

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

ISO New England Inc.

)

Docket No. EL19-90-000

**COMMENTS OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

The New England States Committee on Electricity (“NESCOE”)¹ files these comments pursuant to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) October 17, 2019 order in the above-referenced proceeding (“October 2019 Order”).² NESCOE strongly supports the October 2019 Order as a necessary step toward addressing a continued barrier to competition for transmission development in New England. NESCOE appreciates the Commission’s close engagement on this issue and the opportunity to offer its perspective.

ISO-NE’s response to the October 2019 Order confirms that, since its implementation of Order No. 1000,³ ISO-NE has exclusively relied on an exemption to competition to select projects to meet the region’s transmission needs.⁴ The persistent use of the exemption

¹ On October 21, 2019, NESCOE filed a doc-less motion to intervene in this proceeding. NESCOE is the Regional State Committee for New England. It is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO New England Inc. (“ISO-NE”) administers. NESCOE’s mission is to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the lowest possible price over the long term, consistent with maintaining reliable service and environmental quality.

² *Order Instituting Section 206 Proceedings*, 169 FERC ¶ 61,054 (2019) (“October 2019 Order”). Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (“Tariff”).

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,841 (Aug. 11, 2011) (“Order 1000”), *order on reh’g*, Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), *order on reh’g and clarification*, Order No. 1000-B, 77 Fed. Reg. 64,890 (Oct. 24, 2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁴ Response of ISO New England Inc. to Order Instituting Section 206 Proceedings, Docket No. EL19-90-000 (filed Dec. 27, 2019) (“ISO-NE Response”), at 17 (“To date, ISO-NE has not selected any projects to address reliability criteria violations that did not qualify as immediate need reliability projects”). ISO-NE states that it has recently issued its first request for proposals (“Boston RFP”) to solicit solutions for non-time sensitive needs. *Id.* As noted below, while ISO-NE’s issuance of the Boston RFP is a positive step toward competition,

effectively preserves a right of first refusal for incumbent transmission owners that the Commission eliminated in Order 1000. It has swallowed the rules that the Commission approved to foster a competitive process that could identify lower cost projects to meet system needs.⁵ The Commission should act to correct this imbalance.

Reforms are possible without risking reliability. To inform the Commission's consideration of further action in this proceeding, NESCOE provides below one approach to meeting immediate reliability needs that is compatible with competitive transmission solutions while accounting for the time-sensitivity of those needs. NESCOE also suggests a change in connection with the public posting of information to provide greater transparency in ISO-NE's reporting of time-sensitive needs and solutions.

I. BACKGROUND

A. October 2019 Order

The October 2019 Order examines the implementation of an exemption to competition for transmission development in the case of “immediate need reliability projects.”⁶ For such projects, the Commission accepted Order 1000 compliance filings that retained a “federal right of first refusal . . . for transmission facilities that are needed in a short time frame to address reliability needs” provided that the exemption would be “used only in limited circumstances.”⁷

the unique circumstances and system conditions that prompted the need at issue do not provide confidence that ISO-NE will fundamentally alter its practice of relying heavily on the exemption in meeting reliability needs.

⁵ See *ISO New England Inc.*, 143 FERC ¶ 61,150 at P 187 (2013) (“First Compliance Order”), citing Order 1000 at P 256 (Rules impeding competition prior to Order 1000 “harm[ed] customers by discouraging new entrants from submitting proposals that may be a more efficient or cost-effective solution to a region’s needs.”). See also *MISO Trans. Owners v. FERC*, 819 F.3d 329, 333 (7th Cir. 2016) (“No one likes to be competed against. A firm blessed with a right of first refusal can by exercising its option exclude competition with it, in this instance competition in building a new transmission facility. . . . [These utilities] want to retain their right of first refusal—they don’t want to have to bid down the prices at which they will build new facilities in order to remain competitive.”).

⁶ October 2019 Order at PP 1-3.

⁷ *Id.* at P 3.

The Commission placed parameters around the use of the exemption through the application of five criteria, including that the exemption would only apply to reliability projects needed in three years or less and informational requirements providing transparency into the decision to designate a project as time-sensitive.⁸ The Commission approved this “limited exemption” for immediate need reliability projects after balancing the need to remove barriers to competition for transmission development against potential delays that could create reliability risks.⁹

The Commission expressed its concern in the October 2019 order that three Regional Transmission Organizations (“RTOs”)—ISO-NE, PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”)—“may be implementing the exemption in a manner that is inconsistent with what the Commission directed, and therefore may be unjust and unreasonable, unduly preferential and discriminatory.”¹⁰ The Commission examined informational filings regarding immediate need reliability projects that these RTOs submitted from 2015-2018.¹¹ Based on this review, the Commission stated that the three RTOs “may not be complying with the five criteria established” for using the exemption that is contained in their respective Order 1000 compliance orders.¹² The Commission also found that the exemption itself “may no longer be just and reasonable” and that it is being applied more broadly than had been intended.¹³ Additionally, the Commission listed a number of concerns regarding challenges in finding information on the RTOs’ websites in connection with immediate need projects.¹⁴

⁸ *Id.*

⁹ *Id.* at PP 3-4.

