

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

RENEW Northeast, Inc.,)	
Complainant,)	
)	
v.)	
)	Docket No. EL23-16-000
ISO New England, Inc. and)	
New England Participating Transmission)	
Owners,)	
Respondents.)	

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

Pursuant to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Combined Notice of Filings #1 issued on December 14, 2022, in the above-referenced docket, Notice of Extension of Time issued on December 22, 2022, further Errata Notice issued December 29, 2022, and Rule 211 of the Commission’s Rules of Practice and Procedure,¹ the New England States Committee on Electricity (“NESCOE”) submits this Protest and Comments on RENEW Northeast, Inc.’s (“RENEW”) Complaint against ISO New England Inc. (“ISO-NE”), and the New England Participating Transmission Owners (“NE PTOs”) filed December 13, 2022 (“RENEW Complaint” or “Complaint”).² On December 14, 2022, NESCOE filed a timely motion to intervene in this proceeding by doc-less intervention.

¹ 18 C.F.R. § 385.211 (2022).

² *RENEW Northeast, Inc. v. ISO New England, Inc. and New England Participating Transmission Owners*, Complaint of RENEW Northeast, Inc., Docket No. EL23-16-000 (filed Dec. 13, 2022) (“RENEW Complaint” or “Complaint”). Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the “Tariff”).

The Complaint alleges that Schedules 11 and 21 of Part II of the ISO-NE Tariff, the Open Access Transmission Tariff (“OATT”), are unjust and unreasonable to the extent they permit NE PTOs to directly assign to Interconnection Customers operation and maintenance (“O&M”) costs³ associated with Network Upgrades, Stand-Alone Network Upgrades and Distribution Upgrades (collectively, “Network Upgrades”) constructed to facilitate an interconnection.⁴ The Complaint also asks the Commission to determine that RENEW is considered an “Interested Party” pursuant to the Formula Rate Protocols or take other action to ensure RENEW is given “adequate opportunity for participation and access to information about transmission rates.”⁵ RENEW further asks the Commission “to direct the NE PTOs to provide greater transparency regarding O&M costs in the interconnection process.”⁶

I. DESCRIPTION OF NESCOE

NESCOE is the Regional State Committee for New England. It is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO-NE administers.⁷ NESCOE’s mission is to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the lowest possible price over the long-term, consistent with maintaining reliable service and environmental quality.⁸ These comments represent the collective view of six of the New England states.

³ O&M costs include operation and maintenance expenses, administrative and general expenses, and taxes.

⁴ Complaint at 1-2.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *ISO New England Inc.*, 121 FERC ¶ 61,105 (2007).

⁸ See Sept. 8, 2006 NESCOE Term Sheet (“Term Sheet”) that was filed for information as Exhibit A to the Memorandum of Understanding among ISO-NE, the New England Power Pool (“NEPOOL”), and NESCOE (the “NESCOE MOU”). Informational Filing of the New England States Committee on Electricity, Docket No. ER07-1324-000 (filed Nov. 21, 2007). Pursuant to the NESCOE MOU, the Term Sheet is the binding.

II. INTRODUCTION

As NESCOE has detailed in recent filings with the Commission, New England states' laws and requirements are charting a steady path to transitioning the region's power mix to a clean energy system.⁹ NESCOE shares RENEW's interest in facilitating generator interconnections. In comments filed last year on the Commission's proposed reforms to generator interconnection procedures,¹⁰ NESCOE expressed support for the Commission's overarching goal of enabling interconnection customers to interconnect to the transmission system "in a reliable, efficient, transparent, and timely manner, thereby ensuring that rates, terms, and conditions for Commission-jurisdictional services remain just and reasonable and not unduly discriminatory or preferential."¹¹

However, NESCOE has cautioned the Commission against directing changes to New England's long-standing approach to interconnection-related Network Upgrade costs.¹² The structure in place implicates consumer protections and core principles regarding the shifting of investment risks that drove states to restructure the electricity industry.¹³ The Interconnection NOPR did not include proposed changes to the cost assignment rules for interconnection-related network upgrade costs.

Through its Complaint, RENEW seeks to replace long-settled rules that put development risks and costs on interconnection customers with a one-sided bargain that shifts 100% of those

obligation of ISO-NE, NEPOOL, and NESCOE.

