

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., <i>et al.</i>	Docket Nos. RT04-2-010, RT04-2-011, RT04-2-012, ER04-116-010, ER04-116-011 and ER04-116-012
Bangor Hydro-Electric Company, <i>et al.</i>	Docket No. ER04-157-012
The Consumers of New England v. New England Power Pool	Docket No. EL01-39-010
New England Power Pool	Docket Nos. ER04-433-002 and ER04-433-004
Bangor Hydro-Electric Company, <i>et al.</i>	Docket Nos. ER04-432-002 and ER04-432-004
New England Power Pool	Docket No. ER05-459-000

ORDER ACCEPTING COMPLIANCE FILINGS, DENYING REHEARING
AND ACCEPTING TARIFF REVISIONS FOR FILING

(Issued March 24, 2005)

1. In this order, we accept two compliance filings submitted in Docket Nos. RT04-2-010, *et al.* and RT04-2-012, *et al.*, made in response to a series of orders addressing the proposed establishment of ISO New England Inc. (ISO-NE) as a Regional Transmission Organization (RTO). We also accept for filing proposed tariff revisions submitted in Docket Nos. ER05-459-000 and ER04-433-004, applicable to ISO-NE's compliance with

Order No. 2003,¹ and accept a related compliance filing made in Docket No. RT04-2-011, *et al.* Finally, we address a related rehearing request submitted by the Industrial Energy Consumer Group (IECG) in Docket No. ER04-433-002, *et al.* This order benefits customers because it clarifies ISO-NE's interconnection and other operating procedures.

Background

A. The RTO Formation Proceeding

2. In an order issued by the Commission on March 24, 2004, in Docket No. RT04-2-000, *et al.*, we accepted the RTO formation proposal made in this proceeding by ISO-NE and the New England transmission owners² (Transmission Owners) (collectively, the RTO Filing Parties), subject to conditions and the resolution of certain reserved issues.³ Compliance requirements and requests for rehearing relating to the *March 24 Order* were subsequently addressed by the Commission in an order issued November 3, 2004,⁴ while additional compliance matters and requests for rehearing of the *November 3 Order* were addressed by the Commission in an order issued February 10, 2005.⁵

3. In the *February 10, Order*, we identified the RTO Filing Parties' remaining compliance requirements. Specifically, we noted that in the *November 3 Order*, we had identified two matters to be addressed in the RTO Filing Parties' so-called 60-day compliance filing: (i) revisions to the RTO Filing Parties' proposed system planning and expansion procedures, as required by the *March 24 Order*; and (ii) tariff revisions

¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61, 287 (2004), *reh'g pending*.

² Bangor Hydro Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation; New England Power Company; Northeast Utilities Service Company; The United Illuminating Company; and Vermont Electric Power Company.

³ *ISO New England Inc.*, 106 FERC ¶ 61,280 (2004) (*March 24 Order*).

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

⁵ *ISO New England Inc.*, 110 FERC ¶ 61,111 (2005) (*February 10 Order*).

reflecting the RTO Filing Parties' proposed adoption of (and modifications to) the PJM Interconnection, L.L.C. (PJM) Information Policy.⁶ We further noted that in the *November 3 Order* we had required the RTO Filing Parties to address in their so-called 90-day compliance filing two additional issues: (i) revisions to Appendix G of the Market Rule requiring ISO-NE to consider all proposed transmission generation outages together in accepting a proposed Transmission Owner outage plan; and (ii) market rule changes, as may be necessary, to comply with the Commission's market monitoring requirements.

