UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection	**Docket No. RM21-17**

REPLY COMMENTS OF MASSACHUSETTS ATTORNEY GENERAL MAURA HEALEY

Pursuant to the Federal Energy Regulatory Commission's ("Commission" or "FERC") Advance Notice of Proposed Rulemaking entitled *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021) ("ANOPR"), and the Notice of Extension of Time issued by the Commission on September 3, 2021, the Office of Massachusetts Attorney General Maura Healey ("Massachusetts AGO") submits these reply comments[1] for the limited purpose of addressing two arguments raised in the initial comments of certain parties: (1) that the Commission should reinstate the federal right of first refusal ("ROFR") for incumbent transmission owners ("TOs") that the Commission eliminated in Order No. 1000,[2] and (2) that establishment of an Independent Transmission Monitor ("ITM") in regions governed by regional transmission organizations or independent system operators ("RTOs/ISOs") is unnecessary, undesirable, or barred by statute. As discussed below, the Commission should not reinstate the ROFR because it

[1] The Massachusetts AGO separately joined the Reply Comments of the State Agencies submitted to this docket on October 26, 2021. Those comments are fully incorporated and reiterated herein unless otherwise indicated.

[2] *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].

is anti-competitive, unnecessary, and would harm ratepayers. Competition for transmission development is a tremendous potential benefit to ratepayers and should be preserved, strengthened, and improved in the Commission's anticipated regional transmission planning reforms. The Massachusetts AGO also reiterates its strong recommendation that the Commission consider establishing ITMs, which have the potential to provide significant, additional benefits to ratepayers.

I. COMMENTS

A. The Commission Should Strengthen and Expand Order No. 1000 Competition in New England, Not Eliminate It.

As the Massachusetts AGO urged in its initial comments, the Commission should protect ratepayers from undue costs by pursuing policy reforms that support and expand opportunities for meaningful competition in solicitations for transmission solutions.[3] The Massachusetts AGO is dismayed that some commenters, including multiple New England TOs, are seeking to use the ANOPR to roll back the elimination of the federal ROFR—an important competitive measures instituted by Order No. 1000. Improved regional transmission planning processes, including processes in ISO New England ("ISO-NE"), should strengthen and expand opportunities for meaningful competition—not contract them.

For instance, Edison Electric Institute ("EEI"), a trade group for investor-owned electric utilities, argues that the federal ROFR abolished in Order No. 1000 should be reinstated due to the alleged "uncertainty, increased costs and increased delays" that competition has caused.[4] Eversource, National Grid, and Vermont Electric Power Company/Vermont Transco ("VELCO") (collectively, "New England TOs") echo EEI's arguments and argue for narrowing

[3] *See* Massachusetts AGO Initial Comments at 2, 5–7.

[4] EEI Initial Comments at 21.

or eliminating Order No. 1000 competition. Eversource complains that "the competitive transmission processes put in place in response to Order No. 1000 have created delays and limited the opportunities for transparent dialog between transmission developers, market participants, and RTOs/ISOs in addition to not delivering desired outcomes."[5] National Grid asserts "there is little compelling evidence that projects developed through ISO/RTO-administered competitive solicitations are, overall, less costly or otherwise more beneficial to customers."[6] VELCO complains vaguely of unintended consequences of Order No. 1000 that have not benefited the regional grid, including "submission of less than robust project cost estimates" in competitive bids.[7] VELCO suggests that "[o]ne potential solution is to expand the time restrictions for projects that are exempt from the Order 1000 bidding process. The other is to simply remove the requirement for competitive solicitation of transmission projects."[8]

In Order No. 1000, the Commission found that the "federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in transmission development and associated potential savings."[9] The Massachusetts AGO strongly agrees and observes that there is no suggestion in the ANOPR that doing away with competition, one of the central tenets of Order No. 1000, is a potential transmission "reform" that the Commission is considering. In the ANOPR, the Commission stated that it sought to understand "how the reforms of the federal right of first refusal in Order No. 1000 have shaped the type and characteristics of transmission facilities developed through regional and local transmission

[5] Eversource Initial Comments at 13.

