

140 FERC ¶ 61,177
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. and New England Power Pool Docket No. ER12-1651-000

ORDER ON COMPLIANCE FILING

(Issued September 4, 2012)

1. On April 30, 2012, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, Filing Parties) submitted revisions to the ISO-NE Transmission, Markets and Services Tariff (Tariff) to comply with Order Nos. 741 and 741-A.¹ The revisions propose to designate ISO-NE as the central counterparty for transactions that clear through the day-ahead and real-time markets, as well as regional network service transactions and certain bilateral transactions that clear through the ISO-NE settlement system. ISO-NE also proposes revisions to its Financial Assurance Policy relating to Internal Bilateral Transactions. For the reasons discussed below, the Commission will accept ISO-NE's compliance filing, to become effective January 1, 2013, as requested.

I. Background

2. In Order No. 741, the Commission adopted reforms to strengthen the credit policies used in organized wholesale electric power markets. Citing its statutory responsibility to ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential,² the Commission directed regional transmission organizations (RTO) and independent system operators (ISO) to revise their tariffs to reflect the following reforms: implementation of shortened settlement timeframes, restrictions on the use of unsecured

¹ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

² 16 U.S.C. §§ 824d, 824e (2006).

credit, elimination of unsecured credit in all financial transmission rights (FTR) or equivalent markets, clarification of legal status to continue the netting and set-off of transactions in the event of bankruptcy, establishment of minimum criteria for market participation, clarification regarding the organized markets' administrators' ability to invoke "material adverse change" clauses to demand additional collateral from market participants, and adoption of a two-day grace period for "curing" collateral calls. The Commission directed each RTO and ISO to submit tariff changes by June 30, 2011, with an effective date of October 1, 2011. In Order No. 741-A, the Commission extended the deadline for complying with the requirement regarding the ability to offset market obligations to September 30, 2011, with the relevant tariff revisions to take effect January 1, 2012. The Commission subsequently extended the deadline for complying with that requirement to April 30, 2012. On April 30, 2012, Filing Parties submitted the compliance filing at issue in this proceeding.

II. Notice of Filing and Responsive Pleadings

3. Notice of the Filing Parties' April 30, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 27,046 (2012), with interventions and protests due on or before May 14, 2012.³ Northeast Utilities Service Company; NRG Companies; and together, EEI and EPSA filed timely motions to intervene. Eastern Massachusetts Consumer-Owned Systems (EMCOS);⁴ National Rural Electric Cooperative Association (NRECA); Exelon Corporation (Exelon); and, jointly, New Hampshire Electric Cooperative, Inc. and the Vermont Electric Cooperative (collectively, Cooperatives) filed timely motions to intervene with comments or protests. NEPOOL and ISO-NE each filed an answer to the comments, and together ISO-NE, Midwest Independent Transmission System Operator, Inc. (MISO), and New York Independent System Operator, Inc. (NYISO) (collectively, Joint ISOs) filed a joint answer to the comments.

³ On May 11, 2012, Edison Electric Institute (EEI) and Electric Power Supply Association (EPSA) jointly filed a motion requesting an extension of the comment deadline to May 29, 2012. In a notice issued on May 14, 2012, the deadline for comments was extended to May 21, 2012.

⁴ EMCOS consists of Braintree Electric Light Department, Hingham Municipal Lighting Plant, Reading Municipal Light Department and Taunton Municipal Light Department.

4. The April 30, 2012 Filing and responsive protests are summarized by issue below.

III. Discussion

A. Procedural Matters

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

6. 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 the answers filed in response to comments and protests on the compliance filing because they have provided information that assisted us in the decision-making process.

B. Substantive Matters

1. Ability to Offset Market Obligations

7. Order No. 741 directed each RTO and ISO to adopt steps to address the risk that it may not be allowed to use netting and set-offs if a market participant enters bankruptcy.⁵ The Commission required each RTO and ISO to submit tariff revisions reflecting one of the following options: (1) establish a central counterparty; (2) require market participants to provide a security interest in their transactions in order to establish collateral requirements based on net exposure; (3) propose another alternative, which provides the same degree of protection as options 1 and 2; or (4) establish credit requirements for market participants based on their gross obligations.⁶

⁵ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 117.

