

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

New England Power Co., et al.

)

Docket No. ER20-2054-000

**FORMAL CHALLENGE OF THE MAINE OFFICE OF PUBLIC ADVOCATE TO
VIOLATIONS OF ISO NEW ENGLAND'S INFORMATION EXCHANGE PROTOCOLS
BY THE IDENTIFIED NEW ENGLAND TRANSMISSION OWNERS**

INTRODUCTION

Pursuant to Attachment F, Appendix C, Section VI.2 of the ISO New England Open Access Transmission Tariff ("OATT"), the Maine Office of Public Advocate (hereinafter "Maine") hereby lodges this Formal Challenge to the 2023 Annual Update filed in this docket by the New England Transmission Owners ("NETOs") on July 31, 2023. The substantive focus of this challenge is on the cost of asset condition projects placed into service in 2022.¹ As to those projects, the NETOs have refused to answer questions regarding investment policies and practices related to prudence of these investments. The NETOs' decision not to respond to these questions violates their obligation under the OATT's Protocols to "make a good faith effort to respond" to "[i]nformation and document requests that "may be reasonably necessary to determine: (1) "[t]he prudence of actual costs and expenditures" or (2) "any other information that may have an effect on the calculation of the charge pursuant to the Formula Rate." Protocols, Section V 1. and 2.

¹ The NETOs with asset condition projects that are the focus of this challenge are Connecticut Light and Power Company, Maine Electric Power Company, NSTAR Electric Company (East), NSTAR Electric Company (West), New England Power Company, Public Service Company of New Hampshire, Rhode Island Energy, and Vermont Transco, LLC (hereinafter "the identified NETOs.").

One of the grounds for a Formal Challenge is a violation of the Formula Rate Protocols. In order to address the NETO's violation of their tariff obligation under those Protocols, and for the reasons discussed below, Maine respectfully asks the Commission (1) to direct the identified NETOs to answer Maine's information requests and (2) to permit Maine to supplement this challenge with a Formal Challenge to the prudence of the identified NETOs' asset management costs reflected in the July 2023 informational filing once answers to those requests have been provided.

At the core of the NETOs' joint and individual responses to Maine's information requests is their assertion – one with which Maine agrees -- that Maine's requests relate to "the nature of the planning process for asset condition projects."² They claim incorrectly, however, that this area of inquiry is "outside the scope of information authorized under the Protocols" because "the Formula Rate Protocols expressly limit prudence inquiry to the prudence of 'actual costs.'"³ The identified NETOs add, moreover, that they are also not obligated to answer these requests because Maine has not met its alleged burden to raise a "serious doubt" about the prudence of NETOs' expenditures on asset management projects before they can even ask any questions on the subject.⁴

The short answer to the first of these objections is that the Commission has already rejected the argument that questions related to the prudence of a utility's practices affecting "actual costs" must be directed to specific expenditures under formula rate protocols. As to the second objection, the NETOs have conflated their obligation under the Protocols to answer

² December 14, 2023 Response of NETOs to Maine's Informal Challenge. Attachment A. Maine's information requests are found in Attachment B.

³ Id. at 1-2.

⁴ Id.

questions "reasonably necessary to determine" the "prudence of their actual expenditures" with a *subsequent* challenge to the prudence of those expenditures. Maine discusses these points in more detail below.⁵

BACKGROUND

The NETOs' July, 2023 informational filing notes that it is the outgrowth of a section 206 proceeding this Commission initiated *sua sponte* in 2015.⁶ The Commission commenced the proceeding "due to its concerns over the 'transparency and challenge procedures with regard to the formula rates' for transmission services by the PTOs under the ISO OATT..." *Id.* That proceeding resulted in a settlement that featured adoption of the Formula Rate Protocols (Protocols) that are at the heart of the dispute between the identified NETOs and Maine.

State regulators and this Commission have long recognized that while formula rates may have some upsides, they increase the risk that imprudently incurred costs may flow through to ratepayers. Ken Costello, in his work for the National Association of Regulatory Commissioners ("NARUC"), for example, has voiced the concern that "a formula rate plan could increase the chances of a utility passing through imprudent costs."⁷ This Commission has similarly recognized that formula rates reduce utility incentives to act efficiently, but has reasoned that this

⁵ The NETOs also argue weakly, in a contention relegated to a footnote and offered with no further explanation, that "[b]ecause the MeOPA challenge does not meet the minimum requirements for an Informal Challenge, MeOPA is ineligible to submit a Formal Challenge to the 2023 Annual Update." Attachment A, n. 3. Tellingly, having replied to Maine's Informal Challenge, the NETOs offer no explanation for this meritless contention.

⁶ July 31, 2023 NETO Transmittal Letter, pp. 1-2.

⁷ Ken Costello, *Alternative Rate Mechanisms and Their Compatibility with State Utility Commission Objectives*, Report No. 14-03 p. 38 n. 106 (April 2014). *See also*, Mark C. Christie, *It's Time to Reconsider Single-Clearing Price Mechanisms in U.S. Energy Markets*, 44 *Energy Law J* 1, 9 n. 30 (2023). ("Formula rates are procedurally much more attractive to the transmission owner, and often much more generous than most state rate recovery mechanisms, in which the utility bears the burden of proving that costs are reasonable and prudent.")

concern "is mitigated by the fact that all charges billed under formula rates are subject to prudence challenges and after-the-fact refund."⁸ Whether that concern is *adequately* mitigated is, at least in part, what prompted the Commission's 2015 proceeding that led to the adoption of the settlement Protocols.

