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October 3, 2007

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: ISO New England Inc., Docket No. RT04-2-___; Motion for Limited Waiver

Dear Ms. Bose:

Transmitted electronically for filing is the Motion for Limited Waiver of ISO New England Inc. in the above-captioned docket.

If there are any questions concerning this filing, please call me at (202) 661-2205.

Very truly yours,

/s/ Howard H. Shafferman

Howard H. Shafferman
Counsel for
ISO New England Inc.

Enclosure

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc., *et al.*)

Docket No. RT04-2-____

MOTION FOR LIMITED WAIVER OF ISO NEW ENGLAND INC.

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), 18 C.F.R. § 385.212 (2007), ISO New England Inc. (the “ISO”) hereby moves for a limited waiver of the provisions of 18 C.F.R. § 35.34(j)(1)(iv)(A), which require an audit of the independence (an “Independence Audit”) of the ISO’s decision-making process as a Regional Transmission Organization (“RTO”).

The ISO respectfully requests expedited consideration of this waiver request, due to the limited window of availability (i.e., between now and November) of the audit firm that the ISO would use to conduct the audit in the event the waiver request is denied.

I. BACKGROUND

The Independence Audit requirement for RTOs is stated in 18 C.F.R. § 35.34(j)(1)(iv)(A), part of the core FERC regulations governing RTOs. Specifically, that rule states, in relevant part:

- (iv)(A) The Regional Transmission Organization must provide:
 - ...
 - (2) With respect to any Regional Transmission Organization in which market participants have a role in the Regional Transmission Organization’s decision making process but do not have an ownership interest, a compliance audit of the independence of the Regional Transmission Organization’s decision making process under paragraph (j)(1)(ii) of this section, to be performed two years after its approval as a Regional Transmission Organization.

In turn, Section 35.34(j)(1)(ii) states the focus of the audit:

The Regional Transmission Organization must have a decision making process that is independent of control by any market participant or class of participants.

Section 35.34(j)(1)(iv)(B) states that:

The compliance audits under paragraph (j)(1)(iv)(A) of this section must be performed by auditors who are not affiliated with the Regional Transmission Organization or transmission facility owners that are members of the Regional Transmission Organization.

Read together, these three subsections would require the ISO to retain a non-affiliated auditing firm to review the independence of its decision-making process, now that the ISO has completed two years as an RTO.¹

To date, Independence Audits have been performed with respect to two RTOs: PJM and the Midwest ISO. In both cases, as permitted by Commission order,² the Commission's audit staff performed the audit. This methodology was utilized because Commission audit staff was already performing an audit of each of those RTOs, and requiring the RTOs to perform their own Independence Audit would thus have been duplicative.³

The required scope of an Independence Audit is described in the audit report issued in connection with the Midwest ISO:

Specifically, we reviewed Board member independence, securities divestiture policies, prohibitions to affiliations with market

¹ See *ISO New England Inc.*, Order Authorizing RTO Operations, 110 FERC ¶ 61,111 (2005).

² See *PJM Interconnection, L.L.C.; Midwest Independent Transmission System Operator, Inc.*, Order Clarifying Audit Requirement, 106 FERC ¶ 61,168 (2004) (the "Independence Audit Clarification Order"). At the completion of PJM's audit, an order was issued on delegated authority indicating that there were no findings or recommendations that required corrective action. See Letter Order issued on December 20, 2005 in Docket No. RT01-2-013.

³ *Id.* at P 5.

participants, Board and RTO Committee policies, and RTO decisional processes.⁴

II. REQUEST FOR LIMITED WAIVER

The ISO hereby moves for a limited waiver of the Independence Audit requirement. Specifically, the ISO requests that the audit be: (i) postponed until such time at which Commission auditors are performing their next audit of the ISO;⁵ and (ii) conducted by Commission auditors. For the reasons outlined below, grant of this limited waiver would be appropriate from a policy perspective, and would be consistent with Commission practice to date.

Efficiency: It is apparent from the Independence Audit Clarification Order that it is efficient to combine a review of an RTO's independence with reviews of compliance by public utilities with other regulatory requirements.

Efficacy: Commission auditors have a degree of impartiality for conducting Independence Audits equivalent to that of a private-sector, but unaffiliated, audit firm.

Conservation of RTO financial resources: Grant of the waiver would avoid the expenditure of RTO funds to retain a non-affiliated audit firm to perform an "agreed-upon procedures" review, as it is denominated in the accounting industry. The avoided expenditure would contribute to cost savings for ISO ratepayers, as well, due to the true-up provisions of Section IV.A. of the ISO's tariff.

⁴ See delegated letter order issued in Docket No. RT01-87-009 on January 20, 2006, to which the audit report (including MISO's response) is attached. The quotation is from page 2 of the audit report.

