

141 FERC ¶ 61,272
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

ISO New England Inc.

Docket No. ER13-185-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 31, 2012)

1. On October 25, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ ISO New England Inc. (ISO-NE) submitted proposed revisions to Section IV.A of its Transmission, Markets and Services Tariff (Tariff) reflecting its 2013 Revenue Requirement to recover its administrative costs for calendar year 2013. As discussed below, we accept the proposed Tariff revisions for filing, suspend them for a nominal period to become effective January 1, 2013, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. In accordance with its Participants Agreement, ISO-NE must file its revenue requirement, sometimes referred to as its administrative budget, with the Commission no later than 60 days before the start of each operating year.² ISO-NE's 2013 Revenue Requirement totals \$165 million, after true-ups,³ and is composed of several elements, including: the 2013 Core Operating Budget, which reflects the administrative costs of running ISO-NE (\$135.5 million); depreciation and amortization of regulatory assets (\$28.5 million); and a true-up for 2011 as a result of under-collection of ISO-NE rates in 2011 (\$0.9 million).⁴

¹ 16 U.S.C. § 824d (2006).

² Participants Agreement at § 12.5.

³ ISO-NE Transmittal Letter at 5.

⁴ *Id.*

3. ISO-NE proposes to increase its Core Operating Budget by approximately \$11.6 million (9.5 percent) from 2012 levels to fund new initiatives and cost increases, reflecting: (i) external factors and compensation (\$9.6 million); (ii) funding for the development of solutions to the risks identified in the Strategic Planning Initiative⁵ (\$4.5 million); and (iii) other ongoing initiatives and cost increases (\$2.1 million). The Core Operating Budget also reflects an offset of \$4.6 million due to efficiencies and non-recurring work.⁶

4. In support of the costs related to employee compensation, ISO-NE attaches the testimony of Janice S. Dickstein, its Vice President of Human Resources. ISO-NE states that, in an effort to attract and retain high quality employees while maintaining a just and reasonable budget,⁷ it allocated \$2.9 million for a 3 percent increase in salaries for merit and a 0.9 percent increase for promotions.⁸ ISO-NE explains that it reviewed survey data from national compensation consultants on expected merit and promotional pool increases, as well as expected salary range adjustments for the coming year, and then used this information to establish its salary merit and promotional pools and ranges for the coming fiscal year.

5. As to executive salaries and board compensation, ISO-NE states that, to ensure compliance with Internal Revenue Service (IRS) standards, ISO-NE engaged a nationally recognized, independent consulting firm, which evaluated the compensation offered by similarly-situated entities.⁹ ISO-NE and its consultant determined that ISO-NE's

⁵ ISO-NE states that the risks identified in its Strategic Planning Initiative include risks related to resource performance and flexibility, increased reliance on natural gas-fired capacity, retirement of generators, integration of a greater level of variable resources, and alignment of markets with planning. *Id.* at 2-3.

⁶ *Id.* at 6.

⁷ Ms. Dickstein maintains that ISO-NE's compensation program is designed to offer competitive compensation enabling the attraction and retention of highly-skilled employees needed to lead the organization and meet its business goals. Ms. Dickstein contends that meeting this objective is ultimately less expensive than having high levels of turnover, considering the costs of recruiting and relocation, as well as a shortage of, and competition for attracting, talent in the utility industry. Dickstein Testimony at 3-6.

⁸ ISO-NE Transmittal Letter at 6.

⁹ Ms. Dickstein states that ISO-NE is a not-for-profit company under Section 501(c)(3) of the Internal Revenue Code and that these regulations require that the

executive and board compensation is within a reasonable range of competitive practice for functionally comparable positions among similarly-situated entities.¹⁰

6. ISO-NE adds that, as in recent years, it is working to offset increased costs related to the addition of services and the effects of the economic downturn¹¹ through aggressive cost-cutting and reallocation of resources to emerging initiatives. ISO-NE attaches the testimony of Robert C. Ludlow, its Chief Financial Officer, who states that ISO-NE has reduced costs for 2013 by \$3.2 million through the reallocation of existing resources to new initiatives.¹² Mr. Ludlow further states that the budget reflects a \$1.4 million reduction for 2012 items that were non-recurring and other miscellaneous changes.¹³

7. ISO-NE states that depreciation and amortization costs amount to \$28.5 million, which represents a \$1.4 million increase from 2012. ISO-NE explains that it uses a straight-line depreciation methodology based on no net salvage value and certain average service lives and that the depreciation rates remain unchanged from those accepted in the ISO-NE's 2012 Operating Expense Budget.¹⁴

compensation paid to executive officers meet a standard of "reasonableness." Dickstein Testimony at 11.

