

141 FERC ¶ 61,196
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. ER13-356-000

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS, SUBJECT TO
REFUND, AND ESTABLISHING SETTLEMENT JUDGE PROCEDURES

(Issued December 7, 2012)

1. On November 13, 2012, ISO New England, Inc. (ISO-NE) submitted proposed tariff revisions to its Information Policy,¹ which would allow ISO-NE to share confidential information concerning the forecasted schedules and actual operation of specific natural gas-fired generators with the operating personnel of the interstate natural gas pipeline companies (pipelines) serving New England.² In this order, the Commission accepts and suspends the Information Policy Changes for a period of five (5) months to be effective June 14, 2013, or such shorter period as the Commission may establish in a subsequent order, subject to refund, and establishes settlement judge procedures.

I. Background

2. The existing Information Policy establishes rules and guidelines regarding appropriate disclosure of all information received, created, and distributed among ISO-NE, stakeholders, task forces, and working groups, in connection with the operation of and

¹ The Information Policy is Attachment D to the ISO-NE Transmission, Markets and Services Tariff. The proposed tariff revisions will be referred to here as the Information Policy Changes.

² The pipelines include Portland Natural Gas Transmission System (Portland Gas), Tennessee Gas Pipeline Company, L.L.C. (Tennessee Gas), Iroquois Gas Transmission System, L.P. (Iroquois), Algonquin Gas Transmission, LLC (Algonquin), and Maritimes & Northeast Pipeline, L.L.C. (Maritimes).

participation in markets administered by ISO-NE. It currently allows ISO-NE to, among other things, share aggregate generator output schedule information with pipelines.

3. The existing Information Policy also includes pro forma non-disclosure certification and non-disclosure agreements that ISO-NE may enter into with state commissions and academic institutions for purposes of protecting confidential market information that ISO-NE shares with those parties. In case of a breach, each agreement expressly allows the affected participant that gave ISO-NE confidential market information to seek a certain level of judicial recourse, including an injunction and return of the relevant information.

II. The Information Policy Changes

4. The Information Policy Changes would add a single paragraph allowing ISO-NE to give pipelines information concerning the scheduled and real-time output of specific natural gas-fired generators:

Notwithstanding anything to the contrary in the ISO New England Information Policy, the ISO may disclose confidential forecast and real-time output information concerning natural gas-fueled generation from resources located within the New England Control Area to the operating personnel of an interstate natural gas pipeline company that operates a pipeline that is used to serve, directly or indirectly, the resources, provided that: (a) the ISO and the interstate natural gas pipeline company have entered into a non-disclosure agreement substantially in the form attached hereto as Appendix D; and (b) the ISO will discontinue the disclosure of Confidential Information to the interstate natural gas pipeline if (i) the gas pipeline breaches or threatens to breach its obligations under the non-disclosure agreement or (ii) the ISO determines that disclosure is no longer required for reliability purposes. The generator whose Confidential Information is disclosed pursuant to this provision shall be entitled to all rights and remedies, in law or equity, with respect to any breach of the pipeline company's obligation to maintain the disclosed data in confidence consistent with all applicable FERC orders and rules, including FERC Order No. 717, and FERC-approved gas pipeline tariffs, to the same extent as if the generator had provided the information directly to the interstate natural gas pipeline company.

5. In support of the Information Policy Changes, ISO-NE states that the proposal is one step in a series of operational and market improvements that ISO-NE is working on with stakeholders to address emerging concerns over resource performance and New England's reliance on natural gas-fired generators. According to ISO-NE, generation performance

during periods of stressed system conditions in 2010 and 2011 showed that many resources do not perform at the levels of their offered parameters.³ ISO-NE additionally asserts that New England's increased reliance on natural gas-fueled generation⁴ coupled with the potential for generation unit retirements that could reduce fuel diversity and eliminate the capacity surplus means that its markets may require enhancements to ensure both reliability and market efficiency. ISO-NE states that the Information Policy Changes will provide one such enhancement by facilitating communication and coordination between the control room operators of the electric and gas networks.

