

125 FERC ¶ 61,392
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc.

Docket No. ER09-197-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued December 31, 2008)

1. On October 31, 2008, ISO New England Inc. (ISO-NE) filed revised tariff sheets to collect its administrative costs for the calendar year 2009 (October 31 Filing). In this order, the Commission accepts ISO-NE's proposed tariff revisions for filing to become effective January 1, 2009, as requested.

Background

2. In its October 31 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 2009 (2009 Revenue Requirement). ISO-NE states that its 2009 Revenue Requirement is \$123.4 million. The proposed 2009 Revenue Requirement is composed of several elements: the 2009 "Core Operating Budget" (\$99.5 million);¹ "Debt Service" (\$28.8 million);² and "True-Up Amounts" for 2007 and 2008 (-\$1.7 million and - \$3.3 million, respectively).

¹ ISO-NE notes that the 2009 Core Operating Budget reflects a 9.4 percent increase from 2008, necessitated primarily by the implementation of several new projects and planning processes.

² 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.

3. ISO-NE asserts that it endeavored to keep its 2009 Core Operating Budget for continuing services flat, with any increase tied to specific new initiatives. According to ISO-NE, it has been able to absorb most of the labor costs associated with additional projects and responsibilities by realizing efficiencies in its organization. ISO-NE proposes to increase its Core Operating Budget by approximately \$8.5 million to fund new initiatives, e.g. a Compliance Management Program, Transmission Planning/Economic Studies, and Demand Resource Integration. ISO-NE explains that the Forward Capacity Market activities continue to represent a large portion of the Core Operating Budget, specifically \$4.8 million in such related costs.

4. ISO-NE states that it allocates \$4 million for increased benefit plan costs and a 3.5 percent increase in salaries for merit and a 1 percent increase for promotions to reflect the increasingly competitive labor market for services crucial to its operations.³ 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.

5. Regarding executive salaries and board compensation, ISO-NE explains that it must comply with Internal Revenue Service (IRS) standards governing the reasonableness of compensation for executives and directors of 501(c)(3) corporations, to include base salary and all bonuses.⁴ 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.

6. ISO-NE states that the Commission recently had the opportunity to closely examine, through an extensive paper hearing, ISO-NE's external affairs activities and expenditures.⁵ According to ISO-NE, its external affairs expenditures represent its

³ October 31 Filing at 12.

⁴ *Id.* at 13.

⁵ *ISO New England Inc.*, 117 FERC ¶ 61,070 (2006) (External Affairs Order), *order on reh'g and clarification*, 118 FERC ¶ 61,105, *order rejecting reh'g*, 120 FERC ¶ 61,122 (2007), *aff'd Braintree Elec. Light Dept. v. FERC*, No. 04-1335 (D.C. Cir. Dec. 16, 2008) (*Braintree*).

efforts to monitor relevant legislation, provide outreach and education to state and federal legislators and regulators, respond to media inquiries, and educate consumers on energy efficiency.⁶ ISO-NE cited the Commission's findings that "because ISO-NE has shown that its informational activities were directly related to existing or proposed core operations and undertaken to benefit its ratepayers, it may recover the costs associated with those activities."⁷ ISO-NE asserts that its external affairs expenditures in 2009 will be just and reasonable and properly recoverable from customers and to the extent they constitute "lobbying" as defined by the Internal Revenue Code, they will also be well within the permitted thresholds for those types of expenses.

7. ISO-NE explains that its Debt Service includes the following components: (i) recovery of depreciation; (ii) amortization of regulatory assets and interest expense necessary to repay principal and interest on Commission-approved capital borrowings; and (iii) working capital borrowings. ISO-NE details that for 2009, depreciation and amortization constitutes \$25.8 million, while interest expense constitutes \$3 million, for a total Debt Service amount of \$28.8 million, which is a \$3.4 million decrease from 2008. ISO-NE states that it uses a straight-line depreciation methodology based on no net salvage value and certain average service lives.

8. In support of its filing, ISO-NE notes that its 2009 Operating Expense Budget was unanimously approved (with abstentions) by the New England Power Pool (NEPOOL) Participants Committee, its primary stakeholder body, and was approved by ISO-NE's Board of Directors.

9. ISO-NE requests an effective date of January 1, 2009 for the proposed revisions. ISO-NE also requests that the Commission accept the revised tariff sheets without suspension or hearing.