¹⁰ ISO-NE Transmittal Letter at 6-7.

¹¹ ISO-NE explains that its 2013 pension plan and post-retirement benefit costs have increased to reflect appropriate interest rate assumptions, based on current economic conditions and actuarial projections. As a result of low interest rates in the current economy, ISO-NE is required to establish higher liabilities and costs related to its pension and post-retirement obligations. Ludlow Testimony at 9.

¹² Ludlow Testimony at 12.

¹³ *Id.*

¹⁴ ISO-NE explains that in 2006, the Commission examined and accepted the ISO's depreciation rates after holding a paper hearing for the ISO-NE's current rates. ISO-NE Transmittal Letter at 10; *ISO New England, Inc.*, 117 FERC ¶ 61,310, at P 18 (2006), *order on paper hearing and finding rehearing to be moot*, 119 FERC ¶ 61,178 (2007). Those depreciation rates remained the same in the 2012 Operating Expense Budget, which was accepted by delegated letter order. *ISO New England Inc.*, Docket No. ER12-191-000 (Nov. 22, 2011) (delegated letter order).

8. ISO-NE states that its 2013 Revenue Requirement was overwhelmingly approved by its primary stakeholder body, the New England Power Pool (NEPOOL) Participants Committee, and was unanimously approved by the ISO-NE Board of Directors.¹⁵

II. Notice and Responsive Pleadings

9. Notice of ISO-NE's 2013 Revenue Requirement was published in the *Federal Register*, 77 Fed. Reg. 66,457 (2012), with interventions and protests due on or before November 15, 2012. On October 31, 2012, the Connecticut Public Utilities Regulatory Authority (CT PURA) filed a motion for an extension of time to November 30, 2012 to submit comments, which was granted on November 6, 2012.¹⁶

10. Notices of intervention were filed by CT PURA; Maine Public Utilities Commission; Massachusetts Department of Public Utilities; and Rhode Island Division of Public Utilities and Carriers. Timely motions to intervene were filed by the NEPOOL Participants Committee; the Attorney General for the State of Connecticut (Connecticut AG); Connecticut Office of Consumer Counsel; Northeast Utilities Service Company (NUSCO);¹⁷ New Hampshire Consumer Advocate; Attorney General of the State of Rhode Island; and Maine Public Advocate. Massachusetts Municipal Wholesale Electric Company and New Hampshire Electric Cooperative, Inc. (collectively, Public Systems) together filed a timely motion to intervene and comments. The Joint New England Agencies¹⁸ filed a timely motion to intervene and protest. On November 28, 2012, Connecticut State Senator Rob Kane and Connecticut State Representative Arthur O'Neill jointly filed a letter with comments, and on November 30, 2012, Connecticut State Senator Jason Welch and Connecticut State Representative Whit Betts also jointly filed a letter with comments (collectively, Members of the Connecticut General Assembly). On December 10, 2012, ISO-NE submitted an answer to the Joint New England Agencies' protest and Public Systems' comments. On December 13, 2012,

¹⁵ ISO-NE Transmittal Letter at 4-5.

¹⁶ *Notice of Extension of Time*, Docket No. ER13-185-000 (November 6, 2012).

¹⁷ NUSCO is a subsidiary of Northeast Utilities and the agent for the Northeast Utilities Companies, which include: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and NSTAR Electric Company.

¹⁸ The Joint New England Agencies consist of CT PURA; Connecticut Consumer Counsel; Connecticut AG; Rhode Island Division of Public Utilities and Carriers; Attorney General for Rhode Island; New Hampshire Consumer Advocate; and Maine Public Advocate.

