UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc., *et al*.	Docket Nos. RT04-2-005, RT04-2-006, RT04-2-007, RT04-2-008, RT04-2-009; ER04-116-005, ER04-116-006, ER04-116-007, and ER04-116-008; ER04-116-009
Bangor Hydro-Electric Company, *et al*.	Docket Nos. ER04-157-008, ER04-157-009, ER04-157-010, and ER04-157-011
The Consumers of New England v. New England Power Pool	Docket Nos. EL01-39-005, EL01-39-006, EL01-39-007, EL01-39-008 and EL01-39-009
New York Independent System Operator, Inc. and the New York Transmission Owners	Docket No. ER04-943-001
New England Power Pool	Docket No. ER05-3-001
New England Power Pool	Docket No. ER05-361-000
ISO New England, Inc., *et al*.	Docket Nos. ER05-374-000 and ER05-374-001

ORDER AUTHORIZING RTO OPERATIONS

(Issued February 10, 2005)

1. In this order, we address 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 owners[1] (Transmission Owners) (collectively, the Filing Parties) to establish a regional transmission organization (RTO) for New England. With the approvals adopted in this order, the satisfaction of additional compliance requirements discussed below, and the resolution of certain related proceedings and Reserved Issues, ISO-NE is now authorized to begin operation as an RTO, as requested, effective February 1, 2005.

Background

2. The Filing Parties' proposal in this proceeding to establish an RTO for the New England wholesale electricity markets was initially addressed by the Commission in an order issued March 24, 2004.[2] In the March 24 Order, we found, subject to condition and refund, that the Filing Parties' proposal to establish ISO-NE as an RTO complied with the minimum characteristics and functions applicable to RTO operations, as set forth by the Commission in Order No. 2000.[3] In addition to these findings, the March 24 Order also addressed the reversionary interests of the New England Power Pool (NEPOOL) in ISO-NE's assets and required the Filing Parties to identify the nature and extent of these interests and to propose options for acquiring these interests from NEPOOL.

3. The March 24 Order also addressed a return on equity proposal made by the Transmission Owners, Green Mountain Power Corporation (Green Mountain), and Central Vermont Public Service Corporation (Central Vermont) (collectively, the ROE Filers). As requested by the ROE Filers, we accepted a 50 basis point return on equity adder, applicable to Regional Network Service under the ISO-NE open access transmission tariff (OATT), but rejected this same adder as it would have applied to the Transmission Owners' Local Service Schedules. We also rejected the ROE Filers' proposed 100 basis

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[1] 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.

[2] *ISO New England, Inc.*, 106 FERC ¶ 61,280 (2004) (March 24 Order).

[3] *Id.* at P 3, *citing* Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

point adder as it would have applied to the ROE Filers' Local Service Schedules, but set for hearing, subject to suspension and refund, the ROE Filers' proposed 100 basis point adder as it would apply to Regional Network Service. We also set for hearing, subject to suspension and refund, the ROE Filers' proposed base level return on equity. Finally, we established settlement procedures covering certain specified issues and held the evidentiary hearing in abeyance subject to the outcome of the parties' negotiations.

4. Rehearing and/or clarification of the March 24 Order was sought by numerous intervenors, while filings seeking to comply with our rulings were submitted by the Filing Parties on June 22, 2004 and August 11, 2004. In the meantime, the parties entered into settlement negotiations. On September 14, 2004, NEPOOL, ISO-NE, and the Transmission Owners (collectively, the Settling Parties) submitted for approval a Settlement Agreement, in which they proposed to settle and resolve the issue of NEPOOL's reversionary interests in ISO-NE's assets and other pending issues and identified other matters raised by the parties in this proceeding as "Reserved Issues." Among other things, the proposed Settlement Agreement provided for the redefined role of NEPOOL as a stakeholder advisory body to the RTO and for the transfer to ISO-NE of certain of NEPOOL's existing interests and assets.

5. In an order issued November 3, 2004, we accepted the Settlement Agreement, subject to conditions.[4] We also accepted, in part, the Filing Parties' compliance filings and granted, in part, and denied, in part, the remaining requests for rehearing, *i.e.*, those requests for rehearing and/ or clarification identified in the Settlement Agreement as Reserved Issues. We also accepted two related filings involving the proposed elimination of a seams issue discussed by the Commission in the March 24 Order, *i.e.*, the proposed elimination of Through-and-Out Service charges in the New England/New York regions.[5]

6. Rehearing and/or clarification of the November 3 Order was sought by the Vermont Public Service Board (Vermont Commission); the New England Conference of Public Utilities Commissioners (NECPUC); in a joint submittal, by the New England Consumer-

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[4] *ISO New England, Inc.*, 109 FERC ¶ 61,147 (2004) (November 3 Order).

[5] The two filings were made by NEPOOL, in Docket No. ER05-3-000, and jointly by the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners, in Docket No. ER04-943-000.

Owned Entities,[6] the Connecticut Department of Public Utility Control, and the Connecticut Office of Consumer Counsel (collectively, the New England Consumer-Owned Entities, *et al.*), and the New York Municipal Power Agency (New York Municipal). An answer addressing NECPUC's request for clarification was filed by NEPOOL on December 17, 2004.

7. A compliance filing in response to our rulings in the November 3 Order was submitted by the Filing Parties on December 10, 2004, in Docket Nos. RT04-2-009, *et al.*[7] ISO-NE also made a compliance filing on November 12, 2004 in Docket Nos. RT04-2-006, *et al*. and the Settling Parties made a compliance filing on December 10, 2004, in Docket Nos. RT04-2-008, *et al.* In a related compliance matter submitted on December 20, 2004, in Docket Nos. ER05-361-000, NEPOOL proposed, pursuant to section 205 of the Federal Power Act (FPA),[8] a revision to NEPOOL Market Rule 1 to provide for implementation of a test program for a seams reduction initiative involving short-notice Intra-Hour Transaction Scheduling of energy transactions between the New England and New York control areas. Finally, on December 22, 2004, the Filing Parties submitted for approval, in Docket No. ER05-374-000, pursuant to section 205 of the FPA, proposed revisions to ISO-NE's operating agreements for the purpose of establishing ISO-NE as an RTO, effective February 1, 2005.[9]

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[6] 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).

[7] In addition, the Filing Parties made a compliance filing on October 29, 2004, in Docket No. RT04-2-005, in response to our requirement in the March 24 Order that the Filing Parties make a proposal for the elimination of NEPOOL's Through-and-Out Service charges. The Filing Parties note in their filing that the proposal at issue was made by NEPOOL in Docket No. ER05-3-000.

[8] 16 U.S.C. § 824d (2000).