¹⁰ *Id.* at P 1.

¹¹ *Id.* at P 6. ISO-NE has made two such informational filings. ISO-NE Informational Filings, Docket No. ER13-193-000 (filed Jan. 30, 2018, Jan. 31, 2019) (“ISO-NE Informational Filings”).

¹² October 2019 Order at P 14.

¹³ *Id.* at PP 14-15.

¹⁴ *Id.* at P 11.

The Commission directed each of these RTOs to respond to a series of questions in the October 2019 Order to “(1) demonstrate how it is complying with the immediate need reliability project criteria; (2) demonstrate that the provisions in its tariff, as implemented, containing certain exemptions to the requirements of Order No. 1000 for immediate need reliability projects remain just and reasonable; and (3) consider additional conditions or restrictions on the use of the exemption for immediate need reliability projects to appropriately balance the need to promote competition for transmission development and avoid delays that could endanger reliability.”¹⁵

B. New England’s Experience

In its initial Order 1000 compliance filing, ISO-NE sought to preserve for incumbent transmission owners a federal right of first refusal over transmission development in New England.¹⁶ This proposal would have precluded any competition for transmission projects over the entire ten-year planning horizon. Alternatively, ISO-NE proposed that the Commission grant an exemption for all reliability projects needed within a *five-year* time frame.¹⁷ The Commission rejected both of those proposed approaches, instead directing ISO-NE to file revisions to the Tariff that would, *inter alia*, define immediate need reliability projects as solving a need within three years.¹⁸

ISO-NE began implementing changes under Order 1000 in 2015. One year later, NESCOE identified immediate need projects as an emerging issue warranting the Commission’s

¹⁵ *Id.* at PP 1, 16.

¹⁶ *See* First Compliance Order at PP 133-139. Incumbent transmission owners joined the ISO-NE filing.

¹⁷ *See* First Compliance Order at PP 199-200, 205.

¹⁸ *Id.* at PP 160-172, 236-241.

attention. NESCOE expressed concerns that ISO-NE’s practice of solving only for immediate need projects could cause all reliability needs to be met outside of the competitive process.¹⁹

NESCOE summarized this practice in a more recent Commission docket: (1) ISO-NE first assesses system needs, (2) the assessment shows both time-sensitive needs and longer-term needs (years three to ten), (3) ISO-NE solves for the time-sensitive needs first and puts the longer-term needs, which are subject to competition, on hold, and (4) ISO-NE initiates a new needs assessment to reevaluate all system needs.²⁰

In its 2016 Comments, NESCOE voiced its concern to the Commission that, when these immediate need projects are assigned to incumbent utilities rather than selected under a competitive process, “consumers lose the benefit of competition on costs and associated cost control mechanisms.”²¹ NESCOE further expressed that it was “mindful of the complexities of competitive processes and the costs they require to execute” and that it “has not and does not now advocate for pursuing competitive solicitations if that process endangers reliability.”²² In later comments, NESCOE asked the Commission to closely monitor stakeholder discussions in New England “to determine whether, depending on the outcome, further action is prudent to ensure that (i) the appropriate balance has been struck between solving for time-sensitive reliability needs and achieving consumer benefits through competition, and (ii) there are

¹⁹ Comments of the New England States Committee on Electricity, Docket No. AD16-18-000 (filed May 31, 2016) (“2016 Comments”), at 9.

²⁰ Reply Comments of the New England States Committee on Electricity, Docket No. PL19-3-000 (filed August 26, 2019) (“Transmission Incentives Reply Comments”), at 12. *See* ISO-NE, 2017 Regional System Plan, at 69.

²¹ 2016 Comments at 9.

²² *Id.*

opportunities for cost discipline to the greatest extent practicable, whether a project is exempt from competition or not.”²³

Last year, NESCOE reiterated its concern that the region’s reliability needs continued to be met through immediate need projects and that “the competitive process remain[ed] the exception rather than the rule in New England.”²⁴ NESCOE asked the Commission “to direct ISO-NE to show cause why its tariff remains just and reasonable in light of its broad application of what the Commission intended to be a limited exemption from competition for” immediate need reliability projects.²⁵

The October 2019 Order documents ISO-NE’s reliance on the exemption. Instead of being used in only “limited circumstances,” the Commission found that “it appears that all reliability needs in ISO-NE may be classified as immediate need reliability projects.”²⁶ The October 2019 Order focused on the project list that ISO-NE provided in its Informational Filings, which relate solely to needs in the Southeast Massachusetts and Rhode Island (“SEMA/RI”) study area.²⁷ In fact, ISO-NE’s determination of time-sensitive needs has been more widespread. The table below illustrates how ISO-NE has applied the exemption in assessing needs across the system.²⁸

²³ Post-Technical Conference Comments of the New England States Committee on Electricity, Docket No. AD16-18-000 (filed Oct. 3, 2016), at 6.