6. ISO-NE avers that pipelines may already be given the relevant output information under Order No. 698,⁵ but that the Information Policy Changes would ensure that all parties have the same information at the same time so that they can openly discuss issues as they arise. For example, ISO-NE states that, by sharing scheduled and real-time output of specific natural gas-fired generators, the pipelines could provide information on gas availability that will allow ISO-NE to better anticipate and address potential reliability problems in the event that there is insufficient fuel for all gas-fired generators to meet their schedules. ISO-NE states that the Information Policy Changes do not expand or restrict ISO-NE's existing authority to take dispatch actions based on its assessment of potential reliability threats, and neither the generators nor the pipelines stand to benefit from the proposed information-sharing arrangement; the changes only provide ISO-NE with better information upon which it can base its decisions to take actions to protect reliability.

³ ISO-NE states that the average response rate for New England's non-hydro generation resources was less than 60 percent of the amount requested during the 36 largest system contingency events over the last three years.

⁴ ISO-NE states that natural gas supplied 51 percent of New England's electricity in 2011.

⁵ *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities*, Order No. 698, FERC Stats. & Regs. ¶ 31,251 (2007), *order on clarification and reh'g*, Order No. 698-A, 121 FERC ¶ 61,264 (2007) (collectively, Order No. 698). ISO-NE states that Order No. 698 incorporated certain standards of the North American Energy Standards Board by reference, including WEQ Standard 011-1.2/WGQ Standard 0.3.12; this standard directed each power plant operator and the transportation service provider directly connected to the power plant operator's facility to establish procedures to communicate material changes in circumstances that may impact hourly flow rates, and the power plant operator to provide projected hourly flow rates accordingly.

7. ISO-NE also proposes to include as Attachment D to the Information Policy Changes a new pro forma Non-Disclosure Agreement (NDA) that ISO-NE intends to enter into with each pipeline. The NDA provides for a “Confidential Period” of six months, during which time ISO-NE and a pipeline may disclose confidential information, i.e., information provided pursuant to the Information Policy Changes, only as set forth in the NDA.⁶ The NDA further requires ISO-NE and a pipeline to give each other prompt notice of any legal obligation to disclose confidential information, such as by a court order, and ISO-NE must in turn give notice to any affected generator.⁷ The NDA also allows ISO-NE and a pipeline to request the return of confidential information; provides for the destruction of written documents discussing the confidential information; and, in case of breach, allows ISO-NE or a pipeline to seek damages and equitable relief.⁸ Unlike the pro forma certification and non-disclosure agreements for state commissions and academic institutions, the NDA does not expressly provide for judicial remedies, and, most relevant here, it includes a “No Third-Party Beneficiaries” clause which states: “The Parties do not confer any rights or remedies upon any person other than the Parties to this Agreement and their respective successors and permitted assigns.”

8. While ISO-NE believes the NDA is an important component of the filing for purposes of protecting information provided pursuant to the Information Policy Changes, it acknowledges that the NDA would be between itself and pipelines, without generators, who provided the confidential information, being a party. ISO-NE states that, during the stakeholder process, the NDA represented a major point of contention between generators, who sought third-party beneficiary status so that they could enforce the NDA directly against a pipeline for improperly sharing information, and the pipelines, who refused to sign any NDA with such a provision and in fact sought the above-referenced clause specifically excluding third-party beneficiaries.

9. In support of its proposal to include the No Third-Party Beneficiary provision, ISO-NE states that providing generators with third-party beneficiary status would give generators rights in excess of those currently provided by the Commission, expose

⁶ In broad terms, without the express prior written consent of the disclosing party and any affected generators, ISO-NE shall not disclose confidential information of a pipeline to anyone except ISO-NE’s officers and employees charged with maintaining reliability and their advisors, and a pipeline shall not disclose confidential information of ISO-NE or any affected generator except to the pipeline’s transmission function employees and their advisors. NDA section 2(a).

⁷ NDA section 2(c).

⁸ NDA section 3.

pipelines to unlimited liability, and, as a practical matter, render the Information Policy Changes infeasible because no pipeline will sign an NDA conferring third-party beneficiary status upon generators.

