

141 FERC ¶ 61,275
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.

Docket No. ER13-192-000

ORDER ON PROPOSED BUDGET AND QUARTERLY REPORT

(Issued December 31, 2012)

1. On October 25, 2012, ISO New England Inc. (ISO-NE) filed its 2013 Capital Budget and Capital Budget Quarterly Filing for the Third Quarter of 2012 (Third Quarter 2012 Report) (collectively, the October 25 Filing), pursuant to section 205 of the Federal Power Act (FPA).¹ As set forth below, the Commission accepts ISO-NE's proposed 2013 Capital Budget to become effective January 1, 2013, as requested, and ISO-NE's Third Quarter 2012 Report effective October 1, 2012, as requested.

I. Background

2. Under Section IV.B.6.1 of ISO-NE's Transmission, Markets and Services Tariff (Tariff), ISO-NE must file its capital budget with the Commission at least 60 days prior to the beginning of ISO-NE's operating year. Under Section IV.B.6.2 of the Tariff, ISO-NE must file with the Commission, within 45 days of the end of each quarter, quarterly reports specifying, by project, ISO-NE's prior year spending on multi-year projects, year-to-date spending and a forecast of the next calendar year spending, along with a schedule of the unamortized costs of ISO-NE's funded capital expenditures at the end of the quarter and the allocation of those costs to Schedules 1, 2, and 3.²

¹ 16 U.S.C. § 824d (2006).

² Schedule 1 addresses Scheduling, System Control and Dispatch Service. Schedule 2 addresses Energy Administration Service. Schedule 3 addresses Reliability Administrative Service.

3. In the 2013 Capital Budget, ISO-NE proposes a \$29.3 million capital budget for calendar year 2013. ISO-NE states that the primary deliverable for a majority of the 2013 Capital Budget is application software and requisite hardware needed to maintain and improve bulk-power system reliability or wholesale electric markets. ISO-NE describes 25 specific projects, nine of which it describes as well-defined and with charters approved by management, and 16 of which it states are still in the planning stages or subject to further Commission action.³ ISO-NE requests that the Commission accept the 2013 Capital Budget effective January 1, 2013.

4. ISO-NE states that the Third Quarter 2012 Report satisfies the requirements of previous Commission orders requiring the filing of such reports⁴ and highlights: (i) newly-chartered capital projects; (ii) projects completed during the quarter; and (iii) projects with significant budget changes compared with the last quarterly report.⁵ ISO-NE requests that the Commission accept its Third Quarter 2012 Report effective October 1, 2012.

II. Notice of Filing and Responsive Pleadings

5. Notice of the October 25 Filing was published in the *Federal Register*, 77 Fed. Reg. 66,458 (2012), with interventions and protests due on or before November 15, 2012. A notice of intervention was filed by Connecticut Public Utilities Regulatory Authority (CT PURA). Timely motions to intervene were filed by the New England Power Pool (NEPOOL) Participants Committee,⁶ the Connecticut Consumer Counsel (CT OCC), the Attorney General for the State of Connecticut (CTAG), and Northeast Utilities Service Company (NUSCO).⁷ Comments were filed by the NEPOOL Participants Committee. A protest was filed collectively by CT PURA, CT OCC, and CTAG (collectively, the Connecticut Agencies).

³ October 25 Filing at 7-14. Attached to this order as Appendix A is a list of the projects and their respective proposed funding amounts.

⁴ *ISO New England Inc.*, 109 FERC ¶ 61,382 (2004).

⁵ October 25 Filing at 15-18.

⁶ NEPOOL is a voluntary association with more than 430 members. The Participants act through the NEPOOL Participants Committee. NEPOOL Participants Committee November 2, 2012 Motion to Intervene.

⁷ NUSCO 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, Public Service Company of New Hampshire, and NSTAR Electric Company.

6. On November 29, and November 30, 2012, ISO-NE and NEPOOL Participants Committee, respectively, submitted answers to the Connecticut Agencies' protest.

