

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Long-Term Firm Transmission Rights in  
Organized Electricity Markets

Docket No. RM06-8-000

**INITIAL COMMENTS OF NEW ENGLAND PUBLIC  
SYSTEMS**

New England Public Systems<sup>1</sup> appreciate this opportunity to submit their initial comments on the Notice of Proposed Rulemaking (“NOPR”)<sup>2</sup> issued by the Commission regarding the establishment of long-term firm transmission rights (“LTTRs”) in organized electricity markets. For the reasons stated below, we support the Commission’s NOPR and urge the Commission to move forward with the implementation of LTTRs and to resist calls to backtrack, delay implementation, or permit individual regions the “flexibility” to do so.

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<sup>1</sup> New England Public Systems are: Vermont Public Power Supply Authority, Barton Village, VT; Burlington (Vt.) Electric Department; Village of Enosburg Falls, VT; Town of Hardwick (Vt.) Electric Department; Village of Hyde Park, VT; Village of Jacksonville, VT; Village of Johnson (Vt.) Water & Light Department; Village of Ludlow (Vt.) Electric Department; Village of Lyndonville (Vt.) Electric Department; Village of Morrisville (Vt.) Water & Light Department; Village of Northfield, VT; Village of Orleans, VT; Town of Readsboro (Vt.) Electric Department; Town of Stowe (Vt.) Electric Department; Swanton Village, VT; Washington Electric Cooperative; Vermont Electric Cooperative, Inc; New Hampshire Electric Cooperative; Littleton (NH) Water & Light Department; Connecticut Municipal Electric Energy Cooperative; Pascoag (RI) Utility District; Houlton (ME) Water Company; Kennebunk (ME) Light & Power District; Belmont (MA) Municipal Light Department; Braintree (MA) Electric Light Department; Chicopee (MA) Municipal Lighting Plant; Concord (MA) Municipal Lighting Plant; Groton (MA) Electric Light Department; Hingham (MA) Municipal Lighting Plant; Hudson (MA) Light & Power Department; Ipswich (MA) Municipal Light Department; Mansfield (MA) Municipal Electric Department; Middleborough (MA) Gas & Electric Department; Peabody (MA) Municipal Light Plant; Princeton (MA) Municipal Light Department; Reading (MA) Municipal Light Department; Shrewsbury (MA) Electric & Cable Operations; Taunton (MA) Municipal Lighting Plant; Templeton (MA) Municipal Light & Water Plant; Westfield (MA) Gas & Electric Department.

<sup>2</sup> *Long-Term Firm Transmission Rights in Organized Electricity Markets*, 114 F.E.R.C. ¶ 61,097 (Feb. 2, 2006) (“NOPR”), published at 71 Fed. Reg. 6693 (Feb. 9, 2006).

## I. EXECUTIVE SUMMARY

Congress and the Commission both have recognized correctly that Load-Serving Entities (“LSEs”) with service obligations frequently must enter into long-term power supply arrangements in order to meet those obligations, and that the ability to secure power delivery at a relatively predictable price is critical to the viability of such long-term arrangements and, as such, to investment in new baseload and renewable generation resources. Section 217(b)(4) of the Federal Power Act (“FPA”) thus requires that:

The Commission shall exercise [its] authority ... under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy [their] service obligations ... and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.<sup>3]</sup>

Section 1233(b) of the Energy Policy Act of 2005 (“EPAct”) requires the Commission to “implement Section 217(b)(4) of the [FPA]” within “1 year after the date of enactment of this section,” August 8, 2005. Consistent with these obligations, the NOPR proposes to “require” transmission organizations such as ISO New England, Inc. (“ISO”), “to make available long-term firm transmission rights that satisfy guidelines established by the Commission in this rulemaking.” NOPR at P 1. Specifically, the Commission proposes in the NOPR to require transmission organizations such as the ISO to file, within 180 days, either proposed tariff sheets making such rights available or an explanation that such rights are already available. *Id.* at P 40.

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<sup>3</sup> The definitions included in FPA Section 217(a) make clear that public power joint action agencies, cooperatives, and their members are LSEs entitled under Section 217(b)(4) to secure such long-term firm transmission rights or “equivalent” financial rights on a long-term basis for their long-term power supply arrangements.

Neither long-term firm transmission rights nor equivalent financial rights are available in New England now.<sup>4</sup> The undersigned LSEs assert that the availability of such long-term rights is essential to the execution of long-term power supply arrangements (including investment in new baseload and fuel-diverse generation that is needed in New England but may be remote from our loads) in fulfillment of our long-term service obligations. We therefore strongly support the NOPR and the proposed Guidelines and look forward to working with ISO New England, Participants in the New England Power Pool (“NEPOOL”), and other stakeholders to craft expeditiously a LTTR proposal that satisfies the statute’s requirements and the NOPR’s Guidelines.