⁶ *Id.*

a. **Proposal**

8. ISO-NE proposes to become the central counterparty⁷ for Regional Transmission Service transactions, transactions in the day-ahead and real-time energy markets, transactions for ancillary services, transactions in the Forward Capacity Market, market transactions for Financial Transmission Rights (FTR), and Internal Bilateral Transactions. ISO-NE explains that as the central counterparty, it would be inserted in the chain of title between the seller and purchaser of the products involved in each transaction listed above, with limited exceptions.⁸ In order to do this, ISO-NE proposes several changes to its governing documents. Specifically, ISO-NE proposes modifications to Section I (General Terms and Conditions), Section II (Open Access Transmission Tariff (OATT)), Section III (Market Rule 1) and to the forms of Market Participant Service Agreement included in Attachment A of Section IV (ISO Funding Mechanisms) of the ISO-NE Transmission, Markets and Services Tariff (Tariff).

9. ISO-NE explains that the General Terms and Conditions would be revised to reflect that ISO-NE acts as the central counterparty and, as such, it bills and collects charges and pays remittances for its own account, not as agent for market participants and other covered entities. Additionally, ISO-NE states that its proposed revisions to section I.3 would provide an overview of ISO-NE's role as central counterparty, and make clear that ISO-NE will not make any independent warranties with respect to any products in transactions for which it is the central counterparty.⁹

10. ISO-NE also proposes to revise Exhibit ID (Financial Assurance Policy) of its General Terms and Conditions to prevent bilateral transactions from causing a market participant to exceed its credit test percentages.¹⁰ Specifically, ISO-NE states that, if a market participant is going to exceed its credit test percentages as a result of one or more

⁷ ISO-NE defines central counterparty as: "Counterparty means the status in which the ISO acts as the contracting party, in its name and own right and now as an agent, to an agreement or transaction with a Customer (including assignments involving Customer) involving sale to the ISO, and/or purchase from the ISO, of Regional Transmission Service and market and other products and services, and other transactions and assignments involving Customers, all as described in the Tariff."

⁸ ISO-NE Transmittal at 4.

⁹ *Id.* at 5.

¹⁰ The credit test percentages compare a market participant's obligations to their credit limit and financial assurance. Exhibit IA, ISO-NE's Financial Assurance Policy III.B.

bilateral transaction(s), then ISO-NE will reject the pending bilateral transaction(s) to the extent necessary to bring the market participant back into compliance with ISO-NE's Financial Assurance Policy. The Internal Bilateral Transaction-related revisions provide assurance that ISO-NE will not take on unacceptable risks in its role as central counterparty for Internal Bilateral Transactions. In response to concerns raised in the stakeholder process about the rejection of Internal Bilateral Transactions, ISO-NE states that it will be working with the NEPOOL Budget & Finance Subcommittee to consider how the Financial Assurance Policy might be modified to provide for notice and a limited opportunity to cure before Internal Bilateral Transactions are rejected.¹¹

11. ISO-NE further explains that it is revising its OATT to state that it will purchase and provide Regional Transmission Service and ancillary services directly, as the central counterparty. However, ISO-NE states that it will not serve as central counterparty for point-to-point service over Merchant Transmission Facilities, point-to-point service over phase I/II HVDC transmission facilities or local service, because it does not currently provide or bill for these transmission services.¹²

12. ISO-NE also seeks to revise section III.1.1 of Market Rule 1 of its Tariff to provide an overview of the role of ISO-NE as central counterparty for energy, capacity and other markets and products.¹³ ISO-NE states that it charges its customers the amounts produced by the pertinent market clearing process or through the other pricing mechanisms described in Market Rule 1 and is therefore not exercising discretion as to pricing its sales (whether under Market Rule 1 or under any other provision of the ISO-NE Tariff). Proposed new section III.1.4 also provides the prerequisites for ISO-NE to act as central counterparty to settle Internal Bilateral Transactions submitted by market participants.¹⁴

13. ISO-NE states that it will not act as the central counterparty for the import into the New England Control Area, for the use of Publicly Owned Entities, of: (1) energy,

¹¹ *Id.*

¹² *Id.* at 6 & n.15.

