

133 FERC ¶ 61,267  
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.

Docket No. ER11-1943-000

ORDER ACCEPTING TARIFF REVISIONS  
AND REQUIRING INFORMATIONAL FILING

(Issued December 30, 2010)

1. On October 29, 2010, ISO New England Inc. (ISO-NE) filed revised tariff sheets to collect its administrative costs for calendar year 2011 (October 29 Filing). In this order, the Commission accepts ISO-NE's proposed tariff revisions for filing to become effective January 1, 2011, as requested and directs ISO-NE to make an informational filing.

**I. Background**

2. In accordance with its Participants Agreement, ISO-NE must file, no later than sixty days before the start of each operating year, its rates reflecting the final ISO budget with the Commission.<sup>1</sup> In its October 29 Filing, ISO-NE proposed changes to Section IV.A of its Transmission, Markets and Services Tariff (Tariff) to collect its administrative costs for the calendar year 2011 (2011 Revenue Requirement). ISO-NE states that its 2011 Revenue Requirement is \$133.8 million, after true-ups.<sup>2</sup> The proposed 2011 Revenue Requirement is composed of several elements, including: the 2011 "Core Operating Budget" (\$114.7 million); "Debt Service" (\$28.7 million); and "True-Up Amounts" for 2009 and 2010 (\$2.5 million and \$7.2 million, respectively).

3. ISO-NE states that the 2011 Revenue Requirement was developed using a measured growth scenario. This revenue requirement scenario includes adoption of both a "status quo" budget and a "measured growth" budget. That is, the "status quo" budget reflects "funding for existing commitments, like those required by order of the Commission, and for increases to fund non-discretionary costs and to maintain the

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<sup>1</sup> Participants Agreement at § 12.5.

<sup>2</sup> October 29 Filing at 8.

competitiveness of compensation.”<sup>3</sup> The “measured growth” budget includes \$2.5 million in addition to the “status quo” budget for a variety of initiatives.<sup>4</sup> ISO-NE attributes the budget increase to several 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.<sup>5</sup>

4. ISO-NE proposes to increase its Core Operating Budget by approximately \$8.5 million. ISO-NE explains that previously established priorities—including the Forward Capacity Market, a project to integrate demand resources, business continuity plan enhancements, and an ISO-NE compliance management program—continue to represent a large portion of the Core Operating Budget, necessitating an increase of approximately \$3.3 million from 2010 levels.<sup>6</sup> In addition, ISO-NE proposes an increase of \$2.5 million for measured growth in the following areas: information delivery, non-transmission alternatives and transmission planning, forward capacity market/price-responsive demand, studies and application development, user interface improvements, smart grid, emerging work allowance, and cost/impact analysis.<sup>7</sup>

5. With respect to employee compensation, ISO-NE states that it allocated \$2.7 million for a 2.9 percent increase in salaries for merit and a 0.9 percent increase for promotions. ISO-NE notes that this sum is offset by an increase in the vacancy rate of 3 percent, resulting in a budget reduction of \$2.1 million. In addition, ISO-NE notes that it strives to provide competitive salaries in order to attract and retain high quality employees, while maintaining a just and reasonable budget.<sup>8</sup> 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 promotional pools and ranges for the coming fiscal year.<sup>9</sup> ISO-NE states that, as it did in 2009 and

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 9-11.

<sup>6</sup> *Id.* at 9.

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

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

<sup>9</sup> 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. *Id.* at 11 and n. 21.

2010, it will reconsider the salary increase pool when updated survey information is available and before increases are finalized.<sup>10</sup>

6. With respect to executive salaries and board compensation, ISO-NE explains that it must comply with Internal Revenue Service (IRS) standards. 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.<sup>11</sup>

7. In support of ISO-NE's compensation practices, ISO-NE provides the testimony of Janice S. Dickstein, Vice President of Human Resources (Dickstein Testimony), who maintains that the objective of its compensation program is 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 when considering the costs of recruiting, relocation, and other factors. Furthermore, Ms. Dickstein maintains that the two challenges to meeting these objectives for a non-profit like ISO-NE are a critical shortage of talent in the utility industry and competition for this shrinking pool of talent with for-profit utilities.<sup>12</sup>

