

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

ISO New England Inc.)	Docket Nos.	ER18-1509-000
)		EL18-182-000
)		ER20-1567-000

**REQUEST FOR CLARIFICATION AND EXPEDITED CONSIDERATION OF
ISO NEW ENGLAND INC.**

Pursuant to Rule 212¹ of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), ISO New England Inc. (the “ISO”)² hereby respectfully moves for clarification regarding the Commission’s October 30, 2020 *Order Rejecting Proposed Tariff Revisions*.³ The Commission issued the October 30 Order in response to the ISO’s April 15, 2020 filing of Tariff revisions to incorporate the proposed “Energy Security Improvements,” or ESI, to better address fuel security concerns in New England.⁴ The April 15 Filing was submitted in response to the Commission’s July 2, 2018 *Order Denying Waiver Request, Instituting Section 206 Proceedings, and Extending Deadlines*, in Docket Nos. ER18-1509-000 and EL18-182-000.⁵

For the past two years, the ISO, the New England states and stakeholders have expended substantial resources and time to identify potential market solutions to address critical regional issues related to the rapidly-changing resource fleet. Throughout this investment of resources

¹ 18 C.F.R. § 385.212 (2019).

² Capitalized terms used but not defined in this request have the meaning given to such terms in the ISO’s Transmission, Markets and Services Tariff (the “Tariff”).

³ See *ISO New England Inc.*, 173 FERC ¶ 61,106 (2020) (“October 30 Order”).

⁴ See *ISO New England Inc.*, Compliance Filing of Energy Security Improvements Addressing New England’s Energy Security Problems, Docket Nos. EL18-182-000 and ER20-1567-000 (filed Apr. 15, 2020) (“April 15 Filing”).

⁵ See *ISO New England Inc.*, 164 FERC ¶ 61,003 (2018) (“July 2 Order”).

and time, the ISO, the states and stakeholders have been unable to freely consult with the Commission because of the application of the *ex parte* rules following the Commission's issuance of the July 2 Order. The end result is that the region is potentially back to the starting line following the October 30 Order.

The region is at a crossroads with respect to energy security and its reserve markets. The ISO does not believe that it is prudent to move forward without the opportunity to speak freely with the Commission and its staff. Accordingly, we are stalled.

Therefore, this request seeks clarification from the Commission that the ISO may engage in communications with the Commission and its staff about the ESI market design, the design of the reserve markets, the option construct, and the voluntary nature of the markets as of December 1, 2020. This timeline assumes that no party files for rehearing of the October 30 Order. The ISO also seeks clarification regarding the status of its obligations in the proceeding initiated in the July 2 Order pursuant to Section 206 of the Federal Power Act. Moreover, if it is necessary, the ISO requests that the Commission resolve the ISO's obligations in the Section 206 proceeding and any pending requests for rehearing/clarification thereof expeditiously, so that the Section 206 proceeding may be closed and discussions unencumbered by *ex parte* restrictions⁶ may ensue.

As the requested clarification will inform potential next steps, the ISO respectfully asks that the Commission act on this request as expeditiously as possible, but by no later than ten days from the date of this filing.

⁶ 18 C.F.R. § 385.2201.

I. BACKGROUND

In its October 30 Order, the Commission rejected the Tariff revisions reflecting the ESI proposal, which were filed to fulfill the ISO's compliance obligation in the July 2 Order. Briefly, the July 2 Order rejected the ISO's petition for waiver of certain Tariff provisions to prevent the retirement of the Mystic Generating Station given the region's fuel-security reliability challenges. In that order, the Commission instituted a Section 206 proceeding, preliminarily finding that "the ISO-NE Tariff may be unjust and unreasonable based on ISO-NE's demonstration in this proceeding that the Tariff fails to address specific regional fuel security concerns identified in the record."⁷ The Commission ordered the ISO to file rules to retain resources needed for fuel security as well as a long-term market-based fuel security solution.

Consistent with the July 2 Order's directives, on August 31, 2018, the ISO filed Tariff revisions incorporating a fuel security retention mechanism, and those revisions were accepted by the Commission in its December 3, 2019 *Order Accepting Compliance Filing and Requiring Informational Filings*.⁸ To fulfill the outstanding compliance obligation to file a long-term, market-based solution to better address regional fuel security concerns, the ISO submitted the April 15 Filing.

