

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New England Power Pool

Docket No. ER04-697-000

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

(Issued May 27, 2004)

**I. Introduction**

1. In this order, the Commission accepts for filing changes to section 8.2 of the NEPOOL Open Access Transmission Tariff (OATT)<sup>1</sup> that implement the 103<sup>rd</sup> Agreement amending the New England Power Pool Agreement (103<sup>rd</sup> Agreement). The 103<sup>rd</sup> Agreement amends and restates the New England Power Pool's (NEPOOL) existing financial assurance and billing policies to implement a weekly billing and payment system for charges in NEPOOL's hourly markets.<sup>2</sup> This order benefits customers by reducing the amount of collateral required from market participants and the exposure of NEPOOL to a default by one of those participants.

**II. Background**

2. On April 1, 2004, NEPOOL submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),<sup>3</sup> the 103<sup>rd</sup> Agreement. NEPOOL also filed revised tariff sheets that make conforming changes to its OATT to implement the weekly billing and payment system. NEPOOL states in its filing that since 2002 the NEPOOL Participants have been discussing ways of moving from a monthly billing and payment cycle to a more frequent cycle, to improve liquidity and reduce both the amount of collateral required from market participants and the exposure of NEPOOL to a default by one of its participants. NEPOOL notes in its filing that the NEPOOL Participants Committee, with input from ISO New England Inc. (ISO-NE), approved this proposal, consistent with the

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<sup>1</sup> New England Power Pool, FERC Electric Tariff, Fourth Revised Volume No. 1.

<sup>2</sup> The hourly charges are defined by NEPOOL to include real-time energy, day-ahead energy, real-time operating reserves, day-ahead operating reserves, forward reserves, regulation service, emergency sales and emergency purchases.

<sup>3</sup> 16 U.S.C. § 824d (2000).

policy guidance suggested by the New York Independent System Operator, Inc. and the PJM Interconnection, L.L.C.<sup>4</sup> orders on financial assurance that were issued on September 22, 2003.

3. Under the proposed revisions to the financial assurance and billing policies, ISO-NE would bill for hourly charges on a weekly basis, statements for such charges would be issued each Thursday with payment due on the fourth business day following the issuance of the statement (typically Wednesday), and remittances would be distributed by ISO-NE on the sixth business day after the issuance of the statement (typically Friday). Additionally, the tariff revisions filed by NEPOOL amend the billing policy to reduce the grace period for payment of ISO-NE invoices from ten days to two business days, and provide that if payment has not been made after two business days, the defaulting entity will be suspended from trading. NEPOOL asserts that under these procedures, market participants would receive payment for market services within 12 to 14 days after the services are delivered, rather than waiting up to 50 days as they do under the currently-effective policies. Moreover, NEPOOL notes that the proposed revisions would reduce the amount of financial assurance that participants would have to provide, since power would be sold on credit over a shorter period of time. NEPOOL states that ISO-NE has projected that the overall amount of financial assurance required for participation in NEPOOL would be reduced from approximately \$176,791,000 to \$58,128,000. NEPOOL also argues that weekly settlements would reduce the level of charges that a participant could accrue before a payment default and subsequent suspension occur, thereby reducing the overall exposure of all market participants.

4. Additionally, the 103<sup>rd</sup> Agreement creates a Payment Default Shortfall Fund (PDS Fund) and Shortfall Funding Arrangement<sup>5</sup> which ISO-NE could utilize to clear weekly settlements in the event that a participant defaults, and the financial assurance provided by the defaulting participant is insufficient to cover any non-congestion related amounts that remain due.<sup>6</sup> The PDS Fund would be equal to the amount of a hypothetical invoice

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<sup>4</sup> In these orders, the Commission noted that approval through a stakeholder process of provisions related to credit or collateral requirements for participation in markets operated by RTOs or ISOs would be given “due deference.” The Commission also noted, however, that such provisions would be addressed on the merits to determine whether they are just and reasonable. See New York Independent System Operator, Inc., 104 FERC ¶ 61,311 at P 19 (2003) (NYISO); PJM Interconnection, L.L.C., 104 FERC ¶ 61,309 at P 29 (2003) (PJM).