We are concerned, however, that many other NEPOOL Participants may have little interest in effectively implementing the Commission’s proposed regulations, or in accommodating the needs of the region’s vertically-integrated LSEs who retain service obligations and who engage in long-term power supply arrangements.<sup>5</sup> Indeed, *last August*, VPPSA and certain other public power entities formally requested that the NEPOOL Markets Committee form a working group on the LTTR issue, but were rebuffed. Likewise, some of the undersigned found NEPOOL unable to accommodate their perspective on this issue in NEPOOL’s comments, drafted for submission in this

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<sup>4</sup> As discussed below, the Financial Transmission Rights (“FTRs”) and Auction Revenue Rights (“ARRs”) that are now available in New England, for terms of one year or less, are not necessarily equivalent to firm transmission service even on a short-term basis. Consequently, simply extending the duration of existing FTR and ARR products would not meet the needs of LSEs with long-term service obligations, would not satisfy the statute, and is not consistent with the NOPR’s Guidelines.

<sup>5</sup> Not all LSEs have a long-term focus. In states that have adopted retail access, many LSEs cannot be sure of the load they will be serving on a long-term basis and therefore have adopted short-term oriented power supply strategies. In contrast, other LSEs — including most municipal utilities — continue to have exclusive geographic service territories and obligations to serve, which requires them to engage in long-term power supply planning and power supply commitments to fulfill those obligations.

proceeding and approved by the NEPOOL Participants Committee at its March 3, 2006 meeting.<sup>6</sup>

As explained below, the current FTR and ARR regimen as structured in New England is insufficient to fully hedge congestion risk even on a short-term basis. Simply extending the duration of existing FTR and ARR products, as some NEPOOL Participants may propose, would fall even further short of that goal on a long-term basis and would not meet the reasonable needs of New England's LSEs with long-term service obligations to commit to long-term power supply arrangements. While the NOPR indicates that the Commission "will allow regional flexibility in setting the terms of the rights," the NOPR also states—unequivocally—that this "development of long-term firm transmission rights *must* ... occur within certain guidelines," which will ensure that the rights "have certain properties that we believe are *fundamental to meeting the objectives of section 217(b)(4) of the FPA.*" NOPR at P 42 (emphasis added). Specifically, such rights must be established with terms and conditions that "are sufficient to meet the needs of load-serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation." *Id.* at P 3. These "needs" cannot be met by the provision of only short-term FTRs and ARRs, yet that is all that is currently available in New England.

Based on our unsuccessful attempts to establish a working group last August and subsequent discussions among NEPOOL Participants on this issue, we expect NEPOOL to oppose or to seek to delay the creation of LTTRs consistent with the NOPR's

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<sup>6</sup> It is no coincidence that the New England LSEs with long-term service obligations and long-term power supply arrangements — NEPOOL's public power sector and VELCO — voted against adoption of the draft NEPOOL comments.

Guidelines. We urge the Commission not to waver from the fundamental course set by EAct 2005 and the proposed Guidelines in the name of permitting regional implementation flexibility. The Commission should finalize the proposed regulations and Guidelines and should affirm that the only question left for regional flexibility is *how*, not *whether* or *when*, those Guidelines must be satisfied.

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### **III. COMMENTS**

#### ***A. Background Regarding Physical and Financial Transmission Rights in New England***

Our support for the NOPR is informed by our experience with the transition from physical to financial transmission rights in New England, the insufficiency of current FTR and ARR products in New England to adequately mitigate congestion risk and to permit investment in long-term power supply projects, and the resistance we have encountered in past attempts to address these problems. Prior to the advent of bid-based markets in New England, NEPOOL had a long history of regional planning and of reliance on pool-planned and –sited generation units located distant from many of the loads served by that generation. New England’s 345kV backbone transmission system was planned and built to ensure the delivery of the output of such units to regional loads. Prior to the development of locational marginal price (“LMP”) based markets, transmission customers purchasing “regional network service” were assured of their ability to deliver power resources to their load *at a relatively predictable price*, in

exchange for which they agreed to pay their share of the costs of operating (and expanding if necessary) the regional transmission system.

