

To: ISO New England (ISO-NE) Board of Directors
From: NESCOE
Date: October 29, 2021
**Subject: November 1, 2021 State Official/ISO-NE Board meeting on ISO-NE
Response to *Advancing the Vision***

A year ago, the New England states expressed through the *Vision Statement* that a clean, affordable, and reliable 21st century regional electric grid required significant changes in three core segments of our energy system: Wholesale Electricity Market Design, Transmission System Planning, and ISO-NE Governance.¹ Since then, state officials engaged in discussion on these critical issues with consumers, public officials, electricity market participants, energy law professors, environmental justice educators, and you and your management team. This summer, NESCOE advanced recommendations in each of the three intersecting segments, as well as on equity and environmental justice, through the *Advancing the Vision* report.² Last month, you provided a response to these recommendations.³

Through collaborative work over the last year, New England has made progress in some areas toward the 21st century regional electric system we called for in the *Vision Statement*. As discussed below, transmission planning reforms are moving along a defined track while market reforms are on a directionally promising path, albeit with much more work ahead. These efforts represent a significant amount of work; we particularly appreciate ISO-NE staff's diligence in advancing them during what is for all a challenging year.

On ISO-NE governance, your September 2021 Response, while an important first step, largely maintains the *status quo* structure. It did not squarely address many key concerns that we raised. As progress in the other areas has benefitted considerably from continued discussion, we write to identify governance issues that require more conversation for us to make progress as a region. We look forward to our discussion with you in early November.

Transmission Planning

We appreciate your responsiveness to our call for long-term planning to inform the region of the amount, type, and high-level cost of transmission infrastructure necessary to cost-effectively incorporate clean energy and distributed energy resources into the system, and to meet New England states' energy policy requirements and goals. We look forward to continued progress on the *2050 Transmission Study*, assessing its results, and determining interest in taking a next

¹ <https://nescoe.com/resource-center/vision-stmt-oct2020/>.

² https://nescoe.com/resource-center/advancing_the_vision/.

³ See September 2021 Response at https://www.iso-ne.com/static-assets/documents/2021/09/iso-ne-response_to_states-vision_sept_23_2021.pdf.

step through competitive processes to minimize consumer costs. We are similarly appreciative of ISO-NE staff's efforts to make such long-term planning routine by amending the tariff. We also recognize the value of other on-going initiatives that support the integration of clean energy resources, such as the Future Grid Reliability Study.

As we have noted, there also remains a need for a more meaningful state role in the evaluation and selection of public-policy driven transmission projects, as well as process points along the way to allow each state to assess facts and options for satisfying state legal requirements. Your September 2021 Response indicates that you share this perspective.⁴ Other work in progress, from improvements to interconnection processes for clean energy resources to transmission-related reforms the Federal Energy Regulatory Commission (FERC) is exploring,⁵ provides continuing opportunity for our collaboration.

Wholesale Electricity Market Design

We welcome your and stakeholders' efforts to identify potential market designs that would enable the development of scalable clean energy. One objective in any such design is to give markets predictability and each state flexibility to use judgment about whether, when, and to what extent participation in that market makes sense based on then-current laws and needs.

We appreciate the concerted regional effort to shape the forthcoming analysis of several designs to provide market-based value streams to clean energy resources. We look forward to reviewing the directional outcomes together and assessing options against the *Vision Statement* market principles.⁶

As we await analysis results that are expected to inform next steps in that matter, we want to work in partnership with you on other important market design issues. These include tariff revisions to eliminate the Minimum Price Offer Rule, resource accreditation, improving ancillary services, and co-optimizing reserves in the energy markets. Work in these areas is well-timed to operationalize the closer communication with us as outlined in your September 2021 Response.

⁴ See September 2021 Response at p. 5: "The states' Vision foresees large-scale transmission investment to enable clean energy – This will require *increasing levels of input and decision-making from state regulators and policymakers* with the ISO playing a technical role to support the states." (emphasis in original)

⁵ See, e.g., *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021).