10. Moreover, ISO-NE avers that generators are covered by the Information Policy Changes, which expressly state that generators shall be entitled to all rights and remedies in law or equity and maintain protection under federal law and regulations, such as the anti-discrimination provisions of the Natural Gas Act⁹ and the Order No. 717 Standards of Conduct requirements.¹⁰ ISO-NE further points out that, as provided for by the Information Policy Changes, generators' information may not be used for any purpose other than to ensure reliability of gas and electric systems, thus prohibiting pipelines from sharing the information with pipeline personnel who sell gas or transportation services. Additionally, generators must consent to any disclosure or use of the information outside of these parameters and must be given notice of subpoenas and any assignment of the NDA. Moreover, ISO-NE adds that the protections included in the NDA extend for six months after the disclosure of the information, which is a time period ISO-NE asserts is universally acknowledged as exceeding the commercial lifespan of the information. Nevertheless, ISO-NE notes that stakeholders approved two versions of a non-disclosure agreement: ISO-NE's proposed NDA passed with a vote of 81.72 percent in favor, and an alternative version (alternative NDA) establishing generators as third-party beneficiaries passed with a vote of 98.1 percent in favor.

11. Anticipating that the NDA will continue to be a point of contention in this proceeding, ISO-NE requests an interim order allowing the Information Policy Changes to become effective December 7, 2012, subject to a final order, fully considering any protests, within the 60-day notice period. ISO-NE also requests waiver of the Commission's notice provisions to the extent necessary to permit issuance of an order by the requested effective date. ISO-NE states that the interim relief requested will allow the proposal to go into effect in order to address reliability concerns in light of the upcoming winter, while giving any intervenors the statutorily-prescribed time to provide the Commission with a full record upon which to base its final decision.

⁹ Both the Federal Power Act (FPA) and the Natural Gas Act (NGA) prohibit undue discrimination or preference. *See* 16 U.S.C. § 824d(b) (2006); 15 U.S.C. § 717c (b) (2006).

¹⁰ *See Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011) (collectively, Order No. 717).

III. Notice of Filing, Interventions, Comments, Protests, and Answers

12. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 69,816-02 (2012), with interventions and comments due on or before December 4, 2012. The deadline was subsequently shortened to and including November 23, 2012.¹¹

13. Calpine Corporation, Dominion Resources Services, Inc., Exelon Corporation, GenOn Parties,¹² Northeast Utilities Service Company, Portland Gas, and Tennessee Gas filed timely motions to intervene. New England States Committee on Electricity (NESCOE) filed a motion to intervene and comments. Electric Power Supply Association (EPSA), the New England Power Generators Association, Inc. (NEPGA), and New England Power Pool Participants Committee (NEPOOL) filed motions to intervene and protests. Iroquois, Algonquin, Maritimes, Interstate Natural Gas Association of America (INGAA), and NextEra Energy Resources, LLC filed motions to intervene out-of-time. The pipelines and INGAA together submitted comments. ISO-NE filed an answer to comments. The pipelines and INGAA also filed an answer to protests and comments.

IV. Discussion

A. Procedural Issues

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely-filed unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant Iroquois', Algonquin's, and Maritimes', and INGAA's late-filed motions to intervene, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.213(a)(2) (2012), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer, as it has provided information that assisted us in the decision-making process. However, we are not persuaded to accept the pipelines' and INGAA's answer and will, therefore, reject it.

¹¹ Errata Notice Shortening Comment Date, *ISO New England Inc.*, Docket No. ER13-356-000 (November 14, 2012).

¹² GenOn Parties include GenOn Energy Management and GenOn Kendall, LLC.

B. Protests and Comments

16. Protests and comments generally support the language and purpose of the Information Policy Changes¹³ but express concerns about third-party beneficiary and return of information issues relevant to the NDA. These issues are summarized below.

1. Third-Party Beneficiary

17. NEPOOL states that it supports ISO-NE's Information Policy Changes but argues that the alternative NDA proposed by stakeholders would provide greater protection for affected generators and their confidential information. NEPOOL and NEPGA state that the lack of third-party beneficiary language in the proposed NDA represents a clear and unjustified departure from the stated protections in the certification and non-disclosure agreements for state commissions and academic institutions, which provide third-party beneficiary rights for generators.¹⁴ NEPOOL further asserts that the alternative NDA, conferring third-party beneficiary status to generators, would better ensure that an affected generator would receive advanced notice of disclosures, ahead of any requirement by a court or regulator ordering such disclosure. NEPGA adds that the alternative NDA would not undo or contradict any aspects of ISO-NE's Information Policy Changes.

