129 FERC ¶ 61,299
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer and Philip D. Moeller.

ISO New England Inc. Docket No. ER10-154-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued December 30, 2009)

1. On October 29, 2009, as amended on October 30, 2009, ISO New England Inc. (ISO-NE) filed tariff sheets revising section IV.A of its Transmission, Markets and Services Tariff (Tariff) to collect its administrative costs for the calendar year 2010 (October 29 Filing). In this order, the Commission accepts ISO-NE's proposed tariff revisions for filing to become effective January 1, 2010, as requested.

I. October 29 Filing

2. ISO-NE is a non-profit entity without equity; it relies on collections under its Tariff to fund its operational expenses, including Debt Service. ISO-NE states that its administrative costs for the calendar year 2010 (2010 Revenue Requirement) are $137.2 million, after all true-ups.[1] The proposed 2010 Revenue Requirement is composed of several elements: the 2010 "Core Operating Budget" ($106.2 million);[2] "Debt Service" ($26.8 million);[3] and "True-Up Amounts" for 2008 and 2009 ($1.3 million and $2.8

[1] October 29 Filing at 9.

[2] ISO-NE states that the 2010 Core Operating Budget reflects an increase of approximately $6.6 million from 2009 levels to fund new initiatives and cost increases, in the amount of $10.5 million. October 29 Filing at 9.

[3] ISO-NE reports that its Debt Service includes the following components: (1) recovery of depreciation; (2) amortization of regulatory assets and interest expense necessary to repay principal and interest on Commission-approved capital borrowings; and (3) working capital borrowings. October 29 Filing at 14.

million, respectively).[4]

3. ISO-NE states that its 2010 Core Operating Budget was developed by identifying certain discrete regional priorities and that the expense of these priorities was offset where possible by cutting costs and deferring expenses.[5] According to ISO-NE, the budget increase is attributable to a variety of factors, including increased costs related to the economic downturn, funding commitments related to previously-established priorities, new initiatives intended to allow the region to keep pace with policy and technological changes, and limited compensation increases to retain ISO-NE's highly skilled and sought-after workforce.[6] ISO-NE proposes to increase its Core Operating Budget by approximately $6.6 million to expand services in the following areas: market improvements, backlog reduction, system planning, system operations, network model management, market monitoring, and the Eastern Interconnection Planning Collaborative.[7] ISO-NE explains that previously-established priorities—including the Forward Capacity Market, a project to integrate demand resources, the expansion of planning services, and an ISO-NE compliance management program—continue to represent a large portion of the Core Operating Budget, necessitating an increase of approximately $2.3 million from 2009 levels.[8]

4. With respect to employee compensation, ISO-NE states that it allocated the net sum of $1.1 million for a 2.5 percent increase in salaries for merit and a 0.5 percent increase for promotions to provide competitive salaries in order to attract and retain high quality employees, while maintaining a just and reasonable budget.[9] ISO-NE explains that it reviewed survey data from several national compensation consultants on expected merit and promotional pool increases, as well as expected salary range adjustments for the coming year, and then used the information to establish its salary merit and

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[4] *Id.* at 9. On October 30, 2009, ISO-NE submitted a corrected version of Exhibit 3, RCL-7, Schedule 1, to replace the one included in the October 29 Filing.

[5] *Id.*

[6] *Id.* at 10.

[7] *Id.* at 11.

[8] *Id.* at 10.