8. Ms. Dickstein, on behalf of ISO-NE, explains that it utilizes a "pay for performance" program that is comprised of two components; an annual base salary which reflects external competitiveness, the employee's productivity and performance, the qualifications for the position and internal equity, and an annual incentive compensation which is intended to motivate superior performance towards critical annual business and customer service objectives and goals. For executives and certain key employees, a third component is utilized – a long-term incentive plan designed to encourage retention by deferring payments for two and one-half years after they are declared. Before these awards are paid out, the Board conducts a retrospective review of the quality and impact of the goal achievement supporting the award. If ISO-NE underperforms in the management of the bulk electric power system or in its other functions, the Board can reduce or eliminate the payment of the awards and Ms. Dickstein maintains that the Board has, in fact, taken such action in the past.

9. As part of the budget process, Ms. Dickstein explains, the Compensation and Human Resources Committee reviews national survey data pertaining to employee

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<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.*

<sup>12</sup> Dickstein Testimony at 3-5.

compensation compiled by five different nationally recognized companies and utilizes the nationwide benchmark for its employees. Identifying the fact that the individual surveys contain proprietary information, Ms. Dickstein provides a description of the survey data which shows a range of 2.7 percent to 3.0 percent for all industries nationwide, and a range of 2.7 percent to 3.3 percent for the utility industry, with the promotional increases ranging from 0.9 percent to 1.0 percent for all industries nationwide, and a range of 0.5 percent to 1.8 percent for the utility industry.<sup>13</sup> After reviewing the survey data, Ms. Dickstein asserts that the Board adopted the lowest possible increase that would still keep compensation competitive.<sup>14</sup>

10. Notwithstanding the above, according to Ms. Dickstein, ISO-NE expects an update of the survey firm's data, much as was done in 2008 and 2009.<sup>15</sup> In 2008, ISO-NE reduced the 2009 compensation budget by \$500,000 to reflect reduced estimates by the compensation consultants due to the economic downturn. Ms. Dickstein maintains the ISO will monitor these updates again and, if appropriate, reduce the 2011 budget accordingly.

11. Regarding the framework for ISO-NE's determination of executive compensation, 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 compensation paid to executive officers meet a standard of "reasonableness." Reasonableness is defined as compensation that falls within a range of competitive practices for total compensation paid by similarly-situated organizations, both taxable and tax-exempt, for functionally comparable positions, according to Ms. Dickstein. Further, Ms. Dickstein maintains a tax-exempt organization is allowed to establish a "rebuttable presumption" placing the onus on the IRS to show that compensation is unreasonable by having independent individuals (e.g., the Board of Directors) approve in advance compensation arrangements, that the group of individuals have appropriate data on comparability, and that the group adequately document the basis for its determination.

12. To ensure compliance with the presumption of reasonableness, Ms. Dickstein states that ISO-NE's Board retains an outside compensation advisor, Mercer Consulting (Mercer), to prepare an opinion annually on the reasonableness of ISO-NE's executive compensation, using as comparators other ISOs and RTOs, as well as for-profit utilities and other companies.

13. To accomplish the annual review of executive compensation, Ms. Dickstein explains that the process begins in the first quarter of the year when the Board asks the

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<sup>13</sup> Dickstein Testimony at 9.

<sup>14</sup> *See supra* at 5.

<sup>15</sup> October 29 Filing at 11.

Compensation and Human Resources Committee to consider appropriate compensation. Ms. Dickstein states both the Compensation and Human Resources Committee and then the Board, considers the CEO's appraisal of each executive's experience, responsibilities, performance, specific skill set, and contribution to strategic goal achievement, as well as the company's financial and operational achievement. Ms. Dickstein states that the Board then provides its compensation recommendations to Mercer for an opinion on reasonableness.

14. With respect to the determination of 2011 executive compensation, Ms. Dickstein maintains that the Board will use the same process as set forth above. While 2011 compensation has not yet been determined Ms. Dickstein asserts that it will be based on 2010 executive compensation and, as a consequence, it is reasonable to presume that the 2011 executive compensation will be similar to the 2010 compensation, with changes necessary to maintain the organization's competitiveness.

15. Regarding public disclosure of executive compensation, Ms. Dickstein states that the total compensation for each executive is contained in its IRS Form 990, a copy of which ISO-NE is required to provide to anyone who requests it, and information regarding base salary for each officer is on page 104 of its annual FERC Form No. 1.