The concerns that prompted that 2015 proceeding, unfortunately, remain extant. New England today already has among the highest transmission rates in the country. The New England transmission owners are proposing a 9% increase for the coming year – substantially above the rate of inflation -- with similar increases projected over the subsequent four years. A substantial portion of the projected increases are being driven by so-called asset condition projects, essentially the rebuilding and replacement of existing lines and facilities. The NETOs have estimated that approximately 43% of capital additions for 2023 and 64% of capital additions for 2024 consist of such projects.⁹

Critically, such projects receive virtually no state review for their reasonableness, and similarly receive no such review by ISO New England. This means that there is no review of the prudence of these investments prior to their inclusion in rates, exposing customers to the risk of being charged unjust and unreasonable rates. Fortunately, the absence of prior review does not leave customers subject to formula rates without recourse. Even before the adoption of the current protocols, this Commission has made clear, as noted above, that costs billed under formula rates "are subject to prudence challenges and after-the-fact refund." *Northeast Utilities, supra*.

⁸ *Northeast Utils. Serv. Co.*, 62 FERC ¶ 61,294 at p. 62,906 (1993).

⁹ See RNS Rate Forecast Overview, pp. 4-5 (\$571 million/\$1.35 billion - 2023) and (\$889 million/ \$1.385 billion -2034), https://www.iso-ne.com/static-assets/documents/2023/07/a03_2023_07_18_19_rc_tc_rns_rate_forecast.pdf.

It may be that the limited review of asset management projects is a product of an attitude that older lines need to be replaced at some point. But Maine's concern is that at least some New England utilities may be taking advantage of this lax review process to the benefit of their shareholders. Are they building replacement projects prematurely? If so, such practices can contribute to significant and unnecessary rate increases. Could the projects be more targeted and smaller? Are there less expensive alternatives to large transmission replacement projects? Do the NETOs adequately keep track of the condition of their current transmission assets? Do they have processes for maximizing the timing of replacements or the evaluation of non-transmission or hybrid alternatives? These are precisely the types of questions Maine raises, and which the New England States Committee on Electricity (NESCOE), composed of appointees of each of the Governors of the New England states, have been asking of the NETOs.¹⁰

Maine is aware that in objecting to answering some of these same questions in this case, the NETOs have pointed to ongoing discussions with NESCOE. They have agreed, the NETOs state, "to standardized guidelines for asset condition project presentations that include increased notice and opportunities for stakeholders to submit written feedback." Attachment A, p. 2.¹¹ Maine applauds this progress, but what appears to be potential *prospective* improvement in transparency does not address Maine's concerns about the NETOs' current investment planning

¹⁰ See, e.g., February 8, 2023 letter from NESCOE to New England Transmission Owners re Asset Condition Projects and Process Improvements, https://www.iso-ne.com/static-assets/documents/2023/02/2023_02_08_nescoc_asset_conditions_letter.pdf.

¹¹ Two days ago, several NETOs (Avangrid, Eversource, National Grid, Rhode Island Energy, Vermont Electric Power Co. and Versant Power) sent a letter to New England's consumer advocates regarding "process enhancements" for asset condition projects. There, they refer back to their response to NESCOE's February 2023 letter detailing their "several enhancements to asset condition reporting" and state that they "anticipate developing additional enhancements, as well as refinements to the deliverables already provided." January 29, 2024 NETO letter to New England Consumer Advocates. Attachment E. As discussed above, however, the NETOs describe potential *prospective* changes.

practices and whether the costs of the *current* asset management projects were prudently incurred. It is those concerns that underlie the questions Maine has posed and that the identified NETOs have declined to answer.

ARGUMENT

I. MAINE'S FORMAL CHALLENGE FALLS SQUARELY WITHIN THE SCOPE OF SECTIONS V AND VI OF THE PROTOCOLS.¹²

A. The Identified NETOs' Failure to Produce Information Required Under The OATT Protocols Is Challengeable "Inaction."

Formal and Informal Challenges relate to both violations of the Formula Rate and to violations of the Protocols themselves. The OATT Protocols require the challenging party to "identify the action or inaction...alleged to violate the Formula Rate or Protocols" and to "[e]xplain how the action or inaction violates the Formula Rate or the Protocols." As Maine does here, a Formal challenge must identify the "business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the party filing the Formal Challenge," including, where applicable...[t]he prudence of actual costs and expenditures." Protocols, Section VI .2.a.

The inaction that is the subject of Maine's Formal Challenge is the identified NETOs¹³ failure to produce the information Maine requested. Section V.1.h of the Protocols allows

¹² Attachment D contains a checklist detailing Maine's satisfaction of the requirements to raise a Formal Challenge under the Protocols.

¹³ The NETOs' joint response to Maine's informal challenge states that Maine's questions went to "the general processes and procedures for asset condition projects for each PTO, including those PTOs whose information request responses indicated that they do not have any asset condition projects." Attachment A, p. 1. Maine's formal challenge, however, is limited to NETOs that do have asset condition projects.

"Affected Parties"¹⁴ like Maine to request information "reasonably necessary to determine... [t]he prudence of actual costs and expenditures." Section V.2 of the Protocols then requires the NETOs to make a "good faith effort" to produce the information. There was no good faith effort to answer, nor even a claim that responding would be burdensome. The NETO's inaction was based entirely on their unsupported claim that the questions went outside the Protocols. That, as discussed below, was incorrect.

B. Under Section V.1.h. of the OATT Protocols, Maine's Requests Are "Reasonably Necessary to Determine" The Prudence of The NETOs' Asset Management Practices.

The heart of the identified NETOs' objection to Maine's information requests is that the requests "extend to the general processes and procedures for asset condition projects for each PTO." They assert that "the Formula Rate Protocols expressly limit prudence inquiry to the prudence of "actual costs." Appendix A, pp. 1-2. The NETOs' position, however, reflects a complete misapprehension of the Protocols and the nature of a prudence inquiry, evidently confining the inquiry to the calculation of costs, as opposed to the prudence of the decision-making process leading to the expenditures.

