states that this service agreement will be filed with the Commission and will include appropriate ADR provisions. NEPOOL Consolidated Answer at 42.

49/ NECPUC Motion at 8, 17; Massachusetts Department Notice of Intervention at 25-30.

50/ 18 C.F.R. § 385.214 (1996).



Docket No. EC97-35-000 - 17 -

### B. Standard of Review

Section 203(a) of the FPA provides, in relevant part, as follows:

No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. [16 U.S.C. § 824b(a) (1994).]

Section 203(a) also provides that the Commission will grant authorization upon a showing that a disposition of jurisdictional facilities is consistent with the public interest.

With the exceptions discussed below, we conclude that the proposed NEPOOL ISO generally comports with the Commission's ISO principles, and that the ISO should be approved conditionally. We further conclude that the proposed transfer of control to the ISO of the jurisdictional facilities of NEPOOL's public utility members is consistent with the public interest and should be approved on an interim basis, subject to future filings and certain conditions.

### C. Application to Transfer Operational Control to an ISO

The creation of the ISO at issue here requires the transfer of control of the operation of the NEPOOL transmission facilities from the transmission owners (e.g., the public utilities that together comprise NEPOOL) to the ISO, and is a disposition of jurisdictional facilities requiring prior Commission authorization under section 203 of the FPA. <sup>51/</sup> Below we discuss how the proposed ISO complies with our ISO principles.

#### ISO Principle No. 1. The ISO's governance should be structured in a fair and non-discriminatory manner.

NEPOOL states that the ISO will be governed by a Board of Directors (Board) composed of ten members that have no affiliation with NEPOOL Participants. Nine members of the Board, all of whom have now been selected, are chosen by the NEPOOL Executive Committee.

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<sup>51/</sup> See Atlantic City Electric Company, et al., 76 FERC ¶ 61,306 at 62,513, reh'g dismissed, 77 FERC ¶ 61,298 (1996).

Docket No. EC97-35-000

- 18 -

The CEO of the ISO will be selected by the nine Board members. The CEO of the ISO will serve as a member of the Board and will have full voting rights as a director. After all initial directors are chosen, the ISO Board will thereafter be self-perpetuating, with vacancies filled by action of the remaining Board members.

NEPOOL states that the ISO will play a significant role in the development of the rules and operating procedures (the System Rules and Procedures) applicable to the control and planning of the transmission system. NEPOOL states that this role has been carefully tailored, in close collaboration with NECPUC, to ensure that no class of Participants will control this process. Initially, the System Rules and Procedures will be those that are currently in place. The ISO will have the ability to propose or promulgate changes to these existing rules as it may deem necessary in performing its functions. In addition, the ISO will have sole authority to interpret and administer the System Rules and Procedures as it carries out its operating functions. However, it will not have a vote on the various NEPOOL committees where proposed rules originate, but it will have the right to appeal to the NEPOOL Management Committee any actions on proposed rules of any NEPOOL committee.

If the ISO disputes the action on proposed rules of any NEPOOL committee, the proposed rule will be suspended pending resolution of the dispute. If the NEPOOL Management Committee denies the appeal of the ISO, or takes action on any issue concerning a proposed rule sua sponte and the ISO disagrees, the matter will go to the ISO Board for determination. If the ISO Board decides against NEPOOL, then the NEPOOL Management Committee may (i) accept the decision of the ISO Board, (ii) request the submission of the matter to the dispute resolution procedures provided in the NEPOOL Agreement, or (iii) submit the decision of the ISO directly to the Commission for determination.

The Interim ISO Agreement will also allow the ISO to promulgate a rule unilaterally when there is a system emergency or other extraordinary circumstance. The ISO will be able to create a rule whenever it determines in good faith that: (i) the failure to immediately implement a new rule or rule change would substantially and adversely affect (a) system reliability or security, or (b) the competitiveness or efficiency of the NEPOOL market; and (ii) invoking the procedures of the relevant NEPOOL committee would not allow for timely redress of the ISO's concerns. When the ISO invokes this authority, the rule will become effective immediately (subject to Commission approval where appropriate), even if challenged by NEPOOL, and will remain effective until final resolution of the dispute. With respect to any dispute between NEPOOL and the ISO over proposed rules, the

Docket No. EC97-35-000

- 19 -

Commission will have final authority to determine the appropriate resolution. 52/

As noted above, some intervenors maintain that the governance structure of the ISO violates ISO Principle No. 1. These intervenors state that the voting structure on the various committees is skewed in favor of the large IOUs in NEPOOL. They argue that these utilities can use the functions of these committees to impede the independence of the ISO.