⁹ See Initial Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Aug. 17, 2022) ("NESCOE Initial NOPR Comments"), at 15-16 (referencing Initial Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Oct. 12, 2021) ("NESCOE Initial ANOPR Comments")).

¹⁰ *Improvements to Generator Interconnection Procedures and Agreements*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,194 (2022) ("Interconnection NOPR").

¹¹ Initial Comments of the New England States Committee on Electricity, Docket No. RM22-14-000 (filed Oct. 13, 2022), at 2.

¹² See NESCOE Initial ANOPR Comments at 50-51.

¹³ *Id.*

costs to consumers. The Commission should reject that myopic approach, as both bad policy and a matter of law. Of particular note, New England is already on a path to revisit cost allocation more broadly in connection with public policy-driven transmission projects as part of the regional work following ISO-NE's implementation of its longer-term transmission planning process.¹⁴ The Complaint distracts from this work. NESCOE encourages RENEW to withdraw its Complaint about Network Upgrade costs and instead focus its efforts and the expertise of its members on the broader cost allocation work that the region will engage in this year.

While NESCOE opposes the Complaint's attempt to upend the rule assigning Network Upgrade costs, subject to the comments below, NESCOE generally supports RENEW's call for greater transparency around O&M costs and a broader ability of parties in New England to participate in the Formula Rate Protocol process. However, as discussed below, NESCOE has both substantive and procedural concerns with RENEW's proposed change to the definition of an "Interested Party" under the Formula Rate Protocols. A more fully formed record is needed for the Commission to evaluate the merits on all of these issues.

III. PROTEST

A. RENEW Has Failed To Meet Its Burden Under Section 206 of the Federal Power Act To Demonstrate that New England's Longstanding Interconnection Cost Arrangement Has Become Unjust and Unreasonable.

The Commission is required under the Federal Power Act ("FPA") to ensure that jurisdictional rates are just and reasonable.¹⁵ Under Section 206 of the FPA, FERC may "prescribe a change in contract rates whenever it determines such rates to be unlawful."¹⁶ However, "[t]he condition precedent to the Commission's exercise of its power under § 206(a) is that the existing

¹⁴ See NESCOE's Initial NOPR Comments at 51.

¹⁵ See 16 U.S.C. §§ 824d(a), 824e(a).

¹⁶ *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956).

rate is ‘unjust, unreasonable, unduly discriminatory or preferential,’”¹⁷ and the burden of proof for this showing is upon the complainant.¹⁸

Where, as here, a complainant challenges an existing rate previously found to be just and reasonable, the Commission must evaluate whether the rate has become unjust and unreasonable due to “intervening shifts in circumstances.”¹⁹ RENEW has failed to show that any such change in circumstances has caused the rate to become unjust and unreasonable and has, therefore, not met its burden under Section 206. The Commission should dismiss the Complaint.

1. The Reasoning Behind the Commission’s Finding That Schedule 11’s Allocation of Interconnection-Related Costs Is Just and Reasonable Continues To Apply Today.

Schedule 11 of ISO-NE’s OATT authorizes the direct assignment to interconnection customers of all interconnection-related Network Upgrade costs, including O&M costs, with certain exceptions not relevant here.²⁰ As RENEW recognizes, Schedule 11 was initially developed as part of New England’s open access restructuring, before the Commission established standardized generator interconnection procedures.²¹ In 2000, the Commission approved the Tariff’s cost allocation provisions and found the direct assignment to be reasonable, particularly in light of ISO-NE’s congestion management program.²² The Commission’s order approved direct

¹⁷ *Id.* (quoting 16 U.S.C. § 824e(a)).

¹⁸ 16 U.S.C. § 824e(b); *Blumenthal v. FERC*, 552 F.3d 875, 881 (D.C. Cir. 2009); *Union Elec. Co. v. FERC*, 668 F.2d 389, 393 (8th Cir. 1981) (stating that “the challenger has the heavy burden of showing convincingly that the [rate at issue] is outside the zone of reasonableness”).

¹⁹ *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 356 (D.C. Cir. 2014) (“*FirstEnergy*”); *La. Pub. Svc. Comm’n v. FERC*, 184 F.3d 892, 897 (D.C. Cir. 1999). While this Protest focuses on Schedule 11, to the extent that Schedules 21 incorporate the O&M cost allocation provisions of Schedule 11, the reasons for dismissal with respect to Schedule 11 also apply to Schedule 21.

