

DE 00-162

ISO NEW ENGLAND, INC.

Regional Electric Industry Market Reports

Generic Protective Order

O R D E R N O. 23,830

November 1, 2001

On October 12, 2001, ISO New England, Inc. (the ISO) filed a "Motion for Proprietary Treatment" in this docket, which the Commission opened in 2000 to consider the issue of confidential treatment of certain data provided by the ISO to the Commission on a voluntary basis. The motion seeks a "generic protective order" providing for confidential treatment of certain market reports prepared by the ISO to keep the Commission, similar state agencies in other New England States and other governmental bodies with jurisdiction informed as to the functioning of the wholesale electricity markets that the ISO administers.

As noted in the ISO's motion, the Commission has issued two previous orders in this docket. In Order No. 23,590 (November 20, 2000), the Commission concluded that it would be consistent with the New Hampshire Right-to-Know Law, RSA 91-A, to treat as confidential and not available for public inspection certain market-sensitive data that had then been furnished by ISO New England. In Order No. 23,788

(September 28, 2001), the Commission noted that "it discourages rather than facilitates the receipt of [market-sensitive data from ISO New England] for us to require the ISO, every time it provides such a report to the Commission, to include a formal motion for confidential treatment." *Id.*, slip op. at 5. Therefore, the Commission determined that it would "henceforth assume that any data as to individual bids in the ISO market that is less than six months old and is furnished to the Commission should be treated as confidential," with ISO New England simply required to so indicate in a cover letter. *Id.*

In the instant motion, the ISO points out that under the ISO's market rules as approved by the Federal Energy Regulatory Commission (FERC), additional information beyond individual bid data is entitled to confidential treatment. Specifically, the motion refers to "the names of any companies subjected to mitigation" under the ISO New England Market Rules. Motion for Proprietary Treatment at 2. The motion requests that the Commission issue a "generic protective order" that would accord confidential treatment to (1) entities' bid data until that data is more than six months old, (2) the names of mitigated companies, and (3) "[t]he ISO's analysis of this bid data (to the extent it could reveal

bid levels)."¹ *Id.*

In these circumstances, it is not necessary to recapitulate the analysis contained in Order Nos. 23,590 and 23,788, which set forth the relevant principles under RSA 91-A. Based on that analysis, we expressed an intention in Order No. 23,788 to "treat the unredacted versions of the quarterly [market] reports as confidential to the extent they remain subject to similar treatment in the FERC's files." Order No. 23,788, slip op. at 4. We further indicated that, for reasons of administrative efficiency at both the ISO and the Commission, in submitting future quarterly market reports for Commission review in redacted and unredacted form, the ISO could simply indicate by cover letter that it was invoking our prior ruling on the confidential nature of portions of these reports and thereby gain protective treatment for the unredacted documents without need of a formal motion. *Id.* at 5-6.

The ISO's instant request is consistent with Order No. 23,788 and we therefore grant it for the reasons stated in

¹ Appended to the instant motion is the ISO's quarterly market report covering the period from February through April of 2001. The ISO's motion contemplates that the requested generic protective order would be applicable to this filing.

that Order.² When submitting a quarterly market report to the Commission, the ISO may obtain confidential treatment for the unredacted version of the report by indicating in a cover letter that the redacted portions of the document comprise data that the ISO itself treats as confidential with the express approval of the FERC. However, as we stated in Order No. 23,788, this ruling is provisional in the sense that we retain the ongoing authority to revisit all confidentiality determinations we make under RSA 91 should circumstances warrant.

Based upon the foregoing, it is hereby

ORDERED, that the motion of ISO New England, Inc. for confidential treatment of certain portions of its Market Report for February through April of 2001 is GRANTED; and it is

FURTHER ORDERED, that quarterly market reports provided to the Commission by ISO New England, Inc. in the

² To the extent that our rules would require a different protocol, see Puc 204.05 (providing that all documents filed at Commission are matters of public record except, *inter alia*, documents subject to protective order) and 204.06 (providing for issuance of protective orders on motion of party submitting document), the relevant requirements are hereby waived, see Puc 201.05(a) (noting that Commission may waive any rule if waiver "serves the public interest" and does not disrupt "the orderly proceeding of the commission").

future shall be treated as confidential by the Commission to the same extent that the data receives similar treatment by either the Federal Energy Regulatory Commission or ISO New England, Inc. under rules approved by the Federal Energy Regulatory Commission; and it is

FURTHER ORDERED, that this Order is subject to the ongoing authority of the Commission, on its own motion or on the notion of Staff or any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this first day of November, 2001.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary

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