[6] National Grid Initial Comments at 21.

[7] VELCO Initial Comments at 5.

[8] *Id.*

[9] Order No. 1000 at PP 284–85.

planning processes."[10] Rather than offering, as the Commission requested, useful insights into the type and characteristics of transmission projects that have been shaped by competition, or constructive feedback that might further enable and improve the competitive process, EEI and the New England TOs instead advocate to narrow or eliminate competition in transmission development and rhapsodize about the golden era of monopoly transmission construction when "cooperation and collaboration . . . between neighboring TOs" was allegedly focused on "the best interest of the customer."[11] There is no mention of any profit motive by these investor-owned utilities in advocating for the return to policies of yesteryear; but their self-interest is transparent and underscored by the lack of data supporting their claims.

1. There is No Evidence That Competitive Transmission Projects in New England Have Been Problematic.

Despite the complaints of EEI and the New England TOs about the alleged shortcomings of competitive transmission projects, there is little objective evidence in support of their arguments that competition has been unsuccessful, time-consuming, or costly and should therefore be abolished or curtailed. Indeed, New England TOs cannot identify delays, high costs, or lack of transparent dialogue around New England competitive projects because there has only been one competitive solicitation in New England since Order No. 1000. That project was awarded to the incumbents, National Grid and Eversource, in 2020.[12] And overall, the competitive solicitation experience was successful.

[10] ANOPR at P 37.

[11] EEI Initial Comments at 21.

[12] *See* ISO-NE, *Boston 2028 Request for Proposal (RFP) – Review of Phase One Proposals at* 31–33 (2020), https://www.iso-ne.com/static-assets/documents/2020/07/final_boston_2028_rfp_review_of_phase_one_proposals.pdf.

As described in the Massachusetts AGO's initial comments in this docket, competition has barely begun in New England.[13] Even though ISO-NE planning processes include a requirement to solicit proposals for competitive solutions to transmission reliability, that provision only applies to needs that can be addressed more than three years from the completion of the needs assessment.[14] Under this three-year exemption, the "time sensitive" or "immediate need" solution is to be developed and built by the incumbent TO alone.[15] The Commission's rationale for exempting immediate need projects from competition was "to avoid delays in the development of projects needed to resolve a time-sensitive reliability criteria violation."[16] The Commission intended that the exemption would be "used only in limited circumstances."[17] Nonetheless, data to date suggests that the exemption has swallowed the rule—it is almost a complete impediment to the competition envisioned by Order No. 1000.[18]

In October 2019, the Commission issued an order initiating a proceeding under section 206 of the Federal Power Act directing ISO-NE, among other RTOs/ISOs, to demonstrate whether its Commission-jurisdictional tariff was just and reasonable and complied with the Commission's mandates found in Order No. 1000, particularly with respect to the three-year time sensitive reliability needs exemption from competitive transmission solicitations.[19] In the

[13] *See* Massachusetts AGO Initial Comments at 5–7.

[14] ISO-NE, ISO New England Open Access Transmission Tariff [OATT] § II, att. K, §§ 4.1(i) & (j). ISO-NE's OATT is Section II of the *ISO New England Inc. Transmission, Markets, and Services Tariff*, https://www.iso-ne.com/participate/rules-procedures/tariff.

[15] *Id.* att. K, §§ 4.1(j)(ii), 4.2, 4.3.

[16] *ISO New England Inc.*, 143 FERC ¶ 61,150, at P 235 (2013).

[17] *Id*. at PP 235–38.

[18] *See* Massachusetts AGO Initial Comments at 6–7 (quoting *ISO New England Inc.*, 169 FERC ¶ 61,054, at P 15 (2019) (observing that under ISO-NE's current approach to transmission planning, "it appears that all reliability needs . . . may be classified as immediate need reliability projects").

