

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

**Credit Reforms in
Organized Wholesale Electric Markets**)

Docket No. RM10-13-___

**JOINT MOTION OF ISO NEW ENGLAND INC.,
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION AND
NEW YORK INDEPENDENT SYSTEM OPERATOR
REQUESTING EXTENSION OF TIME TO SUBMIT COMPLIANCE FILING**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), 18 C.F.R. § 385.212 (2011), ISO New England Inc. (“ISO-NE”), California Independent System Operator Corporation (“CAISO”), and New York Independent System Operator, Inc. (“NYISO”) (together, the “Movants”) hereby move for an extension of time - until January 31, 2012 - to submit the filing to comply with the requirement that regional transmission organizations (“RTOs”) and independent system operators (“ISOs”) enhance their ability to offset market obligations in bankruptcy, as specified in Section 35.41(d) of the Final Rule¹ issued in this proceeding pursuant to Order No. 741.²

This additional time should permit the Movants, each of which is a tax-exempt entity, to secure rulings from the Internal Revenue Service that implementation of the preferred method of compliance will not adversely affect their status as tax-exempt organizations or cause revenues to be classified as unrelated business income. The additional time will also permit CAISO and NYISO to ensure that such implementation will not adversely affect prior rulings and tax agreements with the relevant state tax authorities.

¹ The Final Rule is reflected in Subpart J of 18 C.F.R. Part 35 (2011).

² See *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, 133 FERC ¶ 61,060 (2010), *on reh’g*, Order No. 741-A, 134 FERC ¶ 61,126 (2011) (“Order No. 741” and “Order No. 741-A,” respectively), *on reh’g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

I. BACKGROUND

Section 35.41(d) requires ISOs and RTOs to file tariff revisions that:

Establish a single counterparty to all market participant transactions, or require each market participant in an organized wholesale electric market to grant a security interest to the organized wholesale electric market in the receivables of its transactions, or provide another method of supporting netting that provides a similar level of protection to the market and is approved by the Commission. In the alternative, the organized wholesale electric market shall not net market participants' transactions and must establish credit based on market participants' gross obligations.

Each of the Movants has assessed these options and reviewed them with its stakeholders. Each Movant has determined that becoming a central counterparty to its transactions is the preferred course of action among the above-cited options presented by the Commission. However, as described below, by taking title as the central counterparty, each Movant faces the possibility of federal, and in the case of CAISO and NYISO, state tax implications.

Each of the Movants is an organization exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code of 1986, as amended, and each holds a Determination Letter from the Internal Revenue Service to that effect. Maintenance of this status allows the Movants to eliminate costs related to income taxes and certain state taxes, and also reduces costs for certain types of financing. As such, this status benefits the consumers in the Movants' regions. Therefore, in assessing the implications of becoming a counterparty to each transaction in its markets, each Movant considered the effect of such a change on its tax status.

Federal tax law requires a tax-exempt organization holding a Determination Letter to advise the Internal Revenue Service when the organization engages in a new activity or changes the nature of its activities. After consulting with counsel and tax practitioners, each Movant concluded that it would be prudent, if not necessary, to inform the Internal Revenue Service and, in the case of CAISO and NYISO, state tax authorities, regarding the planned implementation of

the central counterparty structure and to seek a ruling confirming that its role as a central counterparty is consistent with and in furtherance of the purposes for which it was granted tax-exempt status, and in the case of CAISO and NYISO, state law tax status and requirements. Furthermore, as each Movant will be a counterparty to every sales transaction in its market, the Movants wanted to confirm that the gross proceeds of such transactions will not be classified as income from an unrelated trade or business within the meaning of Internal Revenue Code § 513. While these risks may be relatively low, their consequences, if realized, would be significant.

Given these concerns, on or before July 25, the Movants each requested a ruling from the Internal Revenue Service that the establishment of central counterparty status (i) will not adversely affect its status as a tax-exempt organization, and (ii) will not cause the revenues received by the Movant as the central counterparty to such transactions to be classified as income from an unrelated trade or business within the meaning of Internal Revenue Code § 513. In addition, the NYISO has sought confirmation from the New York State Department of Taxation and Finance that its existing tax status would not be adversely impacted if the NYISO were to take title in the market transactions, and the CAISO expects to raise the issue with the California Franchise Tax Board after it receives a ruling from the Internal Revenue Service.

As the Movants are working to resolve these tax issues, they have not, at this point, completed their stakeholder processes related to the adoption of a central counterparty model. Now that the ruling requests have been filed, the Movants intend to pursue discussions with their stakeholders.

II. MOTION FOR EXTENSION OF TIME

In Order No. 741, the Commission directed RTOs and ISOs to submit compliance filings on or before June 30, 2011. In Order No. 741-A, the Commission extended the date for filing the tariff revisions necessary to comply with Section 35.41(d) of the Final Rule to September 30,

2011. The Movants request that the Commission extend the September 30, 2011 compliance filing deadline in this proceeding, for their regions, to January 31, 2012.

The extension of time is necessary because the Movants must have confirmation that the central counterparty model will not have unintended tax consequences before they complete the stakeholder processes and file tariff changes to implement the central counterparty structure. The requested extension should allow the Movants time to secure the above-referenced private letter rulings from the Internal Revenue Service and an advisory opinion or other appropriate comfort from applicable state tax authorities, and complete their stakeholder processes. While, historically, private letter ruling requests have taken as long as six months to fulfill,³ the Internal Revenue Service has agreed informally to consider the Movants' request for rulings more expeditiously. The requested extension of approximately four months is the minimum amount of time in which the Movants believe that they can complete the steps outlined above and make a filing with the Commission.

Assuming that the Movants receive favorable private letter rulings and, in the case of NYISO and CAISO, comfort from applicable state tax authorities on the state tax issues, and further assuming that stakeholders agree with the Movants' perspective that becoming the central counterparty is the best means of addressing the Commission's netting concerns, the Movants will be in a position to make filings to complete their compliance with Order 741 before the end of the extension period.

³ See Deloitte & Touche's "Frequently Asked Questions About Subchapter C Rulings" at [http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/US_tax_subcfqs_113007\(1\).pdf](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/US_tax_subcfqs_113007(1).pdf).

III. CONCLUSION

For the foregoing reasons, the Movants requests that the Commission extend the Section 35.41(d) compliance filing deadline in this proceeding for their regions to January 31, 2012.

Respectfully submitted,

/s/ Maria A. Gulluni

Maria A. Gulluni
Assistant General Counsel - Corporate
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040
(413) 535-4000
mgulluni@iso-ne.com

/s/ Daniel J. Shonkwiler

Nancy J. Saracino
Vice President, General Counsel and
Chief Administrative Officer
Roger E. Collanton
Assistant General Counsel - Litigation &
Mandatory Standards
Daniel J. Shonkwiler
Senior Counsel
California Independent System Operator
Corporation
P.O. Box 639014
Folsom, CA 95763-9014
(916) 608-7015
dshonkwiler@caiso.com

/s/ Sara B. Keegan

Sara B. Keegan
Senior Attorney
New York Independent System Operator
10 Krey Boulevard
Rensselaer, NY 12144
(518) 356-8554
skeegan@nyiso.com

Date: August 15, 2011