

transmission rates remain just and reasonable.⁴ NESCOE also set forth a potential approach for leveraging the Order No. 1000⁵ competitive process as a vehicle for applicants to establish a nexus between incentives and investments.⁶

NESCOE provides these reply comments to emphasize five points. First, building on comments from a broad group of market participants and others that the Commission’s current policies are sufficient for developers to attract capital, the Commission should focus any reforms on ensuring that consumers do not pay more for transmission investments than is necessary. Second, any benefits that consumers may derive from regional transmission organization (“RTO”)⁷ membership incentives should not be conflated with the need for perpetual RTO-participation incentives and cannot relieve an applicant from its burden to justify the enhanced rates it seeks. Third, the existing risks and challenges framework provides an appropriate mechanism to incentivize the use of innovative technologies and practices and there is no current need to put operating expenses in rate base to promote these investments. Fourth, the record in this proceeding and in Docket No. AD16-18-000 is sufficient for the Commission to direct ISO New England Inc. (“ISO-NE”) to show cause why its tariff remains just and reasonable in light of ISO-NE’s broad application of a limited exemption from competition for projects needed to solve time-sensitive needs. Finally, NESCOE disagrees with commenters urging the Commission to revise its incentives rules to help advance state clean energy and environmental laws because those revisions could interfere with and frustrate New England states’ efforts.

⁴ *Id.* at 12-15.

⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (“Order 1000”), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁶ Initial Comments at 8-11.

⁷ For brevity, these reply comments use “RTO” to describe both RTOs and independent system operators.

II. COMMENTS

A. The Commission’s Transmission Policies Incentivize New Infrastructure Investments But May Not Adequately Protect Consumers

1. The Commission’s Existing Framework Is Attracting Capital and Spurring Investments

Several commenters, including transmission developers, confirmed that existing Commission policies succeed in attracting sufficient capital for new transmission investments.⁸ Commenters also highlighted the reversal in transmission investments that has taken place since the 1990s,⁹ with one entity characterizing this shift as a “resurgence” in infrastructure spending.¹⁰ In New England alone, regional investments in transmission identified to promote system reliability have topped \$10 billion over the last two decades.¹¹

This data and industry experience demonstrate that there is no reasonable basis for the Commission to reverse course from its risks and challenges framework. Nor is there a need for more generous incentives to drive transmission investments. In fact, the base return-on-equity (“ROE”) and cost-of-service ratemaking may on their own provide a path to attracting capital by

⁸ Initial Comments of NextEra Energy Transmission, LLC, Docket No. PL19-3-000 (filed June 25, 2019) (“NextEra Comments”), at 5; Initial Comments of LSP Transmission Holdings II, LLC, Docket No. PL19-3-000 (filed June 26, 2019), at 2. *See* Initial Comments of the American Wind Energy Association, Docket No. PL19-3-000 (filed June 26, 2019) (“AWEA Comments”), at 2 (“[P]otential transmission investments are not typically sidelined by inadequate rates of return. Rather, in most cases, substantial private capital is already available for new transmission development, even at current rates of return, and it is other barriers that stand in the way of the projects.”).

⁹ Initial Comments of WIRES, Docket No. PL19-3-000 (filed June 26, 2019) (“WIRES Comments”), at 3; Comments of Southern New England State Agencies, Docket No. PL19-3-000 (filed June 26, 2019) (“CT/MA AGO Comments”), at 4-7; Comments of Massachusetts Municipal Wholesale Electric Company et al., Docket No. PL19-3-000 (filed June 26, 2019) (“Public Systems Comments”), at 5; Joint Initial Comments of the Aluminum Association et al., Docket No. PL19-3-000 (filed June 26, 2019) (“Joint Comments”), at 4; NextEra Comments at 5. *See* Initial Comments of Eversource Energy Service Company, Docket No. PL19-3-000 (filed June 26, 2019) (“Eversource Comments”), at 10-11 (describing billions of dollars in transmission investments in New England since 2002 and substantial reductions in congestion).

¹⁰ WIRES Comments at 3.

