

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

Competitive Transmission Development)	Docket No. AD16-18-000
Technical Conference)	
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)	

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

The New England States Committee on Electricity (“NESCOE”)¹ appreciates the opportunity to provide comments in advance of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) June 27-28, 2016 technical conference on competitive transmission development related to Order No. 1000 implementation (the “Technical Conference”). NESCOE has expressed interest in participating in the Technical Conference and looks forward to hearing perspectives regarding the relationship between cost containment and competitive transmission development. This includes approaches to competition that can work in tandem with near-term reliability needs and ways in which cost control and cost discipline can be inserted into transmission development irrespective of whether needs are more immediate or longer-term.

As discussed below, transmission cost discipline is a fundamental component to any competitive transmission development process. To provide context for any NESCOE perspective expressed at the Technical Conference, provided below is a brief background on the New England states’ collective interest in transmission cost issues and cost containment and the opportunity for cost control mechanisms that a transition to a competitive framework provides for consumers. NESCOE also includes below its preliminary views on some potential associated issues that may warrant discussion at the Technical Conference.

¹ NESCOE is the Regional State Committee for New England.

I. BRIEF BACKGROUND

A. New England Transmission Investments

Over the last fifteen years, New England consumers have invested over \$7 billion in regional transmission infrastructure.² More than 600 projects have been placed into service during this time period.³ Hundreds of additional projects are planned in the next decade, representing further consumer investments in transmission of almost \$5 billion.⁴

These combined investments, as ISO-NE has noted, contribute to reliable system operations and have significantly alleviated costly congestion.⁵ New England consumers' substantial financial commitments to reliability projects reflect, in general, the region's recognition of the need for and value of transmission to satisfy reliability needs.

At the same time, New England has experienced dramatic cost increases associated with these projects. Since 2010, as illustrated in the graph below, New England consumers pay more as a percentage of their monthly bills for reliability-based transmission than do consumers in any other regional transmission organization region.⁶

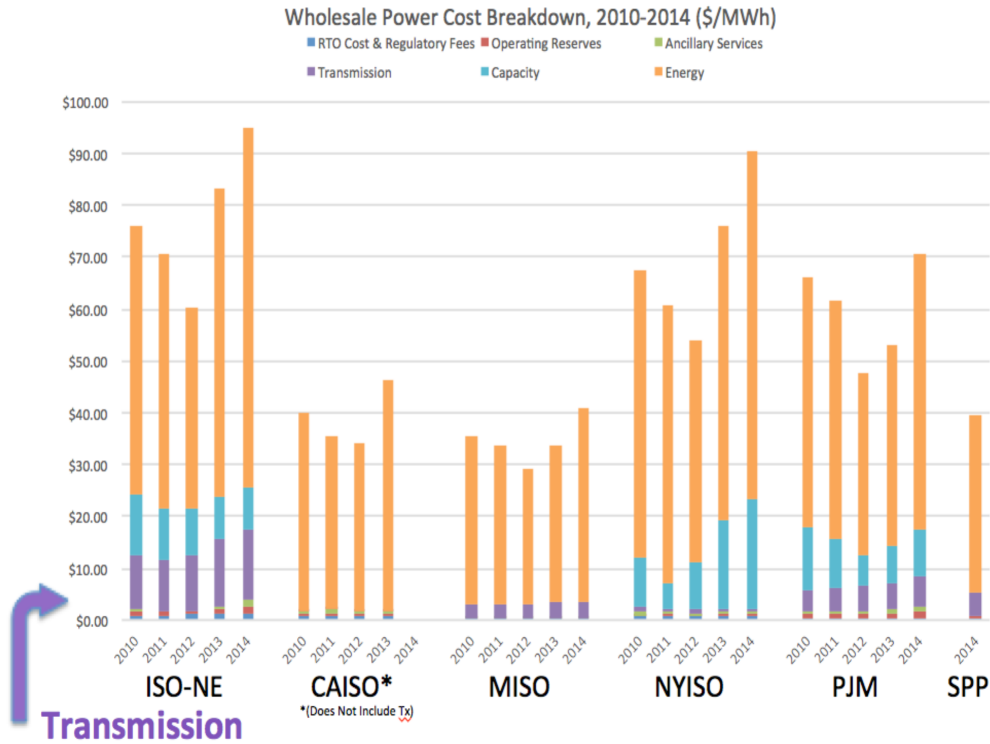
² ISO New England Inc., 2015 Regional System Plan, at 7, available at <http://www.iso-ne.com/system-planning/system-plans-studies/rsp>.