In circumstances similar to the instant case, the Commission rejected the notion that questions "reasonably necessary to determine" "the prudence of actual costs and expenditures" must be limited to the questions regarding the actual costs themselves. *ITC Midwest LLC*, 154 FERC ¶ 61,188 (2016) involved a challenge under the MISO formula rate protocols to the transmission provider's decision to opt in or out of a particular depreciation methodology. *ITC*

¹⁴ Section II of the Protocols (Definitions) defines Affected Parties to include "any state consumer advocacy agency of the state in which that PTO operates, on behalf of such state's retail customers."

objected that the challenger had contested a particular practice, not the utility's actual cost or expenditures:

ITC Midwest asserts that the target of Interstate Power's formal challenge is not the ADIT balance itself or the validity of the calculations associated with the ADIT input, but rather, the underlying decision to opt out of bonus depreciation. ITC Midwest argues that the decision to opt out of bonus depreciation, however, is neither a "cost" nor an "expenditure," and thus not within the scope of the limited prudence review permitted under the formal challenge process established in the protocols. ITC Midwest asserts that its protocols are designed to address the implementation of its formula rate for a given rate year, *not substantive policy issues* like the exercise of tax election rights under the Internal Revenue Code.

ITC Midwest, supra at P. 23. But the Commission flatly rejected this argument:

[T]he formal challenge alleges that because ITC Midwest, through its corporate parent ITC Holdings, opted out of bonus depreciation and thereby inflated its rate base, imprudently incurred costs were passed through ITC Midwest's formula and charged to customers. *Thus, we disagree with ITC Midwest that the formal challenge does not raise "the prudence of actual costs and expenditures,"* and we find that the subject matter of Interstate Power's formal challenge properly falls within the scope of the ITC Midwest protocols.

Id. at P. 45. (emphasis added) (internal citations omitted)

Here, Maine has asked *whether* the identified NETOs have policies or practices that logically would inform prudent decisions about the timing, scope and necessity for asset condition projects, i.e., replacement facilities, as well as the existence of policies or practices that would look at potentially less expensive alternatives. Given the absence of prior scrutiny of these projects, answers to these questions were "reasonably necessary to determine" the prudence of the identified NETOs expenditures on these projects.

The questions Maine has posed are precisely the types of questions that go to the prudence of utility practices that may result in unnecessary costs to consumers. It is well-established under state and federal utility regulation that an act of omission can be "just as

imprudent as an act of commission."¹⁵ This Commission has similarly recognized the "failure to take the opportunity to minimize costs as grounds for [an] imprudence finding." *Public Service Co. of New Mexico*, 25 FERC ¶ 61,469 at n.27 (1983) (citing *Public Service Company of Indiana*, 10 FERC ¶ 61,236 at p. 61,434 (1980) (failure of electric utility to take opportunity to minimize costs through increased coordination could be taken into account in setting rates); *Public Service Company of New Hampshire*, 6 FERC ¶ 61,299 (1979) (higher fuel costs resulting from utility's failure to assert contractual rights against its supplier cannot be passed on to its customers")). See also *Epsilon Trading, LLC*, 185 FERC ¶ 61,126 at P 213 (2023) (referencing earlier case finding "that a utility's failure to take bonus depreciation was imprudent because it increased the revenue requirement unnecessarily").

Finally, the NETOs' interpretation of the Protocols is both illogical and would defeat the purpose of permitting a prudence inquiry. The case books are filled with examples of utilities that failed to take actions, the result of which was to place customer service reliability at risk and/or to raise the costs to consumers unnecessarily.¹⁶ Oftentimes the imprudence relates to a failure to take a course of action that may be the direct result of a policy choice made by the utility or the *absence* of a practice. In *ITC, supra*, the utility's failure to take advantage of a depreciation bonus – the direct result of a general corporate policy – led to actual increased costs.

¹⁵ *Pa. Pub. Util. Comm. v. Philadelphia Elec. Co.* (Part 1 of 6), R-891364; R-891364, C001-C007, 1990 Pa. PUC LEXIS 155, *64-65. See also *Georgia Power Co. v. Georgia Pub. Svc. Comm.*, 196 Ga. App. 572, 576-77, 396 S.E.2d 562, 569 (1990).

¹⁶ See, e.g., *In re: Investigation of Fuel Cost Recovery Clauses of Electric Utilities* (Gulf Power Co. – Maxine Mine), 84 FPSC 6:295 (June 22, 1984); *Kansas Gas and Elec. Co. v. State Corp. Comm'n of State of Kan.*, 14 Kan. App. 2d 526,539-40 (1009); 794 P.2d 1165 (Kan. Ct. App. 1990); *Re Gulf States Utilities Co.*, 19 Tex. P.U.C. Bull. 1401 (Aug. 19, 1993); *Entergy Gulf States, Inc. v. Louisiana Pub. Serv. Comm'n*, 726 So. 2d 870, 886 (La. 1999); *Application of San Diego Gas & Electric Co. (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account*, 2017 Cal. PUC LEXIS 513 at *39 (Cal. P.U.C., Nov. 30, 2017).

But the absence of a policy or practice could have similar adverse effects. Suppose, for example that a utility failed to implement a regularized equipment maintenance process that would foreseeably lead to premature equipment failure, an actual cost to consumers. Under the NETOs reading of the protocols, however, questions going to the utilities' maintenance practices would be barred because they do not relate to the costs of specific facilities.

