

134 FERC ¶ 61,014  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

ISO New England Inc. and  
New England Power Pool

Docket No. ER10-942-001

ORDER DENYING REHEARING

(Issued January 7, 2011)

1. On July 15, 2010, the Commission issued an order accepting in part and rejecting in part proposed credit reform-related tariff amendments submitted in this proceeding by ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (collectively, the Filing Parties).<sup>1</sup> Among other things, the July 15, 2010 Order accepted the Filing Parties' proposal to eliminate corporate guarantees as a form of financial assurance in the New England markets. The New England Credit Policy Coalition (the Coalition) requests rehearing of this determination. For the reasons discussed below, we will deny rehearing.

**I. Background**

2. On March 26, 2010, the Filing Parties filed proposed revisions to the ISO-NE Tariff's Financial Assurance Policy and its Billing Policy (collectively, Proposed Amendments). Among other things, the Proposed Amendments sought authorization to eliminate unsecured credit for all market participants except certain state-regulated load-serving entities, such as municipal utilities and transmission and distribution companies that are able to recover their costs for native load service through government-approved rates.<sup>2</sup> The Filing Parties stated that the Proposed Amendments would help reduce the

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<sup>1</sup> *ISO New England Inc.*, 132 FERC ¶ 61,046 (2010) (July 15, 2010 Order).

<sup>2</sup> The Proposed Amendments also sought to: (i) shorten the billing and settlement period for Hourly Charges from weekly to twice each week; (ii) provide for separate collateralization of ISO Charges and Transmission Charges; (iii) change the allocation of shortfalls caused by payment defaults; and (iv) implement other amendments to the Financial Assurance Policy and the Billing Policy, including revisions to standards governing letters of credit and elimination of the requirement for ISO-NE to purchase credit insurance. Proposed Revisions at 5-6.

financial assurance burden on ISO-NE's Market Participants and the risks to the New England electricity markets posed by payment defaults.<sup>3</sup>

3. As part of their general initiative to minimize - credit risks, the Filing Parties proposed eliminate the use of corporate guarantees in all instances.<sup>4</sup> In the July 15, 2010 Order, noting that there were no protests to this proposal,<sup>5</sup> the Commission accepted this proposal, stating that it was a reasonable way to further reduce the risk of default.<sup>6</sup>

## II. Request for Rehearing

4. The Coalition requests rehearing of the Commission's elimination of corporate guarantees in the July 15, 2010 Order. It argues that the proposal to make unsecured credit unavailable to most Market Participants included barring corporate guarantees as financial assurance.<sup>7</sup> The Coalition states that it protested the Proposed Amendments' elimination of unsecured credit.<sup>8</sup> The Coalition argues that its protest inherently objected to the elimination of corporate guarantees because they are included in the elimination of unsecured credit, and that the Commission erroneously stated there were no protests on the proposed barring of corporate guarantees.<sup>9</sup>

5. The Coalition also argues that the elimination of corporate guarantees selectively targeted competitive load-serving entities (Competitive LSE) such as its members.<sup>10</sup> The Coalition states that Competitive LSEs routinely use corporate guarantees and thus will be negatively affected compared to state-regulated entities that are capitalized sufficiently to obtain credit and often debt ratings, thereby reducing financial dependence on their corporate parent. The Coalition argues eliminating corporate guarantees would give state-regulated cost-of-service suppliers a competitive advantage because the Competitive

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> Proposed Amendments at 16.

<sup>5</sup> July 15, 2010 Order, 132 FERC ¶ 61,046 at P 78.

<sup>6</sup> *Id.* P 80.

<sup>7</sup> Rehearing Request at 3.

<sup>8</sup> *Id.* at 3, 11.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 6-7.

LSEs will incur the costs of posting letters of credit.<sup>11</sup> State-regulated suppliers, according to the Coalition, do not have these costs and thus will have an unduly preferential competitive advantage. Additionally, the Coalition explains that, in the July 15, 2010 Order, the Commission held that the Filing Parties had not supported the selective elimination of unsecured credit, and could not find that such proposal was not unduly discriminatory and preferential.<sup>12</sup> The Coalition argues that the Commission erred by not applying that same rationale as a basis to reject eliminating all corporate guarantees.

