

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

ISO New England, Inc. and)	Docket No.	ER13-193-000 and
Participating Transmission Owners)		ER13-196-000
Administrative Committee)		(not yet consolidated)

**MOTION FOR LEAVE TO RESPOND AND RESPONSE OF
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY AND
THE FIVE NEW ENGLAND STATES**

Pursuant to Rules 212 and 213 of Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the New England States Committee on Electricity (“NESCOE”)² and the Department of Public Utilities of the Commonwealth of Massachusetts (“Mass DPU”), the Rhode Island Public Utilities Commission (“Rhode Island PUC”), the Connecticut Public Utilities Regulatory Authority (“CT PURA”),³ the Commissioner of the Connecticut Department of Energy and Environmental Protection (“CTDEEP”),⁴ the State of New Hampshire Public Utilities Commission (“NHPUC”),⁵ the Vermont Public Service Board (“VT PSB”),⁶ and

¹ 18 C.F.R. §§ 385.212 and 385.213 (2012).

² NESCOE filed the “Motion To Intervene And Protest of the New England States Committee on Electricity” in these dockets on December 10, 2012 (“NESCOE Protest”).

³ The Mass DPU, Rhode Island PUC and CT PURA filed the “Notice of Intervention and Protest of the Southern New England States” in these dockets on December 10, 2012 (“Southern New England States Protest”).

⁴ CTDEEP filed the “Motion To Intervene and Comments of the Commissioner of the Connecticut Department of Energy and Environmental Protection in Support of the Protest of the Massachusetts Department of Public Utilities” in these dockets on December 10, 2012. CTDEEP is the designated NESCOE manager for the state of Connecticut.

⁵ The NHPUC filed the “Motion for Out-Of-Time Intervention of The New Hampshire Public Utilities Commission” in these dockets on December 13, 2012. The NHPUC supports the Southern New England States Protest.

⁶ The VT PSB filed the “Out-of-Time Motion to Intervene of Vermont Public Service Board” in these dockets on January 7, 2013.

the Vermont Public Service Department (“VPSD”)⁷ (collectively, the “Five New England States”) hereby submit their Motion for Leave to Respond and Response to several of the Comments and Protests filed in the above-captioned proceeding in response to the October 25, 2012 filing by ISO New England Inc. (“ISO-NE”) and Participating Transmission Owners Administrative Committee (collectively, “Filing Parties”) in purported compliance with the Commission’s Orders on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000 and Order No. 1000-A⁸ (“October 25 Filing”). In support of this Motion and Response, NESCOE and the Five New England States state as follows:

I. MOTION FOR LEAVE TO RESPOND

Although Commission Rule 213(a)(2) generally prohibits answers to protests,⁹ the Commission has accepted answers to protests that provide information that assists the Commission in its decision-making process.¹⁰

NESCOE’s and the Five New England States’ submittal meets this standard. This Response will assure a more complete record in this proceeding by clarifying the New England states’ collective positions and will otherwise assist the Commission in

⁷ The VPSD is the designated NESCOE manager for the state of Vermont. The VPSD has to date not intervened in the above-captioned dockets. The VPSD represents the interests of the public in utility matters and is responsible for utility planning to meet the public’s need for least cost, sustainable energy.

⁸ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. and Regs. ¶ 31,323 (2011) (“Order No. 1000”), Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012) (“Order No. 1000-A”), Order No. 1000-B, 77 Fed. Reg. 64,890, 141 FERC ¶ 61,044 (2012).

⁹ 18 C.F.R. § 385.213(a)(2) (2012).

¹⁰ *See, e.g., Michigan Elec. Transmission Co., LLC*, 106 FERC ¶ 61,129, at p. 61,452 (2004) (allowing responses to protest “as they provide additional information that assists the Commission in the decision-making process”); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,031, at p. 61,077 (2003) (admitting answer to protest “since it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act”).

understanding and resolving the issues raised in various filings made in this proceeding. Therefore, NESCOE and the Five New England States respectfully request that the Commission grant their Motion for Leave to Respond.

II. RESPONSE

A. The New England States Advanced a Consensus Compromise Order No. 1000 Preliminary Draft Process for Regional Discussion, Spoke as a Region Throughout the Stakeholder Process and Have a Common Point of View on the October 25 Filing, But for the Maine Public Utility Commission's Post-Compliance Position Regarding the Public Policy Process.

Several New England state entities filed with the Commission Protests or Comments in response to the October 25 Filing, and expressed a common point of view. Specifically, in addition to NESCOE's Protest on behalf of the New England states and the Protest of the Southern New England States, the Commission received filings from the Connecticut Department of Energy and Environmental Protection and the State of Maine Public Utilities Commission ("Maine PUC"). Despite the different New England state pleadings, NESCOE and the Five New England States underscore that: (1) all six New England states worked collaboratively throughout the latter half of 2011 to provide to ISO-NE and market participants a draft framework for the process by which to consider public policy in transmission planning – a framework which represented the compromise, consensus views of the six New England states and which is largely reflected in both the October 25 Filing and the New England Power Pool Participants Committee ("NEPOOL") Comments on the October 25 Filing ("NEPOOL Comments"),¹¹ in which NEPOOL supports an alternative proposal ("NEPOOL-

¹¹ Comments of the New England Power Pool Participants Committee, Docket Nos. ER13-193-000 and ER13-196-000 (Nov. 16, 2012).

supported proposal”);¹² (2) the six New England states worked collaboratively throughout New England’s almost year-long Order No. 1000 stakeholder process and spoke with one voice to ISO-NE and stakeholders on suggested modifications to the public policy process and other issues up to and including communication of the six New England states’ collective view during NEPOOL’s Participants Committee final vote on the compliance filings; and (3) the New England states are of one view in connection with the October 25 Filing and the NEPOOL-supported proposal with one exception, *i.e.*, the Maine PUC’s position on certain aspects of the public policy process. NESCOE and the Five New England States provide this summation of the New England states’ collaborative and consensus approach to Order No. 1000 to make clear to the Commission the near unanimous views of the New England states, with the exception of the Maine PUC regarding this one discrete aspect of the NESCOE and the Southern New England States’ Protests of the October 25 Filing.

As described in NESCOE’s Protest, the six New England states are working collaboratively to identify those renewable resources most able to satisfy the states’ energy and environmental objectives through Coordinated Competitive Renewable Power Procurement. New England’s current work to identify renewable resources that may serve customers at the lowest all-in cost (generation and transmission combined) is pursuant to a July 2012 Resolution of the six New England Governors that calls for NESCOE to issue a competitive solicitation for renewable power by no later than December 2013. This collaborative multi-state effort to identify renewable resources is designed to capture the benefits of working as a region and importantly, allows each state

¹² NEPOOL Comments at 2.

to assess proposed projects that emerge through a competitive process and determine whether such projects satisfy each state's objectives and warrant long-term contracts supported by the ratepayers of that state. The region's efforts in furtherance of Coordinated Procurement began prior to Order No. 1000 and will move forward irrespective of the outcome of Order No. 1000.¹³ The Coordinated Procurement process also avoids the potential for unproductive, prolonged and distracting in-region disputes, which Order No. 1000 could frequently produce absent approval of the NEPOOL-supported proposal. The New England states' proactive collaboration on renewable resource procurement also mitigates the likelihood of litigation that would result from American Wind Energy Association and Renewable Energy New England's ("AWEA/RENEW") and the Conservation Law Foundation's ("CLF") proposed modifications.

B. The Commission Should Give AWEA/RENEW's Comments on the October 25 Filing No Weight.

The Commission should give the AWEA/RENEW Comments¹⁴ no weight when analyzing the October 25 Filing for several reasons. First, AWEA/RENEW did not raise the issues or concerns AWEA/RENEW now argue to the Commission during New England's almost year-long Order No. 1000 stakeholder process. New England held informal Order No. 1000 stakeholder sessions beginning in August 2011. Beginning in

¹³ The Maine PUC's suggestion that there is now a tariff arrangement-induced impasse in the region that Order No. 1000 seeks to address (Maine PUC Protest at 10-11) is confounding. The six states' agreement to implement Coordinated Competitive Renewable Power Procurement at the direction of the six New England Governors - irrespective of Order No. 1000 and the current tariff - belies the existence of an impasse in New England at this time in relation to the six states' proactive joint work to satisfy public policy objectives.