Even if there were ambiguity in the language of the Protocols, they should be construed liberally to comport with Commission policy to promote meaningful prudence review under formula rates. FERC has long recognized that it is authorized “to order refunds for imprudent costs charged to customers through an existing formula rate.”¹⁷ Indeed, FERC has previously “rejected attempts to limit the timeframe for prudence inquiries.” *Id.* Its reason is clear. “The Commission affirmed its willingness to address such challenges no matter when they are brought to its attention because it recognizes that customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.” *Id.* The right to challenge prudence of costs recovered under a formula rate is so fundamental that the challenge right exists even where the formula rate protocols make no reference to prudence inquiries:

DP&L points to no language in the Protocols that prohibits interested parties from requesting information on and challenging costs as imprudent. Nor does it point to any evidence to support its claim that the settling parties agreed to such a concession. The Commission's acceptance of a formula rate constitutes acceptance of the formula, but not the inputs to the formula. Parties can challenge the inputs to the formula rate in the same way as they can challenge costs in a stated rate case, including by raising prudence issues.

Delmarva Power and Light Company, 145 FERC ¶ 61,055 at P 22(2013). What this Commission similarly stated about fuel adjustment clauses - a limited form of a formula rate - is wholly applicable to full blown formula rates like those of the NETOs:

¹⁷ *Entergy Services, Inc.*, 148 FERC ¶ 63,015 at P 35 (2014).

[I]t is the utility that decides whether or not to use a FAC. In choosing to employ FAC procedures for cost recovery, without prior notice and filing with the Commission under section 205 of the FPA, the utility knowingly exposes itself to after-the-fact prudence inquiries. The benefits of FACs come from the fact that they allow rates to increase to track selective cost components, without those costs being reviewed, and without consideration of whether other costs have declined. As a result, they result in the benefit of fewer general rate filings. Clearly, Interstate elected to adopt its fuel clause knowing the benefits and the risks that would result.

Cities and Villages of Albany et al. v. Interstate Power Co., 61 FERC ¶ 61,037 at 61,186 (1992).

II. THE REASONABLE DOUBT STANDARD APPLIES TO VIOLATIONS OF THE FORMULA RATE, NOT TO VIOLATIONS OF THE PROTOCOLS.

A. Maine's Information Requests Seek to Ascertain Whether There Was Imprudence, an Inquiry Stymied by the NETO's Refusal to Answer Those Requests in Violation of Formula Rate Protocols.

The NETO's alternative objection to Maine's information requests is that Maine must first demonstrate a "serious doubt" as to the NETOs' prudence in order to mount a Formal Challenge of imprudence. This result follows, they claim, from Commission precedent stating that utilities have the burden of proof to justify the prudence of their expenditures only if a "serious doubt" as to their prudence has been raised. Attachment A, pp. 1-2. But the NETOs conflate formal challenges to the Formula Rate (in this case imprudent charges collected under the Formula Rates) with formal challenges to adherence to the Protocols. As discussed in Section I *supra*, however, Maine's challenge relates to the NETOs' inaction under the Protocols, *i.e.*, their failure to produce information related to the prudence of their conduct.

It may well be, as Maine suspects, that the NETOs have no formalized processes to examine the timing of asset management projects, or even data bases reflecting the condition of existing facilities the projects would replace, or records of the alternatives, if any that they examined before deciding to proceed with particular asset management projects. In such a case, their inactions would indeed raise serious doubts about their imprudence. Because the Protocols

place a time limit on prudence challenges not otherwise applicable under Commission precedent governing formula rates (see discussion *supra*), the Commission must protect prudence *inquiries* that precede formal prudence challenges. The NETOs' refusal to answer these relevant questions improperly forecloses any such threshold inquiries.

B. Even Assuming The "Serious Doubt" Standard Applies, The Admission of One NETO That It Does Not Currently Maintain an Asset Condition Data Base Raised a Serious Doubt That The NETOs Are Prudently Managing the Replacement Process.

As discussed in Section II. A. *supra*, the Commission need not address whether Maine has raised a serious doubt about the prudence of the NETOs costs related to their asset condition projects. Assuming however that the serious doubt standard applies, Holyoke's September 29, 2023 answer to one of Maine's questions raise that serious doubt. While the NETOs jointly objected to most of Maine's questions, in its separate response to question 3.a, Holyoke admits that it "does not maintain an asset condition data base." Attachment C. Without such a data base or something similar, a utility would have no means to determine whether the condition of an existing facility suggests that it needs replacement. Given their reluctance to answer this and similar questions, the NETOs' non-response and Holyoke's response together raise a reasonable doubt about the prudence of the NETOs' asset management policies.

CONCLUSION

For the reasons discussed above, Maine respectfully asks the Commission to direct the identified NETOs to answer Maine's information requests. Because answers have been improperly withheld, Maine also asks that the Commission permit Maine to raise within two months of receiving that information a Formal Challenge to the prudence of the identified NETOs' asset management costs reflected in the July 2023 informational filing,

Respectfully submitted,

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January 31, 2024

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 this proceeding.

/s/Jonathan Schneider

January 31, 2024

**Participating Transmission Owners’ Response
to the Maine Office of the Public Advocate**

December 14, 2023

The Maine Office of the Public Advocate’s (“MeOPA’s”) “informal protest”¹ submitted to the Participating Transmission Owners (“PTOs”)² on November 15, 2023 does not meet the minimum requirements of an Informal Challenge under the Transmission Formula Rate Protocols (“Protocols”) set forth in Appendix C to Attachment F of the ISO New England Inc. Open Access Transmission Tariff. Contrary to the requirements for an Informal Challenge described in Sections II and VI of the Protocols, the MeOPA challenge only vaguely asserts, without any basis for doing so, that “it is reasonable to infer that some meaningful portion of the asset condition investment reflected in the formula rate filing is imprudent.” As a result, MeOPA’s challenge is an informal challenge in name only and is not a sufficient basis for further challenge of the 2023 Annual Update under the Protocols.³ The PTOs nonetheless provide this response to the MeOPA challenge based on their understanding of what MeOPA challenges, as informed by a meeting between MeOPA’s representative and a senior representative for the PTOs on December 5, 2023.

