

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

ISO New England Inc.

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Docket No. ER24-1978-000

ANSWER OF ISO NEW ENGLAND INC.

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ ISO New England Inc. (the “ISO”)² hereby submits this answer to the comments filed by New Hampshire Transmission, LLC (“NHT”), LSP Transmission Holdings II, LLC (“LSP”), Advanced Energy United (“AEU”), and RENEW Northeast, Inc. (“RENEW”) (collectively, “Comments”) filed with the Commission in the above-captioned proceeding.³

The Comments are in response to Tariff revisions that the ISO, joined by the New England Power Pool Participants Committee (“NEPOOL”), and the PTO Administrative Committee on behalf of the Participating Transmission Owners (“PTOs”) (together, the “Filing Parties”) submitted to the Commission pursuant to Section 205 of the Federal Power Act (“FPA”) on May 9, 2024.⁴ The Tariff revisions proposed in the May 9 Filing establish, as part of the optional,

¹ 18 C.F.R. § 385.213(a)(3) (2024) (providing that “An answer may be made to any pleading, if not prohibited under paragraph (a)(2) of this section”, which prohibits answers to “protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisions authority”).

² Capitalized terms used but not defined in this answer are intended to have the same meaning given to such terms in the ISO’s Transmission, Markets and Services Tariff (the “Tariff”). The ISO’s Open Access Transmission Tariff (the “OATT”) is Section II of the Tariff.

³ See *ISO New England Inc., et al.*, Joint Comments of New Hampshire Transmission, LLC and LSP Transmission Holdings II, LLC, Docket No. ER24-1978 (May 30, 2024) (“NHT/LSP Comments”); see also *ISO New England Inc., et al.*, Comments of Advanced Energy United, Docket No. ER24-1978 (May 30, 2024) (“AEU Comments”); see also *ISO New England Inc., et al.*, Comments of RENEW Northeast, Inc., Docket No. ER24-1978 (May 30, 2024) (“RENEW Comments”).

⁴ See *ISO New England Inc., et al.*, Revision to the Attachment K Longer-Term Transmission Planning Process, Docket No. ER24-1978 (filed May 9, 2024) (the “May 9 Filing”). Some parties filed comments offering their views as to whether the rules contained in the May 9 Filing would comply with Order No. 1920. See *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 (2024).

longer-term transmission planning process (“LTTP”) in Attachment K of the OATT,⁵ mechanisms that enable the New England states to develop policy-based transmission facilities in connection with Longer-Term Transmission Studies (“LTTS”),⁶ and the associated cost allocation methods for these upgrades.⁷ For the reasons discussed below, the ISO respectfully requests that the Commission decline to consider the arguments advanced in the Comments, and accept the LTTP Phase 2 Changes as filed, without suspension, hearing, or condition.

I. BACKGROUND

As the May 9 Filing fully describes, the LTTP Phase 2 Changes reflect the outcome of an extensive and collaborative effort between the ISO, the New England States Committee on Electricity (“NESCOE”) representing the New England states, the PTOs, and NEPOOL to address the states’ longer-term process requests. The LTTP Phase 2 Changes comprise a package of processes that enable the New England states to advance from the state-requested, scenario-based LTTS to regional transmission solutions and cost allocation for such solutions needed for the states to achieve their energy and environmental policy objectives. The processes include a comprehensive core process and an add-on supplemental process that are incorporated as part of the optional, complementary longer-term planning procedures that the Commission accepted for

(“Order No. 1920”). For clarity, the LTTP Phase 2 Changes, which are a critical step in facilitating the investment in transmission necessary for the states to meet their energy policy objectives, were not in connection with the Commission’s April 21, 2022 Notice of Proposed Rulemaking or final rule issued in Docket RM21-17-000.

⁵ See OATT, Attachment K at § 16.