7. On December 10, 2012, the Connecticut Agencies submitted an answer to the answers.

8. NEPOOL Participants Committee submitted comments in support of ISO-NE's 2013 Capital Budget. Within those comments, NEPOOL Participants Committee states that, at its October 3, 2012 meeting, it voted to support the 2013 Capital Budget.⁸

9. As an initial matter, the Connecticut Agencies argue that the 2013 Capital Budget is an integral part of ISO-NE's filing to recover its administrative costs for calendar year 2013 (2013 Administrative Budget), filed in Docket No. ER13-185-000, and that the Commission should consider both filings together.⁹ The Connecticut Agencies assert that although ISO-NE proposes to fund its 2013 Capital Budget through private financing, ISO-NE funds the capitalized portion of the interest on its debt through the debt servicing and depreciation recovery portion of the administrative budget, the costs of which are ultimately borne by ratepayers.¹⁰ The Connecticut Agencies add that ISO-NE's requests for additional staffing and other administrative costs typically are directly linked to its capital budget requests.¹¹

10. The Connecticut Agencies further argue that the 2013 Capital Budget does not effectively prioritize projects or limit spending. They assert that 84 percent of the proposed 2013 Capital Budget is for conceptual projects rather than approved projects,¹² and that conceptual projects typically have substantially higher costs and short time frames for completion.¹³ They state that the 2013 Capital Budget proposal is 4.4 percent

⁸ NEPOOL Participants Committee November 15, 2012 Comments at 2.

⁹ Connecticut Agencies November 11, 2012 Protest at 8.

¹⁰ *Id.* at 7, 12.

¹¹ As an example, the Connecticut Agencies explain that in the 2013 Administrative Budget, ISO-NE seeks \$4.5 million and additional staff to work on the Strategic Planning Initiative while in the 2013 Capital Budget ISO-NE seeks an additional \$2.5 million for the Strategic Planning Initiative as a conceptual capital expense.

¹² Connecticut Agencies November 11, 2012 Protest at 5.

¹³ The Connecticut Agencies assert that \$25 million of the \$29 million request for 2013 capital spending is designated for projects in the conceptual design stage. *Id.* at 10.

higher than the approved 2012 capital budget and that in the past five years ISO-NE has added 100 full time equivalent positions and increased its revenue requirement by 34 percent. The Connecticut Agencies seek an evidentiary hearing to determine whether the 2013 Capital Budget is just and reasonable.¹⁴

11. The Connecticut Agencies also request a series of reforms to the ISO-NE budget-making process. First, they seek a requirement that ISO-NE submit its proposed annual administrative and capital budgets to each New England state commission at least 60 days prior to filing them with the Commission, to allow state regulatory agencies more time to review the proposed budgets before they are filed with the Commission. The Connecticut Agencies posit that they received the formal 2013 Capital Budget on the same day that ISO-NE filed it with the Commission, leaving them two weeks to consider the filing and submit a protest. Second, they seek a requirement that ISO-NE include the states' feedback in its budget filings, so that the Commission will be automatically notified of the various states' positions. Third, they seek a requirement that ISO-NE file the administrative and capital budgets together, starting with the 2014 budgets.¹⁵ They note that ISO-NE presents the two budgets together to NEPOOL, and then separates them for filing with the Commission. Fourth, the Connecticut Agencies request that the Commission allow state commissions and agencies an opportunity for an evidentiary hearing at FERC if a New England state utility commission so requests. They argue that budget hearings should be a standard procedure but that the Commission has not held a hearing on ISO-NE's capital budget for at least 11 years.¹⁶ They aver that when the Commission approves a budget without an evidentiary hearing, the rate increases are borne by the ratepayers of New England without any state governmental oversight or input. The Connecticut Agencies also propose that, as an alternative to conducting an evidentiary hearing, the Commission could delegate its review and decision-making authority regarding the administrative and capital budget filings to a Commission-approved New England State Board pursuant to section 209 of the FPA.¹⁷

12. In its answer, ISO-NE responds to criticism of its budget-making process, asserting that states have ample opportunity to review the budgets. ISO-NE explains that it publishes its budgets on its website at least 60 days before filing at the Commission, and it notifies state regulators by email of such publication. It avers that CT OCC, as a member of NEPOOL, and other state regulators could have attended the August meeting

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 9.

¹⁶ *Id.*

¹⁷ 16 U.S.C. § 824h (2006); *id.* at 11-13.

of the NEPOOL Budget and Finance Subcommittee where the budgets were reviewed. While ISO-NE acknowledges that the Connecticut Agencies formally received the 2013 Capital Budget on the same day that it was filed with the Commission, ISO-NE notes that such service was in addition to the earlier opportunities stakeholders had to review and comment on the budgets. Additionally, ISO-NE states that it provided all states with a detailed budget presentation in advance of a September 13, 2012 budget meeting between ISO-NE management and the New England states. ISO-NE posits that it invited questions before, at, and after that meeting. ISO-NE states that Connecticut was represented at the meeting and that ISO-NE met separately with the Connecticut Agencies on October 16, 2012, as they requested.¹⁸ It argues that the Connecticut Agencies should take full advantage of existing opportunities to engage in the budget-development process rather than utilizing a protest here to request a new process. Nevertheless, ISO-NE concedes its willingness to include state feedback, provided through existing channels, in its capital budget filings.¹⁹