²⁴ Comments of the New England States Committee on Electricity, Docket No. PL19-3-000 (filed June 26, 2019), at n. 32.

²⁵ Transmission Incentives Reply Comments at 12-13.

²⁶ October 2019 Order at P 15. The October 2019 Order preceded ISO-NE’s issuance of the Boston RFP.

²⁷ See October 2019 Order at PP 6, 8, 10, 15.

²⁸ As captured in the links below, ISO-NE has designated these presentations as Critical Energy Infrastructure Information (“CEII”) and they are available only to those who have permission to access CEII materials. The table is not intended to represent an exhaustive list of all ISO-NE needs assessments since its implementation of Order 1000 in 2015. As discussed below in Section II.B, locating information on the ISO-NE website related to the immediate need exemption is challenging. In this case, finding the information reflected in the table

Key Study Area	Needs Assessment	PAC Presentation
Eastern CT	2029 Eastern CT Needs Assessment https://smd.iso-ne.com/operations-services/ceii/pac/2019/11/final_ceii_ect_2029_na.pdf	All needs are time-sensitive (Slides 36-37) https://smd.iso-ne.com/operations-services/ceii/pac/2019/10/ect_2029_needs_assessment_rev1_clean.pdf (Revision 1)
Eastern CT	2027 Eastern CT Needs Assessment https://smd.iso-ne.com/operations-services/ceii/pac/2018/05/final_ceii_ect_2027_na.pdf	All needs are time-sensitive (Slides 29-30) https://smd.iso-ne.com/operations-services/ceii/pac/2018/04/a7_ect_2027_needs_assessment_presentation_update.pdf (Update)
Eastern CT	2022 Eastern CT Needs Assessment https://smd.iso-ne.com/planning/ceii/reports/2010s/final_eastern_ct_2022_needs_assessment_report.pdf	All needs are time-sensitive (Slide 9) https://smd.iso-ne.com/operations-services/ceii/pac/2015/09/2022_ect_needs_update_final.pdf (Revision 2)
Greater Boston	Boston 2028 Needs Assessment https://smd.iso-ne.com/operations-services/ceii/pac/2019/06/ceii_boston_2028_na.pdf	Determination of time-sensitive and non time-sensitive needs (Slides 55-61) https://smd.iso-ne.com/operations-services/ceii/pac/2019/04/ceii_boston_2028_na_presentation_rev1_clean.pdf (Revision 1)
Maine	2023 Maine Addendum Analysis Report https://smd.iso-ne.com/operations-services/ceii/pac/2016/04/2023-final-me-addendum-report_20160428.pdf	Identification of time-sensitive needs and deferral of competitive solicitation process pending final solutions to those needs (Slides 25-26) https://smd.iso-ne.com/operations-services/ceii/pac/2016/02/a4_maine_2023_needs_update_presentationl.pdf (Update)
NH/VT	2029 NH Needs Assessment https://smd.iso-ne.com/operations-services/ceii/pac/2019/12/final_ceii_nh_2029_na.pdf	All needs are time-sensitive (Slide 37) https://smd.iso-ne.com/operations-services/ceii/pac/2019/10/a3_new_hampshire_2029_needs_assessment_ceii.pdf

required individual searches through ISO-NE’s “Key Study Areas” and sifting through a list of documents for information containing ISO-NE’s determination of time-sensitive needs.

NH/VT	2027 NH Needs Assessment Report https://smd.iso-ne.com/operations-services/ceii/pac/2018/11/final_ceii_new_hampshire_2027_needs_assessment.pdf	All needs are time-sensitive (Slide 33) https://smd.iso-ne.com/operations-services/ceii/pac/2018/09/a06_new_hampshire_2027_needs_assessment_presentation_rev_1_clean.pdf (Revision 1)
NH/VT	2023 NH/VT Needs Assessment https://smd.iso-ne.com/operations-services/ceii/pac/2015/10/2023_final_nhvt_transmission_needs_assessment_addendum_report.pdf	Identification of time-sensitive needs and deferral of competitive solicitation process pending final solutions to those needs (Slides 18-19) https://smd.iso-ne.com/operations-services/ceii/pac/2015/10/2023_nh_needs_update_final.pdf (Revision 2)
SWCT	2027 SWCT Needs Assessment https://smd.iso-ne.com/operations-services/ceii/pac/2018/07/final_ceii_swct_2027_na.pdf	All needs are time-sensitive (Slide 31) https://smd.iso-ne.com/operations-services/ceii/pac/2018/06/a2_swct_2027_na_presentation.pdf

