

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

RENEW Northeast, Inc.,)	
Complainant,)	
)	
v.)	Docket No. EL23-16-000
)	
ISO New England Inc. and)	
New England Participating Transmission)	
Owners,)	
Respondents.)	

**MOTION FOR DISMISSAL AS A PARTY
AND, IN THE ALTERNATIVE,
ANSWER TO COMPLAINT
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, ISO New England Inc. (“the ISO”) moves for dismissal, with prejudice, of the ISO as a party to this proceeding. At issue here is a complaint filed on December 13, 2022 (“Complaint”) by RENEW Northeast, Inc. (“RENEW”).¹ The Complaint alleges that: (1) certain portions of Schedules 11 and 21 of the ISO’s Open Access Transmission Tariff (“OATT”)² related to the direct assignment of “O&M costs” to Interconnection Customers for Network

¹ See *RENEW Northeast, Inc. v. ISO New England, Inc. and New England Participating Transmission Owners*, Complaint, Docket No. EL23-16-000 (filed Dec. 13, 2022). On December 22, 2022, as subsequently corrected on December 29, 2022, the Commission issued a notice extending the deadline for comments and answers on the Complaint to January 23, 2023. See *Renew Northeast, Inc. v. ISO New England Inc. and New England Participating Transmission Owners*, Errata Notice, Docket No. EL23-16-000 (Dec. 29, 2022).

² The ISO’s OATT is in Section II of the ISO New England Inc. Transmission, Markets and Services Tariff (“Tariff”).

Upgrades are unjust and unreasonable; (2) the Commission should determine that RENEW is considered an Interested Party under the Formula Rate Protocols; and (3) the Commission should direct the New England Participating Transmission Owners (“PTOs”) to provide additional information regarding O&M costs in the interconnection process.³ The Complaint names as respondents the ISO and the PTOs.

This motion asks the Commission to dismiss the ISO as a party to this proceeding. As explained below, the provisions of the OATT which the Complaint challenges—those that authorize the PTOs to charge O&M costs for Network Upgrades—are within the exclusive right of the PTOs (not the ISO) to establish and modify under Section 205 of the Federal Power Act (“FPA”).⁴ Further, the ISO has no financial interest at stake in this matter, and is not a necessary party. Therefore, the Commission should dismiss the ISO from the case.

In the event that the Commission declines to grant dismissal of the ISO from the proceeding, the ISO provides its answer to the Complaint.⁵

I. BACKGROUND

For the purposes of establishing the factual context for this motion, the ISO concurs with the following excerpt from the Complaint:

The ISO is the private, non-profit entity that serves as the regional transmission organization (“RTO”) for the six New England states. The ISO plans and operates the New England bulk power system and administers New England’s

³ See Complaint at 1-2.

⁴ 16 U.S.C. § 824d.

⁵ 18 C.F.R. § 385.213.

organized wholesale electricity markets pursuant to the Tariff. In its capacity as an RTO, the ISO also has the responsibility to protect the short term reliability of the New England Control Area and to operate the system according to reliability standards established by the North American Electric Reliability Corporation and the Northeast Power Coordinating Council.⁶

The PTOs own transmission and distribution facilities, and they are the Interconnecting Transmission Owners who are parties to Large Generator Interconnection Agreements and Small Generator Interconnection Agreements with Interconnection Customers.⁷

The ISO and the Participating Transmission Owners are parties to a Transmission Operating Agreement (“TOA”) that gives the Participating Transmission Owners certain rights under FPA Section 205 to modify rates included in the Tariff.⁸

The essence of the Complaint is RENEW’s claim that the PTOs’ direct assignment of O&M costs associated with Network Upgrades is unlawful. Specifically RENEW contends that the direct assignment to Interconnection Customers of O&M costs associated with the Network Upgrades that are constructed to facilitate the Interconnection Customer’s interconnection is inconsistent with Commission policy and precedent, most

⁶ See Complaint at 7-8.