4. In response to these requirements, compliance filings were submitted by the RTO Filing Parties on January 14, 2005, in Docket No. RT04-2-010, *et al.*, and on February 11, 2005, in Docket No. RT04-2-012, *et al.*

B. The Order No. 2003 Compliance Proceedings

5. In Order No. 2003, we required all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to either: (i) adopt our *pro forma* standards governing the interconnection of their facilities with Large Generators, *i.e.*, our *pro forma* Large Generator Interconnection Procedures (LGIP) and *pro forma* Large Generator Interconnection Agreement (LGIA); or (ii) propose any variations from these requirements, if appropriate, pursuant to the stated exemptions outlined in our order. On January 20, 2004, the New England Power Pool (NEPOOL) submitted its Order No. 2003 compliance filing, in Docket No. ER04-433-000. A contemporaneous compliance filing was made by the Transmission Owners, in Docket No. ER04-432-000, concerning the local facilities subject to their control.⁷

6. In an order issued by the Commission on November 8, 2004, we accepted NEPOOL's proposed retention of a number of its existing rules and policies, including NEPOOL's Minimum Interconnection Standard and its existing cost allocation provisions under Schedules 11 and 12 of the NEPOOL open access transmission tariff (NEPOOL OATT).⁸ However, as discussed below, we also rejected other proposed

⁶ *Id.* at note 24.

⁷ On April 26, 2004, NEPOOL and the Transmission Owners submitted additional documents in their respective proceedings in response to our Order No. 2003 order on rehearing (Order No. 2003-A).

⁸ See *New England Power Pool*, 109 FERC ¶ 61,155 (2004) (*November 8 Order*).

variations. In addition, we rejected the Transmission Owners' compliance filings. We noted that as non-independent entities, the Transmission Owners had neither asked for nor demonstrated that the variations they sought were consistent with or superior to the *pro forma* LGIP and LGIA. Accordingly we directed the Transmission Owners to make a ministerial filing within 15 days of the date of issuance of this order.

7. Finally, we stated that should the Transmission Owners seek any variations from the *pro forma* provisions, they may do so in a new filing and either: (i) explain why the proposed variations are consistent with or superior to our Order No. 2003 standards; (ii) agree to transfer to ISO-NE control over the significant aspects of the Local OATT interconnection process, including the performance of all interconnection studies and cost determinations applicable to system upgrades; or (iii) as to any individual Transmission Owner variations based on a regional reliability standard, support such variations by reference to the specific regional reliability standard relied upon.

8. In response to the *November 8 Order*, compliance filings and related submittals were filed by NEPOOL on January 18, 2005, in Docket No. ER05-459-000, and on January 18, 2005, in Docket No. ER04-433-004. In addition, the RTO Filing Parties made a related compliance filing on January 28, 2005, in Docket No. RT04-2-011, *et al.* Finally, rehearing of the *November 8 Order* was sought by IECG.

Notice of Filings and Responsive Pleadings

9. Notice of the filings identified above was published in the *Federal Register*. Notices of intervention were timely filed in Docket Nos. ER05-374-002 and ER05-374-003 by NEPOOL; in Docket No. ER05-459-000, by Unitil Energy Systems, Inc., and Fitchburg Gas & Electric Light Company, ISO-NE, and Northeast Utilities Service Company; in Docket No. ER04-433-004, by ISO-NE; in Docket No. RT04-2-010, *et al.*, by NEPOOL; and in Docket No. RT04-2-011, *et al.*, by NEPOOL and Florida Power & Light. There were no protests filed.

Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ the timely, unopposed motions to intervene filed in the above-noted proceedings serve to make the entities that filed them parties to these proceedings.

B. Request for Rehearing of the November 8 Order

11. IECG seeks rehearing of the *November 8 Order* regarding the Commission's conditional acceptance of ISO-NE's proposal to retain NEPOOL's existing Minimum Interconnection Standard (in lieu of the alternative interconnection services contemplated by Order No. 2003).¹⁰ IECG argues, in effect, that ISO-NE's proposal should have been accepted without condition.¹¹

⁹ 18 C.F.R. § 385.214 (2004).