[19] *ISO New England Inc.*, 169 FERC ¶ 61,054 (2019). The Commission ultimately terminated the investigation, finding "there is insufficient evidence in the record to find under [Federal Power Act] section 206 that [ISO-NE's] implementation of the exemption for immediate need reliability projects is unjust, unreasonable, or unduly

course of that investigation, ISO-NE produced documentation on thirty-one transmission projects that originated from two separate needs assessments.[20] All thirty-one projects were designated as immediate need reliability projects to be undertaken by the incumbent TO.

Thus, EEI and the New England TOs' arguments about the detriments or "dubious benefits"[21] of Order No. 1000 competition do not appear to be based on any actual experience in New England, but rather appear to be firmly based on corporate economic interest. Indeed, the only evidence cited by EEI, Eversource, and National Grid is a report by Concentric Energy Advisors ("CEA") issued in June 2019.[22] Only Eversource mentions in a footnote that this report was commissioned by regulated TOs, including Eversource and National Grid, specifically to rebut a report issued by the Brattle Group in April 2019.[23] The Brattle Group's report was commissioned by LSP Transmission Holdings, a merchant electric transmission developer. The Brattle Group's report found that even though transmission projects subject to competition represented only 3% of U.S. nationwide transmission investments between 2013 and 2017, the potential cost savings in the United States from expanding competitive processes could range from approximately 20% to 30%, or an estimated $8 billion over the course of five years.[24]

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discriminatory or preferential." *ISO New England Inc.*, 171 FERC ¶ 61,211 (2020), *reh'g denied*, 172 FERC ¶ 61,293 (2020), Order Addressing Arguments Raised on Rehearing, *appeal docketed sub nom, LSP Transmission Holdings II, LLP v. FERC,* No. 20-1422 (D.C. Cir. Oct. 16, 2020).

[20] Response of ISO-New England, Inc. to Order Instituting Section 206 Proceedings, att. A & C, Docket No. EL19-90 (Dec. 27, 2019).

[21] Eversource Initial Comments at 14.

[22] *See* Emma Nicholson et al., Concentric Energy Advisors [CEA], *Building New Transmission: Experience To-Date Does Not Support Expanding Solicitations* (June 2019), https://ceadvisors.com/publication/building-new-transmission-experience-to-date-does-not-support-expanding-solicitation/ [CEA Report].

[23] *See* Johannes P. Pfeifenberger et al., The Brattle Group, *Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value* (Apr. 2019), https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf.

[24] *Id.* at 1. The CEA Report challenged the assumptions and methodologies used by the Brattle Group in estimating potential savings from expanding solicitations for new transmission projects. CEA concluded by opining

EEI and the New England TOs also do not mention that the Brattle Group issued a thorough rebuttal to the CEA report.[25]

But the most important takeaway from EEI and the New England TOs' reliance on the CEA report is the fact that they are willing to base a sweeping assertion that competition has been unsuccessful on data that is four to eight years old and represents only 3% of transmission projects nationwide in the 2013-2017 timeframe. This readily demonstrates the poor foundation of their arguments. For updated data on competitive projects nationwide to date, including the cost savings features of the competitive bids and selected projects, the Commission should refer to the Comments of LS Power Grid filed in this docket.[26]

2. Non-Competitive Transmission Projects in New England Have Been a Source of Significant Delays.

EEI, Eversource, and National Grid complain of delays that are allegedly inherent in the competitive solicitation process as a reason to eliminate Order No. 1000 competition, while making no mention of the significant delays that have characterized non-competitive immediate need projects in New England. The delays in incumbent-built projects are on full display in ISO-NE's response filed in Docket No. EL19-90.[27] As the Massachusetts AGO and other New England State Agencies pointed out in their comments in that docket, ISO-NE's Attachments A and C show that out of 30 completed and ongoing immediate need projects:[28]

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that there was "no basis to expand the scope of transmission projects that are selected through solicitations at this time." CEA Report, *supra*, at 2.