13. ISO-NE also states that the Connecticut Agencies' assertions regarding the relationship of the capital and administrative budgets are largely incorrect. ISO-NE explains that many capital costs are for hardware, software, and upgrades that do not materially impact operating costs, and it clarifies that the staff positions that have been added in recent years are largely unrelated to capital projects. ISO-NE notes that the operating costs and the capital costs for the Strategic Planning Initiative are related but not linked in terms of cause and effect.²⁰ ISO-NE also states that it has a robust prioritization process, which is reflected in the Wholesale Markets Project Plan and in the annual and quarterly capital budget filings. It explains that management develops a detailed set of priorities for the year, which it shares with state officials and NEPOOL. Further, ISO-NE states that the boundaries on the size of its capital budget are in fact limited by the stakeholder process, the Commission's processes,²¹ and the amount of outside financing. Moreover, ISO-NE asserts that the conceptual projects included in the capital budget are being developed pursuant to Commission orders. Indeed, ISO-NE notes that the Commission required ISO-NE to file quarterly reports, such as the one

¹⁸ ISO-NE November 29, 2012 Answer at 4.

¹⁹ *Id.* at 3-5.

²⁰ *Id.* at 8-9. ISO-NE explains that the operating costs for the Strategic Planning Initiative are to manage the risks that have arisen, while the capital costs are for changes to the markets to mitigate the risks on a going-forward basis.

²¹ ISO-NE states that the process is outlined in the Participants Agreement, which includes a multi-stage stakeholder process, a vote of participants, approval by the ISO's independent Board of Directors, and ultimately filing with the Commission for approval.

included here, which specify, by project, ISO-NE's spending on multi-year projects and a forecast of the spending to complete each project in each future calendar year. ISO-NE explains that in advance of these quarterly filings, it meets with the NEPOOL Budget and Finance Subcommittee to review its capital forecast and answer any questions from stakeholders.²²

14. ISO-NE further disputes the Connecticut Agencies' request for hearing, asserting that there are no factual disputes. ISO-NE contends that the Connecticut Agencies merely raise broad policy issues and have failed to proffer any evidence in support of setting the 2013 Capital Budget for hearing.²³

15. In its answer to the protest, NEPOOL Participants Committee states that the proceeding should be limited to consideration of the 2013 Capital Budget filing itself, and not include changes to the ISO-NE budget-making process.²⁴ It argues, consistent with ISO-NE's answer, that the existing budget-making process provides an adequate review period, further explaining that this year, there were more than 60 days' notice and multiple opportunities to question, discuss, and provide feedback on the draft capital budget. NEPOOL Participants Committee details that the 2013 Capital Budget was posted on the ISO-NE webpage on August 20, 2012, and circulated to every NEPOOL member who requested it, including CT OCC. It states that on September 7, 2012, the 2013 Capital Budget was circulated to all members of NEPOOL and other interested parties,²⁵ and that at the September 14, 2012 NEPOOL Participants Committee meeting, all interested parties were encouraged to provide feedback and ask questions, and all such feedback and questions were posted on the ISO-NE website. Furthermore, NEPOOL Participants Committee states that ISO-NE's written responses to stakeholder questions were posted on October 1, 2012, and the budget proposals were circulated again on October 3, 2012, for vote at the Participants Committee meeting on the same day. It argues that an automatic evidentiary hearing on every capital budget filing is unnecessary, because interested parties may actively participate in the Commission-

²² ISO-NE November 29, 2012 Answer at 10-12.

²³ *Id.* at 6-7.

²⁴ NEPOOL Participants Committee November 30, 2012 Answer at 1.

²⁵ NEPOOL Participants Committee states that the 2013 Capital Budget was also distributed to representatives of the New England States Committee on Electricity and the New England Conference of Public Utility Commissioners, and representatives of all New England state regulatory commissions.

approved stakeholder process. However, like ISO-NE, NEPOOL Participants Committee is amenable to including state agencies' feedback in ISO-NE's capital budget filings.²⁶

16. NEPOOL Participants Committee further states that it is not opposed to consolidation of ISO-NE's 2013 Administrative and Capital Budgets or a requirement that such filings be submitted together in the future. It states that the Connecticut Agencies correctly note that the administrative and capital budgets are jointly reviewed, finalized, and voted upon at the stakeholder level.²⁷

17. In response to the answers, the Connecticut Agencies expound upon their concerns regarding the inclusion of conceptual projects in the 2013 Capital Budget. They argue that such projects should be disallowed because there is insufficient evidence regarding how much will be spent on specific capital plant or facility improvements in 2013. Noting ISO-NE's stated caveat that the 2013 Capital Budget cannot accurately predict ISO-NE's actual expenditures for 2013,²⁸ the Connecticut Agencies argue that the caveat attempts to circumvent Commission oversight.