[9] In addition, three amended filings have been made: (i) an amended filing on January 20, 2005, in Docket No. ER05-374-001, by the Boston Edison Company (Boston Edison), one of the Filing Parties, incorporating certain revisions to the Boston Edison's Local Service Schedule (Schedule 21 of the ISO-NE OATT), as approved by the Commission in Boston Edison Company, 109 FERC ¶ 61,300 (2004); (ii) an amended

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Notices and Responsive Pleadings

8. Notices of the above-noted compliance filings and section 205 submittals were published in the Federal Register. In Docket Nos. RT04-2-005 and RT04-2-008, no responsive pleadings were filed. In Docket No. RT04-2-006, motions to intervene were timely submitted by NEPOOL, PSEG Energy Resources & Trade LLC (PSEG), and Constellation Energy Commodities Group, Inc.[10] (Constellation, *et al*.). In addition, an answer was filed by ISO-NE on December 20, 2004.

9. In Docket No. RT04-2-009, motions to intervene were timely submitted by NEPOOL, the Long Island Power Authority and its operating subsidiary, LIPA (collectively, LIPA), and Edison Mission Energy, Inc. and Edison Mission Marketing & Trading, Inc. (collectively, Edison Mission). In addition, an answer was filed by ISO-NE on January 11, 2005.

10. In Docket No. ER05-361-000, motions to intervene were timely filed by NEPOOL, ISO-NE, H.Q. Energy Services (U.S.), Inc. (H.Q. Energy), Morgan Stanley Capital Group Inc. (Morgan Stanley), the New York Transmission Owners,[11] jointly by Fitchburg and Unitil (Fitchburg, *et al*.), and Northeast Utilities Service Company (Northeast Utilities).

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filing on January 28, 2005, in Docket No. ER05-374-002, by ISO-NE, incorporating certain revisions to ISO-NE's Capital Funding Tariff; and (iii) an amended filing on January 28, 2005, in Docket No. ER05-374-003, by ISO-NE, incorporating certain revisions to ISO-NE's Administrative Costs Tariff. The latter two filings will be addressed by the Commission in a subsequent order.

[10] Joined by Constellation NewEnergy, Inc., Unitil Energy Systems, Inc. (Unitil) and Fitchburg Gas and Electric Light Company (Fitchburg).

[11] The New York Transmission Owners are: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; LIPA; New York Power Authority; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; and Orange and Rockland Utilities, Inc.

11. Finally, in Docket No. ER05-374-000, motions to intervene were timely submitted by NEPOOL, Eastern Massachusetts Consumer-Owned Systems (Braintree, *et al*.),[12] jointly by Chicopee and the Town of South Hadley, Massachusetts (Chicopee, *et al.*), and jointly by the Massachusetts Municipal Wholesale Electric Company and Connecticut Municipal Electric Energy Cooperative (Massachusetts Municipal, *et al*.). In addition, motions to intervene out-of-time were filed by PSEG and jointly by Calpine Eastern Corporation and Calpine Energy Services, L.P. (Calpine). There were no responsive pleadings filed regarding Boston Edison's submittal in Docket No. ER05-374-001.

Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[13] the notices of intervention and the timely, unopposed motions to intervene submitted by the entities noted above, serve to make these entities parties to the proceedings in which these interventions were filed. In addition, we will accept the unopposed, late-filed interventions submitted by PSEG and Calpine in Docket No. ER05-374-000. Rule 213(a) of the Commission's Rules of Practice and Procedure[14] prohibits an answer to a protest, an answer to a rehearing request, or an answer to an answer, unless otherwise permitted by the decisional authority. We are not persuaded to accept the answers filed by the entities noted above and therefore will reject them.

B. Requests for Rehearing and Clarification (Docket Nos. RT04-2-007, *et al.*)

13. As noted above, rehearing and/or clarification of the November 3 Order was sought by NECPUC, the Vermont Commission, the New England Consumer Owned Entities, *et al*., and New York Municipal. For the reasons discussed below, we will deny rehearing of the November 3 Order. We will grant the Vermont Commission's request for clarification.

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[12] Eastern Massachusetts Consumer-Owned Systems are: Braintree, Reading, Taunton, Concord Municipal Light Plant, Hingham Municipal Lighting Plant, and Wellesley Municipal Light Plant.

[13] 18 C.F.R. § 385.214 (2004).

[14] *Id*. at § 385.213(a)(2).

1. Arguments Presented

14. The Vermont Commission requests clarification regarding section 3.09 of the Transmission Operating Agreement (Planning and Expansion), as it relates to the resolution of disputes arising under that provision (the procedures for which are addressed, in part, under section 11.14 of the Transmission Operating Agreement).[15] The Vermont Commission asserts that the dispute resolution procedures set forth in these provisions limit participation in a section 3.09(b) dispute to the ISO-NE and the applicable Transmission Owners, even where the resolution of that dispute could be binding on all stakeholders. The Vermont Commission requests clarification that third parties will be permitted to protest to the Commission that the ISO-NE OATT has been violated if they believe that an ISO-NE/Transmission Owner dispute resolution carried out under section 3.09 is inconsistent with the terms of the ISO-NE OATT.

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[15] Section 3.09 reads in relevant part as follows:

> In the event that the ISO and the applicable [Participating Transmission Owner(s)] disagree about modifications to the portions of Planning Procedures related to the planning and expansion of Transmission Facilities or any new Planning Procedures related to the planning and expansion of Transmission Facilities, the affected [Participating Transmission Owner(s)] will have the opportunity to submit the dispute for resolution in accordance with the dispute resolution provisions set forth in Section 11.14 herein.

Section 11.14 provides, in relevant part, as follows:

> The Parties agree that any dispute arising under this Agreement shall be the subject of good-faith negotiations among the affected Parties and affected market participants, if any. Each affected Party and each affected market participant shall designate one or more representatives with the authority to negotiate the matter in dispute to participate in such negotiations. The affected Parties and affected market participants shall engage in such good-faith negotiations for a period of not less that 60 calendar days [. . .].

15. NECPUC also requests clarification of the November 3 Order regarding the preamble "objectives" set forth under section 1 of the RTO Tariff (General Terms and Conditions), specifically, paragraphs (b) and (c) of the RTO Objectives.[16] NECPUC requests clarification that these RTO Objectives do not entitle participants to receive compensation for services provided but rather set forth the understanding that in a competitive market, the price of the combination of products offered generally will allow efficient suppliers to recover their costs and make a profit over a period of time. NECPUC also requests clarification that the RTO Objectives do not allow for the withholding of capacity, bidding in whatever manner one wants, or exiting the market at will regardless of the impact on others. Finally, NECPUC requests clarification that these RTO Objectives do not justify market rules (or other RTO rules) that would tip the balance in favor of sellers over buyers.