²⁰ See *ISO New England, Inc., et al.*, 91 FERC ¶ 61,311 at 62,078-62,080 (2000) (“Initial Order”), *order on reh’g*, 95 FERC ¶ 61,384 (2001).

²¹ Complaint at 10-12; see *New England Power Pool*, 85 FERC ¶ 61,141 (1998).

²² Initial Order at 62,079.

assignment of all interconnection-related upgrade costs, including O&M costs, to interconnection customers.

After the acceptance of Schedule 11, the Commission promulgated its standardized generator interconnection procedures in Order No. 2003.²³ In Order No. 2003, the Commission included *pro forma* transmission pricing policies²⁴ but, as relevant to this proceeding, the Commission explicitly allowed for “independent entity variations” from the proposed procedures.²⁵ The Commission recognized that an Independent System Operator (“ISO”) or Regional Transmission Organization (“RTO”) “is less likely to act in an unduly discriminatory manner than a [transmission provider] that is a market participant,” and, therefore, accorded ISOs/RTOs “greater flexibility to customize its interconnection procedures and agreements to fit regional needs.”²⁶

Notwithstanding the Commission permitting regional flexibility to tailor its generation interconnection tariff provisions, the Complaint relies heavily on the *pro forma* provisions in Order No. 2003.²⁷ It argues that Network Upgrades should not be directly assigned to interconnection

²³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,146 (2003) (Order No. 2003); *order on reh’g*, Order No. 2003-A, 69 Fed. Reg. 15,932, (Mar. 26, 2004), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,160 (2004) (Order No. 2003-A); *order on reh’g and directing compliance*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,171 (2005) (Order No. 2003-B), *order on reh’g*, Order No. 2003-C, 70 Fed. Reg. 37,662 (June 30, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,190 (2005) (Order No. 2003-C); *aff’d sub nom.*, *National Association of Regulatory Commissioners v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

²⁴ These policies generally disallowed direct assignment to interconnection customers of network upgrade costs because these customers should not be “charged twice” for the use of the transmission system (i.e., first, by funding Network Upgrades; second, by paying transmission service charges)—thus, once interconnection customers have initially paid the full cost of Network Upgrades that would not have been needed but for the interconnection, the interconnection customer receives transmission service credits for the cost of the Network Upgrades. Order No. 2003 at P 694.

²⁵ *Id.* at P 827.

²⁶ *Id.*

²⁷ *See* Complaint at 12-14.

customers—referring to this as “the Commission’s O&M Cost policy.”²⁸ However, as just discussed, the Commission clearly allowed flexibility for ISO/RTO regions to propose alternative interconnection pricing provisions. The Commission also specifically recognized at least two situations where the general rule would not necessarily apply, both of which are directly relevant here: (1) in regions where interconnection customers do not pay for transmission service,²⁹ and (2) where “a well-designed and independently administered participant funding policy” for Network Upgrades would offer “the potential to provide more efficient price signals and more equitable allocation of costs than the crediting approach.”³⁰

The Commission squarely considered, and accepted, these exceptions in the context of the NEPOOL’s compliance filing in the Order No. 2003 proceeding. NEPOOL’s compliance filing stated that “[t]he Order No. 2003 Amendments . . . preserve NEPOOL’s current practice of allocating all ongoing costs (O&M, G&A, taxes) of Generator Interconnection Related Upgrades to generators.”³¹ The Commission agreed that this practice was appropriate. The Commission’s order on compliance found that NEPOOL’s variations from Order No. 2003’s *pro forma* Large Generator Interconnection Agreement (“LGIA”) were acceptable given ISO-NE’s independence.³² In once again approving Schedule 11, the Commission noted that interconnection customers would

²⁸ *Id.* at 14-15.

²⁹ *See* Order No. 2003-A at PP 423-24. In Order No. 2003-A, the Commission noted Central Maine Power Company’s argument that in regions where interconnection customers do not pay for transmission service, not requiring them to pay expenses associated with Network Upgrades would allow them to use the entire transmission system without making any contribution toward its associated costs. The Commission did not accept the argument as a blanket rule but stated that it would entertain proposals from an RTO or ISO to directly assign such costs to interconnection customers. *Id.* at P 424.