³ *Id.*

⁴ *Id.*

⁵ *See id.*

⁶ *See generally* ISO/RTO Joint Common Performance Metrics Report, Docket No. AD14-15-000 (filed Oct. 30, 2015), available at http://iso-ne.com/static-assets/documents/2015/10/ad14-15-000_10-30-15_iso-rto_common_metric_rpt.pdf.



According to a recent analysis presented to the Commission, the Regional Network Service rate, which is the charge in New England for high-voltage transmission service, has increased almost 400% over the last decade, from \$20.26/kW-yr. ten years ago to \$98.70/kW-yr. today.⁷ That rate is expected to climb to \$123.48/kW-yr. in 2020.⁸

B. NESCOE’s Support for Competitive Processes and Cost Containment Features

Since the rulemaking preceding Order No. 1000, NESCOE has supported the Commission’s efforts to establish meaningful competition in transmission development.⁹ NESCOE noted experiences in New England where transmission project costs were “well above

⁷ Complaint of Eastern Massachusetts Consumer-Owned Systems, Docket No. EL16-64-000 (filed Apr. 29, 2016), at 11-12.

⁸ *Id.* at 12.

⁹ *See, e.g.*, Comments of the New England States Committee on Electricity on Notice of Proposed Rulemaking, Docket No. RM10-23-000 (filed Sept. 29, 2010) (“NOPR Comments”), at 24-25; Motion to Intervene and Protest of the New England States Committee on Electricity, Docket Nos. ER13-193-000 and ER13-196-000 (filed Dec. 10, 2012), at 14-16, 37, 45-52.

project cost-estimates at the time of project approval” and that this outcome “frustrates, or worse, makes impossible a timely comparison of alternative physical solutions[.]”¹⁰

NESCOE has long viewed cost discipline and containment as a critical and inseparable element of any selection process for transmission infrastructure. NESCOE encouraged the Commission to include in the final rule that became Order No. 1000 “transmission cost control and review mechanisms to assure construction is performed as efficiently as possible and that costs incurred are reasonable.”¹¹ At the same time, NESCOE understands cost containment is complex, that various approaches could result in unintended consequences, and that the implementation details require careful deliberation.

C. New England States’ Efforts to Inform a Transition to a Competitive Process

Over the past year, ISO-NE, stakeholders, and state officials have worked to understand the range of issues that must be addressed as New England begins implementation of Order No. 1000 competitive processes. Among the open issues are how to incorporate price controls and cost caps into project selection criteria.

Late last year, in an effort to inform the region’s transition to Order No. 1000, NESCOE and ISO-NE jointly sponsored a “Competitive Transmission Forum.” The forum explored mechanisms employed in other regions as part of early Order No. 1000 implementation processes, including cost containment mechanisms. Representatives from regional transmission organizations and incumbent and non-incumbent transmission project developers shared their

¹⁰ NOPR Comments at 25. *See* Notice of Intervention and Protest of the Southern New England States, Docket Nos. ER13-193-000 and ER13-196-000 (filed Dec. 10, 2012), at 34-35 (stating that more than two-thirds of recent projects over \$10 million “had in-service costs that exceeded the planned estimate costs.”). NESCOE understands that other regions have similarly had to confront cost overruns for approved projects. *See, e.g., SPP Board, Members Frustrated over Tx Project Overruns*, RTO Insider, July 21, 2015, at 1, 8 (describing report to stakeholders that 23 of the 30 committed projects to meet identified needs faced cost increases exceeding 30% of project cost estimates).