[25] Judy W. Chang et al., The Brattle Group, *Response to Concentric Energy Advisors' Report on Competitive Transmission* (Aug. 2019), https://brattlefiles.blob.core.windows.net/files/16873_response_to_concentric_energy_advisors_report_on_competitive_transmission.pdf.

[26] Initial Comments of LS Power Grid, app. II (reviewing U.S. competitive solicitations).

[27] *See* Response of ISO-New England, Inc. to Order Instituting Section 206 Proceedings, *supra*, att. A & C.

[28] The discrepancy between the ISO-NE number of 31 projects and the Massachusetts AGO and other New England State Agencies number of 30 projects is due to the fact that the states excluded Project No. 1735 from their

- 80% of projects (24 of 30) were not completed within 3 years;
- 50% of projects (15 of 30) were expected to take at least 5 years;
- the average (mean) project duration was 4.5 years;
- the most likely project duration (mode) was 5.5 years;
- the second most likely duration was 4.4 years;
- of the 25 ongoing projects at the time of ISO-NE's filing, 15 (60%) were expected to take more than 5 years to complete;
- 20 of the 30 projects had "need by dates" predating the assessment that identified the need, suggesting a flawed assessment process; and
- another 4 of the 30 projects had "need by dates" in the same year as the need was identified.[29]

As demonstrated by the above, while the three-year immediate need exemption acts as a near-complete shield against competition for regional transmission reliability projects in New England, the actual urgency of allegedly time sensitive reliability criteria violations appears to be quite doubtful, or at least very flexible, and the three-year need criterion appears to be meaningless in practice. This gives rise to the valid question of how time sensitive each identified need actually was and whether the project instead should have been competitively bid.

3. The Commission Should Support and Expand Competition to Protect and Benefit Ratepayers.

In sum, there is no New England-based evidence of problems with competitively bid projects that would support narrowing or eliminating competition in the ways that EEI and the New England TOs advocate. Instead of reinstating the federal ROFR as EEI and the TOs propose, the Commission should level the playing field and proactively address potential barriers

calculations because it was subsequently determined that no additional work needed to be done. *See* Response of ISO-New England, Inc. to Order Instituting Section 206 Proceedings, *supra*, att. C at 1.

[29] *See* Comments of William Tong, Attorney General for the State of Connecticut & Maura Healey, Massachusetts Attorney General, et. al, Docket No. EL19-90 (Jan. 27, 2020).

to competition. For instance, the Massachusetts AGO and other New England State Agencies argued in Docket No. EL19-90 that the three-year immediate need exemption in New England should be narrowed or eliminated entirely. Some intervenors in that investigation argued that if New England TOs cannot build a project by the "need by date," it should be put out for bid.[30] Others argued for an accelerated solicitation process for time sensitive projects to address concerns about potential delays caused by the competitive solicitation process.[31] The Commission rejected those recommendations in Docket No. EL19-90;[32] but the instant rulemaking provides an ideal opportunity to revisit them.

More generally, as set forth in the Massachusetts AGO's initial comments, the Commission should take action to alleviate barriers to competition by expediting competitive bid processes and timelines, requiring longer-term transmission planning that will identify needed reliability upgrades with sufficient lead time to allow for competitive solutions, and requiring a planning process that de-siloes transmission planning by allowing multi-value transmission solutions—upgrades that may simultaneously facilitate reliability, economic efficiency, and achievement of public policy goals and other long-term system needs. If lack of cooperation and collaboration among competitive bidders and incumbent TOs is or could be a problem, as the New England TOs allege, the Commission should build requirements into the competitive process to address those concerns.

[30] *See* Comments of Massachusetts Municipal Wholesale Electric Company & New Hampshire Electric Cooperative, Inc. at 6, Docket No. EL19-90 (Jan. 27, 2020).

