

UNITED STATES OF AMERICA 111 FERC ¶61,344
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

ISO New England, Inc., <i>et al.</i>	Docket Nos. RT04-2-013 and ER04-116-013
Bangor Hydro-Electric Company, <i>et al.</i>	Docket No. ER04-157-013
The Consumers of New England v. New England Power Pool	Docket No. EL01-39-011
Florida Power & Light Company – New England Division	Docket No. ER04-714-004

ORDER ON REHEARING

(Issued June 2, 2005)

1. The Long Island Power Authority and its operating subsidiary, LIPA (collectively, LIPA); the New England Consumer-Owned Entities;¹ and the Connecticut Department of Public Utility Control and Connecticut Office of Consumer Counsel (collectively, Connecticut), seek clarification and/or rehearing of the Commission's February 10, 2005 Order in the above-captioned proceeding.² For the reasons discussed below, we will deny clarification and rehearing of the February 10 Order.

¹ The New England Consumer-Owned Entities are: Connecticut Municipal Electric Cooperative; Massachusetts Municipal Wholesale Electric Company; Vermont Public Power Supply Authority; New Hampshire Electric Cooperative, Inc.; Chicopee Municipal Lighting Plant; Braintree Electric Light Department (Braintree); Reading Municipal Light Department (Reading); and Taunton Municipal Lighting Plant (Taunton).

² *ISO New England, Inc., et al.*, 110 FERC ¶ 61,111 (2005) (February 10 Order).

Background

2. In the February 10 Order, we addressed a series of related compliance filings, informational filings, proposed tariff revisions, and requests for rehearing and/or clarification of prior orders concerning the proposal made in this proceeding by ISO New England Inc. (ISO-NE) and the New England transmission owners³ (Transmission Owners) (collectively, the Filing Parties) to establish a regional transmission organization (RTO) for New England.⁴ We found that with the approvals adopted in our order, the satisfaction of additional compliance requirements, and the resolution of certain related proceedings and reserved issues, ISO-NE was authorized to begin operation as an RTO, as requested, effective February 1, 2005.

3. We found, among other things, that the Second Amended and Restated Interregional Coordination and Seams Issue Resolution Agreement (Seams Resolution Agreement) entered into between ISO-NE and the New York Independent System Operator (NYISO) satisfied the requirement in the November 3 Order with respect to the parties' identification of remaining interregional seams issues.⁵ In addition, we also rejected the New England Consumer-Owned Entities' assertions that the Commission had erred in the November 3 Order in accepting certain of the computational components

³ Bangor Hydro Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation; New England Power Company; Northeast Utilities Service Company; NSTAR Electric & Gas Corporation; The United Illuminating Company; and Vermont Electric Power Company.

⁴ See *ISO New England, Inc.*, 106 FERC ¶ 61,280 (2004) (March 24 Order) (order granting RTO status subject to fulfillment of requirements and establishing hearing and settlement judge procedures) and *ISO New England, Inc.*, 109 FERC ¶ 61,147 (2004) (November 3 Order) (order accepting partial settlement, subject to conditions; accepting, in part, compliance filings; and granting, in part, and denying, in part, requests for rehearing).

⁵ See February 10 Order, 110 FERC ¶ 61,111 at P 37. We found that while the Seams Resolution Agreement provided for the inclusion of additional seams issues, the specified issues covering ISO-NE's initial stages of RTO development were appropriately limited to (i) Facilitated Checkout; (ii) Regional Resource Adequacy and Partial Unit Installed Capacity; (iii) Cross Border Controllable Line Scheduling; and (iv) Coordination of Regional Planning. *Id.*

included in the proposed ISO-NE base-level Return on Equity (ROE), including our acceptance, on a preliminary basis, of a proxy group comprised of Northeast utilities doing business in the markets operated by ISO-NE, the NYISO, and PJM Interconnection, LLC (PJM).⁶

Requests for Clarification and Rehearing

4. In its rehearing request, LIPA requests clarification that the Commission's ruling, regarding the adequacy of the Seams Resolution Agreement, was not intended to limit the issues to be addressed pursuant to that agreement, *i.e.*, the four issues identified by the Commission in the February 10 Order.⁷ LIPA notes that pursuant to section 3.1 of the Seams Resolution Agreement, ISO-NE and the NYISO are permitted to identify and prioritize additional seams issues and, ultimately, "[a]dd approved Additional Seams Issues (with milestones and timetables) to Attachment I and integrate them into the existing FERC Seams reporting process."⁸

5. Connecticut and the New England Consumer-Owned Entities request clarification that the February 10 Order does not preclude the presiding judge, in the ROE hearing established by the March 24 Order,⁹ from examining whether the proposed proxy group, as preliminarily accepted by the Commission in the November 3 Order,¹⁰ faces risks comparable to those of the Transmission Owners. The New England Consumer-Owned Entities assert that the Commission erred in the February 10 Order in finding that "[t]aken

⁶ The proposal at issue was made by the Transmission Owners joined by Green Mountain Power Corporation and Central Vermont Public Service Corporation (collectively, the ROE Filers).