³⁰ Order No. 2003 at P 695. The Commission noted that providing transmission service credits to an interconnection customer for the costs of Network Upgrades somewhat mutes the interconnection customer’s “incentive to make an efficient siting decision that takes new transmission costs into account[.]”

³¹ New England Power Pool, Standardizing Generator Interconnection Agreements and Procedures: Order No. 2003 Compliance, Docket No. ER04-433-000 (filed Jan. 20, 2004), at 25.

³² *New England Power Pool, et al.*, 109 FERC ¶ 61,155 at P 22, 25 (2004) (“*NEPOOL Order*”). The Commission acknowledged that the Tariff would retain the existing cost allocation provision under Schedule 11. *Id.* at P 4.

continue to be “required to pay all annual costs including [O&M costs] allocable to the direct assignment facilities and [Network Upgrades].”³³

The Commission’s order also related facts demonstrating that the direct assignment to interconnection customers of interconnection-related Network Upgrade costs, including O&M costs, continued to be appropriate. The Commission explained that in New England, “generators do not pay for transmission service, so there are no transmission charges against which the credit contemplated by the *pro forma* LGIA could be applied.”³⁴ ISO-NE has explained the region’s transmission rate structure in a separate proceeding before the Commission:

Pursuant to the ISO OATT, the ISO provides regional transmission service –Regional Network Service (“RNS”) and Through or Out Service (“TOut”) – within the New England Control Area over the Pool Transmission Facilities (“PTF”). The New England OATT for regional transmission service has differed from the Commission’s *pro forma* OATT since its inception, in 1997, in that it has not employed a system of physical rights and advance reservations for point-to-point transmission service for the vast majority of transactions over the PTF in New England. [ISO-NE] does not employ a system of physical rights for transmission service over lines that are internal to the New England Control Area.

RNS, which is the primary form of transmission service over the PTF, does not use advance reservations, and does not distinguish between “firm” and “non-firm” transmission service. Rather, RNS allows network Transmission Customers to receive energy and capacity from Network Resources at any point on the PTF without a reservation, and treats all transactions cleared in the energy markets or generation scheduled for reliability as firm. Generating resources that participate in the New England Markets are automatically designated as Network Resources and be [*sic*] able to utilize the regional transmission system. . . . Consistent with the foregoing, in New England, *generators do not pay to transmit their output within New England on the regional network system.*”^[35]

³³ *Id.* at P 7.

³⁴ *Id.* at P 84.

³⁵ *Motion to Intervene and Comments of ISO New England Inc.*, Docket No. EL11-49-000 (filed Aug. 15, 2011), at 9-10 (footnotes omitted) (emphasis added).

The NEPOOL counsel memo attached to the RENEW Complaint underscores this point: “Generators connected to the grid pay nothing to access all of the New England power markets.”³⁶

The Commission expressly permitted the continued inclusion in the Tariff of the previously-approved cost allocation provisions regarding the costs of Network Upgrades related to interconnections:

In Order No. 2003, we stated that we would permit independent entities to adopt their own pricing approach, where appropriate. This flexibility is warranted here, given the existing Commission-approved provisions NEPOOL proposes to retain, which we find acceptable under Order Nos. 2003 and 2003-A, and the interplay of these provisions with NEPOOL’s Commission-approved market design.^[37]

The order’s approval of the continued use of the existing Tariff provisions was appropriate and consistent with Order No. 2003, and the factors supporting the Commission’s decision continue to apply today.

2. RENEW Fails To Satisfy Its Burden Under Section 206.

To meet its burden under Section 206 of the FPA, RENEW must show that Schedule 11 has become unlawful due to “intervening shifts in circumstances.”³⁸ To justify granting the Complaint, RENEW attempts to rely on its assertion that the markets administered by ISO-NE have evolved since Schedule 11 was first developed and that the “cost of network upgrades funded by Interconnection Customers today is far more extensive than it was when Schedule 11 was approved.”³⁹ RENEW contends that “[a]ny ISO transitional considerations that may have formed

³⁶ Complaint at Exhibit 3, June 13, 2002 Letter from David T. Doot to Paul B. Shortley, Chair, NEPOOL Tariff and Reliability, at 9.

