

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

**Building for the Future Through Electric)
Regional Transmission Planning and)
Cost Allocation)**

Docket No. RM21-17-000

**REQUEST FOR CLARIFICATION AND REHEARING OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

June 12, 2024

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Pursuant to Section 313(a) of the Federal Power Act (“FPA”),¹ and Rules 212 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),² the New England States Committee on Electricity (“NESCOE”) respectfully requests clarification and rehearing of the final rule issued by the Commission in this docket on May 13, 2024.³ NESCOE supports the Commission’s efforts to address a major gap in transmission planning—the absence of procedures to identify longer-term needs and solutions. In alignment with objectives that the Commission set forth in Order No. 1920, NESCOE provides here requests to clarify and reconsider certain features of the final rule to help enable the successful implementation of these reforms.

I. INTRODUCTION

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

¹ 16 U.S.C. § 8251 (a).

² 18 C.F.R. §§ 385.212, 385.713.

³ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Final Rule, Order No. 1920, 187 FERC ¶ 61,068 (2024) (“Order No. 1920”).

Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO New England Inc. (“ISO-NE”) administers.⁴ 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.⁵

A. Update on Long-Term Regional Planning in New England

In a tremendous collaborative effort, ISO-NE, states, and stakeholders have come together in support of longer-term planning reforms in New England, designed to lead to action. In 2020, NESCOE emphasized the paramount importance of “a routine transmission planning process that helps to inform all stakeholders of the amount and type of transmission infrastructure needed to cost-effectively integrate clean energy resources and [distributed energy resources] across [New England].”⁶ Four years later, New England has nearly finalized forward-looking, proactive transmission planning reforms that will enable the region to better plan for and invest in the future. In 2022, the Commission approved a Tariff mechanism that allows ISO-NE to perform state-led, scenario-based, longer-term transmission analyses as a routine practice.⁷ This process provides New England critical visibility into future transmission needs driven by

⁴ *ISO New England Inc.*, 121 FERC ¶ 61,105 (2007). Capitalized terms not defined in this Request for Clarification and Rehearing are intended to have the meaning given to such terms in the in the ISO-NE Transmission, Markets and Services Tariff (“Tariff”) or in the final rule.

⁵ *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 obligation of ISO-NE, NEPOOL, and NESCOE.

⁶ NESCOE. *New England States’ Vision for a Clean, Affordable, and Reliable 21st Century Regional Electric Grid* (2020), at 4, at <http://nescoe.com/resource-center/vision-stmt-oct2020/>.

⁷ *ISO New England Inc., New England Power Pool*, 178 FERC ¶ 61,137 (2022).

state laws and policies and is informed by states’ views on the impact of their own public policies on study assumptions. ISO-NE completed the first Longer-Term Transmission Study, the *2050 Transmission Study*, earlier this year.⁸ As the Commission is aware, ISO-NE also filed earlier this year a second set of Tariff revisions (“Phase 2 Changes”)⁹ to create “a competitive process whereby ISO-NE, NESCOE, and stakeholders work together to solicit and move forward competitive transmission projects that address the needs identified by Longer-Term Transmission Studies.”¹⁰

A guiding principle leading to unanimous state support has been a central role for states in investment decisions directly related to the states’ own laws and mandates. Such a role for states in connection with state law- and policy-driven transmission fits comfortably with, and does not undermine in any way, the role that transmission providers occupy in connection with transmission project evaluation and selection.¹¹ The central role for states is the lynchpin of the Phase 2 Changes, which create a mechanized process for the solicitation of projects that meet longer-term transmission needs along with two methodologies for project selection and cost allocation.¹² The New England states’ unanimous support for the Phase 2 Changes demonstrates that states are capable of and interested in gathering around a tariff mechanism and cost allocation approaches that work comfortably for all, despite varying state laws.

⁸ ISO-NE, *2050 Transmission Study* (Feb. 2024), at https://www.iso-ne.com/static-assets/documents/100008/2024_02_14_pac_2050_transmission_study_final.pdf.

⁹ ISO New England, Inc., New England Power Pool, Revisions to the Attachment K Longer-Term Transmission Planning Process, Docket No. ER24-1978-000 (filed May 9, 2024) (the “ISO-NE Longer-Term Filing”).

¹⁰ Comments of the New England States Committee on Electricity, Docket No. ER24-1978 (filed May 30, 2024), at 2.

¹¹ ISO-NE Longer-Term Filing at 17. *See also id.* at 4.

¹² ISO-NE Longer-Term Filing at 8-10.

In many ways, the Long-Term Regional Transmission Planning requirements of Order No. 1920 mirror the longer-term processes established in New England, including the recently proposed Phase 2 Changes. Both reflect a common interest in establishing transparent and effective avenues for the analysis and ultimate development of transmission infrastructure to meet the long-term needs of the transmission system, taking into account state laws and mandates. Additionally, both are driven by scenario-based, longer-term analyses that consider a broad set of potential benefits. In New England, the *2050 Transmission Study* has already identified the need for significant investment to support the clean energy transition.¹³ NESCOE appreciates ISO-NE's and stakeholders' tireless work on a process that will allow the region to move to action in the near term based on the findings in this analysis.

B. Overview of NESCOE's Positions

NESCOE shares a commitment to meaningful long-term regional transmission planning reform and seeks to ensure that FERC-jurisdictional transmission rates remain just and reasonable and not unduly discriminatory or preferential. In light of the progress in New England, NESCOE especially appreciates the Commission's acknowledgement that certain transmission planning regions already conduct regional transmission planning on a forward-looking, proactive basis and its intent "not to undermine progress made in these transmission planning regions, and our goal is to set a floor, not a ceiling."¹⁴ NESCOE has participated actively in this rulemaking since its inception and submitted extensive comments in response to

¹³ *2050 Transmission Study* at 55 (estimating a cost of \$23-\$26 billion to meet projected system needs by 2050).

¹⁴ Order No. 1920 at P 240.

the Commission’s Notice of Proposed Rulemaking¹⁵ and, prior to that, on the Advance Notice of Proposed Rulemaking¹⁶ on these important issues. As NESCOE has explained, for long-term regional transmission planning processes to produce transmission rates that are just and reasonable, such planning processes must account for state involvement, at all stages—identification of state laws and mandates that drive long-term transmission needs, the choice of assumptions and factors in scenario analyses used to identify and evaluate potential projects to meet those needs, the establishment of criteria for selecting such projects, and the allocation of costs of long-term transmission facilities. NESCOE’s requests for clarification and rehearing focus on the Commission strengthening the state role in all phases of Long-Term Regional Transmission Planning, including on cost allocation, to best enable the final rule to realize the Commission’s articulated goals.¹⁷

Additionally, there are aspects of the final rule where the Commission declined to take action. The Commission did not act on some important consumer protections that could make great headway on cost containment, even more crucial now with the anticipated need to spend billions of dollars to shore up the transmission system to meet future needs. There remains in the

¹⁵ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,028 (2022) (“NOPR”). Initial Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Aug. 17, 2022) (“NESCOE Initial Comments”); Reply Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Sept. 19, 2022); Motion to Reject Untimely Supplemental Comments, or in the Alternative, to Accept Supplemental Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Mar. 20, 2024) (“NESCOE Supplemental Comments”).