NEPOOL Participants Committee also submitted an answer to the Joint New England Agencies' protest. On December 20, 2012, Joint New England Agencies filed an answer to ISO-NE's December 10, 2012 answer and NEPOOL Participants Committee's December 13, 2012 answer.

11. Questioning numerous aspects of the 2013 Revenue Requirement, the Joint New England Agencies assert that the ISO-NE's filing lacks sufficient detail and that the proposed 2013 budget and rate proposal are unjust and unreasonable and should be set for hearing. Specifically, they argue that the following requests made by ISO-NE appear to be unreasonable: (1) an increase of 39 full time employees¹⁹ for a total of 563 full time employees; (2) a \$13 million cost for outside legal, consulting and professional fees; (3) rate increases ranging from 5 percent to 1440 percent²⁰ -- for example, the regional network service rate, which is directly paid by New England's ratepayers, would increase by 25.3 percent; (4) a \$164.9 million revenue requirement, increased by \$21.3 million, or 14.8 percent over the 2012 revenue requirement of \$143.6 million; and (5) an increase in ISO-NE's operating expenses by \$11.2 million, or 9.2 percent from \$121.6 million in 2012 to \$132.9 million in 2013.

12. The Joint New England Agencies challenge ISO-NE's increased staffing levels and professional fees,²¹ pointing out that the main expense in the Core Operating Budget is personnel-related, including \$95.7 million for salaries and overhead and an additional \$13.9 million in professional fees and consultants. They posit that ISO-NE's total staff is significantly larger than the staff of all New England public utility commissions combined, with more than one-third as many full-time employees as this Commission. Furthermore, they assert that while ISO-NE has the smallest service area of the Regional Transmission Organizations (RTO),²² it also has the highest costs, including, according to the Joint New England Agencies, more employees (using population, generation or

¹⁹ Joint New England Agencies state that these 39 positions reflect 26 new positions and 13 filled positions by cutting the vacancy rate in half, and that ISO-NE proposes to add 28 employees to its operations administration and 11 employees to its executive administration. The Joint New England Agencies November 28, 2012 Protest at 8.

²⁰ In response to Joint New England Agencies' assertion that the rate increase in FTR auctions that clear is 1440 percent, ISO-NE responded that this is a misstatement; this rate increased 36.2 percent. ISO-NE December 10, 2012 Answer at 26 n.48.

²¹ The Joint New England Agencies November 28, 2012 Protest at 9-11.

²² *Id.* at 11-13.

transmission metrics) than every other RTO in the nation.²³ They seek a hearing to examine whether ISO-NE's rates and the size and scope of its operations are just and reasonable in light of the core functions it is designed to serve.

13. The Joint New England Agencies further argue that ISO-NE's filing lacks specificity and the details necessary for the Commission to determine whether ISO-NE's proposed rate increases are just and reasonable. For example, they argue that ISO-NE provides testimony as to the level of executive compensation, turnover ratios, and the national average percentage increases. However, ISO-NE fails to provide any specific data or information in its filing as to the levels of merit bonuses, expected promotions and actual expenses for merit increases and promotions.²⁴ The Joint New England Agencies add that while labor costs are high everywhere, ISO-NE's costs appear to be heavily weighted to highly-compensated employees.

14. They further argue that ISO-NE failed to support its change in interest rate assumptions for the Pension Expense and post-retirement benefits other than pensions (PBOP), which reflect a \$4.1 million increase in Pension Expense and PBOPs costs. The Joint New England Agencies argue that the filing lacks the actuarial assumptions, the projected return on plan assets, the yield curves, the union contractual obligations, the discount rates, the rate of return on investments, or the impact of proposed future salary increases. They add that it is unclear whether the proposed pension and PBOP increases reflect the proposed 39 new employees for 2013 (the 26 new positions and 13 additional positions from the change in the vacancy rate). The Joint New England Agencies also argue that ISO-NE fails to provide any offset for retirements and departures.