16. New York Municipal asserts that the Commission erred by accepting a proposal (that was filed by the NYISO and the New York Transmission Owners in Docket No. ER04-943-000) to eliminate the NYISO's Through-and-Out Service charges.[17] New York Municipal argues that the NYISO's proposed tariff revisions do not fairly allocate the costs associated with seams elimination because the allocation of costs to load will not be commensurate with the benefits received, due to New York Municipal's long-term contractual commitments. New York Municipal asserts that because suppliers

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[16] Paragraphs (b) and (c) of the statement of RTO Objectives, as filed and accepted by the Commission, provides as follows:

> The Objectives of the [RTO are]. . . (b) to create and sustain open, non-discriminatory, competitive, unbundled markets for energy, capacity and ancillary services (including Operating Reserves) that are (i) economically efficient and balanced between buyers and sellers, and (ii) provide an opportunity for a participant to receive compensation through the market for a service it provides, in a manner consistent with proper standards of reliability and the long-term sustainability of competitive markets [and] (c) to provide market rules that (i) promote a market based or voluntary participation, (ii) allow market participants to manage the risks involved in offering and purchasing services, and (iii) compensate at fair value (considering both benefits and risks) any required service, subject to FERC's jurisdiction and review.

[17] *See* November 3 Order, 109 FERC ¶ 61,147 at P 63.

providing power under these long-term contracts will have the ability to benefit from seams elimination, it is these suppliers (not load, *i.e.,* the interests served by the New York Municipal) that should be required to shoulder the corresponding burden.

17. Finally, the New England Consumer-Owned Entities, *et al*. assert that the Commission erred in the November 3 Order in its determinations regarding certain rate matters. First, the New England Consumer-Owned Entities, *et al*. assert that the Commission erred by accepting the Settling Parties' proposed five-year moratorium on changes in the RTO's transmission rate structure. The New England Consumer-Owned Entities, *et al*. argue that this provision will permit the Transmission Owners, at the end of the moratorium, to contravene some or all of the historic rate agreements reached within NEPOOL. The New England Consumer-Owned Entities, *et al*. submit that these historical arrangements should not be eliminated or revised absent the consent of all affected parties or pursuant to a Commission finding made under section 206 of the FPA.

18. The New England Consumer-Owned Entities, *et al*. also assert as error the Commission's findings regarding the appropriate proxy group to be used in determining the return on equity, in this case, as requested by the ROE Filers. The New England Consumer-Owned Entities, *et al*. argue that the Commission acted arbitrarily and without substantial evidentiary support in finding that the use of a midpoint return is an appropriate measure for determining a single, region-wide return on equity in this proceeding. The New England Consumer-Owned Entities, *et al*. also argue that the Commission erred in characterizing its grant of non-cost based return on equity adders as adjustments that fall within the range of reasonable returns.

2. **Commission Findings**

19. We will grant the Vermont Commission's request for clarification regarding the operation and effect of the dispute resolution provisions set forth in sections 3.09(b) and 11.14 of the Transmission Operating Agreement. Specifically, a protest or complaint asserting that the RTO Tariff has been violated, including protests or complaints addressing ISO-NE's system planning and expansion procedures, may be filed by any party, notwithstanding the resolution of a related dispute carried out under section 3.09(b) of the Transmission Operating Agreement.

20. We will deny NECPUC's requested clarifications as unnecessary. Specifically, we decline to provide substantive interpretation to the briefly-summarized, non-comprehensive set of guidelines and principles selected for inclusion by the parties as RTO Objectives. To extent these RTO Objectives allude to or otherwise implicate the Commission's own policies and precedents, it is these policies and precedents themselves that will control. Similarly, to the extent the RTO Objectives refer to, or trigger, substantive provisions of the RTO Tariff, it will be these latter, more detailed tariff provisions that govern the rights and obligations of the parties. Finally, to the extent the

RTO Objectives form the asserted basis for a section 205 filing to be made at some point in the future, it will be in that proceeding, not here, that we will consider the merits of any such assertions.

21. We will also deny New York Municipal's request for rehearing regarding the asserted cost impact under certain long-term contracts attributable to the NYISO's elimination of Through-and-Out Service charges. While certain costs may be borne by some market participants over the short term, in connection with the NYISO's elimination of this inefficient inter-regional seam, on balance, it is the Commission's judgment that the overall short-term and long-term benefits for all market participants and the market as a whole significantly outweigh any such costs. For example, while New York Municipal may incur the loss of revenue credits associated with the elimination of Through-and-Out Service charges under the transactions to which these charges have applied in the past, the elimination of this seam will also permit New York Municipal to participate in new transactions that might not have been feasible before. This is so because, as we have found before, the elimination of rate pancaking promotes efficiency and competition.[18]

22. Finally, we will deny the requests for rehearing raised by the New England Consumer Owned Entities, *et al*. First, we reject the New England Consumer Owned Entities, *et al*.'s argument that the November 3 Order erred by not extending a rate moratorium beyond the five-year period voluntarily proposed by the Filing Parties in their initial RTO filing. The New England Consumer Owned Entities, *et al*. request, in effect, that the Commission make a finding at this time, under section 206 of the FPA, that any revision to NEPOOL's existing rate structure, as applicable five years in the future, would be unjust and unreasonable and that NEPOOL's current rate structure would be just and reasonable in five years. Any such finding would be speculative in nature, however, and is unsupported by the facts presented here. Under these circumstances, the Commission cannot preclude the Transmission Owners, as a preemptive matter in this proceeding, from seeking a future rate change under section 205 of the FPA following the expiration of the rate moratorium.

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[18] *See* Ameren Services Company, *et al.,* 105 FERC ¶ 61,216 at P 43 (2003).

23. We will also reject the New England Consumer Owned Entities, *et al*.'s assertions that the Commission erred in the November 3 Order in accepting certain of the computational components included in the ROE Filers' proposed base-level ROE.[19] First, we reject the New England Consumer Owned Entities, *et al*.'s assertion that our preliminary acceptance of the ROE Filers' proposed proxy group was unjustified. In fact, the 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 Interconnection, LLC (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. In any event, we also stated in the November 3 Order that the presiding judge would be free to determine that additional companies could be included in this 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 did not belong in the proxy group due to its unsustainable growth rates. The presiding judge may exclude from the proxy group other companies that have financial indicators that are unsustainable.