¹⁴ Motion to File Comments Out-of-Time and Comments of American Wind Energy Association and Renewable Energy New England, Docket Nos. ER13-193-000 and ER13-196-000 (Dec. 11, 2012) ("AWEA/RENEW Comments").

January 2012, these informal stakeholder sessions were followed by eleven regular NEPOOL Transmission Committee meetings that included discussions of Order No. 1000. According to minutes available as of the date of this filing, RENEW's professional staff attended at least five Order No. 1000 monthly stakeholder meetings over the course of the year.¹⁵ At none of those meetings did RENEW's professional staff publicly raise any concern, identify any issue, ask any question or offer any alternative to resolve any of the issues AWEA/RENEW now raise for the first time to the Commission about the public policy process reflected in both the October 25 Filing and the NEPOOL-supported proposal.¹⁶

Second, the positions AWEA/RENEW argue to the Commission are contrary to the votes AWEA/RENEW voting members cast on the October 25 Filing and the NEPOOL-supported proposal. Specifically, members of RENEW that voted on New England's Order No. 1000 compliance filings at the NEPOOL Participants Committee supported either the October 25 Filing or the NEPOOL-supported proposal, both of which incorporate the public policy process provisions that AWEA/RENEW now claim before the Commission are non-compliant.¹⁷ Indeed, AWEA/RENEW's Comments raise

¹⁵ Meeting minutes are available at http://www.iso-ne.com/committees/comm_wkgrps/trans_comm/tariff_comm/mins/2012/index.html.

¹⁶ One of RENEW's members, First Wind Energy Marketing, LLC, raised an issue during Transmission Committee meetings that was unrelated to the public policy process objections AWEA/RENEW now raise. See June 21, 2012 Transmission Committee meeting minutes, at 4, available at http://www.iso-ne.com/committees/comm_wkgrps/trans_comm/tariff_comm/mins/2012/index.html. Although Conservation Law Foundation ("CLF"), another RENEW member, did raise some of the issues it sets forth in its Motion to Intervene and Protest, the amendment CLF offered during the stakeholder process to address its concern was rejected by the stakeholders. See http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/prtcpnts/mins/2012/npc_2012_1003.pdf, at 2862.

¹⁷ See http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/prtcpnts/mins/2012/npc_2012_1003.pdf, Attachment 2.

for the first time concerns about elements of the proposed Order No. 1000 public policy stakeholder process (*i.e.*, the states' role in the process), which were part of a package that every voting member of NEPOOL supported, whether they voted in favor of what ultimately became the October 25 Filing or the NEPOOL-supported proposal.

The purpose of the Order No. 1000 stakeholder meetings over the course of the year was to allow ISO-NE, Transmission Owners, states and market participants to hear each others' concerns, questions, suggestions, proposals and/or alternatives to NESCOE's consensus straw proposal advanced in January 2012, to initiate discussion. The reason that stakeholders attended those meetings, presumably, was to offer their suggestions and alternatives for the region's consideration. In fact, after NESCOE advanced a proposed public policy process for discussion in January 2012, other stakeholders raised many issues and concerns that NESCOE had not previously considered, many of which provided significant value and significantly influenced the October 25 Filing and the NEPOOL-supported proposal. For example, the October 25 Filing and the NEPOOL-supported proposal's provisions on transmission cost control, which the states collectively consider critical, emerged from stakeholder discussions.

It would be contrary to the purpose, integrity and spirit of regional stakeholder processes for the Commission to give weight to arguments entities express for the first time in proceedings before the Commission when those same entities did not object or offer alternatives to proposals during prolonged regional stakeholder processes.¹⁸ In this

¹⁸ The Commission has consistently reminded parties that RTO stakeholder processes are the appropriate fora for addressing these types of concerns in the first instance. *See, e.g., ISO New England, Inc.*, 133 FERC ¶ 61,239 at P 26 (2010) (recommending that a party "address its concerns through the...stakeholder process"); *California Independent System Operator Corp.*, 119 FERC ¶ 61,313 at P 70 (2007) (encouraging a party to "actively participate in the stakeholder process to address the concerns raised herein"); *Morgan Stanley Capital Group, Inc. v. PJM Interconnection, LLC*, 96 FERC

case, the AWEA/RENEW arguments saved for Comments to the Commission are also contrary to the those organizations' voting members' views expressed through their favorable votes for the public policy process that is included both the October 25 Filing and the NEPOOL-supported proposal.

Separately, in comments RENEW submitted to NESCOE on August 12, 2012, in response to NESCOE's draft Work Plan to implement Coordinated Competitive Renewable Power Procurement, RENEW noted the states' and ISO-NE's contemplated role in Order No. 1000 public policy processes.¹⁹ In that submittal, RENEW commented on how the Order No. 1000 process could work together with Coordinated Competitive Renewable Power Procurement efforts. In those comments, RENEW made no mention of any concern about the states' role in the Order No. 1000 public policy process to which RENEW now, for the first time, objects to before the Commission.

In sum, the Commission should give no weight to comments in which AWEA/RENEW object, for the first time, to the public policy process after they did not object to or offer alternatives to the process during the region's extensive Order No. 1000 stakeholder process.

C. Arguments Contending That the States Should Not Have a Primary Role in Identifying Transmission Needed To Support the States' Public Policies Must Be Rejected.

To the extent the Commission considers the AWEA/RENEW Comments, the Commission should reject AWEA/RENEW's request that the Commission: (1) modify the process to allow ISO-NE to consider "potential future public policies" in transmission

¶ 61,331, at pp. 62,269-70 (2001) (encouraging parties to "first seek relief" through the stakeholder process).

¹⁹ *Comments of Renewable Energy New England regarding NESCOE's Coordinated Competitive Renewable Power Procurement Draft Work Plan* (August 31, 2012), available at <http://www.nescocoe.com/uploads/RENEW.pdf>.

planning; (2) reject the states' role in identifying state public policies; and (3) reject the fact that states must determine whether, how and at what cost states will implement state public policy objectives. The Commission should also reject: (1) CLF's claim that ISO-NE may substitute its judgment for that of the states in determining how states will satisfy state policy objectives and at what cost to state ratepayers; (2) ENE's requests regarding integrated resource planning because (i) these requests are outside the scope of compliance with Order No. 1000 and represent a collateral attack on the orders accepting ISO-NE's Order No. 890 compliance filing, and (ii) the Commission needs to do nothing to satisfy ENE's interest in alternative resource analysis given current work underway in New England; and (3) arguments that provisions granting New England states the ability to opt in to public policy projects constitute participant funding, will result in "free ridership," will give states a "veto" over public policy projects, or are not fully transparent or fully specified in the tariff.

NESCOE and the Five New England States note that although they are responding here to arguments objecting to certain aspects of the Filing Parties' public policy project proposal, they are not evincing support for the Filing Parties' proposal. Rather, NESCOE and the Five New England States are supporting those elements as part of the NEPOOL-supported proposal, which we believe is more responsive to the needs of all stakeholders, including the states, and is fully compliant with Order No. 1000.²⁰

²⁰ The Southern New England States explained in their Protest that although the Filing Parties' public policy project proposal contains a number of elements that were important to the states, other elements of that proposal are not just and reasonable and, as an integrated compliance filing, it should be rejected as unjust and unreasonable and not compliant with Order No. 1000. The Southern New England States urged the Commission instead to accept the NEPOOL-supported proposal as part of a broad-reaching compromise among diverse stakeholders.

