**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**

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| ISO New England Inc. | ) | |
| | ) | Docket Nos. ER13-193-000 |
| | ) | ER13-196-000 |
| | ) | (not consolidated) |

**PROTEST OF**

**THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION,**

**THE RHODE ISLAND PUBLIC UTILITIES COMMISSION,**

**THE VERMONT PUBLIC SERVICE BOARD, THE VERMONT PUBLIC SERVICE DEPARTMENT, VERMONT ELECTRIC POWER COMPANY, INC. AND VERMONT TRANSCO, LLC**

Pursuant to Sections 205 and 206 of the Federal Power Act ("FPA"), 16 U.S.C. §§ 824d, and 824e (2010), Rule 211 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 (2013), the Commission's November 15, 2013 Combined Notice of Filings #1, and the Commission's November 18, 2013 Errata Notice Extending the Comment Date to December 16, 2013, the State of New Hampshire Public Utilities Commission ("NHPUC"), the Rhode Island Public Utilities Commission ("RIPUC"), the Vermont Public Service Board ("VT PSB"), the Vermont Public Service Department ("VPSD"), Vermont Electric Power Company, Inc. ("VELCO"), and Vermont Transco, LLC ("VTRANSCO")[1] (collectively, the "Protesting Parties") hereby jointly file this timely Protest in the above-captioned proceedings.

[1] VTRANSCO is majority-owned by the Vermont electric distribution companies. VTRANSCO has consulted with the distribution utilities and represents that the following companies support this filing: Green Mountain Power Co., Inc., Vermont Electric Cooperative, Vermont Public Power Supply Association, Burlington Electric Department, and Stowe Electric Department.

## I. EXECUTIVE SUMMARY

The Protesting Parties assert that it is unjust and unreasonable to allocate 70 percent of the costs of a Public Policy Transmission Upgrade to all states, regardless of whether each state has enacted a statute supporting the public policy driving the need for such upgrade and whether each state has unmet needs under aforementioned public policy. The Protesting Parties recognize that almost any transmission project will provide some incidental benefits to all New England ratepayers; however, absent empirical studies showing the incidental benefits to be significant, the presumption must be that such benefits are small compared to the primary benefits derived from Public Policy Transmission Upgrades. Such upgrades are intended to meet certain states' public policy needs, and therefore the primary benefits are to those states; under the concept that costs must be commensurate with benefits, it follows that the majority of the costs of an upgrade, selected through an approved Order No. 1000 process and allocated based on a default cost-allocation mechanism, should be borne by those states driving the need for the upgrades. For this reason, Protesting Parties assert that only those states with unmet needs under such public policy should pay the majority of the costs. In order to achieve this result, Protesting Parties believe that it would be appropriate, and consistent with cost-causation principles, to allocate no more than 30 percent of the total costs of an upgrade to states based on load-ratio shares, while allocating the remaining 70 percent to states based on unmet policy needs in those instances when a default cost allocation methodology is required. Such a cost allocation would result in a distribution of costs to states that is roughly commensurate with the distribution of benefits from such public policy-driven upgrades.

## II. SERVICE AND COMMUNICATIONS

The persons to whom correspondence, pleadings, and other papers in regard to this Protest should be addressed and whose names are to be placed on the Commission's official service list for these proceedings are designated as follows:


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## III. RELEVANT BACKGROUND

1. The Protesting Parties respectfully file this Protest in response to the filing, on November 15, 2013, in the above-captioned dockets, of the proposed revisions to Sections I and II of the ISO New England Inc. ("ISO-NE") Tariff and to the Transmission Operating Agreement ("TOA") (the "November 15 Filing") submitted by ISO-NE and the Participating Transmission Owners Administrative Committee ("PTO AC") (collectively, the "Filing Parties").[2]

2. The Protesting Parties limit this Protest to the proposed terms of the revised Schedule 12 of the Filing Parties' Open Access Transmission Tariff ("OATT") Proposal (within Section II of the ISO-NE Tariff), and specifically the default cost-allocation provisions for Public Policy Transmission Upgrades delineated therein.

[2] The Filing Parties filed clarifying Amendments on November 18, 2013, specifically delineating the actual signatories to the proposal, having included the New England Power Pool ("NEPOOL") Participants Committee as a signatory to the November 15 Filing in error.