¹⁶ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Advance Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 (2021). Initial Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Oct. 12, 2021) (“NESCOE Initial ANOPR Comments”); Reply Comments of the New England States Committee on Electricity, Docket No. RM21-17-000 (filed Nov. 30, 2021).

¹⁷ See *infra* Section II.

final rule, as NESCOE pointed out nearly two years ago, a noticeable gap on consumer protection issues.¹⁸ NESCOE eagerly awaits further Commission action on a reassessment of the Construction Work in Progress incentive along with other incentives that may result in excessive transmission rates.¹⁹ We also encourage the Commission to act swiftly on the cost management proposals under consideration in Docket No. AD22-8-000, including some means to satisfy the identified need to monitor the cost of transmission facilities. Transmission planning and cost management must go hand in hand to ensure that the transmission investment needed to meet future needs is both efficient and cost-effective. NESCOE urges the Commission to couple improvements to Long-Term Regional Transmission Planning in Order No. 1920 with the consumer protections necessary to ensure sensible and efficient investments at a moment when transmission investment is expected to sharply accelerate to meet future needs driven by state laws and mandates.

For these reasons, the Commission should require the prioritization of alternative transmission technologies as cost-effective alternatives to traditional transmission investment.²⁰ Additionally, the Commission's rules on enhancing transparency for local transmission inputs in the regional transmission planning process leave consumers bearing material costs of projects that are effectively unregulated as the final rule exempts from transparency reforms in-kind replacement projects (known as asset condition projects in New England), which constitute the vast majority – over 80% – of expected transmission investment in New England.²¹ While asset

¹⁸ NESCOE Initial Comments at 3.

¹⁹ Order No. 1920 at P 1547.

²⁰ See *infra* Section III.

²¹ See *infra* Section IV.

condition project infirmities are the last matter in this pleading, they are top of mind in New England as asset condition projects dominate consumer spending. Until those processes are improved, the infirmities, with associated consumer spending implications, will carry over to “right-sized” projects. Conditioning the grant of federal rights of first refusal (“ROFRs”) on a showing of sufficient transparency protections to ensure the costs of asset condition projects remain principled is a concrete way in which the Commission can productively improve these processes.

NESCOE looks forward to continuing to participate actively on these issues and requests the Commission make the improvements detailed below to the final rule so that Long-Term Regional Transmission Planning is best positioned for success.

II. THE COMMISSION SHOULD CODIFY A ROLE FOR STATES WHERE STATE POLICIES AND LAWS ARE IMPLICATED IN LONG-TERM REGIONAL TRANSMISSION PLANNING

A. Overview of Concerns with the Final Rule’s Treatment of States

NESCOE supports the overarching goals of Order No. 1920 and agrees that regional transmission planning should be “conducted on a sufficiently long-term, forward-looking, and comprehensive basis to plan for Long-Term Transmission Needs.”²² NESCOE also supports the Commission’s requirement that transmission providers include in their open access transmission tariffs (“OATTs”) an evaluation process, including selection criteria, that they will use to identify and evaluate Long-Term Regional Transmission Facilities for potential selection to address Long-Term Transmission Needs.²³

²² Order No. 1920 at P 87.

²³ *Id.* at P 911.

For the Commission’s reforms to fully achieve their objectives, Long-Term Regional Transmission Planning processes must account for state input (including Regional State Committees)²⁴ in all phases of Long-Term Regional Transmission Planning and cost allocation where state energy and environmental laws and policies are implicated. In Order No. 1000, the Commission carved out a role for states with respect to identification of public policy requirements driving transmission needs,²⁵ yet orders on compliance excluded states in New England from having any particular role in evaluating or selecting projects to meet those needs.²⁶ This absence of a defined state role throughout the Public Policy planning process in Order No. 1000 has impeded use of Tariff provisions for public policy-driven projects in New England. Processes that do not appropriately provide for state and transmission provider cooperation over matters pertaining directly to state public policies risk going unused. As discussed above, ISO-NE’s Phase 2 Changes filing appropriately situates states; NESCOE expects that, together with the close collaboration among ISO-NE, states, transmission owners and other stakeholders, the Phase 2 Changes will achieve the types of cost-effective long-range transmission planning goals that are at the foundation of the final rule.

²⁴ See *infra* Section II.C (addressing the definition of Relevant State Entities).

²⁵ *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011), Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012), *order on reh’g & 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).

²⁶ See NESCOE Initial Comments at 17 (citing Request for Clarification and Rehearing of the New England States Committee on Electricity and the Five New England States, Docket Nos. ER13-193-000, ER13-196-000 (filed June 17, 2013), at 7-18 (arguing that the Commission erred in finding that the core participation of New England states in the proposed process for evaluating and selecting transmission solutions to identified transmission needs driven by public policy requirements is not consistent with Order No. 1000)).

It is through this lens that NESCOE reviewed Order No. 1920. NESCOE is heartened by the Commission’s acknowledgement that “experience with Order No. 1000 has reinforced the critical role that states play in the development of new transmission infrastructure, particularly at the regional level, where transmission projects may physically span, and their costs may be allocated across, multiple states.”²⁷ NESCOE agrees with the Commission’s finding that “facilitating state regulatory involvement in the cost allocation process could minimize delays and additional costs associated with state and local siting proceedings.”²⁸ State officials’ early and continuing place in the conversation is the best way to ensure that regional transmission planning will take into account Long-Term Transmission Needs arising out of evolving state law and policy requirements.

In certain aspects of the final rule, the Commission’s commitment to this principle is explicit. The Commission states: “As reflected throughout this final rule, we recognize that states have a particularly important role to play in the development of Long-Term Regional Transmission Facilities and encourage transmission providers to work with states in a way that reflects that role in addition to complying with the relevant requirements established herein.”²⁹ Likewise, the Commission’s assertion that “the final rule affords significant new opportunities for Relevant State Entities to inform the evaluation process, selection criteria, and cost allocation

²⁷ Order No. 1920 at P 124.

²⁸ *Id.*

²⁹ *Id.* at P 561.

method adopted by the transmission providers in a transmission planning region”³⁰ is encouraging.³¹

In certain aspects of the final rule, the requirements do not fully effectuate the Commission’s assertions. NESCOE respectfully asks the Commission to close the gap between these statements and some of the specifics of the final rule’s requirements. NESCOE seeks clarification and rehearing on these discrete issues, as discussed below.