The first step in the development of New England's bid-based markets—the institution of a market with a pool-wide clearing price—did not significantly change this situation because congestion costs were (at the time) relatively low and were not localized to particular customers. The introduction of LMP-based markets exposed LSEs in New England for the first time to highly volatile and difficult to predict localized congestion charges based on the difference between LMPs at injection and withdrawal nodes.<sup>7</sup> Most parties recognized that there was a need to establish hedging mechanisms, such as “financial” transmission rights, to enable LSEs to mitigate their exposure to congestion charges. ISO New England and NEPOOL developed short-term “Financial Transmission Rights” (“FTRs”), which are available for periods of one year or less and 100 percent of which are auctioned off each year. Residual auction revenues—*i.e.*, revenues remaining after FTR sellers are paid the FTR clearing price—are then allocated among congestion-paying LSEs and certain other market participants.<sup>8</sup> Like FTRs, Auction Revenue Rights (“ARRs”) are defined for periods of one year or less. However, unlike either FTRs or the congestion charges to be hedged, ARR generally are not localized. Instead, LSEs generally are allocated their load ratio share of the sum of FTR

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<sup>7</sup> Adoption of a “Minimum Interconnection Standard” in New England, and the resulting proliferation of new Network Resources interconnected with but not fully integrated into the New England grid, has further complicated the situation.

<sup>8</sup> See generally ISO New England Manual for Financial Transmission Rights, Manual M-06 § 7 (rev. 5, effective August 1, 2005) (available at [http://www.iso-ne.com/rules\\_proceeds/isone\\_mnls/index.html](http://www.iso-ne.com/rules_proceeds/isone_mnls/index.html)).

auction revenues in their load zones.<sup>9</sup> As discussed below, this mismatch between the way costs are incurred and revenues are allocated is one reason why allocation of ARR, without a right to convert them directly to FTRs, fails to enable LSEs to mitigate congestion risk fully even on a short-term basis.<sup>10</sup>

Upon the introduction of LMP-based markets in New England, a number of public power entities — LSEs who fulfill service obligations with long-term power supply arrangements — were rebuffed in their efforts to seek the introduction of long-term financial transmission rights. As reflected in Manual M-06 (§ 3-1), ISO committed that “[w]ithin two years from the SMD Effective Date [which occurred in March 2003] the ISO will evaluate making available FTRs with a term of more than one year (in one-year increments).” So far as we are aware, that has not occurred. More importantly, as explained below, merely extending the term of existing FTRs in New England would neither meet the needs of LSEs planning long-term power supply investments to meet service obligations nor comply with the statute.

On August 5, 2005, in light of EPAct 2005’s imminent enactment, VPPSA, “on behalf of itself, many New England public power systems, and load serving utilities in Vermont” requested that the ISO/NEPOOL Markets Committee create a working group “to investigate, design, and implement Long Term Transmissions Rights (‘LTTRs’) for

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<sup>9</sup> Sections 7.3 and 7.4 of Manual M-06 describes the allocation of auction revenues in New England. As explained therein, ARRs associated with Excepted Transactions and certain NEMA Contracts are defined between generation and load but, otherwise, ARRs are allocated to “Congestion Paying LSEs” based on their zonal real-time load ratio share. ARRs are then subject to one or more “simultaneous feasibility tests,” as a result of which an LSE’s ARR allocation may be reduced. Finally, “[s]ince the four stage ARR allocation process is not inherently revenue neutral, a final proportional adjustment is applied to the auction revenue awards to distribute all available auction funds each month.” *Id.* § 7.5.

<sup>10</sup> As also discussed below, FTRs and ARRs in New England currently are not fully funded.

use in the New England electricity market.”<sup>11</sup> As the letter explained, “VPPSA and many other load serving entities who are obligated to maintain contractual commitments to serve load, will not be able to execute long term contracts if we can not secure LTTRs.”

With LTTRs, however, VPPSA explained that:

[P]ublic power communities and the load serving entities throughout New England will be able to acquire or execute agreements for the long term purchase of electricity. These commitments will assist potential developers in securing financing for the construction of new generation or the refurbishment of existing facilities. This financing will bring new energy and capacity, better emission technologies, and ancillary services to the region and enhance the reliability of the regional grid, which is one of the goals of the ISO. Therefore, by working together, we can achieve successful results for all ratepayers.

*Id.* Although President Bush signed EAct 2005 into law just three days later, NEPOOL did not establish the working group VPPSA had requested.

In response to the NOPR, the NEPOOL Markets Committee has established a working group to address the LTTR issues raised by EAct and the NOPR. We look forward to working with the ISO and other NEPOOL Participants to develop a New England LTTR proposal that complies with the Guidelines and meets the reasonable needs of New England’s LSEs with long-term service obligations. However, based on our experience to date, we are concerned that we may encounter substantial resistance in that effort, as well as attempts to delay New England’s compliance. We urge the Commission to hold fast to its proposed Guidelines setting out the minimum necessary

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<sup>11</sup> Letter from Brian Evans-Mongeon, VPPSA, to Kevin Kirby, Vice President, ISO New England (Aug. 5, 2005) (Attachment A to these comments).

characteristics of a compliant LTTR proposal, and we ask the Commission to head off at the pass any attempts at a “regional-flexibility veto” of those fundamental characteristics.