3. The Filing Parties submitted the November 15 Filing in an effort to comply with the terms of the Commission's May 17, 2013 order[3] regarding the Filing Parties' October 25, 2012 filing (the "October 25 Filing"), made by the Filing Parties in an effort to comply with the terms of the Commission's Order Nos. 1000 and No. 1000-A (together, "Order No. 1000").[4]

4. In the May 17 Order, the Commission found that the October 25 Filing partially complied with the requirements set forth in Order No. 1000.[5] The New England States Committee on Electricity ("NESCOE"), together with the NHPUC, the RIPUC, the VT PSB, and the VPSD, along with others, filed on June 17, 2013 a Request for Clarification and Rehearing of the May 17 Order, which is currently pending before the Commission.

5. The request for clarification and rehearing is currently pending before the Commission. The filers of that request, the NHPUC, the RIPUC, the VT PSB, and the VPSD, continue to assert that the proposed cost allocation methodology submitted within the October 25 Filing complies with the Order No. 1000 requirements and the comments submitted today should not be construed as waiving their rights under such request. NHPUC, RIPUC, VT PSB, and VPSD are submitting these comments as an alternative, in the event that the Commission declines to accept the pending June 17, 2013 NESCOE rehearing request.

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[3] *ISO New England, Inc.*, 143 FERC ¶ 61,150 (2013) (the "May 17 Order").

[4] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) ("Order No. 1000"), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 ("Order No. 1000-A"), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *petition for review pending*, No. 12-1232 (D.C. Cir.).

[5] In the May 17 Order, the Commission recognized the NHPUC, the RIPUC, and the VT PSB as parties in these proceedings, in response to these parties' motions to intervene. The VPSD submitted a Motion to Intervene on December 16, 2013.

6. As clarified by the November 18, 2013 Amendments to the November 15 Filing, the following parties on the PTO AC, together with ISO-NE, are full signatories to the November 15 Filing: Bangor Hydro Electric Company; Central Maine Power Company; Maine Electric Power Corporation; New England Power Company d/b/a National Grid; Northeast Utilities Service Company on behalf of its affiliates (The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire); NSTAR Electric Company; The United Illuminating Company. VELCO and VTRANSCO are signatories and supporters of the November 15 Filing, with the exception of the revisions to Schedule 12 of the OATT, and are also Protesting Parties.

7. The proposed default cost-allocation methodology for Public Policy Transmission Upgrades presented in the November 15 Filing, applicable in the absence of some alternative agreement on the allocation of costs for specific Public Policy Transmission Upgrades, may be briefly summarized as follows. In Section 6(a) of Schedule 12 of the Filing Parties' proposed OATT, it is delineated that 70 percent of the costs of each Public Policy Transmission Upgrade shall be allocated to transmission customers taking service under the OATT in the same manner as for Regional Benefit Upgrades. As acknowledged by the Filing Parties, this 70 percent of the costs of Public Policy Transmission Upgrades would therefore be automatically allocated to transmission customers throughout the New England region based on load-ratio shares.[6]

8. The remaining 30 percent of the costs of such Public Policy Transmission Upgrades would be allocated, as contended by the Filing Parties, "based on a more

[6] November 15 Filing, preamble letter to The Hon. Kimberly D. Bose, FERC Secretary, p. 24.

precise identification of beneficiaries of specific Public Policy Requirements being addressed."[7] Specifically, as delineated in Section 6(b) of Schedule 12 of the Filing Parties' proposed OATT, 30 percent of the costs, under a default-allocation scenario, are to be allocated to the Regional Network Load of each New England state in direct proportion to each state's share of the public policy planning need that gives rise to the Public Policy Transmission Upgrade ("Planning Need"). Each state's share of the Planning Need would be identified and developed by the New England States Committee on Electricity ("NESCOE"), based on its estimate of the MWhs of electric energy (or MWs of capacity, if applicable), needed over the requested study period (for a Public Policy Transmission Study commissioned pursuant to Section 4A.1 of Attachment K of the OATT) to satisfy the state and federal Public Policy Requirements NESCOE identified for evaluation and how such needs are allocated among the states. This NESCOE estimate would take into account the MWhs (or MWs of capacity, if applicable) associated with contracts and other mechanisms that are available and capable to satisfy the Public Policy Requirements for the year or years of need considered in the requested Public Policy Transmission Study. If NESCOE does not provide such a Planning Need calculation, this 30 percent of costs will be assessed on the basis of the load-ratio share of the Regional Network Load of each state that has been identified, pursuant to the procedures set forth in Sections 4A.1 and 4A.1.1 of Attachment K of the OATT revisions proposed by the Filing Parties, as having one or more Public Policy Requirements that will be evaluated in the corresponding Public Policy Transmission Study.