15. In addition, the Joint New England Agencies seek more state-level participation in and oversight of ISO-NE's administrative budget-making process.²⁵ Positing that they have too few opportunities for review and comment,²⁶ they state that, with specific regard

²³ *Id.* at 13. The Joint New England Agencies arrived at these ratios by dividing the number of FTEs by ISO-NE's installed generation, miles of transmission lines and population. For the data that it used to make these calculations, the Joint New England Agencies cite to ISO-NE's Proposed 2013 Operating and Capital Budgets presentation to the NEPOOL Budget and Finance Subcommittee (*id.* at Exhibit A, p. 102) and the 2011 Independent System Operator (ISO/RTO) Metrics Report, filed on August 31, 2011, in Docket No. AD10-5-000 (*id.* at Exhibit C, p. 11).

²⁴ *Id.* at 16.

²⁵ *Id.* at 17-18.

²⁶ *Id.* at 18 (citing October 25 Filing at 4).

to the 2013 Revenue Requirement, they were able to engage in one “information only” regional luncheon, where no action was contemplated or taken; and one meeting between ISO-NE management and staff from the Connecticut Office of Consumer Counsel, Connecticut AG and CT PURA (the Connecticut Agencies) on October 16, 2012, the day before the ISO-NE Board of Directors approved the 2013 Revenue Requirement. The Joint New England Agencies argue that the Connecticut Agencies raised concerns about the additional staffing levels and extent of the proposed increases, none of which were addressed in the submitted budget. They argue that due to timing constraints imposed by back-to-back meetings, the Connecticut Agencies’ comments could not possibly have been taken into account. The Joint New England Agencies argue that without a hearing, ISO-NE’s 2013 Revenue Requirement and rate increases will be borne by the ratepayers of New England without any state governmental oversight or input.

16. The Joint New England Agencies also seek a series of reforms to ISO-NE’s budget-making processes, requiring that: (1) ISO-NE provide its proposed annual administrative and capital budgets to each New England state commission for advance review at least 60 days prior to filing them with the Commission,²⁷ (2) ISO-NE include the state agencies’ feedback in its budget filings, so that the Commission will be automatically notified of the various states’ positions; (3) ISO-NE file both the annual administrative and capital budgets in one proceeding; and (4) if a state’s concerns are not addressed by the first three proposed reforms, then state utility commissions and agencies should be given an opportunity for a hearing before the Commission. In the alternative, the Commission could delegate its review and decision-making authority regarding the ISO-NE annual budget and rate filing to a Commission-approved New England State Board, pursuant to section 209 of the FPA.²⁸

17. In their joint comments, Public Systems²⁹ share concerns about ISO-NE’s staffing levels. Public Systems state that ISO-NE’s 2013 Revenue Requirement does not

²⁷ ISO-NE’s capital budget reflects specific project-related costs. Section IV.B.6.1 of ISO-NE’s Tariff requires ISO-NE to file its capital budget with the Commission at least 60 days prior to the beginning of ISO-NE’s operating year. On October 25, 2012, ISO-NE’s 2013 Capital Budget was submitted to the Commission in Docket No. ER13-192-000.

²⁸ 16 U.S.C. § 824h (2006). *See* Joint New England Agencies November 28, 2012 Protest at 11-13. The Connecticut Agencies made the same four requests to change the process and oversight of ISO-NE’s 2013 Capital Budget in their protest filed in response to ISO-NE’s 2013 Capital Budget filing in Docket No. ER13-192-000.

²⁹ Public Systems note that, although they did not register formal opposition to the ISO-NE’s 2013 budget when it was considered as part of the NEPOOL stakeholder

(continued...)

dispositively show that there is a problem with ISO-NE's staffing levels, but the data suggests that ISO-NE's staffing practices should be closely examined.³⁰

18. NEPOOL Participants Committee submitted comments in support of ISO-NE's 2013 Revenue Requirement. It states that it voted at its October 3, 2012 meeting to support the 2013 Revenue Requirement, after general agreement by the NEPOOL Budget and Finance Subcommittee.³¹

19. Members of the Connecticut General Assembly submitted letters stating that they were troubled by what they describe as ISO-NE's proposed "10 percent hike in electric rates" due to take effect on January 1, 2013.