1. The Commission Should Require Transmission Providers to Rely on States in the Development of Long-Term Scenarios and Evaluation of Benefits of Long-Term Transmission Facilities Where State Laws, Regulations and/or Policies are the Drivers.

NESCOE supports the Commission’s requirement that transmission providers (1) develop and use Long-Term Scenarios as part of Long-Term Regional Transmission Planning, and (2) use those Long-Term Scenarios to identify and evaluate Long-Term Regional Transmission Facilities to meet Long-Term Transmission Needs.³² The development of Long-Term Scenarios is an important first step in the Long-Term Regional Transmission Planning process. NESCOE commends the Commission for appropriately requiring transmission providers to amend their OATTs to establish open and transparent processes to offer stakeholders and states a meaningful opportunity to propose potential factors for incorporation into development of Long-Term Scenarios.³³ NESCOE also appreciates the Commission’s

³⁰ *Id.* at 268.

³¹ *See* Order No. 1920, 187 FERC ¶ 61,068 (Phillips, Chair and Clements, Comm’r, concurring at P 20) (“We agree with Commissioner Christie that transmission development works best when states are key partners in the process. That is why we take the unprecedented steps described in the final rule to give them a central role.”).

³² Order No. 1920 at P 298.

³³ *Id.* at P 528.

finding that “the final rule does not preclude transmission providers from relying on scenarios developed by state agencies,” as long as they comply with other requirements in Order No. 1920.³⁴

However, in other provisions of the final rule, states are treated as equivalent to a stakeholder that has no authority over or obligation to execute state laws.³⁵ NESCOE respectfully asks the Commission to clarify—or, as appropriate, grant rehearing—to confirm that states are distinct from stakeholders in the different phases of Long-Term Regional Transmission Planning. Thus, the Commission should require transmission providers to rely on states in developing Long-Term Scenarios *where state laws, regulations and/or policies are the drivers of Long-Term Transmission Needs*. This requirement implicates the first three categories of Long-Term Scenario factors as well as part of Factor Category Seven, although at times other categories of factors may warrant deference to state-developed scenarios.

Similarly, the Commission should require transmission providers to defer to states in the identification of benefits that Long-Term Transmission Facilities may provide when the driver of the Long-Term Transmission Need is related to satisfying state laws, regulations and/or policies.³⁶ Appropriate recognition of the state’s central role in both these circumstances should be codified in the transmission providers’ OATTs.

³⁴ *Id.* at P 306.

³⁵ *E.g., id.* at P 560.

³⁶ *See id.* at P 895 (citing NESCOE Initial Comments at 41-43).

2. State Role in Development of Criteria for Evaluating and Selecting Long-Term Regional Transmission Facilities

There is little debate about the importance of states' engagement when the questions at issue revolve around Long-Term Transmission Needs driven by state laws, regulations and/or policies. In the NOPR, the Commission "propose[d] to require that public utility transmission providers demonstrate on compliance that they developed their proposed selection criteria in consultation with the relevant state entities in their transmission planning region's footprint."³⁷ The final rule "require[s] transmission providers to demonstrate on compliance that they made good faith efforts to consult with and seek support from Relevant State Entities in their transmission planning region's footprint when developing the evaluation process and selection criteria that they propose to include in their OATTs."³⁸

NESCOE observes that "consult with" can mean a range of things, from an offer of a one-hour meeting to preview potential selection criteria, to interactive and substantive discussions. NESCOE respectfully requests that the Commission confirm that the obligation to consult with Relevant State Entities means something more consequential than the former—that there is an unambiguous pathway for states' feedback to be heard and taken into account.

Along these same lines, NESCOE recommends that the Commission provide guidance on what constitutes "good faith efforts." Having guidance from the Commission up front will go a long way towards ensuring the compliance filings that transmission providers submit meet the final rule's articulated goals.

³⁷ NOPR at P 246.

³⁸ Order No. 1920 at P 994.

3. State Role in Regional Transmission Cost Allocation

NESCOE strongly supports the opportunity for central state involvement around cost allocation in Long-Term Regional Transmission Planning.³⁹ As noted above, the Phase 2 Changes in New England create such a central role for states, not just on project selection but around cost allocation as well. The final rule establishes a six-month Engagement Period, the purpose of which is to “provide[] the same opportunity for robust engagement in the cost allocation process as the NOPR proposal.”⁴⁰ To support the Commission’s goal of ensuring states indeed have an adequate opportunity for robust engagement around cost allocation, NESCOE respectfully requests that the Commission make certain modifications outlined below.

- a. Include an Ongoing Requirement for Consultation with Relevant State Entities.

The requirement to consult with Relevant State Entities should not be a one-time Engagement Period. The Commission clarifies that once a transmission provider files a cost allocation method with FERC, and the Commission approves it, the transmission provider is subsequently free at any time thereafter to make a FPA section 205 filing to amend the cost allocation method.⁴¹ Any such modification to the region’s Long-Term Regional Transmission cost allocation method should trigger an obligation to establish a new Engagement Period to provide a forum for Relevant State Entities to engage in discussions around the new cost allocation proposal. Otherwise, all the efforts put in by the states and others in the region to

³⁹ See NESCOE Initial Comments at 55-57.

⁴⁰ Order No. 1920 at P 1362.

⁴¹ *Id.* at P 1430 (“We further clarify that unless voluntarily waived, a transmission provider retains its FPA section 205 filing rights to submit an *ex ante* cost allocation method for Long-Term Regional Transmission Facilities at any time, consistent with any limitations a transmission provider may have agreed to, for example, as part of its membership in an RTO/ISO.”) (citations omitted).

coalesce around a cost allocation method could be undone by a new filing, without any need for further consultation with states. For these reasons, NESCOE requests that the Commission reconsider its decision to make the Engagement Period a one-time forum.⁴²

b. Require Transmission Providers to File the State Agreed-Upon Cost Allocation Method.

The Commission declines to require, as NESCOE and others requested, that if the transmission provider disagrees with the state-chosen cost allocation method, the transmission provider “file two cost allocation methods – the transmission providers’ preferred cost allocation method and the cost allocation method agreed to by the Relevant State Entities.”⁴³ The Commission states that “[e]ntities that oppose or prefer a different cost allocation method than the transmission providers’ preferred cost allocation method can provide their comments if and when such cost allocation method is filed with the Commission.”⁴⁴

NESCOE recognizes that transmission providers hold FPA section 205 rights. However, because states are not public utilities, absent language in the transmission providers organizational documents or tariffs, there is no way for them to file the cost allocation methods themselves. Relegating states to commenting on a transmission provider’s cost allocation filing does not enable the states to put before the Commission their preferred cost allocation method; rather, it shifts the burden to states to show that the transmission provider’s FPA section 205 filing is not just and reasonable. The only path the Commission envisions for approval of the states’ cost allocation method would be through the vehicle of a complaint. The Commission

⁴² Order No. 1920 at P 1368.

⁴³ *Id.* at P 1429.