[7] *Id.*

## IV. PROTEST

9. The Commission should reject the proposed default cost-allocation methodology as inconsistent with the requirements of the May 17 Order on the basis that the Filing Parties have failed to demonstrate that it is permissible under well-established FERC cost-allocation principles and under the cost-allocation principles elucidated by the Commission in Order No. 1000 itself. Section 205 of the FPA gives FERC jurisdiction over "all rates and charges made, demanded, or received by any public utility," and requires that "such rates and charges… be just and reasonable." 16 U.S.C. § 824d(a) (2012). A well-established corollary of this statutory standard of reasonableness is the "cost-causation principle," which requires that all Commission-approved rates reflect to some degree the costs actually caused by the customers who must pay them.[8] Compliance with the cost-causation principle is measured by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party; although FERC need not allocate costs with exacting precision, it must justify any departure from the principle of cost-causation.[9]

10. The Commission, in issuing Order No. 1000, has reaffirmed the cost-causation principle in its vision for Public Policy Transmission Upgrades. In Paragraph 637 of Order No. 1000, FERC adopted Cost Allocation Principle 2 for both regional and interregional cost allocation for Public Policy Transmission Upgrades: Those that receive no benefit from transmission facilities, either at present or in a likely future

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[8] *See KN Energy Inc., v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *see also ICC v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009).

[9] *See ICC* at 576 F.3d at 476; *see also Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368-1369 (D.C. Cir. 2004); *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 707 (D.C. Cir. 2000).

scenario, must not be involuntarily allocated any of the costs of those transmission facilities.[10]

11. In Paragraph 545 of Order No. 1000, the Commission did hold that "[b]eneficiaries in one state are not subsidizing anyone in any other state when they are allocated costs that are commensurate with the benefits that accrue to them, even if the transmission facility in question was built in whole or part as a result of the other state's transmission needs driven by Public Policy Requirements."[11] However, the Commission clearly stated in Paragraph 545 that "estimations of benefits require adequate support," and established that under Order No. 1000 cost allocation, costs are to be allocated "in a manner that is roughly commensurate with estimated benefits."[12]

12. In their November 15 Filing, the Filing Parties assert that "there is no single 'correct' way to allocate the costs of Public Policy Transmission Upgrades," that the proposed default cost-allocation mechanism in Schedule 12 "represents a fair compromise of competing interests," and the "partial load-ratio allocation of costs is a reasonable way to allocate costs to customers that is roughly commensurate" with listed, "including difficult to quantify," regional benefits. The benefits listed by the Filing Parties included "improved reliability, reduced congestion costs, reduced power losses, greater carrying capacity, reduced operating reserve requirements, environmental benefits such as reduced air pollutant emissions, employment/economic benefits, and improved access to generation."[13]

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[10] Order No. 1000 at ¶ 637.

[11] Order No. 1000 at ¶ 545.

[12] Order No. 1000 at ¶ 545.

[13] November 15 Filing, preamble letter to The Hon. Kimberly D. Bose, FERC Secretary, pp. 24-25.

13. The Protesting Parties assert that the Filing Parties' proposed 70/30 default cost allocation methodology, wherein all states pay 70 percent of the cost of a public policy project, turns the underlying precept of Order No. 1000 on its head. The default cost-allocation methodology required by Order No. 1000 relates to transmission upgrades *driven* by public policies.[14] However, under the Filing Parties proposal, the lion's share of the upgrade costs are paid for by all states based upon an unsupported assumption that such public policy-driven upgrades produce substantial, yet unquantified, regional benefits, rather than by those states with public policies driving the transmission need or states with unmet needs under those policies. Moreover, the proposed default cost allocation methodology runs contrary to core principles of Order No. 1000 by providing no mechanism through which potential regional benefits are measured and then allocated in a commensurate manner. Absent such measures, it is unreasonable and unjust to assume that any resulting costs could be "roughly commensurate" with benefits. Overall, the Filing Parties' proposal focuses attention on the incidental benefits of the upgrades rather than the purported underlying purpose – which is to advance the public policies of specific states consistent with the core principles underlying Order No. 1000. While the Protesting Parties agree that Public Policy Transmission Upgrades can provide some incidental regional benefits, the primary purpose of such upgrades is not to enhance reliability, reduce congestion or lower power losses, but to advance states' public policy goals. The default cost methodology must reflect these priorities in order to be consistent with the cost-causation principles.