1. The Commission Should Reject AWEA/RENEW's Request for the Commission to Require Speculation About Potential Future Public Policies and To Incorporate Such Speculation in Planning.

The Commission should reject AWEA/RENEW's claim that it would be imprudent for ISO-NE not to include someone's notion of what future public policies might be in transmission planning. The Commission should likewise reject AWEA/RENEW's associated request that the Commission amend ISO-NE's tariff to provide for consideration of public policy objectives not yet enacted into law.²¹ The Commission squarely addressed this issue in Order No. 1000 when it determined to define Public Policy Requirements as those requirements enacted by state or local legislatures. The Commission emphasized that public utility transmission providers are not required to consider – but are not precluded under Order No. 1000 “from choosing to plan for state public policy goals that have not yet been codified into state law, which they nonetheless consider to be important long-term planning considerations.” Order No. 1000 at P 216, n. 193. AWEA/RENEW's request that the Commission require ISO-NE to modify its tariff in a way that Order No. 1000 explicitly did not require should be rejected as a collateral attack on Order No. 1000.

ISO-NE or any other entity may, of course, conduct analyses to satisfy their curiosities regarding hypothetical future public policies at any time. In fact, Attachment K, ISO-NE's planning tariff, provides that ISO-NE may conduct up to three scenario analysis studies annually at the request of stakeholders. Scenario analysis and transmission planning are, however, distinct. Directing ISO-NE, stakeholders or federal agencies to speculate what public policies some government authority may adopt at some

²¹ AWEA/RENEW Comments at 10.

point in the future and to incorporate someone's notion of such hypothetical future public policies into transmission planning in New England would be an exercise in futility and an imprudent use of ratepayer funds. Similarly, as the New England states have no special clairvoyance to guess what public policies a New England state or federal legislature may adopt at some point in the future, it would be imprudent for the states to speculate about future acts of government and to have ISO-NE spend ratepayer dollars incorporating such speculation into planning. The only thing ISO-NE, the Commission, states and stakeholders could have confidence about with respect to such speculation is that it is almost certain to be wrong.

Allocating *any* transmission costs to consumers which result from the implementation of someone's speculation about potential future hypothetical public policies into ISO-NE's transmission plans would be unjust and unreasonable. It would be equally unjust and unreasonable to require ratepayers to pay for costs associated with someone's notion of a "public policy-related benefit" if policymakers do not in fact adopt such policies. To put a finer point on the issue, if the Commission were to require ISO-NE to consider a hypothetical public policy in transmission planning and cost allocation, the Commission would also need to address important threshold questions: (1) by what mechanism and from whom, and (2) at what point in time would New England consumers be reimbursed for costs ISO-NE allocates to them to consider these hypothetical public policies, and any transmission costs allocated to them based on a finding of "public policy-related benefits," if a government body does not ultimately adopt the potential future public policies at issue. At no point should ratepayers be responsible to fund transmission based on someone's speculation about unrealized public

policies that public policy makers never adopt into law. For these reasons, the Commission should deny AWEA/RENEW's request.

Accordingly, the Commission should reject requests to base transmission plans, and to create and allocate transmission costs to consumers, based on someone's speculation about possible future public policies.

2. The Commission Should Also Reject Requests That ISO-NE – or Any Entity Other than the States – Determine Whether, How and at What Costs States Should Implement State Public Policies.

AWEA/RENEW state that they do “not see a justification for why ISO-NE is entrusting its role for the selection of PPRs^[22] in a manner different from the processes it employs for other types of projects.” AWEA/RENEW Comments at 15.

AWEA/RENEW allege that ISO-NE “strips itself of any meaningful independence by deferring to state regulators regarding the identification of transmission needs driven by public policy and in the selection of transmission projects to implement in response to identified needs driven by public policy.” AWEA/RENEW Comments at 15. The Maine PUC similarly argues against state determinations about state public policies and against other New England's states rights to make decisions about the means to execute their state policies. Maine PUC Protest at 6-7.

As a threshold matter, whether New England stakeholders voted for the October 25 Filing or the NEPOOL-supported proposal, *all* New England stakeholders (other than a few abstentions) voted for a package that included a public policy process that is designed to be open and recognize both the value of stakeholder input and the proper role

²² AWEA/RENEW did not define PPR in its Comments. PPRs are presumed here to be a “Public Policy Requirement.”

of states in identifying *state* public policies and deciding whether, how and at what cost states will satisfy state public policy objectives.

States – not planning authorities, stakeholders representing various stakeholders or special interests, or the federal government – are the proper jurisdictional entities to identify state public policies appropriate to consider in planning. Similarly, a state is the only appropriate entity, as a jurisdictional and practical matter, to decide whether, how and at what cost a state will satisfy its state public policy objectives. To test that premise, NESCOE conducted a cursory review of state energy-related policies. Among the diverse and complex energy, environmental and economic development state policies codified in state statutes across New England, NESCOE did not identify any in which state legislatures deferred decisions about means of implementing state policies or decisions about their costs to ISO-NE, the Commission or NEPOOL market participants. AWEA/RENEW assume, erroneously and without basis, that the Commission has the authority, through its issuance of Order No. 1000, to confer upon ISO-NE the authority to make decisions about the implementation of state policies for states. The Commission has no such authority, and ISO-NE has no such authority. It is not possible, then, as AWEA/RENEW assert, that ISO-NE has “deferred” its authority over states’ policy to states.²³ Authority over state policies has been, and remains with, the states.

ISO-NE is a transmission planner and wholesale market administrator. It is not, as an institutional or jurisdictional matter, suited to make judgments on states’ behalf about state policies or to make decisions for a state about the means by which a state will satisfy its state public policy objectives or at what costs. Similarly, the Commission does not, as an institutional and jurisdictional matter, have authority in connection with

²³ AWEA/RENEW Comments at 15.

identifying or decisions about the means of implementing state public policies. Nor do individual stakeholders have any authority in connection with the implementation of state policies. None of these entities has the authority or expertise to substitute its judgment for that of the states in connection with state statutory requirements or policy preferences codified in state law, many of which contemplate that state officials will exercise their judgment in balancing the interests and goals identified by state legislatures, including those related to energy and the states' environment and economic development goals. Stakeholder and other interests' representatives are always free to try to persuade state legislatures to modify such state statutes to, for example, transfer state policy implementation authority to someone other than state officials. Unless and until a state legislature does so, it would be wholly improper for the Commission to attempt to reassign responsibility for state law implementation in this context. The public policy processes set forth in both the October 25 Filing and the NEPOOL-supported proposal reflect this basic jurisdictional reality, while providing ample opportunity for stakeholder input at each step.²⁴

Similar to the argument made by AWEA/RENEW, CLF, the Natural Resources Defense Council and the Sustainable FERC Project (collectively, "CLF") argue that the October 25 Filing inappropriately "defers" to the states the authority to make a discretionary, project-by-project determination of the allocation of costs well after a

²⁴ Section 4A.2 of the October 25 Filing describes the independent process ISO-NE will use to prepare a public policy study and the opportunity for input from stakeholders through the Planning Advisory Committee ("PAC"). As with other studies brought through the PAC, stakeholders will have the opportunity to comment on assumptions and encourage ISO-NE and NESCOE to make changes where there is stakeholder support to do so.

public policy transmission facility has been proposed.²⁵ CLF's argument is premised on the false underlying assumption that ISO-NE has the authority to decide for state governments whether, how and at what cost a New England state will implement its state policies and to involuntarily allocate associated costs around the region. As explained above, ISO-NE has no such authority and the Commission does not have the authority to confer upon ISO-NE authority to do so. CLF's arguments thus should be accorded no weight.

