COMMENTS OF PAUL HIBBARD TO NEPOOL PARTICIPANTS' COMMITTEE
Manchester, VT – March 6, 2009

Good morning everyone, and thanks for giving us this opportunity to talk. There are two areas I'd like to discuss here – one is price responsive demand, and the other related to the role of ISO, states, and FERC in infrastructure investment and resource planning.

Price Responsive Demand

NECPUC appreciates the effort that ISO and stakeholders have put into addressing the price responsive demand question. Needless to say, as a market mechanism that holds out promise to improve competitive wholesale market efficiency, reduce consumer costs, encourage innovation in our energy economy, and mitigate the ultimate cost of compliance with future carbon control regimes, an aggressive, effective, and reliable price responsive demand in our region is among our highest priorities.

The bottom line of NECPUC's position, given the importance of this issue to ALL of the states, is DON'T RUSH. We believe that now is not the time to draw conclusions about specific approaches, nor is it the time to put the question before FERC in a technical conference. As states we do not feel the issues have been adequately vetted, and we are confident that the states, ISO, and regional stakeholders in this room are more than capable of vetting the issues in a timely manner, and coming to a result that is not only the best result for our region, but one that will be a model for price responsive demand across the country.

And it's no secret that all of our states are casting about for ways to increase price responsive demand at the retail level. ISO at times will point to the states and saying this is a retail pricing problem, and asks why states have not solved it at the retail level. This is a valid question, but it's important to keep in mind a couple things here: state regulators balance a wide range of ratemaking policies and precedent, including fairness, continuity, equity, simplicity, and the like. So while we are now looking at electricity pricing programs with a sense of urgency, we also face legitimate policy and temporal constraints to establishing pricing in a way that would lead ONLY to the most efficient outcome from a pricing perspective. The other point is that, even with perfect pricing designs, significant market barriers to the optimal level of demand response would remain, and given the importance of getting this right – for markets, for consumers, and for the environment – it is incumbent on all of us to work harder at it.

So NECPUC is unanimous as a group in urging the region at this time to continue to work at this, to not foreclose any option – whether already discussed or others that may be thought of, and to dig into this through continued regional deliberations WITHOUT or BEFORE taking the step of putting it before FERC in a technical conference. If any of you are interested in seeing NECPUC's comments, they have been sent to ISO, and may be posted, or you can contact NECPUC Executive Director, Bill Nugent.

Resource Planning

There is one other item I would like to raise before this group. And I ask you to bear with me a bit, because at this point it really isn't more than a not-well-formed level of discomfort I have floating around a number of things that are going on simultaneously within and outside our region. The discomfort is loosely related to what I perceive as a general level of confusion or anxiety regarding the roles of states, ISO, NEPOOL stakeholders and FERC on questions of resource planning (including transmission planning), market administration, cost review responsibilities, and the propagation of energy and environmental policy. Basically, I believe a series of efforts are leading us toward a future where states have fully abdicated authority over electricity resource planning to the federal government.

This abdication comes in the form of transfer of evaluations of cost-effectiveness, resource alternatives, and potentially non-reliability transmission siting and cost allocation to the FERC, through the ISO.

The most obvious example of this risk is the inclusion in the stimulus bill of expansion of DOE congestion study siting to include generation interconnection projects that are at least on paper, or by way of intention, related to production from renewable sources. Add on to this the active consideration before at least the Senate of a bill directed at giving FERC exclusive or at least backstop siting authority for ALL transmission, not just transmission deemed critical to address system reliability concerns, with the stated goal of fostering development of renewable power.

But just to bring it closer to home, let's focus for a moment on the efforts within our region related to the ISO mission statement and the efforts to increase accountability for costs in the build out of transmission within the region. While in my mind potential outcomes of these efforts could equally represent a transfer of resource planning authority to the feds, they stem from very real concerns of many in the region. Fundamentally, ratepayer advocates and utility regulators are monumentally frustrated with the lack of a forum to review investments in transmission that have amounted to, and will amount to, tens of billions of dollars of electricity cost increases within our region over the period of a decade or so.

The ultimate authority on wholesale markets and interstate transmission investment rests with FERC. FERC's approval of revenue requirement is required for those expenses to flow through transmission rates. And FERC's determination of competitiveness in wholesale markets and wholesale market designs is necessary for the conclusion that the rates that flow from such markets are just and reasonable. Of course, in many ways, the authorities and responsibilities of FERC from a rate perspective are virtually identical to those of us who sit in state utility commissions, so naturally we look to our own review of state-jurisdictional investments to find the forum in which the prudence of utility investment, the usefulness of utility investment, and the containment of utility costs is carefully reviewed, vetted, and ultimately reflected in rates.

The problem is, it is extremely difficult to find that forum with respect to FERC-jurisdictional costs. Instead, there is a perception of FERC being a rubber stamp on infrastructure investment, a feeling that there is little that states, consumer advocates, business organizations, municipal electric light companies, etcetera, can do to gain a measure of comfort that such investments are needed, prudent, and useful. And I am not a lawyer, so I'm straying way out of my area of expertise, but it appears there is or will be little in the way of a contested proceeding related to major investments. Even worse, if I understand it correctly, the burden of proof is fundamentally different. Namely, the burden is not on the proponent of investment recovery that the investment is prudent and useful; instead, it is essentially on the complainant that the investment is not.[1] For state regulatory agencies, many consumer advocates, and certainly individual business interests, this burden, before FERC, on transmission, is simply too steep of a hill to climb.