[14] Order No. 1000 at ¶¶ 2, 166, and Order No. 1000-A at ¶ 302.

14. The Protesting Parties also assert that the incidental regional benefits listed in the November 15 Filing are not supported by studies or evidence quantifying the magnitude of those benefits and how they are distributed among the New England states. Absent studies that support the Filing Parties' claim that Public Policy Transmission Upgrades produce region-wide benefits, there is no justification for imposing 70 percent of the total costs on all states. Furthermore, without empirical studies, the Filing Parties cannot meet their burden of showing that the costs allocated to the states based on load-ratio shares are "roughly commensurate" with estimated benefits.

15. The Filing Parties also fail to acknowledge that because Public Policy Transmission Upgrades may run through scenic landscapes including forested and open wetland areas, they can burden the host states with significant economic and non-monetary costs, such as impacts on viewsheds, recreation and tourism, human health and overall environmental quality. As the State of Connecticut's moratorium on wind development,[15] in place since June 2011, and the controversy surrounding the Northern Pass Transmission Project in New Hampshire attest, these long-lasting economic and non-monetary costs can outweigh the short-term employment/economic benefits usually associated with local infrastructure projects.

16. As noted above, the Filing Parties justify allocating more than two-thirds of all upgrade costs to all New England states by claiming Public Policy Transmission Upgrades produce certain benefits that are shared by all customers in the region. After careful consideration of these claims, the Protesting Parties have concluded that most of

[15] *See* Brad Kane, *CT Extends Wind Ban Until At Least February*, HARTFORD BUSINESS JOURNAL, November 26, 2013, available online at http://www.hartfordbusiness.com/ARTICLE/20131126/NEWS01/131129938

them do not withstand close inspection. Chief among them are the claims that Public Policy Transmission Upgrades enhance power system reliability and reduce congestion. The Protesting Parties contend that any reliability/congestion benefits associated with Public Policy Transmission Upgrades are likely to be small in comparison to the benefits produced by traditional reliability-driven transmission projects under the Regional Benefit Upgrades provision of the OATT. For example, Public Policy Transmission Upgrades are likely to include significant radial lines (specifically, generator interconnection facilities) to access remotely located wind generation resources.[16] This is in contrast to new reliability-driven transmission projects that become part of a highly integrated network that enhances reliability, reduces congestion, reduces power losses, and provides access to a wide variety of resources. In fact, the Filing Parties fail to recognize that generator interconnection facilities have historically been excluded from ISO-NE's high voltage integrated network (i.e., Pool Transmission Facilities) because they provide little or no regional reliability and congestion benefits.[17] Thus, the Commission should not presume that Public Policy Transmission Upgrades benefit the entire network by reducing the likelihood or severity of power system outages. Any such finding by the Commission should be based on empirical analysis of the impacts such facilities have on the regional network.

[16] A radial transmission line provides the only source of power to a substation serving customers. If this line is out for any reason, the substation also goes out until the line is repaired and put back in service. For this reason, substations fed by radial lines are susceptible to extended outages. Without a second source, damage from accidents or weather-related events during peak load periods must be repaired before service restoration can occur. For these reasons, radial lines do not typically enhance reliability.

[17] In fact, all generator interconnection facilities associated with transmission upgrades that are not Public Policy Transmission Upgrades will continue to be excluded from ISO-NE's PTF.

17. Furthermore, the Filing Parties do not address a key question: if the reliability needs of the ISO-NE region are already being met with transmission projects that meet the requirements of the Regional Benefit Upgrades provision of the OATT, what level of additional reliability benefit do Public Policy Transmission Upgrades truly provide? ISO-NE ensures continued reliability of the regional power system by authorizing construction of special purpose transmission facilities, costing billions of dollars, to address identified reliability concerns. As of June 2013, the total estimated cost of Regional Benefit Upgrades proposed, planned, and under construction was approximately $5.8 billion, which represents a 53 percent increase in transmission rates over the next five years. This amount is in addition to approximately $5 billion that has been spent on reliability projects in the past ten years. Ratepayers have a finite ability to absorb more costs, such significant transmission cost increases are not sustainable, and the Filing Parties' proposal will exacerbate the cost burdens on those states that have not enacted statutes supporting the public policy driving the need for transmission or states that have little or no unmet needs under the public policy. The reliability upgrades put into service have been fully vetted by the appropriate NEPOOL technical committees as described in ISO-NE's 2013 Regional System Plan. Stated differently, Public Policy Transmission Upgrades will not provide a meaningful contribution toward meeting the reliability/congestion needs of the region if those needs have been filled, or are on-schedule to be filled, with transmission upgrades designed specifically for that purpose.

