

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

Industrial Energy Consumers of America, )  
American Forest & Paper Association, R Street )  
Institute, Glass Packaging Institute, Public Citizen, )  
PJM Industrial Customer Coalition, Coalition of )  
MISO Transmission Customers, Association of )  
Businesses Advocating for Tariff Equity, Carolina )  
Utility Customers Association, Inc., Pennsylvania )  
Energy Consumer Alliance, Resale Power Group )  
of Iowa, Wisconsin Industrial Energy Group, )  
Multiple Intervenors (NY), Arkansas Electric )  
Energy Consumers, Inc., Public Power )  
Association of New Jersey, Oklahoma Industrial )  
Energy Consumers, Large Energy Group of Iowa, )  
Industrial Energy Consumers of Pennsylvania, )  
Maryland Office of People's Counsel, )  
Pennsylvania Office of Consumer Advocate, )  
Consumer Advocate Division of the Public )  
Service Commission of West Virginia, and )  
Missouri Industrial Energy Consumers, )

Complainants

v.

Avista Corporation; Idaho Power Company )  
MATL LLP; NorthWestern Corporation; )  
PacifiCorp; Portland General )  
Electric Company; Puget Sound Energy, Inc.; )  
Duke Energy Florida, LLC; Florida Power & )  
Light Company; Tampa Electric Company; )  
Dominion Energy South Carolina, Inc.; )  
Duke Energy Carolinas, LLC and Duke Energy )  
Progress, Inc.; Louisville Gas and Electric )  
Company and Kentucky Utilities Company; )  
Southern Company Services Inc., as agent )  
For Alabama Power Company, Georgia Power )  
Company, Georgia Power Company and )  
Mississippi Power Company; Arizona Public )  
Service Company; Black Hills Power, Inc.; )  
Black Hills Colorado Electric Utility Company, )  
LP; Cheyenne Light, Fuel & Power Company; )  
El Paso Electric Company, NV Energy, Inc.; )

Docket No. EL25-44

Public Service Company of Colorado; Public )  
 Service Company of New Mexico; Tucson )  
 Electric Power Company; UNS Electric, Inc.; )  
 California Independent System Operator, Inc.; )  
 Southwest Power Pool, Inc.; PJM Interconnection, )  
 L.L.C.; Midcontinent Independent System Operator )  
 Inc.; New York Independent System Operator, Inc.; )  
 and Independent System Operator of New England )  
 Inc., )

Respondents )

### **NOTICE OF INTERVENTION AND COMMENTS OF THE MAINE PUBLIC UTILITIES COMMISSION**

The Maine Public Utilities Commission (“MPUC”) respectfully submits this Notice of Intervention and Comments in response to the Complaint submitted in the above-captioned docket. Complainants identify a valid and persistent issue: the lack of meaningful review of asset condition<sup>1</sup> projects. As noted by the Complainants, this issue is pervasive in New England, where asset condition projects are solely within the transmission providers discretion, and only some of which must be presented before (but not approved by) the Independent System Operator of New England (“ISO-NE”). Nevertheless, as described in MPUC’s Comments, the one-size-fits-all remedy sought by the Complainants is not appropriate for all regions. Thus, MPUC urges the Commission to reject the remedies proposed by Complainants and open its own investigation (or

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<sup>1</sup> The Complaint addresses local projects at or above 100 kV that are planned by individual transmission owners based on criteria set by the transmission owner, referring to such projects as “Locally Planned” projects or “Self-Planned Transmission.” Complaint at n.5. In this Notice of Intervention and Comments, MPUC refers to such projects as “asset condition projects” as that is the common term used in New England (other regions call such projects “asset management projects”).

investigations) pursuant to the Federal Power Act (“FPA”) at Section 206<sup>2</sup> to further explore this important issue but allow for regional flexibility in its solution.

## **I. PRELIMINARY STATEMENT**

This Notice of Intervention and Comments is filed pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC”), 18 C.F.R. § 385.214(a)(2) (2024), and FERC’s December 20, 2024 Combined Notice of Filings #1, as amended in FERC’s January 7, 2025 Notice of Extension of Time, in which FERC established March 20, 2025 as the date by which interventions, comments, and protests are to be filed in the instant proceeding.

The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on FERC’s official service list are designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2024):

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<sup>2</sup> 16 U.S.C. § 206 (2024); *see also Calpine Corp., et al. v. PJM Interconnection LLC*, 163 FERC ¶ 61,236, at PP 6-7 (2018) (FERC granted a complaint, in part, and *sua sponte* initiated a Federal Power Act Section 206 proceeding. While FERC agreed that changes to PJM’s Tariff were required, it did not accept the changes proposed by parties and, consequently, denied the proposed remedy in the complaint.)