In addition to SEMA/RI, the ISO-NE Response lists projects designated to meet time-sensitive needs for Greater Boston but not for the other areas listed above.²⁹ The absence of projects to solve time-sensitive needs in other areas raises an important question. The purported reason for the exemption is that the needs are pressing and there is no time to conduct a competitive solicitation. Yet, a number of the studies listed above were completed several years ago, some as far back as 2015 and 2016. It is unclear, given ISO-NE’s determination of a time-sensitive need in these areas, why projects to solve those needs have not been designated.³⁰ This gap between

²⁹ See ISO-NE Response at Attachment A.

³⁰ To be clear, NESCOE does not understand that any delays in the implementation of immediate need projects have had an adverse effect on reliability. NESCOE discusses in Section II.B below the need for greater transparency around these projects. As part of this discussion, NESCOE suggests that ISO-NE consider providing on its website a list reflecting the status of solution development for identified time-sensitive needs. This list could help explain why solutions for time-sensitive needs have not yet been selected or may no longer be needed. For example, in several instances, ISO-NE has undertaken a re-study that showed significantly reduced needs resulting in a cancellation or modification of the proposed solution. Changes in transmission planning practices as well as changed system conditions, such as lower load growth due to energy efficiency and distributed generation, are some of the factors that have led to ISO-NE’s finding that the need has been reduced. NESCOE has worked with ISO-NE over the past several years on changes to transmission planning practices such as incorporating a probabilistic assessment of system needs. NESCOE commends ISO-NE for

the identification of a time-sensitive need and the designation of an immediate need project to solve that need suggests that, at least for some needs, ISO-NE may have prematurely foreclosed the competitive process.

The Commission raised a similar concern in the October 2019 Order about whether the projects ISO-NE designated as time-sensitive were truly needed within the three-year exemption period. The Commission found that “the majority of ISO-NE’s immediate need reliability projects have need-by dates occurring prior to ISO-NE’s designation of these projects as immediate need reliability projects in the regional transmission plan, with 24 of 29 designated projects having need-by dates prior to or in 2016.”³¹ Only a small handful of projects designated in 2016 as an “immediate need” have gone into service.³²

ISO-NE issued the Boston RFP on December 20, 2019, soliciting solutions to meet non-time sensitive needs resulting from the retirement of a large generating unit just outside Boston.³³ ISO-NE expressed its concern that the retirement of these resources could threaten the continued operation of an adjacent liquefied natural gas facility that would increase the “region’s risk of operating reserves depletion and load shedding[.]”³⁴ Given the unique circumstances and system conditions giving rise to the identified need, the Boston RFP does not appear to signal a fundamental shift away from ISO-NE’s use of the exemption.

re-examining and changing some of its planning practices while ensuring that these changes are consistent with mandatory reliability standards. In a parallel effort with the reforms advocated in these comments, such changes to ISO-NE’s transmission planning practices should continue to be a central focus.

³¹ ISO-NE Response at P 8, citing ISO-NE Informational Filings.

³² October 2019 Order at P 10, citing ISO-NE Informational Filings; ISO-NE Response at Attachment A.

³³ ISO-NE Response at 6; ISO-NE, 2019 Regional System Plan (“2019 RSP”), at 7.

³⁴ *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 at P 8 (2018).

C. ISO-NE's Response

The ISO-NE Response confirms that the Commission's preliminary findings in the 2019 Order are not in dispute. To date, all of the transmission projects ISO-NE has selected to meet the region's reliability needs have been designated as immediate need projects.³⁵ Only four of the 29 projects ISO-NE identified in 2016 as immediate need projects were in-service by the December 2019 date of the ISO-NE Response.³⁶ Of those four projects, just one was put in-service within three years of that immediate need designation.³⁷

ISO-NE dedicates the bulk of its response to defending its implementation of the Tariff, related planning and technical guides, and the Commission's directives relative to immediate need projects. ISO-NE states that "the exception is working as intended in the New England area" and identifies no current need for changes.³⁸ ISO-NE disagrees with proposals to shorten the exemption period, create an abbreviated competitive process for immediate need reliability projects, or impose other conditions or requirements on use of the exemption.³⁹ ISO-NE states that it may evaluate improvements to its process after completing the recently-issued Boston RFP, but it makes no mention if that would include revisions to rules relating to the immediate need exemption.⁴⁰

³⁵ ISO-NE Response at 17.