The October 30 Order states that the Commission reviewed the April 15 Filing under FPA Section 205, and rejected the ESI proposal contained therein as unjust and unreasonable because it imposed substantial costs on consumers without meaningfully improving fuel security,

⁷ *Id.* at P 49.

⁸ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018). No requests for rehearing and/or clarification were filed regarding this Order.

and identified three findings supporting that determination.⁹ In rejecting the April 15 Filing, however, the October 30 Order also states that the Commission “make[s] no finding on whether ISO-NE faces a fuel security or energy security issue.”¹⁰ Nor does the Commission impose any further compliance directive on the ISO. Rather, in the order, the Commission recognizes the ISO’s concerns with its ability to reliably serve load given the region’s growing reliance on just-in-time resources, and offers guidance on how the ISO might develop a market approach “[i]f ISO-NE decides to pursue a solution to address these concerns.”¹¹ Further, the Commission notes “that nothing in this order prohibits ISO-NE from proposing a day-ahead reserve market independent of any proposal to address the concerns at issue here.”¹²

II. REQUEST FOR CLARIFICATION AND EXPEDITED CONSIDERATION

As the Commission is aware, over the past two years, the ISO, along with the states and stakeholders, have expended considerable resources and time evaluating the region’s fuel and energy security and possible market design enhancements. Those efforts did not benefit from consultation with the Commission and its staff.

The October 30 Order rejects the result of those efforts, the ISO’s ESI market design, without making any findings regarding fuel security or energy security issues, or imposing any further directives on the ISO, expressly leaving it to the ISO to determine whether to pursue further market designs to address the concerns identified in the April 15 Filing related to the region’s growing reliance on just-in-time resources. The ISO does not believe that it is prudent to move forward with such market designs without the opportunity to speak freely with the

⁹ See October 30 Order at n. 2, PP 22, 49.

¹⁰ *Id.* at P 57.

¹¹ *Id.* (emphasis provided)

¹² *Id.*

Commission and its staff regarding the ESI market design, the design of the reserve markets, the option construct, and the voluntary nature of the markets.

As the ISO believes it is critical that it be able to speak freely with the Commission and its staff about these matters, the ISO requests that the Commission confirm that the ISO may engage in such communications with Commission and its staff as of December 1, 2020, assuming no rehearing on the October 30 Order is filed. Providing the requested clarification will allow the ISO, the states and stakeholders to engage in open and frank discussions with the Commission and its staff on important, ongoing wholesale market design initiatives, including matters that are central to evaluating the region's fuel and energy security and establishing a path forward to addressing any outstanding concerns. As this clarification will inform potential next steps for many in the region, the ISO also asks that the Commission act on this request and provide the requested clarity as expeditiously as possible, but by no later than ten days from the date of this request.

In addition, the ISO requests that the Commission provide clarity as to the status of its obligations under the Section 206 proceeding initiated in the July 2 Order. Specifically, the ISO requests that the Commission confirm the ISO's current understanding that, because the October 30 Order expressly leaves it up to the ISO to determine whether to pursue market solutions to the region's needs, the ISO does not have a pending obligation. Finally, if pending rehearing and/or clarification requests in that docket are an impediment to the ISO's ability to engage in discussions with the Commission and its staff, the ISO requests that the Commission resolve those requests for rehearing and/or clarification on the July 2 Order expeditiously, so that the

Section 206 proceeding may be closed and discussions unencumbered by *ex parte* restrictions¹³ may ensue.

In resolving any outstanding matters in this or the July 2 Order docket, the ISO urges the Commission to refrain from maintaining and/or imposing any further compliance obligations on the ISO. The ISO fully commits to look at its next steps with a view to the region's needs and to work, in conjunction with the states and stakeholders, to find solutions to those needs.

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant this request for clarification expeditiously. In sum, the ISO requests that the Commission act within ten days to clarify that: the ISO, its states and stakeholders are able to talk to the Commission and its staff as of December 1, 2020 about matters related to the October 30 Order, assuming no rehearing requests are filed in that docket; the ISO has no further obligations in the Section 206 proceeding initiated in the July 2 Order; and that Section 206 proceeding is closed upon the resolution of pending rehearing requests, which the Commission has undertaken or will expeditiously undertake.

Respectfully submitted,

By: /s/ Monica Gonzalez

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¹³ 18 C.F.R § 385.2201.

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 Commission Secretary in these proceedings.

Dated at Holyoke, MA this November 13, 2020.

/s/Julie Horgan

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