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## **II. DESCRIPTION OF MPUC AND NOTICE OF INTERVENTION**

Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over the rates and service of electric utilities in the state, and charged with the duty to ensure safe, reasonable and adequate service and to ensure that the rates of public utilities are just and reasonable to both customers and public utilities. *See* 35-A.M.R.S.A. § 101 *et seq.* It is, therefore, a “state commission” under FERC’s regulations, 18 C.F.R. § 1.101(k) (2024). As the state commission of Maine, the MPUC hereby gives notice of its intervention pursuant to Rule 214(a)(2) of FERC’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(a)(2) (2024), and respectfully requests that FERC recognize the MPUC as an intervenor in this proceeding. MPUC reserves the right to posit and address any additional issues that it or others may identify or raise herein that are developed before or after discovery or during the course of any hearing or other procedures that may be conducted in this proceeding.

### III. BACKGROUND

#### A. Complainants' Concerns

On December 19, 2024, Complainants submitted the Complaint against all FERC-jurisdictional public utility transmission providers with local planning tariffs, all regional transmission organizations and independent system operators (“RTOs/ISOs”), including ISO-NE, and FERC-jurisdictional public utility transmission owners that are not members of FERC-jurisdictional RTOs/ISOs (“Respondents”).<sup>3</sup> In the Complaint, Complainants allege that, cumulatively, local planning of asset condition projects results in unjust and unreasonable transmission rates because local planning tariffs allow individual transmission owners to plan FERC-jurisdictional transmission facilities at 100 kV and above without regard for whether it is the right project for the interconnected grid.<sup>4</sup> Complainants demonstrate that asset condition projects serve to rebuild an antiquated transmission system, which does not address the interconnected nature of today’s grid and will not meet future needs.<sup>5</sup> Complainants also argue that self-interested transmission owners will label as many projects as they can “asset condition projects” because such projects do not need to undergo a competitive process (as required for certain projects under regional planning).<sup>6</sup>

The Complaint accurately demonstrates that there is little to no review of asset condition projects, even to determine whether the projects meet the electrical needs of the

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<sup>3</sup> Complaint at 6.

<sup>4</sup> *Id.* at 8 and 11.

<sup>5</sup> *Id.* at 27-33 and 43-53.

<sup>6</sup> *Id.* at 33-42.

transmission owner building the projects.<sup>7</sup> Throughout the Complaint, Complainants use the process in New England as the example that proves their point. With respect to New England, Complainants correctly show that asset condition projects receive essentially no scrutiny at present.<sup>8</sup> Complainants explain that in New England, transmission owners routinely post presentations regarding asset condition projects a week in advance of ISO-NE Planning Advisory Committee (“PAC”) meetings (during which certain asset condition projects are presented for informational purposes), making it difficult for stakeholders to prepare meaningful feedback and questions.<sup>9</sup> And, even if stakeholders provided such comments, Complainants note that transmission owners in New England are under no obligation to modify an asset condition project based on such feedback.<sup>10</sup> Complainants also note that the information regarding which asset condition projects are in-service, under construction, or being proposed are limited and may not include such basic information as voltage and approximate miles.<sup>11</sup> Complainants further show that, while customers may challenge asset condition projects through formula rate filings made by public utilities, such review occurs *after* the project is built, customers are provided with limited information, and customers have to overcome the presumption of prudence.<sup>12</sup> Complainants correctly point out that, in New England, not only are the transmission owners’ asset condition projects not scrutinized through the PAC process, but in some cases, the ability to challenge asset condition projects through the

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<sup>7</sup> *Id.* at 28.

<sup>8</sup> *Id.* at 101-106.

<sup>9</sup> *Id.* at 103-104.

<sup>10</sup> *Id.* at 104.

<sup>11</sup> *Id.* at 104.

<sup>12</sup> *Id.* at 34-35, 103, and 186-187.

transmission owner's formula rate filing has been thwarted.<sup>13</sup> For example, the New England Transmission Owners refused, during the most recent formula rate annual update process, to answer questions regarding investment policies and practices related to the prudence of asset condition projects.<sup>14</sup>

Given the lack of review and scrutiny, the Complaint shows that the dollars spent on local planning has dwarfed those spent on regional planning.<sup>15</sup> Nationally, in 2023, there was over \$25 billion in transmission investment, with about \$12.5 billion in individual transmission owner-planned transmission projects.<sup>16</sup> Annual spending on asset condition projects in New England increased eight-fold from 2016 to 2023.<sup>17</sup> The Complaint also correctly notes that in New England alone there are nearly \$5 billion in asset condition projects that are proposed, planned, or already under construction<sup>18</sup> and \$6 billion in asset condition projects are expected in the next several years.<sup>19</sup>

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<sup>13</sup> *Id.* at 103 (citing 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, Docket No. ER20-2054-000 (Jan. 31, 2024)).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 102 and 197.