***B. The Commission Must Not Allow Regional Vetos of the LTTR Guidelines or Other NOPR Requirements***

FPA § 217(b)(4) requires the Commission to exercise its authority in a manner that “facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.” The NOPR correctly finds that, in order to achieve those ends and fulfill the statutory requirement, LTTRs must possess certain fundamental characteristics set forth in the proposed Guidelines. We support the NOPR’s conclusions and proposed Guidelines and highlight here certain Guidelines that will be of particular importance (and likely controversy) in New England.

**1. LTTRs Must Be Point-to-Point Rights Allocated to LSEs or Must Be Convertible Into Such Rights; Zonal ARR’s Are Not Sufficient to Mitigate Risk and Enable Long-Term Investment**

FPA § 217(b)(4) requires that long-term firm transmission rights be available to support long-term power supply arrangements, which means that such rights must be defined in such a way as to enable LSEs to “hedge the congestion costs that may be incurred in delivering the output of particular generation resources to particular loads.”<sup>[46]</sup>

NOPR at P 45.<sup>12</sup> Consequently, Guideline No. 1 states that “[t]he long-term firm

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<sup>12</sup> New England’s existing ARR’s do not satisfy this requirement, as the NOPR seems to recognize. *See id.* n.46 (noting APPA’s observation that, “because ISO-NE offers only general system-wide ARR’s, there is no direct relationship between the ARR’s that a market participant receives and the FTR’s that the market

transmission right should be a point-to-point right that specifies a source (injection node or nodes) and sink (withdrawal node or nodes), and a quantity (MW).”<sup>13</sup> Further, Guideline No. 7 states that “[t]he initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction.”<sup>14</sup> Alternatively, if an auction model is adopted or continued, Guideline No. 7 “require[s] that ... auction revenue rights can be directly converted to transmission rights without participation in the auction.” *Id.* at P 64.<sup>15</sup>

We strongly support these requirements as essential to achieving the ends sought by FPA § 217(b)(4) and the NOPR. LSEs seeking to enter into long-term power supply arrangements or to invest in new baseload or renewable generation must have available to them LTTRs that they can rely upon to fully hedge the congestion costs that may be

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participant may desire, given the location of its resources.”).

<sup>13</sup> We agree that LTTRs should be point-to-point rights but support the recognition that the source or sink point can be a “node or nodes.” Thus, for example, LSEs should be able to specify a Load Zone as the sink for an LTTR.

<sup>14</sup> *See also id.* at P 71 (“[T]he first step under any proposed design will be a direct allocation, rather than an auction (followed possibly by *voluntary* participation in an auction)” (emphasis added)).

<sup>15</sup> Paragraph 74 elaborates on how such an ARR-with-conversion-rights system would work:

In systems that directly allocate ARRs, the rules would be slightly different. A long-term ARR obligation would mean that for the term defined in the right, the load-serving entity would receive the right to auction revenues associated with a fixed quantity of injections and withdrawals in the FTR auction. The load-serving entity could then either directly convert the ARRs to FTR obligations on an annual basis or it can use the expected revenues to purchase FTRs of greater than one year based on the assumption that its ARR revenue eligibility will be fixed for multiple years (or it could choose not to purchase long-term FTRs but simply collect auction revenues each year).

Such a system, the Commission explains, would give LSEs “a similar degree of financial certainty as the directly allocated long-term FTR obligation, but more flexibility to change actual holdings of FTRs from year to year.” *Id.* This explanation makes clear that any acceptable ARR-based proposal would have to provide for point-to-point ARRs that would be directly convertible (without auction or any additional charge) into LTTRs that comply with Guideline No. 1.

incurred over the life of the contract or generating unit.<sup>16</sup> In its Final Rule, the Commission should confirm expressly that, in New England, simply “extend[ing] the term of the auction revenue rights or FTRs that [ISO New England] currently allocate[s]”<sup>17</sup> would satisfy neither the Guidelines nor the requirements of FPA § 217(b)(4).

Section 217(b)(4) requires the Commission to enable LSEs to “secure firm transmission (or *equivalent* tradable or financial rights) on a long-term basis.” EPC Act 2005 § 1233(a); NOPR at P 48 (emphasis added). Contrary to NEPOOL’s suggestion, the ARR/FTR structure in New England is inadequate to hedge congestion risk and is not equivalent to firm transmission even on a short-term basis; so simply extending the term of such products cannot satisfy the statute’s requirements. First, in New England, there are not sufficient simultaneously-feasible FTRs or ARRs to ensure that LSEs can fully hedge their congestion risks. Second, as discussed above, most ARRs in New England are allocated among congestion-paying LSEs on a zonal load ratio share (“LRS”) basis. In effect, each such LSE is paid the auction clearing price of an *average* FTR in the zone times the ratio of its peak load to the zonal peak load. There is no assurance that revenues thus received will be sufficient to enable the LSE to acquire a specific FTR across a particularly congested path. Auction revenue rights that (a) do not necessarily cover the cost of transmission congestion at a specific location, and (b) cannot be

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<sup>16</sup> While LTTRs must be available to hedge congestion risk, there should be no requirement that LSEs *incur* the risk that congestion patterns will reverse and cause LTTR obligations to become liabilities. Therefore, if LTTRs are to be structured as obligations rather than options, it must be up to the LSE to decide whether it wants the LTTR obligation when it makes a long-term power supply arrangement or generation investment. They should not be forced to incur such obligations in circumstances where they believe the risks of an LTTR obligation outweighs the benefits.