24. We also reject the New England Consumer Owned Entities, *et al*.'s assertions that the Commission erred in accepting the use of a midpoint return (as opposed to a median return) for determining a single, region-wide return on equity in this proceeding. The New England Consumer Owned Entities, *et al*. point, in particular, to the Commission's ruling

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[19] In the November 3 Order, we made five such findings. First, we found that the use of a midpoint return is an appropriate measure for determining a single, region-wide return on equity in this proceeding. Second, we held that a proxy group comprised of Northeast utility companies provides a sufficiently representative universe of companies for calculating a return on equity applicable to the Transmission Owners. Third, we found that the ROE Filers' proposed proxy group appropriately excluded firms that do not pay common dividends, or for which no growth rate data is currently available, as reported by I/B/E/S International, Inc. (I/B/E/S), or Value Line, subject to the right of the presiding judge to consider the inclusion of additional companies for which comparable data can be reasonably substituted. Fourth, we found that it was appropriate to exclude from consideration in the proxy group companies whose return on equity does not meet the threshold test of economic logic. Finally, we found that the inclusion of PPL Corporation (PPL) in this proxy group is inappropriate, given the outlier status of its 17.7 percent cost of equity.

in *Northwest Pipeline Corp.*[20] in support of their contention that a median return should be adopted in this case. However, as we noted in the November 3 Order, a midpoint return is reasonable in this case for the same reason discussed by the Commission in *Midwest Independent Transmission System Operator, Inc.*,[21] *i.e.,* because the midpoint return provides an average of the highest and lowest returns indicated by the proxy group and is appropriate where, as here, the proxy group consists of a diverse group of companies that is not likely to skew the range of distribution in either direction.

25. We also reject the New England Consumer Owned Entities, *et al*.'s argument regarding companies with significant debt costs. The New England Consumer Owned Entities, et *al.* argue that a company whose low-end return on equity is lower than its reported debt cost should not be disqualified, on this basis, from inclusion in the proxy group. We disagree. A company whose return is lower than its debt cost cannot be reasonably relied upon as a representative proxy company. In fact, as we stated in *Southern California Edison Company*,[22] investors generally cannot be expected to purchase stock if debt, which has less risk than stock, yields essentially the same return.

26. We will also reject the New England Consumer Owned Entities, *et al*.'s argument that the ROE Filers' proposed non-cost based "adders" cannot be regarded as a return on equity adjustment that would fall within the range of reasonable returns. The New England Consumer Owned Entities, *et* al. assert, in this regard, that the ROE Filers' proposed adders cannot be properly accepted by the Commission as reasonable, absent a Commission finding that the costs represented by these adders will be outweighed by the benefits customers will receive. We disagree that the benefits of the adders are outweighed by their costs. As we noted in the November 3 Order, it is appropriate for the Commission to adjust the allowed return, within the zone of reasonableness, for transmission owners that undertake commitments designed to enhance the overall competitiveness and efficiency of the wholesale markets. These benefits, we have found, can be realized where, as here, transmission owners transfer the operational control of

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[20] 99 FERC ¶ 61,305 at p. 62,276 (2002).

[21] 106 FERC ¶ 61,302 at P 8-10 (2004).

[22] 92 FERC ¶ 61,305 at p. 62,276 (2002).

their transmission facilities to an independent entity responsible for providing regional transmission service under the terms and conditions of a regional tariff. This finding is also consistent with our rulings in other cases and with Order No. 2000.[23]

C. The 30-Day Compliance Filings (Docket Nos. RT04-2-008, *et al*. and RT04-2-009, *et al*.)

27. The November 3 Order directed that compliance filings be made on, or before, 30 days of the date of the November 3 Order to address certain matters, while other (relatively limited) matters were to be addressed in compliance filings to be made within 60 or 90 days of the date of the November 3 Order,[24] or pursuant to an alternative, specified timetable.[25] Subsequently, at the Filing Parties' request, we extended the date for submitting the 30-day compliance filings to and until December 10, 2004. We also permitted the Filing Parties to address market rule changes to comply with our Market Behavior Rules Tariff Order[26] in a separate compliance filing to be made on or before

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[23] *See* Order No. 2000 at 31,193.

[24] Specifically, the November 3 Order identified two matters to be addressed in the Filing Parties' 60-day compliance filing: (i) revisions to the Filing Parties' proposed system planning and expansion procedures, as required by the March 24 Order (*see* November 3 Order, 109 FERC ¶ 61,147 at P 163); and (ii) tariff revisions reflecting the Filing Parties' proposed adoption (and modifications to) the PJM Information Policy (*id*. at P 176). In addition, the November 3 Order required the Filing Parties to address a single issue in their 90-day compliance filing, *i.e.*, revisions to Appendix G of the Market Rule requiring the ISO to consider all proposed transmission and generation outages together in accepting a proposed Transmission Owner outage plan. *Id.* at P 163. The Filing Parties' filings in response to these requirements will be addressed by the Commission in subsequent orders.

[25] Specifically, the November 3 Order directed the Filing Parties to file, on or before December 1, 2004, revisions to NEPOOL Market Rule 1 providing for the implementation of limited testing of processes central to the establishment of Virtual Regional Dispatch. *Id.* at P 64. This filing, which was made by the Filing Parties on November 12, 2004 in Docket No. RT04-2-006, *et al*., is discussed below.

[26] *See* Investigations of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,175 (2004), *order on rehearing*, 107 FERC ¶ 61,175 (2004).

February 11, 2005.[27] In addition, we extended the dates for making the 60-day and 90-day compliance filings to and until January 14, 2005 and February 11, 2005, respectively. In addition, we extended the date for submitting revisions to the RTO Tariff and documents needed to comply with Order No. 2003 to and until January 28, 2005.

28. Below, we address the December 10, 2004 filings made by the Filing Parties, in Docket Nos. RT04-2-009, *et al*., and by the Settling Parties, in Docket Nos. RT04-2-008, *et al*. (collectively, the 30-Day Compliance Filings). Except as otherwise noted, below, we will accept 30-Day Compliance Filings and terminate those proceedings. We will also accept the Filing Parties' compliance filing in Docket Nos. RT04-2-005, *et al*. and terminate that proceedings.