¹¹ Initial Comments at 5.

offering certainty around rate recovery and ample financial inducement.¹² The Commission’s adoption of formula transmission rates provides an additional risk-reducing incentive through timely cost recovery of capital investments and incurred costs.¹³

2. Basing Eligibility for Incentives on Customer Benefits or Project Characteristics Complicates the Commission’s Framework and Creates the Potential for Excessive Consumer Costs

On the other hand, comments proposing incorporation of a customer benefits or project characteristics incentives approach reveal a fundamental shortcoming of such a framework. NESCOE is unaware of any comments filed in this docket that offer an appropriate standard of review for a benefits/characteristics model that the Commission could then apply to distinguish between those projects that warrant incentives and those that do not.

Some commenters supporting the benefits/characteristics framework seem to prefer a “flexible” approach in assessing the need for incentives.¹⁴ Flexibility is not, of course, a substitute for reasoned decision-making. Moreover, without a standard of review, “flexible” could be interpreted as “ad hoc.” This could have the effect of increasing the likelihood of litigation in connection with requested incentives, working against the efficiencies that proponents of such a flexible approach seek to achieve.

¹² *See id.* at 12-14; Joint Comments at 4; CT/MA AGO Comments at 15-19.

¹³ Comments of Transmission Dependent Utility Systems, Docket No. PL19-3-000 (filed June 26, 2019) (“TDUS Comments”), at 5-6.

¹⁴ *See, e.g.*, Initial Comments of the Edison Electric Institute, Docket No. PL19-3-000 (filed June 26, 2019) (“EEI Comments”), at 26; Comments of National Grid USA, Docket No. PL19-3-000 (filed June 26, 2019) (“National Grid Comments”), at 17-18. *See also* Eversource Comments at 25-33 (favoring expansion of incentives eligibility to focus on project categories providing benefits).

Other commenters proposed the use of a cost-benefit analysis as part of a larger framework.¹⁵ As a general matter, NESCOE appreciates proposals to ensure that consumers will receive net benefits in connection with the rates they are charged. However, transmission incentives may only be awarded if they materially affect investment decisions. *See San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 138 (9th Cir. 2019) (quoting Order No. 679-A, 117 FERC ¶ 61,345 at P 25 (2006)). NESCOE underscored in its Initial Comments that “[t]he possibility that a project can benefit consumers does not establish the need for consumers to fund incentivized investments through regulatory recovery beyond what is provided through the base ROE and cost-of-service ratemaking” and cautioned that focusing on expected project benefits could produce an unjust and unreasonable outcome.¹⁶ Demonstrating that a project’s benefits exceed its costs does not by itself justify incentives. Unless the incentives materially affect investment decisions, any award simply results in a reduction to the net benefits that consumers would have enjoyed.

In addition, some commenters argued that an incentive awarded based on customer benefits should not later be revoked if the benefits do not materialize.¹⁷ NESCOE strongly disagrees. System conditions are always subject to change. A project receiving incentives based

¹⁵ *See, e.g.*, Comments of Advanced Energy Economy, Docket No. PL19-3-000 (filed June 26, 2019) (“AEE Comments”), at 6; AWEA Comments at 11. NESCOE appreciates that the AEE Comments place emphasis on the requirement that an incentive be “just and reasonable.” AEE Comments at 6. The AEE Comments also propose a framework that would include an examination into “whether the incentive is needed for the project,” but that standard does not appear to be defined elsewhere in the proposal. *Id.*

¹⁶ Initial Comments at 12. *See also* Comments of the California Independent System Operator Corporation, Docket No. PL19-3-000 (filed June 26, 2019), at 6 (“[T]here is no causal link between the net benefits a project approved in a regional planning process provides or the type of need a project meets, and the level of ROE adder required to attract capital or encourage a developer to build the project. Standing alone, a project’s net benefit level or the specific transmission need the project meets should not directly affect a project sponsor’s ability to attract capital or pursue the project, particularly if the project has been approved in a regional planning process for purposes of cost allocation.”).

¹⁷ EEI Comments at 26; National Grid Comments at 21.

on expected benefits must accept the obligation to deliver on those benefits to receive the awarded incentives. If difficulty anticipating future conditions is a basis for limiting the Commission's ability to remove incentives, it must also be a basis for not awarding them in the first place.