The MeOPA challenge states that it requested “various information,” including “policies regarding the scope and timing of the construction of asset condition projects.” As the PTOs explained in their responses and objections to MeOPA’s information requests, inquiry into the nature of the planning process for asset condition projects is inappropriate under the limitations of Section V of the Protocols. The Protocols “are designed to provide increased transparency into the calculation of the Annual Transmission Revenue Requirement” that the PTOs use to determine rates for transmission service. *See* Protocols, Section 1. The focus of many of the MeOPA information requests was, improperly, information about general policies, processes, and procedures, all of which are outside the scope of information authorized under the Protocols. Where information requests were in scope, the PTOs provided extensive information about the asset condition projects included in the Annual Update.

¹ The MeOPA pleading refers to itself as both an “informal challenge” and an “informal protest.” It is referred to herein as the “MeOPA challenge.”

² The only PTOs whose responses to MeOPA’s information requests provided an indication that they have actual costs of asset condition projects placed into service in 2022 in the 2023 Annual Update are: The Connecticut Light and Power Company, Maine Electric Power Company, NSTAR Electric Company (East), NSTAR Electric Company (West), New England Power Company, Public Service Company of New Hampshire, Rhode Island Energy, and Vermont Transco, LLC. Additionally, New Hampshire Transmission, LLC had a single 2022 asset condition project addition included in the 2023 Annual Update. ACL # 87 was inadvertently labeled as RSP # 87 on Worksheet 8 of Appendix A. This project was correctly labeled in the asset condition list on the ISO-NE website. All other PTOs who received the MeOPA challenge do not have 2022 asset condition project additions in the 2023 Annual Update and, as discussed in the December 5th meeting between MeOPA and the PTOs’ senior representative, should be excluded from any challenge on this issue related to the 2023 Annual Update.

³ Section VI.1. of the Protocols requires an Interested Party to submit an Informal Challenge before it may submit a Formal Challenge. Because the MeOPA challenge does not meet the minimum requirements for an Informal Challenge, MeOPA is ineligible to submit a Formal Challenge to the 2023 Annual Update.

Like many of its information requests, the MeOPA challenge does not comply with, and inappropriately seeks information beyond, the scope of the Protocols. The PTOs understand the MeOPA challenge to extend to the general processes and procedures for asset condition projects for each PTO, including those PTOs whose information request responses indicated that they do not have any asset condition projects, and the MeOPA challenge suggests that MeOPA believes that the PTOs must provide the requested information to “sustain their burden under Section VI(2)(c) of the Formula Rate Protocols to demonstrate that projects added to rate base during the relevant period for the calculation of rates was prudent.” However, the Formula Rate Protocols expressly limit prudence inquiry to the prudence of “actual costs.” The PTOs answered MeOPA’s questions directed to actual costs included in the 2023 Annual Update but declined to answer questions related to general processes and procedures for asset condition project planning that are beyond the scope of the Protocols.

The MeOPA challenge misstates both the burden of proof and the prudence standard. As a threshold matter, Section VI(2)(c) applies only to a Formal Challenge. With respect to allegations of imprudence, contrary to MeOPA’s characterizations, nothing in the Protocols alters the Commission’s applications of the burden of proof. Under the prudence standard, “the Commission presumes that all expenditures are prudent[.]” *Delmarva Power & Light Co.*, 169 FERC ¶ 61,171 at P 39 (2019). Only after a party raises serious doubts does then “the company ha[ve] ‘the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.’” *Id.* In addition, asset condition projects are evaluated by both the NEPOOL Reliability Committee and ISO-NE itself under ISO-NE Planning Procedure No. 4 (available at [pp_4_rev9.pdf \(iso-ne.com\)](https://www.iso-ne.com/procurement/procurement-procedures/pp_4_rev9.pdf)), like all other projects, such as regional reliability projects, that are recovered via the RNS rate. MeOPA did not raise any specific challenges through this process.

MeOPA has not raised serious doubt about any specific cost or expenditure. While a senior representative for the PTOs met with counsel for MeOPA on December 5, 2023, MeOPA has not yet conveyed to the PTOs the type of information that complies with the Protocols that would aid its review of the costs included in the Annual Update. The PTOs continue to be receptive to working cooperatively with MeOPA and to resolving MeOPA’s planning policy concerns in the appropriate forum, the regional stakeholder process. The PTOs have been actively working over the last six months with stakeholders to provide additional information and process enhancements around asset condition projects. The PTOs have greatly appreciated the feedback provided thus far by stakeholders and look forward to working with the regional stakeholder community as we continue to make planning process enhancements. For example, through the stakeholder process and in response to stakeholder feedback, the PTOs are actively working towards creating a database containing age-related information for transmission lines and transformers. The PTOs welcome MeOPA’s participation and engagement with that ongoing process in the appropriate forum.

Additionally, the PTOs have been working with stakeholders, including the MeOPA, to provide requested presentations at recent NEPOOL Planning Advisory Committee meetings on asset management processes and cost estimate development and have agreed to standardized guidelines for asset condition project presentations that include increased notice and opportunities for stakeholders to submit written feedback. In order to ensure these process

enhancements allow for input from all stakeholders, some work will continue into next year. Full transparency regarding the timeline for process enhancements continues to be presented at monthly NEPOOL Planning Advisory Committee meetings which are open to all stakeholders for participation.