[31] *See, e.g.*, Response of LSP Transmission Holdings II, LLC at 8, Docket No. EL19-90 (Jan. 27, 2020).

[32] *ISO New England Inc.*, 171 FERC ¶ 61,211 (2020).

B. The Commission Should Consider the Establishment of Independent Transmission Monitors to Protect Ratepayers and Enhance Efficiency.

In initial comments, the Massachusetts AGO and other state agencies and consumer advocates argued that ITMs could offer important safeguards for ratepayers and enhance the overall efficiency of transmission expansion.[33] By contrast, ISO-NE and several regional TOs, including Eversource, Avangrid, and National Grid (collectively, "Opposed Commenters"), spoke against the value of an ITM.[34] The Opposed Commenters raise three main arguments against an ITM: 1) that an independent monitor of the already "independent" system operator's functions is unnecessary and contrary to the Federal Power Act; 2) that an ITM would increase costs, uncertainty, and delays in transmission development; and 3) that existing processes for reviewing transmission proposals are sufficiently transparent. For example, ISO-NE stated

> it is unclear what concerns warrant the establishment of another independent transmission entity to oversee regional system transmission planning that could not be addressed through RTO planning process enhancements. ISO-NE . . . is concerned that the addition of another entity to oversee planning could weaken the process and potentially introduce further delays and risks into transmission development where there are already substantial challenges . . . .[35]

Transmission Owners Eversource, National Grid, and Avangrid agree with ISO-NE's conclusion.[36] Eversource and Avangrid further note that transmission projects in New England

[33] *See* Massachusetts AGO Initial Comments at 34–35; State Agencies Initial Comments at 33–37.

[34] *See* ISO-NE Initial Comments at 32–35; Eversource Initial Comments at 14–16; National Grid Initial Comments at 42–45; Avangrid Initial Comments at 28–30.

[35] ISO-NE Initial Comments at 34.

[36] *See* Eversource Initial Comments at 14 ("ISO-NE already provides strong, independent oversight of both transmission planning and cost allocation processes. Additionally, the stakeholder process already provides significant transparency into transmission planning decisions and opportunities for validation of ISO-NE's decisions."); National Grid Initial Comments at 43–45 ("Adding an ITM's review on top of the existing transmissions planning process would increase customer costs, extend the already-lengthy planning and development cycle and increase uncertainty for little or no commensurate benefit."); Avangrid Initial Comments at 30 (stating that "in RTO regions, an independent transmission monitor is bureaucracy adding little value").

typically are presented to stakeholders through the New England Power Pool ("NEPOOL") or ISO-NE technical committees (such as the Planning Advisory Committee), and that those processes furnish stakeholders with sufficient opportunity to review technical materials, provide feedback, and vote on the proposed project design.[37] And National Grid argues that "Congress provided no role in this process for a 'middleman' entity, such [as] an ITM, to review and pass judgement on the justness and reasonableness of a public utility's rates."[38]

As discussed below, all of these comments are myopically misguided at best and self-servingly anti-consumer at worst. The Opposed Commenters suggest additional oversight is contrary to statute even though ISO-NE's wholesale markets are already surveilled by two market monitors. They provide no evidence than an ITM would increase costs to consumers or cause undue delays, nor do they contemplate any potential for an ITM to control costs. Finally, they argue that ISO-NE's current transmission development approach is relatively transparent without acknowledging the herculean staffing and monetary needs associated with thorough review of transmission project proposals and the considerable limitations of existing stakeholder processes.

1. Like Wholesale Market Monitoring Units, ITMs Could Serve a Critical, Non-Duplicative Role in Realizing the Consumer-Protection Aims of the Federal Power Act.

Opposed Commenters argue that establishing an ITM is unnecessary and would be contrary to the Federal Power Act.[39] The Massachusetts AGO disagrees and urges the

[37] Eversource Initial Comments at 15–16; Avangrid Initial Comments at 28–29.

[38] National Grid Initial Comments at 44.

