

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

**Building for the Future Through Electric            )  
Regional Transmission Planning and Cost            )  
Allocation and Generator Interconnection        )**

**Docket No. RM21-17-000**

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

Pursuant to the Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) on April 21, 2022,<sup>1</sup> and the Commission’s Notice on Requests for Extension of Time issued in this docket on May 25, 2022, the New England States Committee on Electricity (“NESCOE”) files reply comments on the Commission’s proposed reforms to address deficiencies in the Commission’s electric regional transmission planning, cost allocation, and generator interconnection processes. NESCOE filed initial comments on the NOPR on August 17, 2022.<sup>2</sup>

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<sup>1</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,028 (2022) (“NOPR”).

<sup>2</sup> Initial Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Aug. 17, 2022) (“NESCOE Initial Comments”). Given the breadth of initial comments, NESCOE’s reply comments are narrow in scope, and silence on any given issue should not be construed as agreement with any particular position.

NESCOE also filed comments on the Commission’s Advance Notice of Proposed Rulemaking, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021) (“ANOPR”). See Initial Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Oct. 12, 2021) (“NESCOE ANOPR Initial Comments”).

## I. REPLY COMMENTS

### A. States Must Have a Central Role in All Aspects of Long-Term Regional Transmission Planning and Cost Allocation, and the Commission Should Allow Transmission Providers Flexibility to Propose Approaches That Best Accommodate the States in Their Regions.

NESCOE emphasized throughout initial comments the need for states to have a central role in all aspects of Long-Term Regional Transmission Planning, from the early stages through the development of cost allocation methodologies.<sup>3</sup> Comments submitted by ISO New England Inc. (“ISO-NE”) on the NOPR echo this theme. As ISO-NE explained, “a longer-term planning process for public policy that affords the states a greater, decision-making role is a necessary element to realizing the additional investment needed for a reliable, clean energy future.”<sup>4</sup> NESCOE supports ISO-NE’s request that “[t]he Commission should explicitly authorize, or allow for, an approach in which the region’s states occupy a central decision-making role in *all* aspects of long-term transmission planning for public policy, including scenario analysis development.”<sup>5</sup> ISO-NE’s request underscores the imperative for greater state involvement in transmission.

Some transmission owners express alarm over the idea of states having the right to determine cost allocation, even for Long-Term Regional Transmission Facilities needed to satisfy state public policies. National Grid PLC (“National Grid”), for example, urged the Commission to “recognize that, under the Federal Power Act (‘FPA’), the right to propose electric transmission rate design, including cost allocation, rests with public utilities. As such,

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<sup>3</sup> NESCOE Initial Comments at 9-10, 16-19, 28-29, 41-44, 46, 48-49, 54-59.

<sup>4</sup> Initial Comments of ISO New England Inc., Docket No. RM21-17-000 (filed Aug. 17, 2022) (“ISO-NE Initial Comments”), at 2-3.

<sup>5</sup> *Id.* at 4 (emphasis in original).

any State Agreement Process contemplated by the Final Rule should be based on public utilities voluntarily affording a role for states in the cost allocation process rather than the Commission's seeking to involuntarily deprive public utilities of their statutory rights."<sup>6</sup>

While National Grid indicated that it "anticipates that a multi-state cost allocation agreement would be honored and filed with the Commission by the relevant public utility[,]"<sup>7</sup> not all public utility transmission owners seemed willing to adopt such an approach. Exelon Corporation ("Exelon"), commenting through the lens of a transmission owner in PJM Interconnection, L.L.C. ("PJM"), argued as an initial matter that the Commission should require a "backstop" cost allocation methodology in the event that states cannot reach agreement.<sup>8</sup> Exelon explained that "[f]ollowing the selection of the project, or portfolio of projects, and within a certain limited period of time, states would have the opportunity to propose an alternative cost allocation to the *ex ante* methodology."<sup>9</sup> However, Exelon then asserted that "[t]he FPA section 205 rights holders can then decide to accept and file the state alternative, modify it, or reject it and keep the *ex ante* cost allocation. Such a process would respect the legal rights that transmission owners, at least in PJM, have retained and that cannot be ceded to the states....Additionally, states would always have the option to file a complaint pursuant to FPA section 206."<sup>10</sup>

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<sup>6</sup> Comments of National Grid PLC, Docket No. RM21-17-000 (filed Aug. 17, 2022), at 25.