ATTACHMENT B

From: Landry, Andrew <Andrew.Landry@maine.gov>
Sent: Friday, September 15, 2023 2:34 PM
To: mary.grover@eversource.com <mary.grover@eversource.com>
Cc: joseph.lowell@morganlewis.com <joseph.lowell@morganlewis.com>;
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ahodges@steptoe.com <ahodges@steptoe.com>; craig.silverstein@marchcounsel.com
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epler@unitil.com <epler@unitil.com>
Subject: ER20-2054 Annual Informational Filing - Information Request from Maine Office of the Public Advocate

Dear Ms. Grover,

On behalf of the Maine Public Advocate, I ask you to accept service of information requests addressed to each of the ISO-NE Participating Transmission Owners in connection with the July 31, 2023 informational filing in Docket No. ER20-2054 (Formula Rates), in your capacity as Chair of the PTO Administrative Committee Legal Working Group. These requests are filed pursuant to the procedures outlined in Attachment F of the ISO OATT, and are addressed to "the prudence of actual costs and expenditures," an inquiry provided for in Att. F, Appendix C, Section V.1.

Please note that contacts for the Participating Transmission Owners have been copied here, employing contact information provided on the service list in Docket No. ER20-2054.

The information requests we address to each of the Participating Transmission Owners (referred to below as New England Transmission Owners, or "NETOs" are as follows:

1. For each NETO:

(a) describe the procedures and processes you employ to evaluate the need for a particular asset condition project and how such procedures and processes were developed;

(b) to the extent these procedures are embodied in written policies, (1) please provide copies of such documents (2) identify to whom these policies are circulated and the respective roles of the recipients;

(c) (1) Identify the persons working for the NETO as employees, officers or consultants who are involved in the decision-making process for asset condition projects included in the informational filing and for which the NETO seeks cost recovery, (2) to the extent any person identified in (c)(1) recommended against proceeding with a particular asset condition project, provide copies of any notes, emails, or other documents reflecting and describing the nature of each such disagreement. If no such documents exist, provide a narrative description of the person(s)' reasons for recommending against the each project responsive to this request.

2. For each NETO:

(a) Please describe whether the NETO has procedures in place for the purpose of considering project alternatives that are more efficient, including non-transmission alternatives, evaluating the potential deferral of such projects, or more limited/partial replacement projects as alternatives given to asset condition projects? If so, please provide copies of any written documents describing such procedures. Also please provide any written communications in the form of emails, memoranda, policy documents, or the like describing how consideration of such alternatives (including the weight they might be accorded) was included in the decision-making process for asset condition projects proposed to be included in rates in this year's Annual Informational Filing.

(b) provide examples of asset condition projects that were rejected for inclusion in the informational filing in lieu of alternatives of the type described in (a) above. Provide all documents reflecting, describing or detailing the reasons for any such rejection. If no project initially considered for cost recovery in the NETO's filing in this case was rejected, i.e., if every asset condition project initially considered by the NETO for cost recovery in this case was included in the filing, so state.

3. For each NETO:

(a) does the NETO maintain an asset condition data base? If so, what types of information are included in the data base, how is such information utilized to determine whether an asset condition project is needed and how frequently is the data base updated?

(b) If the answer to (a) is yes, provide a copy of the data base in readable digital format.

(c) If the answer to (a) is yes, explain how that data base was used to assess the need for the asset condition projects for which the NETO seeks recovery in this case. Provide all documents relating to the use of such asset condition data base in the NETO's decision making process.

(d) If the answer to (a) is no, please explain why and providing any supporting documents.

4. For each NETO:

(a) Where an asset project is determined by the NETO to be necessary and that viable alternatives do not exist, what safeguards are in place to ensure that an asset condition project is not placed into service before it is needed? To the extent a description of such safeguards is in

writing, please provide copies of any documents, emails or other communications reflecting the NETO's policy. If such safeguards are not in writing, so state and explain why they are not in writing.

(b) To the extent the safeguards described in (a) exist, how were they employed with respect to each of the asset projects for which the NETO seeks recovery? If no such safeguards are in place, so state.

Please note that we have copied here representatives of the NETOs listed on the FERC service list for Docket No. ER20-2054, as well as a handful of additional NETO contacts. We trust you will share this note with companies not so listed.

Kindly contact me with any questions.

Best regards,
Drew Landry

Andrew Landry
Deputy Public Advocate
State of Maine
Cell: (207) 299-8034
andrew.landry@maine.gov



Commissioners:
Francis J. Hoey, III
James A. Sutter
Marcos A. Marrero
Manager:
James M. Lavelle

By Email

September 29, 2023

Andrew Landry
Deputy Public Advocate
State of Maine
Andrew.landry@maine.gov
207-299-8034

Dear Mr. Landry,

**HOLYOKE GAS AND ELECTRIC DEPARTMENT
ER20-2054 ANNUAL INFORMATIONAL FILING – INFORMATION REQUEST**

Pursuant to the July 31, 2023 informational filing in Docket No. ER20-2054 (Formula Rates) and the Maine Office of the Public Advocate’s (MEOPA) information request sent via email on September 25, 2023, Holyoke Gas & Electric (HG&E) responds to MEOPA’s information request follows:

MEOPA REQUEST 1 FOR EACH NETO:

- a. Describe the procedures and processes you employ to evaluate the need for a particular asset condition project and how such procedures were developed.
- b. To the extent these procedures are embodied in written policies, (1) please provide copies of such documents (2) identify to whom these policies are circulated and the respective roles of the recipients.
- c. (1) Identify the persons working for the NETO as employees, officers or consultants who are involved in the decision-making process for asset condition projects included in the informational filing and for which the NETO seeks cost recovery, (2) to the extent any person identified in (c)(1) recommended against proceeding with a particular asset condition project, provide copies of any notes, emails, or other documents reflecting and describing the nature of each such disagreement. If no such documents exist, provide a narrative description of the person(s)' reasons for recommending against the each project responsive to this request.

