

New England States Committee on Electricity (NESCOE)

Term Sheet

September 8, 2006

Introduction:

This term sheet presents the key points of the New England states' proposal to create a *Regional State Committee* or RSC as contemplated by the Federal Energy Regulatory Commission (FERC) in their SMD White Paper.¹ The contents are taken in part from the states' revised Petition filed with the Commission in January of 2005² and from the NESCOE Plan of Organization prepared by the states in April of 2005.³ This term sheet has been created by the states to provide a readily accessible description of their plans for NESCOE and to facilitate dialogue with interested persons on the issues it raises. It reflects extensive consultations with many stakeholders in the New England region and includes many commitments designed to address their concerns. The states agree that they will seek FERC approval to create NESCOE consistent with the terms set forth herein and, if approved, will operate NESCOE in a manner consistent with these terms.

Organization:

The organization will be a not-for-profit corporation called the "New England States' Committee on Electricity" or NESCOE.

It will be directed by a committee representing the six New England States, with one or more representatives appointed by each Governor to represent their state.⁴ It will have a staff sufficient to undertake the research and analysis, communication and consultation, and advocacy necessary to achieve its mission.

Decision-making:

Regardless of the number of individuals appointed by each Governor, each state will have one, undivided vote to cast in arriving at NESCOE determinations.

¹ See SMD NOPR; "White Paper, Wholesale Power Market Platform,," FERC Docket No. RM01-12-000, April 28, 2003 ("White Paper")

² Joint Amended Petition For Declaratory Order To Form A New England Regional State Committee, FERC Docket No. EL04-112-000, January 11, 2005. ("Revised Petition")

³ NESCOE: Plan of Organization, April 2005, ("Plan of Organization")

⁴ Revised Petition, p 16

NESCOE will make policy determinations with a majority vote (i.e. ...a numerical majority [of the states]) and a majority weighted to reflect relative electric load of each state within the region's overall load.⁵

Mission:

NESCOE's mission will be to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the lowest possible price over the long term, consistent with maintaining reliable service and environmental quality. Through collaboration with stakeholders and presentation of NESCOE's views to regulators, it will advance policies which seek to facilitate the efficient development of power generation, demand management and transmission resources needed to reliably serve the electricity requirements of consumers. It will seek to accomplish its objectives in the context of a wholesale electricity market that is primarily characterized by competitive market mechanisms, subject to the constraints and directions of law, regulation and public policy.

Scope of Activities

NESCOE will be active, and express its views, in two areas: resource adequacy and system planning and expansion. NESCOE's activities are in no way intended to diminish or affect any of the responsibilities and objectives of ISO-NE or NEPOOL relating to resource adequacy or system planning and expansion, as stated in all of their governing documents. NESCOE will strive to achieve a comprehensive and integrated approach to achieving resource adequacy and system planning and expansion without relying unduly on any single resource or type of infrastructure.

Resource Adequacy: NESCOE will recommend policies and comment on proposed market rule and tariff changes related to resource adequacy, demand response and energy efficiency. NESCOE will work within the process established by ISO-NE and NEPOOL as outlined in Section 11.4 of the Participants Agreement and, more specifically, (i) provide feedback on ISO-NE's annual proposed Installed Capacity Requirement ("ICR") at the relevant NEPOOL Reliability Committee meeting, and (ii) have a representative at the NEPOOL Participants Committee at which the ICR vote will be taken, in order to present NESCOE's position.⁶

⁵ Revised Petition, p 3

⁶ The manner in which the ICR is determined is the subject of litigation brought by the State of Connecticut in the U.S. Court of Appeals for the District of Columbia, Docket No. 05-1411. The states recognize that the ICR determination process may be altered by the resolution of that litigation, which would take precedence over any commitments made here by the states on this issue.

In addition, NESCOE will work with State policy makers and legislatures to encourage the use of diverse fuels, including renewable fuels, for electricity generation, customer participation in demand response programs, implementation of cost-effective energy efficiency programs and retail pricing that aligns well with wholesale market pricing.

System Planning and Expansion: NESCOE will recommend policies designed to ensure that resources are available to provide for regional electric reliability and, where it is feasible and cost-effective, to eliminate persistent and costly congestion over transmission lines⁷ and to enable the inter-connection of generation resources. In addition, NESCOE will study and evaluate approaches to the siting of interstate transmission lines on a regional basis.⁸ On these issues, NESCOE will work with the Planning Advisory Committee, which is the Commission-approved body for providing advisory input to ISO-NE regarding the development of the Regional System Plan.