¹⁰ The *pro forma* LGIP, at section 3.2, gives the Interconnection Customer the option of choosing between one of two alternative services: (i) an Energy Resource Interconnection Service (ERIS) – a basic or minimal service that allows the Interconnection Customer to connect its Generating Facility to the Transmission System and (in the case of a bid-based market) to place bids; and (ii) a Network Resource Interconnection Service (NRIS) – an enhanced service that contemplates the acquisition of full market rights (*e.g.*, Installed Capacity payments), conditioned on the Interconnection Customer's obligation to pay for any Network Upgrades that may be required for its requested interconnection.

¹¹ The proposal at issue was made by ISO-NE, not NEPOOL, given the fact that the stakeholder process giving rise to NEPOOL's filing was unable to reach a determination on the issue presented. As such, NEPOOL stated in its initial compliance filing that it was leaving open the question of whether the two alternative interconnection services set forth in Order No. 2003 should be offered under the NEPOOL OATT, or whether, conversely, the NEPOOL OATT should provide for a single service, *i.e.*, NEPOOL's currently effective Minimum Interconnection Standard.

12. In the *November 8 Order*, we noted that currently, generators that interconnect under the Minimum Interconnection Standard are eligible to sell their capacity as a qualified Installed Capacity resource and to receive Installed Capacity payments, even when the generator's output is not deliverable to the load that buys the Installed Capacity. Accordingly, while we accepted ISO-NE's proposed retention of the Minimum Interconnection Standard, we required ISO-NE to file, no later than September 1, 2005 (for implementation on January 1, 2006), a mechanism that will ensure that generators meet an intra-zonal deliverability test in order to qualify as an Installed Capacity resource.¹²

13. On rehearing, IECG asserts that the Commission's compliance requirement represents the adoption of an interconnection standard that would be a higher standard than the existing Minimum Interconnection Standard. IECG argues that using this standard to determine Installed Capacity eligibility, or a standard that would require incumbent preferential interconnection on a zonal basis, has no basis in engineering, is inherently anti-competitive, is inconsistent with New England's bid-based markets, and is otherwise harmful to customers. While IECG agrees that conditions should be established regarding a generator's eligibility to receive Installed Capacity payments, IECG argues that these conditions should be based on the ability of the generator to deliver its product under the Minimum Interconnection Standard and to either qualify for dispatch in a bid-based market or receive the price under a demand curve appropriately adjusted to reflect available supply.

14. We will deny rehearing. First, we disagree that the *November 8 Order* adopted, or requires, an interconnection standard that is "higher" than the Minimum Interconnection Standard. In fact, the *November 8 Order* permits ISO-NE to retain the Minimum Interconnection Standard, *i.e.*, a generator, if it so chooses, may continue to interconnect on this basis. At the same time, we also recognized that currently, a generator's output may not be deliverable to every load in New England and that, as such, it may not be just and reasonable for a generator to receive an Installed Capacity payment premised on the assumption that it has provided an Installed Capacity resource to a load in a location to which it cannot, in fact, be delivered.

15. We stated that while the proposed locational Installed Capacity (LICAP) mechanism conditionally accepted by the Commission in Docket No. ER03-563-030, *et al.*, addresses this issue on a regional basis, this issues remains unresolved on an intra-

¹² 109 FERC ¶ 61,155 at P 43. Subsequently, this implementation deadline was extended by the Commission, at ISO-NE's request, to July 1, 2006.

zonal basis. However, we did not make any determinations regarding intra-zonal eligibility requirements. Additionally, the Commission did not make any conclusions regarding transmission transfer capabilities, transfer rights, or the treatment of incumbent versus new interconnecting generators as these issues were not before the Commission in this proceeding. Rather, we required ISO-NE to consider the issue of intra-zonal deliverability, including intra-zonal transfer capability and transfer rights, and to propose revisions to its tariff in a future filing that would offer interconnection customers an option for meeting a zonal deliverability requirement. We did so, moreover, based on a need that IECG does not challenge, *i.e.*, based on a finding that the existing payments may not be warranted.