³⁶ *Id.* at Attachment A.

³⁷ *Id.* (listing project with corresponding ID number 1741 with April 2019 in-service date).

³⁸ *Id.* at 19.

³⁹ *Id.* at 17-19.

⁴⁰ *Id.* at 19.

II. COMMENTS

The exemption for immediate need reliability projects in New England has played an outsized role in the planning process. Every reliability project that ISO-NE has placed in its regional system plan since it began implementing its Order 1000 changes has been selected pursuant to the “immediate need” exemption and assigned to an incumbent transmission owner, sidestepping the competitive process. This is not the outcome the Commission could have envisioned when it approved an exemption to be used only “in certain limited circumstances.”⁴¹ When projects in New England continue to be sole-sourced to incumbents, “the longer . . . barriers are maintained against potential competitive transmission solutions proposed by nonincumbent transmission developers”⁴² and the longer consumers are denied the benefits of competition.⁴³ The Commission must address a practice that has become unjust and unreasonable.

⁴¹ First Compliance Order at P 236. *See id.* at P 235 (“ISO-NE generally will rely on a competitive solicitation process to evaluate and select new transmission projects in the regional transmission plan for the purposes of cost allocation.”).

⁴² *Id.* at P 238.

⁴³ While this proceeding relates to barriers to competition in connection with the immediate need exemption, NESCOE notes an emerging area of concern in connection with another impediment to competition in New England: the ineligibility of certain non-transmission alternatives (“NTAs”) to participate in the competitive transmission solution process for non-immediate needs. The Midcontinent Independent System Operator, Inc. (“MISO”) recently filed with the Commission proposed tariff revisions to allow MISO to select a storage resource as the preferred solution to meet transmission system needs. Midcontinent Independent System Operator, Inc., Proposed Tariff Revisions for Storage as a Transmission Only Asset, Docket No. ER20-588-000 (filed Dec. 12, 2019). MISO states that the tariff reforms “reflect a fundamental first step forward for the use of storage resources to maximize the reliability and efficiency of the electric system.” *Id.* at 1. While NESCOE does not take a substantive position on the MISO filing, as a general matter, the eligibility of storage resources should also enhance the competitiveness of the solicitation process. NESCOE appreciates ISO-NE’s commitment to explore changes to New England’s competitive solicitation process following the Boston RFP and understands that commitment to include the initiation of stakeholder discussions around the eligibility of storage resources to participate in future solicitations. *See ISO New England Inc. and New England Power Pool Participants Committee*, 169 FERC ¶ 61,195 at P 21 (2019) (noting ISO-NE’s “intention to hold stakeholder discussions following the [Boston] RFP to consider additional changes to the competitive solicitation process.”). These efforts should begin as soon as possible. NESCOE looks forward to working with ISO-NE and stakeholders to consider Tariff revisions that account for the important role that NTAs can play in competing to meet regional transmission system needs more cost-effectively.

The lack of competition in New England raises obvious questions about whether consumers are paying more for transmission than is necessary. Over \$1 billion in transmission is already planned over the next ten years, with many of these projects under construction or in the siting approval process.⁴⁴ Consistent with trends over the last decade, transmission costs are projected to continue their climb into the future. With revenue requirements forecast to increase from \$2.146 billion in 2018 to \$2.7 billion in 2023, consumers would see a rate increase of almost 25% over this five-year period.⁴⁵ Even before these increases take effect, an ISO-NE analysis shows that most residential retail electric customers in New England paid transmission costs representing 11% to 18% of their total retail rates.⁴⁶

While transmission investments can, of course, provide consumers with reliability benefits, project costs matter. Competition provides a platform to drive down costs by incenting developers to bid lower prices, propose innovative solutions, assume project risks, and commit to contain costs. New England consumers lose the benefits of competition when ISO-NE assigns a transmission solution to the incumbent utility.⁴⁷

NESCOE shares the Commission's concern regarding how broadly the exemption has been implemented in New England. ISO-NE's use of the exemption has largely resulted in a pre-Order 1000, *status quo* approach to meeting transmission needs that displaces competition.

⁴⁴ 2019 RSP at 2.

⁴⁵ *Id.* at 96 (Table 5-2) (showing the Regional Network Service ("RNS") rate in 2018 at \$110.43/kW-year and the forecasted RNS rate in 2023 at \$138/kW-year).

⁴⁶ Joint Report of the Consumer Liaison Group Coordinating Committee and ISO New England, 2018 Report of the Consumer Liaison Group, Mar. 12, 2019, at 32, available at https://www.iso-ne.com/static-assets/documents/2019/03/2018_report_of_the_consumer_liaison_group_final.pdf.