The scope of activities set forth herein can only be expanded in the future beyond resource adequacy and system planning and expansion with the unanimous approval of the six states.⁹ NESCOE would give due notice and opportunity for consultation to interested stakeholders of any proposed change in its scope of activities and will obtain approval by the Commission before acting on such a change.

NESCOE is not intended to replace or constrain the functioning of either the New England Conference of Public Utility Commissioners (NECPUC) or the Power Planning Committee (PPC) of the New England Governors Conference or the Commission-approved stakeholder processes for providing input to ISO-NE and the PTO Administrative Committee.¹⁰ NECPUC and the PPC are expected to continue to carry out many of the functions they do now and in much the same way. Nevertheless, NESCOE will make every effort to avoid duplication of efforts or conflicting policy positions with these organizations. To the extent possible, this would include joining with them to meet jointly with ISO-NE staff and other stakeholders on issues of common interests.

NESCOE will communicate regularly with NECPUC and the PPC and will seek to hold a formal coordination meeting with both groups at least once a year to discuss upcoming regional electricity policy issues and allocate lead responsibility for developing recommendations to ISO-NE and NEPOOL. The purpose of these communication measures will be to avoid conflicting recommendations and to make efficient use of

⁷ Revised Petition, p 13

⁸ Revised Petition, p 15

⁹ Revised Petition, p 11

¹⁰ For example, NECPUC and its member commissions have a jurisdiction that goes well-beyond electricity to natural gas, telecommunications, and other industries. It also has unique expertise in rate-making issues that render it far better equipped to address specific electricity rate-making issues in matters before the FERC, expertise that will not be duplicated by NESCOE. Likewise, the Power Planning Committee engages in activities that go well beyond electricity issues to all matters dealing with energy, including other fuels and uses (including for space heating and transportation).

available staff and resources. The PPC and NECPUC will be asked to relay any particular concerns to NESCOE about its jurisdiction or position on issues. NESCOE will make every effort to address and reconcile such concerns before it makes a final recommendation to ISO-NE or NEPOOL on an issue. Whenever possible, through these regular and extensive communications, decisions on these matters will be made by consensus among the two or three organizations. When that is not possible, NESCOE will use its formal voting method to determine whether a matter is within its scope of activities, or to develop its recommendations on matters within its scope of activities.

Consultation and Dispute Resolution:

NESCOE will consult regularly and substantially with ISO-NE, the Participating Transmission Owners (“PTO”) Administrative Committee, the PAC, NEPOOL participants and other interested stakeholders on matters within its scope of activities. A primary means to accomplish this result will be NESCOE’s functioning as an “Individual Participant” in NEPOOL advisory activities. Thereby NESCOE would engage in regular and active participation in the established NEPOOL and PAC stakeholder consultation process. NESCOE would submit any policy proposals it plans to initiate to these organizations’ review processes and, where applicable, would bring those proposals to the NEPOOL Participants Committee for an advisory vote.¹¹ In so doing, NESCOE will make every effort to avoid duplication of consultative processes with these particular stakeholders. NESCOE also may, from time to time, undertake additional consultations or inquiries as it may find necessary and useful. To the extent this arrangement would benefit from being addressed explicitly in the Second Restated NEPOOL Agreement and/or the Participants Agreement, NESCOE would endeavor to reach agreement with NEPOOL and ISO-NE on implementation of those changes as soon as possible. In the event NEPOOL does not support a NESCOE policy proposal following this review and advisory vote, NESCOE reserves the right to pursue this policy proposal independently. More generally, in any instance when ISO-NE, the PTO Administrative Committee, NEPOOL participants and other interested stakeholders file proposed actions with the FERC concerning matters within the scope of NESCOE’s activities, NESCOE reserves the right to intervene in such proceedings and file comments with the FERC stating NESCOE’s views of the proposed action.