18. NEPGA argues that any NDA would be governed by Massachusetts law and that, under Massachusetts law, a third-party beneficiary is a party whom the contracting parties intend to benefit from the rights and obligations defined by the contract.¹⁵ NEPGA and EPSA assert that generators are the intended beneficiaries of the NDA, and as such, should be given third-party beneficiary rights. NEPGA argues that if the pipelines refuse to

¹³ For example, NESCOE states that it supports the timely effort to protect reliability by enhancing communication between pipelines and ISO-NE, explaining that coordination of the natural gas and electricity markets is imperative to exploring the broadest range of potential cost-effective solutions to reliability risks. NESCOE does not take a position on the NDA language but recognizes that the issue has the potential to delay the implementation of changes that would improve gas-electric coordination for the benefit of system reliability. Thus, NESCOE requests that the Commission expeditiously resolve issues regarding the NDA so that the Information Policy Changes may be implemented as soon as possible.

¹⁴ ISO-NE Information Policy: Section 9 of Appendix A (Form of NDA for State Regulatory Commissions), at 49, and Section 8 of Appendix C (Form of Academic Institution NDA), at 64.

¹⁵ *Citing Spinner v. Nutt*, 417 Mass. 549 (1994).

execute the alternative NDA, the Commission should compel the pipelines to collaborate with ISO-NE to devise an NDA that protects generators' rights.

19. NEPOOL further disputes ISO-NE's position that the alternative NDA would impose unlimited liability on pipelines. Specifically, NEPOOL argues that ISO-NE's concern could and should have been addressed with contract language that prescribes limitations on liability, rather than proposing to remove third-party beneficiary rights altogether.

20. NEPOOL further states that, while existing law and regulations provide some protections, those protections are not as broad as ISO-NE claims. First, NEPOOL states, the Standards of Conduct are inapplicable to a pipeline unless the interstate pipeline has a marketing affiliate that ships gas on the pipeline;¹⁶ NEPOOL states that some of the New England pipelines do not meet this description. Second, NEPOOL states that the protections set forth in the Standards of Conduct only address communications between the transmission and merchant functions within the same corporate organization,¹⁷ and therefore offer little protection here.

21. NEPOOL and NEPGA also assert that they have not identified any pipeline FERC Gas Tariff provision that, like the Commission's *pro forma* open access transmission tariff and the arrangements between ISO-NE and the affected generators, would provide potential relief for gross negligence or willful misconduct.¹⁸ Further, NEPOOL states that

¹⁶ 18 C.F.R. § 358.1 (2012).

¹⁷ See FERC Staff Report on Gas-Electric Coordination Technical Conferences, p. 26 (Docket No. AD12-12-000) (November 15, 2012) ("the Standards of Conduct apply to communications only within the same organization (*i.e.*, between the affiliated entities of a single corporate family)").

¹⁸ Citing *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) ("Accordingly, the revised provision provides that the customer will not be required to indemnify the transmission provider in the case of negligence or intentional wrongdoing by the transmission provider"); see also Section 10.2 (Indemnification) of Appendix D to Order No. 888. See Order No. 888, FERC Stats. & Regs. ¶ 31,036, *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

even if the interstate pipeline tariffs did include such protective provisions, it is not clear that such provisions would apply to inappropriate disclosure of confidential information. Regarding ISO-NE's assertion that an affected generator could seek redress through Commission processes, NEPOOL states that this might be true if an enforcement action resulted in sufficient penalties that were used to make an affected generator whole, but that such a scenario is not a given.

22. NEPOOL notes that it has, as suggested by the November 15, 2012 Commission Staff report on gas-electric coordination, reviewed California Independent System Operator Corporation's (CAISO) outage management model for guidance.¹⁹ NEPOOL explains that CAISO's outage management model provides for the sharing of confidential maintenance and forced outage information of generation facilities, and contemplates an NDA. NEPOOL states that CAISO's form of NDA includes language indicating that there is no intention to create a third-party right to its agreement.²⁰ However, NEPOOL differentiates this from the NDA here that includes an affirmative statement that there are no third-party beneficiaries.

