

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

ITC Grid Development LLC

)

Docket No. EL15-86-000

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

Pursuant to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) July 29, 2015 Notice of Petition for Declaratory Order, the New England States Committee on Electricity (“NESCOE”)¹ hereby files comments on the petition for declaratory order (“Petition”) filed by ITC Grid Development LLC (“ITC Grid”) in this docket on July 28, 2015. The Petition asks the Commission to rule that: (1) binding revenue requirement bids selected as the result of Commission-approved, Order No. 1000-compliant and demonstrably competitive transmission project selection processes should be automatically deemed just and reasonable without Commission review when filed at the Commission as a stated rate pursuant to Federal Power Act (“FPA”) section 205, and (2) such binding bids should be entitled to protection under the *Mobile-Sierra* standard and should not be able to be subsequently changed in response to a complaint filed pursuant to FPA section 206, unless required by the public interest. Petition at 1.

The Petition raises the core issue of keeping transmission project costs to just and reasonable levels. Consumers can receive substantial benefits when transmission developers include some form of cost containment measures in their bids in Order No. 1000 competitive solicitation processes. As ITC Grid points out, several of the independent system operators (“ISOs”) and regional transmission organizations (“RTOs”) have been giving significant weight

¹ NESCOE filed a motion to intervene in this docket on August 3, 2015. NESCOE is the Regional State Committee for New England.

to cost containment commitments in their project selection processes, as part of early implementation of Order No. 1000.

Transmission cost discipline and control is an objective that NESCOE supports emphatically. Indeed, it is a priority. It is, however, premature to grant the specific relief that ITC Grid requests at this time given the experiences to date in early phases of implementing Order No. 1000. In New England, for example, ISO New England Inc. (“ISO-NE”), states and stakeholders have yet to discuss in depth specific cost containment approaches and mechanisms. NESCOE and others in the region are also currently seeking to understand cost control approaches other ISOs/RTOs have used to inform approaches that will best serve New England consumers. Deliberate decisions, with the benefit of education and discussion, will help avoid unintended consumer consequences. It is far too early in this process for any particular approach to be imposed on New England.

Additionally, ITC Grid provides no support for the Commission to make a generic and binding determination that the rates resulting from a competitive solicitation process that includes a requirement for binding bids with exemptions, as ITC Grid describes, are automatically just and reasonable under FPA section 205. Nor does the Petition provide a basis for the Commission to rule that such rates will be afforded *Mobile-Sierra* protection over an extended (e.g., 40-year) period. The Commission should instead reserve the discretion to review such rate filings on a case-by-case basis and must ensure that the resulting rates are just and reasonable, consistent with the FPA.

As the Commission fashions a response to the Petition, NESCOE urges the Commission to (1) acknowledge as a positive step that ISOs/RTOs that have already commenced competitive solicitation processes are giving significant weight to cost containment features in ranking and

selecting projects in Order No. 1000 competitive solicitations; (2) encourage ISOs/RTOs to continue this practice because of the consumer benefits alluded to by ITC Grid in the Petition; and (3) place transmission developers on notice that if their project is selected in an Order No. 1000 competitive transmission solicitation process, to the extent that the project lacks any meaningful cost containment commitment to advance associated consumer benefits, the filing party would bear a heavy burden to show that those rates meet the just and reasonable standard of FPA section 205.

Cost containment policies are critical to the implementation of Order No. 1000's regional transmission planning processes, whether for reliability or public policy driven projects. The consumer benefits accruing from bids with cost containment features can be significant. The Petition recounts the significance of cost containment measures (specifically, binding cost commitments) in the evaluation of bids in PJM Interconnection, L.L.C. and the California Independent System Operator Corporation. Petition at 6-7. To the extent these ISOs/RTOs assign weight to bids with binding cost commitments, NESCOE agrees that such commitments are appropriate to protect against cost overruns, which can undermine a competitive transmission process and which have burdened consumers in New England and elsewhere.² Participants in the transmission planning process should be on notice that a project that lacks any kind of cost control mechanism will inevitably shoulder a heavier burden of demonstrating to the Commission that the rate for such project is just and reasonable, particularly if the costs do ultimately exceed the estimates that formed the basis of project selection.