CLF further argues that discretion on the part of the states is unlawful because it has the states usurping ISO-NE's role as "ultimate arbiter of cost-effectiveness." CLF Protest at 19-20. Like the Commission, ISO-NE has no lawful authority to be the "ultimate arbiter" for state government about the means by which a state will satisfy its state public policy objectives. Nor does ISO-NE have the authority to involuntarily allocate to a state's ratepayers costs associated with *another* state satisfying *its* public policy objectives as codified in that state's statutes or regulations. As noted above, state policies often reflect a complex mix of energy, environmental, economic development and other goals that state legislatures identify for state officials to balance in making decisions that affect the state. Contrary to CLF's arguments, nothing in Order No. 1000 confers upon ISO-NE the authority to decide for a state how a state should balance and implement its policies or to decide for states how to share costs of a project several state wish to fund in connection with those state policies.

²⁵ See Motion to Intervene and Protest of the Conservation Law Foundation, Natural Resources Defense Council and Sustainable FERC Project ("CLF Protest") at 2, 11-12.

3. The Commission Should Reject AWEA/RENEW’s Assertion That ISO-NE Has the Same Authority Over Transmission That Could Advance State Public Policies as it Does Over Transmission It Identifies Needed to Maintain Power System Reliability.

AWEA/RENEW argue that the public policy process set forth in the October 25 Filing violates Order No. 1000’s tenets of comparability and non-discrimination by and between reliability and public policy projects. *See* AWEA/RENEW Comments at 15. AWEA/RENEW ignore that optional transmission projects that one or more states may elect to pursue and support to help them meet their state public policy objectives are fundamentally distinct from transmission projects ISO-NE determines to be needed to maintain regional power system reliability.

AWEA/RENEW also ignore that ISO-NE’s authority to allocate costs of a project built to satisfy one or some subset of states’ state public policies is correspondingly distinct from ISO-NE’s authority to allocate costs of transmission facilities ISO-NE identifies as needed to maintain power system reliability.

First, some power system reliability needs ISO-NE identifies in system planning can *only* be satisfied by incremental transmission facilities. To the contrary, states may satisfy state public policy objectives through diverse means and supporting transmission to reach distant renewable generation resources is only one of many options available to states. For example, states could satisfy Renewable Portfolio Standard (“RPS”) requirements through installation – near load centers – of renewable energy technologies such as solar or fuel cells, or other technologies that do not require investment in long-distance transmission.²⁶ Many states have ratepayer funds established to support such

²⁶ The Maine PUC directs the Commission’s attention to *Renewable Supply Curve Analysis* NESCOE undertook in 2012 and the level and relative cost of wind resources located in Maine. Maine PUC

distributed local technologies and have statutory policies that support their deployment in-state. States could also satisfy these requirements through Alternative Compliance Payments (“AC Payments”) some New England state legislatures have codified. AC Payments effectively cap the costs to consumers of RPS requirements. AC Payments codified in state law represent a state decision that certain levels of renewable resources are not to be funded by state ratepayers *at any cost*. States typically direct AC Payments toward clean energy technology development important to that state’s policies. Cost control – in the form of AC Payments – is in some states as fundamental a component of a state’s policy as are the associated renewable resource goals. As noted, state laws that NESCOE reviewed do not defer to ISO-NE the authority to decide whether or in what circumstances the state should invest in transmission to reach distant power in lieu of AC Payments.

Second, it is within ISO-NE’s authority to identify reliability needs of the power system to ensure its continued reliable operation and to allocate the costs of resources needed to maintain power system reliability. It is not within ISO-NE’s authority - or within any authority the Commission is able to confer upon ISO-NE - to determine whether, how or at what cost any one or more states must execute their state public policy objectives. As discussed below, it is similarly not within ISO-NE’s authority to assign

Protest at 13-14. The purpose of that analysis was to illustrate the indicative, relative directional costs of on-shore versus off-shore wind in two study years. For example, the analysis showed that the cost and time to plan and build transmission that may be needed to integrate large on-shore wind in New England could accelerate the competitiveness of off-shore wind as a likely contributor to meeting states’ Renewable Portfolio Standard requirements. *See*, Presentation to the New England Governors, *New England Renewable Supply Curve Analysis* (February 26, 2012), at 6, available at http://www.nescoc.com/uploads/Supply_Curve_2.26.12.pdf. The analysis did not include the range of other renewable technologies eligible to satisfy New England State Renewable Portfolio Standards. As NESCOE indicated in the analysis, the focus on wind was not NESCOE’s expression of interest in certain types of resources over others and was not a projection of actual costs. *Id.* at 3, 5.

costs to a state's ratepayers that would result from ISO-NE deciding for it or for some *other* state whether or how to satisfy its state policy objectives.

Finally, to the extent any entity attempts, as AWEA/RENEW urge, to decide for the states whether, how and at what cost one or more states should satisfy their state public policy objectives, the consequence would almost certainly be litigation. Aside from senselessly draining resources, AWEA/RENEW's preferred Order No. 1000 process would only act as a distraction from the New England states' current use of existing authority and ongoing work to identify resources to help states satisfy common renewable energy goals. This may be best represented by, but is certainly not limited to, NESCOE's Coordinated Competitive Renewable Resource Procurement process. The New England states have designed that process to capture the benefits of working together as a region and to allow individual states to determine whether – in each state's judgment – the benefits of projects that prevail in a competitive solicitation outweigh their costs and are in their ratepayers' interest.

For these reasons, the Commission should reject AWEA/RENEW's request that the Commission direct ISO-NE to ignore the fundamental difference between: (1) transmission ISO-NE determines is needed for power system reliability and (2) the optional nature of transmission states may elect to build to satisfy state public policy requirements if in the states' judgment, such optional transmission would better serves state ratepayers' interest than would other means by which the states could satisfy the same state policies.

D. The NEPOOL-Supported Proposal Is Fully Transparent and Will Best Ensure That Transmission To Support State Public Policies Will Be Built When Appropriate and According to State Regulatory Procedures.

CLF claims that a lack of a well-defined and transparent cost allocation method will result in public policy transmission projects not getting built. CLF Protest at 11-12. To the contrary, the only way a transmission project that may advance state public policy objectives will be built is if one or more states determine such a project is their preferred way forward to satisfy state objectives and that the benefits of new transmission outweigh the costs to their state ratepayers. This basic premise is the foundation of the Coordinated Competitive Renewable Power Procurement process the six New England states developed to work together to advance state public policy objectives at the direction of the New England Governors. It is ironic for CLF now to argue that the very process the New England states have created to consider transmission projects that may advance state policies – a process for which CLF has expressed its strong support²⁷ – will result in projects not getting developed. Contrary to CLF’s assertion, the way to stall or halt project development in New England is to do what CLF urges: involuntarily allocate to a state’s ratepayers the costs of a transmission project a state does not need or want to satisfy its state policy objectives. Involuntary allocation of costs associated with public policy projects irrespective of a project’s specifics and irrespective of whether one or more states have already satisfied their public policy objectives or elected to satisfy them by other means would lead to unjust and unreasonable rates.

²⁷ See Conservative Law Foundation, *Comments on the NESCOE Coordinated Competitive Renewable Procurement – Draft Work Plan* (2012), available at <http://www.nescoe.com/uploads/CLF.pdf>.

The concerns AWEA/RENEW raise about the transparency of the regional transmission planning process in New England with respect to state public policy requirements are likewise unfounded. AWEA/RENEW complain that the Filing Parties' public policy project proposal is not a transparent planning process because, if the states do not move projects forward into the later stages of the public policy transmission planning process, "the tariff does not specify what steps will follow but instead merely states that ISO-NE will determine the appropriate next steps to take with input from the states and stakeholders." AWEA/RENEW Comments at 16-17. CLF similarly complains that the Filing Parties' public policy project proposal process is insufficiently transparent as it does not adequately identify and consider in the earliest stages of planning "the full complement of benefits associated" with each reliability, market efficiency and public policy project. CLF Protest at 17.