20. In its answer to the protests, ISO-NE disputes the Joint New England Agencies' assertion that it provided inadequate support for its staffing levels and use of professional services.³² ISO-NE states that in the budget materials it provided as part of the stakeholder process, it included ample justification for the addition of 26 new positions.³³ ISO-NE also states that in response to stakeholder inquiry, it provided a breakdown of each position added since 2009 and that this breakdown identified the department to which an additional employee will be assigned and a rationale for adding the position.³⁴ ISO-NE disputes the Joint New England Agencies' argument that the professional fees

process, they support strong oversight of ISO-NE's budget by the Commission and the New England state agencies, including adequate opportunity for the state agencies to assess ISO-NE's budget and raise any concerns in a timely and efficient manner. Public Systems November 30 Motion to Intervene and Comments at 3-4.

³⁰ *Id.* at 3-6.

³¹ NEPOOL Participants Committee November 30, 2012 Comments at 2.

³² ISO-NE December 10, 2012 Answer at 24.

³³ *Id.* at 24 and n.77 ("See, for example, pages 22 to 27 of the presentation included in the August Budget and Finance Subcommittee materials, including the breakdown of headcount additions for 2013 on page 27. The presentation can be found at http://www.isone.com/committees/comm_wkgrps/prtcpnts_comm/budgfin_comm/budgfin/mtrls/2012/aug242012/2_2013_budg_update_final.pdf.").

³⁴ *Id.* at 24-25 and n.78 ("See the ISO's answers to stakeholder questions at http://www.isone.com/committees/comm_wkgrps/prtcpnts_comm/prtcpnts/mtrls/2012/oct32012/index.html.").

are “additive,” stating that its professional fees for 2013 are in fact \$1.43 million lower than in 2012. ISO-NE also points to information in the 2013 Revenue Requirement and stakeholder materials, which details the professional fees, including the costs of external auditors, the external market monitor, legal fees, the Forward Capacity Market auctioneer and related costs, and costs for information technology and project management support.³⁵

21. As to arguments that ISO-NE’s costs appear to be heavily weighted to highly-compensated employees, ISO-NE asserts that its workforce is composed largely of well-educated economists, engineers and IT professionals.³⁶ ISO-NE reiterates its assertions about having to compete for talent against for-profit companies and expounds upon the various restrictions on non-profit compensation, including those imposed by the IRS.³⁷ ISO-NE also dismisses as irrelevant any comparison of ISO-NE to other ISOs/RTOs, in terms of staffing or otherwise.³⁸ ISO-NE asserts that the Commission has specifically rejected³⁹ or cautioned against such comparisons, stating that “Commission Staff recognizes administrative costs will vary by ISO/RTO and that comparisons may not be meaningful.”⁴⁰

22. In response to Joint New England Agencies’ concerns regarding merit increases and promotions, ISO-NE states that it has not provided specific data as to actual expenses for bonuses, promotions and increases because the bonuses and increases have not yet been paid, nor have the promotions occurred.⁴¹ ISO-NE states that it did provide its recent history (2009-2011) of actual merit and promotional increases in response to a

³⁵ *Id.* at 25. ISO-NE cites to Exhibit 3, RCL-5 of the October 25 Filing.

³⁶ *Id.* at 26-27.

³⁷ *Id.* at 28; Dickstein Testimony at 6, 11.

³⁸ ISO-NE December 10, 2012 Answer at 29.

³⁹ *Id.* (citing *ISO New England Inc.*, 109 FERC ¶ 61,383, at P 16 (2004)).

⁴⁰ *Id.* at 30 (citing to the Commission Staff Report, Federal Energy Regulatory Commission, *ISO/RTO Performance Metrics*, Docket No. AD10-5, October 21, 2010 at 44).