We disagree. The Interim ISO Agreement contains safeguards to prevent such control. First, the ISO representative will participate, albeit as a non-voting member, in the development of rules that originate in the various NEPOOL committees. It is also able to propose rules. However, if a NEPOOL committee fails to adopt a rule proposed by the ISO representative, or if the ISO representative is opposed to a rule change or proposal by one of the NEPOOL committees, the ISO representative can appeal the rule to the NEPOOL Management Committee. If the NEPOOL Management Committee denies the appeal of the ISO representative or takes any action with which the ISO representative disagrees, the matter goes to the ISO Board for determination. At this point, the balance of authority shifts to the ISO Board because its decision will stand unless the NEPOOL Management Committee decides to (i) submit the matter to ADR (with ISO Board approval), or (ii) submit the decision of the ISO Board to the Commission for resolution. If the NEPOOL Management Committee challenges the decision of the ISO Board, the Board's decision remains effective pending resolution of the dispute. 53/ Accordingly, the ISO representative has the ability to prevent any inappropriate rule from being implemented. These procedures satisfy the Commission's ISO Principle No. 1.

Moreover, section 6.17(e) of the Interim ISO Agreement gives the ISO broad power to implement a rule or rule change unilaterally (subject to Commission approval, if necessary) if it determines in good faith that failure to immediately implement such a rule or rule change would substantially and adversely affect system reliability or security, or the competitiveness or efficiency of the NEPOOL Market; and invoking the procedures of the relevant NEPOOL committee would not allow for timely redress of its concerns. Authority to act unilaterally, we believe, is a crucial element of a truly independent ISO.

While we are satisfied that the governance structure (as it relates to proposed rules) provides adequate independence to the

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52/ Transmittal Letter at 25-28, citing Interim ISO Agreement, §§ 5.1, 5.2, 5.6, and 6.17.

53/ Interim ISO Agreement §§ 6.17 (b), (c), (d).

ISO, we have some concerns. We note intervenors' contention that instead of the ISO having a representative on NEPOOL Committees, NEPOOL should have a representative on committees directed by the ISO. 54/ Similarly, Intervenor state that the proposed governance structure will lead to disputes between NEPOOL and the ISO, and they maintain that the Commission's ISO principles did not contemplate putting the Commission in the position of having to arbitrate between NEPOOL and the ISO. Intervenor also have concerns that the ISO should have more authority to implement system rules and procedures, rather than have the ISO participate in an advisory role in the NEPOOL Committees, and that a further step to be taken at an appropriate time should occur to effect this. 55/ While we generally share Intervenor's concerns, the proposal before us is a negotiated arrangement that satisfies diverse interests of various NEPOOL Participants, and, as indicated above, we believe that the governance provisions, as they relate to the voting structure within the NEPOOL committees, are generally acceptable. We do, however, foresee this negotiated arrangement evolving over time. The ISO Board, which now implements system rules and procedures devised by the NEPOOL Committees, may ultimately exert greater authority. In circumstances where there is no existing pooling arrangement, an ISO with complete authority over the transmission system will tend to be the norm. Ultimately, the NEPOOL membership may also find that arrangement to be more advantageous.

We do, however, find that one adjustment is necessary. We will require that NEPOOL amend the definition of "Related Person" in section 1.76 of the Restated Agreement to lower the ownership percentage from 50 percent to 10 percent. The Commission generally uses 10 percent as an indicator of an affiliate relationship, 56/ and we will require its use here as well. This adjustment is necessary to reduce the potential for affiliates of large IOUs to block NEPOOL action and to assure more parity in governance issues among Participants.

The second governance issue involves the ISO Board selection process. In Atlantic City Electric Company, et al., 77 FERC ¶ 61,148 at 61,584 (1996) (PJM), the Commission, in providing guidance to the PJM Companies regarding the structure of an ISO, stated that a board of directors with no affiliation with any

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54/ See Conservation Foundation Motion at 2-3; Stakeholder Coalition Motion at 20-22; Competitive Coalition Motion at 4-13.

55/ MASSPOWER Motion at 34-37.