<sup>7</sup> *Id.* at n.55.

<sup>8</sup> Comments of Exelon Corporation, Docket No. RM21-17-000 (filed Aug. 17, 2022), at 26.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 26-27.

The Commission should reject Exelon’s proposed approach as a national model. NESCOE’s initial comments anticipated the argument that requiring public utilities to file a state cost allocation method could be construed as requiring them to “cede” their FPA section 205 rights.<sup>11</sup> As NESCOE explained, states are not public utilities and cannot file a cost allocation method. A Final Rule that requires public utility transmission providers to file the state-preferred cost allocation method along with their own preferred cost allocation—assuming a disagreement—would respect the FPA section 205 rights that the public utilities hold. If the Commission were to adopt a scheme that allowed public utilities to refuse to file the region’s state-preferred cost allocation method for Long-Term Regional Transmission Facilities (which, by definition are proposed to be those facilities “selected in the regional transmission plan for purposes of cost allocation to address transmission needs driven by changes in the resource mix and demand”),<sup>12</sup> it would impede a crucial aspect of the proposed reforms.

Comments filed by the Organization of MISO States, Inc. (“OMS”) on the state agreement process illustrate that this is another area where regional flexibility is warranted. OMS explained that in the existing Midcontinent Independent System Operator, Inc. (“MISO”) process, “states are heavily involved in the development of cost allocation methodologies and are afforded the ability to lead and establish the timing and scope of stakeholder discussions on cost

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<sup>11</sup> NESCOE Initial Comments at 69 (distinguishing its recommendation and the proposed reform from *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9 (2002)). *See also* Initial Comments of the Entergy Operating Companies, Docket No. RM21-17-000 (filed Aug. 17, 2022), at 31-34 (explaining its view that the proposal to involve states early on in cost allocation decision-making does not violate *Atl. City Elec. Co. v. FERC* because, in Entergy’s view, the public utilities would have agreed to the state agreement process up front). While NESCOE disagrees with Entergy as to what happens in the case of disagreement between the states and public utilities over cost allocation, Entergy’s comments are nonetheless informative on the section 205 issue identified in the Exelon comments.

<sup>12</sup> NOPR at n.507.

allocation.”<sup>13</sup> OMS stated that they “agree with the NOPR’s proposed requirement that relevant state authorities continue to have an integral role in the development of cost allocation methodologies prior to filing and selection but question the need for a formal process.”<sup>14</sup> NESCOE takes no issue with what OMS described as a process for the MISO region. Rather, the OMS comments underscore that regions may prefer different processes. To reaffirm NESCOE’s initial comments, for New England, if the relevant state entities opt for a State Agreement Process, the details of that process should be informed by states and filed with the Commission.<sup>15</sup>

Much of the potential controversy over cost allocation could be avoided if the Commission confirms, as both NESCOE and ISO-NE requested, that there is no obligation for the transmission provider to select a project for inclusion in the regional system plan or for purposes of regional cost allocation.<sup>16</sup> If the states have an opportunity for buy-in that a particular Long-Term Regional Transmission Facility should be selected in a regional system plan and for purposes of regional cost allocation, it is much more likely that the states in a region will coalesce around a cost allocation method that could be filed by the public utility

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<sup>13</sup> Initial Comments of the Organization of MISO States, Inc., Docket No. RM21-17-000 (filed Aug. 17, 2022), at 11.

<sup>14</sup> *Id.*

<sup>15</sup> NESCOE Initial Comments at 63.