1. Stakeholder Appeals Process

29. The November 3 Order required the Settling Parties to submit additional support regarding their proposed retention of certain procedures applicable to the NEPOOL appeals process.[28] Specifically, we noted that under section 11 of the Restated NEPOOL Agreement, as proposed, the Review Board would be authorized to request that ISO-NE delay filing with the Commission any materials that are the subject of an appeal, with ISO-NE thereafter permitted, in its sole discretion, to elect to delay any such filing. Given the potential of this provision to delay a filing that should be brought to the Commission's attention in a timely manner, we directed the Settling Parties to provide additional information supporting their proposed provision.[29]

30. In response to our directive, the Settling Parties explain that the Review Board is an independent panel and that while it would be authorized, in its discretion, to request that ISO-NE delay any section 205 filing due to an appeal pending before the board, ISO-NE would be authorized, in its sole discretion, to decline such a request. The Settling Parties further state that Commission action need not be delayed because an appeal is pending before the Review Board. The Settling Parties further state that if the Review Board grants an appeal, the Review Board would be authorized to make an advisory recommendation

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[28] November 3 Order, 109 FERC ¶ 61,147 at P 28.

[29] As noted below, compliance with this directive was made by the Settling Parties (not the Filing Parties) in a separate compliance filing made in Docket No. RT04-2-008, *et al*.

concerning its determination. However, the Settling Parties reiterate that where an appeal or the underlying proposal to which it relates raises issues that merit expeditious Commission review, there would be no restriction on ISO-NE filing its proposal pursuant to the time-frame that ISO-NE, in its sole discretion, deems appropriate.

31. Based on these assurances, we agree that the Review Board procedures outlined above satisfy the independence requirements of Order No. 2000. Specifically, we agree that under ISO-NE's relevant operating agreements (the Second Restated NEPOOL Agreement and the Participants Agreement), ISO-NE will have sufficient authority to make the section 205 filings it deems to be necessary.[30] As such, we will accept the Settling Parties' compliance filing.

2. Resolution of Inter-Regional Seams

32. In their initial RTO filing, in this proceeding, the Filing Parties proposed to address the scope and regional configuration requirements of Order No. 2000, in part, by way of an agreement entered into between ISO-NE and the NYISO, known as the Interregional Coordination and Seams Issue Resolution Agreement (Seams Resolution Agreement). In the March 24 Order, we found that the Seams Resolution Agreement, with modifications,

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[30] Section 7.5 of the Second Restated NEPOOL Agreement states, in relevant part:

> To the extent any appeal relates to the Participant Committee's action with respect to a rule or procedure which must be filed with the Commission by the System Operator, the Review Board in its sole discretion may request that the System Operator delay any filing regarding the action being appealed from pending a Review Board decision, which request the System Operating in its sole discretion can accept or reject. Nothing in this Section 7.5 shall be construed to require the Commission to delay its decision on any matter before it because an appeal is pending before the Review Board.

Section 11.6 of the Participants Agreement states, in relevant part:

> Nothing in this Section 11.6 shall be deemed to require ISO to delay making a filing or require the Commission to delay deciding any matter because an appeal is pending before the Review Board. The Review Board shall not have the right to review or otherwise participate in actions of ISO or to take any action with respect to any matter involving a dispute between ISO and NEPOOL or any Governance Participant.

could serve as a useful vehicle for eliminating many of the persisting seams that divide the New England/New York wholesale electricity markets. Accordingly, we required the Filing Parties to submit a revised agreement including specific milestones and timelines for resolution of each of the remaining seams issues within one year of the date of the Filing Parties' compliance filing.

33. In response to our requirement, the Filing Parties submitted an amended Seams Resolution Agreement addressing, among other things, a revised timeline for resolving the regions' remaining seams issues. In the November 3 Order, however, we found that the Filing Parties' proposed timeline failed to comply with the requirements of the March 24 Order because it failed to include specific implementation dates. Accordingly, we required the Filing Parties to further modify the Seams Resolution Agreement. We also required the parties to specify, in that agreement, that each of the proposals made by the Filing Parties to resolve the remaining seams issues will be filed with the Commission at least 60 days prior to the implementation date of the proposal.

34. The Filing Parties state that in compliance with these requirements, the Seams Resolution Agreement has been amended to reflect that any seams-related tariff filing required to be filed by the November 3 Order, will be made at least 60 days in advance of the proposed implementation date and that, to the extent that implementation of any seams project does not require tariff modification, an informational filing will be made with the Commission at least 60 days in advance of the proposed implementation. The Filing Parties state that the Seams Resolution Agreement has also been revised to include specific implementation dates for the seams resolution proposals.[31] The Filing Parties request,

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[31] For example, the Cross-Border Controllable Line Scheduling Project would be implemented on a phased-in basis no later than June 30, 2006 (as to phase I) and October 2006 (as to phase II). With respect to the Partial Unit Installed Capacity Sales initiative, the Seams Resolution Agreement specifies an implementation date no later than October 31, 2006. Additionally, the Seams Resolution Agreement states that stakeholder and Commission approval of the ISO-NE Partial Unit Installed Capacity Sales proposal could result in an earlier implementation date of June 2005. In addition, Facilitated Checkout is expected to be fully functional between the NYISO, ISO-NE, the Independent Electricity Market Operator (IMO) Ontario and Hydro Quebec (HQ) Interconnection no later than June 30, 2005; in April 2005 the ISOs will report on how their respective efforts have been able to identify and remove the remaining barriers to the trading of Installed Capacity between regions; and the Seams Resolution Agreement specifies an implementation date of no later than June 30, 2005 for the Region-wide Planning Process.

however, that ISO-NE not be required to commit to 2005 implementation dates for these seams issues, given all of the other pressing matters currently pending before ISO-NE and its stakeholders.[32]

35. Edison Mission and LIPA protest this proposed timeline. Specifically, Edison Mission and LIPA argue that ISO-NE has, without justification, extended the timeline to resolve these issues beyond the one-year filing requirement specified by the Commission in the March 24 Order.[33]

36. We find that the Seams Resolution Agreement, as amended, satisfies our mandate to resolve critical market seams within a reasonable time frame. With respect to timing concerns raised by LIPA and Edison Mission, we agree with the Filing Parties that the implementation dates specified in the revised Seams Resolution Agreement reflect both a reasonable and an efficient use of capital expenditures and human resources available to the parties.

37. With regard to the contention that the revised Seams Resolution Agreement fails to list additional seams issues, we clarify that the term "remaining seams issues" refers only to the seams issues listed in the Seams Resolution Agreement. The remaining seams issues, with the exception of the elimination of export fees and Virtual Regional Dispatch are: Facilitated Checkout, Regional Resource Adequacy and Partial Unit Installed Capacity, Cross Border Controllable Line Scheduling and Coordination of Regional Planning. We note that additional seams initiatives of ISO-NE's are available on its website. In addition, although the existing Seams Resolution Agreement already provides for the inclusion of additional seams issues, we find that in the initial stages of RTO development it is reasonable to list only the most critical and complex seams issues that create market barriers to efficient cross border trading.