Notice of Filing, Interventions, Protest and Answer

10. Notice of ISO-NE's October 31 Filing was published in the *Federal Register*, 73 Fed. Reg. 67,495 (2008), with interventions, comments or protests due on or before November 21, 2008. Timely motions to intervene were filed by Northeast Utilities

⁶ October 31 Filing at 13.

⁷ External Affairs Order, 117 FERC ¶ 61,070 at P 42.

Service Company on behalf of the Northeast Utilities Companies.⁸ The NEPOOL Participants Committee filed a timely motion to intervene and comments in support of the filing. Joint Advocates filed a timely motion to intervene and protest.⁹ ISO-NE submitted an answer to Joint Advocates' protest.

11. In their protest, Joint Advocates argue that ISO-NE's filing does not provide enough supporting evidence for its proposed costs, and as such, the Commission does not have enough information to determine whether they are just and reasonable. Joint Advocates ask the Commission to investigate the following areas: ISO-NE's requested executive compensation and salary structure; employee staffing levels; depreciation and amortization schedules; and external affairs activities.¹⁰ Joint Advocates request that the Commission set these issues for hearing.

12. Regarding the executive compensation packages, the Joint Advocates state that ISO-NE does not actually disclose precisely what it proposes to pay its executives, whether base pay or in bonuses. The Joint Advocates state 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.¹¹ The Joint Advocates state the compensation paid to officers and executives is a matter of public interest and concern because it is paid for by all utility customers. The 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. The Joint Advocates state 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. Therefore, the Joint Advocates argue that the Commission should reject ISO-NE's executive compensation proposal as unreasonable and set this matter for hearing.

⁸ The Northeast Utilities Companies are: the Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire.

⁹ The Joint Advocates consist of Richard Blumenthal, Attorney General for the State of Connecticut, and the Connecticut Office of Consumer Counsel.

¹⁰ Joint Advocates at 1.

¹¹ *Id.* at 5.

13. Regarding the total compensation to its employees, the Joint Advocates state that ISO-NE provides no explanation why the salary expenses are necessary other than to assert that it reviewed survey data from several national compensation consultants on expected merit and promotional pool increases.¹² The Joint Advocates state that ISO-NE's representations are inadequate for the Commission to make any reasonable determinations as to the need for the salary increases or the new employees. Regarding the survey data from several compensation consultants, the Joint Advocates state ISO-NE provided no backup data or any of the "surveys" it relied upon for its employee salary and benefit increase. The Joint Advocates state that in light of rising unemployment rates and dropping consumer incomes the Commission should require ISO-NE to "tighten its belt." They request that the Commission require the ISO-NE to present all of its evidence to support its proposed salary increases for a hearing and allow the representatives of the public interest to challenge ISO-NE's request.

14. Regarding the addition of 25 employees dedicated to operating the Forward Capacity Market, the Joint Advocates state that the Commission should not accept ISO-NE's stated need without a detailed justification of what employees will be doing. The Joint Advocates state ISO-NE provides no supporting documentation to justify these increases in its staff, so the Commission cannot determine whether the costs associated with these increases are just and reasonable. The Joint Advocates request an investigation of these staffing level increases in full hearing proceedings.

15. Regarding depreciation and amortization expenses, the Joint Advocates continue to oppose ISO-NE's proposed depreciation rates as unreasonably high. The Joint Advocates point to a variety of ISO-NE assets for which it asserts the average service lives are too short to be reasonable (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).¹³ The Joint Advocates explain that ISO-NE with each and every one of the deviations from the IRS General Depreciation System imposes additional unnecessary cost burdens upon New England ratepayers, but that ISO-NE applies the IRS General Depreciate System in other areas. The Joint Advocates argue that the unreasonably high depreciation and amortization rates is an economic benefit for ISO-NE at the expense of ratepayers as well as inter-generational subsidy where current ratepayers are being forced to pay the costs of assets that will benefit future generations of ratepayers. According to the Joint Advocates, the

¹² *Id.* at 6.

¹³ *Id.* at 7-8.

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.