To the extent the Commission is inclined to award incentives based on customer benefits or project characteristics alone, it must first develop a standard to distinguish between projects that warrant an incentive and those that do not. For the reasons set forth above, the significant hurdles involved in adopting such an approach militate against any limited utility that might be gained by fundamentally altering an existing and successful framework.

3. The Commission Should Focus its Reforms on Ensuring Consumers are not Overpaying for Transmission

The Commission should prioritize any reforms on ensuring that consumers are not paying more than necessary for transmission infrastructure. As discussed above, the Commission's existing policies are succeeding in attracting capital. Significant investments in transmission have occurred since the Commission effectuated the directives of Section 219. In turn, transmission costs have increased substantially over the last decade. The Initial Comments described, for example, how transmission charges in New England rose from approximately \$869 million in 2008 to \$2.25 billion ten years later.¹⁸ Transmission costs are a material component of New England residential retail electric rates.¹⁹

In light of this sharp pendulum swing toward increasing transmission investments, NESCOE strongly agrees with comments that "the Commission's reevaluation of its transmission incentives policy should be focused on how to *increase* the rigor of its test for

¹⁸ Initial Comments at 5.

¹⁹ *See id.*

assessing whether an individual incentive is needed to realize a project that will, in turn, satisfy the statutory goals of section 219.”²⁰ This close review of incentives requires that the Commission continue to examine incentive requests on a case-by-case using the risks and challenges framework to distinguish between projects that need incentives and those that do not.²¹

B. The Commission Should Reject Attempts to Conflate RTO Benefits with the Need for Perpetual RTO-Participation Incentive Adders

Transmission owners and their trade organizations echo a common theme in defense of the *status quo* for RTO membership incentives.²² This chorus of support includes lengthy attestations of the benefits that RTOs provide to consumers. While an examination of RTO benefits may be part of the Commission’s examination into whether it should grant an RTO-participation adder, it cannot be the end of the inquiry. An applicant must justify the specific bonus rate it seeks, and the attendant cost to consumers, as truly necessary to influence a utility’s decision to join an RTO. NESCOE agrees with comments questioning whether a 50-basis point adder remains supportable in light of the maturation of RTOs and adoption of other Commission reforms promoting transmission investments.²³

Documenting the purported benefits that an RTO provides does not relieve an applicant of its burden to establish the nexus between its requested RTO-participation incentive rate and its

²⁰ Notice of Intervention and Opening Comments of the California Public Utilities Commission, Docket No. PL19-3-000 (filed June 26, 2019) (“CPUC Comments”), at 24 (emphasis in original). *See* Joint Comments at 4 (“There is certainly no demonstrable need to liberalize the Commission’s basic approach to considering project-specific incentives – particularly ROE adders – to promote transmission investment at this time.”).

²¹ *See* Initial Comments at 12-14.

²² *See, e.g.*, EEI Comments at 5, 17-24; WIRES Comments at 6-7; Eversource Comments at 14-17; National Grid Comments at 39-41; Comments of American Electric Power Company, Inc., Docket No. PL19-3-000 (filed June 26, 2019) (“AEP Comments”), at 1; Initial Comments of the MISO Transmission Owners, Docket No. PL19-3-000 (filed June 26, 2019), at 16.

²³ *See* TDUS Comments at 25-29. *See also* CT/MA AGO Comments at 37-39; Public Systems Comments at 5-6.

decision to become an RTO member. The Commission must closely scrutinize these requests consistent with its duty under the Federal Power Act to ensure that consumers are not charged excessive costs. *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016); see *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1207 (D.C. Cir. 1987) (“The Commission stands as the watchdog providing ‘a complete, permanent and effective bond of protection from excessive rates and charges.’”) (Starr, J., concurring) (quoting *Atl Ref. Co. v. Pub. Service Comm’n*, 360 U.S. 378, 388 (1959)). Moreover, nothing in Section 219 requires the use of ROE adders to incentivize RTO participation, and there are many other types of incentives the Commission can (and does) use to promote membership.²⁴ Applicants seeking a bonus ROE should establish, as a threshold requirement, why other incentives are insufficient to promote RTO membership.