⁴⁴ *Id.*

would thereby put the burden on states to first show that the transmission provider's cost allocation method is unjust and unreasonable under FPA section 206 before the Commission would reach the question of whether the states' method is just and reasonable.

The Commission points to the *Atlantic City* opinion⁴⁵ as justification for its view that “[c]onsistent with FPA section 205, however, transmission providers have the right to not file a State Agreement Process.”⁴⁶ The Commission's interpretation of *Atlantic City* essentially removes any effective role for the states in the absence of a FERC-approved State Agreement Process in the tariff. However, *Atlantic City* does not prohibit Commission action under FPA section 206, under which authority the Commission has promulgated Order No. 1920. Rather, *Atlantic City* simply affirms that transmission-owning utilities have filing rights under section 205 that FERC may not revoke.⁴⁷

Requiring the transmission provider to file its preferred cost allocation method along with the states' preferred cost allocation⁴⁸ comports with precedent that the Commission does not have jurisdiction to require utilities “to cede rights expressly given to them” in FPA section 205.⁴⁹ If, however, the Commission declines to grant rehearing on this issue, NESCOE requests

⁴⁵ *Atl. City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) (“*Atlantic City*”).

⁴⁶ Order No. 1920 at n.2895.

⁴⁷ *Atlantic City*, 295 F.3d at 9.

⁴⁸ A useful construct is the “jump ball” filing in New England. The Participants Agreement among ISO New England Inc. and New England Power Pool and the Individual Participants “contains a ‘jump ball’ provision in the case of ISO-NE proposed market rule changes failing to receive sufficient support from the Participants Committee. Specifically, this jump ball provision requires ISO-NE to present to the Commission, in addition to its own section 205 market rule proposal, any alternative participant-sponsored proposal approved by a vote of at least 60 percent of the Participants Committee. In these circumstances, the Commission has the benefit of reviewing both proposals in the context of the initial section 205 filing.” *ISO New England Inc.*, 133 FERC ¶ 61,070, at P 75 (2010).

⁴⁹ *Atlantic City*, 295 F.3d at 9.

that the Commission strongly encourage transmission providers to voluntarily codify existing or new approaches on compliance that would facilitate placing before the Commission alternative region-wide state agreement on cost allocation. This would be consistent with approaches already used by the New York Independent System Operator (“NYISO”) region and the Southwest Power Pool, Inc. (“SPP”).⁵⁰

Including the state-agreed upon cost allocation method in a transmission provider’s section 205 filing is a lawful and rational means to effectuate in a concrete way the respect for the state role the Commission articulates. The more the Commission is successful in encouraging transmission providers to include such voluntary commitments in their tariffs, the greater the likelihood is that states in the region will have comfort with moving forward on providing the approvals needed to actually get much-needed new transmission built.

4. If the Commission Does Not Modify the Final Rule to Better Accommodate the States’ Unique Role, NESCOE Seeks Rehearing.

NESCOE urges the Commission to make the clarifications and modifications discussed above (Sections II.A.1-3). Doing so will reinforce the strides made in the final rule to strengthen the role of the states in Long-Term Regional Transmission Planning and cost allocation, while ensuring that the final rule respects the boundaries of state authority in FPA section 201(a). Where the final rule does not sufficiently recognize the unique role of states, identified above, the result is likely to be processes—and consumer spending on them—that create significant work, but not optimally meaningful outputs (incremental to money spent on the solutions that *are* found relevant, if not Order No. 1920-compliant).

⁵⁰ See NESCOE Initial Comments at 69-70 (discussing *NY Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040, at P 119 (2015) and SPP Bylaws, Section 7.2).

Further, posturing the states as stakeholders can result in Long-Term Transmission Needs being delayed or going unmet as limited resources of the transmission provider are directed toward analyses and processes that are disconnected from states' determinations about needs driven by state laws, but necessary for compliance with the final rule. This would result in a transmission system that does not efficiently meet the future needs of the region, and transmission rates that are not just and reasonable, contrary to FPA sections 205 and 206, 16 U.S.C. §§ 824d, 824e, and contrary to the stated goals of the Commission with these reforms.

If the Commission does not make these important clarifications and modifications, the final rule risks being arbitrary and capricious. *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1991) (“*K N Energy*”) (“we cannot ignore the Commission’s unwillingness to address an important challenge...It most emphatically remains the duty of this court to ensure that an agency engage the arguments raised before it - that it conducts a process of reasoned decision-making.”).

B. The Commission Should Confirm That the Definition of Relevant State Entities Includes Regional States Committees; in the Alternative, NESCOE Seeks Rehearing.

NESCOE respectfully asks the Commission to clarify that the definition of Relevant State Entities includes Commission-recognized Regional State Committees. NESCOE opposed the NOPR’s proposed definition of Relevant State Entities because it would have excluded NESCOE managers designated by each New England Governor to represent that state’s interest as part of Regional State Committees recognized by the Commission.⁵¹ As NESCOE explained, it

⁵¹ NESCOE Initial Comments at 57 (addressing NOPR at P 304).

believed this omission to have been unintentional, as the NOPR expressly referred to NESCOE's bylaws as one possible way to measure "agreement" among the states.⁵²

Unfortunately, the Commission did not modify the definition of Relevant State Entity to make this clarification. Instead, the Commission defines Relevant State Entity in the final rule as "any state entity responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state."⁵³ The only modification the Commission made to the NOPR's proposed definition was "to add the word 'electric' before 'utility regulation' to make clear that Relevant State Entities are those state agencies responsible for *electric* utility regulation, and not other types of utility regulation."⁵⁴

This modification does not address the concerns NESCOE raised with respect to the definition of Relevant State Entity. As the Commission is aware, NESCOE is the Regional State Committee in New England. A Board of Directors representing the six New England states directs NESCOE's activities and affairs. Each New England Governor appoints their state's NESCOE manager(s), which is often, for example, the chair or commissioner at a public utilities commission or at a state's energy policy agency. Without the clarification NESCOE seeks, it is unclear that Regional State Committees (or at least NESCOE), which do not necessarily appear in any state laws⁵⁵ and which are not necessarily state agencies but can be non-profit

⁵² NESCOE Initial Comments at 57 (quoting NOPR at n.512 ("For example, states in ISO-NE may consider NESCOE's by-laws in defining the threshold of agreement among relevant state entities.")).

⁵³ Order No. 1920 at P 1355.

⁵⁴ *Id.* (emphasis in original).

⁵⁵ NESCOE is not designated by the laws of any New England state for the purpose of electric utility regulation or siting electric transmission facilities. *See id.*

organizations, would fall under the definition of Relevant State Entity. NESCOE recognizes that Regional State Committees in different regions may be structured and may operate differently, and the clarification NESCOE seeks is to ensure that it, and indeed all, Regional State Committees, may be considered Relevant State Entities for purposes of Order No. 1920.