These concerns are not substantiated by proposed Attachment K. NESCOE and the Five New England States envision that the process proposed by the Filing Parties, as modified by the NEPOOL Alternative Proposal, will be a fully open and transparent process. For example, at the Planning Advisory Committee stages, the study scope, assumptions and results will be presented to the Planning Advisory Committee with the opportunity for stakeholders to comment. *See* NEPOOL proposed Attachment K, Section 4A.1(a). And, as NESCOE explained in its Protest (at 22-23), both states and stakeholders will have a meaningful opportunity to participate and comment in the first phase of the open and transparent study process, through which NESCOE will submit requests for public policy transmission studies. The second phase of the public policy transmission study process, in which more detailed information is provided about

potential transmission solutions that may meet public policy requirements, is also designed to be open and transparent and to enable the states to provide input regarding the proposed options, or regarding any particular feature of proposed transmission solutions that the states are interested in exploring.

To the extent a public policy project is identified in the planning process, the public policy project – and its potential costs to consumers – will ultimately be subject to an open proceeding, separate and apart from the equally open proceeding in which a state regulatory authority(ies) will evaluate whether to grant siting approval. In other words, the decision to opt in to a transmission project designed to meet state public policy requirements will result in a fully noticed, public process before each state regulatory agency. The process in which each affected state regulatory authority would evaluate a potential transmission solution thus will be an adjudicatory one with no limitations on the ability of interested stakeholders to intervene and participate fully, as deemed appropriate by that state’s regulatory authority. In such a forum, interested stakeholders will have the ability to provide their input and, if they are ultimately unhappy with a state’s decision not to site a particular line, they have full recourse with the state courts. This process is wholly transparent, and NESCOE and the Five New England States urge the Commission to reject the requests of AWEA/RENEW and CLF suggesting otherwise.

Putting aside the fact that no state is entitled to any particular level of explanation about another state’s decision-making process in connection with its state policies, states that determine a proposed transmission project could advance their state public policy objectives will hold proceedings in which its state regulatory authority will evaluate the proposed project and its costs and benefits as appropriate, which provides the market and

region a high level of transparency. The intended state regulatory authority processes are not detailed in compliance filings submitted to the Commission because state regulatory authority processes are not a proper subject matter for federal tariffs.

CLF, like the Maine PUC, spends considerable time arguing about “benefit” quantification and requests the Commission to require the Filing Parties to submit a new cost allocation methodology which, according to these arguments, would ensure that the claimed “benefits” of proposed projects “are adequately defined, quantified and assigned and costs allocated accordingly.” CLF Protest at 16-17; *see also* Maine PUC Protest at 12-13.

In the first instance, the approach CLF and the Maine PUC advocate encourages, above all, ongoing battles of consultants and lawyers over claimed “benefit” analyses. The Commission should reject, as NEPOOL did, this unproductive and distracting recommendation that would have ISO-NE, the New England states and market participants spending more time contesting consultants’ competing claimed “benefit” analyses than they would on getting projects developed to advance public policy objectives as determined by states.

Through CLF’s and the Maine PUC’s request to focus on claimed “benefit” analysis, these entities effectively ask the Commission to shift the burden of proof on the allocation of costs for transmission projects one or more states agree to fund to satisfy their public policy objectives to other states that (1) have no state public policy objectives that require an investment in transmission or (2) that prefer other means to satisfy their state public policy objectives. Simply because there may be some benefits that flow broadly from a specific public policy-related transmission project does not mean there are

not less expensive means and/or projects that could achieve for one or more states the same or similar benefits *and/or* better satisfy the range of the other states' policy objectives. The existence of *some* level of benefit stemming from a particular project does not mean that a state could not achieve the same or greater benefits through alternative transmission projects, or through other resources that require no transmission. CLF's and the Maine PUC's approach would compel those states with no needs to meet or with alternative ways to meet them to assume the burden of countering claimed "benefit" analysis for projects other states have chosen to build.

The Commission should not countenance a process that forces a state government to spend its time and its ratepayers' money to participate in claimed "benefit" quantification battles over a transmission project that one or more other New England states choose to fund in furtherance of their states' public policy objectives. Even if a build-out of a transmission line to wind resources located in New England State A, for example, that New England States A and B agree to develop, could provide some benefits to New England State C, it does not mean that New England State C could not achieve greater economic and environmental benefits central to its state policies by developing low- or no-carbon resources in England State C. It would be unjust and unreasonable for ISO-NE to impose a portion of the costs of a project that New England States A and B elect to pursue on New England State C when New England State C has other resource investment options that better meet its state policy objectives.

It would be equally unjust and unreasonable to impose the costs of a project that New England States A and B agree to fund in furtherance of their state policy objectives on New England State C where New England State C has already satisfied its state policy

objectives through its prior investment decisions – without shifting any of those costs onto other New England states’ ratepayers. As states move ahead with their own individual efforts to satisfy state policy objectives, and as the region moves forward collectively with efforts such as Coordinated Competitive Renewable Power Procurement, it will increasingly be the case that states will have already satisfied their policy objectives. It would be unjust and unreasonable to shift other states’ public policy costs to them.

Moreover, if the Commission required ISO-NE to adopt a tariff mechanism whereby a state could effectively shift some cost burden to other states, it would create a perverse incentive for a state to be passive in connection with satisfying its public policies until the state can cost-shift.²⁸ Order No. 1000 will serve a useful purpose in New England only to the extent the resulting process respects New England states’ authority to judge for state ratepayers the costs and benefits associated with any given public policy project and to elect to pursue and fund such a project under terms and conditions states conclude to be reasonable in furtherance of state public policies. Otherwise, states will exclusively rely on other processes available to them under their existing authority.

²⁸ The Maine PUC also expresses concern about states “free-riding.” Maine PUC Protest at 8. NESCOE’s and the Five New England States’ strong preference is not to create a tariff mechanism that could encourage some states to be passive in the region’s current Coordinated Competitive Renewable Power Procurement efforts on the expectation that there will be a tariff mechanism at some future point, as CLF urges, for states to shift a portion of the costs of their preferred public policy project to other states.

E. Arguments Opposing the Provision That States May Opt In To Cost Allocation of Public Policy Projects Should Be Rejected.

1. A Provision Granting New England States the Ability To Opt in to Certain Public Policy Projects Does Not Constitute Participant Funding.

Contrary to the arguments posited by CLF and others, including the Maine PUC, the cost allocation method for public policy projects proposed by the Filing Parties²⁹ does not constitute participant funding. CLF argues that “[w]hat ISO-NE is proposing is nothing more than a participant funding form of cost allocation.” CLF Protest at 16. Accordingly, CLF argues, the proposal is not compliant with Order No. 1000 in light of the Commission’s ruling in Order No. 1000 that participant funding is not a permissible form of regional cost allocation. *Id.*, citing Order No. 1000 at PP 497-98, 715, 723.

This argument is premised on an apparent misunderstanding of participant funding. As the Commission explained in Order No. 1000, “[u]nder a participant funding approach to cost allocation, the costs of a transmission facility are allocated only to those entities that volunteer to bear those costs.” Order No. 1000 at P 486, n. 375. The Commission makes clear in its discussion of participant funding in Order No. 1000 that participant funding refers to a cost allocation method under which “a transmission developer, a group of transmission developers, or one or more individual transmission customers” (*id.* at P 724) funds a particular project. The Commission goes on to explain that if a transmission developer fails to satisfy a transmission planning region’s criteria for its project to be selected in the regional transmission plan for purposes of cost allocation, “the developer could either withdraw its transmission project or proceed to ‘participant fund’ the transmission project on its own or jointly with others.” *Id.* at P 725.

²⁹ In this respect, the NEPOOL-supported proposal is similar.