⁷ *See supra* note 5.

⁸ On March 11, 2005, ISO-NE filed an answer to LIPA's request for rehearing. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a rehearing request unless otherwise permitted by the decisional authority. We are not persuaded to allow ISO-NE's answer and therefore will reject it.

⁹ March 24 Order, 106 FERC ¶ 61,280 at P 250.

¹⁰ November 3 Order, 109 FERC ¶ 61,147 at P 204-205.

as a whole, and individually . . . the risk profiles of the [companies included in the proposed proxy group] are reasonably similar to the risks faced by ISO-NE.”¹¹

Discussion

6. We will deny clarification and/or rehearing of the February 10 Order. First, we need not clarify section 3.1 of the Seams Resolution Agreement, as requested by LIPA. That provision expressly and unambiguously provides for the identification and resolution of additional seams issues, as LIPA itself points out in its rehearing request. Nor are we required to clarify the February 10 Order with respect to this allowance. In fact, the February 10 Order acknowledged that “the existing Seams Resolution Agreement already provides for the inclusion of additional seams issues.”¹²

7. We will also deny the requests for clarification and/or rehearing asserted by Connecticut and the New England Consumer-Owned Entities, regarding the risk profiles of the ROE Filers’ proposed proxy group. Connecticut and the New England Consumer-Owned Entities claim that the February 10 Order held for the first time (contrary to the findings made in the November 3 Order) that the risk profiles of the proposed proxy group companies are reasonably similar to the risks faced by ISO-NE. We disagree that the findings on risk profiles in the February 10 Order differed from our findings in the November 3 Order or otherwise require clarification. In fact, the challenged findings in the February 10 Order¹³ were restatements of the findings in the November 3 Order.¹⁴

¹¹ February 10 Order, 110 FERC ¶ 61,111 at P 23.

¹² *Id.* at P 37.

¹³ In the February 10 Order, we held as follows:

[T]he ROE Filers’ proposed proxy group consists of a group of companies, each of which does business in the Northeast, including transmission-owning participants doing business in the markets operated by ISO-NE, the NYISO, and [PJM]. Taken both as a whole, and individually, we believe the risk profiles of these companies are reasonably similar to the risks faced by ISO-NE.

Id. at P 23.

¹⁴ In the November 3 Order, we held as follows:

(continued...)

8. Specifically, in the November 3 Order, we found that the proposed proxy group was “sufficiently representative” of ISO-NE; in the February 10 Order, we found that the proposed proxy group was “reasonably similar” to ISO-NE – and denied the New England Consumer-Owned Entities challenge of our initial ruling in February 10 Order on this very issue. In both orders, the ROE Filers’ proposed proxy group was found to be appropriate by the Commission, subject *only* to the *specified allowances* in the November 3 Order. We held in the November 3 Order that the presiding judge would be free to determine that additional companies could be included in the proxy group so long as: (i) reasonable data could be substituted for the growth rate data reported by I/B/E/S or Value Line; and (ii) the company’s low-end return is not lower than its reported debt cost. We also found that PPL Corporation did not belong in the proxy group due to its unsustainable growth rates. We also clarified, in the February 10 Order, that the presiding judge would be permitted to exclude from the proxy group other companies that have financial indicators that are unsustainable. No other challenges will be entertained.¹⁵

The Commission orders:

Clarification and/or rehearing of the February 10 Order are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

[T]he ROE Filers’ proposed proxy group consists of twelve utilities doing business in the Northeast, including transmission-owing members of [ISO-NE], [the NYISO], and PJM, all of whom issue share[s] of publicly-traded stock. We believe a proxy group comprised of Northeast utility companies provides a sufficiently representative universe of companies for calculating an ROE applicable to the [Transmission Owners] in this proceeding.

Id. at P 204.

¹⁵ The Presiding Judge’s Initial Decision was issued May 27, 2005. *See Bangor Hydro-Electric Company, et al.*, 111 FERC ¶ 63,048 (2005).