[9] *Id.* at 12.

promotional pools and ranges for the coming fiscal year.[10] ISO-NE states that, as it did in 2009, it will reconsider the salary increase pool when updated survey information is available and before increases are finalized.[11]

5. With respect to executive salaries and board compensation, ISO-NE explains that it must comply with Internal Revenue Service (IRS) standards.[12] To ensure compliance, ISO-NE states that it engaged a nationally recognized, independent consulting firm, which evaluated the compensation offered by similarly situated entities. ISO-NE and its consultant determined that ISO-NE's executive and board compensation is within a reasonable range of competitive practice for functionally comparable positions among similarly situated entities.[13]

6. ISO-NE states that it has endeavored to mitigate the increased costs of economic factors, previously established priorities, and service expansions through aggressive cost-cutting and deferral of non-critical projects. According to ISO-NE, it has achieved permanent savings with operational efficiencies and temporary savings through cost deferrals.[14]

7. ISO-NE explains that its Debt Service includes the following components: (1) recovery of depreciation; (2) amortization of regulatory assets and interest expense necessary to repay principal and interest on Commission-approved capital borrowings; and (3) working capital borrowings.[15] For 2010, ISO-NE continues, depreciation and amortization constitutes $24.1 million, while interest expense constitutes $2.7 million, for a total Debt Service amount of $26.8 million, which represents a $2.0 million decrease from 2009. ISO-NE states that it uses a straight-line depreciation methodology based on no net salvage value and certain average service lives and maintains that the depreciation rates remain unchanged from those accepted by the Commission in the 2009 Operating

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[10] ISO-NE states that the surveys used by ISO-NE were conducted by Mercer Human Resources Consulting, WorldatWork, The Conference Board, Hewitt Associates, and the Hay Group. October 29 Filing at 12 and n.21.

[11] *Id.* at 12.

[12] *Id*. at 13.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 14.

Expense Budget.[16]

8. In support of its filing, ISO-NE notes that its 2010 Operating Expense Budget was overwhelmingly approved by its primary stakeholder body, the New England Power Pool (NEPOOL) Participants Committee, and was unanimously approved by ISO-NE's Board of Directors. ISO-NE requests an effective date of January 1, 2010, for the proposed revisions. ISO-NE also requests that the Commission accept the revised tariff sheets without suspension or hearing.

II. Notice and Responsive Pleadings

9. Notice of ISO-NE's October 29 Filing was published in the *Federal Register*, 74 Fed. Reg. 58274 (2009), with interventions and protests due on or before November 19, 2009. Timely motions to intervene were filed by the NEPOOL Participants Committee and Northeast Utilities Service Company.[17] The NEPOOL Participants Committee subsequently filed timely comments in support of the filing. Joint Advocates filed a timely motion to intervene and protest.[18] On December 3, 2009, ISO-NE submitted an answer to Joint Advocates' protest.

10. In their protest, Joint Advocates argue that ISO-NE's filing does not provide sufficient evidence for its proposed costs, and as such, the Commission does not have enough information to determine whether the costs are just and reasonable. Joint Advocates ask the Commission to conduct a hearing to investigate ISO-NE's requested executive compensation and salary structure and depreciation and amortization schedules.

11. With respect to the executive compensation packages, Joint Advocates state that the approval ISO-NE seeks for its 2010 executive compensation is for levels of compensation that have not been determined. Joint Advocates assert that ISO-NE's request forces end-use consumers to pay executive compensation, supported only by ISO-NE's assurances that it will ensure the reasonableness of its 2010 compensation at some

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[16] *Id.*

[17] The Northeast Utilities Service Company 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, and Public Service Company of New Hampshire.

[18] The Joint Advocates consist of Richard Blumenthal, Attorney General for the State of Connecticut, and the Connecticut Office of Consumer Counsel.

point in the future.[19] Joint Advocates state that "ISO-NE's failure to disclose the salaries and bonuses of its executives constitutes a violation of its responsibility to serve the public interest and a deliberate attempt to shield [those salaries and bonuses] from public and regulatory view and scrutiny."[20] They maintain it is unacceptable that ISO-NE's "assurance" does not include the promise of refunds.[21] Joint Advocates question whether ISO-NE's failure to disclose its proposed executive compensation is within the "climate of cost accountability and transparency."[22] Joint Advocates state that ISO-NE's failure to provide its proposed executive compensation is in open defiance of previous rulings by the Commission, which determined that ISO-NE's disclosure of executive compensation information to the NEPOOL Budget and Finance Subcommittee "is not a substitute for ISO-NE filing such information with the Commission."[23]