16. As in recent years, ISO-NE states that it is working to offset increased costs related to the addition of services and the economic downturn through aggressive cost-cutting and reallocation of resources to emerging initiatives. According to the testimony of Robert C. Ludlow, Chief Financial Officer (Ludlow Testimony), ISO-NE has reduced costs for 2011 by \$500,000 by making cuts, including: eliminating software licenses for the previous communication platform for demand resources; reducing licensing costs for application support/web logic and database as a result of the development of a virtual office environment; and bringing various services in-house to eliminate professional fees.<sup>16</sup> ISO-NE states that its focus for 2011 is to develop the new services in the measured growth scenario.<sup>17</sup>

17. For 2011, ISO-NE states, depreciation and amortization constitutes \$25.9 million, while interest expense constitutes \$2.8 million, for a total Debt Service amount of \$28.7 million, which represents a \$1.9 million increase from 2010. 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 2010 Operating Expense Budget.<sup>18</sup>

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<sup>16</sup> Ludlow Testimony at 13-14.

<sup>17</sup> *Id.* at 12.

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

18. In support of its filing, ISO-NE notes that its 2011 Revenue Requirement 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.<sup>19</sup>

19. ISO-NE requests an effective date of January 1, 2011, for the proposed revisions. ISO-NE also requests that the Commission accept the revised tariff sheets without suspension and not subject to refund. ISO-NE states that, if the Commission decides to set any issues for hearing, it should identify the scope of any such hearing as specifically and narrowly as feasible, and require a paper hearing process to ensure conservation of ISO-NE, stakeholder, and Commission staff resources.<sup>20</sup>

## **II. Notice and Responsive Pleadings**

20. Notice of ISO-NE's October 29 Filing was published in the *Federal Register*, 75 Fed. Reg. 70,736 (2010), with interventions and protests due on or before November 19, 2010. Timely motions to intervene were filed by the NEPOOL Participants Committee and Northeast Utilities Service Company.<sup>21</sup> The NEPOOL Participants Committee subsequently filed timely comments in support of the filing. Joint Advocates filed a timely motion to intervene and protest.<sup>22</sup> On December 3, 2010, ISO-NE submitted an answer to Joint Advocates' protest.

21. The Joint Advocates argue that the Commission should reject the instant filing and require ISO-NE to provide the Commission with detailed support for its proposed executive compensation, including reports prepared by independent consultants. The Joint Advocates state that the instant filing does not provide sufficient documentation or evidence to support its proposed executive compensation costs for the Commission to determine whether those costs are just and reasonable and does not meet the minimum standards set forth by the United States Court of Appeals ruling in *Blumenthal v. FERC*, 613 F.3d 1142 (D.C. Cir. 2010) (*Blumenthal*).<sup>23</sup>

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<sup>19</sup> *Id.* at 7-8.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> 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.

<sup>22</sup> The Joint Advocates consist of Richard Blumenthal, Attorney General for the State of Connecticut, and the Connecticut Office of Consumer Counsel.

<sup>23</sup> Joint Advocates Protest at 4-5 (citing *Blumenthal*, 613 F.3d 1142).

22. According to the Joint Advocates, in December 2008, in response to the Joint Advocates' protest of the proposed 2009 rates and executive compensation plan, ISO-NE filed a 211 page answer. That answer included estimated compensation levels for ISO-NE's senior executives and a detailed report by Mercer supporting the reasonableness of ISO-NE's proposed 2009 executive compensation. The Joint Advocates state that the Commission approved ISO-NE's 2009 executive compensation levels based largely upon the representations in the Mercer Report.<sup>24</sup> The Joint Advocates further state that the D.C. Circuit Court of Appeals ruled that an evidentiary hearing was not necessary, that protestors were not denied due process, and the Commission's reliance upon the Mercer Report's proxy group was not "unreasonable" within the deferential arbitrary and capricious standard.<sup>25</sup>