III. Discussion

A. Procedural Matters

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

19. 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 and an answer to an answer unless otherwise ordered by the decisional authority. We will accept ISO-NE's and NEPOOL Participant Committee's answers and the Connecticut Agencies' answer to the answers because they provided information that assisted us in our decision-making process.

B. Commission Determination

20. The Commission will accept ISO-NE's proposed 2013 Capital Budget and Third Quarter 2012 Report to become effective January 1, 2013, and October 1, 2012, respectively, as requested. As discussed below, we find that ISO-NE has supported the

²⁶ NEPOOL Participants Committee November 30, 2012 Answer at 4-5.

²⁷ *Id.* at 3.

²⁸ October 25 Filing at 14-15.

costs in the 2013 Capital Budget as just and reasonable. We further find that the Third Quarter Report satisfies the requirements of the Tariff and relevant Commission orders.²⁹

21. We find that ISO-NE has adequately supported the inclusion and related costs of each project listed in the 2013 Capital Budget. The budget was developed by ISO-NE's Chief Executive Officer, the Chief Financial and Compliance Officer, members of ISO-NE Board of Directors, other officers, and certain key managers, and the costs, purpose and need for each project are discussed not only in the 2013 Capital Budget itself, but also in the testimony of Dr. Vamsi Chadalavada, the Executive Vice President and Chief Operating Officer of ISO-NE.³⁰ Dr. Chadalavada describes how each project will help ensure reliability, promote efficiency, or implement Commission-accepted elements of ISO-NE's Forward Capacity Market design, and he provides the estimated total cost for each project; the amount allocated for year 2013, and in some cases, how that amount compares to previous years; whether any project costs will be reimbursed from other sources; and the projected completion date for each project.³¹ While, as ISO-NE acknowledges, the 2013 Capital Budget proposal (or any projected budget) cannot predict with 100 percent accuracy ISO-NE's actual capital expenditures for any given year, ISO-NE is required, as it has done here, to keep the Commission informed via quarterly filings of any major budget changes. Together, the annual capital budget and quarterly reports are designed to help ensure transparency for stakeholders and allow for ongoing Commission review of ISO-NE's capital spending, as well as adjustments for stakeholder- or Commission-approved projects throughout the year. In addition, we note that ISO-NE's 2013 Capital Budget was reviewed by both the NEPOOL Budget and Finance Subcommittee and NEPOOL Participants Committee. The 2013 Capital Budget was approved by 94.56 percent of voting NEPOOL Participants Committee stakeholders³² and by ISO-NE's independent Board of Directors.

²⁹ In taking this action, we note that comments and protests address only the 2013 Capital Budget, not the Third Quarter 2012 Report.

³⁰ October 25 Filing, Dr. Vamsi Chadalavada Testimony at 9-26.

³¹ *Id.* For example, Dr. Chadalavada explains that the Synchrophasor Infrastructure and Data Utilization Project relates to smart grid technology. The total cost for the project is projected at \$10.6 million, half of which is expected to be reimbursed by the U.S. Department of Energy. ISO-NE's net spending is expected to be \$5.3 million, of which \$4.1 million is expected to be capital expenditures. The 2013 budget for this project is \$500,000. *Id.* at 11. *See also, id.* at 10 (explaining that the back-up control center transition is necessary because, in the event that the main Control Center became unavailable, ISO-NE would not be able to reliably run its grid).

³² *Id.* at 7-8.

22. While the Connecticut Agencies dispute the need for inclusion of conceptual projects in the 2013 Capital Budget, we find that in order to plan and budget for projects, ISO-NE needs to incorporate these future projects and expenditures in capital budgets to provide a high degree of transparency. Moreover, as these projects are moved through the planning stages and begin receiving charter approval, the Commission will continue review of projects through ISO-NE's quarterly section 205 filings. The quarterly filings will reflect a true-up of any cost changes in the projects. Therefore, we find that it is reasonable to include the conceptual projects as listed in the 2013 Capital Budget, and that the costs for these projects, as with the other projects, are adequately supported by the record (for the reasons described above).