Following the consultations described above, including completion of the NEPOOL review and advisory voting process, NESCOE may seek a formal commitment from ISO-NE to pursue implementation of NESCOE’s recommendation. Depending upon the nature of the NESCOE recommendation, NESCOE will request a written response from ISO-NE within a reasonable time frame as to whether ISO-NE intends to implement the recommendation or, if ISO-NE will not pursue implementation of the NESCOE recommendation, an explanation as to why not. If ISO-NE does not commit to

¹¹ In the event that NESCOE supports a market rule change different from a change proposed by ISO-NE, NESCOE would seek a vote of NEPOOL on the proposal. If NEPOOL supports NESCOE’s proposal, the proposal will be subject to the “jump ball” filing provisions set forth in Section 11.1.5 of the Participants Agreement. .

pursue implementation of the NESCOE recommendation or proposes a schedule for implementation which is not acceptable to NESCOE, NESCOE will allow a reasonable period of time to attempt to resolve the matter with ISO-NE (and NEPOOL, if applicable) to the parties' mutual satisfaction. If the consultations described above and any further efforts to resolve the matter do not produce a resolution satisfactory to NESCOE, NESCOE may then forward as appropriate its recommendation directly to the FERC for action, including by means of one or more filings pursuant to Section 206 of the Federal Power Act. NESCOE will only take such action following a prevailing vote, determined in accordance with its formal voting process, and consultation with ISO-NE and NEPOOL in the manner outlined above.

NESCOE will not use litigation as a primary means to accomplish its mission, but rather, whenever possible, collaborate with stakeholders to achieve negotiated resolutions that address its concerns. Nevertheless, NESCOE reserves the right to use litigation to accomplish its mission if all attempts at negotiation and formal dispute resolution fail to do so.

Operating Expenses:

It is likely to take five years for NESCOE to reach its steady-state size and full capabilities. A first year staff of 3 persons would include the Executive Director and most of the senior staff. This staff is expected to grow to a total of 7 individuals in year five.

Salaries and benefits are anticipated to cost just over \$430,000 in the first year and rise to \$1.2 million in year five. Consulting services for economic, financial and engineering analyses along with legal service are anticipated to cost on average \$350,000 per year over the five years. Operational expenses including rent and utilities, office equipment leases, fees for accounting and information technology assistance and travel are expected to average in total¹² about \$200,000 per year. Allowing for a contingency at ten percent of expenses, the annual operating budget is expected to be approximately \$930,000 in the first year and rise to slightly more than \$2 million in the fifth year. At no time will NESCOE seek approval of a budget in excess of \$1.4 million per year in its first two years of operation and no more than \$2.2 million in its third through fifth year of operation.

Not later than the end of year four of its operations, NESCOE will present a framework for its annual budgets for years six through ten of its operations to the NEPOOL Participants Committee, the PTO Administrative Committee and ISO-NE for their review in the manner described in the next section ("Budget Timeline"). In the absence of agreement with at least the NEPOOL Participants Committee to the contrary, this framework will call for annual budgets that do not increase more than 15% in any one year and do not increase more than 50% on a cumulative basis over that five year period.

¹² Revised Petition, p 3

Unless altered or eliminated by agreement with at least the NEPOOL Participants Committee, NESCOE will continue to propose and obtain FERC approval of five-year budget frameworks following a consultative process similar to that described in this section as long as its operations continue. In light of the fact that five-year budget frameworks for NESCOE's operations will be established by agreement with these three organizations and/or by approval of the FERC, the annual review of its proposed budgets by at least the NEPOOL Participants Committee will be limited to considerations of accounting and reconciliation, so long as spending remains within the boundaries established by those frameworks.

NESCOE will develop an operating budget recommendation for each year in consultation with NEPOOL, the PTO Administrative Committee and ISO-NE within the boundaries of the then-approved five year budget framework following a process and timeline as described in the next section.

Each year NESCOE will produce a "Report to the New England Governors" that will document its accomplishments from the preceding year and its projected policy priorities for the coming two years. This report will be public and shall be released to NEPOOL and ISO-NE simultaneously with its release to the New England Governors. This report will include a full accounting of spending by NESCOE during the preceding year and proposed budgets for each of the upcoming two years. Before NESCOE submits its proposed budget for the upcoming year to the FERC for approval, it will take a formal vote of the member states according to the voting methodology described above in the "Decision-Making" section to provide a public record of the states' positions on that budget.

Budget Timeline:

NESCOE would coordinate its budget process with the budget cycle that ISO-NE currently uses for its annual administrative expenses recovery filing with the Commission. The schedule below is a rough approximation of this timeline.