As was the case with the NOPR, it appears the Commission did not deliberately exclude Regional State Committees from the definition of Relevant State Entity. To the contrary, the Commission notes that “Relevant State Entities can choose to use existing mechanisms for state involvement in regional transmission planning and cost allocation processes, such as the SPP Regional State Committee and the Organization of MISO States, to negotiate a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process.”⁵⁶

In its explanation of why the proposed definition of Relevant State Entities is adequate, the Commission appears to have misapprehended NESCOE’s argument as solely concerned about its unique structure of achieving consensus among the New England states. The Commission states, “[i]n response to NESCOE’s request to amend the definition to accommodate individual transmission planning regions’ particular approaches to cost allocation requirements, we find that the definition of Relevant State Entities, as amended, recognizes the important role of states while providing sufficient regional flexibility for effective Engagement Period participation.”⁵⁷ NESCOE explained that under its structure, regardless of the number of individuals each Governor appoints as a NESCOE manager, each New England state has one

⁵⁶ Order No. 1920 at P 1357.

⁵⁷ *Id.* at P 1364 (citing NESCOE Initial Comments at 57).

undivided vote in arriving at NESCOE determinations.⁵⁸ However, NESCOE was simply describing its structure, and its salient point was that the definition of Relevant State Entities should be expanded to accommodate the composition of Regional State Committees.⁵⁹

For these reasons, NESCOE respectfully requests that the Commission confirm that the definition of Relevant State Entity includes Regional State Committees and modify the definition accordingly. If the Commission does not, NESCOE seeks rehearing. Absent clarification to address NESCOE's concerns with the definition of Relevant State Entity, this portion of the final rule will not be the product of reasoned decision-making. *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208 (D.C. Cir. 2011) ("*PSEG Energy*") ("an agency's failure to respond meaningfully to objections raised by a party renders its decision arbitrary and capricious") (internal quotations and citation omitted).

C. The Commission Should Require Transmission Providers to Rely on State Input When Developing Assumptions Related to State Laws, Regulations and/or Policies.

The Commission requires transmission providers to incorporate seven specific categories of factors in the development of Long-Term Scenarios.⁶⁰ Among these are Categories One and Two: federal, federally-recognized Tribal, state, and local laws and regulations affecting the resource mix and demand (Category One), and addressing decarbonization and electrification

⁵⁸ NESCOE Initial Comments at 58.

⁵⁹ *Id.* at 57.

⁶⁰ Order No. 1920 at P 409.

(Category Two), and Category Seven, which includes state policy goals that affect Long-Term Transmission Needs.⁶¹

State officials have expertise in connection with their own laws, regulations and policy goals. States know well implementation challenges, timing details, and the like regarding their laws, regulations and policies. Accordingly, NESCOE requests that the Commission confirm that transmission providers should rely on states for input regarding the details of state requirements in the factors in these categories. Otherwise, the transmission provider could end up devoting resources to developing Long-Term Scenarios that are of less value to the region, rather than expending resources running additional scenarios that reflect a more realistic accounting of each state's status in relation to state laws. For example, while there may be a renewable portfolio standard in states' laws, or a requirement for solicitations for renewable energy, states will be best able to inform the details of the assumptions needed to model these factors. This discrete but important modification to the Commission's requirements would maximize transmission provider efficiency and ultimately save on costs and valuable transmission provider resources. Additionally, this discrete modification would align with the Commission's general statement that "each proposed category of factors is broad enough to allow the transmission providers in each transmission planning region to reflect regional differences within the category."⁶²

⁶¹ Category Three is state-approved integrated resource plans and expected supply obligations for load-serving entities. *Id.*

⁶² Order No. 1920 at P 417.

III. THE COMMISSION SHOULD REQUIRE TRANSMISSION PROVIDERS TO ENSURE THAT ALTERNATIVE TRANSMISSION TECHNOLOGIES SERVE AS THE STARTING POINT FOR ADDRESSING IDENTIFIED TRANSMISSION NEEDS

NESCOE commends the Commission’s efforts to address a critical gap in regional transmission planning processes by requiring transmission providers to consider alternative transmission technologies in both Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes when evaluating solutions to identified system needs.⁶³ Indeed, as the Commission concluded, the failure to consistently consider alternative transmission technologies “prevents them from being identified, evaluated, and selected as a more efficient or cost-effective solution to transmission needs, to the detriment of customers that can benefit from their deployment.”⁶⁴

Directing transmission providers to consider alternative transmission technologies “consistent with the requirement in their OATTs for other transmission solutions” represents an important step forward in ensuring the identification and selection of more efficient or cost-effective transmission solutions, and, in turn, just and reasonable rates.⁶⁵ However, if alternative transmission technologies are not prioritized in the evaluation of potential transmission solutions, rates remain at risk of being unjust and unreasonable given the myriad benefits that alternative transmission technologies can provide the transmission system, including their ability to mitigate or defer the need for more expensive and longer-lead-time solutions. To guard against this risk,

⁶³ Order No. 1920 at P 1198. Order No. 1920 adopted and modified the NOPR by requiring the consideration of advanced conductors and transmission switching in addition to dynamic line ratings and advanced power control devices.

⁶⁴ *Id.* at P 1195.

⁶⁵ *Id.* at P 1199.

the Commission should grant rehearing and require transmission providers to ensure that alternative transmission technologies serve as the *starting point* for addressing identified transmission needs.

The final rule is replete with findings regarding the substantial benefits that alternative transmission technologies can bring to the electric grid when incorporated with existing and new transmission infrastructure. When added to existing infrastructure, alternative transmission technologies have the potential to make its use “more efficient and optimize the performance of such infrastructure, mitigating or deferring the need for development of new regional transmission facilities.”⁶⁶ Adding alternative transmission technologies concurrent with the deployment of new transmission facilities may provide cost savings by improving operational efficiency of transmission facilities and bring more benefits and less cost than incorporating them as retrofits after the fact.⁶⁷ The final rule highlights real-world examples of alternative transmission technologies being cost-effectively deployed to meet transmission needs in various areas around the country, along with recent study findings illustrating the ability of alternative transmission technologies to provide significant production cost, net import, and avoided curtailment savings.⁶⁸

In addition to the potential economic benefits of alternative transmission technologies, the final rule also recognizes the ability of certain alternative transmission technologies to enhance reliability and provide additional capacity.⁶⁹ Dynamic line ratings and advanced power

⁶⁶ *Id.* at P 1201.

⁶⁷ *Id.*

⁶⁸ *Id.* at P 1196.