<sup>17</sup> NEPOOL Comments at 4 (quoting NOPR. at P 46).

converted directly to LTTRs that *do* hedge the risk of transmission congestion at a specific location are not the “equivalent” of the firm transmission rights that Section 217(b)(4) requires.<sup>18</sup>

Thus, simply extending the terms of existing FTR and ARR products in New England will neither satisfy the statute nor meet the needs of those New England LSEs with service obligations to be met with long-term power supply arrangements. The Commission should confirm that Guideline Nos. 1 and 7 mean what they say and should continue to require either the allocation of point-to-point LTTRs or point-to-point, long-term ARRs (“LTARRs”) that can be converted directly (and without additional charge) to the corresponding LTTR.

2. The Final Rule Should Require Full Funding of LTTRs as the NOPR Proposes

As noted above, Section 217(b)(4) requires the Commission to ensure that LSEs can obtain “secure firm transmission (or *equivalent* tradable or financial rights) on a long-term basis.” The NOPR properly interprets this provision as requiring “the availability in organized electricity markets of long-term firm transmission rights that provide price stability to load-serving entities with long-term power supply arrangements used to satisfy their service obligations. NOPR at P 48. One corollary of this requirement is that LTTRs (and any corresponding LTARR) must be “fully funded,” *i.e.*, such rights must

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<sup>18</sup> We understand that some NEPOOL Participants may argue against direct allocation of LTTRs or automatic rights to convert LTARRs into LTTRs, suggesting instead that use of an auction “tie-breaker” would sufficiently protect the interests of LSEs with long-term service obligations. We disagree. Subjecting LSEs to the whims of an auction, even with a tie-breaker, is not the same as providing them with long-term firm transmission or the financial equivalent thereof, as FPA § 217(b)(4) requires. Order No. 888 did not require LSEs to bid for firm transmission rights. Rather, so long as LSEs were willing to pay their allocated share of a transmission system planned and built to meet their needs they were assured of receiving firm transmission service. They were not deprived of access to firm transmission service simply because some other market participant outbid them by one dollar.

provide a dependable non-prorated revenue stream “for the entire term of the right, and for the entire quantity of the right.” *Id.* Thus, “[w]hen conditions arise that cause the transmission organization to receive congestion revenues that are not sufficient to meet payment obligations to [LTTR] holders,” the Commission will require that transmission organizations “have in place a mechanism to fully fund the rights.” *Id.* at P 49.

We strongly support this requirement. Without it, LSEs would not be able to rely on the LTTRs they were allocated to effectively mitigate the congestion costs to which they might be exposed over the course of a long-term power supply arrangement or generation investment. Thus, without a full funding requirement, LTTRs will not suffice to meet the needs of LSEs with service obligations to be met with long-term arrangements.

As the NOPR recognizes, the primary way that transmission organizations should ensure full funding of LTTRs is by planning and expanding transmission systems as necessary to accommodate them:

[T]he proposed guidelines would require that transmission organizations guarantee the financial coverage of the long-term firm transmission rights over their entire term. Accordingly, transmission organizations will need to have effective planning and expansion regimes in place, and may need to expand the system where necessary to ensure that the long-term firm transmission rights can be accommodated over their entire term without modification or curtailment.

*Id.* at P 88. This approach is fully consistent with the underlying principles of Order No. 888 and with Congress’s requirement that the Commission ensure the availability to LSEs of long-term firm transmission service or the financial equivalent.