56/ See Morgan Stanley Capital Group, Inc., et al., 72 FERC ¶ 61,082 at 61,436 (1995); The Power Company of America, L.P., 79 FERC ¶ 61,067 at 61,325-12 & n.4 (1997).

entity dealing with the ISO would assure fair and non-discriminatory governance. (However, if an applicant proposes to establish a board with no stakeholders (i.e., a "disinterested" board), we have indicated that the applicant should address the Commission's concern that there be knowledgeable and effective administration of the ISO.) NEPOOL has chosen a disinterested board structure in which no seats are reserved for stakeholders. This approach is consistent with PJM.

However, Intervenors maintain that NEPOOL will control the ISO Board selection process. They contend that the large IOU NEPOOL members will select a Board that is sympathetic to their concerns. We disagree. An independent professional search organization, see infra note 15, identified over 300 candidates for the initial ISO Board. The individuals chosen as initial directors were selected from the nominating committee's slate of no fewer than 15 candidates. We believe that this process, given the diversity of the market participants on the nominating committee, is sufficient to ensure that the ISO Board is comprised of qualified, non-partial members, i.e., a "disinterested" Board.

We also conclude that the ISO Board, in conjunction with the transfer of NEPOOL staff who have considerable experience in NEPOOL operations, and the ISO Advisory Committee representing the concerns of special interests, meets our concern that there be knowledgeable and effective administration of the ISO.

ISO Principle No. 2. An ISO and its employees should have no financial interest in the economic performance of any power market participant. An ISO should adopt and enforce strict conflict of interest standards.

NEPOOL proposes a code of conduct for the ISO that is intended to comply with the requirements of Order No. 888. The ISO's conflict of interest policy prohibits any member of the ISO Board or any officer or employee of the ISO from being an officer, director, partner or employee of any NEPOOL Participant. In addition, the policy provides that, subject to a short transition period not to exceed six months, no director or officer or employee of the ISO will have a material financial interest in the economic performance of any NEPOOL Participant or other market participant in the NEPOOL Control Area, or any affiliate of either.

NEPOOL emphasizes that the parties negotiating the ISO arrangements expressed concern regarding the absolute prohibition against the employees, directors, ISO officers, and key consultants of the ISO owning any securities of a Participant. Specifically, NEPOOL argues, such stock ownership restrictions place an undue burden on the ISO Board selection process. In addition, NEPOOL argues, unduly restrictive security ownership

requirements would impose substantial hardship on the NEPOOL employees who will be initially employed by the ISO. Those employees are technically employees of NU, and have acquired NU stock under employee stock plans as part of their compensation. NEPOOL is concerned that, because NU's stock has experienced a material decrease in its value over the last year, requiring NEPOOL employees to immediately divest their stock interest could adversely impact such employees. 57/

To address such concerns, the proposed ISO code of conduct and ethics policy imposes limitations on permissible ownership of market participant securities which are intended to address the needs and concerns of the ISO without jeopardizing the independence of the ISO. Specifically, market participant securities ownership limitations are imposed on ISO directors of the lesser of (a) the market value of one-half of one percent of the outstanding stock of any market participant, or (b) \$50,000. A securities ownership limitation of \$50,000 is imposed on officers, employees and key consultants of the ISO. Initial ISO officers and employees, as well as new employees at any point in time, are required to divest themselves of securities of market participants within six months of their employment by the ISO if the \$50,000 threshold is exceeded. Furthermore, such persons are prohibited from making voluntary purchases of the stock of a market participant after beginning their employment with the ISO. Any other acquisition of the stock of a market participant (e.g., by gift or inheritance) is subject, on an ongoing basis, to divestiture within three months of a threshold being exceeded. With respect to the ISO staff that currently have interests in NU's stock, pension and health plans, the ISO commits to restructure those plans within six months after the ISO is activated so that the employee benefit plans for the ISO will be independent (except as described above) of any market participant.

To assure that NEPOOL funding of the ISO does not influence the independence of the ISO, the code of conduct provides that NEPOOL Participants will not make payments to employees of the ISO, and ISO employees will not benefit under the incentive compensation plan of any Participant.

To assure the financial ability of the ISO to operate, NEPOOL commits that the funds available to the ISO in its first year of operation will be sufficient for the ISO to carry out its duties. Prior to the conclusion of the first operating year, the ISO will prepare and submit to NEPOOL a budget approved by the ISO Board for the upcoming year. NEPOOL will review and comment on the proposed budget. If disputes over the budget arise, the

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57/ NEPOOL Consolidated Answer at 27-28; NEPOOL Transmittal Letter of February 13, 1997 at 3-4.

budget for the ISO's operating expenses and pre-approved capital expenditures and carrying charges will automatically roll over for the next year (with an inflationary increase for the operating expenses) until the dispute has been resolved. Budgetary disputes which cannot be resolved will be subject to the dispute resolution procedures provided in the Interim ISO Agreement and the Restated Agreement.