12. Joint Advocates contend that ISO-NE's failure to disclose its executive compensation for the second year in a row demonstrates that ISO-NE is intentionally seeking to subvert the review process and deprive representatives of an opportunity to review and evaluate its proposed executive compensation prior to receiving Commission approval of its budget. They state that, because ISO-NE disclosed its proposed executive compensation in an answer to a protest in 2008 only 23 days before Commission approval, Joint Advocates were not able to raise their substantive protest to ISO-NE's actual executive compensation proposals until after the Commission had already approved, and ISO-NE had already begun collecting, rates to pay ISO-NE's executive compensation.[24] Joint Advocates contend that ISO-NE has adopted a strategy of delay so that information about executive compensation cannot be examined before the collecting the revenue for "such executive bonuses and perks" from ratepayers and that this gaming undermines the fairness of the administrative process.[25]

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[19] Joint Advocates Protest at 5.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 6 (quoting *ISO New England Inc.*, 125 FERC ¶ 61,392, at P 35 n.37 (2008)).

[24] *Id.*

[25] *Id.* at 7.

13. Joint Advocates state the Commission should reject ISO-NE's executive compensation proposal as unreasonable and set the matter for hearing. They aver that ISO-NE bears the burden of proof in this proceeding and must present actual dollar amounts and hard proposals to the Commission so that it can evaluate whether ISO-NE's compensation is just and reasonable.[26] Joint Advocates state that compensation paid to officers and executives is a matter of public interest and concern; it is paid for by all utility customers.[27]

14. Further, Joint Advocates maintain that the Commission should reject ISO-NE's continued reliance on its consultant's report (the Mercer report) to justify its undetermined 2010 executive compensation levels, because there have been profound changes in the business climate and global economy since this report was provided to ISO-NE in March of 2008.[28]

15. Finally, Joint Advocates assert that ISO-NE presents no evidence as to how its executive compensation will be calculated and what criteria would trigger an executive bonus or other incentive compensation. They state that ISO-NE's ratepayers are entitled to know whether the executive bonus is tied to ratepayer benefits, such as decreased electric costs, increased reliability, or to some other metric.[29]

16. With respect to the total compensation to ISO-NE's employees, Joint Advocates contend that ISO-NE provides no evidence that this amount is just and reasonable. Specifically, Joint Advocates state that ISO-NE provides no explanation why the increased salary expenses are necessary other than to assert that the sums are developed using data from several national compensation consultants.[30] Joint Advocates also state that ISO-NE provided no backup data or any of the "surveys" (from the consultants) on which it relied for its proposed employee salary and benefit increase.[31] Joint Advocates further state that, in light of an extraordinary financial crisis, a severe economic contraction, rising unemployment rates, and dropping consumer incomes, the

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[26] *Id*.

[27] *Id.*

[28] *Id.* at 7-8.

[29] *Id.* at 8.

[30] *Id*. at 8-9.

[31] *Id.* at 9.

Commission should require ISO-NE to "tighten its belt."[32] They request that the Commission require ISO-NE to present all of its evidence to support its proposed salary increases at a hearing.

17. With respect to depreciation and amortization expenses, the Joint Advocates continue to oppose ISO-NE's proposed depreciation rates as unreasonably high. They point to a variety of ISO-NE assets for which ISO-NE asserts the average service lives are too short (e.g., ISO-NE uses a three-year average service life for automobiles; a three-to-five year average service life for computers and software; a twenty-five year average service life for buildings).[33] They explain that, with each of the deviations from the IRS General Depreciation System, ISO-NE imposes additional unnecessary cost burdens upon New England ratepayers, which is troubling because ISO-NE applies the IRS General Depreciation System's standard depreciation periods in other areas.[34] Joint Advocates argue that the effect of the unreasonably high depreciation and amortization rates is an economic benefit to ISO-NE at the expense of ratepayers, as well as inter-generational subsidy where current ratepayers are being forced to pay for assets that will benefit future generations of ratepayers.[35] According to the Joint Advocates, the Commission should require ISO-NE to conduct a full depreciation study based upon its historical and projected rates and should set the issue of ISO-NE's depreciation rates for hearing.