Under Order No. 888, long-term firm transmission service customers have the right to continue to take transmission service from the transmission provider when their contracts expire, and transmission providers are required to plan and expand facilities to satisfy network and point-to-point customer needs. *E.g.*, NOPR at PP 16, 19, 90. If transmission capacity proved insufficient, Order No. 888 required transmission providers and transmission customers to bear system redispatch costs and, if necessary, curtailments on a non-discriminatory basis. *Id.* at P 19. This provided a further incentive (beyond the incentive to increase rate base on which the transmission provider would earn a return) for transmission providers to expand transmission capacity as necessary to accommodate known or predictable uses. Now, however, ISOs and RTOs plan and operate the transmission system but do not serve retail load and do not have the same incentives to minimize redispatch costs.<sup>19</sup>

Just as Order No. 888 requires Transmission Providers to plan and expand transmission systems to meet customers' needs, ISOs and RTOs should be required to plan and Transmission Owners should be required to construct the transmission systems in organized electricity markets so that all necessary LTTRs (or LTARRs) remain

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<sup>19</sup> At the same time, transmission owners may have decreased incentives to expand the transmission system. Unlike the prior regime, under which Transmission Providers and customers were required to bear the consequences of under-investment on a non-discriminatory basis, under LMP there is no guarantee that the Transmission Owner will bear a proportionate level of the congestion costs resulting from inadequate transmission investment. Further, transmission owners that serve load in an LMP-based system typically can spread the congestion costs they incur in a few locations over a much larger retail load than can municipal utilities or other small LSEs. As discussed below and as the NOPR recognizes, rules that allocate at least some of the cost responsibility for under-funding of LTTRs or LTARRs to Transmission Owners in a position to expand facilities and reduce congestion may be an appropriate mechanism to address such issues.

simultaneously feasible and fully funded over their terms.<sup>20</sup> Robust transmission system planning, combined with the New England Transmission Owners' obligation to build facilities that are identified as needed to fulfill needs that the market has not met,<sup>21</sup> is the best way to ensure that LTTRs remain fully funded.<sup>22</sup> Such obligations would be appropriately and effectively reinforced by rules that allocate all or some of any LTTR-funding shortfalls to the entities responsible for the "maintenance and expansion of the transmission system that is needed to ensure the feasibility of the long-term rights that are allocated." *See* NOPR at P 49. Transmission owners in a position to reduce transmission congestion should not be permitted to externalize the congestion costs of their own inaction. Indeed, it is only fair that favorable return on equity "incentives" available for the construction of new facilities be balanced by requiring Transmission Owners to internalize at least some of the congestion costs associated with non-construction of such facilities.<sup>23</sup>

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<sup>20</sup> As we have previously explained, RTOs should be required to adopt mechanisms that ensure that public power entities will be able to participate in and contribute to RTO-planned transmission expansions or upgrades. Enabling the participation of public power entities with low financing costs may be one of the most effective ways to promote the necessary expansion of regional transmission systems.

<sup>21</sup> *ISO New England, Inc., et al.*, 106 F.E.R.C. ¶ 61,280, P 196 (2004).

<sup>22</sup> The NOPR (at P 89) seeks comment on "whether the Commission should require that transmission organizations file their transmission planning and expansion procedures and specific plans," or "whether, alternatively, the Commission should require that transmission organizations file such procedures for informational purposes, as a means for the Commission to monitor the adequacy of such plans and procedures for ensuring the adequacy of long-term firm transmission rights." We strongly support a requirement that RTO planning procedures and plans be filed, and subject to comment, at least on an informational basis, to ensure their adequacy to meet the needs of all region stakeholders.

<sup>23</sup> The NOPR suggests (at P 50) that "there may be extraordinary circumstances under which the requirement for full funding should be relaxed," such as the sustained, unplanned outage of a large transmission line, and that "[s]uch circumstances may require alternative rules for sharing of congestion cost risk than would otherwise apply." We submit that such an extraordinary-circumstances exception should be limited to Acts of God and other extraordinary, unforeseeable, and unpreventable occurrences. A heavy burden should be placed on the party seeking the exception from the default cost allocation rules to justify the exception.

3. The Commission Should Not Delay Implementation of the Final Rule in New England

While we agree that development of LTTR proposals compliant with the proposed Guidelines will require the resolution of difficult issues, we believe that a requirement to file within six months of the date of the Final Rule provides sufficient time within which to address those issues. A New England working group on these issues was recently established, and preliminary discussions need not await issuance of the Final Rule. Moreover, we note that VPPSA and certain other public power entities asked NEPOOL to establish a working group on this issue *more than seven months ago*, and that EAct § 1233(b) requires the Commission to implement FPA § 217(b)(4) within one year of EAct's enactment.

Every month that passes prior to the creation of LTTRs in accordance with the NOPR is another month during which, contrary to Congress's intent, LSEs with service obligations will have difficulty planning for and entering into long-term arrangements to meet those continuing obligations, and will further delay the development of new generating facilities and other market solutions to the region's resource needs. We urge the Commission promptly to issue a Final Rule that (as the NOPR [at P 1] proposes) requires the submission within 180 days of "tariff sheets and rate schedules that make available long-term firm transmission rights that are consistent with the guidelines set forth in the Final Rule." To the extent that any transmission organization finds that it is unable to meet that deadline, the Commission should require the submission of a detailed explanation of the reasons for the delay and a detailed schedule for the completion and submission of such a filing.