⁷ See Complaint at 8. The Large Generator Interconnection Agreement and Small Generator Interconnection Agreement are contained, respectively, in Schedules 22 and 23 of the OATT.

⁸ See Complaint at 8.

particularly Order No. 2003,⁹ and are obsolete.¹⁰ Therefore, RENEW asserts, the PTOs' direct assignment of O&M costs to Interconnection Customers is unjust and unreasonable and should be rejected.¹¹

II. THE ISO SHOULD BE DISMISSED AS A PARTY

The Commission should promptly dismiss the ISO as a party to this proceeding because the Tariff provisions that the Complaint challenges are transmission rate terms over which the ISO does not hold FPA Section 205 rights under the TOA. Further, the ISO has no pecuniary interest in the subject matter of the Complaint, and it is not a necessary party.¹² Accordingly, it is unnecessary for the ISO to be involved in litigation of the claims RENEW asserts, and the Commission should dismiss the ISO from the case.

The Complaint appears to name the ISO as a respondent on the premise that the ISO has the rights to modify Schedule 11 of the OATT.¹³ This is misplaced. Under the TOA, the PTOs—not the ISO—hold the FPA Section 205 rights over Schedules 11 and 21

⁹ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,160, *order on reh'g*, Order No. 2003-B, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Utils. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

¹⁰ See Complaint at 5.

¹¹ Complaint at 5.

¹² The PTOs have authorized the ISO to convey their agreement that the PTOs—and not the ISO—are the appropriate respondents in this case.

¹³ See Complaint at 6 and 37.

of the OATT. Specifically, Section 3.04(b)(i) of the TOA provides that the “methodology by which the costs of Transmission Upgrades related to generator interconnections are allocated” is subject to the PTOs’ rights under Section 205 of the FPA.¹⁴ Correspondingly, Section 2.05(ii) of the TOA provides that, in any filing of an Interconnection Agreement involving interconnections with entities that are not PTOs—an “interconnecting non-Party,” in the TOA’s words—the “just and reasonable” standard of Section 205 of the FPA applies only to the PTOs relative to their “position on any financial obligations of the PTOs or the interconnecting non-Party.”¹⁵ In other words, the TOA places exclusively on the PTOs the responsibility to establish that the Interconnection Customer’s financial obligations regarding the upgrades identified as necessary for the interconnection of a new generator comply with “the standard applicable under Section 205 of the Federal Power Act.”¹⁶

The Complaint recognizes the PTOs’ exclusive FPA Section 205 rights under the TOA in describing RENEW’s efforts through the stakeholder process to modify Schedules 11 and 21: “Even if the RENEW proposal had received the two-thirds vote, no changes would have been made unless the NE PTOs agreed to make the necessary tariff changes.”¹⁷ The Complaint further clearly and correctly recognizes that the ISO has no role in

¹⁴ TOA at § 3.04(b)(i). *See also id.* at § 3.04(a)(viii).

¹⁵ *Id.* at § 2.05(ii). The Interconnection Procedures in Schedules 22, 23 and 25 of the ISO’s OATT incorporate the terms of the TOA. *See, e.g.,* OATT, Schedule 22 at § 11.3.2 (recognizing the PTOs’ exclusive FPA Section 205 rights over “terms and conditions of the LGIA related to the costs of upgrades to such Interconnecting Transmission Owner’s transmission facilities . . .”).

¹⁶ *Id.*

¹⁷ Complaint at 17.

determining whether to establish, much less set the amount of, any O&M charges to Interconnection Customers under Schedules 11 or 21.¹⁸ As the Complaint states, O&M costs associated with Network Upgrades are directly assigned to Interconnection Customers by the PTOs.¹⁹ These O&M charges are not determined or imposed by the ISO, and the ISO realizes no revenues from the associated charges. O&M costs, as well as other charges related to Network Upgrades for Interconnection Customer, are determined and imposed solely by the PTOs that are responsible for construction and physical operation of the associated facilities.