<sup>16</sup> *Id.* at 46-47; ISO-NE Initial Comments at 35 (“the states should be responsible for determining whether to move forward with and selecting the transmission investments, and the corresponding cost recovery method to address the identified system concerns, with the ISO playing a supporting, technical role....If the states choose not to move a project forward, the transmission provider should have the option to conclude the long-term planning cycle. This flexibility is critical to the success of long-term planning in New England, and avoids the consequences experienced with the Order No. 1000 public policy process.”).

transmission provider (and less reason, as National Grid suggested, for the public utility to have reason to disagree with broad state agreement).

**B. Clear Standards for Right-Sizing Projects in New England Have Yet to Be Developed and Are Needed.**

In initial comments, NESCOE expressed general support for the Commission’s proposed reforms to bring needed transparency to the process of “right-sizing” in-kind replacements of existing transmission facilities.<sup>17</sup> NESCOE noted that in-kind transmission replacements in New England—known as “asset condition projects”—have become a material component of the overall regional network service charge.<sup>18</sup> Over \$2.5 billion of these projects have been placed in service, and \$3.122 billion more are listed in ISO-NE’s regional system plan as proposed, planned, or under construction.<sup>19</sup> These projects are not part of the regional planning process that ISO-NE leads, yet their costs are regionalized.<sup>20</sup> Currently, transmission owners simply present proposed asset replacement projects to ISO-NE’s Planning Advisory Committee.

There is a need for clear standards in the ISO-NE tariff for considering when and how to right-size transmission facilities—beyond just the category of in-kind replacement projects contemplated in the NOPR. While the pace of new asset condition projects alone drives the need for such transparent tariff rules, right-sizing guidelines covering a broader category of projects would serve an important role as the region considers an expansion of the transmission system to

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<sup>17</sup> NESCOE Initial Comments at 78.

<sup>18</sup> *Id.* at 79-80.

<sup>19</sup> *Id.* at 80.

<sup>20</sup> *Id.* at 79.

account for new clean energy resources and state decarbonization requirements.<sup>21</sup> For these reasons, as NESCOE informed the Commission in initial comments,<sup>22</sup> NESCOE requested that ISO-NE explore changes in this area as part of its 2023 Work Plan.<sup>23</sup> ISO-NE is currently considering including that work as a project for next year.<sup>24</sup>

To the extent other commenters suggest that the Commission’s proposed reforms on right-sizing are already in effect in New England, NESCOE does not agree. As one example, in initial comments, Eversource expressed support for the NOPR’s right-sizing proposal, with certain modifications, stating that it “is already implementing the right-sizing approach.”<sup>25</sup> Eversource proceeded to describe a “Settlement Transmission Support Agreement” between an Eversource operating company (NSTAR Electric Company) and Park City Wind LLC, an affiliate of Avangrid, “that provides for the right-sizing of a new transmission line that will allow NSTAR to meet a reliability need on the transmission system, and at the same time facilitate the interconnection of future offshore wind projects.”<sup>26</sup> In noting its support for the Commission’s right-sizing proposal, Eversource cited to its experience with this Park City Wind Project and

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<sup>21</sup> See *id.* at 12-13 (describing ongoing ISO-NE 2050 Transmission Study “to enable visibility into potential future transmission system needs that account for the clean energy transition over a longer-term planning horizon” and to provide the states with a transmission upgrade roadmap).

<sup>22</sup> *Id.* at 21-22.

<sup>23</sup> See Memorandum from NESCOE to PAC Matters (Apr. 11, 2022) (requesting that ISO-NE include in its 2023 Work Plan an allocation of resources to develop standards or guidelines for right-sizing future transmission projects, including asset condition and reliability projects), at [https://nescoe.com/resource-center/right-sizing\\_tx\\_projects/](https://nescoe.com/resource-center/right-sizing_tx_projects/).

<sup>24</sup> ISO New England, Vamsi Chadalavada, 2022-2025 Roadmap to the Future Grid, NEPOOL Participants Committee Summer Meeting (June 21-23, 2022), at 19, at [https://nepool.com/wp-content/uploads/2022/06/NPC\\_20220621\\_0623\\_Composite4.pdf](https://nepool.com/wp-content/uploads/2022/06/NPC_20220621_0623_Composite4.pdf) (PDF at 32).