Nevertheless, that is exactly where the forum does, and should, exist. At FERC. But faced with the reality of a lack of effective voice at the federal level, we are finding ourselves looking to ISO, or even more to the point, to NEPOOL committees and stakeholder processes, as a vehicle for vetting investment dollars. But neither ISO nor NEPOOL stakeholder processes carry that authority. ISO facilitates the planning for reliability transmission projects, and the stakeholder processes provide for a high-level of discussion around system need and overall cost, but they cannot and should not be the forum for determination of investment prudence, cost efficiency, or for any form of regulatory approval. They do not have that authority, should not have that authority, and cannot have that authority.

But here is where it gets really confusing, at least for me. From a certain point of view, the aim at ISO and the NEPOOL stakeholder process is not entirely off the mark. One of the reasons climbing the burden hill at FERC is so difficult is because when one heads down that path, FERC can point to ISO's transmission planning, and to vetting within the transmission, reliability and participants committees as representative of a regional stakeholder vetting process, and as a major contributor to their determination that recovery of the investment leads to just and reasonable rates. So in some sense, it's a chicken or egg problem. There is no formal or enforceable process for vetting infrastructure investment dollars within the regional planning and stakeholder processes, but when you get to FERC their existence can effectively constitute evidence of investment prudence and just and reasonable rates.

So obviously this is why many in the region are frustrated, and I simply don't know what the answer is. I tend to think the only real and legally appropriate path is to push at FERC on the fundamental cost vetting issues before us. FERC needs to hear that the ISO planning and NEPOOL stakeholder processes do not provide an opportunity for due process and do not address the fundamental prudence, cost-effectiveness, and usefulness determinations that should be the foundation of FERC cost recovery

[1] Technically, I understand that the burden on the complainant is not to show that the investment is imprudent but to cast a serious doubt as to the prudence of the expenditures at which point the burden does shift to the utility. Nonetheless, given consumer advocates and state regulators limited access to information that could be a basis for casting such doubt, the burden remains extraordinarily high.

approval findings, and that there needs to be an effective, deliberative review of transmission investments before the agency.

So the question remains, what can we do within our regional processes to give regulators and others within New England some degree of comfort around transmission investment, and more importantly, a level of information gathering that can help in bringing the issue before FERC? Chairman Getz's group has made a great deal of progress in its review of this issue, and I urge all of us to continue to work towards something that can address our concerns on this.

But we must not let this distract us in a way that introduces fundamental confusion over the proper roles of states, ISO, stakeholders and the federal government regarding resource planning. Unfortunately, it seems to me that this is where it is headed. This level of frustration with the proper vetting of major transmission investment and the focus of transmission planning is leading some to suggest that review of cost-effectiveness and cost-benefit analyses should be part of the ISO's mission, and that mission should include the review of non-transmission alternatives. This would be a grave mistake for at least two reasons.

First, while on the face of it, this would seem to provide a hook within our region for the review of transmission costs, it in fact can never provide the level of local resource planning analysis that goes on within our states, and it can never provide the level of due process review of transmission investments that we need to seek before the entity with statutory review of such costs – namely, FERC. And second, I ask you all to consider what it would mean to vest with ISO the requirement or authority to review transmission projects and transmission project alternatives – whether distributed generation, demand-side resources, or central-station generation, subject to the requirement that ISO identify the "best" option – whether the result of a cost-benefit analysis or through some cost-effective or least-cost determination. Ultimately, it can represent an abdication of state authority over resource planning, and a transfer of that authority to ISO, subject of course to review and approval of FERC.

It is and should be at the state level that we determine, in consideration of our energy and environmental policies and goals, what types of electricity resources – whether efficiency, local renewables, large-scale renewables, or market-based generation additions – are brought forward to meet growing demand. For these reasons, ISO's responsibilities must not extend beyond administration of the tariff, administration of market rules, administration of regional billing, and planning for backstop transmission solutions needed for reliability. To inject cost-effectiveness evaluations, cost-benefit analyses, or evaluation of transmission alternatives into ISO's mission will only confuse their proper place in our region's market, interfere with the critical role they do play, and transfer fundamental state resource planning responsibilities to the federal government.

So, I'll just wrap up by saying that, we sit here at an incredible moment, one where there is a huge opportunity for transformation of the way that we produce, deliver, and consume electricity. And, in this moment, federal and state governments will be making decisions that we will need to live with for the rest of our lifetimes. I fear our current, legitimate concerns over transmission costs may be leading us to answers that transfer resource planning authority out of states in a way that is not in the best interest of our region. We need to think carefully about the message that sends, particularly at a time when what we see happening in Washington is similarly geared towards transfer of resource planning authority, from states, to DOE and FERC, with the potential result that our future electricity needs are not met through state energy and environmental policy, state resource planning, or local resource additions, but instead through an avalanche of power transported from coal, nuclear, and yes – possibly some renewable generation – from thousands of miles away. We should consider carefully whether this is the best result for New England, and if not, what our appropriate response should be.