It is therefore unnecessary for the ISO to be a party to this proceeding in order for the Commission to consider, formulate, or implement any change to the allocation of cost responsibility for Network Upgrade O&M costs, should the Commission ultimately order such a change. Any order to modify the allocation of such costs would necessarily be directed to the PTOs collectively, not to the ISO. This conclusion follows directly from the terms of the TOA, and is recognized in the Complaint.²⁰

The grounds for the ISO's dismissal from this case are even stronger than when the Commission dismissed the ISO from a previous complaint proceeding.²¹ In that instance, the ISO was named as a respondent in a challenge to the PTOs' base rate of return on equity

¹⁸ See *id.* at 27, 32-34 (relating RENEW's direct engagement with the PTOs during RENEW's 2021 stakeholder effort and the PTOs' Annual Formula Rate Update process for information on cost inputs comprising O&M charges and how they are calculated).

¹⁹ See *id.* at 31 ("Today, the NE PTOs continue to charge direct assignment of O&M costs on Network Upgrades to Interconnection Customers . . .").

²⁰ See Complaint at 17.

²¹ See *Coakley v. Bangor Hydro-Electric Co.*, 139 FERC ¶ 61,090 (2012).

(“ROE”). The Commission granted the ISO’s motion for dismissal from the case, finding that “[t]he New England [Transmission Owners] are the true parties in interest for purposes of this proceeding,” while “with regard to the ROE at issue, [the ISO] is the billing agent for the New England [Transmission Owners], not the beneficiary.”²²

With respect to the O&M costs for Network Upgrades at issue in the Complaint (or any other PTO similar charge), the ISO does not have even the “billing agent” role that the Commission found insufficient to justify the ISO’s participation in the ROE complaint proceeding. In contrast to the ISO’s billing and collection of the rates for Regional Transmission Service that include the transmission owners’ ROE, Schedule 11 of the OATT states that Interconnection Customers will pay the costs of interconnection-related transmission upgrades to the affected PTO(s).²³ The ISO thus has even less of a connection to this case than it had to the ROE complaint from which the Commission unconditionally granted the ISO’s dismissal.²⁴

Accordingly, the ISO is neither a necessary nor an appropriate party to this proceeding. The ISO therefore respectfully requests that the Commission dismiss the ISO from this case.

III. ISO’S ANSWER TO THE COMPLAINT

²² *Id.* at P 23.

²³ *See* OATT, Schedule 11, Sections (5), (7).

²⁴ Dismissing the ISO from this case also would comport with other decisions in which the Commission has dismissed from complaint proceedings entities that are not real parties in interest. *See, e.g., UNITIL Power Corp. v. Pub. Serv. Co. of N.H.*, 62 FERC ¶ 61,055, at 61,286 & ordering para. (B) (1993) (dismissing a utility named a respondent to a complaint because it “does not actually provide electric service to [the respondent]” that provided wholesale service to the complainant); *see also N. Star Steel Co. v. Ariz. Pub. Serv. Co.*, 116 FERC ¶ 61,022 (2006) (dismissing complaint where respondents had no privity of contract with complainant).

In the event the Commission denies the ISO's motion for dismissal as a party, the ISO respectfully provides the following answer to the Complaint in accordance with the Commission's Rule 213(a).²⁵

The ISO has no financial interest in the O&M or any similar charge of any PTO to any Interconnection Customers. Therefore, the ISO takes no position on the merits of the claims RENEW asserts in the Complaint, and takes no position on the propriety of any relief RENEW requests in the Complaint.

IV. COMMUNICATIONS

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

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V. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission promptly grant this motion for dismissal of the ISO as a party.

²⁵ 18 C.F.R. § 385.213(a).

Respectfully submitted,

ISO NEW ENGLAND INC.

/s/ Monica Gonzalez

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January 19, 2023

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 Holyoke, MA on this 19th day of January, 2023.

/s/ Julie Horgan
Julie Horgan
eTariff Coordinator