[39] *See, e.g.*, ISO-NE Initial Comments at 34; Eversource Initial Comments at 14; National Grid Initial Comments at 44.

Commission to consider the relevant example of existing wholesale market monitors as it further evaluates the potential role and benefits of ITMs.

In New England, as in other regions across the country, independent market monitoring units serve an important function that complements the work of the ISO. In fulfilling its ISO function, ISO-NE has its own markets development and markets operations groups, which help design and operate the region's wholesale markets. The independence of ISO-NE's staff from market participants is critical to safeguard ratepayers' interests—but that independence is not the region's sole market oversight mechanism. As ISO-NE describes, the ISO also

> employs two independent market monitors to regularly review, analyze, and report on market results, and offer recommendations on market improvements. These market monitors are also charged with notifying the Federal Energy Regulatory Commission of any behavior by market participants or the ISO requiring investigation. . . . This dual-monitor strategy is similar to how internal and external auditors are used jointly for corporate finance oversight.[40]

It is odd that ISO-NE thinks the dual-monitor strategy (the concept of internal and external auditors) has an essential place in market operations but not transmission operations. Certainly, increased oversight can be unwelcome to those being surveilled, but such safeguards are commonplace in industry and government to help protect consumers. External monitors have the potential to provide important oversight functions in the realm of transmission development just as they do in many other types of corporate operations that impact beneficiaries.

Similarly, the Opposed Commenters make no effort to explain why it is permissible under the Federal Power Act for the Commission to authorize monitors of RTO/ISO-administered market operations but not RTO/ISO-administered transmission operations.[41] In

[40] *Market Monitoring and Mitigation*, ISO-NE (2021), https://www.iso-ne.com/markets-operations/market-monitoring-mitigation/.

[41] *See* National Grid Initial Comments at 44.

fact, it is well within the Commission's statutory authority to establish new mechanisms to improve competition, reduce costs, and protect ratepayers from excessive transmission spending.[42] The Federal Power Act imposes a duty on the Commission to improve transmission operations and grants the Commission broad authority to ensure rates are just and reasonable and not unduly discriminatory or preferential.[43] The Commission has long exercised its statutory authority to, for example, approve the establishment of independent market monitors, require market monitoring, approve market power mitigation measures and market monitoring plans, and require RTOs/ISOs to publish data about their operations.[44] Establishing ITMs would be consistent with the Commission's longstanding policy and practice.[45]

2. Experience with Market Monitors Suggests That ITMs Could Help Control Costs and Risks to Ratepayers.

The Opposed Commenters provide no evidence or estimates to support their assertions that the cost of an ITM would exceed its benefits. Indeed, it is impossible to conceive how the Opposed Commenters could confidently estimate the value of an ITM before knowing the scope of its mandate or budget. The Opposed Commenters fail to acknowledge the most relevant analog to ITMs: wholesale market monitors, which have relatively large remit and surprisingly low cost. As the Commission has stated, market monitors "perform an important role in

[42] *Cf. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (upholding the transmission planning reforms in Order No. 1000 as a valid exercise of the Commission's authority under section 206 of the Federal Power Act).

[43] *See* 16 U.S.C. §§ 824d(a)–(b), 824e(a); *see also id.* § 824(a) (federal regulation of interstate transmission of electricity is "necessary in the public interest"); *S.C. Pub. Serv. Auth.*, 762 F.3d at 55 ("[T]he Commission must have considerable latitude in developing a methodology responsive to its regulatory challenge[.]" (quoting *Am. Pub. Gas Ass'n v. FPC*, 567 F.2d 1016, 1037 (D.C. Cir.1977))).

[44] *See, e.g.*, *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 (Dec. 20, 1999); *Policy Statement on Market Monitoring Units*, 111 FERC ¶ 61,267 (May 27, 2005); *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (Oct. 17, 2008); *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719- B, 129 FERC ¶ 61,252 (2009).