The need to reevaluate the reasonableness of RTO-participation incentives is especially acute in the case of transmission owners that joined RTOs many years ago. In the time since the Commission implemented its transmission incentives policies, it has issued major orders removing barriers to transmission investments such as Order 1000, Order No. 890,²⁵ and Order No. 845.²⁶ NESCOE also shares the understanding of other commenters that utilities have rarely exited RTOs in light of the benefits membership accords them,²⁷ and NESCOE is unaware of any

²⁴ See TDUS Comments at 26-27.

²⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

²⁶ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh’g*, Order No. 845-A, 166 FERC ¶ 61,137 (2019).

²⁷ See TDUS Comments at 28.

transmission company exiting or seeking to exit ISO-NE. Transmission owners should demonstrate why their long-standing RTO membership justifies continued ROE bonus rates.

C. The Existing Framework Provides an Appropriate Mechanism for Incentivizing Novel and Innovative Technologies and Practices

A number of transmission owners and their trade associations reacted positively to the prospect of recovering certain operations and maintenance (“O&M”) costs, such as grid management technology or vegetation management, in rate base.²⁸ NESCOE urges the Commission to proceed cautiously before considering such a radical change. Moreover, there is no current need to revise incentives rules to promote these investments.

Under the Commission’s traditional cost-of-service ratemaking, O&M costs are, of course, generally not capitalized. Increasing the category of O&M costs that would be eligible for rate base treatment would represent a fundamental shift in the Commission’s traditional cost-of-service ratemaking principles. It would also likely significantly increase the cost of a transmission project over its useful life, requiring consumers to pay a return on investments that have historically been treated as expenses in the normal course of providing reliable service.

The implications of this proposed rate treatment go beyond a consideration of reforms to the Commission’s incentives policy implementing Section 219. To the extent the Commission is inclined to advance such a proposed change, NESCOE respectfully suggests that the Commission commence a separate proceeding to solicit comments from the broad cross-section of entities that would have an interest in this potential modification to a long-standing ratemaking practice.

²⁸ See, e.g., WIRES Comments at 9-10; EEI Comments at 27; National Grid Comments at 34; AEP Comments at 20-22; Comments of Exelon Corporation, Docket No. PL19-3-000 (filed June 26, 2019), at 34-35.

Moreover, the Commission’s existing framework already provides a vehicle to incent utility investments in new technologies and other innovative practices. Utilities have the ability to request incentives on a case-by-case basis to address the special risks and challenges that a project presents, including the need to deploy novel or innovative technologies, which distinguish an investment from those made in the ordinary course of providing reliable service.²⁹ This framework appropriately directs the Commission’s inquiry, as provided in Section 219, to ensuring that incentive rates are just and reasonable.³⁰ The Commission has the existing tools to encourage utilities to pursue advanced technologies and innovative practices for the benefit of customers. A new category of special O&M incentives is not necessary at this time.

D. The Commission Should Act to Remove a Documented Impediment to Competitive Transmission Development in New England to Facilitate Use of the Competitive Process as a Mechanism for Applicants to Establish a Nexus Between Incentives and Investments.

In its Initial Comments, NESCOE explained how competitive processes for transmission under Order 1000 may be uniquely positioned to serve as an alternative, or complement, to the Commission’s current framework.³¹ NESCOE noted, however, that competition has been impeded in New England. The Initial Comments discussed ISO-NE’s reliance on an exemption for reliability needs within three years (“Time-Sensitive Needs”) to assign solutions to

²⁹ See Initial Comments at 12-14. See also *United Illuminating Co.*, 167 FERC ¶ 61,126 at PP 62-63 (2019) (examining incentive request for smart grid technology to account for risks and challenges in using a novel or innovative technology).

³⁰ See NOI at P 5 (“[S]ection 219(d) provides that all rates approved pursuant to a rulemaking adopted pursuant to section 219 are subject to the requirement in FPA sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.”).