<sup>5</sup> The Shortfall Funding Arrangement allows ISO-NE and/or NEPOOL to arrange third-party financing to initially fund the PDS fund. ISO-NE made a filing with the Commission on April 19, 2004, in Docket No. ES04-29-000, to request approval for this borrowing pursuant to section 204 of the FPA, 16 U.S.C. § 824c (2003).

<sup>6</sup> NEPOOL states that shortfalls occurring as a result of congestion will be covered by a Congestion Revenue Fund. See Fifth Revised Sheet No. 446 under Attachment N of the OATT.

at the 97<sup>th</sup> percentile of the average amounts due on invoices rendered to participants over the previous six calendar months. ISO-NE would adjust this amount on a quarterly basis, and NEPOOL states that ISO-NE currently estimates that the initial balance required would be approximately \$4,000,000.

5. NEPOOL states that the NEPOOL Budget and Finance Subcommittee members and ISO-NE concluded that implementing a weekly billing system would provide participants with significant benefits, including: “(1) improving cash flow to participants that are owed money in the NEPOOL markets and accelerating the payment of that money, (2) reducing collateral requirements imposed on participants, and (3) reducing overall exposure of market participants to payment defaults that accrue before a market participant is suspended from the markets.”<sup>7</sup> NEPOOL also notes that the proposed change to a weekly billing system received broad stakeholder support from the NEPOOL Participants Committee, with 80 percent voting in favor of the change.

6. NEPOOL requests an effective date of June 1, 2004 for both the 103<sup>rd</sup> Agreement and the related tariff revisions. NEPOOL asks the Commission to approve this effective date regardless of whether the financing necessary to implement weekly billing and settlement is in place at that time, to allow ISO-NE and NEPOOL to implement weekly billing and settlement without further delay once appropriate financing is arranged.

### **III. Notice of Filing, Interventions and Protests**

7. Notice of NEPOOL’s filing was published in the Federal Register,<sup>8</sup> with interventions, comments, and protests due on or before April 22, 2004. Timely motions to intervene were filed by Northeast Utilities Service Company (on behalf of itself as well as Northeast Utilities Operating Companies<sup>9</sup> and Select Energy, Inc. (collectively, Northeast Utilities)), Calpine Eastern Corporation and Calpine Energy Services, L.P. (collectively, Calpine), and ISO-NE. Calpine filed comments in support of NEPOOL’s filing. ISO-NE filed comments requesting that the Commission modify NEPOOL’s proposal to require that participants pay statements by the second, rather than the fourth business day after the statement is issued.

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<sup>7</sup> See NEPOOL Filing, Transmittal Letter at 6.

<sup>8</sup> 69 Fed. Reg. 19,999 (2004).

<sup>9</sup> The Northeast Utilities Operating Companies are: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire.

#### **IV. Discussion**

##### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>10</sup> the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### **B. Analysis of Tariff Revisions**

###### **1. Timeframe for Payment of Statements**

9. In its comments, ISO-NE requests that the Commission modify the timeframe for payment of statements so that participants pay their invoices no later than the second business day after issuance (*i.e.* Monday) of the statement, rather than the fourth business day after issuance (*i.e.* Wednesday), as proposed by NEPOOL. ISO-NE argues that extending the payment timeframe to four business days will increase the required amounts of financial assurance and the likelihood of defaults. ISO-NE also states that it does not understand why participants are unable to pay statements in two business days, when the proposal will require ISO-NE to pay remittances within the same two business-day timeframe. Further, ISO-NE asserts that the total payment cycle of six days would require it to pay remittance advices around the same time it is also required to prepare the next set of weekly statements. ISO-NE objects to this procedure because it believes the proposal will create “spikes” in its workflow and lead to an unnecessary increase in administrative costs.<sup>11</sup>

###### **2. Commission Determination**

10. The Commission finds that the tariff changes proposed by NEPOOL have been shown to be just and reasonable, and will accept them for filing to become effective the later of June 1, 2004, or the date on which the financing necessary to implement the

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<sup>10</sup> 18 C.F.R. § 385.214 (2003).