³⁷ *NEPOOL Order* at P 85.

³⁸ *FirstEnergy*, 758 F.3d at 356; *La. Pub. Svc. Comm’n*, 184 F.3d at 897.

³⁹ Complaint at 20-22.

the basis for Schedule 11 are no longer present.”⁴⁰ Despite these conclusory statements, the fact remains that the core rationale underlying the Commission’s previous approval of Schedule 11 is still in place today, *inter alia*, that (i) interconnection customers in New England do not pay for transmission service, (ii) the cost allocation for interconnection-related Network Upgrades is intertwined with the ISO-NE market design, and (iii) ISO-NE is an independent transmission provider.

Furthermore, RENEW’s attempt to recast, without proof, the well-settled cost allocation methodology in New England as “transitional” ignores the fact that interconnecting generators continue to enjoy access to ISO-NE markets without having to pay a transmission charge. This specific arrangement is at the heart of the cost allocation structure: load is responsible for regional transmission service charges, and interconnecting generators bear the risks of Network Upgrades triggered by their interconnected generation and their ongoing expenses. RENEW’s proposal seeks to shift the annual costs of Network Upgrades while proposing no corresponding adjustments to the cost responsibility for the transmission service charge. Under RENEW’s plan, customers will be responsible for the merchant developers’ “burdensome” O&M costs, because such costs have now become “more extensive than ... when Schedule 11 was approved.”⁴¹ Rising transmission costs, which consumers also bear through regional rates that allow interconnecting generators corresponding access to and use of the ISO-NE transmission system, do not alone establish the requisite changed circumstances for the Commission to grant the Complaint.

Moreover, RENEW’s characterization of the effect of its proposed change of moving the recovery of O&M costs from interconnecting generators to ratepayers through transmission rate

⁴⁰ *Id.* at 20.

⁴¹ *Id.* at 21.

as “*de minimis*” is not adequately supported. RENEW estimates such impact to vary between 0.74% and 0.34% for RNS rates and between 3% and 0.03% for LNS rates.⁴² However, current O&M Network Upgrade costs are not an accurate proxy for future costs of this category where an imminent grid expansion is expected to keep up with the pace of the changing generation fleet and the need to interconnect more clean resources to the ISO-NE transmission grid. Furthermore, a *de minimis* rate increase today and another such increase tomorrow eventually adds up to material costs reflected on consumers’ bills. In any event, “*de minimis*” rate impact is, of course, not the legal standard to show that the current rate is unjust and unreasonable, and on this issue, too, RENEW has failed to meet its burden of proof.

3. The Complaint Constitutes an Impermissible Collateral Attack on the Commission Orders Approving Schedule 11.

RENEW’s assertion that the doctrine of collateral estoppel does not apply to its Complaint because O&M costs “were not actually litigated and decided”⁴³ in the Commission’s Order on NEPOOL’s Order No. 2003 compliance filings is wrong. As discussed above, the Commission deliberated the assignment of the specific costs at issue here and decided to preserve NEPOOL’s current practice of allocating all ongoing costs, including O&M, G&A, and taxes, of Generator Interconnection Related Upgrades to interconnecting generators.⁴⁴ RENEW’s claims, which effectively amount to criticism of the Commission’s reasoning in the earlier orders, constitute an impermissible collateral attack—“an attack on a judgment in a proceeding other than a direct appeal[.]”⁴⁵ Even though a complaint may seek only prospective relief, it constitutes a collateral

⁴² *Id.* at 26-29.

⁴³ *Id.* at 20.

⁴⁴ New England Power Pool, Standardizing Generator Interconnection Agreements and Procedures: Order No. 2003 Compliance, Docket No. ER04-433-000 (filed Jan. 20, 2004), at 25.

⁴⁵ *New England Conference of Public Utilities Commissioners v. Bangor Hydro-Electric Co., et al.*, 135 FERC ¶ 61,140 at P 27 (2011) (“*NECPUC*”) (“Collateral attacks on final orders and relitigation of applicable precedent ...

attack when its argument is in direct conflict with a prior Commission order in another proceeding.⁴⁶ The Commission should reject this attempt.