⁶⁹ *Id.* at PP 1196, 1207.

control devices can confer reliability benefits,⁷⁰ advanced conductors may greatly increase the capacity of transmission facilities,⁷¹ and transmission switching can be used to route energy around areas with high congestion and improve the overall transfer capacity of the system.⁷²

The final rule and the record at large in this proceeding demonstrate that alternative transmission technologies have tremendous potential to optimize and enhance the system in ways that traditional transmission solutions cannot. As such, the Commission’s requirement that transmission providers consider alternative transmission technologies “consistent with the requirement in their OATTs for other transmission solutions”⁷³ should go one step further. NESCOE requests that the Commission grant rehearing and take the next step of requiring transmission providers to prioritize consideration of alternative transmission technologies when evaluating potential transmission solutions.⁷⁴ The Commission should direct transmission providers to incorporate procedures into their tariffs establishing a rebuttable presumption that the incorporation of alternative transmission technologies as a solution to an identified Long-Term or existing Order 1000 transmission need would result in a more efficient or cost-effective

⁷⁰ *Id.* at P 1241.

⁷¹ *Id.* at P 1243.

⁷² *Id.* at P 1244.

⁷³ *Id.* at P 1199. *See also id.* at P 1198 (“ . . . when evaluating regional transmission facilities for potential selection, transmission providers must consider whether regional transmission facilities that incorporate, or solely consist of, any of the enumerated list of alternative transmission technologies would be more efficient or cost-effective than selecting new regional transmission facilities or upgrades to existing transmission facilities that do not incorporate these technologies.”).

⁷⁴ The Commission applies the rebuttable presumption principle in adjudicating certain issues, including, but not limited to, whether an interconnected utility should be relieved of its purchase obligations under the Public Utility Regulatory Policies Act of 1978 (*Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order No. 872, 172 FERC ¶ 61,041, at PP 624-25, *order on reh’g and clarification*, Order No 872-A, 173 FERC ¶ 61,158 (2020)) and whether transmission developers who seek incentive rate treatment satisfy the necessary requirements set forth in section 219 of the Federal Power Act. *See, e.g., LS Power Grid N.Y., LLC*, 167 FERC ¶ 61,139, at PP 12-13 (2019).

transmission solution. Incorporating a rebuttable presumption prioritizing the consideration of alternative transmission technologies would place the burden on the transmission provider to demonstrate why alternative transmission technologies are not, on their own or as a component of a larger solution, the more efficient or cost-effective solution. Importantly, adopting this recommendation on rehearing would preserve flexibility for transmission providers envisioned by the final rule because it would not require the selection of any particular alternative transmission technology (or any alternative transmission technology at all) to address an identified need or diverge from a transmission provider's duty to follow Good Utility Practice in planning, developing, and maintaining transmission facilities.⁷⁵

Prioritizing alternative transmission technologies when identifying, evaluating, and selecting transmission solutions appropriately recognizes the unique technological value and benefits that alternative transmission technologies provide. The potential for alternative transmission technologies to be deployed quickly and at a lower cost than traditional transmission upgrades requires that transmission providers consider these modern technologies as the starting point in evaluating solutions. Absent direction that transmission providers prioritize the consideration of alternative transmission technologies, the Commission will not be able to wholly fulfill its mandate to ensure just and reasonable transmission rates under the Federal Power Act. 16 U.S.C. §§ 824d, 824e.

⁷⁵ Order No. 1920 at P 1209.

IV. BY EXEMPTING ASSET CONDITION PROJECTS FROM THE FINAL RULE'S TRANSPARENCY REQUIREMENTS, THE COMMISSION CANNOT ENSURE JUST AND REASONABLE TRANSMISSION RATES FOR THE MAJORITY OF TRANSMISSION SPENDING

A. The Vast Majority of Transmission Spending in New England Stems from In-Kind Replacements and Should Not Be Exempt from Basic Transparency Requirements.

As the Commission is aware, significant transmission investment will be needed to meet future needs. Indeed, it is one of the drivers of Order No. 1920. In New England, the pace of transmission investment is expected to accelerate in the coming years to meet the region's evolving generation mix and load profiles. With the accelerated investment of consumer dollars, a sharp focus on cost consciousness and consumer confidence in spending is paramount. While the long-term planning requirements in Order No. 1920 broadly pave the way forward for efficient transmission planning, attendant transparency and cost oversight mechanisms are needed to ensure that rates are just and reasonable.

NESCOE has made clear that maximizing the efficient use of existing infrastructure will be a key component of cost-efficient investment that will give consumers appropriate assurances that their dollars are being spent wisely. Here, a thoughtful and measured right-sizing approach has an important role to play. However, it is impossible for New England to develop a sound right-sizing approach without "underlying asset condition processes that are transparent and result in disciplined, cost-conscious investment."⁷⁶ The Commission must first ensure that asset condition project spending is principled and costs reasonable before contemplating any right-sizing approach, let alone a ROFR for such projects. Absent meaningful improvements to the

⁷⁶ NESCOE Supplemental Comments at 7; *see id.* at n.19.

asset condition process, a noticeable gap in consumer protections will become a cavernous void as these projects are expanded under right-sizing rules.

To put this in context, NESCOE shares here updated information on asset condition processes in New England, where asset condition spending far outpaces spending on reliability needs identified through ISO-NE led, Order No. 890- and Order No. 1000-compliant processes. In February 2023, NESCOE asked the New England Transmission Owners (“NETOs”) to reform their asset condition process to bring transparency, predictability, and cost discipline to asset condition projects in New England.⁷⁷ The existing process, which was effectively a single power point presentation,⁷⁸ was woefully inadequate given the level of consumer spending on asset condition projects.

NESCOE identified several specific deliverables that would bring additional rigor and transparency to the asset condition process in light of the NETOs’ quickly accelerating investment of consumer dollars in asset condition projects.⁷⁹ The most important of these was an Asset Condition Needs and Solutions Guidance Document (“Guidance Document”), intended to promote a more criteria-based decision-making approach to asset condition projects. NESCOE urged the NETOs to develop the Guidance Document by the end of 2023 given its central

⁷⁷ NESCOE, *Asset Condition Projects and Process Improvements* (Feb. 8, 2023), at https://nescoe.com/wp-content/uploads/2023/02/Asset_Condition_Ltr_2-8-23.pdf.

⁷⁸ *Id.* at 2.

⁷⁹ NESCOE, *Asset Condition Process Improvements – Next Steps* (July 14, 2023), at <https://nescoe.com/wp-content/uploads/2023/07/Asset-Cond-NETO-Requestsf-7.14.23-.pdf>.

importance to transmission right-sizing discussions. What NESCOE got instead was a Process Guide that simply summarized existing utility processes.⁸⁰

As much as NESCOE has sought to improve the transparency, predictability, and cost-discipline of asset condition projects, the pace of spending continues to be staggering and shows no signs of slowing. Since NESCOE’s initial request in February 2023, the NETOs have brought \$3.3 billion in asset condition projects through the Planning Advisory Committee (“PAC”).⁸¹ This includes over \$1.1 billion in projects thus far in 2024 alone.⁸² Over a year and \$3.3 billion later, and appropriate asset condition review processes are not yet in place.⁸³ And looking ahead, asset condition spending represents over 80% of the total expected future transmission investment in New England.⁸⁴

⁸⁰ NESCOE, *NETOs’ Asset Condition Process Guide in Lieu of a Database* (June 5, 2024) at <https://nescoe.com/resource-center/feedback-on-asset-condition-process-guide/>. See also NETOs, *Draft Joint NETO Asset Condition Process Guide* (April 25, 2024) at https://www.iso-ne.com/static-assets/documents/100010/2024_04_25_pac_asset_condition_process_guide_draft.pdf.