⁴⁷ See First Compliance Order at P 182 ("... the elimination of federal rights of first refusal in Order No. 1000 was intended to benefit customers by fostering competition in transmission development.") and P 187 (finding that a "lack of competition harms customers by discouraging new entrants from submitting proposals that may be a more efficient or cost-effective solution to a region's needs.") (footnote omitted). See also *MISO Trans. Owners*, 819 F.3d at 333 (developers participating in a competitive process for transmission development are incented to "bid down the prices at which they will build new facilities in order to remain competitive.").

With the Commission’s direction, the process can and should be adjusted to promote competition without placing reliability at risk. NESCOE sets forth below one approach that seeks to achieve the balance between competition and time-sensitive reliability needs that the Commission intended in approving the exemption.

There is also a need, consistent the Commission’s inquiry in the October 2019 Order, for enhanced transparency in connection with ISO-NE’s identification of time-sensitive needs and the designation of projects meeting those needs.⁴⁸ ISO-NE should establish a single webpage that provides information on ISO-NE’s determination of time-sensitive needs and how each designated project meets the Commission’s criteria for using the exemption. Alternatively, ISO-NE should explain why creating that webpage is not possible or is impractical.

A. The Commission Should Require ISO-NE to Establish a Competitive Process for Selecting Immediate Need Reliability Projects that Includes Flexibility to Address Concerns About Delays and Costs

i. Adoption of a Competitive Bidding Model for Immediate Need Reliability Projects Balances Time-Sensitivities with Competition

The October 2019 Order included questions about “additional conditions or restrictions that the Commission may consider imposing on the immediate need reliability project exemption contained in its tariff to help maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances.”⁴⁹ One of these questions contemplated the creation of “an abbreviated competitive process for immediate need reliability projects.”⁵⁰ NESCOE

⁴⁸ October 2019 Order at P 11.

⁴⁹ *Id.* at P 19.

⁵⁰ *Id.* (Question 15f).

supports the implementation of a tailored competitive process to meet time-sensitive reliability needs in New England.

The model already exists for ISO-NE to meet immediate reliability needs through a competitive process. With the Commission’s approval, transmission planning regions implemented two different structures to comply with Order 1000’s removal of federal rights of first refusal: a Competitive Bidding model and a Sponsorship model.⁵¹ The Sponsorship model, which ISO-NE adopted, should continue to be used as the primary vehicle for solving New England’s reliability needs. However, the Competitive Bidding model provides a ready mechanism for ISO-NE to introduce competition in the case of more time-sensitive needs. In this way, ISO-NE could adopt a hybrid structure, employing the Sponsorship model for longer-term needs and the Competitive Bidding model for immediate needs.⁵²

Under the Competitive Bidding model, project developers compete to *construct* a specified project.⁵³ This can include financing, building, owning, and operating the project.⁵⁴ The transmission planning entity (*e.g.*, an RTO), with stakeholder input, designs the specific solution to an identified need and then solicits bids to develop that project. While specific tariff provisions differ, SPP, the Midcontinent Independent System Operator, Inc., and the California

⁵¹ See Supplemental Notice of Technical Conference and Request for Speakers, Competitive Transmission Development Technical Conference, Docket No. AD16-18-000, May 10, 2016 (“Technical Conference Supplemental Notice”), at 9.

⁵² See *Time to Open “Time-Sensitive” Transmission Projects to Order 1000 Competition*, Utility Dive, May 9, 2019, available at <https://www.utilitydive.com/news/time-to-open-time-sensitive-transmission-projects-to-order-1000-competiti/554397/>.

⁵³ See Technical Conference Supplemental Notice at 9.; Brattle Group, *Transmission Competition Under FERC Order No. 1000 at a Crossroads: Reinforce or Repeal?: Discussion Paper*, October 10, 2018 (“Brattle Presentation”), at Slide 8.

⁵⁴ Brattle Presentation at Slide 8.

Independent System Operator Corporation (“CAISO”) all adopted a form of the Competitive Bidding model.

The Sponsorship model involves a competition for *ideas*.⁵⁵ Rather than developing the solution, the RTO or other transmission planning entity invites proposals to meet the identified need. Bidders generally have broad latitude to submit different approaches, including innovative designs. The planner compares the solutions based on evaluation criteria in its tariff and selects a qualified developer as the project sponsor to “finance, build, own, and operate” the project.⁵⁶ In addition to ISO-NE, PJM and the New York Independent System Operator have adopted forms of the Sponsorship model.

NESCOE strongly supports maintaining the Sponsorship model to meet ISO-NE’s longer-term reliability needs. A Sponsorship model, which solicits ideas for solving the need, offers consumers the potential for significant cost savings in meeting these longer-term needs through innovative and creative approaches. The Boston RFP, issued late last year, may provide insight into the potential cost savings achieved through use of this model.