⁶ *Vision Statement* at p. 2: "1. Meet States' decarbonization mandates and maintain resource adequacy at the lowest cost by using market-based mechanisms; 2. Establish effective mechanisms that accommodate existing and future long-term contracts for clean energy resources executed pursuant to state law; 3. Integrate distribution-level resources effectively and efficiently; 4. Allow interested buyers and sellers to participate; and, 5. Provide for an appropriate level of state involvement in market design and implementation."

Governance and Practices

Governance is, as we have stated, inseparable from the evolution required of markets and transmission planning to meet the needs of a future electric grid.

Your reply last month was directionally responsive to our recommendations in some ways, but it fell short in addressing the need for structural changes that we identified. The days are past when what we primarily asked of ISO-NE was to run fuel neutral markets and plan for and operate reliability-based transmission. This moment—grounded in state laws and mandates, not preferences or ideas⁷—needs governance to keep pace with an evolving power grid and the role of state laws and mandates in that evolution.

Greater Interaction With States Fits Comfortably with Independent Decisionmaking

First, a word on independence. The structural reforms we recommended would not compromise ISO-NE's independence. New England state officials had a central role in establishing ISO-NE's governance in the 1990s when they elected to use competitive wholesale markets to serve consumers; then and now, states value your independence.⁸

Second, as FERC has recognized, states are not market participants. ISO-NE's governance should recognize this key distinction. In encouraging the formation of RTOs, FERC demarcated between state and other interests in RTO affairs. For example, in discussing the need for RTO governing boards to be independent, the Commission's concerns were focused on ensuring that an RTO's "decisionmaking process should be independent of any *market participant or class of participants*."⁹ In fact, the Commission expressed openness to state government officials serving as voting members on RTO boards, finding that "[t]here may be special circumstances in some regions that would make it in the public interest to give voting rights to one or more state government representatives."¹⁰

⁷ Most, but not all, New England states have economy-wide decarbonization requirements. New Hampshire noted in the *Vision Statement* that it "does not have the same or similar clean energy mandates as do the other New England states" but that it has "a common interest in preserving efficient wholesale markets and in ensuring that transmission system planning achieves least-cost solutions; as well as a legislative mandate to prevent or minimize any rate impact of other states' policies on New Hampshire retail electric rates." *Vision Statement* at n. 2.

⁸ FERC's requirement that ISO-NE maintain its independence from market participants applies equally to ISO-NE's role as an independent system operator (ISO) and regional transmission organization (RTO). *See Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) at p. 152 (requiring all RTOs to be independent of market participants) and pp. 154-155 (stating that in the proposed rule preceding Order No. 2000, "the Commission reiterated its earlier statement that the principle of independence is the bedrock upon which the ISO must be built and that this standard should apply to all RTOs, whether they are ISOs, transcos or variants of the two.") (quotation omitted).

⁹ Order No. 2000 at pp. 227-28 (emphasis added).

¹⁰ *See id.* at p. 232. The Commission also recounted that most commenters on the proposed rule "were comfortable with allowing state officials to serve as *ex officio* members" and noted that "[i]t was thought that state officials would be better informed in making their own decisions if they could closely observe the considerations and constraints that were weighed by the RTO in making its decisions [and that] the ability of

Greater interaction with and accountability to states reflected in reforms to ISO-NE's mission, governance, and practices fits comfortably with your need to maintain independent decisionmaking, and may further promote the public interest. An example of an ISO rightly preserving independence of judgment alongside greater engagement by public officials is informative. The New York Independent System Operator's (NYISO) Board welcomes representatives from the New York Public Service Commission to participate in its meetings in a non-voting role.¹¹ We trust that would not be a practice if it were deleterious to NYISO's independence.

Enhanced Communications and Transparency

We are pleased that you agreed to increase communication with the public and the states through additional meetings. As a public utility with federal filing rights on matters that directly affect electric consumer costs, offering the public an opportunity to become familiar with you through some open meetings is a reasonable way to increase visibility into your processes and actions. We hope you will consider creating other opportunities for the public to hear from you, and you to hear from them. Your speaking at ISO-NE's Consumer Liaison Group (CLG) meetings would be a natural step in that regard.

We welcome meetings with you and management to discuss states' views prior to ISO-NE finalizing its positions. Similarly, your commitment to explain in FERC filings how ISO-NE considered majority state positions in connection with proposals is a constructive way to enhance public visibility into how you arrive at your determinations.

