

125 FERC ¶ 61,230  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 26, 2008

In Reply Refer To:  
ISO New England Inc., *et al.*  
Docket No. ER09-147-000

ISO New England Inc.  
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Attention: Howard H. Shafferman  
Counsel for ISO New  
England Inc.

Attention: Joseph B. Nelson  
Counsel to the Long Island  
Power Authority and LIPA

Reference: Request for Waiver of Financial Assurance Policy

Dear Ladies and Gentlemen:

1. On October 27, 2008, ISO New England Inc. (ISO-NE), the Long Island Power Authority and its operating subsidiary, LIPA (collectively, the Applicants), jointly filed a request for expedited consideration of a waiver request. Specifically, the Applicants request (i) a waiver permitting LIPA's treatment as a Municipal Market Participant under Section III of ISO-NE's Financial Assurance Policy<sup>1</sup> until a stakeholder process is

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<sup>1</sup> The Financial Assurance Policy is Exhibit IA to section I of the ISO-NE Transmission, Markets and Services Tariff, Electric Tariff No. 3. Section III of the Financial Assurance Policy deals specifically with the financial assurance requirements for Municipal Market Participants.

completed and the Commission has approved a permanent solution; and (ii) a waiver permitting the use of the ISO-NE settlement account for acceptance of LIPA's cash collateral until the earlier of the Commission's grant of waiver or action upon a permanent solution.

2. The Applicants explain that LIPA is a non-profit, state power authority organized under New York State law. The Applicants acknowledge that since LIPA became a New England Market Participant in 2001, LIPA has been treated as a Municipal Market Participant. The Applicants further acknowledge that since its registration in 2001, LIPA has fully complied with the creditworthiness requirements for Municipal Market Participants, has maintained an investment grade rating, and timely paid all invoices.

3. The Applicants state that ISO-NE concluded in October 2008, that because LIPA is organized under New York law, and not under the laws of a state of New England, that LIPA does not qualify as a Municipal Market Participant under its current Financial Assurance Policy. Based on this conclusion, the Applicants explain that ISO-NE informed LIPA that it was subject to the credit requirements applicable to all Non-Municipal Market Participants. The Applicants confirm that LIPA complied with ISO-NE's request for additional financial assurance by depositing \$5.3 million in cash collateral into the ISO-NE settlement account and granting ISO-NE a security interest for such amounts. The Applicants explain that it was necessary for LIPA to use ISO-NE's settlement account for its deposit, rather than posting it with the agent designated in the Financial Assurance Policy because establishing an account with the agent requires specific authorization by the Long Island Power Authority's Board of Trustees, which could not be accomplished until December, 2008. According to the Applicants, as a condition of seeking this joint waiver, ISO-NE has required LIPA to continue its posting of the appropriate levels of collateral as a Non-Municipal Market Participant, but upon issuance of the requested waiver will refund to LIPA its posted collateral.

4. The Applicants acknowledge that the Financial Assurance Policy, as currently written, excludes LIPA from treatment as a Municipal Market Participant because it is not a public owned entity created under the authority of one of the New England states. However, the Applicants also agree that LIPA should be treated the same as other publicly owned entities in New England and, to ISO-NE's knowledge, LIPA is the only market participant whose status is affected by these provisions. The Applicants explain that a stakeholder process has been initiated to consider modifications to the Financial Assurance Policy to accomplish this goal and that ISO-NE intends to file a proposed permanent solution with the Commission when the stakeholder process is completed.

5. Notice of the Applicants' joint filing was published in the *Federal Register*, 73 Fed. Reg. 65,844 (2008), with protests and interventions due on or before November 6, 2008. The New England Power Pool (NEPOOL) filed a motion to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2008), NEPOOL's timely, unopposed motion to intervene serves to

make it a party to this proceeding. In a separate filing, NEPOOL submitted comments. NEPOOL does not oppose the requested waiver.

6. In its comments, NEPOOL notes that its Participants Committee has not had the opportunity to consider the Applicants' joint waiver request. NEPOOL also notes that the waiver request is temporary and is intended only to be effective until completion of an expedited opportunity to consider within the stakeholder process any proposed changes to the financial assurance requirements as applied to LIPA's circumstances. NEPOOL reminds the Commission that the current Financial Assurance Policy is the product of a deliberate NEPOOL stakeholder process that was accepted by NEPOOL and approved by the Commission. NEPOOL explains that the region is currently considering its financial assurance requirements and states that it continues to wrestle with the distinctions, if any, it should make among various market participants in establishing financial assurance and credit requirements. Accordingly, NEPOOL urges the Commission to allow full stakeholder consideration before it judges whether and to what extent the circumstances identified by ISO-NE and LIPA in this proceeding justify permanent changes to the current Financial Assurance Policy.

7. The Commission has previously granted temporary tariff waivers where: (1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.<sup>2</sup> Applying these same standards to the instant filing, we find that the Applicants have provided sufficient justification for the requested waivers. We believe that the Applicants have acted in good faith and find that limited and temporary waivers permitting the continued treatment of LIPA as a Municipal Market Participant and permitting the use of ISO-NE's settlement account for LIPA's cash collateral will remedy concrete problems in a way that merely continues the status quo, without causing any harm, or risk of harm, to third parties. Accordingly, we hereby grant the requested waivers.

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<sup>2</sup> *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006).

8. We also note the importance of completing the stakeholder process to address the problem and direct ISO-NE to file tariff revisions proposing a resolution to this issue at the earliest possible date. The limited and temporary waivers granted in this order will expire upon Commission approval of a permanent solution.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.