*C. Additional Comments*

We submit the following additional comments regarding specific matters on which the Commission seeks input.

1. Terms and other characteristics of LTTRs

The NOPR seeks comment (at P 56) on the length of terms of LTTRs and whether regional flexibility is needed on the length of term, or whether a more specific set of terms should be included in the Final Rule. The Commission also seeks comment on

how longer-term long-term firm transmission rights (i.e. 20 to 30 years) relate to the transmission organization's planning cycle, how such longer-term rights can be guaranteed beyond the length of the planning cycle, and whether the planning cycles of transmission organizations must be modified or extended to accommodate terms that are sufficient to meet the needs of load-serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation.

*Id.* With regard to renewal of LTTRs, the Commission proposes to allow transmission organizations to propose reasonable criteria regarding the availability of renewal rights, and the price at which rights may be renewed, as well as “minimum notice periods for initiation, renewal, cancellation or conversion that accommodate the transmission organization's planning cycle or other administrative considerations.” *Id.* at P 57.

Because the combination of initial term and renewal rights operate together to determine the effectiveness of LTTRs as a long-term risk management tool, questions as to initial term cannot be answered separately from questions of renewal rights. The bottom line is that, by one mechanism or the other, LSEs must have the ability to acquire long-term rights capable of hedging the congestion risks associated with power supply arrangements or baseload generation investments that are not of a definite or uniform duration but that may last for decades. In general, we are amenable to proposals like

those made by TAPS for ten-year rights with rolling renewal options. However, the more fundamental point—as Guideline No. 4 appears properly to recognize—is that the combination of initial term, renewal rights, and cancellation or turn-back rights must be sufficiently flexible to enable LSEs entering into different types of long-term arrangements to tailor their LTTR coverage to their specific needs. An LSE that needs LTTR coverage for a 20-year power supply contract should not be limited either to a non-renewable 10-year right or a non-relinquishable 30-year right (particularly not if that right is structured as an obligation). Such flexibility is necessary to fulfill the Commission’s “primary concern here ... to be responsive to the needs of load-serving entities, other market participants, and the requirements of section 217(b)(4) of the FPA.” NOPR at P 55.

We do not believe that the creation of very long-term LTTRs, or shorter-term LTTRs with renewal rights, in and of itself should change a transmission organization’s planning cycle. The length of an RTO’s planning cycle should be driven predominantly by the lead time necessary to plan and build facilities necessary to meet the system’s requirements, including, for these purposes, the need to ensure that LTTRs remain simultaneously feasible. Longer-duration LTTRs should not require a longer planning cycle any more than load growth expected to occur twenty years from now requires a twenty-year planning cycle. Longer planning cycles than currently used may well be beneficial, but the need for longer planning cycles will not be driven by establishment of LTTRs.

2. Limitations on the amount of transmission capacity devoted to LTTRs, and other mechanisms to protect other market participants

In general, and especially as time goes on, the transmission systems supporting organized markets should be planned and built sufficiently robustly to support all reasonably anticipated uses of the system—including the use of LTTRs to mitigate congestion risks associated with long-term power supply arrangements to meet LSEs’ service obligations. Nevertheless, as the NOPR recognizes, there may be instances when transmission capacity is scarce and cannot support all requested short-term and long-term transmission rights.

The NOPR proposes to give a priority to LSEs seeking to procure LTTRs in connection with long-term power supply arrangements to fulfill service obligations. However, the Commission seeks comment (at P 59) on methods of allocating scarce capacity and “whether and to what extent it may be appropriate to allow transmission organizations to adopt limits on the amount of capacity they will allocate to long-term rights before such rights are allocated.” More generally, the NOPR seeks comment on “ways that transmission organizations may balance any adverse economic impacts of allocating long-term firm transmission rights between participants receiving and not receiving such rights” and “any measures that should be adopted to protect against actions by long-term firm transmission rights holders.” *Id.* at P 70.

Like APPA and TAPS, we recognize that allocating LTTRs to LSEs may impact the level of transmission capacity available to support shorter-term FTRs. We agree with the Commission that, under FPA § 217(b)(4), it is appropriate to give priority to LSEs’ needs for LTTRs necessary to enable long-term power supply arrangements in fulfillment

of service obligations. However, we agree that it may be appropriate to adopt mechanisms that cap the impact of such an LTTR priority on other market participants. We submit that the specific nature and terms of such mechanisms are best left to negotiation among the affected stakeholders prior to the filings to be made by transmission organizations following adoption of a Final Rule. We wish to emphasize that our purpose in seeking LTTRs is not to enable us to speculate on or profit from such rights, but only to enable us to fulfill our service obligations by entering into long-term power supply arrangements and investing in new generation that cannot be sited close to our loads. We expect no more from an LTTR regimen, but also require no less.