³¹ Initial Comments at 8-11. The CPUC Comments also explained how increased competition under Order 1000 could more cost-effectively promote transmission infrastructure and obviate the need for transmission incentives. CPUC Comments at 19-20.

incumbent transmission owners rather than initiate the competitive process.³² NESCOE suggested that the Commission “evaluate factors that are limiting the implementation of competitive processes for transmission and consider how to promote competition where it does not place reliability at risk and is in the interest of consumers.”³³

Several commenters raised similar concerns regarding impediments to competition for transmission investments, where exclusions to competitive processes are based on the need date.³⁴ While the Commission has a range of tools available to remedy competitive barriers experienced across RTOs,³⁵ it can take immediate action in New England. There is no factual dispute regarding ISO-NE’s use of the exemption as the primary vehicle for developing transmission in New England. To ISO-NE’s credit, it acknowledged the practical effects of this planning process in its most recent Regional System Plan:

Since the effective date of [Order 1000], the ISO has completed several area needs assessments or has conducted an update to an already completed needs assessment. The results of all the needs assessments show that that [*sic*] time-sensitive and a few non-time-sensitive needs exist. Thus, the solutions study process has been used first to solve the time-sensitive needs, and the Competitive Solutions Process for the few non-time-sensitive needs has been placed on hold until the time-sensitive needs are addressed through the solutions study process. After the solutions have been identified for the time-sensitive needs, the ISO will begin a new needs assessment, which will include the preferred solutions for the time-sensitive needs and identify any remaining needs. The ISO will continue to review the implementation of the competitive

³² Initial Comments at 5-6.

³³ *Id.* at n. 32.

³⁴ NextEra Comments at 8-9; CT/MA AGO Comments at 21; Public Systems Comments at 8-9.

³⁵ *See, e.g.*, NextEra Comments at 8-9; CT/MA AGO Comments at 21; Public Systems Comments at 8-9; CPUC Comments at 19-20.

process in New England and across the country.”^[36] (citations omitted)

What ISO-NE describes is effectively a study loop that has to date limited competition: (1) ISO-NE assesses system needs, (2) the assessment shows both time-sensitive needs and longer-term needs (years three to ten), (3) ISO-NE solves for the time-sensitive needs first and puts the longer-term needs, which are subject to competition, on hold, and (4) ISO-NE then initiates a new needs assessment to reevaluate all system needs. The Commission can recalibrate this process.

As noted in the Initial Comments, ISO-NE announced earlier this year its intent to initiate a competitive procurement in connection with the retirement of a large generating resource in Greater Boston.³⁷ NESCOE appreciates ISO-NE’s focus on potentially running a procurement later this year, including the dedicated efforts of ISO-NE staff over the last several months to prepare for the solicitation. However, this anticipated procurement is unlikely to mark a systemic transition away from ISO-NE’s existing practice of solving for Time-Sensitive Needs and assigning projects to incumbent utilities rather than subjecting them to competition. As NESCOE explained in its Initial Comments, the proposed solicitation is the consequence of unique circumstances and system conditions.³⁸

ISO-NE’s reliance on the Time-Sensitive Need exception, and displacement of the competitive process, is ripe for Commission consideration. The Commission has sufficient record support, in which facts are not in dispute, through this proceeding and Docket No. AD16-

³⁶ ISO-NE, 2017 Regional System Plan, at 69, available at <https://www.iso-ne.com/system-planning/system-plans-studies/rsp/>.

³⁷ Initial Comments at n. 32.

³⁸ *Id.*

18-000³⁹ to direct ISO-NE to show cause why its tariff remains just and reasonable in light of its broad application of what the Commission intended to be a limited exemption from competition for projects needed to solve Time-Sensitive Needs. NESCOE respectfully suggests that it is time for the Commission to address this barrier to competition in New England.

E. Transmission Incentive Reforms are not Needed at This Time to Advance New England State Laws

NESCOE strongly disagrees that the Commission should create a new category of transmission rate incentives to help implement state-jurisdictional energy and environmental laws.⁴⁰ Such a new category of transmission incentives are not needed and could frustrate the states' implementation of their statutory requirements. State laws provide mechanisms to procure transmission, as appropriate and needed and on the terms and conditions a state identifies as reasonable, to meet state statutory requirements promoting the interconnection of clean energy resources.