23. The Joint Advocates state that in the instant filing ISO-NE has failed to provide supporting information to justify its proposed executive compensation because the Dickstein Testimony is the only evidence provided.<sup>26</sup> The Joint Advocates maintain that ISO-NE's presentation is entirely inadequate to meet the minimum standards set forth by the court in *Blumenthal*.<sup>27</sup> The Joint Advocates contend that the court made clear in *Blumenthal* that the Commission has broad authority and discretion to determine the reasonableness of ISO-NE's executive compensation, as long as the Commission itself has had the opportunity to review the supporting documents. Therefore, the court affirmed the Commission's ruling because the Commission "reviewed the filings in this case - which included a detailed justification of the composition of the comparison group - and determined that no evidentiary hearing was necessary to determine the validity of Mercer's approach."<sup>28</sup> The Joint Advocates note that the court found that the Commission did not deprive the challenging parties of their due process rights because those challenging parties had some opportunity to review the supporting data and to present their concerns to the Commission.<sup>29</sup>

24. In the instant filing, the Joint Advocates claim that ISO-NE has failed to provide the Mercer report or any other supporting documents for the Commission's review and that ISO-NE provided no "detailed justification of the composition of the comparison

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 7-8.

<sup>26</sup> *Id.* at 9-10.

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *Id.* at 11 (citing *Blumenthal*, 613 F.3d at 1146).

<sup>29</sup> *Id.*

group.”<sup>30</sup> The Joint Advocates contend there is no analysis explaining the appropriate “lag time between the market downturn and adjustments to executive compensation.”<sup>31</sup> Instead, the Joint Advocates maintain that ISO-NE asks the Joint Advocates and the Commission to accept Mercer’s conclusions on faith. The Joint Advocates state that ISO-NE acknowledges that “Mercer prepares an opinion annually on the reasonableness of the ISO’s executive compensation,”<sup>32</sup> but the last report ISO-NE has provided the Commission was dated March 2008. The Joint Advocates state there have been profound changes in the business climate and the global economy since March 2008 and that the Commission should reject ISO-NE’s perennial reliance on a consultant’s report dated more than 30 months ago. The Joint Advocates assert that the entire point of securing annual consultant reports and Commission approval is to update the conclusions in those reports. Therefore, the Joint Advocates argue that no party should have to rely upon the same outdated consultant’s report year after year.<sup>33</sup>

25. The Joint Advocates maintain that ISO-NE’s filing is substance-free and questions ISO-NE’s reliance on the previous year’s compensation levels [2010] for 2011 compensation levels.<sup>34</sup> The Joint Advocates question how they are to know that ISO-NE’s 2010 executive compensation was reasonable. The Joint Advocates maintain that ISO-NE used the same logic for justifying the reasonableness of its 2010 executive compensation. The Joint Advocates state that ISO-NE is not actually providing any analysis or explanation for why its proposed executive compensation is reasonable, but rather relies on a serial regression of previous “validations” that bear little or no relevance to the reasonableness of next year’s executive compensation.<sup>35</sup>

26. The Joint Advocates state that, if ISO-NE is in possession of a more recent consultant’s report, it should provide it to the Commission for review. The Joint Advocates further state that, in the absence of any record evidence to support ISO-NE’s proposed rates, the Commission simply has no basis upon which to consider, much less evaluate, for example: (1) whether the composition of the proxy comparison group was reasonable; or (2) what effect the recent economic downturn has had on Mercer’s “new benchmarks” for executive compensation levels. The Joint Advocates assert that the

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 11 (citing Dickstein Testimony at 11).

<sup>33</sup> Joint Advocates Protest at 12.

<sup>34</sup> *Id.* at 12 (citing Dickstein 2011 Testimony at 11[sic]).

<sup>35</sup> *Id.* at 12-13.

Commission's failure to examine the relevant evidence supporting the executive compensation would, quoting *Blumenthal*, "jump the rails of reasonableness."<sup>36</sup>

27. The Joint Advocates state it is a fundamental principle of administrative procedure that participants in an administrative proceeding whose rights may be affected by that proceeding should have access to the data the administrative tribunal relies upon and an opportunity to review and contest that evidence. The Joint Advocates also state that the total compensation packages paid to officers and executives is a matter of significant public interest and concern. The Joint Advocates further state it is axiomatic that ISO-NE bears the burden of proof in this proceeding and thus must present evidence to the Commission before it can evaluate whether ISO-NE's compensation is just and reasonable. Furthermore, the Joint Advocates contend they must be afforded a full and fair opportunity to scrutinize these expenses; the failure to afford that opportunity violates their due process rights.<sup>37</sup>