⁸¹ The PAC is ISO-NE’s public stakeholder forum on regional planning. The current asset condition process calls for NETOs to provide informational presentations to the PAC on asset condition projects with an estimated cost of \$5 million or greater.

⁸² ISO-NE, *Final Asset Condition List – March 2024* (“March 2024 Asset Condition List”), available at <https://www.iso-ne.com/system-planning/system-plans-studies/rsp>. These totals also include the asset condition projects presented through May 2024 that are not reflected in the March 2024 Asset Condition List. See National Grid W-149 115 kV Line Asset Condition Refurbishment (May 15, 2024); National Grid O-141/P-142 115 kV Line Asset Condition Refurbishment (May 15, 2024); National Grid 339 and 349 345 kV Line Asset Condition Refurbishment (April 11, 2024); Eversource New Hampshire Line X-178 Rebuild (Feb. 28, 2024); Vermont Electric Power Company Sand Bar Phase Shifting Transformer Asset Condition (Feb. 28, 2024) (“2024 Additional Asset Condition Projects”), all available at <https://www.iso-ne.com/committees/planning/planning-advisory/?load.more=3>.

⁸³ The NETOs have made progress on several NESCOE requests, including PAC presentation guidelines, initial asset condition forecasts, and an asset condition database.

⁸⁴ There are \$6.1 billion in proposed, planned, or under construction asset condition projects (including the 2024 Additional Asset Condition Projects) compared to \$1.28 billion in proposed, planned, or under construction reliability projects. See March 2024 Asset Condition List; ISO-NE, *Final RSP Project List – March 2024* (“March 2024 RSP Project List”), available at <https://www.iso-ne.com/system-planning/system-plans-studies/rsp>.

Enhanced transparency requirements would go a long way toward remedying the shortcomings NESCOE has been working to address. The exemption of asset condition projects from the transparency requirements in the final rule leaves consumers without a fundamental understanding of how asset condition evaluations translate into action—initial needs identification, subsequent potential expansion of scope, and solution development—and the cost ramifications of different transmission provider decisions. Further compounding consumer protection efforts, and as NESCOE has highlighted for the Commission, these projects fall into a known regulatory gap that “effectively leaves transmission costs unreviewed at both the state and federal levels.”⁸⁵ While we encourage the Commission to act swiftly in Docket No. AD22-8-000 to implement needed cost oversight protocols to close this regulatory gap, the Commission should act here to ensure that these projects are subject to appropriate and necessary transparency requirements. The lack of requirements for transparency or stakeholder engagement, coupled with currently negligible cost oversight, leaves consumers largely unprotected by regulators in connection with the majority of transmission spending in New England.

NESCOE agrees with the Commission that “enhanced transparency and opportunities for stakeholder participation are needed to ensure just and reasonable Commission-jurisdictional rates.”⁸⁶ Yet, the final rule sets aside NESCOE’s serious concerns that while asset condition spending in New England is an increasingly material component of the overall regional network service charge paid by customers, it is subject to far fewer requirements for transparency, scrutiny, and review. NESCOE raised this issue to the Commission nearly two years ago, noting

⁸⁵ Comments of the New England State Committee on Electricity, Docket Nos. AD22-8-000, AD21-15-000 (filed Mar. 23, 2023), at 19.

⁸⁶ Order No. 1920 at P 1635.

that since ISO-NE began tracking asset condition projects in 2016, over \$2.5 billion such projects were placed in service, with \$3.122 billion more proposed, planned, or under construction.⁸⁷ Based on the last published update in March 2024, over \$4 billion in asset condition projects have been placed in service, with \$5.1 billion more proposed, planned, or under construction.⁸⁸ If all projects that have been presented to date are included, the estimated spending on future projects jumps to nearly \$6.2 billion.⁸⁹ That’s a twofold increase in less than two years. By comparison, forecast reliability investments have remained virtually unchanged in those two years.⁹⁰ This begs the question of how Order No. 1920 will result in just and reasonable transmission rates when the vast majority of transmission investment is excluded from basic transparency requirements.

The Commission clarifies the transparency “requirement applies only to local transmission planning that is within the scope of Order No. 890 and is therefore already subject to Order No. 890 transparency requirements.”⁹¹ This single sentence, without further discussion addressing the concerns NESCOE and others raised on behalf of consumers, does not constitute reasoned decision-making. The Commission acknowledges that “the trends regarding use of... in-kind replacement processes, provide additional evidence to support our finding that existing regional transmission planning and cost allocation requirements are inadequate without

⁸⁷ NESCOE Initial Comments at 80 (citing June 2022 Asset Condition List).

⁸⁸ March 2024 Asset Condition List.

⁸⁹ *Id.*; 2024 Additional Asset Condition Projects.

⁹⁰ At the time of NESCOE’s initial comments there were \$1.29 billion in planned, proposed, and under construction reliability projects; as of March 2024, there were \$1.28 billion in such reliability projects. *See*: NESCOE Initial Comments at 80 (citing June 2022 RSP Project List); March 2024 RSP Project List.

⁹¹ Order No. 1920 at P 1625.

reform.”⁹² Yet the final rule, with no discussion, declines to adopt reforms that the Commission expressly recognizes are needed to ensure regional transmission planning and cost allocation is just and reasonable. Here the Commission can neither “demonstrate that it has made a reasoned decision based upon substantial evidence in the record,” nor “articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Cal. PUC v. FERC*, 20 F.4th 795, 800 (2021) (“*Cal. PUC*”) (internal quotations and citations omitted).

B. Unless the Commission Grants Rehearing and Subjects Asset Condition/In-Kind Replacement Projects to the Same Transparency Requirements as Local Transmission Projects, There Is No Basis to Give the Owners of Such Projects a Federal ROFR.

While declining to subject asset condition projects to transparency requirements based on a narrow view of the Order No. 890 planning process, the Commission simultaneously reverses a protection it adopted in Order No. 1000, the prohibition against transmission providers holding federal rights of first refusal.⁹³ Inexplicably, the Commission determines that granting a ROFR for right-sizing asset condition projects “will *promote* the consideration of more efficient or cost-effective potential transmission solutions.”⁹⁴ This would be true *if* the existing asset condition processes were transparent and *if* consumers had confidence that the asset condition process yielded cost-effective, efficient investment. Neither is the case.

⁹² *Id.* at P 111.