23. We reject as beyond the scope of this proceeding the Connecticut Agencies' proposed reforms to ISO-NE's budget-making process,³³ including, among other things, requiring ISO-NE to file its administrative and capital budgets together³⁴ and provide its final budgets to state commissions prior to submitting them to the Commission, and establishing standard hearing procedures for ISO-NE's capital budgets.³⁵ Our determination in this section 205 proceeding is limited to consideration of whether ISO-NE's October 25 Filing is just and reasonable, and ISO-NE has proposed no changes to its budget-making process here. However, we note that, with NEPOOL Participant Committee's support, ISO-NE has committed to include the states' feedback as part of its future budget filings, as the Connecticut Agencies request. We further note that NEPOOL does not oppose filing the administrative and capital budgets together, and ISO-NE may submit them together if it so chooses.

³³ See *California Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,082, at P 75 (2009) (finding that commenter's concerns regarding involuntary curtailments have no bearing on whether a price cap and floor proposal is just and reasonable, and is thus beyond the scope of the proceeding); *S. Co. Services, Inc.*, 125 FERC ¶ 61,393, at P 20 (2008) (finding that market power issues are beyond the scope of a proceeding to determine whether a proposed tariff is just and reasonable).

³⁴ While we will not require ISO-NE to submit its administrative and capital budgets together, or formally consolidate the proceedings, as the Connecticut Agencies have requested, we note that the Commission's order addressing ISO-NE's 2013 Administrative Budget in Docket No. ER13-185-000 is being issued concurrently with this order.

³⁵ As noted above, the appropriateness of a trial-type evidentiary hearing is case-specific and a hearing is required only when a genuine issue of material fact exists. See, e.g., *Virginia Elec. & Power Co.*, 84 FERC ¶ 61,254, at 62,254 (1998).

24. Finally, we reject the Connecticut Agencies' request for a trial-type evidentiary hearing. As discussed above, we find that ISO-NE has provided adequate support for its 2013 Capital Budget, and the record reflects no specific evidence to the contrary.³⁶

The Commission orders:

(A) ISO-NE's 2013 Capital Budget is hereby accepted for filing, effective January 1, 2013, as requested, as discussed in the body of this order.

(B) ISO-NE's Third Quarter 2012 Report is hereby accepted for filing, effective October 1, 2012, as requested, as discussed in the body of this order.

By the Commission

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁶ “[A] protestor . . . has a burden to do more than make mere unsubstantiated allegations to warrant a hearing.” *Interstate Power & Light Co.*, 127 FERC ¶ 61,043, at P 44 n.49 (2009); *see also Tennessee Gas Pipeline Co.*, 26 FERC ¶ 61,144, at 61,361 n.39 (1984) (“[T]he Commission is not required to hold evidentiary hearings, in the absence of such concrete specifications, merely to explore argumentative policy or legal issues.”).

APPENDIX A

<u>Description</u>	<u>2013 Amount</u>
<u>Capital Projects – Approved Charters</u>	
Markets Database Infrastructure Upgrade	\$ 1,500,000
Backup Control Center Data Center Transition	\$ 1,332,800
Synchrophasor Infrastructure and Data Utilization (SIDU)	\$ 500,700
NX9/NX12D Data Integration and Automation	\$ 500,000
Wind Integration	\$ 300,000
Software Testing Tool	\$ 200,000
Forward Capacity Market Enhancements	\$ 142,000
System Restoration and BlackStart Resource Management	\$ 60,000
Bilateral Financial Insurance	\$ 79,200
<u>Capital Projects in Conceptual Design</u>	
Strategic Initiatives	\$ 2,500,000
Generation Control Application (GCA) Phase II	\$ 2,000,000
Forward Capacity Auction (FCA) 8	\$ 2,000,000
Alternative Technologies and Regulation Market (ATRM)	\$ 2,000,000
Intra-day Offers	\$ 2,000,000
Coordinated Transaction Scheduling	\$ 1,800,000
Business Continuity Plan Infrastructure Enhancements Phase III	\$ 1,500,000
2013 Issue Resolution Project	\$ 1,500,000
Simultaneous Feasibility Test and Market System Upgrade	\$ 1,000,000
Business Intelligence Phase III	\$ 800,000
Divisional Accounting	\$ 800,000
Web Enhancements Phase II	\$ 500,000
Day Ahead Market (DAM)	\$ 500,000
Q2 2013 Release	\$ 300,000
Q4 2013 Release	\$ 300,000
2013 Q1/Q2 Network Model Enhancements	\$ 200,000
Other Emerging Work Projects	\$ 818,100
Non-Project Capital Expenditures	\$ 3,700,000
Capitalized Interest and Loan Fees	\$ 500,000
<u>TOTAL Capital Projects</u>	<u>\$ 29,332,800</u>

Source: October 25 Filing, Attachment 1.