B. If the Commission Finds that Schedule 11 Is Unjust and Unreasonable, It Should Not Grant the Requested Relief, But, Instead, Should Direct the Development of a Just and Reasonable Replacement Rate Through the Stakeholder Process.

For the reasons set forth above, the Commission should deny the Complaint. However, should the Commission find that Schedule 11 and related Tariff provisions are unjust and unreasonable, it should not grant RENEW's requested relief, which would necessarily have wide-ranging impacts throughout the region not only for consumers but also for the markets that ISO-NE administers. The proposed remedy implicates, for example, the categories of transmission costs that are allowable for inclusion in wholesale market bids. Unlike a traditional complaint related to a rate charged by a jurisdictional service provider, in which relief would impact only the single rate at issue, granting the relief requested would appear to impact every generator and transmission customer, and thereby, every retail electric customer in New England. Any changes to Network Upgrade cost assignment should be considered and informed by discussion among ISO-NE, states, market participants, and stakeholders to fully appreciate the impact of the reforms, their relationship to other Tariff provisions, and their cost implications. Because granting the Complaint would implicate the overall rate structure in New England, the Commission would need to direct a comprehensive and holistic process that examines all relevant market rules and Tariff provisions.

thwart finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged.”); *see NSTAR Elec. Co. v. ISO New England, Inc.*, 120 FERC ¶ 61,261 at P 33 (2007).

⁴⁶ *NECPUC* at P 28.

Indeed, to the extent that changes to cost assignment rules for interconnecting resources warrant consideration, changes to those rules should be part of a broader regional discussion on cost allocation, such as the process outlined above. A Section 206 proceeding is necessarily limited in examining inter-related cost allocation issues and is less likely to lead to a durable solution.

IV. COMMENTS

In addition to its requested relief in connection with the assignment of Network Upgrade costs, RENEW asks the Commission to (i) determine that it is an “Interested Party” under the Formula Rate Protocols or take other action to ensure RENEW is given “adequate opportunity for participation and access to information about transmission rates[,]” and (ii) order greater transparency regarding O&M costs in the interconnection process.⁴⁷

NESCOE generally supports improvements to the Formula Rate Protocols and practices that lead to greater transparency and understanding of how costs, including O&M costs for Network Upgrades, are recorded and calculated. On the broader issue of transparency related to transmission costs and oversight, NESCOE has consistently advocated for reforms to current practices to provide enhanced visibility into the rate.⁴⁸ NESCOE is not opposed to appropriate adjustments to the NE PTOs’ Formula Rate Protocols that allow for enhanced participation of interested parties in New England.⁴⁹

While NESCOE is open to appropriate adjustments to the Protocols as previously discussed, NESCOE is opposed to blanket adoption of the proposed definition of Interested Party in the Midcontinent System Independent Operator (“MISO”) protocol orders that RENEW

⁴⁷ Complaint at 2.

⁴⁸ See NESCOE’s Initial ANOPR Comments at 5, 32, and NESCOE’s Initial NOPR Comments at 3-4, 11, 81.

⁴⁹ See Complaint at 36.

suggests.⁵⁰ On its face, that definition does not appear to include NESCOE. Without explanation, RENEW would have the Commission direct the removal of explicitly named Interested Parties such as NESCOE that were included in the definition following substantial settlement discussions on the Protocols.⁵¹ Without an affirmative clarification on this issue, NESCOE will continue to oppose RENEW's proposed revision.

In addition, RENEW's challenge to the definition of an "Interested Party" implicates a moratorium on changes to the formula rate that was negotiated and accepted by the Commission as part of the larger Joint Settlement that included the Protocols. The terms of that moratorium, which extends through the end of 2024, are as follows:

There shall be a moratorium on FERC filings involving changes to the Settled Formula Rate included herein, which is set forth in Attachment F to the ISO-NE OATT. As set forth in Attachment F, the moratorium period will end on December 31, 2024. Unless the Parties otherwise agree in writing, no Settling Party shall be permitted to file for a change to this Settlement Agreement, Attachment F or any of its Appendices or the Protocols pursuant to Section 205 or Section 206 during the moratorium period unless such filing is specifically permitted by this Settlement Agreement or the moratorium provisions in Attachment F. It is the intent of the Settling Parties that this moratorium shall provide equivalent protection to sellers and buyers of transmission services subject to this Settlement Agreement and shall therefore apply to any and all FERC filings seeking to change the Settled Formula Rate before or during the moratorium period, including any filings made by entities that are not Settling Parties. In the event that any non-settling party or any other person or entity makes a filing with the FERC prior to the end of the moratorium period seeking to modify the Settled Formula Rate, Attachment F and its appendices or the Protocols that is not specifically permitted by this Settlement Agreement or the

⁵⁰ See *id.* at 35-36.

