

130 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ISO New England Inc.

Docket No. ER10-154-001

ORDER DENYING REHEARING

(Issued March 25, 2010)

1. On January 29, 2010, Richard Blumenthal, Attorney General for the State of Connecticut, and the Connecticut Office of Consumer Counsel (together, Joint Advocates) filed a request for rehearing of the Commission's December 30, 2009 order accepting ISO New England Inc.'s (ISO-NE) revised tariff sheets for the recovery of its 2010 administrative costs.¹ In this order, the Commission denies rehearing, as discussed below.

I. Background

2. In its October 29, 2009 filing, ISO-NE explained that its proposed 2010 Revenue Requirement is composed of several elements: the 2010 "Core Operating Budget" (\$106.2 million); "Debt Service" (\$26.8 million); and "True-Up Amounts" for 2008 and 2009 (\$1.3 million and \$2.8 million, respectively). ISO-NE stated that the proposed budget increase is attributable to a variety of factors, including limited compensation increases to retain ISO-NE's highly skilled and sought-after workforce. ISO-NE allocated the net sum of \$1.1 million for a 2.5 percent increase in salaries for merit and a 0.5 percent increase for promotions. ISO-NE stated that it had 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. ISO-NE further stated that, as it did in 2009, it would reconsider the

¹ *ISO New England Inc.*, 129 FERC ¶ 61,299 (2009) (December 30, 2009 Order).

salary increase pool when updated survey information is available and before increases are finalized.

3. With respect to executive salaries and board compensation, ISO-NE explained that it must comply with Internal Revenue Service (IRS) standards. To ensure compliance, ISO-NE stated that it had 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.

4. In the December 30, 2009 Order, the Commission found that ISO-NE had adequately supported its proposed administrative budget, including the proposed increases in employee and executive compensation.

II. Request for Rehearing

5. Joint Advocates request rehearing of the December 30, 2009 Order, maintaining that the Commission should establish a hearing to examine ISO-NE's requested executive compensation and salary structure. They contend that ISO-NE's filing and supplemental answer do not provide sufficient documentation or evidence to support a Commission determination that the proposed costs are just and reasonable. Specifically, they state that not only did ISO-NE fail to provide any details of its proposed executive compensation, ISO-NE also failed to provide its own consultant's report, as it had done in the past. Joint Advocates point out that ISO-NE admitted that its 2010 executive compensation had not yet been determined. They contend that the Commission's approval of ISO-NE's proposed 2010 budget is "extraordinary, unprecedented and all the more egregious" because the Commission previously determined that full disclosure of executive salaries is necessary to make an informed determination of the justness and reasonableness of the compensation package.² Joint Advocates point out that the Commission previously ruled that, "when ISO-NE files seeking approval for executive compensation again, it may use any new benchmarks that have arisen due to the economic situation at that time."³ Joint Advocates maintain that "at that time" refers to now, i.e., ISO-NE's 2010 budget filing. Therefore, they request that the Commission direct ISO-NE to disclose its proposed executive compensation and provide any consultant's report relied upon to justify such compensation. Further, they request that the Commission set the matter for hearing.

² Request for Rehearing at 5 (quoting *ISO New England Inc.*, 125 FERC ¶ 61,392, at P 35 (2008), and the Commission's finding that, "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").

³ *Id.* at 7 (quoting *ISO New England Inc.*, 127 FERC ¶ 61,254, at P 22 (2009)).

III. Discussion

6. Joint Advocates have not provided any new, or newly persuasive, argument against our approval of ISO-NE's proposed executive compensation and salary structure. Therefore, we will deny the request for rehearing, as discussed below.

7. At the outset, the Commission noted in its December 30, 2009 Order that the proposed compensation went through an extensive stakeholder process and was overwhelmingly approved by stakeholders.⁴ The Commission also noted that ISO-NE's Compensation and Human Resources Committee reviewed the reasonableness of the compensation portion of the 2010 budget and recommended salary and promotion increase level percentages at or below the low end of the survey's recommended ranges of increases, in light of the current economic conditions and management's recommendations. Finally, the Commission acknowledged that ISO-NE's independent Board of Directors, after considering feedback from stakeholders, unanimously approved the proposed compensation levels.

8. In concluding that ISO-NE had adequately justified the need for merit and promotional increases, the Commission considered ISO-NE's explanation that, without such increases, ISO-NE would be unable to compete for the shrinking pool of highly-skilled talent necessary to fulfill its mission and that budgeting for merit and promotional increases is ultimately less expensive than high levels of turnover. The Commission accordingly found that ISO-NE had balanced its need to attract and retain skilled employees with the realities of the current economic conditions.