[45] *Cf. S.C. Pub. Serv. Auth.*, 762 F.3d at 63 (finding that "the Commission has relatively broader authority" over electricity transmission as opposed to sales).

assisting the Commission in enhancing the competitiveness of ISO/RTO markets," and those "[c]ompetitive markets benefit customers."[46] Experience with external and internal market monitors to date suggests that ITMs could play an important role in helping to reduce costs and risk to ratepayers, resulting in potential savings that far exceed potential costs.

As an illustrative example, ISO-NE's contract with Potomac Economic, its external market monitor, has a base cost of $936,000 per year.[47] The ISO-NE internal market monitor has an estimated budget of $5,239,351 per year.[48] These are small costs given ISO-NE's 2020 combined wholesale market costs of approximately $5.8 billion.[49] On a percentage basis, the two levels of market monitoring work accounted for approximately 0.1% of the value of the region's wholesale markets in 2020.

There is no reason to think that an ITM would be more burdensome for ratepayers than existing market monitors or that an ITM would increase costs without providing any benefit. As the New England States Committee on Electricity ("NESCOE") rightly observes, "relatively modest investment in resources to oversee transmission costs could provide meaningful discipline and benefit to consumers."[50] For example, New England's annual regional network service ("RNS") expenditures total $2.5 billion.[51] If a hypothetical ITM had a budget of $5 million per year, in line with ISO-NE's existing market monitoring budget, it would "pay for

[46] *Policy Statement on Market Monitoring Units*, 111 FERC ¶ 61,267, P 1 (May 27, 2005).

[47] *See* ISO-NE, Informational Filing of Contract between ISO New England Inc. and Potomac Economics, Ltd., att. § 3.1(i) (Dec. 17, 2019), https://www.iso-ne.com/static-assets/documents/2019/12/emm_contract_2020.pdf.

[48] *See* ISO-NE, Filing of 2022 Capital Budget and Revised Tariff Sheets for Recovery of 2022 Administrative Costs, sched. exh. 3 (RCL-3, sched. 1.0, line 21) (Oct. 15, 2021), https://www.iso-ne.com/static-assets/documents/2021/10/iso_2022_operating_and_cap_budget_filing.pdf.

[49] *See* ISO-NE Internal Markets Monitor, *2020 Annual Markets Report* 18–19 (2021) https://www.iso-ne.com/static-assets/documents/2021/06/2020-annual-markets-report.pdf.

[50] NESCOE Initial Comments at 33.

[51] ISO-NE Internal Markets Monitor, *supra*, at 18.

itself" (that is, provide savings greater than its costs) if it could reduce annual RNS costs by just 0.2%. It seems entirely plausible that there is the potential for transmission savings on at least this scale, for instance, in the form of more efficient transmission expansion or the elimination from rates of unused land procured decades ago.

Overall, the success of market monitors suggests that the Commission should further evaluate the potentially immense benefits of an ITM and not dismiss the concept outright, as Opposed Commenters advocate based on no discernable evidence.

3. ITMs Could Help Fill the Critical Need for Increased Transparency and Oversight of Transmission Spending.

While the Opposed Commenters suggest that current NEPOOL transmission project approval processes are sufficiently transparent,[52] they fail to acknowledge the reality that most ratepayers, and even consumer advocates, are unable to meaningfully scrutinize transmission plans and costs. The Massachusetts AGO is an active NEPOOL participant with far greater technical expertise and more resources than the typical ratepayer; yet, even for our office, assessing the transmission filings and design proposals that flow through the NEPOOL committees is a "daunting task."[53] Overall, there is a tremendous need for increased transparency and oversight of transmission spending in New England. An ITM could play a valuable role in protecting consumer interests, particularly given the anticipated increase in transmission expenditures in New England over the coming decades.

While, as a matter of process, NEPOOL participants can provide feedback on individual transmission project proposals and vote to oppose certain projects, that ability does not translate into meaningful oversight in practice. Since 2002, some 834 transmission project components

[52] *See, e.g.*, Eversource Initial Comments at 15–16; Avangrid Initial Comments at 28–29.