RESPONSE:

Since the Maine Public Advocate has not defined what it meant by “asset condition projects” and this is not a defined term in the ISO-NE tariff, we are interpreting the request to be pointing to Appendix A Worksheet 8 in the Annual Informational Filing where any Asset Condition Listing (ACL) projects and associated numbers greater than \$5 million are listed. These projects fall under the ISO Tariff Section II (Open Access Transmission Tariff). Attachment K: Regional System Planning Process. Any questions relating to this process are outside of the scope of the formula rate protocols. Public interest in the nature of the asset condition project planning process is outside of the designed purpose of the Transmission Formula Rate Protocols under Appendix C to Attachment F of the ISO-NE OATT (“Protocols”). The Protocols “are designed to provide increased transparency into the calculation of the Annual Transmission Revenue Requirement (‘ATRR’)” that HG&E and

other PTOs in New England use to determine rates for transmission service. *See* Protocols, Section 1. Your information request concerns general processes and procedures and does not reference any particular computations, worksheets or actual costs or expenditures that are part of the calculation of the ATRR. HG&E accordingly objects to this information request on the grounds that it is beyond the scope of the Protocols and the Information Exchange Process. *See* Protocols, Section V. Though your request refers to Section V.1.h of the Protocols, the information you request does not address what may be reasonably necessary to determine the prudence of actual costs and expenditures included in the Annual Update. HG&E also objects to your information request because it is vague, undefined, unclear, and is “directed to ascertaining whether the Formula Rate is just and reasonable.” Protocols, Section V.1. In regard to procedures outlined in Attachment F of the ISO OATT to "the prudence of actual costs and expenditures", in the Informational Filing for calendar year 2024, HG&E does not have any ACL projects, thus costs are \$0.

As M may be aware, HG&E and other transmission owners have been engaged in discussions with regional stakeholders in addressing many of the questions contained in MEOPA’s information requests. In particular, the transmission owners have been working to provide additional information and process enhancements and have made several presentations to the ISO New England Planning Advisory Committee (PAC) over the past few months. Materials from these presentations, as well as feedback from stakeholders, are posted to the ISO New England website (<https://www.iso-ne.com/system-planning/transmission-planning/transmission-owner-asset-management>). In particular, HG&E encourages MEOPA to refer to the New England Transmission Owners’ August 8, 2023 letter (https://www.isone.com/staticassets/documents/2023/08/2023_08_16_net0_letter_to_nesc0e_asset_condition_process_updates.pdf) which provides a schedule of anticipated stakeholder presentations for the remainder of 2023. A presentation on asset condition project planning processes is scheduled for the October 18, 2023 PAC meeting

For request 1a, HG&E has no ACL projects listed in the Informational Filing for calendar year 2024.

For request 1b, HG&E has no ACL projects listed in the Informational Filing for calendar year 2024 and this request is outside of the scope of the formula rate protocols.

For request 1c(1), HG&E has no ACL projects listed in the Informational Filing for calendar year 2024.

For request 1c(2), HG&E has no ACL projects listed in the Information Filing for calendar year 2024.

MEOPA REQUEST 2 FOR EACH NETO:

- a. Please describe whether the NETO has procedures in place for the purpose of considering project alternatives that are more efficient, including non-transmission alternatives, evaluating the potential deferral of such projects, or more limited/partial replacement projects as alternatives given to asset condition projects? If so, please provide copies of any written documents describing such procedures. Also please provide any written communications in the form of emails, memoranda, policy documents, or the like describing how consideration of such alternatives (including the weight they might be accorded) was included in the decision-making process for asset condition projects proposed to be included in rates in this year’s Annual Informational Filing. N/A - HG&E has no ACL projects listed in the Informational Filing for calendar year 2024.
- b. Provide examples of asset condition projects that were rejected for inclusion in the informational filing in lieu of alternatives of the type described in (a) above. Provide all documents reflecting, describing or detailing the reasons for any such rejection. If no project initially considered for cost recovery in the NETO's filing in this case was rejected, i.e., if every asset condition project initially considered by the NETO for cost recovery in this case was included in the filing, so state.

RESPONSE:

For request 2a and 2b, This is not applicable. HG&E has no ACL projects listed in the Informational Filing for calendar year 2024.

MEOPA REQUEST 3 FOR EACH NETO:

- a. Does the NETO maintain an asset condition data base? If so, what types of information are included in the data base, how is such information utilized to determine whether an asset condition project is needed and how frequently is the data base updated?
- b. If the answer to (a) is yes, provide a copy of the data base in readable digital format.
- c. If the answer to (a) is yes, explain how that data base was used to assess the need for the asset condition projects for which the NETO seeks recovery in this case. Provide all documents relating to the use of such asset condition data base in the NETO's decision making process.
- d. If the answer to (a) is no, please explain why and providing any supporting documents.

RESPONSE:

For request 3a, HG&E does not maintain as asset condition data base.

For request 3d, please refer to future ISO-NE Planning Advisory Committee (PAC) meeting discussions. A presentation on the development of a region-wide database with asset condition-related information was provided at the September 20, 2023 PAC meeting.