⁹³ Order No. 1920 at P 1704 (noting that “the establishment of a federal right of first refusal for right-sized replacement transmission facilities is an exception to Order No. 1000’s general requirement for transmission providers to eliminate any federal right of first refusal for regional transmission facilities selected in a regional transmission plan.”).

⁹⁴ *Id.* at P 1706 (emphasis in original).

To ameliorate this problem, NESCOE requests that the Commission condition the ability to receive this ROFR on a showing by the transmission owner that its asset condition process provides adequate transparency and input from stakeholders, based on the structure set forth in the final rule. Such a showing could be made as part of the Order No. 1920 compliance process or subsequently. Without such a requirement, the final rule errs in establishing this ROFR without robust requirements to justify both the asset condition estimates as well as any identified right-sizing need and guardrails on spending.

Additionally, the Commission should revise its rule which, as written, could be broadly interpreted to the detriment of consumers. The final rule adds to the NOPR's definition of a right-sized facility a requirement that such facility must be "located in the same general route as, and/or uses the existing rights-of-way of, the existing transmission facility identified as needing to be replaced."⁹⁵ The final rule does not define "general route" or explain why it would be appropriate to use this vague and potentially very broad term in place of the well-established and legally delineated term of existing rights-of-way.⁹⁶

The final rule essentially creates an open invitation for transmission owners to accelerate the replacement of assets with no checks in place to require the justification or verification of these asset condition projects. New England already observes broadly scoped asset condition

⁹⁵ *Id.* at P 1678; *id.* at P 1702 ("the right-sized replacement transmission facility [must be] located in the same general route as, and/or uses or expands the existing rights-of-way of, the existing transmission facility").

⁹⁶ *See* NOPR at P 339 (explaining that the requirement in Order No. 1000 to eliminate the federal ROFR did not "remove, alter, or limit an incumbent transmission provider's use and control of its existing rights-of-way under state law" (citing Order No. 1000 at PP 226, 319)).

projects coming forth without compelling evidence to justify the projects.⁹⁷ NESCOE has sought to remedy this shortcoming through requests for improvements. Our region needs the Commission’s help. Robust justification should be a matter of course for asset condition project proposals. This is especially true for projects that are being considered for right-sizing. While the region continues to work to improve existing asset condition processes, the Commission can and must act if it expects to fulfill its statutory duty under the FPA to ensure just and reasonable transmission rates, 16 U.S.C. §§ 824d, 824e.

V. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

In accordance with Rules 203(a)(7) and 713(c) of the Commission’s regulations,⁹⁸

NESCOE provides the following Statement of Issues and Specification of Errors.

1. The Commission should codify a role for states in the reforms to Long-Term Regional Transmission Planning where state policies and laws are implicated. *See* Section II.A, above.

a. NESCOE seeks confirmation that transmission providers should rely on states for Long-Term Scenario development and identification of benefits where state laws, regulations and/or policies are the drivers of Long-Term Needs. *See* Section II.A.1, above.

b. The Commission should confirm that the requirement for transmission providers to consult with Relevant State Entities on evaluation processes and selection criteria is meaningful, including guidance on what constitutes “good faith efforts” to consult. *See* Section II.A.2, above.

⁹⁷ In a recent example, a NETO proposed to fully rebuild a line for an estimated cost of \$384.61 million when information provided by the NETO suggest that only 7% of the structures targeted for replacement are actually deteriorated. In this instance, the NETO has agreed to provide additional information in response to NESCOE’s requests. *See* Eversource New Hampshire Line X-178 Rebuild (Feb. 28, 2024), at https://www.iso-ne.com/static-assets/documents/100008/a05_2024_02_28_pac_line_x178_rebuild_presentation.pdf; NESCOE, *New Hampshire X-178 Line Rebuild* (March 14, 2024) at <https://nescoe.com/wp-content/uploads/2024/03/Feedback-on-ES-X-178.pdf>; Eversource, *Eversource Update on Schedule for X178 Rebuild Project* (April 10, 2024) at https://www.iso-ne.com/static-assets/documents/100010/2024_04_10_pac_eversource_update_x178_rebuild_final.pdf.

⁹⁸ 18 C.F.R. §§ 385.203(a)(7), 385.713(c).

2. The Commission should ensure adequate opportunity for robust state engagement around cost allocation. *See* Section II.A.3, above.

a. The Commission should reconsider its determination to restrict the Engagement Period to a one-time obligation. *See* Section II.A.3.a, above.

b. The Commission should at the very least strongly encourage—if not require—transmission providers to file the cost allocation method agreed to by the states in the region. Such an approach is consistent with *Atl. City Elec. Co. v. FERC*, 295 F.3d 1. *See* Section II.A.3.b, above.

Making these clarifications and modifications on rehearing will ensure that rates for Long-Term Regional Transmission Facilities are just and reasonable, FPA sections 205, 206, 16 U.S.C. §§ 824d, 824e. Not making these important clarifications would be arbitrary and capricious in failing to address important issues, demonstrating a lack of reasoned decision-making. *KN Energy*, 968 F.2d 1295 at 1303. *See* Section II.A.4, above.

3. The Commission errs in not clarifying that the definition of Relevant State Entities includes Commission-recognized Regional State Committees. Failure to address NESCOE's concerns is arbitrary and capricious and not the product of reasoned decision-making. *PSEG Energy*, 665 F.3d at 208 (D.C. Cir. 2011). *See* Section II.B, above.

4. NESCOE seeks confirmation that transmission providers are required to rely on input from the states on development of study assumptions where state laws, regulations and/or policies are among the factors in the Long-Term Scenario analyses. *See* Section III.C, above.

5. The Commission errs in not requiring transmission providers to prioritize alternative transmission technologies as the starting point for addressing identified transmission needs. As a result, transmission rates are at risk of remaining unjust and unreasonable. 16 U.S.C. §§ 824d, 824e. *See* Section III, above.

6. The Commission errs by exempting asset condition projects from the final rule's transparency requirements.

a. Given that much of transmission spending falls into this category, the Commission cannot ensure just and reasonable transmission rates without such protections. The Commission's failure to articulate an explanation for not addressing concerns raised by NESCOE is arbitrary and capricious. *Cal. PUC*, 20 F.4th at 800. *See* Section IV.A, above.

b. Absent the fundamental transparency protections, there is no basis to extend a federal ROFR to asset condition projects. Accordingly, the Commission should condition the ability to receive this ROFR on a showing that the asset condition process is sufficiently transparent. *See* Section IV.B, above.

VI. CONCLUSION

For the reasons discussed above, NESCOE respectfully requests that the Commission grant the requested clarifications and grant rehearing to ensure the final rule for Long-Term Regional Transmission Planning results in just and reasonable transmission rates.

Respectfully Submitted,

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Date: June 12, 2024

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 12th day of June, 2024

/s/ Phyllis G. Kimmel

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