<sup>16</sup> *Id.* at 68; *and see id.* at 68-177 (Complainants provide examples of how transmission providers have increased transmission investment in asset condition projects, resulting in rate increases (and higher utility earnings), with little to no review, oversight, consideration of alternatives, or evaluation of whether regional projects could displace the need for certain local projects.).

<sup>17</sup> *Id.* at 106 and 197.

<sup>18</sup> *Id.* at 101.

<sup>19</sup> *Id.* at 106.

## **B. Complainants' Requested Relief**

Complainants seek FERC's determination that local planning for asset condition projects results in unjust and unreasonable rates.<sup>20</sup> As a proposed just and reasonable replacement rate, the Complainants request that asset condition projects no longer be included in local planning, that FERC should declare as FERC-jurisdictional all transmission facilities at or above 100 kV (with certain exceptions), and that FERC should require such projects to be conducted exclusively under Order No. 1000 regional planning processes.<sup>21</sup> The Complaint also requests that Order No. 1000 regional planning be revised to implement exclusive regional planning of all transmission facilities 100 kV and above for all needs, including but not limited to: reliability, resilience, economic considerations, Public Policy, facilities addressing multiple needs, substations, generator interconnection, and planning for the end of operational life for existing transmission facilities above 100 kV.<sup>22</sup>

Complainants further request establishment of Independent Transmission Planners ("ITPs") that would have planning authority for all transmission facilities over 100 kV, review non-transmission solutions, conduct competitive processes, conduct generator interconnection studies, and coordinate with other regions.<sup>23</sup> The ITP would also have authority to issue directives to the respective incumbent transmission owner addressing emergency or immediate transmission system need and would be involved in

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<sup>20</sup> Complaint at 180-207.

<sup>21</sup> *Id.* at 207-232 (Exceptions to such regional planning would include: (1) local distribution facilities; (2) emergency scenarios or *force majeure* circumstances; (3) merchant transmission; and (4) directly assigned costs for new large loads (but any rolled in network upgrades at or above 100 kV would be subject to regional planning)).

<sup>22</sup> *Id.* at 229.

<sup>23</sup> *Id.* at 232-238.



critical stages of merchant transmission development.<sup>24</sup> Complainants also suggest that FERC could require the ITP to independently evaluate all proposed transmission solutions between 69 kV and 99 kV to determine whether more than one transmission pricing zone benefits from the transmission project/solution.<sup>25</sup> For RTO/ISO regions, funding for the ITP could occur through Schedule 1 of their tariff.<sup>26</sup>

Complainants request that FERC require revisions to all FERC-jurisdictional tariffs, including the *pro forma* Open Access Transmission Tariff, as well as RTO/ISO governing documents to implement their suggested solutions.<sup>27</sup>

#### IV. COMMENTS

MPUC wholeheartedly agrees with the concerns raised in the Complaint, and the rightfully demonstrated apprehension regarding the sufficiency of the New England process for review of asset condition projects.<sup>28</sup> As explained in detail below, FERC-jurisdictional transmission owners that participate in ISO-NE have full control over whether, when, and how to repair and replace their transmission assets and any review or presentation of such projects to ISO-NE and stakeholders provides limited feedback opportunities, feedback which transmission owners are under no obligation to incorporate.

While the Complainants correctly identified a regulatory gap present in New England, the MPUC submits that the one-size-fits-all remedy proposed by the

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<sup>24</sup> *Id.* at 237-238.

<sup>25</sup> *Id.* at 242-243.

<sup>26</sup> *Id.* at 236.

<sup>27</sup> *Id.* at 238-244.

<sup>28</sup> *Id.* at 101-106.

Complainants is inappropriate and should be rejected. Any remedy to the regulatory gap identified by Complainants should consider regional differences and provide for regional flexibility, especially since, as described below, there are already regulatory and state statutory frameworks in place that address certain aspects of asset condition projects. MPUC requests that the Commission reject the one-size fits-all remedy proposed by Complainants and open a Federal Power Act Section 206 investigation (or investigations) to address the important concerns identified in the Complaint and to provide for further consideration of necessary regional flexibility.