18. The Protesting Parties acknowledge that there may be clean air benefits associated with Public Policy Transmission Upgrades; however, any determination regarding these benefits must take into account the existence of air pollution control regulations such as

the Regional Greenhouse Gas Initiative and each state's implementation of the Clean Air Act. If one or more states are of the opinion that the existing air pollution standards are too lenient and that air pollution from power plants should be cut further, Protesting Parties acknowledge that one way to achieve that objective is to advocate for the construction of Public Policy Transmission Upgrades that make possible the delivery of clean renewable energy that in turn displaces energy produced by compliant resources. The Protesting Parties assert that the costs of those upgrades should be borne primarily by the states that created the need for the upgrades. Stated differently, states that have no statutory authority to advance a public policy that seeks to reduce power plant air pollution below existing authorized levels should not be required to subsidize states that do.

19. Regarding the unsupported assertion that Public Policy Transmission Upgrades will reduce power losses to the benefit of all states, Protesting Parties contend that absent studies no party can state emphatically that such projects will reduce or increase power system losses. The simple reason is that the impact on losses is project- and location-specific. That said, an argument could be made that average power system losses are more likely to increase due to the fact that most of these upgrades will be constructed for the primary purpose of interconnecting intermittent generation assets located long distances from the nearest high voltage network interface.[18]

20. Regarding the unsupported assertion that Public Policy Transmission Upgrades will reduce operating reserve requirements, Protesting Parties disagree and note that such

[18] Since only one of the six New England states includes large hydro among the group of eligible resources under existing Renewable Portfolio Standards laws, Protesting Parties see fewer opportunities for the construction of low-loss DC transmission lines.

upgrades will likely be constructed for the purpose of interconnecting intermittent resources that produce highly variable and uncertain outputs. The variability and uncertainty that is inherent in variable generation technologies adds to the variability and uncertainty in the power system and can have significant effects on operations.[19] When, because of variability and/or uncertainty, the total supply of energy is different than the total demand, system operators must deploy operating reserves to correct the energy imbalance.[20] As intermittent resources interconnected to the bulk electric system increase, operating reserves and regulation will need to increase.[21] This finding by the New England Wind Integration Study appears to contradict the Filing Parties' claim.

21. After concluding that the regional benefits associated with Public Policy Transmission Upgrades are incidental and potentially insignificant when considering the primary drivers behind such system upgrades, the Protesting Parties present in the following paragraphs other arguments which support the overriding conclusion that the regional assignment of the majority of Public Policy Transmission Upgrade costs is unjust and unreasonable. First, the Protesting Parties note that not all states have the same public policies, and even when the policies are similar, the states may be at different stages in meeting their requirements. For example, at the present time, New Hampshire's largest utility, which accounts for approximately 70 percent of all distribution sales in the state, has sufficient Class I Renewable Energy Credits under

[19] Operating Reserves and Variable Generation, NREL, Technical Report NREL/TP-5500-51978, August 2011, Erik Ela, Michael Milligan, and Brendan Kirby.

[20] *Id.*

[21] ISO-NE's Michael Henderson summarizing one of the findings of the New England Wind Integration Study in a June 29, 2011 presentation to NEPOOL's Planning Advisory Committee entitled Integrating Variable Technologies. *See also*, New England Wind Integration Study, Final Report Issued December 5, 2010, available at http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/pac/reports/2010/

contract to meet its Renewable Portfolio Standards obligations for the foreseeable future, has no current need for additional renewable energy purchases, and therefore is unlikely to request service from any developer of Public Policy Transmission Upgrades. Vermont's existing renewable energy policy is focused on the development of in-state distributed generation,[22] although it does have aggressive renewable targets for 2017 through 2032 with flexible mechanisms for meeting those targets.[23] Based on current Vermont utility generation projects and long-term contracts, much of the renewable energy goal may be met with existing procurement strategies, in which case it is unlikely, in the near to medium term, that Vermont would have a need for new transmission based on its policy. Regardless of whether all states expect to have a need for policy-driven transmission in the near future, the Protesting Parties acknowledge that both the public policies and states' needs under those policies will change over time and that it is possible that those that have little or no current need may have a greater need in the future. Under these changed circumstances, the Protesting Parties acknowledge that such states will be partially responsible for the transmission upgrades and, accordingly, should pay an appropriate and just share of the costs. However, to automatically assess 70 percent of the total cost of a Public Policy Transmission Upgrade, on a load-ratio share basis, to those states that do not support the policy driving the specific transmission need or have little or no unmet need under the policy would be unjust and unreasonable, as such costs would be greatly disproportionate to the accrued benefits.