23. EPSA also protests the NDA and supports NEPGA's protest. EPSA adds that the NDA is inconsistent with the language added to the Information Policy as part of ISO-NE's filing, which recognizes the generators' rights to enforce the confidentiality of their information.

24. The pipelines and INGAA²¹ support ISO-NE's Information Policy Changes and NDA and state that they are consistent with statutory prohibitions against undue discrimination or preference in either the NGA or the FPA. The pipelines and INGAA state that pipelines regularly deal with confidential customer information, and statutes and regulations prohibit pipelines from acting in a discriminatory manner. However, the pipelines and INGAA note that, in certain circumstances, pipeline gas controllers that

¹⁹ FERC Staff Report on Gas-Electric Coordination Technical Conferences, at p. 29. NEPOOL notes that this suggestion came after NEPOOL's consideration of the ISO-NE proposal and the alternative NDA.

²⁰ NEPOOL states that the Commission never ruled on the justness and reasonableness of CAISO's form of NDA.

²¹ The pipelines and INGAA request interim approval of the Information Policy Changes and NDA by December 7, 2012 with the additional guidance sought by the pipelines and INGAA. The pipelines and INGAA state that, to the extent such an order is not issued prior to December 7, 2012, the pipelines will request clarification on individual immediate questions through the Commission's Compliance Help Desk.

receive information from ISO-NE could be the same individuals that will be contacted for available capacity on the pipeline system. The pipelines and INGAA state that the Commission should make clear that these communications are transactions that will not violate the NDA. The pipelines and INGAA state that the Information Policy Changes and NDA are similar to CAISO's inter-industry communications model that, according to the pipelines and INGAA, Commission Staff has recognized as one that does not subject parties to future complaints of undue discrimination or preference.²² Moreover, reiterating many of ISO-NE's arguments summarized above, the pipelines and INGAA assert that the information sharing contemplated here is narrowly tailored to serve operational and reliability planning purposes.

25. In its answer, ISO-NE disputes arguments that the Information Policy Changes and NDA are inconsistent because the former seeks to maintain generators' existing legal rights while the latter seeks to limit them. ISO-NE states that the Information Policy Changes and the NDA relate to two separate relationships; the Information Policy addresses the relationship between the pipelines and the generators, while the NDA addresses the relationship between the pipelines and ISO-NE.

26. With respect to NEPGA's claim that the NDA is unduly discriminatory because it limits third-party beneficiary rights whereas the other non-disclosure agreements do not, ISO-NE argues that the "costs and benefits are different."²³ ISO-NE explains that the information disclosed to pipelines pursuant to the Information Policy Changes will help ensure reliability. In contrast, the information disclosed to state commissions and academic institutions is provided only at their request and does not provide the same type of benefit. ISO-NE asserts that this balance of the parties' relative interests is reflected in the terms of the related contract.

27. ISO-NE adds that the Information Policy specifies a number of instances in which ISO-NE is permitted to share information without an NDA or pursuant to an NDA without a third-party beneficiary requirement. ISO-NE offers the following examples: information about defaulting participants to other participants; generator-specific information to market participants' transmission personnel; and generator-specific information to the local control center.²⁴ Finally, ISO-NE states that it believes neither PJM Interconnection

²² Staff Report on Gas-Electric Coordination Technical Conferences, Docket No. AD12-12, at p. 29 (Nov. 15, 2012).

²³ ISO-NE Answer at 7.

²⁴ Information Policy, Attachment D to the tariff, section 2.3, section 3.0(b), and section 3.0(g)(ii), respectively.

L.L.C. (PJM) nor New York Independent System Operator, Inc. (NYISO) has granted any third-party beneficiary rights to generators as part of its information-sharing arrangements with pipelines.