⁶ As proposed in the May 9 Filing, these policy-based transmission facilities are categorized as Longer-Term Transmission Upgrades (“LTTU”), which the proposed Tariff revisions define as “an addition, modification, and/or upgrade to the New England Transmission System that meets the voltage and non-voltage criteria for Longer-Term Transmission Upgrade PTF classification specified in the OATT and has been included in the Regional System Plan and RSP Project List as a Longer-Term Transmission Upgrade pursuant to the procedures described in Section 16 of Attachment K of the OATT.”

⁷ The changes are referred to in the May 9 Filing and in this Answer as the “LTTP Phase 2 Changes.”

inclusion in the ISO's Regional System Plan ("RSP") set forth in Attachment K of the OATT.⁸ The cornerstone of these new processes is a competitive solicitation for transmission solutions to address state energy and environmental policy objectives to be administered by the ISO that closely mirrors the competitive solution development process for Public Policy Transmission Upgrades in Section 4A of Attachment K, and uses the same framework that the Commission has found meets its articulated transmission planning principles.

As relevant here, consistent with the Public Policy Transmission Upgrade construct, the LTTP Phase 2 Changes provide that, where NESCOE requests that the ISO issue a Request for Proposal ("RFP") under the optional, longer-term planning process, proposed Section 16.4(b) of Attachment K provides for the ISO to issue a public notice inviting *any* interested entity that has been pre-qualified as a Qualified Transmission Project Sponsor ("QTPS") to submit Longer-Term Proposals offering solutions that comprehensively address all of the needs identified in the RFP. As the May 9 Filing explained, unlike the competitive process to address reliability and/or market efficiency needs, there is no Backstop Transmission Solution⁹ in the public policy process and, correspondingly, the proposed longer-term process.¹⁰ Additionally, consistent with the Public Policy Transmission Upgrade competitive solution development rules, proposed Section 16.4(b) allows QTPSs to submit individual or joint Longer-Term Proposal(s) for projects that address all

⁸ See *ISO New England Inc.*, 178 FERC ¶ 61,137 (2022) (accepting Tariff revisions to incorporate a supplementary transmission planning process authorizing the ISO to conduct state-led, scenario-based transmission analysis in the Regional System Planning Process) ("February 2022 Order").

⁹ A Backstop Transmission Solution is "a solution proposed: (i) to address a reliability or market efficiency need identified by the ISO in a Needs Assessment reported by the ISO pursuant to Section 4.1(i) of Attachment K to the ISO OATT, (ii) by the PTO or PTOs with an obligation under Schedule 3.09(a) of the TOA to address the identified need; and (iii) in circumstances in which the competitive solution process specified in Section 4.3 of Attachment K to the ISO OATT will be utilized." See Tariff at § I.2.2.

¹⁰ See May 9 Filing, Oberlin/Perben Testimony at 16-17 (explaining that, "[r]equiring complete solutions increases the likelihood of the process successfully leading to development of transmission solutions, rather than having the process terminate because the submitted Longer-Term Proposals cannot be combined in a manner that addresses the identified needs.").

the needs identified in the RFP. However, in accordance with the Transmission Operating Agreement (“TOA”) between the ISO and the PTOs, proposed Section 16.4(c) provides that neither the submission of a project by a QTPS nor the selection of a project submitted by a QTPS for inclusion in the RSP Project List alters a PTO’s use and control of its existing right-of-way or require that a PTO relinquish such rights.¹¹ The concerns advanced in the Comments relate to these elements of the LTTP Phase 2 Changes.

II. ANSWER

A. **Comments that Attempt to Replace Elements of the LTTP Phase 2 Changes Proposed in the May 9 Filing with a Different Approach, or that are Beyond the Scope of the Proposed Changes, Must be Rejected as a Matter of Law**

The Comments generally support the LTTP Phase 2 Changes and no party has demonstrated that they are not just and reasonable.¹² However, some of the Comments, stylized as concerns, advocate for an alternative competitive solicitation approach, under which QTPSs would submit partial solutions (rather than comprehensive solutions) that do not fully address the needs specified in the ISO’s RFP pursuant to Section 16 of Attachment K of the OATT.¹³ The Comments also note concerns with the LTTP Phase 2 Changes to the extent they disallow a QTPS from proposing new transmission facilities on a PTO’s existing right-of-way, contrary to the existing, and unmodified, arrangements in the TOA and planning processes.¹⁴ The Comments

¹¹ See *ISO New England Inc.*, 150 FERC ¶ 61,209, at PP 227-228.