¹³ *Id.*

¹⁴ In addition, ISO-NE explains that Internal Bilateral Transactions are included in a petition to the Commodity Futures Trading Commission (CFTC) seeking exemption from all provisions of the Commodity Exchange Act and regulations thereunder, except for sections 4b, 40, 6(c) and 9(a)(2) of the Act. ISO-NE further explains that the requested exemption is to provide legal certainty that Internal Bilateral Transactions (and ISO-NE) are not subject to regulation by the CFTC.

capacity, and ancillary products associated therewith, to which the Publicly Owned Entities are given preference under articles 407 and 408 of the project license for the New York Power Authority's Niagara Project;¹⁵ and (2) energy, capacity, and ancillary products associated therewith, to which Publicly Owned Entities are entitled under article 419 of the project license for the New York Power Authority's Franklin D. Roosevelt – St. Lawrence Project.¹⁶ ISO-NE explains that this is at the request of members of the publicly-owned entity sector, and in recognition of the license conditions.

14. ISO-NE states that the Participants Committee voted unanimously at its April 24, 2012 meeting, to support the proposed tariff changes. ISO-NE requests that the proposed Tariff changes become effective on January 1, 2013.

b. Request for Rulings and Waivers

15. ISO-NE seeks clarification that it will not be subject to the regulations and requirements regarding market-based rate authorizations for wholesale sale of electric energy, capacity, and ancillary services. In this regard, ISO-NE explains that it will not have any discretion regarding which transactions clear the markets or the prices at which they clear pursuant to the ISO-NE Tariff and will not be a market seller with discretion to sell at market-based rates as defined in the Commissions regulations.¹⁷

16. ISO-NE also seeks clarification that it will not be subject to annual charges under section 382.201 of the Commission's regulations beyond what is already assessed to ISO-NE as a public utility. ISO-NE states that additional reporting or annual charge obligations would pertain to the same transmission service for which it is already reporting and paying charges and would result in unnecessarily burdensome duplication of reporting and payments.¹⁸

17. ISO-NE requests waiver of the Electronic Quarterly Report reporting requirements regarding its sales to market participants that result from its presence in the chain of title of transactions. ISO-NE explains that additional reporting would not provide any

¹⁵ ISO-NE Transmittal at 6-7 (citing *New York Power Authority*, 120 FERC ¶ 61,266, at P 61 (2007)).

¹⁶ *Id.* (citing *New York Power Authority, et al.*, 105 FERC ¶ 61,102 (2003)).

¹⁷ *Id.* at 8 (citing *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207, at P 57 (2010), and *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277 (2010)).

¹⁸ *Id.* at 8 (citing *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207 at P 55).

significant additional information beyond what the Commission already receives from the market participant sellers.¹⁹

2. Protests

18. EMCOS and the Cooperatives argue that ISO-NE becoming central counterparty for almost all transactions in ISO-NE markets could impact their tax exempt status. They assert that ISO-NE's proposed tariff revisions do not address potential impacts of imposing the Order No. 741 central counterparty construct on the tax-exempt status of income earned, and interest paid on indebtedness of ISO-NE market participants that are political subdivisions. The Cooperatives state that, as applied to their respective power supply arrangements, the proposal that ISO-NE become central counterparty to virtually all transactions undertaken within New England could be viewed as changing each of the Cooperatives' revenue sources, thereby potentially impacting their tax-exempt status. Specifically, the Cooperatives argue that the changes ISO-NE may make to its settlement accounting system to implement central counterparty may create an inaccurate appearance of additional non-member income on the part of the Cooperatives.²⁰

19. EMCOS and the Cooperatives acknowledge that ISO-NE has obtained a private letter ruling from the Internal Revenue Service that its role as a central counterparty would not affect its own tax-exempt status. However, they argue that the private letter applies only to ISO-NE and cannot be used or cited by others as precedent.

20. EMCOS states that ISO-NE's transmission arrangements have consistently recognized the broader potential for impacts on the tax-exempt status and activities of political subdivision market participants, and have included safety valve provisions for dealing with unforeseen impacts on tax exempt status. EMCOS argues that a comparable safety valve provision should be incorporated in ISO-NE's central counterparty provisions. Specifically, EMCOS proposes the following language:

If a Publicly Owned Entity reasonably determines that ISO's status as counterparty, as defined in Section 1.2.2, would in any way jeopardize or compromise the tax-exempt status of its income or any bonds used to finance the Publicly Owned Entity's facilities, it shall provide written notice of its determination to the ISO. Within five (5) business days of delivery of such notice, the ISO and the affected Publicly Owned Entity will initiate efforts to develop revised or replacement arrangements that will enable the affected Publicly Owned Entity to maintain the tax-exempt

¹⁹ *Id.* at 8-9 (citing *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207 at PP 60-61).