16. The Joint Advocates state that ISO-NE seeks nearly \$500,000 for its proposed "External Affairs Activities,"¹⁴ but has provided no data to support this amount. The Joint Advocates state that ISO-NE's one line justification that "[t]he ISO will continue to engage in activities the costs of which were found to be recoverable by the Commission"¹⁵ for this request is insufficient to approve a \$500,000 surcharge for New England ratepayers. The Joint Advocates state ISO-NE's external affairs budget consists mostly of lobbying costs, which should be far lower now because the FCM for New England has been approved. The Joint Advocates state ISO-NE should be required to provide detailed projections of these proposed expenses.

17. The Joint Advocates request hearing proceedings to determine whether all of the aforementioned costs and expenses are just and reasonable.

18. In its answer to the Joint Advocates protest, ISO-NE explains there is a transparent, open and well-established stakeholder process to review the budget.¹⁶ ISO-NE explains that the process included a unanimous vote and recommendation by the NEPOOL Participants Committee, an examination by the New England Conference of Public Utilities Commissioners (NECPUC) to address questions and concerns before the budget was filed with the Commission, and a comprehensive review and approval process by the ISO's independent Board of Directors. Further, ISO-NE maintains that there was a lack of any NEPOOL or NECPUC protest. ISO-NE requests that the Commission reject the Joint Advocates' protest and accept the October 31 Filing without suspension or hearing.

19. ISO-NE states that the objective of the compensation program is to pay competitive compensation in order to attract and retain highly skilled employees necessary to fulfill its Commission-approved objectives. ISO-NE explains that because of the challenges in attracting and retaining employees, the ISOs and RTOs as a group experience an average turnover of 10.2% and turnover of executives at the rate of 25%

¹⁴ *Id.* at 8, citing October 31 Filing at Exh. 3, RCL-5, Schedule 2.

¹⁵ *Id.* at 8, citing Ludlow Initial Testimony at 20.

¹⁶ ISO-NE Answer at 2.

per year, along with the related costs of recruiting, relocation, development time and the disruption of workflow.¹⁷

20. Regarding the components of executive compensation, ISO-NE explains that the executive base salary is determined following a review of external competitiveness, the employee's productivity and performance, the qualifications for the position, and internal equity. ISO-NE describes a second component as annual incentive compensation that serves as a bonus program intended to motivate employees to meet critical annual goals with objective goals that are measured using a corporate scorecard that is regularly published to all employees. The third component of compensation is a long-term incentive bonus that applies only to ISO-NE executives and is intended to encourage retention by deferring payments for two and one-half years after these bonuses are declared.

21. ISO-NE explains that when determining executive compensation, it must meet a rebuttable presumption. ISO-NE states that the rebuttable presumption requires that the compensation arrangement 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 (i.e., compensation paid by similarly-situated entities – taxable and tax-exempt – for positions with a similar scope of responsibility), and that the Board of Directors adequately document the basis for its determination. ISO-NE explains that it follows these guidelines, as the Board of Directors and the Compensation and Human Resources Committee have adopted and follow a compensation philosophy reflecting the intent that executive compensation should fall within the 50th to 75th percentile of the comparators' compensation.¹⁸ ISO-NE states that the Board of Directors has contracted with a compensation expert, Mercer Consulting, for an annual independent evaluation of the proposed executive compensation. According to ISO-NE, Mercer Consulting compares the proposed compensation for each executive with comparator organizations, including ISOs, utilities and other entities, and independently prepared survey data, which the Board of Directors then uses for comparability. ISO-NE also stated that they document the Board and the Compensation and Human Resources Committee's decision-making.

22. The ISO explains that the Joint Advocates' claim that executive compensation is unreasonable because it is not disclosed is incorrect because ISO-NE's executive compensation is transparent to all stakeholders since it is disclosed in a proxy-style

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 8.

disclosure that is made available through the NEPOOL Budget & Finance Subcommittee and in the Internal Revenue Service Form 990.¹⁹

23. ISO-NE states that the Compensation and Human Resources Committee of the Board of Directors determines the salary and benefits budget annually after reviewing national survey data that projects what other employers will do for these programs in the coming year.²⁰ ISO-NE states that in spite of the difficulty of recent economic times, freezing salaries could easily cause more harm than savings to customers because a failure to provide the proposed salary increases would cause the ISO's compensation to lag behind that of the entities with which it competes for talent. In essence, ISO-NE states, uncompetitive salaries could possibly lead to increased employee turnover, which could lead to increased costs as well as a concomitant reduction in the quality and timeliness of ISO's services. Therefore, management recommended the lowest possible increases that would still keep compensation competitive, and based on this recommendation and the given economic conditions, the Compensation and Human Resources Committee chose the low end of each range of the survey data.