¹² In total, six comments were filed in response to the May 9 Filing. With the exception of the NHT/LSP Comments, all parties urge the Commission to accept the LTTP Phase 2 Changes as just and reasonable. See, generally, *ISO New England Inc., et al.*, Comments of the New England States Committee on Electricity, Docket No. ER24-1978 (May 30, 2024) (“NESCOE Comments”); see also *ISO New England Inc., et al.*, Comments of Public Interest Organizations, Docket No. ER24-1978 (May 30, 2024) (“PIO Comments”); see also *ISO New England Inc., et al.*, Motion To Intervene and Comments of Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, New Hampshire Electric Cooperative, Inc., and Vermont Public Power Supply Authority, Docket No. ER24-1978 (May 30, 2024) (“Public Systems Comments”), RENEW Comments and AEU Comments.

¹³ See NHT/LSP Comments at 8-11, RENEW Comments at 4-5, and AEU Comments at 9-11.

¹⁴ *Id.*

express concerns with these elements of the LTTP Phase 2 Changes on the basis that they could potentially preclude non-incumbent developers from submitting qualifying competitive solutions.¹⁵

To the extent the Comments seek to replace the Longer-Term Proposal requirements set forth in proposed Section 16.4 of Attachment K to reflect an entirely different approach under which QTPSs could submit partial solutions, or to alter a PTO's use and control of an existing right-of-way, they must be rejected as a matter of law. First, the LTTP Phase 2 Changes were filed pursuant to Section 205 of the FPA, which "gives a utility the right to file rates and terms for services rendered with its assets."¹⁶ Under Section 205, the Commission "plays 'an essentially passive and reactive' role"¹⁷ whereby it "can reject [a filing] only if it finds that the changes proposed by the public utility are not 'just and reasonable.'"¹⁸ The Commission limits this inquiry "into whether the rates proposed by a utility are reasonable – and [this inquiry does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."¹⁹ Under this principle, the LTTP Phase 2 Changes "need not be the only reasonable methodology, or even the most accurate."²⁰ Accordingly, whether an intervenor suggests or even prefers an alternative proposal, the Commission must accept the LTTP Phase 2 Changes if it finds

¹⁵ See NHT/LSP Comments at 11-12, RENEW Comments at 4-5, and AEU Comments at 9-11. *But see also* Public Systems Comments at 11 (noting that the LTTP Phase 2 Changes offer "important consumer benefits, including the potential for: (1) more efficient and cost-effective transmission development; (2) enhanced competition and cost containment; and (3) diversified project ownership.").

¹⁶ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir 2002).

¹⁷ *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir 1984)).

¹⁸ *Id.*

¹⁹ See *ISO New England Inc.*, 114 FERC ¶ 61,315 at P 33 and n.35 (2005), citing *Pub. Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201, 1211 (10th Cir. 1987) and *Cities of Bethany, Bushnell, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) ("*City of Bethany*"), cert. denied, 469 U.S. 917 (1984).

²⁰ *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

them just and reasonable.²¹ Second, the LTTP Phase 2 Changes do not include modifications to the TOA and Tariff provisions regarding the use of PTOs' existing rights-of-way.²² Therefore, any concerns related to those existing arrangements are beyond the scope of this proceeding.