²⁰ *Id.* at 4.

status of its affected income and debt. The negotiation for revised or replacement arrangements shall be concluded as expeditiously as the circumstances of the threat to the tax-exempt status of the relevant debt require, and shall take into account whether or not the affected Publicly Owned Entity is eligible to petition for relief under Title 11 of the United States Code.

EMCOS argues that ISO-NE's central counterparty tariff revisions should ensure that the addition of the central counterparty construct does not jeopardize the tax-exempt status of political subdivision market participants or of particular transactions in which they are involved. EMCOS further argues that the above language would not affect the timely implementation of the central counterparty construct, in accordance with the Commission's objectives in Order No. 741.

21. Similarly, the Cooperatives request that the Commission condition any approval of the filing on the adoption of a savings provision that would include the following concepts: (1) recognition of the tax-exempt status of any participant as defined and determined in accordance with section 501(c)(12) of the Internal Revenue Code, and a stated understanding that nothing in the approved changes is intended to, nor should be construed in a manner that would, jeopardize the tax-exempt status of any participant under section 501(c)(12) of any participant; and (2) an understanding that, in the event any provision adopted in connection with the approval of the central counterparty proposal is determined to be inconsistent with the maintenance of such participant's tax-exempt status under section 501(c)(12), ISO-NE and NEPOOL Participants would be obligated to undertake commercially reasonable efforts to develop revised or replacement arrangements that will enable such participant to continue to participate in the New England markets without incurring adverse federal income tax treatment, and so as to maintain the tax-exempt status of such participant under section 501(c)(12).²¹

22. The Cooperatives also request that the Commission direct ISO-NE and the NEPOOL Participants to negotiate the specific terms of the savings provisions and to submit it as a compliance filing in connection with the approval of the arrangements at issue herein. The Cooperatives note that they support EMCOS' proposed alternative, assuming it can be made express in addressing potential impacts upon the tax-exempt status of the Internal Revenue Code 501(c)(12) entities.²² NRECA states that it supports the Cooperatives' position.²³

²¹ *Id.* at 7.

²² *Id.* at 7-8 & n.10.

²³ NRECA Comments at 1 and 5.

23. Exelon requests that the Commission condition acceptance of the proposed tariff revisions on ISO-NE providing more transparency regarding its methods of assessing and modeling the creditworthiness of ISO-NE members.²⁴ Exelon states that ISO-NE's decision to act as central counterparty for most transactions settled in its market, rather than create an affiliate, like PJM Interconnection, L.L.C.'s (PJM) approach, potentially poses a risk to ISO-NE's solvency and, by extension, to its members. Exelon contends that ISO-NE's proposed tariff revisions do not reflect the methods or models ISO-NE will use to manage this solvency risk. Further, Exelon argues that the proposed revisions do not explain how ISO-NE will manage cash and credit facilities to ensure its solvency in a stress case where a significant payment default by one of more ISO-NE members triggers demands by non-defaulting member counterparties for payment from ISO-NE.

24. To provide transparency and establish processes to ensure adequate liquidity and RTO/ISO solvency under a variety of stress conditions, Exelon requests that ISO-NE be required to disclose to its members the models and model inputs it uses to evaluate members' creditworthiness. It further proposes that ISO-NE be required to demonstrate its ability to remain solvent in stress test cases. Specifically, Exelon wants ISO-NE to: (1) release quarterly portfolio statistics, including a distribution table by counterparty credit rating and exposure of assessed credit risk (similar to those published by PJM and MISO), and credit lines of ISO-NE's top risks as identified by the ISO-NE Credit Department; (2) perform and publish verifiable stress tests specifically targeting forward financial products to ensure collateral adequacy; (3) release quarterly data on ISO-NE's working capital and backup credit facilities available to demonstrate to its members that its liquidity is sufficient to meet an adverse credit event under various stress tests; and (4) create a process whereby ISO-NE's Budget and Finance Subcommittee ensures that ISO-NE members are aligned with ISO-NE's credit policy and that undue credit risks are mitigated. As examples, Exelon submits two credit exposure reports from MISO and PJM that it deems appropriate to meet the aforementioned transparency goals.