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[32] Among other things, the Filing Parties point to the region's pending adoption of a Locational Installed Capacity mechanism (to be implemented on January 1, 2006), rule changes regarding ISO-NE's Ancillary Services Markets, and consideration of certain recommendations stemming from the Northeast Blackout.

[33] *See* March 24 Order, 106 FERC ¶ 61,280 at P 95.

D. NEPOOL's Proposed Intra-Hour Transaction Scheduling Initiative (Docket No. ER05-361-000)

38. On December 20, 2004, in Docket No. ER05-361-000, NEPOOL made a filing pursuant to section 205 of the FPA, proposing modifications to Market Rule 1 to provide for the implementation of one of the seams reduction initiatives, as required by our orders in Docket Nos. RT04-2-000, *et al*. Specifically, NEPOOL proposes, on a pilot basis, to implement short-notice Intra-Hour Transaction Scheduling of energy transactions between the New England and NYISO control areas. NEPOOL states that Intra-Hour Transaction Scheduling will facilitate energy transactions between New England and New York and thereby minimize inefficient price differentials and improve the efficiency of both markets.

39. NEPOOL states that divergent prices at the border between New England and New York affects the efficiency of both markets and that to alleviate this inefficiency, the Intra-Hour Transaction Scheduling is intended to ensure that energy flows from the lower-priced area to the higher priced area. NEPOOL states that, currently, while market participants can efficiently arbitrage some of the price differences between the New England and New York control areas, under the current rules, New York and New England market participants often are unable to engage in short notice transactions that could permit prices at the border to fully converge. NEPOOL states that under its Intra-Hour Transaction Scheduling Initiative, ISO-NE and the NYISO will be able to progress toward the efficiency gains of a single regional dispatch while minimizing complex potential implementation barriers attributable to the fact that both regions have their own dispatch processes.

40. NEPOOL states that its filing is intended to supercede (and render moot) a similar proposal made by ISO-NE, in Docket Nos. RT04-2-006, *et al*., in which ISO-NE proposed to implement a pilot program allowing for the establishment of Virtual Regional Dispatch. NEPOOL notes that ISO-NE's Virtual Regional Dispatch filing did not receive the support of NEPOOL and was protested both by NEPOOL and Constellation, *et al*. In addition, comments seeking conditions, revisions and/or modifications of ISO-NE's proposal were submitted by Morgan Stanley and PSEG.[34]

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[34] Among other things, intervenors pointed out that under ISO-NE's proposal, ISO-NE and the NYISO would have been empowerd to make intra-hour transactions (in an attempt to converge prices), thus usurping the role of market participants.

41. NEPOOL requests that its proposal be made effective January 1, 2005. NEPOOL states that this implementation date will enable ISO-NE to proceed with coordinated Intra-Hour Transaction Scheduling with the NYISO pursuant to the terms of the Seams Resolution Agreement. NEPOOL notes that the Commission has already approved implementation of Intra-Hour Transaction Scheduling testing in the NYISO's markets for a four-month period ending April 30, 2005.[35] NEPOOL adds that its proposed pilot program complements the NYISO testing and adopts the same scheduling protocols. Comments in support of NEPOOL's proposal were filed by ISO-NE, Fitchburg, *et al.*, and HQ Energy.

42. We will accept for filing NEPOOL's submittal, to be effective January 1, 2005, as requested. We will also dismiss, as moot, ISO-NE's filing, in Docket No. RT04-2-006, *et al*. NEPOOL's proposal is intended to evaluate ISO-NE/NYISO scheduling and financial impediments to cross-boarder transactions. In the past, these impediments have prevented opportunities for inter-regional price convergence. Accordingly, the Commission both supports and encourages the attempts made to date as well as the commitment of NYISO and NEPOOL to eliminate these impediments. We expect that the pilot program accepted herein will lead to a regional solution that helps eliminate a significant inter-regional seam. Finally, we note that NEPOOL's proposal is broadly supported as an alternative to ISO'NE's Virtual Regional Dispatch proposal and has not been protested in this proceeding.

E. RTO Implementation Filing (Docket Nos. ER05-374-000 and ER05-374-001)

43. On December 22, 2004, the Filing Parties, joined by certain other transmission-owning entities[36] (collectively, the Joint Parties), made their RTO Implementation Filing in Docket No. ER05-374-000, which consisted of a revised and re-filed RTO Tariff and RTO operating agreements. The re-filed RTO Tariff consists of four parts, including (i) general terms and conditions; (ii) the ISO-NE OATT and Local Network Service Schedules; (iii)

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[35] *See New York Independent System Operator, Inc.*, Docket No. ER04-1263-000, Letter Order (September 30, 2004).

[36] Fitchburg Gas and Electric Light Company; Unitil Energy Systems, Inc.; Vermont Electric Power Company (VELCO); Central Vermont Public Service Corporation; Green Mountain Power Corporation; Vermont Electric Cooperative; and Florida Power & Light Company – New England Division (FPL-NED).

Market Rule 1 (*i.e.,* the rules governing the operation of ISO-NE's energy and capacity markets); and (iv) ISO-NE's Self-Funding and Capital Funding Tariff.

44. The Filing Parties state that the majority of the revisions included in their filing were either: (i) typographical or non-substantive in nature; (ii) previously accepted by the Commission, subject to condition and refund, in the March 24 Order or in the November 3 Order, or otherwise contemplated by those orders; (iii) accepted for filing by the Commission in other proceedings instituted following the Filing Parties' initial RTO filing, *i.e.,* since October 21, 2003, or in proceedings pending as of the filing date of the RTO Implementation Filing;[37] or (iv) otherwise addressed by the Filing Parties, ISO-NE, or the Settling Parties, in their respective compliance filings submitted in Docket No. RT04-2-000, *et al*., *i.e.*, in the filings addressed above.[38]

45. The Joint Parties state that the RTO Implementation Filing also includes certain new proposals and conforming changes to the RTO Tariff and RTO operating agreements (discussed below), which they are submitting pursuant to section 205 of the FPA (New Proposals). Finally, the Joint Parties state that the RTO Implementation Filing includes an informational filing, consisting of the latest amendments to the contract between the Independent Market Advisor and ISO-NE, an amended Certificate of Incorporation and By-Laws of ISO-NE, and an amended Code of Conduct.