There is, however, room for greater visibility. For example, more substantive Board reports are more constructive than requiring states to get insight through lines of questions to ISO-NE management at NEPOOL meetings. Consider the time it would take for questions and answers to illuminate the Board's discussion of a key issue in a recent Board report: "The [Markets] Committee also discussed ... the ISO's plan to address the Minimum Offer Price Rule." Board reports can provide more information without compromising candid discussions or shifting the burden to states to question our way to understanding the nature of your discussion.

Structural Governance Recommendations

We are disappointed that your response did not directly address our structural recommendations. We are interested in discussing the following items with you:

- **Board Committees:** We asked you to establish a standing Board Committee on State and Consumer Responsiveness, with a charter to include explicit assessment of consumer

state officials to observe the RTO's decisionmaking process would be especially useful if the RTO had to recommend one or more expansions to the existing grid." *Id.*

¹¹ See NYISO Bylaws, Article II, Section 7 and Article III, Section 1(c), available at https://www.nyiso.com/documents/20142/1399438/By_Laws_NYISO_2017.pdf/ec19049e-f8f3-f72d-6460-699f8db53251/.

costs and interests, and consideration of how your work accounted for state requirements and mandates that are causing grid transformation.¹²

We would like to explore with you means to that end during this state-driven evolution of our grid.¹³ This includes understanding your objections to a standing Board committee. At a high level, its point would be to put into appropriately sharp focus the Board’s consideration of the interaction of state requirements and ISO-NE’s responsibilities, and on how your choices impact the paying public. If concerns about such a committee persist, we would like to talk about alternative approaches, such as establishing a special committee.

- Mission Statement: *Advancing the Vision* called on ISO-NE to update its mission statement to appropriately balance and account for consumer and other state interests in exercising its authority. In response, you explained that you updated two Board committee charters to reference ISO-NE’s Vision. Note that ISO-NE can change its Vision in the same way it was created—unilaterally, at any time, and without notice or input opportunity.

We recognize the level of work underway now and in the year ahead—and the demands it has put on ISO-NE staff. We do not suggest that a stakeholder process on your Mission Statement should jump ahead of important ongoing matters. We believe, however, that discussion of a Mission Statement adjustment should be on deck (and with check-ins every decade or so). In the meantime, dialogue about it between the Board and states should not distract ISO-NE staff from their work described above, or in ISO-NE’s 2022 Work Plan. If you believe the Mission Statement should remain unmodified, we would like to understand that better.

- Section 205: *Advancing the Vision* asked ISO-NE to “collaborate with the states to propose a form of shared section 205 rights with states” where “the development of future ISO-NE market rule changes . . . seek to execute or integrate state energy and environmental policies and requirements.” We would like to explore this issue further to ensure states’ interests are appropriately accounted for in market design changes that seek to execute or integrate state policies and requirements. This includes understanding better ISO-NE’s concerns as well as its perspective on approaches to 205 rights elsewhere.

¹² For clarity, this request was not intended to suggest that state officials would serve on such a Board committee.

¹³ While not reflected in the Board’s September 2021 response, we are pleased to read that the Nominations and Governance Committee revised its charter to focus on diversity. That change is imperative and the states look forward to partnering with you to promote Board diversity through the states’ representation on the Joint Nominating Committee.

Equity and Environmental Justice

An important theme emerged through the dialogue that led from the *Vision Statement* to the recommendations in *Advancing the Vision*: the need to meaningfully integrate equity and environmental justice considerations into energy infrastructure decisions.

We are mindful of state responsibility and control around permitting and siting, and do not seek to transfer that to ISO-NE. However, we require your partnership to evolve regional processes as well. At the outset, we appreciate your offer to be a resource as we set about together to identify barriers to integrating individual states' environmental justice considerations into the regional planning processes and to develop practices that seek to address these barriers over time. We believe our collective efforts in New England will connect to the objectives of FERC's new Office of Public Participation.

Finally, we understand that publishing plans for infrastructure in simple non-technical terms and in a way that is accessible to diverse affected communities is challenging. We would like the chance to talk more specifically about that as well.

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We look forward to our next conversation in early November. Please be in touch in advance with any questions that might help facilitate our dialogue.