NEPOOL contemplates that the ISO may propose new initiatives requiring the expenditure of funds not previously agreed to by the ISO and NEPOOL. Under the Interim ISO Agreement, these new spending initiatives will require NEPOOL approval. NEPOOL requests guidance as to whether this approval right should be continued in a final ISO agreement, or whether an alternative mechanism, such as bypassing NEPOOL and seeking approval directly from the Commission, should be incorporated into a final ISO agreement.

Finally, NEPOOL and the ISO indicate a commitment to funding the maximum practicable level of ISO costs through the imposition of user fees. This commitment is codified in the Interim ISO Agreement which requires the parties to conclude their plan for such fees on or before the first anniversary of the effective date of the Commission's section 203 approval. NEPOOL states that this commitment was particularly important to NECPUC, to satisfy the New England state regulatory commissions' concerns that the ISO would be, and would remain, independent. 58/

We reject NEPOOL's proposal to allow employees to possess securities of market participants as long as the value does not exceed \$50,000. We note that, in Order No. 888, the Commission emphasized that ISO employees should be financially independent of market participants. The Commission recognized, however, that a short transition period (approximately six months) would be needed for employees of a newly formed ISO to sever all ties with former transmission owners and to make appropriate arrangements. 59/ In Order No. 888-A, the Commission reaffirmed its strong commitment to the ISO principles described in Order No. 888. While not intending to prescribe a "cookie cutter" approach to ISOs, the Commission affirmed its view that ISO Principles No. 1 and 2 are fundamental to ensuring that an ISO is truly independent and would not favor any class of transmission users. In response to arguments that the Commission should take a more flexible approach to employee issues, the Commission affirmed the necessity of requiring employees of an ISO to be financially independent of market participants. Regarding the transition

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58/ NEPOOL Consolidated Answer at 29-31, citing Interim ISO Agreement, § 8.

59/ FERC Stats. & Regs. ¶ 31,036 at 31,731.

period for divestiture, the Commission recognized that some flexibility may be necessary regarding the length of a transition period, but it believed that ISO employees must "in fairly short order" be independent of all financial ties to any market participants. 60/

NEPOOL states that if the Commission rejects its proposal, it should permit those members of the NEPOOL staff who become employees of the ISO upon its activation a period of at least three years to divest any stock interests in market participants which are held by employees on the date of their employment by the ISO. 61/ Although the Commission in Order No. 888-A reaffirmed the necessity of requiring employees to be financially independent and stated that a short transition period should be adequate for employees to sever financial ties, we nevertheless recognized the need for appropriate flexibility. Accordingly, we will permit current NEPOOL officers and employees that become ISO officers and employees up to three years from the date of transfer of employment to the ISO to divest any financial interests in any Participant. We will permit existing ISO Board members a period of one year from the date of issuance of this order to divest their interests in any Participant. Finally, we will require ISO officers and employees hired after the date of this order (that are not current officers and employees of NEPOOL), as well as Board members elected after the date of this order, to divest their interests in any Participant within one year of their hire or election. We direct NEPOOL to reflect this requirement in its final ISO agreement to be filed at a later date.

We also have concerns regarding ISO funding. NEPOOL is confident that the \$26.5 million initially budgeted for the ISO is adequate to fund the ISO during its first operating year. We have no reason to doubt this statement. However, section 8.10 of the Interim ISO Agreement states that NEPOOL and the ISO are committed to funding the maximum practicable level of ISO costs through the imposition of fees on the services provided by the ISO. NEPOOL and the ISO state that they will conclude their plan for such transaction-based fees on or before the first anniversary of the effective date of the Interim ISO Agreement, and further commit to take all necessary steps to obtain Commission authorization to implement those fees. 62/ We believe that it is critical that the ISO be self-funding in order to ensure its independence. Therefore, we will condition our

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60/ FERC Stats. & Regs. ¶ 31,048 at 31,249-50.

61/ NEPOOL Consolidated Answer at 28, n.17.

62/ Interim ISO Agreement, § 8.1; Transmittal Letter at 30; NEPOOL Consolidated Answer at 29.



section 203 approval on the adoption of a self-funding structure for the ISO. We add that upon transfer of control of the NEPOOL facilities to the ISO, the ISO becomes a public utility, and, as a public utility, it may file for recovery of its costs of providing jurisdictional service.

