

# 11th Annual Platts Northeast Power & Gas Markets Conference

May 25, 2016

New England States Committee on Electricity



NESCOE is New England's Regional State Committee, governed by a Board of Managers appointed by each of the New England Governors to represent the collective views of the six New England states on regional electricity matters

- ✧ **Focus:** Resource Adequacy, System Planning & Expansion
- ✧ **Resources:** 5 full-time staff with diverse disciplines & experience. Consultants, primarily for transmission engineering & independent studies
- ✧ **More information:** including filings & comments at
  - [www.nescoe.com](http://www.nescoe.com)
  - Twitter @NESCOEStates

# Overview

- ✧ Brief Background: Order 1000 and Public Policy Planning Process
- ✧ NESCOE's Perspective on Order 1000
- ✧ D.C. Circuit Petition

# Background: Order 1000 and Public Policy Planning

- Planning process must *consider* Tx needs driven by public policy requirements (federal, state, local)
  - Procedures to *identify* need and *evaluate* potential solutions

# Background: Order 1000 and Public Policy Planning

- Purported to provide flexibility to develop procedures:
  - Not dictating substantive outcomes
  - No requirement to satisfy policies
- Assurances not intruding into state authorities:
  - “[N]ot placing public utility transmission providers in the position of being policymakers or allowing them to substitute their public policy judgments in the place of legislators and regulators.”

# Background: NESCOE Perspective



- NESCOE/states actively participated in rulemaking and in regional stakeholder process on compliance.
- ***On competition:*** Supported all qualified project proponents having comparable project development & cost recovery opportunity.
- ***On public policy:*** Advocated for a process states would use. Ultimately, state officials, not ISO-NE, decide whether and the means by which to satisfy state laws.

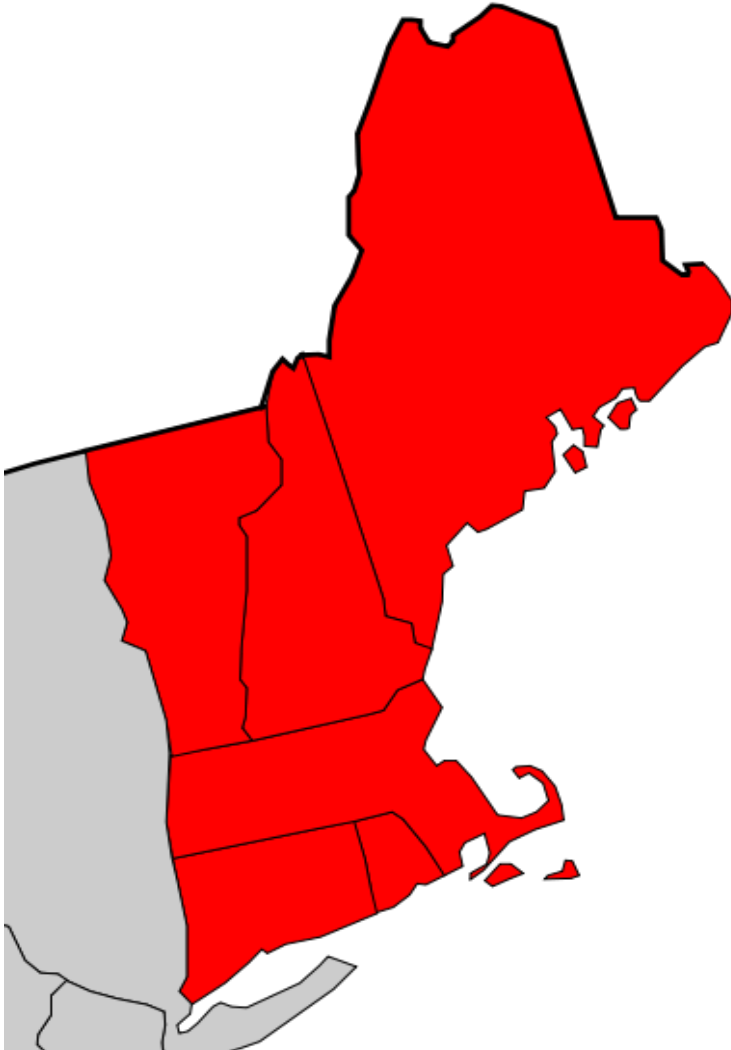
# A (Not So) Funny Thing Happened on the Way to Compliance . . .

- FERC unlawfully expanded the rule to require project *selection* rather than just *consideration* of public policies.
  - Eliminated states' central role in evaluation/selection
  - “Clarification” in response to NESCOE/5 state request indicates public policy project selection will be the default action, which is inconsistent with Order 1000.

## The problem is not academic

By requiring project selection and at the same time denying states a central role in that process, FERC substitutes ISO-NE's judgment for the judgment of state officials implementing state laws.

# D.C. Circuit Appeal



- NESCOE/5 States challenging compliance orders at D.C. Cir. (No. 15-1141)
- FERC converted process-only rule—identification and evaluation—to one resulting in project selection.
- Exceeds FERC's authority: FERC may not determine how a state should implement its public policies.



*It is the fundamental role of state governments to decide whether, how and at what cost to satisfy their own public policies and what project or projects might be the optimal or even preferred means to advance their own statutory requirements.*

# **Retrenchment from “Cooperative Federalism”**

- FERC seeks to create a new jurisdictional line whereby its regulation of transmission empowers FERC to make state policy implementation decisions.
  - States recognize FERC’s authority over Tx; asking FERC likewise to recognize states’ authority over their own laws.
- Trio of SCOTUS cases reflect principle of cooperative federal and state jurisdiction.

[www.nescoe.com](http://www.nescoe.com)