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[37] *See, e.g.,* NEPOOL's 109th Agreement, which amends the list of Category B generating projects in Schedule 11 of the NEPOOL OATT to include the Mirant Kendall Repowering Project. This agreement was submitted for filing by NEPOOL on November 29, 2004, in Docket No. ER05-267-000. In addition, the RTO Implementation Filing includes proposed tariff provisions submitted by ISO-NE, on November 1, 2004, in Docket Nos. ER05-134-000 and ER05-135-000, concerning, respectively, ISO-NE's Transmission Dispatch and Power Administration Services Tariff and the capital funding provisions of ISO-NE's Capital Funding Tariff. These filings were accepted by the Commission on December 30, 2004, subject to conditions. *See* ISO New England Inc., 109 FERC ¶ 61,383 (2004) and *See* ISO New England Inc., 109 FERC ¶ 61,382 (2004).

[38] Included in these filings is ISO-NE's proposal, in Docket No. RT04-2-006, to implement a Virtual Regional Dispatch Pilot Program. However, for the reasons discussed above, ISO-NE's filing has been rendered moot, by virtue of NEPOOL's alternative Intra-Hour Transaction Scheduling Pilot Program filed in Docket No. ER05-361-000.

46. For the reasons discussed below, we will accept for filing the New Proposals, subject to condition. We will also accept for filing the Joint Parties' re-filed tariff sheets, in Docket Nos. ER05-374-000 and ER05-374-001, subject to the outcome of any pending proceeding in which these tariff sheets were initially proposed. Subject to these conditions, the Joint Parties' submittals will become effective, as requested, February 1, 2005.

1. Integration of New Facilities

47. The Joint Parties state the RTO Implementation Filing includes a negotiated proposal for the initiation of Regional Network Service, on a five-year phased-in rate basis, and transfer of operational authority to ISO-NE for certain tie lines located at or near the Northern Vermont/Quebec border (the Highgate Transmission Facilities). The Joint Parties state that under their proposal, access to the Highgate Transmission Facilities will be possible for the first time through a single tariff, *i.e.,* the ISO-NE OATT, rather than through requests to the individual owners.[39] The Joint Parties further assert that the benefits associated with this access, including enhanced system reliability, will be obtainable without a significant cost shift to New England customers.[40] The Joint Parties add that their proposal is fully supported by the owners of the facilities (who join in the filing) and all other parties with contractual rights to the facilities. The Joint Parties state these contracting entities have agreed that their existing contracts will not receive grandfathered status.

48. The Joint Parties state that they have also reached an agreement as to the treatment of the Highgate-Georgia Line, a 115 kV transmission line owned and operated by the Vermont Electric Power Company (VELCO), which runs from the Highgate Transmission

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[39] The current owners of the Highgate Transmission Facilities are: (i) Central Vermont Public Service Corporation; (ii) City of Burlington Electric Department; (iii) Green Mountain Power Corporation; (iv) Rochester Electric Light and Power Company, Inc.; (v) Vermont Public Power Supply Authority; (vi) Vermont Electric Cooperative; and (vii) Village of Johnson Water and Light Department.

[40] The Joint Parties state that the total annual revenue requirement for all of the transmission facilities in Northern Vermont (including the Highgate Transmission Facility and the Highgate-Georgia Line) is less than $5 million, *i.e.,* slightly more than one percent of the annual regional revenue requirement used to calculate the Regional Network Service rate.

Facilities to a substation located in Georgia, Vermont. The Joint Parties state that upon the Commission's approval of the proposed treatment of the Highgate Transmission Facilities, the Highgate-Georgia Line will be treated as a Pool Transmission Facility under the ISO-NE OATT and other relevant ISO-NE operating agreements. The Joint Parties request that the costs associated with the Highgate-Georgia Line be incorporated into ISO-NE's Regional Network Service rates as of the RTO Operations Date.

49. Braintree, *et al*. object to the Joint Parties' Highgate Transmission Facilities proposal. Braintree, *et al*. assert that the proposed regionalization of cost support for these facilities represents a unilateral act by the Joint Parties that will impose an unreasonable level of costs on customers.

50. We will accept the Joint Parties' proposal to integrate the Highgate Transmission Facilities into ISO-NE's system rates on a phased-in basis. In the past, we have encouraged the resolution of the roll in issues associated with the Highgate Transmission Facilities as a continuation of the process begun by the Filing Parties in their initial RTO formation proposals.[41] We agree that the integration of these facilities into ISO-NE's regional grid will provide long-term system benefits. The Highgate Transmission Facilities, when rolled in, will allow greater ability to import energy, strengthen system reliability, and reduce seams issues with neighboring control areas. These benefits, moreover, will significantly outweigh the costs attributable to this rolled in, which are estimated to be only $5,000,000, phased in over a five year period.

2. Billing Procedures

51. The Joint Parties propose revisions to ISO-NE's billing policy, as set forth in the ISO-NE OATT, section 3.10 of the Transmission Operating Agreement, and the Disbursement Agreement. The existing billing policy allocates defaults that result from non-payment of invoices on a pro rata basis to all participants that would be able to receive payments in the settlement, and in the month following the defaults, ISO-NE reallocates that amount less any intervening collections to all entities receiving statements from ISO-NE. The Joint Parties propose to address any payment shortfall by reallocating the payment for defaults on the class of market participants associated with each default.

52. The Joint Parties state that each payment default amount would be reallocated in accordance with the underlying default in three categories: (i) a failure to pay charges to ISO-NE, as required by section IV of the RTO Tariff, *i.e.*, ISO-NE's Self Funding and

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[41] *See* PG&E National Energy Group, *et al*., 99 FERC ¶ 61,187 at P 22 (2002).

Capital Funding Tariff; (ii) a failure to pay transmission charges to ISO-NE, as required by the ISO-NE OATT; and (iii) a failure to pay certain specified Market Charges. In support of their proposal, the Joint Parties submit that placing the risk of defaults on the relevant business segment may assistant transmission owning entities in New England obtain more favorable financing for new transmission projects.

53. The Joint Parties also propose that section 3.10 of the Transmission Operating Agreement, as revised (*see* discussion above), would be subject to the *Mobile-Sierra* public interest standard of review.[42] In support of that request, the Joint Parties point out that section 3.10 addresses ISO-NE's system for billing for transmission revenues and represents a crucial aspect of providing transmission service. In addition, the Joint Parties assert that the limitations on ISO-NE's ability to modify section 3.10 are intended to provide a degree of assurance to the Transmission Owners and their lenders that after the RTO Operations Date, ISO-NE will not later seek to change the billing provision for transmission revenues in a manner that has a materially adverse effect on the Transmission Owners' risk profiles and their ability to obtain financing on favorable terms. In addition, the Joint Parties argue that section 3.10 primarily affects the interests of the Transmission Owners and ISO-NE alone.