B. The LTTP Phase 2 Changes Represent a Just and Reasonable Complement to the Regional Planning Processes Required Under Order Nos. 890 and 1000

The LTTP Phase 2 Changes are just and reasonable. As explained in the May 9 Filing, the proposed approach reflected in the LTTP Phase 2 Changes was intentional. The competitive solicitation construct proposed for longer-term transmission facilities is based on the competitive solution development process for Public Policy Transmission Upgrades in Section 4A of Attachment K, which the Commission accepted on compliance with Order No. 1000.²³ Like the competitive solicitation process for Public Policy Transmission Upgrades, the LTTP Phase 2 Changes allow any QTPS to propose a fully comprehensive solution to the longer-term needs identified in an RFP.²⁴ The LTTP Phase 2 Changes also allow for individual or joint Longer-Term

²¹ Cf. *Southern California Edison Co., et al.*, 73 FERC at P 61,608 n. 73 (1995) ("Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters." (citing *City of Bethany*, 727 F.2d at 1136)).

²² See TOA, Schedule 3.09(a), Section 1.1(f) ("The regional system planning provisions of the ISO OATT shall include statements that: (i) the submission of a project by a Qualified Transmission Project Sponsor or selection of projects for inclusion in the RSP Project List shall not alter a PTO's use and control of an existing right of way, the retention, modification, or transfer of which remain subject to the relevant state or federal law or regulation, including property or contractual rights, that granted the right-of-way; and (ii) no PTO shall be required pursuant to this Agreement or the ISO OATT to relinquish any of its rights-of-way in order to permit a Qualified Transmission Project Sponsor to develop, construct or own a project."); see also OATT, Attachment K, Sections 4.3(b) and 4A.5 and ("Neither the submission of a project by a Qualified Transmission Project Sponsor nor the selection by the ISO of a project submitted by a Qualified Transmission Project Sponsor for inclusion in the RSP Project List shall alter a PTO's use and control of an existing right of way, the retention, modification, or transfer of which remain subject to the relevant law or regulation, including property or contractual rights, that granted the right-of-way. Nothing in the processes described in this Attachment K requires a PTO to relinquish any of its rights-of-way in order to permit a Qualified Transmission Project Sponsor to develop, construct or own a project"); see also OATT, Attachment K, Section 8 ("In connection with regional system planning, the ISO will not propose to impose on any PTO obligations or conditions that are inconsistent with the explicit provisions of the TOA or deprive any PTO of any of the rights set forth in the TOA.").

²³ See *ISO New England, Inc.*, 143 FERC ¶ 61,150 at P108 (2013).

²⁴ See Attachment K, Proposed Section 16.4(b).

Proposals, which, as some parties note, can be structured as joint ownership arrangements that can provide a myriad of benefits.²⁵

By leveraging the existing Public Policy Transmission Upgrade competitive solicitation construct, the LTTP Phase 2 Changes ensure that the longer-term planning process, while optional, aligns with the Commission's transmission planning principles as outlined in Order Nos. 890²⁶ and 1000²⁷ and their progeny, and the regional compliance approaches to those orders that the Commission has accepted as just and reasonable.²⁸ While the ISO subsequently revised the competitive transmission planning rules that address reliability and market efficiency needs by allowing for partial solutions, it did so only for these categories of needs because a Backstop Transmission Solution is also required under those rules, ensuring an efficient process that guarantees the process will derive a solution that will be able to meet the identified need.²⁹ In that case, if the individual partial proposals do not collectively solve the identified need, those partial proposals do not move forward, and the ISO can turn to the Backstop Transmission Solution, which must solve all of the identified needs. This is not the case in the public policy transmission

²⁵ Public Systems note that joint ownership arrangements can provide myriad benefits. *See* Public Systems Comments at 11. The LTTP Phase 2 Changes allow joint proposals to be structured as joint ownership arrangements, so long as each entity is a QTPS.

²⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g & clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g & clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) ("Order No. 890").

²⁷ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) ("Order No. 1000").

²⁸ *See, e.g.*, Order No. 1000 at P226 ("[O]ur reforms are not intended to affect the right of an incumbent transmission provider to build, own and recover costs for upgrades to its own transmission facilities, nor to alter an incumbent transmission provider's use and control of an existing right of way.").