3. Answers to Protests

25. In its answer, NEPOOL urges the Commission to refrain from ordering a specific solution or imposing any specific language changes to ISO-NE's proposed tariff revisions. Rather, NEPOOL requests that the Commission refer those issues back to the stakeholder processes.²⁵

²⁴ Exelon's comments are directed to MISO, ISO-NE and NYISO.

²⁵ NEPOOL Answer at 2 and 6.

26. ISO-NE states protestors' concerns about their tax-exempt status are vague and speculative.²⁶ ISO-NE requests that, even if the Commission requires inclusion of language in the Tariff to protect against possible adverse effects of central counterparty implementation on the tax-exempt status of stakeholders, the Commission should not approve the language proposed by EMCOS.²⁷ ISO-NE further requests that, if the Commission does require such a compliance filing, ISO-NE be given enough time to submit it so that it can simply become effective at the same time as the general central counterparty mechanism (i.e. January 1, 2013).²⁸ ISO-NE states that this will afford ISO-NE and stakeholders maximum time and flexibility to address the issue while still ensuring that revised language is implemented within the necessary time frame.²⁹

27. The Joint ISOs argue that the tariff revisions requested by Exelon are beyond the scope of the central counterparty compliance filings because the revisions do not pertain to clarifying the legal status of the Joint ISOs to act as the single counterparty to market participant transactions. They also argue that Exelon is wrong to assert that the Joint ISOs are exposing their respective market participants to additional risks that warrant additional protections by not creating an affiliate to serve as the central counterparty. They state that PJM and PJM Settlement, its affiliate, mutually guarantee the responsibilities, activities, assets, and liabilities of each other so that this solvency risk is equally borne by PJM as guarantor.³⁰

28. The Joint ISOs also state that ISO-NE protects itself against any such insolvency risk by explicitly limiting its obligations to make payments to market participants to the amount of money received from market participants through charges, drawdowns, and other recovery mechanisms.³¹ Moreover, the Joint ISOs state that the risk of insolvency is further minimized because ISO-NE has the explicit right under its tariff to recover any

²⁶ ISO-NE Answer at 3.

²⁷ *Id.* at 4.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Joint ISO Answer at 4 (citing *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277, at P 10 (2010)).

³¹ *Id.* 5, n.12 (citing Sections 3.3 and 3.4 of the ISO-NE Billing Policy; NYISO OATT Section 27; Section 7 of the MISO Tariff).

market participant payment default/bad debt loss and related costs from its other market participants.³²

29. The Joint ISOs also assert that the protections that Exelon seeks are redundant because each of the RTO/ISOs' tariffs set forth the methods they use to assess and model the creditworthiness of their market participants and the collateral requirements imposed prior to a market participants participating in the market. The Joint ISOs also argue that Exelon has explained neither what it would do with information such as models and the inputs thereto, nor how such information would safeguard the markets.

4. Commission Determination

30. We find the Filing Parties' proposal to designate ISO-NE as the central counterparty for transactions that clear through the day-ahead and real-time markets, as well as for regional network service transactions and certain bilateral transactions that clear through the ISO-NE settlement system, to be in compliance with Order Nos. 741 and 741-A. The establishment of ISO-NE as central counterparty addresses ambiguity regarding the identity of contracting parties in ISO-NE transactions by clarifying that there is a single, specified central counterparty to market participants. This permits ISO-NE to assert in a market participant bankruptcy that the same party, ISO-NE, is involved in all transactions for which a setoff is effected, satisfying one of the criteria for the "mutuality" needed for such a setoff in the bankruptcy.