28. In its answer to the protest, ISO-NE states that the Joint Advocates misinterpret the Commission's and the court's orders. Specifically, ISO-NE states that the Joint Advocates ignore the most recent Commission order regarding ISO-NE's 2010 budget and the fact that the Commission approved the 2010 budget, noting that the filing of the Mercer Report is not necessary.<sup>38</sup> In addition, ISO-NE states that, in the order denying rehearing, the Commission noted that its initial order had recognized that the Participants Agreement compelled ISO-NE to submit proposed budgetary amounts somewhat prematurely, resulting in less precise figures, and that ISO-NE's executive compensation is publicly available on ISO-NE's annual IRS Form 990 and FERC Form No. 1.<sup>39</sup> ISO-NE further states that the Commission found that ISO-NE did not need to disclose its proposed executive compensation and consultant's report to justify such compensation.<sup>40</sup> Therefore, ISO-NE argues that the Commission has held that ISO-NE is not required to submit specific information about executive compensation or a consultant's report in order to establish the justness and reasonableness of its budget.<sup>41</sup>

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<sup>36</sup> *Id.* at 13.

<sup>37</sup> *Id.* at 13.

<sup>38</sup> ISO-NE Answer at 4.

<sup>39</sup> *Id.* at 4-5.

<sup>40</sup> *Id.* at 5 (citing *ISO New England Inc.*, 130 FERC ¶ 61,236, at P 11-12 (2010)).

<sup>41</sup> ISO-NE Answer at 5.

29. As to the Joint Advocates' claim that *Blumenthal* imposes "minimum standards" that the October 29 Filing does not meet, ISO-NE responds that the Joint Advocates failed to identify any such standards. ISO-NE contends that the court used very narrow language to reject each allegation set forth by the Joint Advocates there. ISO-NE argues that the court did not state or even imply that the Mercer Report or other information regarding executive compensation was required in order for the Commission to determine the reasonableness of ISO-NE's budget, or set any other type of "minimum standard."<sup>42</sup>

30. ISO-NE argues that no additional support is required and, in seeking this information, the Joint Advocates misconstrue the budget process. Specifically, ISO-NE states that the Participants Agreement requires that ISO-NE file its budget for review by the Commission 60 days before the budget year. ISO-NE further states that it does not set salaries until the prior year's performance can be measured and considered as part of its salary-setting exercise. Therefore, ISO-NE states that all costs in the budget filing are essentially estimates. ISO-NE adds that the court affirmed this approach when it rejected the Joint Advocates claim that ISO-NE is required to file its actual (not proposed) compensation for the budget year.<sup>43</sup>

31. ISO-NE argues that the Joint Advocates are incorrect that the October 29 Filing includes only three pages on executive compensation. Specifically, ISO-NE notes that the October 29 Filing includes the following: a section on compensation that describes the budget for salary increases and the means of calculating that budget, as well as the rationale for offering increases and a description of the IRS standards by which ISO-NE is bound when setting executive and Board compensation; testimony of Robert C. Ludlow, Vice President, Chief Financial and Compliance Officer, regarding the costs of compensation increase; data in the exhibits to Mr. Ludlow's testimony about total compensation costs, including a comparison with 2010 costs; and the entirety of the Dickstein Testimony, which is offered exclusively for the purpose of discussing ISO-NE's compensation practices.

32. For the above reasons, ISO-NE argues that the Commission should reject the protest and accept the October 29 Filing without suspension or hearing.<sup>44</sup>

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<sup>42</sup> *Id.* at 5-6.

<sup>43</sup> *Id.* at 6-7 (citing *Blumenthal*, 613 F.3d at 1146).

<sup>44</sup> ISO-NE Answer at 7-8.

### III. Discussion

#### A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), (2010) 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

35. As discussed below, the Commission accepts ISO-NE's proposed tariff revisions to collect its 2011 administrative budget to become effective January 1, 2011, as requested.

36. Before addressing the merits of ISO-NE's filing, the Commission will address Joint Advocates' contention that *Blumenthal* established minimum filing standards for ISO-NE's executive compensation. Contrary to the Joint Advocates' contention, the court made it perfectly clear that, "[the Commission], not the Judiciary, has the principal statutory role in determining the reasonableness of rates and proposed executive compensation for companies such as ISO New England."<sup>45</sup> Given the *Blumenthal* court's clear demarcation of the role of the Commission as the determinative evaluator of the reasonableness of the ISO's executive compensation, Joint Advocates' contention that the court established minimum filing standards for ISO-NE's executive compensation is without merit.