18. In its answer to the Joint Advocates protest, ISO-NE maintains that its executive compensation and salary structure are reasonable and were justified in the October 29 Filing. ISO-NE cites to specific testimony of Janice S. Dickstein, included in its filing, which explains how the proposed executive compensation was determined and why it merits the rebuttable presumption of reasonableness.[36] Further, ISO-NE reiterated that the purpose of merit and promotional increases is "to meet the need to pay competitive salaries *to attract and retain the high-quality employees crucial to the ISO's operations*."[37] Specifically, ISO-NE provides figures relating to the shortage of critical

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[32] *Id.*

[33] *Id*. at 10.

[34] *Id.*

[35] *Id.*

[36] ISO-NE Answer at 5-8 (quoting from October 29 Filing, Ex. 4 (Dickstein testimony)).

[37] *Id.* at 8 (quoting October 29 Filing at 12 (emphasis in original)).

talent in the energy industry and the general industry and executive turnover.[38] ISO-NE quoted from the Dickstein testimony as to the development of the merit and promotional increase budget, providing data gathered from the five national surveys. This data indicated that ISO-NE proposed a merit increase budget at the lowest end of the survey ranges (2.5 percent) and a promotional increase budget below the lowest end of the ranges (0.5 percent).

19. ISO-NE responds that its October 29 Filing provided sufficient information about executive compensation and does not propose a "blank check," as the protest alleges. ISO-NE states that the Joint Advocates' argument ignores the terms of the Participants Agreement and ISO-NE's customary and well-established practices for setting annual compensation. It explains that the Participants Agreement requires ISO-NE to submit its annual budget no later than 60 days before the start of the year, which has been ISO-NE's practice since before the Participants Agreement. Further, ISO-NE states that "all of [its] activities must be accomplished within the overall budget that is filed with the Commission."[39] ISO-NE avers that this course of dealing indicates that stakeholders and the Commission understood that specific salaries would not be set at the time the budget is established. ISO-NE further states, however, that it proposes a "firm, dollar-limited budget" each year and that it must comply with the requirements of the IRS for non-profit entities, including making salaries public in ISO-NE's annual Form 990 filing filed with the IRS.[40]

20. With respect to its depreciation and amortization rates, ISO-NE states that the Commission recently considered and ruled on this issue.[41] ISO-NE states that, in that proceeding, ISO-NE explained how its concept of "average service lives" is necessary to comply with its funding mechanisms, is consistent with ISO-NE's historical experience, and is repeatedly stated by its independent auditors to be appropriate.[42] ISO-NE asserts the Commission found "the ISO has provided sufficient support of the reasonableness of the proposed depreciation and amortization expenses included in its 2007 administrative

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[38] *Id.* at 9.

[39] *Id.* at 12.

[40] *Id.* at 13.

[41] *Id.* at 14 (citing *ISO New England Inc.*, 119 FERC ¶ 61,178 (2007) (accepting the ISO's depreciation rates following a paper hearing in which the same arguments were raised as those repeated in the instant protest)).

[42] *Id.*

cost filing" and accepted them as just and reasonable.[43]

21. In any event, ISO-NE explains its average service life figures for building expenditures and leasehold improvements, as well as vehicle depreciation. ISO-NE reiterates that it based its twenty-five year average service life for its building expenditures, for example, on the opinion of independent bond counsel, as well as an analysis of the service lives of the different aspects of the building.[44] Further, ISO-NE states the Commission has found this approach "reasonable," and that the protestors "[had] not made a sufficient showing that [ISO-NE's] estimates [were] unreasonable" in an order issued after the hearing on depreciation.[45] ISO-NE clarifies that the depreciation component of the 2010 Revenue Requirement in the October 29 Filing uses a seven-year service life for the one vehicle being depreciated and that is longer than the five years requested by the Joint Advocates.[46]

III. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), 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.

