
601 13th Street, NW
Suite 1000 South
Washington, DC 20005-3807
TEL 202.661.2200
FAX 202.661.2299
www.ballardspahr.com

March 9, 2010

BY ELECTRONIC FILING

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

Re: ISO New England Inc. and New England Power Pool; Docket No. ER09-1051-002; Motion for Leave to Answer and Answer of ISO New England Inc.

Dear Ms. Bose:

Enclosed for electronic filing in the referenced docket is the Motion for Leave to Answer and Answer of ISO New England Inc.

If there are any questions concerning this filing, please call me at (202) 661-2212.

Very truly yours,

/s/ Daniel R. Simon

Daniel R. Simon
Counsel for ISO New England Inc.

Enclosures

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

**ISO New England Inc. and
New England Power Pool**

)

Docket No. ER09-1051-002

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF ISO NEW ENGLAND INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 and § 385.213 (2009), ISO New England Inc. (the “ISO” or “ISO-NE”) submits this Motion for Leave to Answer and Answer to the February 22, 2010 rehearing request (“Rehearing Request”) of the Connecticut Department of Public Utility Control (“CT DPUC”); Richard Blumenthal, Attorney General for the State of Connecticut (“CT AG”); and the Connecticut Office of Consumer Counsel (“CT OCC”) (collectively, the “Connecticut Representatives”) of the January 21, 2010 order¹ accepting the April 28, 2009 filing submitted by the ISO and the New England Power Pool (“NEPOOL”) Participants Committee in compliance with Order No. 719 (“Compliance Filing”).

I. MOTION FOR LEAVE TO ANSWER

Because an answer is not normally permitted in response to a rehearing request,² the ISO moves, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2009), for leave to accept this answer. Although the Commission’s rules do not normally permit answers to rehearing requests, the Commission often waives this prohibition for

¹ *ISO New England Inc.*, 130 FERC ¶ 61,054 (2009) (the “Compliance Order”).

² *See* 18 C.F.R. § 385.213(a)(2) (2009); 18 C.F.R. § 385.713(d)(1).

good cause shown.³ The Commission has found good cause, for instance, when an answer provides information that assists the Commission in its decision-making process,⁴ narrows or clarifies important issues,⁵ or responds to a rehearing request that raises an issue of fact.⁶ This answer satisfies this test for good cause.⁷ Specifically, the ISO submits this brief answer because the Rehearing Request mischaracterizes both relevant Commission orders and the nature of the Connecticut Representatives' market monitoring reform requests.

II. ANSWER

A. The Commission Has Comprehensively Addressed the Concerns Raised in the Rehearing Request

In multiple proceedings, the Connecticut Representatives have asked the Commission to require the ISO to implement market monitoring reforms beyond those included in the Compliance Filing.⁸ The Connecticut Parties have argued that the market monitoring structure proposed in the Compliance Filing is insufficient and fails to satisfy the intent of the Order No. 719 reforms,⁹ and that the ISO should be required to adopt reforms beyond those proposed in the

³ See, e.g., *Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,007 at P 10 (2007).

⁴ See, e.g., *id.*; *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210 at P 17 (2005).

⁵ See, e.g., *Consumers Energy Co.*, 110 FERC ¶ 61,317 at P 13 n.16 (2005); *Sound Energy Solutions*, 107 FERC ¶ 61,263 n.37 (2004).

⁶ See, e.g., *SFPP, L.P.*, 117 FERC ¶ 61,275 at P 2 (2006).

⁷ See, e.g., *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210 at PP 10 & 17 (accepting an answer to respond to a misleading rehearing request); *Northwest Pipeline Corp.*, 95 FERC ¶ 61,029 at p. 61,092 (2001) (same).

⁸ Notice of Intervention and Comments of the Connecticut Department of Public Utility Control (filed May 26, 2009). (“Connecticut Representatives Comments”); The Connecticut Representatives’ Consolidated Amended Complaint Seeking an Investigation, Hearing, Disgorgement, and Penalties, Docket Nos. EL09-47 and EL09-48 (filed May 22, 2009) (the “Complaint”).

⁹ Notice of Intervention and Comments of the Connecticut Department of Public Utility Control at 15 (filed May 26, 2009). (“Connecticut Representatives Comments”) (“By focusing on the minimal requirements for technical compliance instead of implementing the Commission’s intent in adopting the Order No. 719 reforms, ISO-
(continued...)”) (continued...)

Compliance Filing because of certain prior actions by the ISO's Internal Market Monitoring Unit ("INTMMU").¹⁰ In multiple orders, the Commission declined to adopt the additional reforms recommended by the Connecticut Representatives.¹¹

The Connecticut Parties now seek rehearing of the Compliance Order. The Rehearing Request asserts that "the Connecticut Representatives, through their comments in this proceeding, did not seek to alter any of the provisions of Order No. 719."¹² The Rehearing Request also claims that the Commission has failed "to confront the Connecticut Representatives comments demonstrating that the structure of the ISO-NE's current market monitoring function does not ensure that its market monitors can identify and resolve potential non-competitive behavior or ineffective market rules in a timely manner."¹³ These two arguments mischaracterize both the Connecticut Representatives' recommended reforms and the Commission's orders. Together, the Compliance Order and the Compliant Order comprehensively addressed the Connecticut Representatives' objections to the ISO's market monitoring structure.

The Compliance Order appropriately considered but declined to adopt the additional reforms recommended (yet again) in the Rehearing Request. For instance, the Rehearing Request

(...continued)

NE has actually weakened its market monitoring function by creating less independence and transparency than before."); Complaint at 35 ("In fact, by focusing on technical compliance instead of implementing the Commission's intent in adopting the Order No. 719 reforms, ISO-NE's proposed compliance filing actually weakens the market monitoring function by creating even less independence and transparency than before.").