²⁹ *See, ISO New England Inc. and New England Power Pool*, Transmission Planning Improvements, Docket No. ER22-733, (filed Dec. 28, 2021) ("Boston RFP Lessons Learned Filing"); *see also* Order Accepting Tariff Revisions, 178 FERC ¶ 61,138 (2022) ("Boston RFP Lessons Learned Order").

planning process—and, correspondingly, the longer-term planning process—where no backstop exists by design.³⁰

The May 9 Filing represents a positive revision of the existing rules, “including the potential for . . . (2) enhanced competition and cost containment; and (3) diversified project ownership.”³¹ Moreover, consistent with past practices and as demonstrated by the Boston RFP Lessons Learned Filing, in response to stakeholder concerns, the ISO is committed to undertaking additional stakeholder discussions on ways to further enhance the processes in the future.³² The ISO looks forward to continued discussions with stakeholders and the New England states on how to further improve and refine the longer-term transmission planning process.

Additionally, consistent with the Public Policy Transmission Upgrade competitive solicitation process, the LTTP Phase 2 Changes provide that neither the submission of a project by a QTPS nor the selection of a project submitted by a QTPS for inclusion in the RSP Project List alters a PTO’s use and control of its existing right-of-way or require that a PTO relinquish such rights, consistent with the existing arrangements in the TOA. The LTTP Phase 2 Changes, however, expressly state that a QTPS may propose a solution that includes upgrades to the existing transmission system.³³ In this case, a QTPS is not required to procure the PTO’s agreement for implementation of these corollary upgrades, as the PTO would be required to implement such upgrades to its existing facilities under the TOA if the proposed solution is selected through the

³⁰ See Boston RFP Lessons Learned Filing, Testimony of Brent Oberlin at 9-10 (explaining that a Stage One Proposal for a Public Policy Transmission Upgrade cannot be a partial solution because “the Public Policy process does not require submittal of a Backstop Transmission Solution. As such, there is no guarantee that any proposal or combination of proposals will solve all the identified needs.”)

³¹ Public Systems Comments at 7.

³² May 9 Filing, Transmittal Letter at 40.

³³ See OATT, Attachment K, Section 16.4(d) (“A Qualified Transmission Project Sponsor may submit a proposed solution that includes an upgrade(s) located on or connected to a PTO’s existing transmission system where the Qualified Transmission Project Sponsor is not the PTO for the existing system element(s).”)

competitive process.³⁴ Thus, the LTTP Phase 2 Changes are consistent with this longstanding Commission precedent,³⁵ and are not unjust and unreasonable because of it.

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission decline to consider the arguments advanced in the Comments, advocating for proposals different from what the Filing Parties proposed in the May 9 Filing, and accept the LTTP Phase 2 Changes as filed, without suspension, hearing, or condition.

Respectfully submitted,

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³⁴ See *Transmission Planning Process Guide*, ISO New England Inc., 30 (Sept. 8, 2023), https://www.iso-ne.com/static-assets/documents/2023/09/2023_09_08_pac_transmission_planning_process_guide.pdf; see also ISO New England, Inc., *Response to Stakeholder Comments on the Boston 2028 RFP – Review of Phase One Proposals*, 7-8 (presented to the Planning Advisory Committee in July 2020), https://www.iso-ne.com/static-assets/documents/2020/07/response_to_stakeholder_comments_on_boston_2028_rfp_w_appendices.pdf (discussing the reasons a proposal was rejected because it did not limit the proposed upgrades to existing facilities owned by the incumbent PTO, and to upgrades built by the incumbent to interconnect facilities developed by the QTPS. As required by Section 4.3(a) of Attachment K.)

³⁵ See footnote 27, *supra*.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Commission Secretary in these proceedings.

Dated at Holyoke, MA this 14th day of June, 2024.

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