<sup>25</sup> Comments of Eversource Energy Service Company, Docket No. RM21-17-000 (Aug. 17, 2022) (“Eversource Initial Comments”), at 50.

<sup>26</sup> *Id.* at 50-51.

one other project, both of which Eversource described as “subject to the right-sizing approach[.]”<sup>27</sup>

The Park City Wind Project involves new facilities to interconnect offshore wind resources and not in-kind asset replacements.<sup>28</sup> It’s a wholly different context. Moreover, the Commission’s letter order in that proceeding made clear that cost responsibility rested with the settlement parties and that the Commission was not approving the regionalization of costs.<sup>29</sup>

Thus, while Park City Wind could be an example of a right-sizing approach, it is not, to NESCOE’s understanding, *the* proposed approach in the NOPR. In the interest of clarifying the record in this proceeding, NESCOE affirms the continued need for clear standards in New England for right-sizing projects.<sup>30</sup>

**C. The Commission Should Consider Ways to Incorporate Environmental Justice Into a Final Rule.**

NESCOE agrees with the United States Department of Energy (“DOE”) that “Energy Justice considerations will affect transmission planning and cost allocation and form an integral part of transmission planning.”<sup>31</sup> DOE described its Energy Justice Dashboard, a map which shows at the census-tract level which low-income communities and/or communities of color are

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<sup>27</sup> *Id.* at 52.

<sup>28</sup> *NSTAR Electric Company, Park City Wind LLC*, Letter Order, 179 FERC ¶ 61,200 (2022).

<sup>29</sup> *Id.* at P 9. NESCOE appreciates this clarification and notes that NESCOE was not informed that plans were afoot regarding possible regionalization of costs of right-sizing this individual transmission owner’s project. To the extent ISO-NE takes action to regionalize these costs, NESCOE expects it will have an opportunity to provide its perspective in writing prior to such a decision.

<sup>30</sup> NESCOE notes that, based on initial comments filed in the NOPR proceeding, there are a number of areas where, at a high level, Eversource and NESCOE agree on the NOPR’s proposed direction.

<sup>31</sup> Comments of the United States Department of Energy to Notice of Proposed Rulemaking, Docket No. RM21-17-000 (filed Aug. 17, 2022), at 9.

facing the worst air pollution, related public health risks and energy financial burden, and explained how transmission planning scenarios can address these factors. DOE explained:

Transmission planning scenarios inherently identify potential sources, sinks, and locations of transmission expansion facilities. For example, a scenario that identifies locations where there are frontline communities and historically underserved communities that have faced long-standing impacts may affect the future resource mix. A scenario that avoids placing additional burdens on these frontline communities could offer alternate resource siting and transmission expansion facility siting options or substation location options and could be beneficial to identifying areas where distributed energy resources could offer non-wires solutions to transmission congestion.<sup>[32]</sup>

As NESCOE explained in initial comments on the ANOPR, it is important to “[e]nsure that regional planning processes accommodate state efforts to advance equity and environmental justice concerns.”<sup>33</sup> NESCOE commends the work DOE has undertaken on these important issues, which should inform any final rule in this proceeding on long-term regional transmission planning.

**D. The Commission Should Allow Sufficient Time for Compliance.**

NESCOE supports ISO-NE’s request to allow for sufficient time for compliance.<sup>34</sup> The NOPR covers a wide range of potential reforms, and any final rule will likely require robust discussions among ISO-NE, states, transmission owning utilities, and other stakeholders in the region to work out the myriad details.

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<sup>32</sup> *Id.*

<sup>33</sup> NESCOE ANOPR Initial Comments at 5. *See also id.* at 10 (describing how its report, *New England Energy Vision Statement: Report to the Governors – Advancing the Vision* (June 2021), articulated the importance of incorporating equity and environmental justice issues).

<sup>34</sup> ISO-NE Initial Comments at 41.

## II. CONCLUSION

For the reasons discussed above, NESCOE respectfully requests that the Commission consider its comments in developing any final rule in this proceeding or taking further action on the potential reforms discussed in the NOPR.

Respectfully Submitted,

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