[22] 30 V.S.A. s. 8005a.

[23] 30 V.S.A. s. 8005(d)(4).

22. The Protesting Parties acknowledge the potential exists for some "spillover" benefits to accrue from Public Policy Transmission Upgrades. However, as noted, such benefits are incidental and insignificant, especially in comparison to the expected primary benefit of a given Public Policy Transmission Upgrade, which is likely to be the delivery of renewable energy products to entities in need of such products to meet their obligations under state-mandated clean energy goals. States that have already met their public policy obligations, or intend to meet them in ways that do not require the construction of Public Policy Transmission Upgrades, will have no need to enter into such supply arrangements and therefore will accrue none of the primary benefits. It is not logically defensible to claim, as the Filing Parties do, that allocating 70 percent of the costs of a Public Policy Transmission Upgrade to the states on a load-share basis, regardless of whether each state has requested or needs transmission service from the developer, is somehow commensurate to the benefits received. As indicated, New Hampshire and Vermont do not expect to derive much in the way of primary benefits from Public Policy Transmission Upgrades, at least not in the foreseeable future. Based on this fact alone, it is impossible to justify the 70 percent load-ratio share allocation as it violates the basic cost-causation principle that beneficiaries pay.

23. The Filing Parties' reliance[24] on *Western Mass. Electric Co. v. FERC*, 165 F.2d 922, 927-928 (D.C. Cir. 1999), in an effort to gloss over the need for the proposed cost allocation method to comply with the cost-causation principle, by stating in a conclusory fashion that "there is a presumption that transmission system enhancements benefit all members of an integrated transmission system," is misplaced. *Western Mass.* and similar

[24] November 15 Filing, preamble letter to The Hon. Kimberly D. Bose, FERC Secretary, pp. 24-25.

cases were decided in the context of reliability upgrade projects-- transmission developments for which the primary expected benefit was system reliability. In the case of a public policy driven transmission upgrade, any reliability benefits are incidental, and depending on the specific project (such as a long radial line to interconnect variable energy resources) may have very little reliability benefit.

24. In the Commission's Order No. 890, at Paragraph 559, the Commission identified several factors it would consider in weighing the reasonableness of cost allocations for new transmission facilities. One of those factors is whether the cost allocation method "is generally supported by state authorities and participants across the region." The Commission explains that

> "a cost allocation proposal that has broad support across a region is more likely to provide adequate incentives to construct new infrastructure than one that does not. The states, which have primary transmission siting authority, may be reluctant to site regional transmission projects if they believe the costs are not being allocated fairly."[25]

The Protesting Parties strongly support this FERC principle, and point to the Filing Parties' failure to garner broad-based support for their proposal. As evidenced by the Filing Parties' admitted failure[26] to receive the required two-thirds support of the NEPOOL Participant Committee, the Commission should conclude that there is no general support among NEPOOL stakeholders for the cost allocation proposal. In fact, the Filing Parties' proposal barely received 50 percent of the Participants Committee vote[27] and was opposed by two of the six New England states[28] and nearly all members of

[25] *Preventing Undue Discrimination and Preference in Transmission Service*, FERC Order No. 890 (February 16, 2007), at ¶ 559.

[26] November 15 Filing, preamble letter to The Hon. Kimberly D. Bose, FERC Secretary, p. 31.

[27] *Id.*

[28] Vermont did not voice support or opposition at the Participants Committee before the vote.

the generation group. Despite this opposition, and numerous proposed amendments, the Filing Parties elected to proceed with a proposal that assesses a majority of the costs on states that have little or no need for the new transmission facilities to meet their renewable requirements in order to support states that have a greater need for such facilities.

25. The needs-based method proposed by the Filing Parties to allocate the remaining 30 percent of the costs of a Public Policy Transmission Upgrade requires calculation of: (i) a Planning Need that gives rise to the transmission upgrade; and (ii) each state's share of the Planning Need. The responsibility for making those determinations rests, in the first instance, with NESCOE, an organization that advocates on behalf of states' interests. The Planning Need must also be included in any request submitted by NESCOE to ISO-NE to conduct a Public Policy Transmission Study pursuant to Section 4A.1 of the proposed Attachment K of the OATT. While the Protesting Parties view this more empirically-grounded approach to determining project-specific benefits for cost allocation purposes as an improvement upon the load-ratio share approach, the Protesting Parties do have some important concerns with this aspect of the Filing Parties' proposal.