[53] NESCOE Initial Comments at 34.

have been placed in service across the New England region for reliability reasons—amounting to nearly one per week for 20 years.[54] In addition, dozens of interconnection studies are produced annually, the costs of which may indirectly affect ratepayers or system reliability. It is immensely burdensome, if not impossible, for any participant to review and engage meaningfully with all of these proposals and studies. Moreover, NEPOOL proceedings are not open to the general public, so the vast majority of ratepayers do not have the option to attend stakeholder meetings, provide verbal feedback, or scrutinize technical study models.[55] And once projects are approved, stakeholders have no oversight over project construction or the authority to audit completed projects to assess whether and how actual costs and timelines differed from projections.

Despite being one of the largest consumer advocates in New England, the Massachusetts AGO has no electrical engineer on staff to vet the technical output presented to NEPOOL committees, nor does it have a consultant on retainer to do that work. It also does not have the capacity to retain a consultant who is deeply familiar with the unit costs of specific transmission elements to scrutinize each individual project cost estimate. And it lacks direct access to load flow or power system planning software to assess proposed solutions or develop alternative solutions. In light of these barriers, it is immensely challenging to evaluate whether any proposed transmission solution is least-cost. As NESCOE well describes, "[g]iven the breadth of information contained in [a] filing, any organization representing consumer interests would

[54] ISO-NE, *2021 Regional System Plan* 5.10.1 (Draft Sept. 3, 2021), https://www.iso-ne.com/static-assets/documents/2021/09/draft_rsp21_report.docx; *see also* ISO-NE, *Summary of ISO-NE Reviewed TCA Applications under Schedule 12C of the Tariff - Status as of 4/21/2021* (2021), https://www.iso-ne.com/static-assets/documents/2018/02/tca_application_status.pdf.

[55] *Cf.* Eversource Initial Comments at 15.

reasonably question whether it has missed asking important questions or failed to challenge inputs that create unjust and unreasonable charges."[56]

As one example, the Massachusetts AGO recently initiated an examination into the fraction of costs in RNS rates derived from FERC Account 105 as part of RNS Rate Protocols. That examination indicated that utilities were collecting a rate of return on expenditures such as:

- $31 million in equipment for Connecticut Light & Power Company's Glenbrook Cables project, which was completed in 2008;
- $12 million for a 345-kilovolt right-of-way in Rhode Island, on Narraganset Electric Company's books, held for future use since 1979;
- $6.9 million for land in Ayer, MA on New England Power Company's books, held for future use since 1987; and
- many other parcels of land held for decades with smaller valuations totaling tens of millions of dollars.

It is possible that many of these assets were prudently acquired but it is hardly clear that they all were. The Massachusetts AGO's review of this single account was time-consuming and resource-intensive. The Massachusetts AGO lacks the necessary resources to consider assets in each account with the same level of scrutiny. An ITM could help reduce this burden, address information imbalances, and allow parties other than the utilities to present affirmative cases in complex and technical adjudicatory proceedings.[57]

II. CONCLUSION

The Massachusetts AGO appreciates the Commission's solicitation of public input on the important issues raised in the ANOPR. We respectfully urge the Commission to consider the

[56] NESCOE Initial Comments at 35.

[57] By statute, the Massachusetts AGO may hire experts and consultants for Department of Public Utility proceedings with funds allocated under the state distribution tariff. Mass. Gen. Laws ch. 12 § 11E. This has dramatically increased the quality of engagement and decision-making by ensuring a robust record. The Massachusetts AGO does not have similar funding for Commission proceedings, however.

above reply comments and recommendations, in addition to the Massachusetts AGO's initial comments in this docket, as the Commission considers potential reforms to improve electric regional transmission planning, cost allocation, and generator interconnection processes.

Respectfully submitted,

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November 30, 2021

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 30th day of November, 2021.

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