54. PSEG and Calpine object to the Joint Parties' proposed billing allocation mechanism. PSEG and Calpine assert that the proposed mechanism is substantially similar to the Filing Parties' proposed dual billing provision, in Docket No. RT04-2-000, *et* al., which was previously rejected by the Commission, both in the March 24 Order and then again, on rehearing, in the November 3 Order.[43] PSEG asserts that while the proposed mechanism may, in fact, lower the risk of loss to the Transmission Owners' receivables, it would do so at the expense of increasing the risks faced by other market participants. PSEG claims that, in turn, these increased risks will increase these participants' credit requirements. PSEG argues that this outcome was expressly rejected by the Commission in Docket No. RT04-2-000, *et al*., and must be rejected again, here.

55. We agree with PSEG's argument that the Joint Parties' default proposal may increase credit requirements and does not comport with the goals expressed in the November 3 Order. In the November 3 Order, we determined that we would not oppose a

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[42] *See* United Gas Pipe Line Co. v. Mobile Gas Services Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[43] PSEG protest at 4, *citing* November 3 Order, 109 FERC ¶ 61,147 at P 127.

dual billing system, implemented for the purpose of providing additional financial assurance to Transmission Owners, provided that this dual billing system does not result in the imposition of additional credit requirements on ISO-NE's non-transmission owning market participants. We find that the Joint Parties' proposal fails to satisfy this requirement because section 3.10, as filed, could increase credit requirements for non-transmission owning market participants. While the Joint Parties' allocation proposal, if implemented, might assist the Transmission Owners in reducing their market risk profile, it could do so at the expense of non-transmission owning market participants. This could lead, in turn, to higher costs for financial assurance for these market participants and thus require increased levels of financial assurance to an extent that could ultimately limit market participation. Accordingly, we will reject section 3.10, as filed. However, we encourage the Joint Parties to continue working through the stakeholder process to consider a billing allocation methodology that would not lead to increased financial assurances or credit requirements for non-transmission owning market participants, *i.e.*, an allocation methodology that would address the concerns of both the transmission owners and ISO-NE's non-transmission owning market participants.[44] Finally, we will not address, here, the Joint Parties' request to apply the *Mobile-Sierra* standard of review to proposed section 3.10 of the Transmission Operating Agreement, given our rejection of the proposed provision to which thie *Mobile-Sierra* protection would apply.

3. <u>Indemnification Payments</u>

56. We will accept the Joint Parties' indemnification provisions, as proposed. The Joint Parties propose to revise the terms and conditions of the RTO Tariff, at section I.5.3, to add language permitting recovery from ISO-NE's customers of any amounts paid by ISO-NE on account of indemnification requirements under operating agreements such as the Transmission Operating Agreement, consistent with the Commission's determinations in

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[44] We note that the Joint Parties' billing allocation proposal received only a 40 percent approval vote when presented for NEPOOL's consideration. The breakdown of that vote, by sectors other than the Transmission Owners Sector, was as follows: Generation Sector – 0 percent (based on zero votes in favor, eight votes in opposition, and three abstentions); Supplier Sector – 0 percent (based on zero votes in favor, 12 votes in opposition, and five abstentions); Publicly Owned Sector – 20 percent (based on 34 votes in favor; zero votes in opposition, and two abstentions); and End User Sector – 0 percent (based on zero votes in favor, 2 votes in opposition, and 9 abstentions).

the November 3 Order regarding ISO-NE's indemnification rights and obligations.[45] The Joint Parties state that section I.5.3 is also being modified to reflect the allocation of payment responsibility among ISO-NE's customers with respect to these indemnification payments. We will accept for filing the Joint Parties' proposed tariff revisions.

4. Grandfathered Agreements

57. Braintree, *et al*. assert that the list of grandfathered interconnection agreements at schedule 3.11(c) of the Transmission Operating Agreement is incomplete. Braintree, *et al*. notes that while they were given the opportunity by ISO-NE to identify agreements that should be included in schedule 3.11(c), the necessary review could not be completed in time for the filing submitted herein.[46] Braintree, *et al*. state that they intend to confer further with ISO-NE on this matter and expect schedule 3.11(c) to be amended, as necessary. Similarly, Braintree, *et al*. note that there are omissions in the Category A and Category B Facilities listed at schedule 2.01 of the Transmission Operating Agreement, which will also require an amended filing.

58. With respect to the limited/conditional protests, we will require the Joint Parties to make a compliance filing within 30 days of the date of this order explaining why, as applicable, the above-referenced transmission service agreements are omitted from Attachment G.

5. Financial Assurance Policy and Capital Funding Tariffs

59. NEPOOL conditionally protests certain language that it asserts was included inadvertently by the Joint Parties in the Financial Assurance Policy for Market Participants and in the ISO-NE Capital Funding Tariff. Specifically, NEPOOL states that the Financial Assurance Policy for Market Participants reflects a change regarding the notice requirements that ISO-NE must follow when a market participant defaults in performing its obligations under the Financial Assurance Policy. NEPOOL asserts that notice should be provided both to a billing contact as well as to the Participants Committee representatives in the event of a default by a participant. In addition, NEPOOL asserts that when ISO-NE determines that it needs to assess a Capital Funding Charge under the

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[45] *See* November 3 Order, 109 FERC ¶ 61,147 at P 191.

[46] Similar concerns are raised by Chicopee, *et al*. and Massachusetts Municipal, *et al*. in their respective comments.

Capital Funding Tariff, ISO-NE should be required to post on its website a non-binding estimate of cash flow requirements in advance of collecting the charges. Further, NEPOOL explains that its counsel understands from speaking with ISO-NE staff that these changes were not intentional and will be reversed in a future filing by ISO-NE.

60. Therefore, we will direct the Joint Parties in their compliance filing to address the Conditional Protest of NEPOOL Participants Committee with appropriate changes to the tariff provisions.

The Commission orders:

(A) Rehearing of the November 3 Order is hereby denied, as discussed in the body of this order. The request for clarification of the November 3 Order, as sought by the Vermont Commission, is hereby granted, as discussed in the body of this order;

(B) The Filing Parties' compliance filings in Docket Nos. RT04-2-005, *et al*. and RT04-2-009, *et al*. are hereby accepted, as discussed in the body of this order;

(C) The Settling Parties' compliance filing in Docket Nos. RT04-2-008, *et al*. is hereby accepted, as discussed in the body of this order;

(D) NEPOOL's filing, in Docket No. ER05-361-000 is hereby accepted for filing, effective January 1, 2005, as discussed in the body of this order; and

(E) The Joint Parties' submittals in Docket Nos. ER05-374-000 and ER05-374-000 are hereby accepted for filing, subject to condition as discussed in the body of this order, effective February 1, 2005. The Joint Parties are hereby directed to make a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.