3. Concerns about the LTTR consequences of overstated load-growth forecasts are easily satisfied

Paragraph 60 of the NOPR states that:

In making available long term firm transmission rights for power supply arrangements “made or planned” to meet service obligations, transmission organizations may have to incorporate estimates of load growth into the award of such rights. This raises the concern that to the extent that the load growth assumptions made by load-serving entities as a basis for nominating transmission rights are overstated, some load serving entities could be awarded more long-term firm transmission rights than needed to meet service obligations, and the associated transmission capacity would not be available for allocation of transmission rights to others. The Commission seeks comment on this issue and any rules or other safeguards that address it.

Similarly, page 7 of the NEPOOL comments approved at the March 3, 2006, NPC meeting raises concerns about “the potential for sham transactions, or overstatement of projected load growth, designed to obtain LTTRs, and how to protect against such gaming of the system.” We suspect that such concerns are overstated as transmission organizations, with ample data regarding historic load-growth trends and substantial

expertise in predicting load growth, should be able to detect substantial departures from normal load-growth estimates.

In any case, additional mechanisms exist to protect against abuse. As noted above, the undersigned LSEs are interested in LTTRs not for speculation or profit, but to minimize their exposure to congestion costs associated with delivery of specific resources to specific loads. Thus, TAPS has proposed dispatch-contingent option LTTRs that only generate a payment to the LSE when the resource at issue is run and do not require payment by the LSE when congestion is reversed. Alternatively, LTTR settlements could be subject to true up at year end based on actual load levels.

#### **IV. CONCLUSIONS**

As stated above, we commend the Commission and strongly support the NOPR and proposed LTTR Guidelines. We look forward to working with ISO New England and other New England market participants to develop LTTRs that comply with the NOPR and satisfy the needs of LSEs with service obligations met through long-term power supply arrangements. We urge the Commission to promptly issue a Final Rule adopting the proposed Guidelines and requiring the submission of compliance filings within six months of issuance of the Final Rule.

Respectfully submitted,

/s/ Jeffrey A. Schwarz

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March 13, 2006

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# ATTACHMENT

# VERMONT PUBLIC POWER SUPPLY AUTHORITY

P.O. Box 298 • 5195 Waterbury-Stowe Rd. • Waterbury Ctr., VT 05677-0298  
(802)244-7678 Fax (802)244-6889

5 August 2005

Mr. Kevin Kirby, Vice President  
ISO-New England

Re: Long Term Transmission Rights

Dear Kevin:

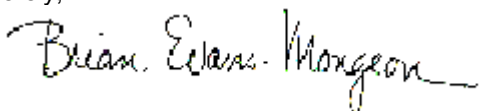
Vermont Public Power Supply Authority ("VPPSA"), on behalf of itself, many New England public power systems, and load serving utilities in Vermont; requests that the Markets Committee create a working group to investigate, design, and implement Long Term Transmissions Rights ("LTTRs") for use in the New England electricity market. VPPSA and many other load serving entities who are obligated to maintain contractual commitments to serve load, will not be able to execute long term contracts if we can not secure LTTRs. LTTRs act as a hedge against long term unknown congestion charges and will allow us to enter into agreements to meet future obligations.

National groups like American Public Power Association (APPA) and the Transmission Access Policy Study Group (TAPS) (VPPSA is a member of both) have been instrumental in advocating for the creation of LTTRs. Most public power entities do not have open retail access and have retained the commitment to meet the native load requirements of their customers. In today's electric marketplace where there is a predominance of open retail access and Locational Marginal Pricing (LMP), public power entities are finding it increasingly difficult to commit to or purchase electricity from power generation projects for the long term. Further, most generating facilities are being developed outside of the public power communities. I have enclosed the position papers from both APPA and TAPS on the subject in addition to some other materials that I feel will be useful. As a result of their efforts, the Congress in the Energy Act of 2005 instructs the Federal Energy Regulatory Commission (FERC) to "meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities and enables load-serving entities to secure firm transmission rights...on a long term basis for long term power supply arrangements..." and to do so within one year following the enactment. We understand that the President is expected to sign the Act in the very near future.

With our ability to secure LTTRs, public power communities and the load serving entities throughout New England will be able to acquire or execute agreements for the long term purchase of electricity. These commitments will assist potential developers in securing financing for the construction of new generation or the refurbishment of existing facilities. This financing will bring new energy and capacity, better emission technologies, and ancillary services to the region and enhance the reliability of the regional grid, which is one of the goals of the ISO. Therefore, by working together, we can achieve successful results for all ratepayers.

VPPSA is prepared to work with you in getting the working group operating and identifying resources necessary for the task. I look forward to talking with you about our request.

Sincerely;



Brian Evans-Mongeon