24. ISO-NE states that the increase of twenty-five additional staff members, net of the vacancy rate of 5 percent, was driven in large part by the 2009 new initiatives plus other needs, and was partially offset by reductions through efficiencies.²¹ ISO-NE states the new headcount was identified during the budget development process. ISO-NE states this process involves a number of steps, during which headcount requests are reviewed and revised at various levels. Specifically, ISO-NE explains that of the thirty-one new positions for 2009, twenty-four are directly attributable to new initiatives included in the 2009 budget, in accordance with the management of the ISO's goal to keep costs relatively flat, with increases primarily for annual salary adjustments and new initiatives. ISO-NE argues that the Joint Advocates were incorrect in the assertion that all new employees will be solely dedicated to the Forward Capacity Market.

25. Regarding ISO-NE's depreciation and amortization rates, it states there is no need to set its depreciation rates for hearing, because the Commission recently held such a paper hearing in Docket No. ER07-116, where it rejected the same arguments the Joint Advocates continue to raise. ISO-NE states that its average service lives were necessary

¹⁹ *Id.* at 9-10.

²⁰ *Id.* at 12. Data is provided from five surveys, prepared by Mercer, World at Work, Hewitt, The Conference Board and the Hay Group.

²¹ *Id.* at 13.

to comply with its funding mechanisms, consistent with its historical experience, and which its independent auditors found to be appropriate.²²

26. ISO-NE explains that it based its twenty-five year average service life for its building expenditures on the opinion of independent bond counsel, as well as an analysis of the service lives of the different aspects of the building.²³ Further, ISO-NE states the Commission found this approach “reasonable” in an order issued after the hearing on depreciation.

27. Regarding vehicle depreciation, ISO-NE clarifies that the depreciation component of the 2009 Revenue Requirement in the October 31 Filing uses a seven-year service life for the one vehicle being depreciated.²⁴ ISO-NE states the October 31 Filing’s transmittal letter, plus Robert C. Ludlow’s initial testimony, inadvertently referred to the shorter depreciation rate ISO-NE previously had used for a vehicle that had been completely depreciated as of September 30, 2008 and did not include in the 2009 Revenue Requirement. ISO-NE notes that this seven-year service life for the one vehicle being depreciated is longer than the five years requested by the Joint Advocates.

28. Regarding the depreciation rate that ISO-NE assumes refers to leasehold improvements, it states that in Docket No. ER07-116 it used this category for capital expenditures incurred for making improvements to the office space it continued to lease in the Pioneer Building until it completed the move to the newly-constructed, ISO-NE-owned building in 2007.²⁵ Further, ISO-NE states that now that it is no longer leasing space in the Pioneer Building, it now uses this category to depreciate similar types of improvements made to the new building. ISO-NE explains that although it is depreciating individual items within this category at service lives both longer and shorter than ten years, based on the nature of each such improvement (e.g., a rooftop railing at twenty-five years; an air conditioning unit at fifteen years; a capacitor bank at ten years), the building improvements purchased since mid-2007 are being depreciated, on average, at approximately ten years.

²² *Id.* at 16-17 (citing *ISO New England Inc.*, 119 FERC ¶ 61,178 (2007)).

²³ *Id.*

²⁴ *Id.* at 18.

²⁵ *Id.*

29. ISO-NE states that contrary to Commission policy, the Joint Advocates are attempting to re-litigate the same issues in successive proceedings without identifying any changed circumstances warranting a new determination.²⁶ ISO-NE states that the Commission should reject the Joint Advocates' contention that ISO-NE should set its depreciation service lives to those recommended in the IRS' General Depreciation System guidelines. ISO-NE explains these guidelines represent the depreciable lives for tax purposes, not economic useful lives more relevant to the Commission's ratemaking policies.