2. Return of Written Information

28. NEPOOL explains that the alternative NDA requires the return of any written confidential information disclosed when the six-month period of protection lapses, as opposed to ISO-NE's proposed NDA, which, according to NEPOOL, makes the return of any written confidential information discretionary. NEPOOL disagrees with ISO-NE's assertion that such information is "stale," arguing that factual disagreement remains regarding whether the information would no longer be considered confidential after six months under the definition of Confidential Information contained in the Information Policy. NEPOOL urges the adoption of the alternative NDA for this reason and adds that CAISO's non-disclosure period survives for a period of ten years after the NDA is terminated, and, upon termination, it is mandatory that the pipelines return and destroy all related written communications.

29. NEPGA argues that six months is not an absolute standard for determining the commercial relevance of generator-specific information. In the interest of minimizing administrative efforts, NEPGA agrees to a relatively short period, but only if generators are assured their information will not be utilized for any future endeavors. NEPGA states that state commissions and academic institutions are required to return or destroy confidential information, and pipelines would not be required to do so under ISO-NE's proposed NDA. Thus, argues NEPGA, the Information Policy Changes unduly discriminate against state commissions and academic institutions by subjecting them to such burdens while relieving pipelines of the same.

30. ISO-NE states that the NDAs for academic institutions and state commissions differ from the NDA here for two reasons: (1) the relative interests of the parties differ and; (2) the confidential information provided pursuant to those agreements will likely be written and may be much broader in scope, with a longer shelf-life, than the narrowly-defined output information that is the subject of this proceeding.

B. Commission Determination

31. Our preliminary analysis indicates that ISO-NE's proposed Information Policy Changes have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed Information Policy Changes, suspend them for a period of five (5) months to be effective June 14, 2013, or such shorter period as the Commission may establish in a subsequent order, subject to refund, and set them for settlement judge procedures, as ordered below. Based on this determination, we dismiss as moot ISO-NE's request for interim action.

32. While ISO-NE states that it attempted to work with generators and the pipelines in attempting to develop a non-disclosure agreement that balances their respective interests, the record does not reflect that all parties assembled together to negotiate a mutually-agreeable non-disclosure agreement. At the same time, the record does reflect various alternatives to the NDA proposed here, which may perhaps address the parties' concerns. Accordingly, the issues presented here may be amenable to settlement, and we find that the involvement of a settlement judge may assist the parties in reaching a mutually agreeable resolution.

33. The Commission recognizes the increasing importance of coordination between natural gas and electricity markets for purposes of ensuring reliability.²⁵ Given the approach of the winter heating season in New England, we expect the parties to make a good faith attempt to resolve their differences promptly. To that end, and in light of ISO-NE's stated need to address reliability concerns associated with the upcoming winter season, we are directing the accelerated settlement process described below. In the interim, the Commission emphasizes that there are multiple avenues for a natural gas pipeline, electric transmission system operator, or other entities participating in the natural gas and electric markets to seek guidance from the Commission and our staff. Immediate questions can be addressed through the Commission's Compliance Help Desk, and we urge ISO-NE to contact the Commission for assistance if an imminent reliability emergency arises, which could be alleviated by information sharing between the pipelines and ISO-NE.

34. We direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practices and Procedure, within one (1) day of the date of this order.²⁶ The settlement judge shall initiate settlement judge procedures and convene a settlement conference as soon as practicable, but not later than December 14, 2012.²⁷ The settlement judge shall submit an interim report to the Commission and the Chief Administrative Law Judge no later than two (2) days after the settlement conference.

²⁵ See, *Order Directing Further Conferences and Reports*, 141 FERC ¶ 61,125 (2012).

²⁶ 18 C.F.R. § 385.603 (2012).

²⁷ See, e.g., *City of Arma, Kansas*, 126 FERC ¶ 61,096 (2009).

The Commission orders:

(A) ISO-NE's proposed Information Policy Changes are hereby accepted, and suspended for a period of five (5) months to be effective June 14, 2013, or such shorter period as the Commission may establish in a subsequent order, subject to refund.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within one (1) day of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge, but in no event later than December 14, 2012.

(C) The settlement judge shall submit an interim report to the Commission and the Chief Administrative Law Judge regarding the progress of settlement discussions no later than two (2) days after the settlement conference.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.