For more immediate needs in New England, the Competitive Bidding model is positioned to achieve the balance between promoting competition and avoiding delays that risk reliability. Under this model, ISO-NE would lead the process for designing a solution similar to its current practice for immediate need reliability projects, thus maintaining control over the timeline. Then, ISO-NE would solicit bids from qualified developers to construct the project, introducing competition among developers for the first time in meeting these time-sensitive needs. The solicitation would, by definition, be more limited in scope than the Sponsorship model,

⁵⁵ See Technical Conference Supplemental Notice at 9; Brattle Presentation at Slide 8.

⁵⁶ Brattle Presentation at Slide 8.

facilitating a streamlined evaluation and selection process that could focus primarily on cost and not on design. Indeed, CAISO determined that this kind of “streamlined and efficient competitive solicitation approach” obviated the need to seek from the Commission the type of exemption that is the subject of this Section 206 proceeding.⁵⁷

ISO-NE does not seem to consider this kind of streamlined approach in its response to the Commission’s question about an abbreviated competitive process. ISO-NE focuses on the time it will take to “weigh options to meet a need” and analyze proposed solutions.⁵⁸ But under a Competitive Bidding model ISO-NE would not issue a broad solicitation and wade through different solutions. As it does today, ISO-NE could lead the design process “as soon as the needs are identified.”⁵⁹ With stakeholder input, ISO-NE would identify one solution to the need and would solicit bids to construct the project(s). The ISO-NE Response fails to explain why system reliability would be jeopardized through use of this type of model.

Adopting a Competitive Bidding model for immediate need projects, rather than sole sourcing them, also provides the potential for meaningful cost containment. When projects are assigned to an incumbent transmission owner under the current exemption, that utility has no incentive to propose cost containment features. Those utilities are allowed to recover costs associated with such a project consistent with the Commission’s traditional cost-of-service ratemaking rules and without any obligation to cap costs or bear project risks. Furthermore, even if a transmission owner agreed to restrictions on cost recovery for these projects, the absence of competition would call into question the efficacy of any such condition or limitation. A

⁵⁷ Motion for Leave to Answer Protests and Answer to Protests of the California Independent System Operator Corp., Docket No. ER13-103-000 (filed Oct. 4, 2013), at 13.

⁵⁸ ISO-NE Response at 18-19.

⁵⁹ *Id.* at 19.

transmission owner committing to restrictions on recovery if costs escalate could limit this risk by reflecting the potential for cost increases in its project estimate. While developers could, of course, similarly account for cost escalations in a competitive process, robust competition among developers encourages project sponsors to sharpen their pencils and limit risk shifting to consumers in an effort to become the winning bidder.

ii. ISO-NE Could Retain Flexibility to Exclude Some Projects from Competition

NESCOE shares the Commission's concern about the need to balance the promotion of competitive processes with reliability risks if time-sensitive projects are delayed.⁶⁰ On a case-by-case basis, ISO-NE could be permitted to justify that the potential for delays for a particular time-sensitive reliability need warrants the development of a solution outside of the Competitive Bidding process.

Like the Commission's directive regarding the current exemption, this carve-out from the competitive process should only be employed in limited circumstances. Also, like the existing exemption, the Commission should place bounds on ISO-NE's use of this limited carve-out. The Commission should continue to impose criteria 2-5.⁶¹ This would ensure that there is a process in place for ISO-NE to post on its website an explanation of the reliability risk and time-sensitivity at issue and why it cannot administer the competitive process. States and stakeholders would also have the opportunity to provide feedback to ISO-NE in response to its explanation, with those comments made publicly available. ISO-NE should also be required to maintain on its website a list of all projects, in-service and under development, that it selected under this

⁶⁰ October 2019 Order at P 4. Importantly, as noted above, NESCOE does not understand that ISO-NE's deferral of transmission solutions to time-sensitive needs has, to date, resulted in adverse reliability impacts and a re-study of needs may have led ISO-NE to determine that those needs have been reduced.

⁶¹ October 2019 Order at P 3 (listing criteria ii-v).

carve-out and provide status reports on active projects. As discussed below in Section II.B, all of this information should be contained on a single ISO-NE administered webpage. The Commission should further require an annual informational filing requirement, similar to what is required today, to provide a more formal public forum for this information and opportunity for Commission review.

In addition, given ISO-NE's extensive use of the current exemption, the Commission should consider requiring project-specific filings in initial years as a condition for employing the carve-out. For some period of years, pending an evaluation of the new reforms in practice, the Commission could require ISO-NE to make a project-specific filing demonstrating that it has met the Commission's criteria for using the carve-out.

