



January 22, 2010

**VIA MESSENGER**

The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: Section 205 Filing by New England Independent Transmission Company and ISO New England Inc. of the NEITC Operating Agreement; Docket No. ER10-\_\_\_-000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),<sup>1</sup> and Section 35.13 of the Federal Energy Regulatory Commission (“Commission” or “FERC”) regulations,<sup>2</sup> the New England Independent Transmission Company, L.L.C. (“New England ITC”) and ISO New England Inc. (the “ISO” or “ISO-NE”) (together the “Filing Parties”) hereby submit for FERC acceptance an original and six copies of the Operating Agreement with New England ITC (“NEITC Operating Agreement”).

The NEITC Operating Agreement represents an arrangement between the Filing Parties governing the operation of transmission infrastructure projects developed by New England ITC within the ISO footprint.

**I. DESCRIPTION OF THE FILING PARTIES**

The ISO is the private, non-profit entity that serves as the regional transmission organization (“RTO”) for New England. The ISO operates the New England bulk power system

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<sup>1</sup> 16 U.S.C. § 824d

<sup>2</sup> 18 C.F.R. § 35.13 (2009)

and administers New England's organized wholesale electricity market pursuant to the its tariff<sup>3</sup> and the Transmission Operating Agreement with the New England Participating Transmission Owners. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council and the North American Electric Reliability Corporation.

New England ITC is a stand-alone independent transmission company in New England. It is a provisional member of the transmission sector within the New England Power Pool ("NEPOOL") New England ITC is a developer of regional transmission projects. Its core members include the individuals responsible for planning, developing, permitting, financing, constructing and operating the Neptune Regional Transmission System, a 660 MW high voltage direct current ("HVDC") transmission cable that runs 51 miles under the Atlantic Ocean from New Jersey to Long Island and 14 miles underground within Long Island. New England ITC has operated as a stand alone transmission development company since 2006.

New England ITC is working on a number of other new subsea and terrestrial regional transmission projects designed to interconnect with the existing ISO-NE transmission system, including the "Green Line," a new 660 MW HVDC transmission line that would run underwater from Wiscasset, Maine to Boston, Massachusetts. New England ITC anticipates that the Green Line would bring green, renewable power from Maine to Boston and other areas within the ISO-NE footprint.

## II. BACKGROUND AND HISTORY

The NEITC Operating Agreement arises from the provisions of Attachment M to the ISO OATT<sup>4</sup> and this Commission's February 20, 2007 Declaratory Order regarding New England ITC.<sup>5</sup> In the February 20 Order, the Commission found that New England ITC's independence criteria are consistent with Commission policy<sup>6</sup> and that New England ITC "has the necessary capabilities to continue its development as an ITC pursuant to Attachment M of the ISO-NE OATT."<sup>7</sup>

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<sup>3</sup> That is, the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (the "ISO Tariff"). The ISO's Open Access Transmission Tariff (the "ISO OATT") is Section II of the ISO Tariff. Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the ISO Tariff.

<sup>4</sup> See ISO OATT, Attachment M, *Role of Independent Transmission Companies*.

<sup>5</sup> *New England Independent Transmission Company, L.L.C.*, 118 FERC ¶ 61,127 (2007) ("February 20 Order").

<sup>6</sup> February 20 Order at P 29.

<sup>7</sup> *Id.* at P 42.

In its February 20 Order, the Commission referred to the following provision of Attachment M of the ISO OATT, describing steps that occur after the Commission issues a favorable declaratory order regarding the independence and capabilities of an Independent Transmission Company (“ITC”):

...the ITC may operate within the ISO consistent with the rights, responsibilities, and functions that have been accepted or approved by FERC . . . and the ITC shall enter into an ITC Agreement with the ISO . . . .<sup>8</sup>

The Commission’s February 20 Order states: “New England ITC explains that it intends to work closely with ISO-NE to ensure the development of an appropriate *pro forma* ITC Agreement in accordance with Attachment M” and that “[l]ikewise, ISO-NE states that it has agreed to begin these negotiations in the near future.”<sup>9</sup> Accordingly, immediately following issuance of the Commission’s February 20 Order, the ISO and New England ITC began development of an ITC Agreement.

In developing the NEITC Operating Agreement, ISO-NE and New England ITC have maintained an open and transparent process with NEPOOL, the Participating Transmission Owners (“PTOs”), and other stakeholders. Through this collaborative process, it became clear that the NEITC Operating Agreement could appropriately be modeled on the existing Transmission Operating Agreement (“TOA”) between the ISO and the PTOs and that the agreement should apply to New England ITC projects generally, and not focus solely on New England ITC’s Green Line project.