⁵ The most recently conducted audit of the ISO covered the period from January 1 through December 31, 2004 (just prior to the ISO's becoming an RTO), and was closed by delegated letter order issued June 1, 2005 in Docket No. FA04-17-000.

Absence of pressing substantive need: There are no pending complaints or other proceedings regarding the independence of the ISO's decision-making as an RTO, or regarding any of the issues that were reviewed by the Commission's audit staff in performing the Independence Audit of the Midwest ISO. Indeed, in its September 14, 2007, comments on the Commission's Advance Notice of Proposed Rulemaking in Docket Nos. RM07-19-000 and AD07-7-000 (the "ANOPR"), the ISO's stakeholder advisory body, the New England Power Pool Participants Committee ("NEPOOL") expresses satisfaction with regional decision-making processes:

NEPOOL is in complete agreement with the Commission that RTOs and ISOs should remain not only independent, but also responsive to their stakeholders. NEPOOL further acknowledges that these dual functions may be in tension and not always easily balanced. NEPOOL also agrees that it is important for stakeholders to have efficient and meaningful communications with their RTO or ISO boards. *With respect to these issues, New England has implemented a model that allows for flexible evolution of changes to balance independence and responsiveness. NEPOOL recommends this model for consideration for other regions.* New England has a well-developed, highly functional stakeholder process for providing input to, and collaboration with ISO-NE. As part of this process, NEPOOL has made great strides over the past few years to develop and enhance the communications it has with ISO-NE Board members, including consistently working to evaluate and improve upon the forms of those discussions. In many respects, NEPOOL already has the "direct board access" to the ISO-NE Board that was encouraged by the Commission in its ANOPR. NEPOOL also is opposed to modifying the ISO-NE Board structure to include stakeholder representatives on the ISO-NE Board.⁶

⁶ See Comments of NEPOOL Participants Committee on the ANOPR on Wholesale Competition in Regions with Organized Electric Markets, Docket Nos. RM07-19-000, AD07-7-000, at p. 34 (September 14, 2007) (the "NEPOOL Comments").

As stated in the NEPOOL Comments (at p. 3), "NEPOOL comments have been distilled to those points on which there is consensus and do not reflect additional views voiced by some market participants and representatives of state regulatory agencies that go further on some points but without the same broad support. Further, the much appreciated participation by state regulator representatives was with the

(continued...)

Section 15 of the Participants Agreement provides for “performance audits” of the ISO, specifying that:

At the request of the Participants Committee, ISO shall engage an independent third party to be chosen by mutual agreement of ISO and the Participants Committee to conduct a periodic audit of ISO’s performance and shall cooperate fully in the conduct of such audits.

The scope of a performance audit could certainly encompass a review of the same factors considered as part of an Independence Audit. Thus, market participants have a mechanism to pursue a review of the ISO’s independence, should that need arise before the Commission’s audit staff performs its Independence Audit of the ISO. Significantly, to date, the NEPOOL Participants Committee has not requested the ISO to engage an auditor for a performance audit.

More fundamentally, the issuance of the ANOPR in itself indicates that the Commission is currently engaged in a reassessment of the independence requirements for RTOs and ISOs. A brief delay in the conduct of an independence audit for the ISO will permit the benefits of that reassessment to be taken into account in the audit.

Consistency with Commission practice to date: The only Independence Audits conducted to date – for PJM and the Midwest ISO – have been performed by Commission auditors. Grant of the limited waiver will permit the Commission to evaluate the ISO’s independence using the same techniques and standards applied to other RTOs.

(...continued)

understanding that such participation was to inform both market participants of the perspectives of regulators and regulators of the perspectives of market participants. The ultimate positions of some market participants and state regulators will be reflected in statements, if any, that they file with the FERC.”

The ISO recognizes, in particular, that Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company have submitted ANOPR comments (at pp. 12 ff.) that call for greater ISO *accountability*; however, these comments do not call into question the sufficiency of the *independence* of the ISO’s current decision-making processes from control by market participants or a class of market participants, such as is at issue in an Independence Audit.

III. COMMUNICATIONS

In addition to serving the parties to this docket, the ISO is also serving copies of the motion on the NEPOOL Participants (electronically, in accordance with Section 17.11(e) of the Participants Agreement) and on the Governors and utility regulatory agencies of the six New England states (by hard copy) and on Non-Market Participant Transmission Customers of the ISO.

Correspondence and communications regarding this filing should be addressed to the undersigned as follows:

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IV. CONCLUSION

For the reasons stated herein, the ISO respectfully requests that the Commission grant this motion.

Respectfully submitted,

/s/ Maria A. Gulluni

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Counsel for ISO New England Inc.

Dated: October 3, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 3rd day of October, 2007.

/s/ Pamela S. Higgins
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