CLF's argument appears to conflate the notion of an individual or group of developers/customers funding a particular transmission project with the concept of a New England State opting in to a public policy project upon determining that some or all of the ratepayers in its state will benefit from the project.³⁰

The Filing Parties' public policy project proposal, as modified by the NEPOOL-supported proposal, provides as follows:

Cost recovery for an approved project shall be limited by the cost recovery mechanism negotiated between the opting-in states and the applicable Qualified Transmission Project Sponsor. Costs will be allocated under the method specified in the Public Policy Transmittal...*provided, however,* that if the opting-in states do not specify a different cost allocation mechanism, the costs of such Public Policy Transmission Upgrade(s) shall be allocated to the network load for all opting-in states based on each state's respective load-ratio share of the Qualified Transmission Project Sponsors' proposal/solution costs for that project.^[31]

There is a significant difference between a cost allocation method where the transmission developer or potential customer must pay for the network upgrades in order for the facilities to be built and what is being proposed by the Filing Parties and in the NEPOOL-supported proposal, in which the Qualified Transmission Project Sponsor will recover its costs from the ratepayers in those states which have opted in to that project. Under the NEPOOL Alternative Proposal, each of the six New England states has the ability to decline to fund a specified project because it believes, for example, that the costs of such project will outweigh the benefits of the project, or that the state simply will

³⁰ The argument that “[t]he Joint Filing’s approach merely substitutes voluntary state funding for participant funding” (Maine PUC Protest at 11) also mistakenly conflates these different cost allocation methods.

³¹ NEPOOL Proposed Attachment K, Section 4A.9(a) (NEPOOL proposed language in underline; italics in both the Filing Parties’ and NEPOOL’s Proposed Attachment K).

not benefit from the project, or that the public policy requirements that are being addressed are not ones that the state supports. But the NEPOOL-supported proposal does not provide that costs of public policy projects are to be allocated only to those transmission developers who sponsor the project, or to their customers. To the contrary – these costs will be allocated on either a region-wide basis, across all of New England, or on a sub-regional basis.

By contrast, in the Order No. 1000 Notice of Proposed Rulemaking, the Commission referred to examples of regions that rely principally or exclusively on the participant funding approach to cost allocation:

- “El Paso Electric proposed in its Order No. 890 compliance filing to use a cost allocation method in which such entities would share the costs proportionally based on each participant’s desired use of the facility to be constructed;”
- “South Carolina Electric & Gas included in its Order No. 890 compliance filing the Southeast Inter-Regional Participation Process (SIRPP) provisions stating that costs for economics-driven upgrades will be born entirely by the transmission owner that builds the facilities;”
- “Entergy filed and had approved a method where the costs for projects developed under its Regional Planning Process and its interregional transmission planning process would be born by the party that constructs the facilities;”
- “ColumbiaGrid and the Northern Tier Transmission Group use a process where, if no agreement on cost allocation among the study team participants or the project proponents is obtained, the entities requesting the project will bear the costs.”^{32]}

Examining the tariff of one of these companies, Entergy Services, Inc. (“Entergy”), reveals very clear language assigning the costs of certain upgrades (referred to by Entergy in its tariff as “Supplemental Upgrades”) to the requesting customer:

³² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, 131 FERC ¶ 61,253, at P 128 (emphasis supplied) (2010).

- A transmission customer requesting point-to-point (“PTP”) service will be charged the higher of: “(i) the applicable PTP rate recoverable over the requested term of service, factoring the cost of the upgrade into the rate; or (ii) the incremental cost of the upgrade....” Entergy Tariff at Attachment T, Section 2.2.1;
- The cost of Supplemental Upgrades required to accommodate requests for interconnection service from the interconnection customer. *Id.* at Section 2.2.2;
- The cost of Supplemental Upgrades required to accommodate network customer service requests will be recovered from the requesting network customer. *Id.* at Section 2.2.3;
- “The cost of all other Supplemental Upgrades will be recovered from the requesting customer .” *Id.* at Section 2.2.4.

To state the obvious, the New England states are not customers. The existence of an “opt-in” provision, which NESCOE and the Five New England States believe is necessary to ensure that a state’s ratepayers do not pay for projects to support public policy requirements that the state either does not support or does not believe to be cost effective, does not transform this cost allocation method into participant funding. Under the NEPOOL-supported proposal, the costs will be allocated throughout the six-state region, unless one or more of the states determines that there will be no benefits to it and therefore does not opt in to that project.

2. Allowing States in New England To Opt-in to Public Policy Projects Will Not Result in “Free Ridership.”

There is a tension between a desire to prevent the “free ridership” concerns identified by the Commission in Order No. 1000 (*e.g.*, at P 534) and a need to comply with the Commission’s cost allocation principles – in particular, Regional Cost Allocation Principle 1 (“The cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits”) and Regional Cost Allocation

Principle 2 (“Those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities”). Order No. 1000 at P 586. The Commission recognized this in explaining that “[i]n response to MISO Transmission Owners that Principle 2 might contribute to free rider problems, we agree that it, like all the other principles adopted in this Final Rule, requires careful consideration and application to ensure that they are implemented appropriately in practice.” *Id.* at P 638.

The CLF Protest “free ridership” argument, also put forward by the Maine PUC, misses the mark by failing to acknowledge that the ability of New England states not to opt in to certain public policy projects ensures compliance with Regional Cost Allocation Principles 1 and 2. CLF argues that “[b]ecause states can elect not to participate in a given project, irrespective of any benefit they may derive from it, the potential for ‘free-ridership’ will be substantial as will be the risk that the ratepayers in the participating states will shoulder a disproportionate share of the project’s costs.” CLF Protest at 15-16. It is illogical, however, to presume that New England states will refuse to participate in a given project “irrespective of any benefit they may derive from it.” NESCOE and the Five New England States expect these processes to be open and that the costs and benefits of projects designed to meet public policy requirements will be openly discussed and debated. But, just because a public policy project may provide a benefit, regardless how slight, to a state, does not mean that this project is the most beneficial alternative or that a state should be forced to require any or all of its ratepayers to bear the costs of that project. Whether, and if so, at what point, any or all of a state’s consumers should underwrite a public policy project, are decisions intrinsically for the state to make.

The CLF argument mistakenly assumes that once a public policy requirement has been identified, there is only one way to address that requirement; and if a state determines not to opt in to a project that can address that requirement, it is a “free rider.” The reality is much more complex than that. There will almost always be a number of alternative ways to achieve the same goal. The CLF “free rider” argument ignores that each state is in the best position to determine how best to meet the public policy requirements of that state, and whether the cost-benefit analysis of any particular solution leads to the conclusion that this solution is appropriate for that state. If a state is forced to bear the costs of a project it has determined will not meet these needs in a cost effective manner, both Regional Cost Principles 1 and 2 will have been violated.

Given the interconnected nature of the transmission grid, if a project is built despite a state’s belief that there are insufficient benefits to be derived from that development, one can always claim the state “benefits” from the extra transmission. For example, if State A enacted a law (*i.e.*, a public policy requirement) that all transmission lines should be placed underground, and underground transmission lines needed to be built in adjacent State B to accomplish that goal, State B would surely “benefit” from the new underground facilities. But State B may not agree that the extra incremental cost of undergrounding the transmission facilities outweighs the benefits to State B, because State B does not have a corresponding law requiring transmission lines to be placed underground. In this situation, only State B can determine whether the benefits of undergrounding are ones worth paying, for instance, three times the cost of overhead transmission lines. Not giving State B the ability to opt in to that project would result in ratepayers in State B being required to bear allocated transmission costs that are not at

least roughly commensurate with estimated benefits of that transmission, and being involuntarily allocated the costs of those transmission facilities.

CLF argues that “[t]ransmission projects driven by public policy needs, such as transmission to access renewables located remotely from the grid, will be particularly susceptible to ‘free-rider’ concerns given that such projects frequently impact and benefit multiple systems.” CLF Protest at 14. As noted above, it is important to recognize, however, the critical distinction between public policy projects and projects required for reliability or market efficiency reasons. If the underground project in the example described above were needed for reliability purposes, the result would be different. In that case, the state would not – and should not – have merely the option to opt in to the project. But in the case of public policy projects designed expressly to meet state public policy requirements, only the state can determine whether a particular project will achieve the public policy benefits of the state in a cost effective manner. The NEPOOL-supported proposal ensures that, as the Commission requires for Public Policy Projects:

any such consideration of transmission needs driven by Public Policy Requirements, to the extent that it results in new transmission costs, must follow the cost allocation principles discussed separately herein. Particularly, the costs of new transmission facilities allocated within the planning region must be allocated within the region in a manner that is at least roughly commensurate with estimated benefits. Those that receive no benefit from new transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those facilities. That is, a utility or other entity that receives no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those facilities.³³

³³ Order No. 1000 at P 219.