31. We grant clarification that ISO-NE will not be subject to the regulations and requirements regarding market-based rate authorizations and wholesale sale of electric energy, capacity, and ancillary services at market-based rates in its role as central counterparty. In fulfilling its obligations under Order No. 741, ISO-NE does not need market-based rate authority under Part 35, Subpart H of our regulations since ISO-NE will have no discretion regarding which transactions clear the markets or the prices at which they clear pursuant to the ISO-NE Tariff and will not be a "market seller" with discretion to sell at market-based rates. While ISO-NE will be in the chain of title, ISO-NE will be a facilitating counterparty to the bids and offers of other market participants and will not be a market seller, and will not submit bids or make offers, and thus will not affect which transactions clear the markets or the prices at which they clear.

32. We also grant the requested waiver of the Electronic Quarterly Report reporting requirements regarding ISO-NE's sales to market participants that result from its presence in the chain of title of transactions. Sellers are already required to file Electronic Quarterly Reports and, in practice, this means that all market participants

³² *Id.* 5, n.14 (citing Section II and III of the ISO-NE Financial Assurance Policy; NYISO Services Tariff Section 26.4-26.5; Attachment L of the MISO Tariff).

selling into an RTO/ISO, including into ISO-NE, must already report. Further, ISO-NE will remain a party to the transmission contracts that are required to be reported in the Electronic Quarterly Report, and services under these contracts will be provided under ISO-NE's Tariff.

33. We will not require ISO-NE to include, in its Tariff, language addressing the tax-exempt status of stakeholders. We recognize that their tax-exempt status is an important issue to some stakeholders and, to the extent ISO-NE's proposal affects their tax-exempt status, ISO-NE, working with its stakeholders, may address this issue in a filing that demonstrates that their proposal would provide the market the same degree of protection as the counterparty requirement.³³

34. ISO-NE represents that additional reporting and annual charge obligations on ISO-NE would pertain to the same transmission service for which ISO-NE is already reporting and paying charges and requests that the Commission clarify that ISO-NE will not be subject to annual charges under section 382.201 of the Commission's regulations. We agree and clarify that because ISO-NE will be acting as the transmission provider and already has reporting and annual charge obligations pertaining to the same transmission service, ISO-NE will not be subject to annual charges beyond what is already assessed to ISO-NE as a public utility.

35. We do not find persuasive Exelon's arguments that ISO-NE must adopt additional protections to improve transparency and establish processes to ensure adequate liquidity and ISO solvency under stress conditions. First, we disagree with Exelon that ISO-NE's proposal to act as the central counterparty instead of establishing a separate affiliate to perform this function, as PJM did, potentially poses a risk to ISO-NE's solvency. This is because establishing a separate affiliate does not necessarily reduce risk to ISO-NE. As the Joint ISOs note, PJM is guarantor of PJM Settlement, its separate affiliate, and therefore is exposed to essentially the same risks as is PJM Settlement.³⁴ Further, ISO-NE protects itself against insolvency risk by explicitly limiting its obligations to make payments to market participants to the amount of money received from market participants through charges, drawdowns, and other recovery mechanisms. ISO-NE's risk of insolvency is additionally minimized because ISO-NE has the explicit right under its Tariff to recover any market participant payment default/bad debt loss and related costs from its other market participants.

³³ We do not here prejudge the ultimate resolution of any such filing.

³⁴ See *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207 (2010) and *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277, at P 10 (2010).

36. We also disagree with Exelon that ISO-NE's market participants are exposed to new risks by ISO-NE becoming the central counterparty. ISO-NE and its members already are exposed to the risk that a market participant may be unable to satisfy its payment obligations to ISO-NE because, as we stated above, defaults under existing ISO-NE requirements are socialized among all market participants. Instead of creating a new or greater risk, ISO-NE is reducing market participant risk by having the ability to offset amounts that a market participant might avoid paying through bankruptcy, with amounts owed to it by becoming the central counterparty and thereby clarifying its legal status to net.

37. Accordingly, we will not require ISO-NE to adopt the protocols and processes recommended by Exelon. In addition, we agree with the Joint ISOs that the additional disclosures that Exelon seeks are for the most part redundant of those already in ISO-NE's Tariff, and it is unclear how the transparency protocols that Exelon requests would strengthen ISO-NE's market. Although we decline to require ISO-NE to adopt Exelon's proposed protocols and processes, we are open to subsequent efforts by market participants and ISO-NE to further strengthen its credit practices.

The Commission orders:

The Commission hereby accepts ISO-NE's proposed tariff revisions, to become effective January 1, 2013, as requested.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.