B. Commission Determination

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[43] *Id.* (quoting *ISO New England*, 119 FERC ¶ 61,178 at P 15).

[44] *Id.* at 15 (citing October 29 Filing, Ex. 3 at 15, which explains how ISO-NE arrived at the average service life of 25 years by bundling the building's steel and concrete at 40 years, with mechanical and electrical work at 25 years, and high wear-and-tear elements at 15 years).

[45] *Id.* (quoting *ISO New England*, 119 FERC ¶ 61,178 at P 14).

[46] *Id.* at 15-16.

24. As discussed below, the Commission accepts ISO-NE's proposed tariff revisions to collect its 2010 administrative budget for filing, to become effective January 1, 2010, as requested.

25. We find that ISO-NE has adequately supported its proposed administrative budget, including the proposed increases in employee compensation. ISO-NE reviewed survey data from five national compensation consultants on expected merit and promotional pool increases, as well as expected salary range adjustments for the coming year in order to calculate its proposed salary and promotion pool.[47] As with other budget items, ISO-NE's proposed compensation levels went through an extensive stakeholder process and was overwhelmingly approved by stakeholders. ISO-NE's Compensation and Human Resources Committee reviewed the reasonableness of the compensation portion of the 2010 budget and recommended salary and promotion increase level percentages at or below the low end of the survey's recommended ranges of increases, in light of the current economic conditions and management's recommendations. Finally, ISO-NE's independent Board of Directors, after considering feedback from stakeholders, unanimously approved the proposed compensation levels. ISO-NE has adequately justified the need for merit and promotional increases, explaining that, without them, the ISO would be unable to compete for the shrinking pool of highly-skilled talent necessary to fulfill its mission, and find its explanation that budgeting for merit and promotional increases is ultimately less expensive than high levels of turnover to be reasonable.[48] Thus, we believe that ISO-NE has balanced its need to attract and retain skilled employees with the realities of the current economic conditions.

26. With respect to executive compensation, ISO-NE explains that it must comply with IRS standards governing the reasonableness of total compensation for executives.[49] To ensure such compliance, ISO-NE engaged a nationally recognized, independent

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[47] *See* October 29 Filing, Ex. 4 at 8. We note that the proposed 2010 increases in the pools for salaries and promotions of 2.5 percent and 0.5 percent, respectively, are lower than those approved for ISO-NE's 2009 budget (of 3.5 percent and 1.0 percent, respectively).

[48] ISO-NE points out that turnover in the ISO industry in 2007 averaged 10.2 percent and for executives as much as 33 percent. ISO-NE recognizes that, while 2009 industry turnover is down, it expects turnover to raise these levels and higher as the economy improves.

[49] Under the IRS requirements for not-for-profit entities, executive compensation must fall within a range of competitive practices for similarly situated organizations for functionally comparative positions.

consulting firm, which evaluates the compensation offered by similarly situated entities, including other system operators and select for-profit "peer" utility organizations.[50] This evaluation also included a broader comparison across all industries for functionally comparable positions.[51] The resulting opinion of the independent consulting firm is that ISO-NE's executive compensation is within a reasonable range of competitive practices for functionally comparable positions among similarly situated entities.

27. Further, in response to the Joint Advocates' assertion that the executive bonus should be tied to ratepayer benefits—such as decreased electric costs, increased reliability, or to some other metric—ISO-NE explains that it has a "pay for performance" compensation program that is based on objective and measurable goals set by the board that reflects organizational goals for operational reliability, efficient and competitive markets, budget performance, and service excellence in stakeholder processes.[52] As such ISO-NE does relate its executives' incentive pay to the achievement of goals that should produce ratepayer benefits.