ISO Principle No. 3. An ISO should provide open access to the transmission system and all services under its control at non-pancaked rates pursuant to a single, unbundled, grid-wide tariff that applies to all eligible users in a non-discriminatory manner.

NEPOOL maintains that its Tariff provides open access to the NEPOOL transmission system, and all services will be provided at non-pancaked rates which are applicable to all eligible users in a non-discriminatory manner. The ISO will control and schedule all transactions over the NEPOOL transmission system. 63/

There are a number of issues regarding the terms and conditions of service offered under the NEPOOL Tariff. These issues will be addressed in a separate order in Docket Nos. OA97-237-000 and ER97-1079-000.

ISO Principle No. 4. An ISO should have the primary responsibility in ensuring short-term reliability of grid operations. Its role in this responsibility should be well-defined and comply with applicable standards set by NERC and the regional reliability council.

The present NEPOOL staff is responsible for the short-term reliability of the NEPOOL Control Area, and previously has had the responsibility to operate the NEPOOL transmission system in accordance with applicable NERC and NPCC standards. Upon activation of the ISO, the same staff, using the existing NEPOOL rules and procedures, will assume primary responsibility to ensure short-term reliability of the NEPOOL Control Area. The ISO's responsibilities also will include overseeing the scheduling and maintenance of the facilities that comprise the NEPOOL transmission system. 64/ We find that these procedures satisfy ISO Principle No. 4.

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63/ Transmittal Letter at 32.

64/ Id. at 32-33, citing Interim ISO Agreement §§ 6.6, 6.8.

ISO Principle No. 5. An ISO should have control over the operation of interconnected transmission facilities within its region.

The ISO will serve as the operator of the NEPOOL Control Area and will assume responsibility for the continued operation of the NEPOOL Control Center and the administration of the NEPOOL Tariff. The ISO will also have authority to direct the operation of any other transmission facilities deemed necessary by the ISO, following consultation with NEPOOL, to carry out its responsibilities under the Interim ISO Agreement.

NEPOOL contemplates that the ISO will assume responsibility for operation of the NEPOOL Control Center on or about July 1, 1997. NEPOOL further contemplates that the ISO will (in the future) perform many of the functions of the various satellite control centers currently operated by NEPOOL Participants. These satellite control centers, under the direction of the system operator, perform dispatching and other functions essential to the reliable operation of the system, including, but not limited to, regional transmission security analysis, switching and tagging. However, due to the complexity and cost involved in transferring these functions to the ISO, NEPOOL contemplates that the satellites will remain in existence for at least the next few years, with the transfer date to be determined by the ISO. In the interim, the ISO will have the authority and responsibility to monitor the operation of the satellites. <sup>65/</sup> These procedures would permit a reasonable and orderly transition of control to the ISO that will allow the ISO to independently operate the PTF in NEPOOL. Accordingly, we find that these procedures satisfy ISO Principle No. 5.

ISO Principle No. 6. An ISO should identify constraints on the system and be able to take operational actions to relieve those constraints within the trading rules established by the governing body. These rules should promote efficient trading.

The ISO will be responsible for identifying constraints on the system and taking operational actions to relieve those constraints. With respect to constraints that require system expansion, the ISO will have input into that process through the NEPOOL committee structure. In addition, the ISO will have authority to independently assess the competitiveness and efficiency of the NEPOOL Market and to convey its findings and recommendations to NEPOOL. The ISO also is authorized to independently promulgate changes in System Rules and Procedures

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<sup>65/</sup> Id. at 33, citing Interim ISO Agreement, §§ 1.16, 6.1, 6.2 and 6.11.

when necessary to prevent adverse effects on market competitiveness or efficiency. 66/

NEPOOL states that the ISO will administer the bid-based Power Exchange, and will modify its operations to accommodate the Exchange. 67/ However, because NEPOOL has not yet filed bid-based rules, we will defer action on this aspect of NEPOOL's proposal until after we have reviewed the filing.

ISO Principle No. 7. The ISO should have appropriate incentives for efficient management and administration and should procure the services needed for such management and administration in an open competitive market.