30. ISO-NE states that the protested external affairs budget item for 2009 (in the amount of \$468,220) encompasses the fixed retainers for, and projected expenses of, the consultants retained by ISO-NE for each of the six New England states and for the federal government. ISO-NE explains that much of the work of the consultants and the ISO-NE external affairs staff is reactive: responding to requests from government officials and legislators for specific data and information about the operation of the bulk power system and electricity markets.²⁷ According to ISO-NE, the Commission concluded that the expenses for these types of activities have been found to be recoverable in the Commission's orders following the 2006 paper hearing on ISO-NE's external affairs budget.²⁸

31. ISO-NE explains that the Joint Advocates' request for "detailed projections" of expenditures on external affairs is difficult to predict because the particular issues requiring efforts by ISO-NE's consultants during 2009 or the corresponding levels of effort are unknown.²⁹ With respect to the assertion regarding the proportion of the external affairs budget that is "lobbying costs," ISO-NE states that it expects, consistent with prior years' activities, that only a small portion of the budget will be used to provide ISO-NE's views on proposed legislation.³⁰ Further, ISO-NE states that with respect to the assertion that external affairs costs should be far lower due to the Commission's approval of the Forward Capacity Market: the approval of the Forward Capacity Market settlement agreement occurred in 2006, and thus could not have been a focus of 2008, or

²⁶ *Id.* at 19.

²⁷ *Id.* at 20.

²⁸ *Id.* at 21 (citing *ISO New England Inc.*, 118 FERC ¶ 61,105 at P 1).

²⁹ *Id.* at 21-22.

³⁰ *Id.* at 23.

even 2007, external affairs expenditures.³¹ ISO-NE states the need to educate and inform, and monitor legislative and regulatory proposals of the New England state and federal governments could be greater in 2009 than in 2008, in light of the significant policy focus in the 2008 campaign cycle on energy, electricity, the need for new transmission, and climate change.³² ISO-NE states that in all instances ISO-NE's "lobbying" activities will conform to the standards enunciated by the Commission in the orders it issued following the paper hearing process: that the communications are directly related to ISO-NE's existing or proposed core operations and undertaken in the collective interest of New England ratepayers.³³

Discussion

A. Procedural Matters

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁴ the timely unopposed motions serve to make the entities that filed them parties to this proceeding.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³⁵ 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

34. The Commission accepts ISO-NE's proposed tariff revisions for filing to become effective January 1, 2009, as requested, as discussed below.

35. We find that ISO-NE has adequately supported its executive compensation package and therefore will not set this matter for hearing. As explained in its transmittal letter, ISO-NE must comply with IRS standards governing the reasonableness of total

³¹ *Id.* at 23-24.

³² *Id.* at 24.

³³ *Id.*

³⁴ 18 C.F.R. § 385.214 (2008).

³⁵ 18 C.F.R. § 385.213(a)(2) (2008).

compensation for executives.³⁶ To ensure compliance, ISO-NE engaged Mercer Consulting, a nationally recognized independent consulting firm, to conduct an annual independent evaluation of the reasonableness of the proposed executive compensation. For ISO-NE's evaluation, Mercer Consulting evaluated the compensation offered by similarly situated entities, including other independent system operators and RTOs. Moreover, the evaluation also incorporated a broader comparison across all industries for positions not unique to utilities. The resulting opinion of the 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. Using this information as well as the recommendations of ISO-NE's Compensation and Human Resources Committee, ISO-NE's independent Board of Directors approved the executive compensation package. In addition, although ISO-NE did not include the information as part of its original filing, ISO-NE did provide details on the executive base pay and bonuses in its Answer.³⁷ On the basis of this information, we conclude that ISO-NE has justified its proposed executive compensation package and thus we find ISO-NE's proposed executive compensation package to be just and reasonable.

36. We also find that ISO-NE has adequately supported its employee salary and benefit package and therefore will not set this matter for hearing. 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 benefit expenses. Moreover, ISO-NE management recommended the lowest possible increases and the Compensation and Human Resources Committee chose the low end of each range of the survey data in light of the economic conditions and management's recommendation. Based on this evidence, the Commission finds that ISO-NE's proposed salary and benefits package to be just and reasonable.

37. With respect to its proposed staffing level increases, ISO-NE explained in its Answer that the proposed staffing increases (adding 25 new hires, net of the vacancy rate of 5 percent to an existing staff of 447) are directly attributable to new initiatives

³⁶ Under the IRS standards, executive compensation must fall within a range of competitive practices for similarly situated organizations for functionally comparative positions.