6. The Coalition claims that the Commission identified no basis for its conclusion to eliminate corporate guarantees, simply stating that the proposal was a “reasonable way to further reduce the risk of default.”<sup>13</sup> It asserts that, in the original filing, the Filing Parties had claimed that eliminating corporate guarantees would reduce contract, legal, and bankruptcy risk without support or explanation. The Coalition also argues that the Filing Parties did not present any evidence that the continued availability of corporate guarantees as a means of financial assurance would create a default risk in the ISO-NE market. The Coalition argues that, if anything, corporate guarantees actually reduce risk because they provide ISO-NE with another creditworthy party against whom to present a claim in the event of default.<sup>14</sup> The Coalition compares corporate guarantees to Letters of Credit, saying that under a default for both, the ISO would make a claim against the defaulting party and its backer, respectively the parent company posting the guarantee and the bank posting the Letter of Credit.

7. On August 31, 2010, the Filing Parties filed an Answer, and on September 13, 2010, the Coalition filed an Answer to the Filing Parties’ Answer.

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<sup>11</sup> The Coalition argues these letters of credit are costly at three percent of the face amount per issuance and will cost approximately \$7.7 million according to its expert witness’s Affidavit in its original April 16 Protest. Affidavit of Scott Carr, at 11-13, Attachment 1 to Protest of the New England Credit Policy Coalition, Docket No. ER10-942-000 (Apr. 16, 2010).

<sup>12</sup> Rehearing Request at 3 (citing July 15, 2010 Order, 132 FERC ¶ 61,046 at P 63-70).

<sup>13</sup> *Id.* at 9 (citing July 15, 2010 Order, 132 FERC ¶ 61,046 at P 80).

<sup>14</sup> *Id.* at 9.

### III. Discussion

#### A. Procedural Matters

8. Rule 713(d)(1) of the Commission's regulations, 18 C.F.R. § 385.713(d)(1)(2010), prohibits answers to requests for rehearing. Accordingly, we will reject all answers to the requests for rehearing.

#### B. Commission Determination

9. The Commission will deny the request for rehearing. We find that the request for rehearing is procedurally improper due to the Coalition's failure to raise any specific argument in favor of corporate guarantees in its April 16, 2010 protest and its May 13, 2010 answer to the Filing Parties' response. It is well established that a request for rehearing is not the appropriate procedural vehicle for raising issues for the first time because it is disruptive to the administrative process.<sup>15</sup>

10. The Coalition argues that its opposition to eliminating corporate guarantees was subsumed in its arguments against eliminating unsecured credit. We disagree. We find that the proposed elimination of corporate guarantees is a distinct issue from the issue of unsecured credit. The issues were separately proposed by the Filing Parties, with the Filing Parties expressly distinguishing corporate guarantees from unsecured credit generally in several places in the filing.<sup>16</sup> For instance, the Proposed Amendments refer to corporate guarantees as a form of financial assurance that should be eliminated "even in the narrow circumstances *where unsecured credit may still be used*" (emphasis added).<sup>17</sup> Later in the original filing, when the Filing Parties describe the NEPOOL stakeholder process and list the different Financial Assurance Policy changes discussed, they refer to "corporate guarantees" separately from "unsecured credit."<sup>18</sup> And in the

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<sup>15</sup> The Commission looks with disfavor on parties raising new issues on rehearing. *Baltimore Gas and Electric Company*, 91 FERC ¶ 61,270, at 61,922 (2000); *Baltimore Gas & Electric Company*, 92 FERC ¶ 61,043, at 61,114 (2000); *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,006, at 61,015 (2001); *Carolina Power & Light Company*, 106 FERC ¶ 61,141, at P 15 (2004); *CARE v. Calpine Energy Services, LP*, 107 FERC ¶ 61,238, at P 7 (2004); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 (2009); *Western Grid Development, LLC*, 133 FERC ¶ 61,029, at P 14 (2010).

