



OPINION

Time to open 'time-sensitive' transmission projects to Order 1000 competition

By Jason Marshall

Published May 9, 2019

The following is a contributed article by Jason Marshall, general counsel for the New England States Committee on Electricity (NESCOE). The views expressed below do not represent those of NESCOE or any of its managers.

As we approach the ten-year anniversary of Order 1000, its promise of competition has largely gone unfilled.

Two recent reports, one from the Brattle Group and another from MIT Professor Paul L. Joskow, cast a light on the success of Order 1000 and, in particular, the continued lack of competition to develop electric transmission infrastructure in the United States.

The Brattle Group report found that only 3% of all transmission projects nationwide were subject to competition between 2013 and 2017. This isn't how it was supposed to be.

Order 1000 made foundational changes to the way regions plan and select transmission for development. It set in motion regional processes for competitive solicitations to meet system transmission needs — removing what amounted to federal monopoly rights for utilities to build transmission within their service territories.

But close to ten years later, competition has become the extreme exception rather than the rule.

It's time for FERC to take a fresh look at the factors limiting competition and how to put these competitive structures to real use. It can be done.

Competition exemption

In New England, competition has stalled in part because certain reliability projects are exempt, by design. Back when regions were developing rules to comply with Order 1000, FERC allowed an exemption in the ISO New England (ISO-NE) region to exclude from competition projects to meet so-called "time-sensitive" needs.

At the time, the exemption was considered limited and seemed sensible. It would apply only to projects that ISO-NE identified as needed for reliability within three years or less.

In those cases, ISO-NE would develop a solution in consultation with stakeholders and then assign it to the transmission owner whose service territory covers the area in which the project is located. FERC granted similar exemptions to other independent system operators (ISOs)/regional transmission organizations (RTOs).

However, since Order 1000 went in effect, ISO-NE has exclusively solved for time-sensitive needs, essentially establishing a study loop where (1) ISO-NE assesses system needs, (2) the assessment shows both time-sensitive needs and longer-term needs (years three to 10), (3) ISO-NE solves for the time-sensitive needs first and puts the longer-term needs on hold, and (4) ISO-NE initiates a new needs assessment to reevaluate all system needs.

In practice, solutions for time-sensitive needs have either solved the longer-term needs or the length of the study process has turned the longer-term needs into near-term needs due to the passage of time.

All solutions to date have been assigned to the incumbent transmission owner. ISO-NE has yet to run a single competitive solicitation for transmission, making it an outlier among ISO/RTO regions.

Certain New England state agencies and utilities have engaged in competitive procurements of clean energy and associated transmission in furtherance of state statutory requirements. But

these procurements take place separately from the ISO-NE reliability planning process.

To its credit, ISO-NE has acknowledged the practical effects of its study process. ISO-NE also recently announced the possibility of a competitive transmission procurement later this year. This potential solicitation is the result of a unique set of facts.

Last year, a large generating resource in the Boston area announced its intent to retire. That triggered a whirlwind of contract-related action, outside of New England's wholesale markets, between ISO-NE and the generator at issue to retain the resource for "fuel security."

More recently, ISO-NE informed stakeholders that the resource's retirement after the contract term ends has triggered the need to plan for a transmission solicitation later this year.

While the prospect of competition is encouraging, the circumstances and system conditions driving this particular need are highly unusual. There's no indication that the solicitation would mark a fundamental shift toward greater competition in New England.

Consumers are paying

To the extent competition is intended to encourage transmission developers to sharpen their pencils, drive down consumer costs, shift risks to private investors and achieve greater efficiencies, New England consumers are not realizing those benefits under the current framework. Consumers are, however, picking up the tab.

According to a recent ISO-NE report, for most residential retail electric customers in New England, transmission costs now account for between 11% to 18% of total retail rates.

Transmission charges have risen dramatically over the last decade. They have increased almost every year from 2008 and, over that decade, have grown from roughly \$869 million in 2008 to

\$2.25 billion in 2018.

Over \$1 billion in additional transmission is planned in New England over the next four years. These consumer investments certainly deliver value, from improved system reliability to lower power prices.

Consumers are right, however, to ask hard questions about whether they are paying more than necessary for transmission, given a lack of competitive pressure and any meaningful cost control mechanisms.

So long as time-sensitive projects continue to be a primary vehicle for developing transmission, rather than the exception, serious efforts must be made to discipline the costs of those projects and contain costs.

Here is one potential path forward.

Two competition models

There are two models employed in ISO/RTO regions to implement Order 1000 competition, commonly referred to as the "Sponsorship" model and the "Competitive Bidding" model.

At a high level, the Sponsorship model can be thought of as a competition for ideas. The ISO/RTO solicits solutions to meet an identified need and welcomes different approaches, including innovative proposals, to solve that need.

The ISO/RTO selects a qualified developer — the project sponsor — after comparing the various solutions that have been offered.

In the Competitive Bidding model, the competition is limited to the *construction* of a project. The ISO/RTO, with stakeholder input, develops the specific solution and puts it out to bid, with developers competing to construct and own the project.

What if ISO-NE adopted a "Hybrid" model for transmission development?

For longer-term needs, the Sponsorship model would continue to be used to attract innovative designs to longer-term (and likely more substantial and costly) needs. With appropriate criteria in place to encourage project cost containment, the Sponsorship model offers the potential for significant consumer savings through creative solutions to meet regional needs.

For time-sensitive needs, ISO-NE could use the Competitive Bidding model. This would introduce competition for these projects for the first time, while accounting for ISO-NE's concerns about near-term reliability needs that prompted the exemption in the first place.

The Competitive Bidding model would follow the same path ISO-NE forges today for time-sensitive projects: ISO-NE would lead the process for designing a solution. However, instead of sole-sourcing the project to an incumbent transmission owner, ISO-NE would bid that project out for competition among all qualified developers.

This would be a more limited and streamlined procurement process than under the Sponsorship model. With ISO-NE's oversight and lead role over solution development, the Competitive Bidding model is well-suited to meet time-sensitive needs.

The specific changes to implement this Hybrid model should, like any major market design reform, be subject to vigorous stakeholder discussion. Of course, if on a case-by-case basis ISO-NE believes that system reliability would be placed in jeopardy because of the time required to administer a competitive process for a specific need, ISO-NE should have the flexibility to assign a project as it does today and inform stakeholders and FERC of the reasons for that determination.

There may also be prudent reasons to exclude other projects from a competitive procurement process.

Administering a solicitation takes time and resources. Consumers bear costs in connection with this process. When a competitive solicitation does not make good sense, the process needs to allow ISO-NE to say so.

Years after its implementation, Order 1000 continues to represent a momentous policy shift toward competition in the development of transmission. The experience of Order 1000 across ISOs/RTOs informs the need to examine why this shift has stalled in practice. In some cases, well-intended exemptions from competition may be playing an outsized role.

Existing models for competition provide insight into further reforms, and how existing approaches can be leveraged, to promote the consumer benefits that Order 1000 sought to achieve. It's time.