The ISO will be managed under the supervision of its Board and it will be the Board's responsibility to ensure efficient operation. The ISO will be free to develop and implement, within its budget, any economic incentives that the ISO Board may deem desirable. The ISO Board will also have complete authority over the hiring, firing, promotion and demotion of ISO employees. In addition, no Participant will have control over the ISO's procurement practices. Other than the conflict of interest rules, there will be no limitation on the ISO's authority to secure services and resources from any source in the open market. Except for transitional services that may be provided by NU in connection with the transfer of the NEPOOL staff to the ISO, the ISO may not procure goods and services from any NEPOOL Participant or affiliate unless it has first solicited bids through an open and competitive process. All procurement procedures and protocols developed by the ISO will be made publicly available. Finally, the ISO may not subcontract all or a substantial portion of its obligations under the Interim ISO Agreement. 68/ We are satisfied that the ISO will be managed in an efficient and independent manner. Accordingly, we find that these procedures satisfy ISO Principle No. 7.

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66/ Id. at 34, citing NEPOOL Tariff, §§ 27.6, 28.7, 42.5, 45.1-7 and 46.2.

67/ Id., citing Interim ISO Agreement, §§ 6.4 and 6.17(q).

68/ Id. at 34-35, citing Interim ISO Agreement, § 6.18.

ISO Principle No. 8. An ISO's transmission and ancillary services pricing policies should promote the efficient use of and investment in generation, transmission, and consumption. An ISO or an RTG of which the ISO is a member should conduct such studies as may be necessary to identify operational problems or appropriate expansions.

NEPOOL states that it currently performs studies to identify operational problems or appropriate expansions, and that the ISO will continue to perform such studies. NEPOOL states that, while network congestion is not a problem in the NEPOOL Control Area, it intends to examine transmission priorities during 1997 and will supplement this filing to address that issue. 69/

Transmission and ancillary services pricing policies will be addressed in an order in Docket Nos. OA97-237-000 and ER97-1079-000.

ISO Principle No. 9. An ISO should make transmission system information publicly available on a timely basis via an electronic information network consistent with the Commission's requirements.

NEPOOL states that the ISO will make transmission system information available on a timely basis through compliance with Order No. 889. 70/ This satisfies ISO Principle No. 9.

ISO Principle No. 10. An ISO should develop mechanisms to coordinate with neighboring control areas.

NEPOOL currently has coordination agreements in effect with neighboring control areas. The ISO will take responsibility for these arrangements and agrees to obtain or furnish emergency power under these agreements if necessary. 71/ This satisfies ISO Principle No. 10.

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69/ Id. at 35-36, citing Restated Agreement, §§ 18.4, 18.5; Interim ISO Agreement, § 6.2.

70/ Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), order on reh'g, Order No. 889-A, 62 Fed. Reg. 12,484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), reh'g pending. Transmittal Letter at 36, citing Interim ISO Agreement, § 6.13; Restated Agreement, § 16.5; NEPOOL Tariff, § 5.

71/ Transmittal Letter at 36, citing Interim ISO Agreement, § 6.10.

ISO Principle No. 11. An ISO should establish an ADR process to resolve disputes in the first instance.

The Restated Agreement and the NEPOOL Tariff establish uniform procedures for resolving disputes. In the event of any dispute between the ISO and NEPOOL, either party may submit the dispute to mediation and/or arbitration to be resolved in accordance with the Restated Agreement. However, in the event of a dispute over proposed rules, the ISO must concur before NEPOOL can invoke these procedures. 72/

Intervenors raise concerns that the Interim ISO Agreement has no provision for ADR between the ISO and Non-Participants in NEPOOL, 73/ NEPOOL agrees that an ADR process should be available to Non-Participants and has agreed to include an ADR provision in its standard service agreement with Non-Participants. 74/ We will permit NEPOOL to include an ADR provision in its standard service agreement with non-Participants, but we believe that NEPOOL's commitment to include ADR procedures for non-Participants should also be codified in the final ISO agreement.

D. Other Concerns

Although no intervenor has addressed this matter, we believe that some clarification is needed regarding NEPOOL membership provisions. In particular, section 3.1 of the Restated Agreement provides that an entity desiring to join NEPOOL must be engaged in or propose to engage in the wholesale or retail electric business in New England. Because Order No. 888 specifically precludes geographic limitations on membership in power pools, 75/ we will direct NEPOOL to eliminate this provision.

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72/ Id. at 36-37, citing Restated Agreement, § 21.1; NEPOOL Tariff, § 12, Interim ISO Agreement, §§ 6.17(c), (d) and (g), 12.1.

73/ There is no dispute that the ADR provisions of the NEPOOL Tariff are available to Non-Participants. Rather, this issue involves potential disputes between Non-Participants and the ISO that are unrelated to transmission service, such as a dispute concerning market operations. Since the ISO is responsible for implementing the rules of the NEPOOL Regional Market Operations Committee, a dispute could arise over their actions in this capacity.