37. The Commission agrees with ISO-NE that the rebuttable presumption, set forth by the IRS and related Treasury regulations, defines the standards that a tax-exempt organization must meet in the setting of executive compensation.<sup>46</sup> In providing sufficient documentation with the Dickstein Testimony, ISO-NE demonstrates that it meets these three criteria, satisfying the Commission that diligence was used in the creation of reasonable benchmarks and comparison data. The *Blumenthal* court acknowledged that "the proper level of executive compensation is more art than

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<sup>45</sup> *Blumenthal*, 613 F.3d at 1147

<sup>46</sup> The rebuttable presumption requires that the compensation arrangements be approved in advance by independent individuals (e.g. the Board of Directors), that the Board have obtained and relied upon appropriate data as to comparability, and that the Board adequately document the basis for its determination.

science”<sup>47</sup> and thus that a variety of comparisons can be used to support findings of the Commission.

38. As explained in Ms. Dickstein’s testimony, ISO-NE engages in a lengthy process in determining executive compensation. In the first quarter of each year, the Board asks its Compensation and Human Resources Committee to consider appropriate compensation and then the Board and the Committee consider the CEO’s appraisal of each executive’s experience, responsibilities, performance, specific skill set, and contribution to strategic goal achievement.<sup>48</sup> The Board then provides its compensation recommendations to Mercer for an opinion on reasonableness. Mercer, using as comparators other ISOs and RTOs, as well as for-profit utilities and other companies, then prepares an annual opinion on the reasonableness of the ISO’s executive compensation. As Ms. Dickstein relates, Mercer’s most recent reasonableness opinion concludes that the proposed 2010 total compensation for executives was reasonable.<sup>49</sup>

39. We find that Ms. Dickstein’s testimony is clear, convincing, and adequately supports the findings that we make in this order. Her testimony establishes and explains the processes and the metrics, i.e., IRS standards, Board review as well as use of an independent consultant to determine, and fully documents the ISO’s compensation practice. The Ludlow Testimony likewise provides further supporting data and explanation for the ISO-NE’s administrative budget including executive compensation. ISO-NE’s testimony was available to Joint Advocates who also had available to them ISO-NE’s IRS Form 990 and FERC Form No. 1.

40. As ISO-NE explained in the Dickstein Testimony, in 2009, it cut its compensation budget by \$500,000 after reviewing updated information provided by its consultants. Ms. Dickstein testified that 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, it will reduce (but not increase) its 2011 budget from that proposed.<sup>50</sup>

41. Accordingly, based on the record before us, including the testimony of Ms. Dickstein and the other supporting information filed by ISO-NE, the Commission

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<sup>47</sup> *Blumenthal*, 613 F.3d at 1146.

<sup>48</sup> Dickstein Testimony at 12.

<sup>49</sup> *Id.*

<sup>50</sup> Dickstein Testimony at 10.

concludes that ISO-NE has justified its proposed executive compensation, and finds that the stakeholder-approved limits on executive compensation are reasonable.<sup>51</sup>

42. 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 with the Commission for informational purposes only within 60 days of receiving such updates from any compensation consultants.<sup>52</sup> The informational report should summarize the updated survey results, state the conclusions of the Compensation and Human Resources Committee of the Board of Directors, and explain what revisions to compensation levels are deemed necessary by ISO-NE if the reports conclude that compensation levels are no longer reasonable. These reports are informational only, and so they will not be noticed, nor would the Commission anticipate issuing an order addressing them.

The Commission orders:

(A) ISO-NE's filing to collect its 2011 administrative costs is hereby accepted for filing, effective January 1, 2011, as requested.

(B) ISO-NE is hereby directed to submit informational reports within 60 days detailing the results of any updates it makes to the executive compensation, 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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<sup>51</sup> 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 initially raise this issue in ISO-NE's stakeholder process.

<sup>52</sup> Information is requested from the compensation consultants listed in n.9. This information is the same information requested in ISO-NE's 2010 revenue requirement proceeding. *ISO-NE*, 129 FERC ¶ 61,299, at P 31 (2009).