

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.

)

Docket No. ER20-739-002

**MOTION FOR LEAVE TO ANSWER AND LIMITED ANSWER OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ the New England States Committee on Electricity (“NESCOE”) files this Motion for Leave to Answer and Limited Answer to the Request for Rehearing of IROL-Critical Facility Owners in this proceeding on June 25, 2020 (“Rehearing Request”). The Rehearing Request challenges the Commission’s May 26, 2020 Order Accepting Proposed Rate Schedule (“May 26 Order”),² which accepted ISO New England Inc.’s (“ISO-NE”) proposed Schedule 17 to its Open Access Transmission Tariff, to become effective March 6, 2020, as requested.

I. MOTION FOR LEAVE TO ANSWER

Answers to rehearing requests are generally prohibited under Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure.³ However, the Commission has exercised discretion in accepting such answers if they assist the Commission in its decision-making process.⁴ NESCOE’s Answer meets this standard and will assist the Commission in its decision-

¹ 18 C.F.R. §§ 385.212, 385.213.

² *ISO New England Inc.*, 171 FERC ¶ 61,160 (2020).

³ 18 C.F.R. § 385.713(d)(1).

⁴ *ISO New England Inc.*, 120 FERC ¶ P61,087, at P 30 (2007) (accepting “parties’ answers to the petitions for rehearing...because they have provided information that assisted us in our decision-making process”);

making process. Accordingly, NESCOE respectfully requests that the Commission accept this Answer.

II. ANSWER

As an initial matter, the Rehearing Request’s characterization of NESCOE’s position is not wholly accurate. The IROL-Critical Facility Owners state that “NESCOE concedes that at least a portion of previously incurred IROL-critical compliance costs are recoverable through cost-of-service ratemaking.”⁵ NESCOE did not articulate any such blanket legal position. Instead, NESCOE informed the Commission that it “does not intend to object to a IROL-Critical Facility Owner seeking to recover” certain undepreciated capital expenses when a resource owner makes its Federal Power Act section 205 filing pursuant to Schedule 17.⁶ As explained by ISO-NE, the costs that eligible facilities may seek to recover under Schedule 17 are “an IROL-Critical Facility Owner’s incremental capital, operation and maintenance, and associated administrative and regulatory costs of complying with the NERC CIP Standards’ medium impact requirements that are not subject to recovery through other means....”⁷ In addition to objecting to recovery of already-depreciated capital expenditures, NESCOE expressed concern that the costs eligible for recovery under proposed Schedule 17 must be “solely and directly related to incremental compliance costs arising from ISO-NE’s designation of the resource as an IROL-

California Indep. System Operator Corp., 129 FERC ¶ 61,241, at P 16 (2009) (“We will accept the answers and responses to the requests for rehearing because they provide information that assisted us in our decision-making process”).

⁵ Rehearing Request at 12.

⁶ Comments of the New England States Committee on Electricity, Docket No. ER20-739-000 (filed Jan. 27, 2020) (“NESCOE Comments”), at 10).

⁷ ISO New England Inc. Response to Commission Deficiency Notice Regarding Schedule 17, Docket No. ER20-739-001 (filed Mar. 27, 2020), at 2.

Critical Facility.”⁸ NESCOE’s articulation of a reasonable and balanced cost recovery approach should not be confused with the broader statement of law that the Rehearing Request seeks to assign to it.

The Rehearing Request argues that the May 26 Order misapplies the filed rate doctrine and the rule against retroactive ratemaking.⁹ IROL-Critical Facility Owners object to the May 26 Order’s finding that Schedule 17 “permits recovery only of CIP costs incurred on or after the effective date of a section 205 filing made by an IROL-Critical Facility Owner to recover such costs.”¹⁰ The IROL-Critical Facility Owners argue that the May 26 Order “creates an irreconcilable conflict with respect to Schedule 17,”¹¹ contending that Schedule 17 requires only “backward-looking cost recovery.”¹² Thus, they argue that the May 26 Order results in “a Schedule 17 that is unworkable.”¹³

As NESCOE previously explained, while Schedule 17 is a new cost recovery mechanism, neither the service provided nor the customers are new.¹⁴ Therefore, arguments that there is a misapplication of the filed rate doctrine are wrong. Contrary to the Rehearing Request’s argument,¹⁵ the rule against retroactive ratemaking *is* applicable in this case.

⁸ NESCOE Comments at 6.

⁹ *See* Rehearing Request at 12-14.

¹⁰ May 26 Order at P 1; *see also id.* at P 27.

¹¹ Rehearing Request at 15.

¹² *Id.*

¹³ *Id.* at 16.

¹⁴ Answer of the New England States Committee on Electricity, Docket No. ER20-739-001 (filed Apr. 24, 2020), at 2-3.

¹⁵ Rehearing Request, *e.g.*, at 26.

However, NESCOE agrees there is a need for Schedule 17 to be “workable,” so as to avoid confusion and unnecessary litigation. Toward this end, NESCOE supports limited clarification of the May 26 Order. NESCOE believes that ISO-NE’s filing requesting an effective date of March 6, 2020, and the Commission’s acceptance of that effective date for Schedule 17 in the May 26 Order, provide customers sufficient notice of a rate increase as of March 6, 2020 regarding certain IROL-critical compliance costs.¹⁶ Moreover, a fuller explanation of the Commission’s rationale for finding that the filed rate doctrine and rule against retroactive ratemaking are applicable to Schedule 17, in conjunction with the clarification discussed above, should resolve the IROL-Critical Facility Owners’ objections related to applicability of the filed rate doctrine.

III. CONCLUSION

For the reasons discussed above, NESCOE respectfully requests that the Commission accept this answer and provide the limited clarification discussed above.

¹⁶ See *id.* at 27.

Respectfully Submitted,

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July 10, 2020

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 10th day of July, 2020.

/s/ Phyllis G. Kimmel

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