74/ NEPOOL Consolidated Answer at 42.

75/ FERC Stats. & Regs. ¶ 31,036 at 31,727.

NICC requests that the Restated Agreement be modified to provide industrial end-users with the opportunity to become NEPOOL Participants. <sup>76/</sup> We believe that NICC's argument is premature. When retail wheeling is instituted in New England, end-users will qualify as "eligible customers" and will be entitled to service under the NEPOOL Tariff. Because the start of retail wheeling in certain states in New England is imminent, we will condition our section 203 approval on NEPOOL's agreement to modify the Restated Agreement to permit end-users to become Participants if and when such end-users become eligible for retail wheeling.

Intervenors maintain that the ISO has insufficient authority over long-range transmission planning and construction. They argue that vesting ownership of future transmission additions in the individual NEPOOL Participants who already own pool transmission facilities perpetuates the status quo with respect to the transmission market power the transmission-owning utilities already possess. They argue that the ISO should have more autonomy over long-range planning of the regional system. They would modify the Interim ISO Agreement to require the ISO to review NEPOOL's transmission system assessment and planning, rather than simply giving it the authority to do so.

We do not agree with intervenors that the proposed planning and construction arrangements will result in transmission-owning utilities having the same transmission market power they now possess. Our disagreement stems from the fact that NEPOOL has filed a pool-wide, open access tariff (with non-pancaked rates), which will be administered by an ISO. However, we agree with MMWEC that the ISO should be obligated to review long-range planning, rather than simply having the authority to do so. Therefore, we will condition approval of the section 203 request on NEPOOL's agreement to modify the Interim ISO Agreement to require that the ISO review the long-range system assessment and transmission construction plans of NEPOOL Participants.

Section 6.5(a) of the Interim ISO Agreement states that the ISO shall have the right to use such facilities, equipment and software as are currently used by NEPOOL in directing the operation of the system (including, without limitation, the NEPOOL Control Center) to enable the ISO to perform its obligations under the Agreement. If the ISO determines a need for additional facilities or equipment to carry out its responsibilities under the Agreement, the ISO shall request funding for such equipment or facilities in its budget which is submitted to the NEPOOL Executive Committee. In its Consolidated Answer, NEPOOL states that it is developing detailed contractual provisions necessary to provide the ISO with the right to use

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<sup>76/</sup> NICC Motion at 35.

NEPOOL facilities and equipment. It also states that the Interim ISO Agreement requires NEPOOL to enter into appropriate agreements with the ISO and other, third parties to ensure that the ISO will have all necessary rights to use these facilities in the manner currently enjoyed by the NEPOOL staff. 77/

We are concerned that such arrangements may affect the independence of the ISO. Accordingly, we will condition our approval of the ISO on NEPOOL's proffer of contractual provisions regarding the use of such facilities, equipment and software as are currently used by NEPOOL in directing the operation of its system (including, without limitation, the NEPOOL Control Center). To the extent the ISO requires additional, similar facilities in the future, these facilities should be funded by the ISO, not NEPOOL, through the ISO's transaction fees to be developed as discussed above.

Finally, section 3 of the Interim ISO Agreement provides for termination of the agreement five years after its effective date unless earlier superseded by a final ISO agreement or terminated for non-performance by NEPOOL. Section 13.2(b) of the Interim ISO Agreement states that termination may only occur with Commission approval. Intervenors express concerns regarding the ability of NEPOOL to terminate the ISO for non-performance. They state that there should be some objective criteria established by which the decision to terminate can be evaluated. We believe that it would be beneficial to all interested parties, including the ISO, if NEPOOL were to provide criteria detailing the circumstances under which it would seek to terminate the ISO. However, we do not believe it is necessary to condition section 203 approval on the submission by NEPOOL of such criteria. The Commission has final approval authority over termination of the ISO.

The Commission orders:

(A) The Interim ISO Agreement is hereby approved on an interim basis, and NEPOOL's request for authorization under section 203 to dispose of the jurisdictional facilities of its public utility members is hereby granted on an interim basis, subject to the conditions and requirements discussed in the body of this order, and subject to further orders in this proceeding.

Docket No. EC97-35-000

- 32 -

(B) Rate schedule designations for the NEPOOL Tariff, the Restated Agreement, and the Interim ISO Agreement will be provided at a later date.

By the Commission.