Throughout the development process, the ISO and New England ITC have met with stakeholders and kept stakeholders aware of the status, substance and progress of development of the NEITC Operating Agreement. New England ITC initially met with the NEPOOL Transmission Commission in early December 2006, shortly after filing the application that resulted in the Commission’s February 20 Order. New England ITC also attended a NEPOOL Participants Committee meeting on January 5, 2007 to answer questions about the application.

In March 2007, following issuance of the February 20 Order, the ISO and New England ITC began more detailed discussions about the NEITC Operating Agreement. On June 19, 2007, the ISO and New England ITC attended a meeting of the NEPOOL Transmission Committee. There, the Filing Parties outlined the idea of basing the NEITC Operating Agreement on the existing Transmission Operating Agreement between the ISO and the Participating Transmission Owners and solicited stakeholder input on the substance of the agreement. The ISO and New England ITC continued to work on development of the NEITC Operating Agreement through the second half of the 2007 and into 2008.

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<sup>8</sup> *Id.* at P 32 (citing ISO OATT, Attachment M, Original Sheet No. 6602) (emphasis added).

<sup>9</sup> *Id.* at P 27.

During the summer of 2007, New England ITC applied for membership in NEPOOL. The membership application was accepted, and NEPOOL designated NEITC as a provisional member of the Transmission Sector. On March 27, 2008, the ISO and New England ITC presented a full draft of the NEITC Operating Agreement to the NEPOOL Transmission Committee for review and comment. On May 1, 2008, the Filing Parties presented an updated draft of the full Operating Agreement to the NEPOOL Transmission Committee. The updated draft incorporated comments provided by the stakeholders at the prior meetings. The ISO and New England ITC continued to develop and negotiate the Operating Agreement with input from the stakeholders through the second half of 2008 and into 2009.

Beginning in April 2009 and through the summer of 2009, monthly conference calls were held amongst the ISO, New England ITC, and representatives of the PTO Administrative Committee to review the draft NEITC Operating Agreement and develop an efficient mechanism for coordinating future operations under the New England ITC Operating Agreement with those under the existing TOA. As a result of that effort, a revised draft of the NEITC Operating Agreement was developed for further stakeholder review.

On October 27, 2009, the NEPOOL Transmission Committee discussed a revised draft of the NEITC Operating Agreement. On November 20, 2009, the Transmission Committee voted unanimously (with four abstentions) to recommend to the NEPOOL Participants Committee that it support the NEITC Operating Agreement. On December 11, 2009, the NEPOOL Participants Committee voted unanimously to support the NEITC Operating Agreement.

### **III. DESCRIPTION OF THE NEITC OPERATING AGREEMENT**

Consistent with Attachment M of the ISO OATT and the Commission's February 20 Order, the NEITC Operating Agreement establishes the roles, responsibilities, and obligations under which New England ITC will develop regional transmission projects in the ISO-NE footprint.

As noted above, the NEITC Operating Agreement is modeled on, and follows the structure of, the existing TOA among the ISO and the PTOs. For ease of reference, a blackline of the NEITC Operating Agreement versus the TOA is Attachment 2, hereto. Due to these similarities, the NEITC Operating Agreement ensures consistent obligations among the ISO and *all* transmission owners in New England, and facilitates the ISO's efficient and consistent operation of all transmission facilities. In addition, both operating agreements address Section 205 regulatory filings, stakeholder interactions, and rate filings and procedures with the ISO, using consistent language.

The NEITC Operating Agreement is designed to terminate automatically when a new New England ITC transmission facility is placed into service<sup>10</sup> or a New England transmission facility is acquired, at which time New England ITC would become a PTO under the TOA. Therefore, the NEITC Operating Agreement addresses the roles, responsibilities, and obligations of New England ITC for purposes of Section 205 filings, stakeholder interactions, and rate filings and procedures during the time that New England ITC is developing, financing, and constructing regional transmission facilities in ISO-NE. By design, then, the NEITC Operating Agreement is a transitional document and it ensures that New England ITC will follow consistent and predictable procedures with regard to the ISO, the PTOs and other stakeholders, and will ease the transition of New England ITC into being a signatory to the existing Transmission Operating Agreement when it qualifies to do so.

The NEITC Operating Agreement filed herein is the result of careful thought and stakeholder review. The ISO and New England ITC, with the input and support of the stakeholders, endorse this simple, streamlined approach to the NEITC Operating Agreement.

