

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

Participating Transmission Owners)	Docket Nos. RT04-2-000
Administrative Committee)	ER09-1532-000
)	

**MOTION FOR LEAVE TO INTERVENE AND COMMENTS OF
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214 (2014), the New England States Committee on Electricity (“NESCOE”) hereby files this Motion to Intervene and Comments in the above-captioned proceeding.

I. BACKGROUND

On April 28, 2015, the Massachusetts Attorney General (“MA AG”) and state agencies from across most of New England (the “Protesting Agencies”) filed a partial protest (the “Partial Protest”) to the informational filing made by the New England Participating Transmission Owners Administrative Committee (“PTOs”) on July 31, 2014 in the dockets listed above (the “PTO Filing”). The PTO Filing sets forth regional transmission rates (*i.e.*, Regional Network Service or “RNS” rates) and charges for the June 1, 2014 through May 31, 2015 period, to be collected through the ISO New England Inc. (“ISO-NE”) Transmission, Markets and Services Tariff (the “Tariff”).¹

The Partial Protest challenges the recovery through RNS rates of expenses that New Hampshire Transmission, LLC (“NHT”) incurred in connection with its “SeaLink” project.²

¹ PTO Filing at 1-2. Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the Tariff.

² *Id.* at 2.

NHT proposed SeaLink as a solution to reliability needs in the Greater Boston area.³ The Protesting Agencies state that “SeaLink was an unsolicited competing proposal” to a project put forward by two other transmission owners whose service territories and electric systems were located within the planning need area.⁴ Ultimately, ISO-NE did not selected SeaLink as the preferred solution.⁵

The Protesting Agencies assert that the recovery, through RNS rates, of expenses associated with the “studying or developing of the SeaLink proposal for the Greater Boston Reliability Project” are disallowed under the Transmission Operating Agreement (“TOA”) and the Tariff because “NHT is not the Transmission Owner with the obligation to plan or to construct reliability transmission upgrades in the franchise territories located in the reliability study area.”⁶ The Protesting Agencies state that “NHT should be ordered to reimburse RNS ratepayers for any such costs charged to date and should be prohibited from further collecting these or similar SeaLink-related expenses through its RNS rate.”⁷

The Protesting Agencies also contend that the PTO Filing is deficient because it fails to “contain sufficient information to reconcile [SeaLink] costs within NHT’s worksheets.”⁸ They state that the PTO Filing “does not provide documentation as to how much was actually

³ See July 9, 2013 ISO-NE presentation to the Planning Advisory Committee, *Greater Boston 2023 Needs Assessment and Solution Study Update*, at Slide 7, available at http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/prtcpnts_comm/pac/mtrls/2013/jul92013/a2_gbwg_update_july_2013_redacted.pdf. For more information, see ISO-NE’s Greater Boston Key Study Area webpage at <http://www.iso-ne.com/system-planning/key-study-areas/greater-boston>.

⁴ Partial Protest at 11.

⁵ *Id.*, citing Feb. 18, 2015 ISO-NE presentation to the Planning Advisory Committee, *Greater Boston Preferred Solution*, available at http://www.iso-ne.com/staticassets/documents/2015/02/a2_isonne_greater_boston_preferred_solution_non_ceii.pdf.

⁶ Partial Protest at 2, 12.

⁷ *Id.* at 18.

⁸ *Id.* at 12.

attributable to SeaLink planning expenses, where on Form 1 the entries for any such amounts were accounted for, or what precisely the costs were expended on.”⁹ The Protesting Agencies additionally state that, while pre-Order 1000 governing documents are controlling with respect to SeaLink cost recovery, NHT would still be prohibited from recovering SeakLink-related planning costs under the Order 1000 construct.¹⁰

The Protesting Agencies state that the MA AG’s office engaged in “lengthy but unsuccessful discussions” with NHT “in an attempt to resolve this dispute.”¹¹ Through these discussions, the MA AG asked NHT “to reconsider and remove the SeaLink-related expenditures from the RNS revenue requirement.”¹²

II. COMMUNICATIONS

Pursuant to Rule 203, 18 C.F.R. § 385.203 (2014), the person to whom correspondence, pleadings, and other papers in regard to this proceeding should be addressed and whose name is to be placed on the Commission’s official service list is designated as follows:

Jason R. Marshall
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III. MOTION TO INTERVENE

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

⁹ *Id.* at 11.

¹⁰ *Id.* at 12, 19-20.

¹¹ *Id.* at 1-2.

¹² *Id.* at 21.

Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO-NE administers.¹³ 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 reasonable cost over the long-term, consistent with maintaining reliable service and environmental quality.

The interests of the citizens of New England are directly affected by the subject matter of this proceeding. The PTO Filing is squarely related to the costs that New England consumers incur for regional transmission and associated services. The Partial Protest raises concerning issues around unauthorized cost recovery through the RNS rate and a lack of transparency and accountability regarding specific project costs in the PTO Filing. The outcome of this proceeding thus has significant consumer cost implications. Based on the foregoing, NESCOE has a direct and substantial interest in this proceeding, which will not be adequately represented by any other party. In addition, NESCOE's participation in this proceeding as the representative of the New England Governors will serve the public interest. NESCOE respectfully requests leave to intervene in this matter.¹⁴

IV. COMMENTS

The Partial Protest identifies significant and unanswered questions about the prudence of SeaLink-related costs being recovered through the RNS rate. It provides a compelling basis for FERC action. NESCOE strongly supports the Commission's investigation into these costs and

¹³ *ISO New England Inc.*, 121 FERC ¶ 61,105 (2007).