16. IECG's position on this issue was set forth in its protest and is restated in its rehearing request.¹³ However, rule changes concerning these issues were not before the Commission when it issued the *November 8 Order*. Nor did the *November 8 Order* approve any such revisions. Accordingly, IECG may raise these issues, if it so chooses, in the stakeholder process that will precede ISO-NE's filing, and to participate in the proceeding when that filing is submitted for Commission review.

C. Order No. 2003 Compliance Filings and Related Submittals

1. Docket No. ER04-433-004

17. On January 18, 2005, in Docket No. ER04-433-004, NEPOOL proposed amendments to Schedule 22 of the NEPOOL OATT, in response to the requirements of the *November 8 Order*. NEPOOL requests an effective date for its filing of November 8, 2004.

18. NEPOOL states that in compliance with the *November 8 Order*, it is proposing to adopt the *pro forma* definitions for the terms "Adverse System Impact," "Large Generating Facility," and "Reasonable Efforts." In addition, NEPOOL states that it has

¹³ IECG supports market rule changes that would limit the amount of Installed Capacity that could be sold in the New England markets and supports the establishment of price differentials between regions, zones (or even within zones) to reflect the actual ability of the transmission system to serve the load of customers. IECG asserts that these objectives can be met in a competitive fashion based on rational engineering principles which determine the transfer capability in or out of various regions or sub regions, and then allow individual resources to be competitively dispatched to provide capacity.

deleted a definition that it had initially proposed in Docket No. ER04-433-000, *i.e.*, a definition for the term “Queue,” which is not defined in the *pro forma* documents. NEPOOL states that it has also restored *pro forma* language for the following sections: section 3.3.1 (In-Service Date); 4.1 (Queue Position); 4.4.2 (Material Modifications); and 4.4.5 (Commercial Operation Date). In addition, NEPOOL states that it has restored the *pro forma* amounts for Deposits for Interconnection Studies in sections 6.1, 7.2, 8.1 and 10.1, as well as in Appendices 2, 3, 4, and 5 of Schedule 22.

19. NEPOOL states that, as required by the *November 8 Order*, it has also modified section 11.3 (Execution and Filing of the LGIA) by: (i) clarifying that NEPOOL’s submittals to modify the NEPOOL Tariff do not modify the Transmission Owners’ existing section 205 filing rights except to the extent that ISO-NE, as the System Operator, will have filing rights under the individual LGIAs; and (ii) adopting the provision addressing respective filing rights as agreed to by ISO-NE and the Transmission Owners in the Transmission Operating Agreement, as accepted for filing in the March 24 Order. NEPOOL states that it has also complied with the *November 8 Order* by deleting references to separate confidentiality agreements at section 13.1 of the LGIP.

20. With respect to its LGIA, NEPOOL states that in compliance with the *November 8 Order*, the term “Interconnection Customer,” in section 2.3.1, replaces the term “generator.” Finally, NEPOOL states that Article 18 has also been redrafted to include the clarification requested by the Transmission Owners regarding the potential applicability of a succeeding RTO Tariff.

21. NEPOOL’s compliance filing satisfies the requirements of the *November 8 Order* and is hereby accepted for filing, to become effective November 8, 2004, as requested.

2. Docket No. ER05-459-000

22. On January 18, 2005, in Docket No. ER05-459-000, NEPOOL submitted, pursuant to section 205 of the Federal Power Act (FPA),¹⁴ proposed amendments to Schedule 22 of the NEPOOL OATT, consisting of variations to the *pro forma* LGIP and LGIA. NEPOOL requests an effective date of April 1, 2005. NEPOOL states that its proposed variations and the support for these revisions offered by NEPOOL, respond to

¹⁴ 16 U.S.C. § 824d (2000).

the allowance offered by the Commission in the *November 8 Order* when it rejected certain variations initially proposed by NEPOOL as unsupported but did so without prejudice.