For example, a 2016 Massachusetts law mandating the solicitation of clean energy resources requires bidders to include transmission costs in their proposals.⁴¹ The law also requires that consumers not bear the costs of any transmission costs overruns.⁴² On June 25, 2019, following a joint solicitation from the state's electric distributions companies, the

³⁹ See Comments of the New England States Committee on Electricity, Docket No. AD16-18-000 (filed May 31, 2016), at 9; Supplemental Comments of LSP Transmission Holdings, LLC, Docket No. AD16-18-000 (filed June 7, 2019), at 11-12. See also Post-Technical Conference Comments of the New England States Committee on Electricity, Docket No. AD16-18-000 (filed Oct. 3, 2016), at 6 (requesting that the Commission closely monitor stakeholder discussions "to determine whether, depending on the outcome, further action is prudent to ensure that (i) the appropriate balance has been struck between solving for time-sensitive reliability needs and achieving consumer benefits through competition, and (ii) there are opportunities for cost discipline to the greatest extent practicable, whether a project is exempt from competition or not.").

⁴⁰ See Eversource Comments at 26-27; Initial Comments of Avangrid Networks, Docket No. PL19-3-000 (filed June 26, 2019), at 33-34.

⁴¹ An Act to Promote Energy Diversity, St. 2016, c. 188, § 12 (adding Sections 83C and 83D to the Green Communities Act, St. 2008, c. 169).

⁴² Section 83C(d)(5)(iv); Section 83D(d)(5)(iv).

Massachusetts Department of Public Utilities approved long-term contracts for hydroelectric generation and associated environmental attributes that included costs to deliver the power over a new 1,200 MW megawatt high-voltage direct current transmission line.⁴³

In 2015, entities in three New England states issued a request for proposals for clean energy and associated transmission (the “Multi-State RFP”).⁴⁴ The Multi-State RFP expressed a strong preference for cost containment, stating that “proposals including cost containment features such as fixed price components, cost overrun restrictions, or other cost bandwidth provisions to limit customer risk will be viewed more favorably.”⁴⁵ It further stated that projects without “significant cost containment features” are unlikely to be selected.⁴⁶ The Multi-State RFP resulted in the procurement of clean energy to satisfy states’ needs without transmission. While states determined that transmission was not needed in connection with this procurement, the Multi-State RFP served as an early model on how transmission cost controls could be incorporated into state-jurisdictional project evaluation processes.

As reflected in these state-sponsored activities, New England states have existing tools to ensure that cost discipline is a critical component of any transmission project selected in furtherance of state law. These mechanisms provide assurance that transmission costs will not unexpectedly rise beyond the bid price submitted to state regulators for review and materially alter the determination of benefits and costs that informed the selection of a project and whether it is in state consumers’ interest.

⁴³ *NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil*, D.P.U. 18-64 through D.P.U. 18-66, Order (June 25, 2019).

⁴⁴ Notice of Request for Proposals from Private Developers for Clean Energy and Transmission, Nov. 12, 2015, available at <https://cleanenergyrfpdotcom.files.wordpress.com/2015/11/clean-energy-rfp-final-111215.pdf>.

⁴⁵ *Id.* at 27 (footnote omitted).

⁴⁶ *Id.* at n. 16.

The Commission's creation of special incentives to help implement state laws could unintentionally hinder, rather than support, state efforts. Incentives tied to state laws would inherently place the Commission in the role of exercising its judgment regarding the execution of those laws. Putting aside the obvious jurisdictional issue, the Commission may be asked to award incentives for a project that is not a state's preferred means to satisfying its statutory mandates. Rather than focus its efforts solely on advancing the state law at issue, a state would consequently be forced to direct resources toward litigating a Commission proceeding. In addition, without cost containment protections, providing additional incentives for clean energy projects would expose consumers to escalating and uncontrolled costs that could frustrate the continued implementation of clean energy laws. At the same time, there is an accountability mismatch: state officials are accountable to citizens for their decisions in executing state laws and the Commission is not.

These conflicts are entirely avoidable. The Commission should decline the invitation to revise its incentive policies to help advance state statutory requirements. Experience to date shows that transmission incentive reforms are not needed to advance New England states' laws. At minimum, if the Commission were to establish these incentives, it should apply them only in regions where the affected states support such a mechanism.

III. CONCLUSION

NESCOE appreciates the opportunity to provide reply comments in this proceeding and respectfully asks that the Commission consider these comments in its evaluation of transmission incentives policies.

Respectfully submitted,

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