26. The Protesting Parties' primary concern with the needs-based method is that it is substantially incomplete, thus making it difficult for the Commission and the Protesting Parties to evaluate and arrive at a definitive conclusion regarding the reasonableness of the methodology under the cost-causation principle and other applicable standards. The Filing Parties' proposal states that the Planning Need shall be "based on an estimate of the MWhs of electric energy (or MWs of capacity, if applicable) needed over the requested study period to satisfy the state and federal Public Policy Requirements it

identified for evaluation." This language is too broad and leaves significant room for dispute. For example, assuming the states' renewable laws and goals are the subject of NESCOE's needs analysis, it is unclear whether the "electric energy" requirements relate to a single class of eligible resources or to all classes covered by such laws and goals. Also, the study period is unspecified. Should the period of analysis cover a single year or multiple years? If the latter, should the quantities in later years have the same weight as quantities in earlier years or should they be discounted?

27. The needs-based method proposed by the Filing Parties also states that the calculation of the Planning Need should "take into account the MWhs (or MWs of capacity, if applicable) associated with contracts and other mechanisms that are available and capable to satisfy the Public Policy Requirements for the year or years of need considered in the requested Public Policy Transmission Study." The Protesting Parties understand this to mean that the Planning Need should reflect not the gross electric energy requirements for the identified public policy, but rather, the net requirements after taking into account energy expected to be supplied by existing eligible resources and other state funded programs. Not specified is whether existing short-term contracts would receive the same weight as existing long-term contracts. That is, is it reasonable to assume existing short-term contracts would be renewed at current or higher supply levels and that state funding for other eligible programs would be maintained or increased? The answers to these and other similar questions will have important implications for each state's share of the Planning Need, and therefore, how the costs subject to the needs-based method are allocated among the states.

28. The Filing Parties' proposal is also silent on how it would comply with the requirement in each Renewable Portfolio Standards law that the delivered cost of Renewable Energy Credits (including the allocated cost of the transmission upgrade) may not exceed the authorized Alternative Compliance Payment.

29. If NESCOE, for any reason, is unable to specify the Planning Need in any request for ISO-NE to conduct a Public Policy Transmission Study, the proposal provides for the remaining 30 percent of the cost of a Public Policy Transmission Upgrade to be allocated to states based on load-ratio shares. The Protesting Parties object to this provision on the ground that it may encourage states that stand to gain from a load-ratio share allocation method to obstruct the development of the Planning Need.

30. For the above reasons, Protesting Parties recommend that the Commission direct the appropriate NEPOOL stakeholder committees to undertake further analysis of the needs-based cost-allocation methodology and make revisions such that the portion of the costs of Public Policy Transmission Upgrades that are subject to this methodology are allocated equitably and in a manner that does not intrude on a state's prerogative to determine how best to meet its public policy goals.

31. Each individual New England state determines its renewable energy goals for itself, through its state legislatures and governors. Diversity in renewable goals is to be expected among six states. An acknowledgement of this diversity leads the Protesting Parties to insist that the Filing Parties' conclusory presumption of uniformly-distributed benefits from Public Policy Transmission Upgrades, across a monolithic New England region, is fallacious, both for primary benefits (renewable goals attainment) and for incidental benefits. The Protesting Parties, applying the cost-causation principles

undergirding the Commission's authority under the FPA and Order No. 1000, have concluded that purported benefits from Public Policy Transmission Upgrades must be examined on a state-specific basis, as public policy goals leading to the development of such projects are developed on a state-specific basis. The Filing Parties' proposal for 70 percent of project costs to be automatically allocated to New Hampshire, Rhode Island, and Vermont customers on a load-ratio share basis under the proposed Schedule 12 of the OATT, without any reference to their own planning needs, functionally obliterates the cost-benefit nexus required by Order No. 1000 and governing precedent. In fact, there is a real danger under the Filing Parties' proposal that states that have met their renewable energy goals under their laws will subsidize, through the 70 percent automatic cost allocation proposal, states that have yet to meet their goals and require Public Policy Transmission Upgrades to satisfy them.