#### **IV. REQUESTED EFFECTIVE DATE**

The Filing Parties respectfully request the Commission approve the New England ITC Operating Agreement by March 23, 2010, and make the Agreement effective as of that date.

#### **V. ADDITIONAL SUPPORTING INFORMATION**

The Filing Parties submit the following documents and additional information pursuant to Sections 205 of the FPA and 35.13 of the Code of Federal Regulations:

35.13(b)(1) – In addition to this transmittal letter, the Filing Parties provide the following materials:

- A copy of the NEITC Operating Agreement (Attachment 1), including schedules thereto (Attachment 1);<sup>11</sup>
- Blacklined copies of the main body of the NEITC Operating Agreement and Schedules 1.01 and 3.09(a) thereto, versus the TOA and corresponding schedules thereto (Attachment 2);<sup>12</sup>

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<sup>10</sup> Because NEITC does not yet own in-service transmission facilities, Schedules 2.01(a) and Schedules 2.01(b) of the NEITC Operating Agreement are reserved. Prior to placing any transmission facilities in service, the Operating Agreement will be amended to add the pertinent schedules.

<sup>11</sup> The NEITC Operating Agreement is being filed unexecuted and will be executed upon receipt of regulatory approval without material modifications or conditions, as is the standard practice of the ISO.

<sup>12</sup> No blackline is included for Schedules 3.02(d) and 3.09(b), and for Schedule 11.17(c) (numbered as Schedule 11.19(c) in the TOA), because these are unchanged in substance from the corresponding TOA schedules.

- A list of non-Market Participant transmission customers (Attachment 3); and
- A list of the governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont to which a paper copy of this filing has been sent (Attachment 4).

35.13(b)(2) – As set forth above, the Filing Parties request that the NEITC Operating Agreement become effective on March 23, 2010, no later than sixty days from the date of this filing.

35.13(b)(3) – An electronic copy of this filing is being provided to all NEPOOL Participants, and a paper copy of this filing is being provided to the Non-Market Participant Transmission Customers, the governors and electric utility regulatory agencies for the six New England states that comprise the New England Control Area, the New England Conference of Public Utilities Commissioners and the New England States Committee on Electricity. The names and addresses of these recipients are shown in Attachment 3 and 4. In accordance with Commission rules and practice, there is no need for entities identified on Attachment 3 and 4 to be included on the Commission's official service list in the captioned docket unless such entities become intervenors in this docket.

35.13(b)(4) – A description of the materials submitted pursuant to this filing is contained in this transmittal letter.

35.13(b)(5) – This transmittal letter and supporting materials provide a statement of the reasons the agreement filed herein should be accepted by the Commission.

35.13(b)(6) – The Filing Parties have authority to make this filing.

35.13(b)(7) – The Filing Parties do not have any knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

35.13(c)(1) – Sales, services, and revenues cannot reasonably be projected at this time.

35.13(c)(2) – There is no other rate schedule on file for which a comparison of charges would be appropriate.

35.13(c)(3) – No specifically assignable facilities have been or will be installed or modified in order for the Commission to accept this filing.

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(...continued)

No blackline is provided for the notice addressees (Schedule 11.01), as no substantive analysis would pertain to that schedule.

## VI. COMMUNICATIONS

Correspondence and communications regarding this filing should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary in connection with these proceedings:

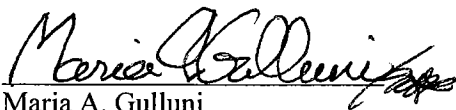
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## VII. CONCLUSION

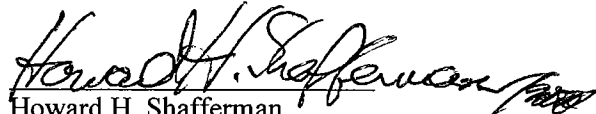
For the reasons stated herein, the Filing Parties request that the Commission accept the NEITC Operating Agreement, effective March 23, 2010.

Please acknowledge receipt of the foregoing by date-stamping the enclosed extra copies of this filing and returning it to the courier delivering this filing.

Respectfully submitted,



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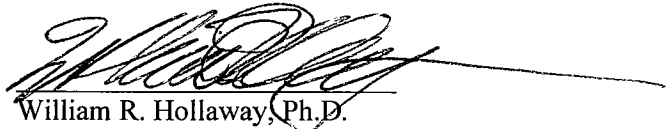


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