⁵¹ *ISO New England Inc.*, 173 FERC ¶ 61,270 (2020) (accepting NE PTOs' Joint Offer of Settlement ("Joint Settlement"), filed in Docket No. ER20-2054-000, resolving issues set for hearing in *ISO New England Inc. Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,343 (2015), *amended by*, 154 FERC ¶ 61,179, *reh'g denied*, 154 FERC ¶ 61,230 (2016)). As reflected in the Explanatory Statement accompanying the Joint Settlement, the settlement was the culmination of years of "extensive negotiations among parties to the proceeding constituting a wide range of interests, including all New England state public utility commissions, and other state governmental agencies and [NESCOE]." Joint Settlement, Explanatory Statement, Docket No. ER20-2054-000 (filed June 15, 2020), at 2.

moratorium provisions in Attachment F, and FERC does not reject such filing in accordance with this moratorium provision or otherwise, the moratorium agreed to hereunder shall automatically terminate and the Settling Parties shall be free to seek changes to the Settled Formula Rate pursuant to Section 205 or Section 206 at any time thereafter.^[52]

To NESCOE's understanding, RENEW did not participate in these formula rate settlement discussions. While RENEW states correctly that it is not subject to the moratorium because it was not a "Settling Party,"⁵³ that description tells a partial story. The language above is clear that a non-Settling Party's Section 206 filing can lead to the termination of the moratorium. To the extent that the Commission were to grant RENEW's requested relief before the moratorium has expired, it could have consequences with respect to the entirety of the Settled Formula Rate that the Commission has accepted.

Moreover, RENEW's attempt to distinguish its Complaint as challenging the "interpretation" of the Protocols is complicated by its request for relief under Section 206, *i.e.*, that the Commission direct the NE PTOs "to conform their definition of Interested Party with the [MISO] definition."⁵⁴ At a minimum, the Complaint leaves open a critical question regarding whether the moratorium would be implicated by the Commission granting RENEW's requested relief here. Respectfully, the Commission should reject RENEW's proposed definition and instead encourage the NE PTOs to work with RENEW and others to ensure that the definition of "Interested Party" does not unfairly impede participation in the protocol process.

NESCOE agrees with RENEW that there is a need for explanation and supporting rationale for charging interconnection customers average versus actual O&M costs. On its face, the practice

⁵² Joint Settlement, Section 18, at 25.

⁵³ Complaint at n. 102.

⁵⁴ *Id.* at 3 (footnote omitted).

creates uncertainty for developers and raises questions about the reasonableness of such a cost structure. Clarity is required to understand why O&M costs for Network Upgrades are calculated on an average basis, as RENEW alleges, instead of on an actual basis.⁵⁵ NESCOE is interested in the NE PTOs' response to this concern, and the Commission should closely scrutinize this issue.

NESCOE is also sympathetic to RENEW's request for early and accurate Network Upgrade O&M cost estimates and the resulting uncertainty that could lead to difficulties in securing financing. At the same time, NESCOE appreciates the complexity of the transmission planning process, which requires multiple studies and retooling as projects are added and removed. Here too, a response from the NE PTOs (and perhaps ISO-NE) would help foster a better understanding of the obstacles to providing earlier and more accurate estimates, particularly with respect to O&M costs of Network Upgrades.

⁵⁵ *Id.* at 23.

V. CONCLUSION

For the reasons discussed above, NESCOE respectfully requests that the Commission deny the Complaint and consider its comments in this proceeding.

Respectfully Submitted,

/s/ Jason Marshall

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Counsel to the New England States Committee on
Electricity

Dated: January 23, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via electronic transmission the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Harrisburg, PA this 23 day of January, 2023.

/s/ Susan E. Bruce
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