MEOPA REQUEST 4 FOR EACH NETO:

- a. Where an asset project is determined by the NETO to be necessary and that viable alternatives do not exist, what safeguards are in place to ensure that an asset condition project is not placed into service before it is needed? To the extent a description of such safeguards is in writing, please provide copies of any documents, emails or other communications reflecting the NETO's policy. If such safeguards are not in writing, so state and explain why they are not in writing.
- b. To the extent the safeguards described in (a) exist, how were they employed with respect to each of the asset projects for which the NETO seeks recovery? If no such safeguards are in place, so state.

RESPONSE:

For request 4a, this is not applicable as HG&E has no ACL projects listed in the Informational Filing for calendar year 2024 and this request is outside of the scope of the formula rate protocols.

For request 4b, this is not applicable as HG&E has no ACL projects listed in the Informational Filing for calendar year 2024 and this request is outside of the scope of the formula rate protocols.

Respectively submitted,



Steve Roy
Holyoke Gas & Electric Department
Superintendent – Electric Division

ATTACHMENT D

Formal Challenge Checklist

1. Clear identification of the action or inaction alleged to violate the Formula Rate or Protocols: See pp. 1-2, 4-6.
2. Explanation of how action or inaction violates the Formula Rate or the Protocols – PP. 4-9.
3. Identification of "business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the party filing the formal challenge. See PP 1-5. See also Protocols Definitions. As the public advocate for the State of Maine, speaks on behalf of the state's electricity consumers and is a defined Affected Party.
4. Service. Maine has served a copy of the Formal Challenge on the PTOs and ISO-NE by electronic mail on the date of this filing.
5. Good faith effort to quantify the financial impact of the items comprising the Formal Challenge. No quantification is possible, as the issue raised goes to information the identified NETOs have refused to provide that would be necessary before any financial impact could potentially be calculated.
6. Specific Relief requested. See Conclusion. The basis for the relief requested is found in the body of the Formal Challenge.
7. Statement regarding Informal Challenge. Maine did utilize the informal challenge procedures. See Attachment B.

January 29, 2024

To: Consumer Advocates of New England (“Consumer Advocates”)

From: Avangrid, Eversource, National Grid, Rhode Island Energy, Vermont Electric Power Company, and Versant Power

Subject: Asset Condition Projects and Process Enhancements

The New England Transmission Owners (NETOs) respectfully submit this correspondence in response to your letter dated September 14, 2023, regarding asset condition projects. We highly value stakeholder contributions and thank you for your interest in this topic.

In this response, we would like to highlight the comprehensive list of process enhancements that the NETOs have developed over the past several months in coordination with stakeholders at public Planning Advisory Committee (“PAC”) meetings. Additionally, we would like to provide some additional context regarding asset condition projects’ projected impacts on wholesale transmission regional network service (RNS) charges. Several weeks ago, the NETOs informally offered to meet with the Consumer Advocates to have a direct discussion of your concerns, and we continue to believe that such a meeting could be helpful.

First, with respect to process enhancements, the NETOs have already been providing information and opportunities for stakeholder participation regarding asset condition planning and projects that is consistent with applicable tariff requirements and the ISO-NE Planning Procedures. However, we have heard from the states and stakeholders (including the Consumer Advocates) that there is a desire to enhance the provision of information and provide for additional opportunities for participation in the process. Therefore, in addition to the existing opportunities for stakeholder input and review facilitated through ISO-NE and NEPOOL-led stakeholder committees, the NETOs are working collaboratively with the states and regional stakeholders to develop enhancements to asset condition project planning processes. The collaboration has yielded a multi-faceted initiative to provide additional transparency and better facilitate stakeholder participation in the review process. In response to NESCOE’s February 2023 letter requesting enhancements to regional reporting on asset condition projects, the NETOs have led numerous discussions and implemented several enhancements to asset condition reporting.¹ These include:

- An overview of the RNS rate forecast with additional information on included asset condition projects
- Informative presentations on the asset management process and cost estimate development

¹ See https://www.iso-ne.com/static-assets/documents/100006/a07_2023_12_20_pac_net_update_on_asset_condition_project_process_enhancements.pdf

- Standardized guidelines for asset condition project presentations to the PAC, with increased notice and opportunities for stakeholders to submit written feedback
- A database containing age-related information for PTF transmission lines and transformers
- A forecast of all planned future asset condition projects, as well as information on expected future projects that are currently under evaluation or under development
- A commitment to the development of an Asset Condition Guidance Document, which is slated to be provided to stakeholders no later than May 2024.

Most, if not all, of these discussions have also included opportunities for stakeholders to provide written feedback. The NETOs have greatly appreciated the feedback provided thus far and look forward to continuing to work with the regional stakeholder community, including the Consumer Advocates, on this important effort. During 2024, we anticipate developing additional enhancements, as well as refinements to the deliverables already provided. In particular, we emphasize our commitment to develop and seek stakeholder feedback on an Asset Condition Guidance Document.

Second, we would also like to clarify certain assertions in your September 14 letter regarding asset condition spending and transmission rates. While the first half of 2023 did see a large volume of asset condition projects presented to the PAC, several of these presentations were updates to previously presented projects, pursuant to ISO-NE's Transmission Planning Process Guide.² The NETOs recognize that asset condition projects are projected to make up a greater portion of transmission regional investments in the next few years. However, we would highlight that total capital expenditures on regional transmission projects over the next five years are currently expected to remain consistent with historical levels.³

The NETOs continue to work diligently on enhancements to the asset condition project process and look forward to building on the achievements outlined herein. We hope to meet with the Consumer Advocates in the near future to continue this dialogue and welcome their continued participation and feedback through ISO-NE and NEPOOL stakeholder processes.

² See: ISO-NE Transmission Planning Process Guide ("TPPG"), Section 6.4.

³ See: https://www.iso-ne.com/static-assets/documents/2023/07/a03_2023_07_18_19_rc_tc_rms_rate_forecast.pdf