<sup>16</sup> Proposed Amendments at 5, 14, 16, and 21.

<sup>17</sup> *Id.* at 16.

<sup>18</sup> *Id.* at 21

Ludlow/Iafrati Testimony, corporate guarantees were again distinguished from unsecured credit: “[C]orporate guarantees are an even more attenuated form of security than the extension of unsecured credit.”<sup>19</sup> The testimony goes on to say that corporate guarantees should be eliminated in all circumstances, even if unsecured credit is still permitted.<sup>20</sup>

11. In addition, while the proposed elimination of unsecured credit in the Filing Parties’ Proposed Amendments would not apply to some entities with native load, which were able to maintain access to unsecured credit (which the Commission found to be not unduly discriminatory), in contrast, the proposed elimination of corporate guarantees applied to all entities, with no exceptions. Thus, the Proposed Amendments make it clear that corporate guarantees are a separate and distinct issue that the Coalition should have raised in its initial protest or a later responsive pleading. We also note that, initially, no party specifically protested the corporate guarantee issue.

12. With respect to the merits of our decision, we find the Coalition incorrectly asserts that the elimination of corporate guarantees selectively targeted certain entities while unduly preferring others. Its allegation of an unduly disproportionate financial impact on Competitive LSEs via the costs of letters of credit does not withstand scrutiny. Competitive LSEs are not being singled out versus any other sector of the New England market. The Filing Parties sought to eliminate corporate guarantees “for the use of financial assurance *in all circumstances*” (emphasis added). And the July 15, 2010 Order accepted these tariff revisions “to *entirely* eliminate corporate guarantees as financial assurance [emphasis added].”<sup>21</sup> Neither the Filing Parties nor the Commission made any distinction between different types of Market Participants. The manner in which a business entity is structured and capitalized is a choice based on a multitude of legal, financial, and other considerations. Choices exist for every company, regardless of business type, to bolster a credit position or balance sheet such that credit is more plentiful and on more reasonable terms. It is expected that any market will set reasonable terms by which participants in it can operate. It is also expected that providers of credit will analyze credit applicants for potential risk and establish associated terms and costs for provision of credit based upon those perceived risks. While the choices that each business entity has made in regards to its structure and capitalization are an inherent factor in any risk analysis, their consideration does not in itself indicate selective targeting. We find therefore that the Coalition members have not been selectively

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<sup>19</sup> Ludlow/Iafrati Testimony at 20, 11-12.

<sup>20</sup> *Id.* at 15-17.

<sup>21</sup> July 15, 2010 Order, 132 FERC ¶ 61,046 at P 80.

targeted. We also find the proposal to eliminate corporate guarantees not to be unduly discriminatory or preferential in design or application.

13. Additionally, contrary to the Coalition's assertion, we believe that the Filing Parties adequately supported their proposal to eliminate corporate guarantees. The Filing Parties included the testimony of Ludlow/Iafrati in their original filing. That testimony concludes that not only do corporate guarantees increase contract, legal, and bankruptcy risk, but that default risk also increases with the introduction of another obligor that ISO-NE is in no position to monitor.<sup>22</sup> Further, it is irrefutable that default risk is lower with secured credit than with unsecured credit, such as corporate guarantees. By removing this form of unsecured credit, the Filing Parties will reduce the risk of incurring losses if a market participant was to default. As a result, the reduction in default risk will increase credit security in the New England market. Finally, we note that the Filing Parties' decision to make this proposal was the result of a lengthy stakeholder process with the specific aim of reducing default risks. Their decision comports with our longstanding policy of encouraging ISOs to consider other means that they believe would be cost-effective measures to reduce mutualized default risk.<sup>23</sup> For these reasons, we reaffirm that it is just and reasonable to eliminate the use of corporate guarantees for the provision of financial assurance in the New England market.

The Commission orders:

The Coalition's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>22</sup> Ludlow/Iafrati Testimony at 11-15, 20.

<sup>23</sup> *Creditworthiness Policy Statement*, 109 FERC ¶ 61,186, at P 31 (2004).