Additionally, the indirect benefits of any associated generation should be distinguished from the benefits of new transmission facilities in the evaluation of beneficiaries. For example, the addition of infra-marginal generation always drives down energy market prices (LMPs). Similarly, the addition of renewable generation may drive down renewable energy credit prices. The existence of such indirect benefits of associated generation, however, does not justify allocating the costs of transmission facilities needed to integrate such generation to all who benefit from lower energy prices, nor does it render all users of transmission constructed to support that associated generation “free riders” so as to justify involuntary allocation of costs to those indirect beneficiaries. If that were the case, every new infra-marginal generator built in the region would require the costs of that generator to be allocated to all consumers in the region, because the energy market prices would have been reduced nominally. If that were the case, then all states in New England logically should be allocated a share of the costs of the Cape Wind project – which will provide region-wide benefits in terms of energy price suppression – but which costs will be borne exclusively by Massachusetts consumers.

The Maine PUC relies on infra-marginal generation benefits to support its argument that allowing states the ability to opt out of public policy transmission projects would result in those states continuing to enjoy the benefits of projects without bearing a fair share of the costs, *i.e.*, the free-rider problem. In support of its argument, the Maine PUC references a 2009 economic study conducted by ISO-NE, which the Maine PUC claims demonstrates that the development of New England wind resources will lower energy clearing prices for all New England states regardless of whether all states

participate in that development. Maine PUC Protest at 10.³⁴ The Maine PUC protest, however, fails to acknowledge that the economic results reported in that study are based on wholesale electric energy market revenues only and do not take into account the significant new transmission investments that would be required to move wind energy reliably from remote locations to major population centers.³⁵

Including transmission costs in the analysis would, at best, reduce the net benefits of wind development – in which case the free rider problem is diminished – and at worst, potentially render the net benefits negative, in which case the free rider problem would be nonexistent. NESCOE and the Five New England States note that the 2009 economic study also found that retiring large amounts of fossil fuel generation and replacing it with the most efficient combined-cycle natural gas-fired generators lowers regional energy clearing prices and produces the lowest emissions of SO₂, NO_X, and CO₂.³⁶ Under these circumstances, a state that chooses not to opt in to a public policy project in order to utilize lower cost combined-cycle generation would simply be protecting the economic interests of its consumers – not free riding.

3. States Will Not Have a “Veto” over Public Policy Projects.

The CLF Protest argues that by providing the states the freedom to decide which public policy projects should be built, and how the costs associated with them should be allocated, the Filing Parties’ public policy project proposal effectively grants each state a “veto” that can have the effect of preventing projects that are regionally beneficial and cost-effective from being implemented in favor of more expensive projects that serve the

³⁴ Citing *Preliminary Results for New England Governors’ 2009 Economic Study* (August 14, 2009), available at <http://www.nescoe.com/Blueprint.html>.

³⁵ *See id.* at 13-14.

³⁶ *Id.*

interests of specific states. CLF Protest at 19. This contention is wrong and not supported by the language in proposed Attachment K. For the CLF contention to be correct, each New England state would need the power to prevent the other states from carrying out public policy projects those states believe are beneficial to their ratepayers. No such power exists (and CLF fails to identify where in proposed Attachment K such power is provided the states). To the contrary, the Filing Parties' public policy project proposal explicitly affords the opt-in states the ability to proceed with a public policy project over the decision by one or more states not to opt in to the project. While an individual state may elect not to participate in the development of a particular public policy project, that state has no ability to prevent the project from moving forward if other states collectively determine that continuing with the project best serves their shared interests. Likewise, a decision not to proceed with the project can be made only by the opting in states. In short, there is no "veto" power, as CLF contends.

F. The Commission Should Reject the Request by Environment Northeast, the National Consumer Law Center, the Natural Resources Defense Council, and the Sustainable FERC Project That New England Adopt An Integrated Planning Process to Select Resources

1. The Request That New England Adopt An Integrated Planning Process to Select Resources Is Outside the Scope of Order No. 1000 Compliance and Is a Collateral Attack on Prior Orders Accepting ISO-NE's Planning Process.

Environment Northeast, the National Consumer Law Center, and Natural Resources Defense Council and the Sustainable FERC Project (collectively, "ENE") urge the Commission to require New England to work toward "a single, integrated planning process" that provides comparable consideration to transmission and non-transmission alternatives and ensures the region chooses between the best low-cost option for addressing reliability needs while meeting regional public policy goals. To ensure

comparable consideration, ENE argues, ISO-NE's tariff must specify the metrics for evaluating non-transmission alternatives.³⁷

Although NESCOE and the Five New England States support in concept consideration of market resource alternatives in the regional transmission planning process, the changes that ENE urges the Commission to order the Filing Parties to make in that process are outside the scope of compliance with Order No. 1000. NESCOE and the Five New England States therefore request that the Commission reject those arguments. At the heart of ENE's argument is dissatisfaction with the existing planning process in New England. ENE argues that the existing planning process in New England has not resulted in non-transmission alternatives being selected and therefore, the existing process must be changed in order to comply with Order No. 1000: "the dearth of alternatives that have been identified and incorporated into the planning process in New England suggests that the planning process is not affording non-transmission alternatives comparable consideration and the Filing Parties have more work to do in this area to comply with Order No. 1000." ENE Protest at 14. The current ISO-NE transmission planning process is not perfect and must continue to be scrutinized to identify and remedy imprecision and inadequacies. But perfecting the ISO-NE transmission planning process is not within the scope of this compliance filing proceeding. What ENE requests with respect to the consideration of non-transmission alternatives is likewise outside of the scope of compliance with Order No. 1000 and ignores what Order No. 1000 required transmission providers to do to comply with the Final Rule.

³⁷ See Motion to Intervene and Protest of ENE, National Consumer Law Center, Natural Resources Defense Council and the Sustainable FERC Project ("ENE Protest") at 2, 12-21.

The Commission explained in Order No. 1000 that it was following the approach taken in Order No. 890, in which public utility transmission providers were required to identify in their transmission planning processes where, when, and how transmission and non-transmission alternatives proposed by interested parties are to be considered. Order No. 1000 at P 153. The Commission emphasized that “[a]s noted in Order No. 890, the transmission planning requirements adopted here do not address or dictate which transmission facilities should be either in the regional transmission plan or actually constructed.” *Id.* ENE’s argument wrongly portrays Order No. 890 and Order No. 1000 as requiring non-transmission alternatives to be constructed on a basis comparable to transmission facilities. Contrary to this position, the Commission clarified in Order No. 1000-A that it was “not requir[ing] anything more than considering non-transmission alternatives as compared to potential transmission solutions, similar to what was developed in Order No. 890, Order No. 890-A, and resulting compliance filings.” Order No. 1000-A at P 193. The Commission did not direct public utility transmission providers to alter their existing processes in any way in this regard other than to ensure that regional planning processes, as well as local planning processes, consider non-transmission alternatives as part of those processes.