¹¹ NOPR Comments at 22.

experiences with project solicitations that have taken place outside New England.¹²

An ongoing competitive process in New England outside of Order No. 1000 might also inform the discussion on cost containment. In November 2015, entities in three New England states issued a request for proposals for clean energy and associated transmission (the “Clean Energy RFP”).¹³ The Clean Energy RFP expresses a strong preference for cost containment. While it does not foreclose cost-of-service bids, the Clean Energy RFP states that “proposals including cost containment features such as fixed price components, cost overrun restrictions, or other cost bandwidth provisions to limit customer risk will be viewed more favorably.”¹⁴ The Clean Energy RFP further states that projects without “significant cost containment features” are unlikely to be selected and “strongly encourages” bidders to include such elements in their proposals.¹⁵ The project selection process is currently pending, with any selection and regulatory review expected this year.¹⁶

Separately, another critical issue under discussion in New England is how the time sensitivity of a reliability need affects the competitive process for transmission solutions, or as it turns out, might have the effect of precluding competitive processes altogether. By way of background, the Commission approved in New England an exemption from the competitive process for reliability projects reflecting a time-sensitive need, allowing projects needed with

¹² Additional information on the forum, including presentations, is available at <http://nescoe.com/resources/comp-t-forum-26oct2015/>.

¹³ Notice of Request for Proposals from Private Developers for Clean Energy and Transmission, Nov. 12, 2015, available at <https://cleanenergyrfpdotcom.files.wordpress.com/2015/11/clean-energy-rfp-final-111215.pdf>.

¹⁴ *Id.* at 27 (footnote omitted).

¹⁵ *Id.* at n. 16.

¹⁶ For additional information on the Clean Energy RFP timeline, see <https://cleanenergyrfp.com/timeline/>.

three years or less to be assigned to incumbent developers.¹⁷ ISO-NE has recently presented to the Planning Advisory Committee (“PAC”) the process it intends to use for implementing the new competitive framework for reliability projects.¹⁸ Under this process, ISO-NE will continue to assess reliability needs over a ten-year planning horizon as it has done historically. However, to the extent a reliability need is identified within the three-year carve out period, ISO-NE would not conduct a competitive process for the longer-term needs (3-10 years) identified in that needs assessment.¹⁹ Instead, ISO-NE would first determine the time-sensitive solution.²⁰ ISO-NE would then re-run the needs assessment to identify whether any longer-term needs remain, or whether those needs had been solved by the time-sensitive solution.²¹ To date, NESCOE understands that every needs assessment ISO-NE has ever conducted shows a need within three years. The implications for competitive processes in New England are discussed more fully below.

II. COMMENTS

The Technical Conference underscores the importance of getting the details right in moving from Order No. 1000 requirements and rules to implementation. NESCOE appreciates the Commission’s efforts to explore the range of complex issues that have arisen in the transition to Order No. 1000 processes and, in particular, the Commission’s focus on cost containment. NESCOE looks forward to hearing the Commission’s and Commission staff’s perspective on

¹⁷ *ISO New England Inc.*, 143 FERC ¶ 61,150 at PP 235, 238 (2013).

¹⁸ ISO New England Inc., Transmission Planning Process Guide Solution Development, Rev. 1, Presentation to the Planning Advisory Committee, Mar. 31, 2016, available at http://www.iso-ne.com/static-assets/documents/2016/03/a2_transmission_planning_process_guide_solutions_study_and_competitive_solutions_process_presentation.pdf.

¹⁹ *Id.* at Slides 6-10.

²⁰ *See id.*

²¹ *See id.* at Slide 18.

these issues and in understanding challenges and potential paths forward from those who have been working to implement, and participate in, competitive processes.

The Commission's direction on cost containment is critical as competitive processes get underway to meet identified transmission needs. Competition encourages cost discipline through the process of evaluating and selecting projects proposed by incumbent transmission owners and from various independent developers. The weight assigned to cost in a competitive transmission process informs the selection of one project over another—or even the viability of non-transmission solutions to meet that need. By protecting against overruns, cost control features promote, and instill confidence in, the competitive process. Ultimately, confidence in cost control and a project's selection over other possible ways to meet a need can also enhance confidence during siting proceedings.

Conversely, confidence is of course eroded when project cost estimates are proven to be fictional. Moreover, when return-on-equity and incentives can be applied to cost overruns, not only is there no financial consequence to a project exceeding the cost component of its bid but there is an inherent economic reward in doing so. Cost containment provides a safeguard for consumers who have traditionally borne the burden of escalating costs without recourse and without the ability to turn back the clock and select an alternative project or resource to satisfy the need.