<sup>11</sup> ISO-NE also requests that the Commission accompany acceptance of the instant filing with the acceptance of its filings in Docket No. ER04-749-000 and Docket No. ES04-29-000. Docket No. ER04-749-000 is ISO-NE's filing to add “backstopping” provisions to its Capital Funding Tariff, which are necessary to facilitate ISO-NE's borrowing for the Shortfall Funding Mechanism. Docket No. ES04-29-000, as noted above, is ISO-NE's filing to request approval to borrow funds for the Shortfall Funding Arrangement under section 204 of the FPA. The Commission will contemporaneously act on these filings through delegated authority.

weekly billing and settlement system is in place.<sup>12</sup> NEPOOL is directed to inform the Commission of the established effective date as soon as it is known. If the effective date is not June 1, 2004, then NEPOOL is directed to submit a compliance filing with revised tariff sheets reflecting the actual effective date no later than 15 days after the date that the tariff changes are to become effective.

11. With regard to ISO-NE's request that the Commission modify NEPOOL's proposal to require that statements be paid within two business days instead of four, we note that NEPOOL states that the four-day time frame was selected in response to concerns raised by some participants (including many transmission owners) that their internal payment procedures would not permit the payment of invoices in less than four business days.<sup>13</sup> While the Commission does believe that a shorter time-period for paying statements would do more to further the goal of reducing the amount of required financial assurance and the likelihood of harmful defaults, NEPOOL has met its burden of showing that, under current circumstances, its proposal is within the range of reasonableness. Although the four-day period may cause ISO-NE an increase in workflow, ISO-NE has not shown that the four-day period is, in fact, unduly burdensome. Accordingly, we will accept NEPOOL's filing and reject ISO-NE's request that we modify the time period in which statements must be paid.

12. In the NYISO and PJM orders, the Commission noted that when reviewing filings made by ISOs and RTOs to revise their credit or collateral requirements we would "balance the goals of allowing the ISOs and RTOs to reduce their risk of exposure in the event of default while at the same time ensuring that the credit or collateral requirements are not so stringent that they unnecessarily inhibit access to the marketplace."<sup>14</sup> The Commission believes that a two business-day period to pay invoices may in the long-run better serve the goal of ensuring that credit and collateral requirements do not inhibit access to the NEPOOL market, as it would require less collateral and further reduce the exposure that participants face in the event of a default. Therefore, while we will not modify the instant proposal as requested by ISO-NE, we will require NEPOOL to explore further through its stakeholder process whether the amount of time to pay statements could be reduced to two days and to file a report on the results of these discussions within 180 days of the date of this order.<sup>15</sup>

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<sup>12</sup> Because the implementation of the weekly billing and payment system depends on ISO-NE first securing necessary financing, we will not allow the revised tariff provisions to become effective prior to the time that such financing is in place.

<sup>13</sup> See Transmittal Letter at 13, n. 23.

<sup>14</sup> NYISO at P 29; PJM at P 19.

<sup>15</sup> The Commission took similar action in NYISO. See NYISO at P 30.

The Commission orders:

(A) NEPOOL's proposed tariff revisions that amend and restate NEPOOL's existing financial assurance and billing policies to implement a weekly billing and payment system for charges in NEPOOL's hourly markets are hereby accepted for filing to become effective the later of June 1, 2004, or the date on which the financing necessary to implement the weekly billing and settlement system is in place, as discussed in the body of this order.

(B) NEPOOL is hereby directed to inform the Commission of the established effective date as soon as it is known.

(C) NEPOOL is hereby directed to submit a compliance filing with revised tariff sheets identifying the actual effective date within 15 days of the date that the tariff changes become effective, if the effective date is not June 1, 2004, as discussed in the body of this order.

(D) NEPOOL is hereby directed to conduct additional stakeholder discussions and submit a report on the results of those discussions within 180 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.