23. NEPOOL states that pursuant to this allowance, it proposes to amend the *pro forma* definition of the term “Adverse System Impact” to read as follows: “Adverse System Impact shall mean any significant negative effects on the stability, reliability, or operating characteristics of the electric system.” NEPOOL states that this definition has been used in the Restated NEPOOL Agreement for many years and is consistent with the reliability-related provision of that Agreement. NEPOOL also proposes to delete section 4.4.2 of the *pro forma* LGIP.¹⁵ NEPOOL states that it is requesting this variation because it has found that a change in the generator technical facility technology and transformer impedances can have significant impacts on a given interconnection. NEPOOL states that these factors could create the need to perform significant additional study of the same Interconnection Request and could substantially change the interconnection design.

24. NEPOOL notes that because the Commission has not yet issued interconnection procedures for generating facilities with capacity of less than 20 MW, NEPOOL is proposing that ISO-NE’s LGIP and LGIA also be used “for generating facilities with Generating Facility Capacity of less than 20 MW, but at least 5 MW, until the Commission issues its final order on interconnection procedures for such facilities.”¹⁶

25. We will accept NEPOOL’s proposed revisions to become effective April 1, 2005, as requested. First, we agree with NEPOOL that its proposed revisions to the term “Adverse System Impact” closely follow the nature of the system and reflect a more

¹⁵ Section 4.4.2 states as follows:

Prior to the return of the executed Interconnection Facility Study Agreement to Transmission Provider, the modifications permitted under this Section shall include specifically: (a) additional 15 percent decrease of electrical output (MW), and (b) Large Generating Facility technical parameters associated with modifications to Large Generating Facility technology and transformer impedances; provided, however, the incremental costs associated with those modifications are the responsibility of the requesting Interconnection Customer.

¹⁶ See proposed LGIP section 2.6.

comprehensive approach to system impacts. We will also accept NEPOOL's proposed deletion of LGIP section 4.4.2, which would permit certain modifications to be made to the Interconnection Facility Study Agreement. As NEPOOL states, and we agree, a change in the generator technical facility technology and transformer impedances, as contemplated by section 4.4.2, could substantially alter the requirements of the interconnection design and necessitate additional study. Finally, we will accept NEPOOL's proposed revision to the LGIP regarding generating facilities with capacity of less than 20 MW. This provision appropriately addresses procedures for interconnection of smaller generation, subject to the Commission's issuance of its final rule on small generator interconnections.

3. Docket No. RT04-2-011, et al.

26. On January 28, 2005, the RTO Filing Parties submitted a compliance filing, in Docket No. RT04-2-011, *et al.*, in response to the requirements of the *November 8 Order*, Order No. 2003-B, and the corresponding requirements of the *March 24 Order* (as it relates to Order No. 2003 compliance matters).¹⁷ The compliance filing consists of an ISO-NE LGIA and LGIP and associated conforming tariff revisions, pursuant to which ISO-NE will exercise control over the significant aspects of the local interconnection process involving the Transmission Owners' Non-Pool Transmission Facilities (non-PTF).¹⁸

27. The RTO Filing Parties state that pursuant to these arrangements, ISO-NE will apply the same generator interconnection procedures for both PTF and non-PTF interconnections, in lieu of the Local OATT LGIAs and LGIPs initially proposed by the Transmission Owners in Docket No. ER04-432-000, *et al.* The RTO Filing Parties further state that the Transmission Owners have transferred control over the significant aspects of the local interconnection process to ISO-NE. The RTO Filing Parties request that their proposed tariff revisions be made effective February 1, 2005, consistent with the RTO Operations Date established for ISO-NE in the *February 11 Order*.

¹⁷ In the *March 24 Order*, we held that the RTO Filing Parties' RTO formation proposal, in Docket No. RT04-2-000, *et al.*, would be required to conform to our rulings in Docket Nos. ER04-433-000, *et al.* See 106 FERC ¶ 61,280 at P 76.

¹⁸ For a general description of the scope and meaning of NEPOOL's Pool Transmission Facilities (PTF) and non-PTF designations, see 109 FERC ¶ 61,155 at P 6-10.