June	Draft budget prepared for the coming calendar year
August	Draft budget presented to NESCOE Board for review & analysis
September	Proposed budget presented to ISO-NE and NEPOOL Budget & Finance Subcommittee for review, input, and recommendations
October (begin)	Presentation of proposed budget to NEPOOL Participants Committee for review, input, and advisory vote.
October (mid)	Proposed budget to NESCOE Board for approval

No later than October 20	Filing to be prepared by NESCOE and submitted to ISO-NE; ISO-NE will use its best efforts to file any late submissions by November 1.
November 1	Adopted budget filed by ISO-NE in a stand-alone filing with the Commission.
January 1	Requested effective date

Within this time frame, NESCOE will also seek input from interested stakeholders and provide ISO-NE and stakeholders an opportunity to provide comments. Ultimately, NESCOE has the responsibility to justify to FERC that its budget is just and reasonable.

If a significant concern arises during ISO-NE's and/or the NEPOOL review of the NESCOE budget, ISO-NE and/or the NEPOOL Participants Committee may request an audit/review of NESCOE's activities and spending by an independent and qualified management consulting firm. Such firm shall be chosen by agreement of NESCOE, ISO-NE and the Participants Committee and paid under a contract with NESCOE. The scope of the audit/review and methods used by the management consulting firm will be agreed upon by NESCOE, ISO-NE and the Participants Committee. This review will culminate in a report that will be made available to stakeholders in draft form, with an opportunity for them to comment before it is made final by the management consulting firm. The finalized report shall be formally transmitted to the Governors, ISO-NE and NEPOOL in the context of NESCOE's annual "Report to the Governors."

For its first year of operation, NESCOE's budget review process may not align exactly with the annual ISO-NE budget review cycle. In this event, NESCOE will endeavor to complete each of the steps in the review process outlined above in the most expeditious manner possible.

Cost Allocation and Revenue Collection:

ISO-NE in a filing to be joined by the six New England States will seek FERC approval for a tariff mechanism that will enable funding sufficient to cover NESCOE's costs to be collected from all Regional Network Load. Costs associated with NESCOE's activities would be collected by ISO-NE from all Regional Network Load through a new schedule included in Tariff Section IV.A¹³ As defined by Section II.1.110 of the Tariff, Regional Network Load includes the load designated by all Network Customers. The filing will seek FERC approval for classification of all of NESCOE's costs as "Regulatory Costs" for purposes of cost recovery.

¹³ "Budget Process, Cost Allocation and Stakeholder Coordination..." Communication from Transmission Owners, July 26, 2005 "...Schedule 1 charges are billed directly by the ISO to Network Load (all regulated utility companies and municipal loads). The billing determinants for Schedule 1 are the monthly Network Load, and the Reserved Capacity of Point-to-Point Transmission Service. Schedule 1 revenues collected from Point-to-Point Transmission Service customers are credited to each Network Customer's monthly Network Load in that month."

Under this arrangement, NESCOE's annual budget will not need the approval of ISO-NE nor will ISO-NE be required to defend the specifics of the tariff filing or the budget. More specifically, in its filings with the FERC related to NESCOE's costs, ISO-NE will support the collection of costs of NESCOE, in general, but will not take any position on the specific budget or costs of operation proposed by NESCOE. NESCOE will lead (and fund) any necessary defense of the specifics of its annual budget proposal and any other of its filings.

Updates to the NESCOE rates would be filed by ISO-NE, separately from ISO-NE's own budget updates. NESCOE will work with the PTO Administrative Committee and ISO-NE to arrive at exact language to facilitate the collection of funds from all Regional Network Load.

Revenue would be forwarded by ISO-NE to NESCOE on a schedule and in amounts consistent with NESCOE's FERC-approved budget. Over- or under-collections in a current year relative to amounts actually spent will be reconciled in the following year's budget.

Cost Recovery:

Participating Transmission Owners (as defined in the Transmission Operating Agreement) and their Distribution Affiliates that serve Network Load must have the ability to recover all costs they pay out for NESCOE activities, not just those costs that might be narrowly defined as "transmission related."

Upon request of the PTO Administrative Committee or an individual TO, NESCOE will file comments and documentation in a rate-making proceeding before any New England state public utility commission that support cost recovery of NESCOE-related costs in retail rates, and will generally support the TOs' collection of all NESCOE costs through filings, letters, and consultations with each state regulatory agency, will request ISO-NE to classify all NESCOE costs as "Regulatory Costs," will support a finding by FERC that NESCOE costs are prudent, just and reasonable as "Regulatory Costs," and will support any tariff amendments needed to effectuate cost recovery.