Moreover, ENE’s request that the Commission direct changes to the existing planning process in New England (ENE Protest at 15-16) is a collateral attack on the orders accepting ISO-NE’s Order No. 890 compliance filing. Indeed, in its order addressing ISO-NE’s Order No. 890 compliance filing, the Commission explicitly rejected an argument that ISO-NE’s proposed process for conducting assessments of non-transmission solutions was not adequately specified in the tariff, finding that ISO-NE’s

planning process does provide for “market responses such as demand-side projects, distributed generation and other similar solutions.”³⁸

ENE’s arguments that the Filing Parties must “do more to ensure that the process and the metrics used are consistent with Order No. 1000” (ENE Protest at 19) and that the tariff should specify “clear metrics” (*id.* at 20) are likewise incorrect. The Commission did “not establish minimum requirements governing ... the appropriate metrics to measure non-transmission alternatives against transmission alternatives....” Order No. 1000 at P 155. To the contrary, the Commission stated that those considerations are best managed among the stakeholders and public utility transmission providers participating in the regional transmission planning process. *Id.*

ENE’s statement that comparable consideration can only be ensured by having the region employ a single integrated planning process that will identify and consider transmission and non-transmission solutions to grid reliability needs (ENE Protest at 18) is also contrary to the Commission’s clear statement in Order No. 1000 (at P 154) that it was not intending to infringe on the state’s authority to oversee integrated resource planning. The Commission’s commitment not to infringe on state authority over integrated resource planning was likewise made clear in Order No. 890:

The transmission planning processes we require in this Final Rule are not intended in any way to infringe upon state authority with regard to integrated resource planning. Rather, we believe that the transparency provided under an open regional transmission planning process can provide useful information which will help states to coordinate transmission and generation siting decisions, allow consideration of regional resource adequacy requirements, facilitate consideration of demand response and load

³⁸ *ISO New England Inc.*, 123 FERC ¶ 61,161, at P 45 (2008).

management programs at the state level, and address other factors states wish to consider.³⁹

Although there is no longer integrated resource planning in all of the New England states, the request made by ENE must be rejected as contrary to Order No. 1000.

2. ENE's Request Ignores Existing Initiatives in New England Regarding Non-Transmission Alternatives.

The ENE Protest ignores that the region is working to address these concerns in other contexts, including ISO-NE's market resource alternative analyses and the New England states' analysis on non-transmission alternatives. Although NESCOE and the Five New England States agree that transmission and non-transmission alternatives must be considered to ensure reliability needs are satisfied at the lowest cost to consumers over the long-term, and in a way that is consistent with environmental quality, NESCOE and the Five New England States disagree with ENE's request that New England adopt an integrated planning process to select resources. Within the parameters of New England's competitive wholesale markets, New England already has two initiatives underway to improve the quality, consistency and timing of alternative resource analysis. An integrated planning process to select resources as ENE requests would, in the first instance, duplicate alternative analyses now underway, and in the second, run counter to the process by which the region's wholesale competitive market generally identifies what resources will be built when and by whom.

In the context of New England's Strategic Planning Initiative, ISO-NE is conducting Market Resource Alternatives ("MRA") analysis for major transmission

³⁹ Order No. 890 at n. 274.

projects.⁴⁰ ISO-NE's MRA analysis is an emerging change to ISO-NE's planning process and is intended to better align the region's competitive markets and transmission planning. Previously, ISO-NE conducted MRA Analysis on a pilot basis in connection with a proposed project in Vermont and New Hampshire.⁴¹ More recently, ISO-NE conducted MRA Analysis for a major proposed transmission project in Connecticut.⁴² The NESCOE and the Five New England States strongly support ISO-NE's efforts in this regard.

Separately, in early September 2011, the six New England States expressed their collective intent to have transmission owners ("TOs") provide non-transmission alternative ("NTA") analysis earlier in the planning process than occurs today, which is typically at the end of the planning process—the siting phase. Earlier NTA analysis by the TOs will help ensure there is no bias in timing between resource types.⁴³ The states also expressed interest in more uniform analysis from TOs across the region than is currently produced.⁴⁴

⁴⁰ *ISO Discussion Paper: Aligning Markets and Planning* (June 13, 2012), available at http://www.iso-ne.com/committees/comm_wkgrps/strategic_planning_discussion/materials/mra_discussion_paper_06132012_vtransmit.pdf.

⁴¹ http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/pac/ceii/mtrls/2012/mar152012/nh-vt_follow-up.pdf. These materials have been classified as containing Critical Energy Infrastructure Information ("CEII"). ISO-NE's CEII Request Form is available at <http://www.iso-ne.com/support/custsvc/forms/>.

⁴² http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/pac/ceii/mtrls/2012/nov142012/ghcc_mra_november.pdf and http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/pac/ceii/mtrls/2012/dec132012/ghcc_mra.pdf. These materials have been classified as containing CEII. ISO-NE's CEII Request Form is available at <http://www.iso-ne.com/support/custsvc/forms/>.

⁴³ *See* Memo from NESCOE to ISO New England and NEPOOL, *Planning Analysis* (September 7, 2011), available at http://www.nescoe.com/uploads/NTA_Analysis_9.7.11.pdf.

⁴⁴ *Id.*

Accordingly, in May 2012, NESCOE developed a draft NTA Framework in furtherance of the states' expressed interest in establishing a regional approach to NTA analyses.⁴⁵ In developing the draft NTA Framework, NESCOE consulted with ISO-NE and the region's TOs. NESCOE presented the draft NTA Framework to NEPOOL's Participants Committee in the summer of 2012 and invited feedback.⁴⁶ ENE provided NESCOE with comments on the draft.⁴⁷ In October 2012, NESCOE issued the final NTA Framework and an associated report.⁴⁸ The report provides context for the NTA Framework and a more detailed explanation of the analytical template. At this time, as explained in the NTA Framework, the individual New England states are working on implementation.

NESCOE expects the approach to NTA analysis described in the NTA Framework to evolve as ISO New England's MRA planning analysis and associated market rule changes evolve. NESCOE and the Five New England States are particularly interested in not duplicating analysis. NESCOE will closely monitor how ISO New England's approach to MRA analysis develops over time, along with associated market rules, and modify the NTA Framework, as appropriate, at that time.

Both the MRA analysis and NTA Framework are intended to produce alternative resource analysis earlier in the planning process than is the case today. Both will also eliminate any bias in timing of analysis in connection with whether and the extent to

⁴⁵ *Non-Transmission Analysis: A Regional Framework Template – Draft* (May 2012), available at http://www.nescoe.com/uploads/NTA_Framework_May_2012.pdf.

⁴⁶ *Non-Transmission Analysis: Regional Framework* (June 27, 2012), available at http://www.nescoe.com/uploads/Summer_PC_NTA_Framework_final.pdf.

⁴⁷ *ENE Comments on NESCOE Draft* (July 20, 2012), available at http://www.nescoe.com/uploads/ENE_CommentsNTAFramework.pdf.

⁴⁸ *Regional Framework for Non-Transmission Alternatives Analysis* (October 2012), available at http://www.nescoe.com/uploads/NTA_Framework_October_2012_FINAL.pdf.

which different types of resources could meet the identified reliability need. Importantly, both are designed not to interfere with or otherwise interrupt New England's competitive wholesale market, on which the region relies to identify what resources are built where and by whom. Accordingly, New England already has means underway to obtain the comparability of analysis ENE requests the Commission to require. There is, therefore, no need for additional changes to the planning process to obtain analysis of alternative resources that may meet reliability needs, as has been suggested by ENE.

Finally, utility companies in five of the six New England states have divested their generation assets and are not vertically integrated. New England has a competitive wholesale market that selects resources: ISO-NE does not conduct integrated resource planning and select resources based on its planning analysis; if it did, it could infringe on state jurisdiction over resource adequacy. For these reasons, the Commission should reject ENE's request that New England adopt an integrated planning process to select resources.

III. CONCLUSION

For the reasons discussed above, NESCOE and the Five New England States respectfully request that the Commission grant the following relief: (1) grant the Motion for Leave to Respond; (2) reject the requests to require modification of the Filing Parties' October 25 Filing and grant the relief requested in the Response of NESCOE and the Five New England States; (3) grant the relief sought in the NESCOE Protest and in the Southern New England States Protest; and (4) grant such other and further relief as the Commission deems appropriate.

Respectfully submitted,

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Dated: January 8, 2013

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 Washington, D.C. this 8th day of January, 2013.

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