32. The Filing Parties' claim of expansive incidental benefits associated for Public Policy Transmission Upgrades is not adequately supported and is contrary to the primary intent of Public Policy Transmission Upgrades – to promote the public policy of states. To the extent that such transmission projects are driven by public policy, it logically follows that the benefits primarily accrue to those states with public policies requiring the need for these upgrades. As Order No. 1000 itself requires that the costs be commensurate with the benefits, it is not just and reasonable for all states to bear 70 percent of the costs of public policy driven upgrades when the primary beneficiaries are only a subset of those states. Regarding the issue of adequate support, Protesting Parties assert that generic studies of the benefits of high voltage transmission projects, such as the Brattle Group study referenced in Footnote 31 of the Preamble Letter to the

November 15 Filing,[29] do not meet the Filing Parties' burden of showing that Public Policy Transmission Upgrades will produce similar incidental benefits.

33. At a meeting of the NEPOOL Participants Committee held on November 8, 2013, the Massachusetts Municipal Wholesale Electric Company ("MMWEC") offered an amendment to the proposed default cost allocation methodology that the Protesting Parties believe addresses some of the aforementioned concerns Specifically, MMWEC's proposal directly addressed Protesting Parties concern that the percentage of costs allocated to the states based on load-ratio shares is too great and not based on empirical data. MMWEC proposed that a percentage of the costs of a Public Policy Transmission Upgrade (not to exceed 30 percent) would be allocated to the states based on load-ratio shares, provided the results of an empirical regional benefits study for the specific upgrade support such allocation. Although the MMWEC proposal failed to receive the required two-thirds vote in order to gain NEPOOL support, it did receive a slightly higher vote of support than the Filing Parties' proposal.

34. The Protesting Parties believe that the MMWEC proposal represents a more equitable approach to the problem of cost allocation, as it relies upon empirical studies for the development of a proxy percentage for regional benefits associated with specific Public Policy Transmission Upgrade projects that would not exceed 30 percent. Protesting Parties also believe that a straight 30 percent allocation of the costs of a Public Policy Transmission Upgrade based on load-ratio shares (without reference to empirical studies) would be reasonable because an appreciably higher percentage would be

[29] November 15 Filing, preamble letter to The Hon. Kimberly D. Bose, FERC Secretary, p. 25; The Brattle Group, *The Benefits of Electric Transmission: Identifying and Analyzing the Value of Investments* (July 2013); accessible via http://www.brattle.com/system/news/pdfs/000/000/020/original/The_Benefits_of_Electric_Transmission_-_Identifying_and_Analyzing_the_Value_of_Investments_Chang_Pfeifenberger_Hagerty_Jul_2013.pdf?1377791283

inconsistent with the indisputable fact that such upgrades are driven by the need to deliver renewable energy products to entities that need them and not by some unstated desire to share in regional benefits posited by the Filing Parties. As noted, those benefits are incidental and unsupported by empirical studies and as such should not be accorded the importance given to them by the Filing Parties' use of the 70 percent factor.

35. In assessing the Filing Parties' default cost-allocation proposal presented in Schedule 12 of the OATT, the Commission, in applying the cost-causation principles underpinning its authority under the FPA and its rationales in Order No. 1000, must find that the automatic allocation of 70 percent of the costs based on load-ratio shares, without support from general or project-specific empirical studies to justify the percentage, is unjust and unreasonable. The Filing Parties' proposal turns the purpose of Order No. 1000 on its head and attempts to allocate the majority of the costs based on incidental rather than primary benefits. It is well established that each state has the prerogative to establish and implement its own public policies to meet its citizens' needs, and states with little or no policy need should not be compelled to bear a disproportionate share of transmission costs incurred to supply the needs of states that have greater needs.

## V. CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated herein, the Protesting Parties respectfully request that the Commission take these comments into consideration, and reject the proposed changes to Schedule 12 of the OATT presented within the November 15 Filing by ISO-NE and the PTO AC as not compliant with the cost allocation requirements of Order No. 1000, and the terms of Commission's May 17 Order, require a cost allocation methodology in which no more than 30 percent of the costs of Public Policy Transmission Upgrades are automatically allocated to all

New England states, and grant such other and further relief as the Commission may deem necessary and appropriate.

Respectfully submitted,

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**for Vermont Electric Power Company, Inc.; and Vermont Transco, LLC**

Date: December 16, 2013

## 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 Secretary in these proceedings.

Dated at Concord, New Hampshire this 16th day of December, 2013.

By: */s/ Alexander F. Speidel*

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