¹⁴ To the extent the Commission views this pleading as out-of-time, NESCOE submits that good cause exists to accept this motion to intervene out-of-time. NESCOE's participation in this proceeding as the representative of the New England Governors will serve the public interest and may assist the Commission in its deliberations. Furthermore, NESCOE's intervention at this stage will not prejudice other parties to this case and will not disrupt the proceeding. The instant motion to intervene and comment arises in response to the Protesting Agencies' allegations. At the outset of this proceeding, as set forth in the Partial Protest, issues around disallowable costs were not apparent in the PTO Filing. As described above, the Partial Protest was filed less than two weeks ago, following what the Protesting Agencies describe as "lengthy but unsuccessful discussions" to resolve the matter. Prior to such filing, NESCOE understands that no party had moved to intervene in the instant proceeding or filed any other pleading. For these reasons, NESCOE requests that the Commission accept its intervention in this proceeding and consider these comments.

appropriate action to ensure that consumers are refunded any unauthorized charges and that RNS calculations are adjusted to ensure a just and reasonable rate.

As a threshold matter, NESCOE is deeply concerned about the Protesting Agencies' asserted difficulties in attempting to identify certain expenditures that are input into the RNS rate. In providing guidance on formula rate updates, FERC staff has underscored that the Commission "recognizes that the integrity and transparency of formula rates and their implementation are critically important in ensuring just and reasonable rates."¹⁵ Formula rate informational filings "must contain sufficient support for all inputs so that interested parties can verify that each input is consistent with the requirements of the formula."¹⁶ It is critical that SeaLink-related costs—and, indeed, all costs—reflected in the RNS rate are clearly disclosed, verifiable, and made available and obvious to the Commission and all interested parties.

As New England transitions this month to a competitive construct under Order 1000, the Partial Protest highlights the importance of transparency and verification of project development costs that are input into the RNS rate. NESCOE has strongly supported robust competition in transmission development and the Order 1000 reforms to remove impediments to participation.¹⁷ With the advent of a new competitive process in New England, however, there must be strict enforcement and vigilance around project development cost recovery.

Under New England's Order 1000 process, transmission developers will have the opportunity to bid projects into a regional solicitation to meet reliability, market efficiency or

¹⁵ FERC Staff, *Staff's Guidance on Formula Rate Updates*, July 17, 2014, at 1, available at <http://www.ferc.gov/industries/electric/indus-act/oatt-reform/staff-guidance.pdf>.

¹⁶ *Id.*, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 at P 86 (2013).

¹⁷ See, e.g., *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 13-16 and 37-40, available at http://www.nescoe.com/uploads/Protest_Order_1000_as_filed.pdf.

public policy needs.¹⁸ However, project proponents are generally *not* permitted to seek regional cost recovery for the initial higher-level bids submitted through the process. In the case of reliability and market efficiency solutions, developers generally bear the costs of Phase One proposals and, provided they meet ISO-NE’s evaluation criteria for Phase One proposals, are only entitled to cost recovery associated with developing a more detailed Phase *Two* Solution.¹⁹ PTOs are entitled to recovery of “all prudently incurred study costs and costs associated with developing any upgrades or modifications to such PTOs’ existing facilities necessary to facilitate the development” of projects selected to provide Stage Two Solutions.²⁰

For public policy-driven projects, proponents of Stage One Proposals²¹ are *not* eligible for regional cost recovery under the Tariff, with a limited exception in the case of a PTO that receives a request from NESCOE or a state’s Governor or regulatory authority to submit a Stage One Proposal.²² Under this exception, a PTO is entitled to cost recovery from the network load of those states making the request.²³ A project developer who is selected to submit a Stage *Two* Solution can recover those prudently incurred costs through the Tariff.²⁴

There are thus important distinctions and variations in allowable cost recovery under the soon-to-be implemented Order 1000 process. Cost recovery is dependent on a range of factors involving the project type (reliability/market efficiency, public policy), exceptions to the general rule, and if a project is short-listed (Phase Two/Stage Two). As the region moves to this new

¹⁸ See Tariff, Attachment K, §§ 4.3, 4A.

¹⁹ *Id.* at § 4.3(i).

²⁰ *Id.*

²¹ As FERC has noted, “[t]o avoid confusion, ISO-NE refers to Phase One/Phase Two for its reliability and market efficiency competitive transmission planning process, and to Stage One/Stage Two for its public policy competitive planning process.” *ISO New England Inc.*, 150 FERC ¶ 61,209 at n. 23 (2015).

²² Tariff, Attachment K, § 4A.6.

²³ *Id.*

²⁴ *Id.*

process, the importance of transparency and clear presentation in formula rate calculations cannot be overstated. NESCOE encourages FERC to insist that transmission project developers present transmission development costs in a way that is both obvious and verifiable.

V. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission (i) grant its Motion to Intervene, and (ii) consider its Comments in this proceeding.

Respectfully submitted,

/s/ Jason Marshall

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Date: May 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Cambridge, Massachusetts this 8th day of May, 2015.

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