⁴¹ *Id.* at 26.

stakeholder question.⁴² ISO-NE also rebuffs Joint New England Agencies' claims that it failed to provide an offset for retirements and departures.⁴³ It states that the "offset" referenced by the Joint New England Agencies is ISO-NE's vacancy rate, or rate of assumed unfilled positions.⁴⁴ ISO-NE states that, as discussed in the 2013 Revenue Requirement, ISO-NE decreased its vacancy rate from 5.0 to 2.5 percent, which increased operating costs for 2013 in the equivalent of 13 positions.⁴⁵

23. As to its Pension Expense and PBOPs assumptions, ISO-NE argues that each year it and external auditors prepare a Financial Report that establishes the "critical assumptions" sought by the Joint New England Agencies.⁴⁶ It states that the report details the assumptions used in the audited financial statements for the prior year, and outlines the assumptions that are expected to be used in the current year.⁴⁷ Further, ISO-NE asserts that this report is completed in the spring each year and is filed with the Commission as part of ISO-NE's FERC Form No. 1 filing.⁴⁸ ISO-NE states that the 2013 Revenue Requirement includes an estimate for pension plan expenses in 2013 to "reflect interest rate assumptions based on current economic conditions and actuarial projections."⁴⁹ ISO-NE states that the assumptions that will firmly establish the expense for 2013 (and the liabilities as of year end 2012) will be included in the Financial Report and ISO-NE's FERC Form No. 1 to be posted in the Spring of 2013.⁵⁰ ISO-NE points

⁴² *Id.* at 26 and n.85 ("See ISO-NE's answers to stakeholder questions at http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts/mtrls/2012/oct322012/index.html").

⁴³ *Id.* at 26.

⁴⁴ *Id.* at 26 and n.83. ISO-NE note that Joint New England Agencies explicitly reference the vacancy rate on page 8 of its protest and that it is unclear why they think the offset is not specified.

⁴⁵ *Id.* at 26; ISO-NE Transmittal Letter at 6.

⁴⁶ ISO-NE December 10, 2012 Answer at 27 and n.91 ("See the full Financial Report at http://www.iso-ne.com/aboutiso/fin/finstmnts/2011_financial_statements.pdf").

⁴⁷ *Id.* at 27.

⁴⁸ *Id.*

⁴⁹ *Id.* at 28.

⁵⁰ *Id.* at 29.

out that those numbers will replace the budget estimate included in the 2013 Revenue Requirement.⁵¹

24. In response to Joint New England Agencies' argument that the New England States need more process and oversight of ISO-NE's budgets, ISO-NE asserts that its budget process is robust and includes thorough review by stakeholders and the Commission.⁵² ISO-NE asserts that the existing budget process provides the Joint New England Agencies with ample opportunities to review and influence the budget.⁵³ ISO-NE highlights that the existing budget process includes: early posting of detailed budget information, including answers to stakeholders' questions and projected rates; meetings directly with the states, including individual agencies; an open review process conducted by NEPOOL, to which three of the Joint New England Agencies belong; access to the ISO-NE Board of Directors, which is responsible for approving the budgets; thorough Commission review; and ongoing opportunities throughout the year to influence ISO-NE's direction and related costs.⁵⁴ ISO-NE also disputes the Joint New England Agencies' requests for a hearing in this case and on any future budgets, stating that they have failed to raise a genuine issue of material fact here, and are not entitled to a hearing on future budgets merely because they request one.⁵⁵

25. Nevertheless, ISO-NE states that it does plan to schedule a meeting for all interested state agencies on the budgets at least 60 days in advance of its annual budget filings (including the administrative and capital budgets), and it commits to include any written feedback received from state commissions in its future budgets filings.⁵⁶

⁵¹ *Id.*

⁵² *Id.* at 5.

⁵³ *Id.* at 14.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 15.

III. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer because it has provided information that assisted us in our decision-making process. We are not persuaded to accept NEPOOL Participants Committee's answer and New England Joint Agencies' answer, as they largely reiterate earlier arguments, and will, therefore, reject them.

B. Commission Determination

28. ISO-NE's proposed Tariff revisions raise issues of material fact, including, among others, issues regarding its proposed increased staffing levels and almost 10 percent budget increase, that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures we order below. While protestors have raised concerns about the proposed Tariff revisions, we find that the appropriateness of the revisions is best addressed in the ordered hearing.