28. We will accept the RTO Filing Parties' compliance filing to become effective February 1, 2005, as requested. In the *November 8 Order*, we rejected the Transmission Owners' proposed variations from the *pro forma* LGIP and LGIA. Among other things, we noted that the Transmission Owners' proposed variations could not be justified under our independent entity variation standard because the Transmission Owners are not operating as independent entities, and they did not attempt to support their proposed variations from the *pro forma* under another applicable standard.

29. We also noted that the Transmission Owners' Local OATTs were deemed to have been revised to include the *pro forma* LGIP and LGIA as of January 20, 2004. In lieu of implementing these *pro forma* provisions, however, we stated that the Transmission Owners may propose variations in a new filing and either: (i) explain why the proposed variations are consistent with or superior to our Order No. 2003 standards; (ii) agree to transfer to ISO-NE control over the significant aspects of the Local OATT interconnection process, including the performance of all interconnection studies and cost determinations applicable to system upgrades; or (iii) as to any individual Transmission Owner variations based on a regional reliability standard, support such variations by reference to the specific regional reliability standard relied upon.

30. As noted above, the Transmission Owners have elected to transfer to ISO-NE control over the significant aspects of the Local OATT interconnection process, including the performance of all interconnection studies and cost determinations applicable to system upgrades. We find that the Transmission Owners' proposal, as reflected in the RTO Filing Parties compliance filing in Docket No. RT04-2-011, *et al.*, satisfies the requirements of the *November 8 Order*.

C. RTO Compliance Filings

1. Docket No. RT04-2-010, et al.

31. On January 14, 2005, in Docket No. RT04-2-010, *et al.*, the RTO Filing Parties submitted a compliance filing, in response to the requirements of the *March 24 Order* and the *November 3 Order*, regarding ISO-NE's regional system planning process. The compliance filing consists of a new Attachment N to the ISO-NE OATT, entitled Procedures for Regional System Plan Upgrades (RSP Procedures).

32. The RTO Filing Parties explain that in the *March 24 Order*, the Commission required the RTO Filing Parties to identify the standards and procedures that would be followed by ISO-NE in the Regional System Plan to identify market efficiency upgrades and assess cost-effective solutions. The *March 24 Order* also required the RTO Filing Parties to explain how ISO-NE would allocate any Financial Transmission Rights or Auction Revenue Rights that would result from the construction of new facilities.

33. The RTO Filing Parties' initial compliance filing in response to the *March 24 Order*, however, failed to provide the required clarifications in the form of proposed tariff revisions. Accordingly, in the *November 3 Order*, the Commission required the RTO Filing Parties to submit a 60-day compliance filing containing the required tariff provisions. The *November 3 Order* also required these tariff provisions to address the issues of cost overruns, posting of needs assessments prior to the market window, and the timing of the cost-benefits analysis.

34. The RTO Filing Parties state that the RSP Procedures satisfy the requirements of the *March 24 Order* and the *November 3 Order* by setting forth the standards applicable to the identification of market efficiency upgrades. Specifically, the RTO Filing Parties state that ISO-NE will identify proposed market efficiency transmission upgrades where the net present value of the net reduction in total costs to supply the system load exceeds the net present value of the carrying cost of the identified transmission upgrade. The RTO Filing Parties further explain that to determine the net present value of bulk power system resource costs, ISO-NE will take into account economic factors.

35. We find that the RTO Filing Parties' compliance filing satisfies the requirements of the *March 24 Order* and the *November 3 Order*. Accordingly, we will accept the RTO Filing Parties' compliance filing, to become effective February 1, 2005.

2. Docket No. RT04-2-012, et al.

36. On February 11, 2005, in Docket No. RT04-2-012, *et al.*, the RTO Filing Parties submitted their 90-day compliance filing in response to the requirements of the *March 24 Order* and *November 3 Order*, concerning: (i) revisions to Appendix G of the Market Rule requiring ISO-NE to consider all proposed transmission generation outages together in accepting a proposed Transmission Owner outage plan; and (ii) market rule changes, as may be necessary, to comply with the Commission's market monitoring requirements.

a. Transmission Generation Outages

37. The *November 3 Order* required ISO-NE to consider transmission and generation outages together in accepting a proposed transmission owner outage plan and to state that ISO-NE will have the authority to require the rescheduling of an outage based on any estimated or actual impacts on congestion or Reliability Must Run costs in financial, day-ahead markets.