The Clean Energy RFP discussed above provides a potential model for competitive transmission solicitations. Under that structure, cost-of-service projects are not foreclosed from bidding: the process allows for flexibility and the ability of the marketplace to propose innovative rate designs. However, projects with cost containment features are strongly

encouraged and bidders are on notice that project selection will weigh heavily the inclusion of mechanisms to discipline and control costs.

Under an Order No. 1000 process, prospective developers should similarly be on notice that a project lacking cost control features will bear a heavier burden of demonstrating to the Commission that the rate for the project is just and reasonable. Particular scrutiny should be applied to costs exceeding the estimates provided during the procurement process.

NESCOE appreciates the detailed issues and questions on cost containment that are reflected in the preliminary agenda for the Technical Conference. One issue requiring close examination is the evaluation of cost capped proposals. NESCOE has stated that cost caps can “limit the risk of cost overruns ultimately paid for by consumers and are an appropriate selection criterion on which to base the evaluation of competing transmission projects.”²² In addition, a “cost cap methodology for transmission project proposals can appropriately balance consumers’ interest in cost certainty and transmission developers’ interests in ensuring that there is a means to accommodate legitimate unforeseeable transmission project cost overruns.”²³ However, the details matter. For example, if cost overruns are precluded from being charged to the regional rate but can be imposed on local consumers, does that merely shift the risk to a smaller subset of ratepayers? Under what circumstances should shareholders assume the risk of cost overruns? How do force majeure provisions operate within the proposed cost cap? What are the practical challenges in comparing numerous cost cap proposals, each with their own distinct features? While NESCOE does not favor new rules that would foreclose creative rate design proposals, uniformity in some areas could help establish parameters that could facilitate an orderly

²² NESCOE, 2015 Annual Report to the New England Governors, at 23.

²³ *Id.*

transition to processes reflecting mutually beneficial cost containment features. NESCOE appreciates the opportunity hear more about how cost caps have been evaluated in other regions and what reforms might help in undertaking comparisons of these bids.

In addition, NESCOE looks forward to understanding how other regions are implementing carve-out provisions that allow exemptions from the competitive process for time-sensitive reliability needs. As discussed above, for reliability needs, ISO-NE will first solve for projects needed within three years or less and would subsequently determine whether longer-term needs remain given the more immediate need solutions that are put in place. If past needs assessments are an indication of future outcomes, it is highly likely that every new or re-run assessment will show a need within three years. There is thus a potential that this study loop will cause all reliability needs to be met with time-sensitive projects exempt from competition. When projects are developed under the historic rather than a competitive framework, consumers lose the benefit of competition on costs and associated cost control mechanisms.

NESCOE is mindful of the complexities of competitive processes and the costs they require to execute. NESCOE also shares the Commission's and ISO-NE's view that preserving reliability is paramount. NESCOE has not and does not now advocate for pursuing competitive solicitations if that process endangers reliability. NESCOE would benefit from any discussion at the Technical Conference regarding how other regions are integrating competitive processes with the need for some reliability projects to be completed in the near term. NESCOE would also value discussion about how projects that are sole sourced due to time-sensitive needs can be designed to control costs and encourage discipline, and whether current FERC-jurisdictional

tariffs and agreements impede cost containment efforts for these projects.²⁴ At minimum, the Commission could explore developing parameters for time-sensitive projects such that, if project costs fall outside certain bands, they are not entitled to a presumption of prudence.

III. CONCLUSION

The collective perspectives exchanged at the Technical Conference can inform enhancements to the current process that will provide ratepayers with reliable service at the lowest reasonable cost. NESCOE looks forward to participating in the Technical Conference and to continuing to work with the Commission, ISO-NE, and others as New England transitions to a competitive process.

Respectfully submitted,

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²⁴ For example, under the Transmission Operating Agreement (“TOA”) between ISO-NE and incumbent transmission owners, there are several references to incumbent transmission owners having the right to recover prudently-incurred costs associated with transmission infrastructure. The TOA is available at http://www.iso-ne.com/static-assets/documents/regulatory/toa/v1_er07_1289_000_toa_composite.pdf.