( S E A L )



Lois D. Cashell,  
Secretary.



APPENDIX

Interventions

- American National Power, Inc. (American National)
- Attorney General of Massachusetts (Attorney General)
- Bangor Hydro-Electric Company (Bangor Hydro)
- Boston Edison Company (Boston Edison)
- Braintree Electric Light Department (Braintree)
- Burlington Electric Department (Burlington)
- Cambridge Electric Light Company (Cambridge Electric)
- Canal Electric Company (Canal)
- Central Maine Power Company (Central Maine)
- Central Vermont Public Service Corporation (Central Vermont)
- Chicopee Municipal Lighting Plant (Chicopee)
- Citizens Lehman Power Sales (Citizens Lehman)
- Citizens Utilities Company (Citizens Utilities)
- Commonwealth Electric Company (Commonwealth Electric)
- Competitive Power Coalition of New England, Inc. (Competitive Coalition)
- Connecticut Municipal Electric Energy Cooperative (Connecticut Coop)
- Connecticut Department of Public Utility Control (Connecticut Department)
- Connecticut Office of Consumer Counsel (Connecticut Office)
- Conservation Law Foundation (Conservation Foundation)
- Duke/Louis Dreyfus L.L.C. (Duke/Louis Dreyfus)
- Electric Clearinghouse, Inc. (Clearinghouse)
- Electric Power Supply Association (EPSA)
- Enron Power Marketing, Inc. (Enron)
- Equitable Resources, Inc. (Equitable Resources)
- Fitchburg Gas and Electric Light Company (Fitchburg)
- Great Bay Power Corp. (Great Bay)
- Green Mountain Power Corporation (Green Mountain)
- Houlton Water Company (Houlton)
- Hydro-Quebec
- Industrial Energy Consumer Group (IECG)
- Maine Electric Power Company (Maine Electric)
- Maine Public Service Company (Maine Public Service)
- Massachusetts Department of Public Utilities (Massachusetts Department)
- Massachusetts Division of Energy Resources (Massachusetts Division)
- Massachusetts Municipal Wholesale Electric Company (MMWEC)
- Massachusetts Municipals
- MASSPOWER
- Member Systems of the New York Power Pool (Member Systems)
- Middleborough Gas & Electric Department (Middleborough)
- Montaup Electric Company (Montaup)
- National Fuel Gas Supply Corp. (National Fuel)
- NEPOOL Industrial Customer Coalition (NICC)
- NEPOOL Stakeholder Coalition (Stakeholder Coalition)

Docket No. EC97-35-000

- 34 -

New Brunswick Power Corporation (New Brunswick)  
New England Conference of Public Utilities Commissioners (NECPUC)  
New England Power Company (NEPCO)  
New Hampshire Electric Cooperative (New Hampshire Coop)  
New Hampshire Office of the Consumer Advocate (New Hampshire Office)  
New Hampshire Public Utilities Commission (New Hampshire Commission)  
New York Mercantile Exchange (NYMEX)  
New York State Electric & Gas Corporation (NYSEG)  
Northeast Energy Associates (Northeast Associates)  
Northeast Utilities Service Company (NU)  
Town of Norwood, Massachusetts (Norwood)  
Orange and Rockland Utilities, Inc. (O&R)  
Ontario Hydro  
PanEnergy Trading and Market Services (PanEnergy)  
Pascoag Fire District (Pascoag)  
PECO Energy Company (PECO Energy)  
Pittsfield Generating Company, L.P. (Pittsfield)  
P.M. Supporting Companies (P.M.)  
Public Advocate, State of Maine (Maine Advocate)  
Public Service Electric and Gas Company (PSE&G)  
Reading Municipal Light Department (Reading)  
Rhode Island Division of Public Utilities and Carriers (Rhode Island Division)  
Sithe/Independence Power Partners, L.P. (Sithe)  
South Hadley Electric Light Department (South Hadley)  
Taunton Municipal Lighting Plant (Taunton)  
Tennessee Gas Pipeline Company (Tennessee Gas)  
Union Oil Company of California (Union Oil)  
United Illuminating Company (United Illuminating)  
Unitil Power Corp. (Unitil)  
U.S. Generating Company (U.S. Generating)  
USGen Power Services, L.P. (USGen)  
Vermont Department of Public Service (Vermont Department)  
Vermont Electric Power Company, Inc. (VELCO)  
Vermont Public Power Supply Authority (VPPSA)  
Westfield Gas and Electric Light Department (Westfield G&E)