² See, e.g., *ISO New England, Inc. and Participating Transmission Owners Administrative Committee*, Notice of Intervention and Protest of the Southern New England States, filed in Docket Nos. ER13-193-000 and ER13-196-000 (Dec. 10, 2012), at 34-35 (stating that in "recent years, over two-thirds of transmission projects with in-service estimated costs in excess of \$10 million had in-service costs that exceeded the planned estimate costs."); *SPP Board, Members Frustrated over Tx Project Overruns*, RTO Insider, July 21, 2015, at 1, 8 (describing report to stakeholders that 23 of the 30 committed projects to meet identified needs faced cost increases exceeding 30% of project cost estimates).

NESCOE has consistently advocated for the need to incorporate cost control measures in the transmission planning process. For example, as NESCOE explained in its most recent annual report:

Cost caps are another tool to limit the risk of cost overruns ultimately paid for by consumers and are an appropriate selection criterion on which to base the evaluation of competing transmission projects. A cost cap methodology for transmission project proposals can appropriately balance consumers' interest in cost certainty and transmission developers' interests in ensuring that there is a means to accommodate legitimate unforeseeable transmission project cost overruns.^[3]

In comments on ISO-NE's proposed filing to comply with Order No. 1000, NESCOE explained that:

Cost discipline is needed: recent experience in New England, where many transmission projects have moved from the planning to operational phase, shows actual costs well above incumbent transmission owners' project cost-estimates at the time of project selection. These overruns are a particular concern in light of the increases in transmission cost as a proportion of New England customers' bills in recent years. Such cost overruns frustrate, or worse, make impossible a timely comparison of alternative solutions that could satisfy or defer the need proposed to be met by the proposed transmission project.^[4]

The Petition's discussion of cost containment in other regions highlights the fact that in New England, the existence of cost containment measures is not a factor that is explicitly given weight in the competitive solicitation process. NESCOE urges the Commission to take note of cost control mechanisms and evolving practices by different ISOs/RTOs as it continues to monitor the implementation of Order No. 1000 competitive transmission solicitation processes

³ 2014 Annual Report to the New England Governors, at 23, *available at* http://www.nescoe.com/uploads/Annual_Report_2014.pdf.

⁴ *ISO New England, Inc. and Participating Transmission Owners Administrative Committee*, Motion to Intervene and Protest of the New England States Committee On Electricity, filed in Docket Nos. ER13-193-000 and ER13-196-000 (Dec. 10, 2012), at 15.

and to take such mechanisms and practices into account in reviewing rates filed by transmission developers selected in those processes.

In response to the Petition's specific requests, as the Commission is aware, regions are in the early phases of implementing competitive transmission solicitation processes that are compliant with Order No. 1000. It would be premature to decide across-the-board and as a matter of policy that rates submitted by utilities in relation to projects selected in an Order No. 1000 process are automatically deemed just and reasonable without review by the Commission, even if those projects included binding bid commitments in the nature of those described by ITC Grid. It would likewise be premature to decide on a generic basis that such rates should be given *Mobile Sierra* protection for an extended period, which would make it more difficult for states and others, and possibly the Commission, to challenge a rate that has, over time, become unjust and unreasonable, or unduly preferential.

Thus, NESCOE does not agree that the Commission should, at this time, issue the generic rulings that the Petition seeks. Instead, NESCOE recommends that the Commission acknowledge the positive steps taken by some ISOs/RTOs in treating cost containment features as an important factor in selecting projects in Order No. 1000 competitive solicitations, and encourage all ISOs/RTOs to adopt similar practices.

Rather than issue any generic rulings at this time, NESCOE urges the Commission to consider cost control measures in its evaluation of rates submitted by entities that have been successful in competitive transmission solicitations. The Commission can and should evaluate on a case-by-case basis the justness and reasonableness of rates where the utility indicates such rates incorporated binding caps, and make a determination based on the facts and circumstances and the record at that time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 27th day of August, 2015.

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