³⁷ ISO-NE also disclosed such information in the NEPOOL Budget and Finance Subcommittee. That disclosure is important, but it is not a substitute for ISO-NE filing such information with the Commission.

included in the 2009 budget. ISO-NE explained the extensive steps taken to make headcount requests and to review and revise those requests before being shared with stakeholders and the Board of Directors. We find that ISO-NE has sufficiently justified its proposed staff increase. Therefore, despite the concerns raised by Joint Advocates, we will not set the matter of ISO-NE's proposed staff increases for hearing.

38. We also find that ISO-NE's depreciation and amortization expenses included in its October 31 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 discriminatory.³⁸ While ISO-NE again based its building property's estimated service life on twenty-five years, the Joint Advocates state the ISO should use the IRS General Depreciation System's thirty-nine year depreciation period for buildings. However, the Joint Advocates have not shown that ISO-NE's estimates are unreasonable. In addition, according to ISO-NE, it inadvertently referred to a shorter depreciation rate for vehicles which it had previously used, but this year it is using a seven-year service life for the one vehicle purchased in 2008 that is being depreciated. This depreciation rate is actually longer than the one that the Joint Advocates argue ISO-NE should use from the IRS General Depreciation System. Beyond this one depreciation rate, the circumstances have not changed for ISO-NE's depreciation and amortization expenses, so the Joint Advocates offer the same argument that we previously rejected.³⁹ Thus, we accept ISO-NE's proposed depreciation and amortization expenses and reject the Joint Advocates request for a full depreciation study and hearing.

39. Finally, we find ISO-NE's external affairs expenditures are directly related to ISO-NE's core responsibilities and benefit its ratepayers, thus making them recoverable as discussed in the External Affairs Order. ISO-NE has demonstrated that the external affairs expenditures represent its efforts to monitor relevant legislation, provide outreach and education to state and federal legislators and regulators, respond to media inquiries, and educate consumers on energy efficiency. ISO-NE has explained that much of the work is reactive and has given several examples of the expected types of work.⁴⁰ As ISO-NE has noted, the Commission has previously found these types of activities to be

³⁸ See *ISO New England Inc.*, 117 FERC ¶ 61,310, at P 17 (2006).

³⁹ *ISO New England, Inc.*, 119 FERC ¶61,178, at P 14-15 (2007).

⁴⁰ See *ISO-New England Answer* at 21-22 and *Ludlow Reply Testimony* at 17-18.

recoverable⁴¹ -- findings recently fully affirmed by the United States Court of Appeals for the D.C. Circuit in *Braintree*.⁴² We agree with ISO-NE that detailed projections of expenditures on external affairs are difficult to determine, but note that it is required to post monthly reports regarding potentially non-recoverable communications expenditures. These monthly reports will allow interested parties to pursue further information or action regarding these expenditures, should they deem it necessary.⁴³

The Commission orders:

The October 31 Filing is hereby accepted for filing, effective January 1, 2009.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴¹ *ISO-New England*, 118 FERC ¶ 61,105 at P 17; *see also ISO-NE*, 117 FERC ¶ 61,070 at PP 48-50.

⁴² *Braintree Elec. Light Dept. v. FERC*, No. 04-1335, slip op. at 10-12 (Dec. 16, 2008).

⁴³ External Affairs Order, 117 FERC ¶ 61,070 at P 52. The reports must “identify all meetings (including those conducted by telephone) held in the past month by or on behalf of [ISO New England] with any public official, including those in the legislative or executive branches of federal or state government, as well as a description of the attendees and the issues addressed during the meetings.” *See also ISO-New England, Inc.*, 118 FERC ¶ 61,105, at P 34 (2007). Additionally, ISO-NE sought and secured clarification to confirm its reading of the order as “requiring posting of a monthly report of meetings held by [ISO New England] (and/or its representatives) with legislators and their staffs and other public officials regarding proposed legislation,” and “not requiring reporting of educational/informational or education/information-gathering activities.” *ISO New England Inc.*, 118 FERC ¶ 61,105 at P 34-44. The United States Court of Appeals for the D.C. Circuit also affirmed this reporting requirement on appeal as “a reasonable balance of competing interests.” *Braintree Elec. Light Dept. v. FERC*, No. 04-1335, slip op. at 17 (Dec. 16, 2008).