38. The RTO Filing Parties have submitted revisions to Appendix G reflecting ISO-NE's ultimate authority to approve or deny proposed outage schedules submitted by the transmission owners or to modify outage schedules because of reliability or economic considerations. A preamble has been added to this section, providing in every instance that generation outages and transmission outages are to be considered together, using the

coordination procedures already specified in the Operating Procedures. Further, Appendix G has been modified to make clear that ISO-NE will have ultimate authority for approval, scheduling and rescheduling transmission outages.

39. We find that the RTO Filing Parties' compliance filing satisfies the requirements of the March 24 Order as it relates to transmission generation outages. Accordingly, we will accept this aspect of the RTO Filing Parties' compliance filing.

b. Market Behavior Rules

40. In the *November 3 Order*, we stated that with respect to market monitoring matters, we were not satisfied that the RTO Filing Parties' RTO formation proposal fully complied with the requirements of our *Market Behavior Rules Order*.¹⁹ Among other things, we noted that the enforcement authorizations set forth in the RTO Filing Parties' proposal appeared to permit subjective evaluations that are not consistent with our policies. Accordingly, we directed the RTO Filing Parties to modify their proposed market monitoring provisions, as may be necessary, to ensure that these provisions are consistent with our *Market Behavior Rules Order*. We also required ISO-NE to include Market Behavior Rule 2 in ISO-NE's OATT.²⁰

41. The RTO Filing Parties state that their compliance filing satisfies these requirements. Specifically, the Filing Parties state that under their proposal, where ISO-NE identifies conduct that could warrant monetary sanctions, ISO-NE will confidentially refer such conduct to the Commission for a determination as to whether the monetary sanctions provided under ISO-NE's Tariff will, or will not, be applied. In this way, the RTO Filing Parties state that discretion regarding the imposition of monetary sanctions will be exercised by the Commission, not ISO-NE.

42. The RTO Filing Parties also state that eliminating ISO-NE's discretion to determine monetary sanctions required a clarification regarding the terms "sanctions" and "mitigation." The RTO Filing Parties state that ISO-NE would also retain the discretion to issue warnings to market participants. The RTO Filing Parties state that a Formal Warning would consist of written notification from ISO-NE stating that potentially

¹⁹ See *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (*Market Behavior Rules Order*), order on *reh'g*, 107 FERC ¶ 61,175 (2004).

²⁰ See 105 FERC ¶ 61,218 at Appendix B.

sanctionable behavior had occurred, with notice of that violation provided to the Commission. However, ISO-NE need not issue a Formal Warning in order to refer the conduct in question to the Commission for a determination regarding the imposition of monetary sanctions.

43. We find that the RTO Filing Parties' compliance filing satisfies the requirements of the *November 3 Order*. Specifically, the compliance filing includes specific, objective criteria for the imposition of sanctions and will not subject market participants to sanctions or consequences other than those set forth in the tariff and approved by the Commission. Accordingly, we will accept the RTO Filing Parties' compliance filing to become effective February 1, 2005, as requested.

The Commission orders:

(A) Rehearing of the *November 8 Order* is hereby denied, as discussed in the body of this order;

(B) The RTO Filing Parties' compliance filings in Docket Nos. RT04-2-010, *et al.*, RT04-2-011, *et al.* and RT04-2-012, *et al.* are hereby accepted, as discussed in the body of this order, to be made effective February 1, 2005; and

(C) NEPOOL's proposed tariff revisions in Docket Nos. ER05-459-000 and ER04-433-004 are hereby accepted for filing, as discussed in the body of this order, to become effective April 1, 2005 and November 8, 2004, respectively.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.