¹⁰ See, e.g., Connecticut Representatives Comments at 10-13; Complaint at 32-40.

¹¹ Compliance Order at PP 133-37; *Richard Blumenthal, Attorney General for The State of Connecticut v. ISO New England Inc.*, 128 FERC ¶ 61,182 at P 57 (2009) ("Complaint Order").

¹² Rehearing Request at 16.

¹³ *Id.* at 1-2; see also, e.g., *id.* at 1 (arguing that the Compliance Order "disregarded structural flaws in [the ISO's] market monitoring function that permitted it to condone blatantly non-competitive energy market offers for more than two years"); *id.* at 13 (arguing that the Commission allegedly overlooked a pledge in the Complaint Order by limiting its analysis in this proceeding to the "nominal requirements of Order No. 719").

contends that the INTMMU is not truly independent if it remains part of the ISO organization.¹⁴ The Compliance Order correctly rejected this argument because, as the ISO Answer explained,¹⁵ Order No. 719 allows a regional transmission organization (“RTO”) to retain an internal market monitor that reports directly to the RTO’s board of directors.¹⁶

The Rehearing Request also asserts that, under the ISO’s hybrid structure, “the external market monitor cannot perform its review functions when, as a practical matter, the internal market monitor dictates whether and when it will make necessary information available.”¹⁷ To be clear, this statement is inaccurate, for the Compliance Filing requires the ISO:

- to provide the External Market Monitor with full and real-time access to all ISO market data;¹⁸
- to allow the External Market Monitor to participate in ISO Board of Director meetings;¹⁹
- to allow the External Market Monitor to submit recommendations directly to the Board and Market Participants on how to improve market competitiveness and efficiency;²⁰ and
- to allow the External Market Monitor to review the ISO’s filings to determine the effects of such filings on market competitiveness and efficiency.²¹

In any event, the Compliance Order correctly found, as the ISO Answer explained,²² that Order No. 719 allows for RTOs to have their internal market monitors retain primary market

¹⁴ Rehearing Request at 11.

¹⁵ ISO Answer at 23-25.

¹⁶ Compliance Order at PP 134-35.

¹⁷ Rehearing Request at 11.

¹⁸ ISO New England Inc. Transmission, Markets and Services Tariff § III.A.1.3 (“ISO Tariff”).

¹⁹ ISO Tariff §§ III.A.1.2 & III.A.2.2.

²⁰ ISO Tariff § III.A.2.2.

²¹ *Id.*

monitoring authority.²³ Ultimately, the Commission did what it is supposed to do in a compliance order: determine whether the Compliance Filing complied with Order No. 719, and not litigate any extraneous issues.²⁴

The Complaint Order addressed the Connecticut Representatives' concerns that the prior actions of the INTMMU warrant the adoption of additional market monitoring reforms. In Docket Nos. EL09-47 and EL09-48, the Commission considered but ultimately declined to set for hearing or otherwise find that the prior actions of the INTMMU demonstrated that the ISO Tariff's market monitoring provisions were unjust or unreasonable, or that a logical nexus existed between the ISO's market monitoring structure and any alleged deficiencies involving the INTMMU.²⁵ Commission precedent bars the Connecticut Representatives from using this proceeding to re-litigate the factual determinations in the Complaint Order.²⁶ Any disagreement with the Complaint Order's factual findings regarding the INTMMU should have been raised through a rehearing request in Docket Nos. EL09-47 and EL09-48, which the Connecticut Representatives did not submit.

(...continued)

²² ISO Answer at 11-16.

²³ Compliance Order at P 134.

²⁴ See, e.g., *California Independent System Operator*, 119 FERC ¶ 61,240 at P 13 (2007) (holding that requests to alter a compliance filing in a manner that is different than the order requiring the compliance filing constitutes a collateral attack on the order requiring the compliance filing); *Acadia Power Partners, LLC*, 106 FERC ¶ 61,215 (2004) (holding that collateral attacks on Commission orders may not be made through protests to compliance filings).

²⁵ Complaint Order at P 57 (finding that "the Connecticut Representatives have not raised a reasonable doubt that the existing tariff provisions are unreasonable and thus should be set for hearing under section 206").

²⁶ *Alamito Co.*, 43 FERC ¶ 61,274 at p. 61,753 (1988) ("Absent a showing of significant change in circumstances, the relitigation of an issue is simply not justified."); see also *Entergy Nuclear Operations Inc. v. Consolidated Edison Co. of New York*, 112 FERC ¶ 61,117 at P 12 (2005) ("Collateral attacks on final orders and relitigation of applicable precedent by parties that were active in the earlier cases thwart the finality and repose that are essential to administrative efficiency and are strongly discouraged.") (citations omitted).

Together, the Complaint Order and the Compliance Order addressed the concerns repeated by the Connecticut Representatives in the Rehearing Request. The Rehearing Request should therefore be denied.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the ISO respectfully requests the Commission to accept this answer and deny the Rehearing Request.

Respectfully submitted,

/s/ James H. Douglass
James H. Douglass
Senior Regulatory Counsel
Christopher J. Hamlen
Regulatory Counsel
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040
(413) 535-4000

/s/ Daniel R. Simon
Daniel R. Simon
Ballard Spahr LLP
601 13th Street, N.W., Suite 1000 South
Washington, D.C. 20005
(202) 661-2200

March 9, 2010

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 these proceedings.

Dated at Washington, D.C. this 9th day of March, 2010.

/s/ Pamela S. Higgins _____
Pamela S. Higgins
Ballard Spahr LLP
601 13th Street, N.W., Suite 1000 South
Washington, D.C. 20005
(202) 661-2258