NESCOE recognizes that there may be other categories of system needs where, on a case-by-case basis, a competitive process may not be in consumers' interest. ISO-NE's administration of a competitive process takes time and resources, the costs of which consumers bear. In some cases, those costs could exceed the cost of the solution selected to meet the identified need. That outcome makes no sense for consumers. Accordingly, if ISO-NE believes that the costs it would incur in administering a procurement would exceed the costs of a likely solution, it should have flexibility to propose a different approach to meeting that system need. Subject to appropriate restrictions and conditions, tariff reforms could provide ISO-NE with flexibility to pursue solutions to a limited category of system needs outside of the competitive process.

B. The Commission Should Require Greater Transparency Regarding the Identification of Immediate Needs and Selected Projects

The October 2019 Order expressed concern regarding the presentation and availability of information on the RTOs' websites in connection with immediate need projects:

[U]pon review of each of the Responding RTOs' websites, it is not always clear whether and where the Responding RTO has provided to stakeholders all of the required information outlined in the second through fourth criteria for each individual immediate need reliability project that the Responding RTO listed in its annual informational filings. In some instances, it is difficult to locate where the Responding RTO separately identifies and posts an explanation, in advance, of reliability violations and system conditions for which there is a time-sensitive need, and, therefore, it is not clear whether the information provides sufficient detail of the need and time sensitivity, as required. Where information is provided, it appears that the Responding RTO discloses the reliability need and the transmission project proposed to meet that need to stakeholders at the same time, rather than posting the time-sensitive reliability need in advance. Furthermore, when the Responding RTO posts an immediate need reliability project, the information about the project is in some cases very limited, with little or no explanation of the circumstances that generated the immediate reliability need, what other transmission and non-transmission alternatives the Responding RTO considered to meet the reliability need, and why the need was not identified earlier. It is also not readily apparent in some cases where the Responding RTO publicly posts all comments provided by stakeholders in response to each immediate need reliability project description.^[62]

NESCOE shares these concerns regarding the need for greater transparency in New England. Information on immediate need projects is diffused across ISO-NE's website. No single webpage exists for the Commission, a consumer-interested representative, or stakeholder to review how ISO-NE has complied with the Commission's criteria for using the exemption. The ISO-NE Response provides various links to individual webpages to find its needs assessments,⁶³ solution studies,⁶⁴ and stakeholder comments on needs assessments.⁶⁵ ISO-NE also posts to its website a list of prior year designations of immediate need projects.⁶⁶

⁶² *Id.* at P 11 (footnote omitted).

⁶³ ISO-NE Response at 5, 9.

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 11.

⁶⁶ *See* https://www.iso-ne.com/static-assets/documents/2019/01/2018_prior_year_projects_section_4j_iii.pdf.

In other cases, the current status of solutions for time-sensitive needs is unclear. As discussed above, ISO-NE has made numerous determinations of time-sensitive needs across the system, with most of those studies conducted between 2015-2018. However, as of the end of last year, ISO-NE had only assigned projects in response to time-sensitive needs in SEMA/RI and the Boston area. As an informational matter, ISO-NE could consider producing a list reflecting the status of solution development for identified time-sensitive needs. If needs were classified as time-sensitive years ago but ISO-NE has not yet selected projects to meet those needs, it raises questions regarding whether the appropriate criteria is being used to assess the time-sensitivity of those needs. A list tracking the development of solutions to time-sensitive needs could help clarify why solutions have not yet been selected or may no longer be needed.

To be clear, NESCOE does not believe that ISO-NE is seeking to impede information related to immediate need projects. However, it can build a better warehouse. If ISO-NE believes it is already posting on different parts of its website all of the information the Commission requires,⁶⁷ this should be an exercise in compiling and organizing that information. ISO-NE could create a centralized location on its website that allows for the review of its use of the exemption and how it has met the Commission's criteria for each project. To facilitate review, the Commission could consider requiring that ISO-NE organize the information using its criteria as a guide.⁶⁸ The Commission should require ISO-NE to house this information in one place or provide ISO-NE the opportunity to explain why it is not possible or would be impractical.

⁶⁷ ISO-NE Response at 12, 16 (attesting that ISO-NE complies with the Commission's process for identifying, and developing solutions for, immediate need projects.).

⁶⁸ See October 2019 Order at P 3 (setting forth the five criteria).

III. CONCLUSION

NESCOE appreciates the Commission's continued engagement on competitive transmission and its initiation of this proceeding. NESCOE respectfully requests that the Commission require ISO-NE to establish a competitive process for immediate need reliability projects and take other action consistent with these comments.

Respectfully submitted,

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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 Cambridge, Massachusetts this 27th day of January, 2020.

/s/ Jason Marshall

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