9. The Commission's finding was also based on the fact that, with respect to executive compensation, ISO-NE must comply with IRS standards governing the reasonableness of total compensation for executives.⁵ ISO-NE stated that, to ensure such compliance, it had engaged a nationally recognized, independent consulting firm, which evaluates the compensation offered by similarly situated entities, including other system operators and certain for-profit "peer" utility organizations. ISO-NE also stated that this evaluation had included a broader comparison across all industries for functionally comparable positions. The Commission accepted the resulting opinion of the independent consulting firm that ISO-NE's proposed executive compensation is within a reasonable range of competitive practices for functionally comparable positions among similarly situated entities. Moreover, ISO-NE represented that it was proposing increases on the lower end of the range.

⁴ December 30, 2009 Order, 129 FERC ¶ 61,299 at P 25.

⁵ *Id.* P 26 & n.49. Under the IRS requirements for not-for-profit entities, executive compensation must fall within a range of competitive practices for similarly situated organizations for functionally comparative positions.

10. The Commission also accepted ISO-NE's representation that the 2009 executive compensation would be the base for 2010 compensation, because the Commission agreed that it is reasonable to presume that the 2010 executive compensation would be similar to the 2009 compensation.⁶ Further, as ISO-NE explained, ISO-NE is required to submit such proposed executive compensation within the timeframe set by the Participants Agreement, despite the fact that, like most other employers, it does not have specific and individual salaries for the coming year at that time. The Commission noted that ISO-NE had committed to reconsider the proposed 2010 salary increase pool when updated survey information is available and before the increases are finalized, as was done in 2009.⁷

11. Joint Advocates contend that it is "extraordinary, unprecedented, and egregious" for the Commission to approve ISO-NE's proposed budget, because ISO-NE has not fully disclosed its proposed executive salaries. In the December 30, 2009 Order, however, the Commission recognized that the Participants Agreement compelled ISO-NE to submit proposed budgetary amounts somewhat prematurely, resulting in less precise figures and the commitment to update subsequently as necessary. While the Commission acknowledged ISO-NE's representation that it is reasonable to presume that the 2010 executive compensation will be similar to the 2009 compensation, to ensure adequate disclosure of the updated reports and ISO-NE's actions with respect thereto, the Commission required ISO-NE to file a report for informational purposes only within 30 days of receiving such updates, which would summarize the updated survey results and would explain any revisions to compensation levels that ISO-NE decides are appropriate. ISO-NE submitted this informational filing on January 27, 2010. Further, information relating to executive compensation is publicly available on ISO-NE's annual IRS Form 990 and FERC Form 1.⁸

12. In its informational filing, ISO-NE stated that four of the five national consulting firms it uses provided ISO-NE with updates on merit increase budgets, but no firm provided updated information on promotional increase budgets. ISO-NE stated that, for utilities, the initial range of 2.5 percent to 3.3 percent dropped slightly to 2.63 percent to 3.1 percent. For the general industry, ISO-NE stated that the initial range of 2.6 percent to 3.1 percent dropped to 2.5 percent to 2.8 percent. ISO-NE averred that the reduced merit budget figures generally still exceed ISO-NE's previously-determined merit budget

⁶ *Id.* P 28.

⁷ ISO-NE explained that, in 2009, it cut its merit and promotional increase budget by \$500,000 after reviewing updated information provided by its consultants. ISO-NE stated that it expected that the survey firms will again produce an update at year end and ISO-NE commits to monitoring these updates and, if appropriate, reduce (but not increase) its 2010 budget. December 30, 2009 Order, 129 FERC ¶ 61,299 at P 30.

⁸ *See id.* P 28.

increase for 2010 of 2.5 percent; therefore, ISO-NE's Compensation and Human Resources Committee decided to retain this amount. These updates are consistent with our prior findings that ISO-NE's proposed increases are just and reasonable. This updated information is sufficient, in our view, that we need not direct ISO-NE to disclose its proposed executive compensation and consultant's report, as Joint Advocates request, to justify such compensation, nor do we need further evidentiary fact-finding by setting this matter for hearing.⁹

The Commission orders:

Joint Advocates' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ See *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over the formulation of their procedures); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1578-79 (D.C. Cir. 1992) (the Commission has discretion to mold its procedures to the exigencies of the particular case); *Woolen Mill Assoc. v. FERC*, 917 F. 2d 589, 592 (D.C. Cir. 1990) (the decision as to whether to conduct an evidentiary hearing is in the Commission's discretion).