28. With respect to the Joint Advocates' argument that ISO-NE is intentionally seeking to deprive representatives of an opportunity to review and evaluate its proposed executive compensation prior to receiving Commission approval of its budget, ISO-NE explains that, while it has not yet determined its 2010 executive compensation, the 2009 executive compensation will be the base for 2010 compensation and that the board has not authorized any changes to the compensation programs. ISO-NE concludes that it is reasonable to presume that the 2010 executive compensation will be similar to the 2009 compensation.[53] ISO-NE explains that it proffered its proposed executive compensation within the timeframe required by the Participants Agreement, "despite the fact that, like most other employers, [ISO-NE] had not yet set its specific and individual salaries for the coming year."[54] The Commission disagrees with Joint Advocates' assertion that ISO-NE's failure to provide its proposed executive compensation is in defiance of the Commission previous statement that ISO-NE's disclosure of executive compensation information to the NEPOOL Budget and Finance Subcommittee "is not a substitute for ISO-NE filing such information with the Commission." The information to which Joint

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[50] October 29 Filing at 13.

[51] *Id.* at 13.

[52] ISO-NE Answer at 7.

[53] October 29 Filing, Ex. 4 at 12.

[54] ISO-NE Answer at 13.

Advocates refer was the publicly available IRS Form 990 and Form 1 executive compensation for 2007, not the proposed executive compensation levels for the 2009 budget. Similarly, executive compensation information for 2008 is available in ISO-NE's 2008 FERC Form 1 and IRS Form 990.[55]

29. We also note that ISO-NE commits to reconsider the proposed 2010 salary increase pool when updated survey information is available and before the increases are finalized, as was done in 2009.

30. As ISO-NE explained, in 2009, it cut its merit and promotional increase budget by $500,000 after reviewing updated information provided by its consultants. ISO-NE expects that the survey firms will again produce an update at year end and ISO-NE commits to monitoring these updates and, if appropriate, reduce (but not increase) its 2010 budget. The Commission expects that such updated information would reflect further changes in the business climate and global economy.[56] Accordingly, based on the information filed, the Commission concludes that ISO-NE has justified its proposed executive compensation and finds that the stakeholder-approved limits on executive compensation are reasonable.

31. However, to ensure adequate disclosure of the updated reports and ISO-NE's actions with respect thereto, we will require ISO-NE to file a report for informational purposes only with the Commission within 30 days of receiving such updates, which summarizes the updated survey results and explains any revisions to compensation levels that ISO-NE decides are appropriate. This report will not be noticed, and the Commission does not intend to act on it.

32. Finally, we find that ISO-NE's depreciation and amortization expenses included in its October 29 Filing are just and reasonable. In the instant filing, ISO-NE used the same depreciation and amortization expenses previously reviewed by the Commission in a paper hearing and found to be just, reasonable, and not unduly preferential or

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[55] If the Joint Advocates continue to have concerns regarding the timing of the development and disclosure of compensation information vis-à-vis the submission of a proposed budget, it would be appropriate to raise this issue in ISO-NE's stakeholder process.

[56] October 29 Filing at 12. ISO-NE also states that the proposed increased for salaries and promotions "may be reduced depending on the evolution of market data." *Id.*

discriminatory.[57] ISO-NE's depreciation practices continue to be in accordance with generally accepted accounting principles and the Commission's Uniform System of Accounts. Further, the Joint Advocates have not provided any new or persuasive evidence that ISO-NE's estimates are unjust or unreasonable. The Joint Advocates proffer the same argument that we previously rejected.[58] Accordingly, we accept ISO-NE's proposed depreciation and amortization expenses.

The Commission orders:

(A) ISO-NE's October 29 filing to collect its 2010 administrative costs is hereby accepted for filing, effective January 1, 2010, as requested.

(B) ISO-NE is hereby directed to submit an informational report within 30 days of any such updates it makes to the salary increase pool, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[57] *See* October 29 Filing at 13 (citing *ISO New England Inc*., 117 FERC ¶ 61,310, at P 17-18 (2006) (setting matter for paper hearing), *order on hearing*, 119 FERC ¶ 61,178, at P 14-15 (2007)).

[58] *ISO New England*, 117 FERC ¶ 61,310 at P 8.