29. Our preliminary analysis indicates that ISO-NE's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept the proposed Tariff revisions for filing, suspend them for a nominal period to become effective January 1, 2013, subject to refund, and establish hearing and settlement judge procedures.

30. In *West Texas Utilities Co.*,⁵⁷ the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding, our preliminary analysis indicates that the rates may not be substantially excessive, as defined in *West Texas*, and therefore, as stated above, we accept the proposed Tariff revisions for filing, suspend them for a

⁵⁷ In 18 FERC ¶ 61,189 (1982) (*West Texas*), the Commission found that it generally would suspend proposed rates for a five-month period when its preliminary analysis indicates that a proposed rate increase may be more than 10 percent excessive.

nominal period, to be effective January 1, 2013, subject to refund, and set them for hearing and settlement judge procedures.

31. While we are setting ISO-NE's proposed Tariff revisions for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.⁵⁹

32. The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

33. We reject as beyond the scope of this proceeding the Joint New England Agencies' proposed reforms to ISO-NE's budget-making process.⁶⁰ The relevant determination here is whether ISO-NE's proposed Tariff revisions reflecting its 2013 Revenue Requirement are just and reasonable; ISO-NE has proposed no changes to its budget-making process. However, ISO-NE has committed to scheduling a meeting with all interested state agencies on the budgets at least 60 days in advance of its annual budget filings and to include state feedback as part of its future budget filings, as the Joint New England Agencies request, and we expect ISO-NE to fulfill its commitments in that

⁵⁸ 18 C.F.R. § 385.603 (2012).

⁵⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

⁶⁰ See *California Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,082, at P 75 (2009) (finding that commenter's concerns regarding involuntary curtailments have no bearing on whether a price cap and floor proposal is just and reasonable, and is thus beyond the scope of the proceeding); *S. Co. Services, Inc.*, 125 FERC ¶ 61,393, at P 20 (2008) (finding that market power issues are beyond the scope of a proceeding to determine whether a proposed tariff is just and reasonable).

regard. We also note that ISO-NE may submit its capital budget and revenue requirements (also referred to as its administrative budget) together if it so chooses.

The Commission orders:

(A) ISO-NE's proposed Tariff revisions are hereby accepted for filing, suspended for a nominal period, to become effective January 1, 2013, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of ISO-NE's proposed Tariff revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C), (D), and (E) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a

prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioners Moeller and LaFleur are concurring with a joint separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket No. ER13-185-000

(Issued December 31, 2012)

MOELLER and LaFLEUR, Commissioners, *concurring*:

The grid operators that manage the day-to-day balancing, control, and monitoring of the organized electric markets are responsible for a complex set of duties to coordinate generation and transmission over a particular region. Of the seven ISOs and RTOs that operate in the United States, their characteristics vary in terms of systems, size, and scope (ranging from single-state ISOs to multi-state RTOs). As no two operators are alike, their annual budgets will understandably vary based on their resource needs and other factors, but ultimately these amounts must be prudent and supported, and not wasteful or unnecessary.

At issue in this proceeding is whether the ISO-NE's budget request is just and reasonable. Frankly, based on the information and the record and the comments of the various parties, it is hard to tell whether sufficient information in some areas has been provided to allow an informed and reasoned decision. When material issues of fact exist, such as here, the Commission will institute such settlement and hearing procedures as a matter of course to better explore, understand, and resolve the contested issues.

However, while the ISOs and RTOs must be transparent and held accountable for their budgets, we are also mindful that an increase in one's budget, even a substantial increase, is not *per se* unreasonable if conditions warrant such an increase. During the past year, we have required the ISOs and RTOs to devote substantial resources to respond to new directives, including their efforts to comply with Order No. 1000's transmission planning and cost allocation requirements, Order No. 745's mandate to develop a complex net benefits methodology, as well as aggressive efforts to address complicated gas-electric coordination issues. While such regulatory burdens may warrant a need for more resources, the ISOs and RTOs must ultimately bear the burden of defending and adequately supporting their requests.

For these reasons, we concur.

Philip D. Moeller
Commissioner

Cheryl A. LaFleur
Commissioner