**A. As Complainants Correctly Describe, there is a Regulatory Gap in New England Regarding the Evaluation of Asset Condition Projects.**

In New England, there is a Transmission Operating Agreement (“TOA”) between ISO-NE and transmission owners, which defers to each transmission owner the determination of how to upkeep, maintain, repair, and replace their own facilities. The TOA provides that it is the transmission owners’ responsibility to “direct, physically operate, repair, and maintain its Transmission Facilities and Local Control Centers....”<sup>29</sup> If a transmission owner’s Transmission Facilities are damaged or destroyed, the transmission owner is to, at its sole discretion, consistent with Good Utility Practice and applicable law, determine whether or not (and if so, in what manner) to restore or cause the restoration of such damaged or destroyed facilities to substantially the same condition, character, or use as existed before the damage or destruction.<sup>30</sup> In doing so, transmission owners are required to “consult with” ISO-NE prior to making such

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<sup>29</sup> ISO-NE TOA at Section 3.06.

<sup>30</sup> *Id.* at Section 3.08(f).

determinations.<sup>31</sup> To meet this consultation requirement, transmission owners present a subset of their asset condition projects to the PAC.<sup>32</sup> PAC presentations are informational and, while stakeholders are provided with opportunities to provide feedback, transmission owners are not obligated to incorporate such feedback in their projects.

Eversource Energy Service Company's ("Eversource") rebuild of the New Hampshire Line X-178 provides an example of how asset condition projects are presented in New England. On February 28, 2024, Eversource presented to the ISO-NE PAC its planned rebuild of the 49-mile New Hampshire Line X-178.<sup>33</sup> Eversource concluded that it should complete a full line rebuild,<sup>34</sup> including removal of 583 existing structures, installation of 580 new structures, as well as conductor replacement, shield wire replacement, and installation of a fiber path.<sup>35</sup> In response to this presentation by Eversource, NESCOE commented that it is "troubled by the lack of compelling evidence to justify a project of this scale [or] any consideration or discussion of lower cost, targeted intervention alternatives."<sup>36</sup> In response to NESCOE's comments, Eversource

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<sup>31</sup> *Id.*

<sup>32</sup> ISO-NE Transmission Planning Process Guide, Section 6.3 (Nov. 7, 2022) (Projects to be presented before the PAC (and placed on the Asset Condition Project List) include those asset condition projects expected to equal or exceed \$5 million in Pool Transmission Facility costs on an individual line or at a single station/substation over a period of five years or less.); *and see* ISO-NE Planning Procedure No. 4, Attachment G (Sept. 7, 2023).

<sup>33</sup> Eversource February 28, 2024 PAC Presentation, available at [https://www.iso-ne.com/static-assets/documents/100008/a05\\_2024\\_02\\_28\\_pac\\_line\\_x178\\_rebuild\\_presentation.pdf](https://www.iso-ne.com/static-assets/documents/100008/a05_2024_02_28_pac_line_x178_rebuild_presentation.pdf).

<sup>34</sup> Eversource considered one alternative, limiting the amount of structures to be replaced. *Id.* at Slide 11.

<sup>35</sup> *Id.* at Slides 12-16.

<sup>36</sup> Eversource March 14, 2024 Comments on the New Hampshire Line Z-178 Rebuild, at 1, available at [https://www.iso-ne.com/static-assets/documents/100009/2024\\_03\\_15\\_pac\\_nescoc\\_feedback\\_line\\_x178.pdf](https://www.iso-ne.com/static-assets/documents/100009/2024_03_15_pac_nescoc_feedback_line_x178.pdf).

considered two alternatives, each of which considered limiting the amount of structures to be replaced, and continued to select the full line rebuild as the preferred solution.<sup>37</sup> Based on analysis of further stakeholder comments and drone inspections completed in 2024, Eversource identified a significantly larger number of structures that needed to be replaced due to deterioration.<sup>38</sup> The total cost of this asset condition project is currently estimated to be \$360.6 million.<sup>39</sup>

While Eversource provided several presentations regarding Line X-178, stakeholders noted issues with a lack of compelling evidence to support the scope of the project (complete rebuild) and lack of responsiveness to stakeholder comments and questions. As NESCOE stated:

“Since first proposed in February 2024, NESCOE has expressed serious concerns about the lack of compelling evidence to support the scope of Eversource’s planned rebuild of the X-178 line. Following Eversource’s initial presentation of the X-178 project, NESCOE asked Eversource to provide specific additional information to justify the scope of the project, including a targeted solution alternative. It took several rounds of communications for Eversource to adequately respond to that request, information which Eversource surely possessed. ... It is entirely unreasonable for states and stakeholders to spend this level of time, effort, and resources to get complete project information. Some of NESCOE’s initial questions remain unanswered. ... The X178 project process illustrates pointedly

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<sup>37</sup> Eversource Response to Stakeholder Feedback on Proposed X-178 Rebuild Project, at 8-10 (June 12, 2024) available: [https://www.iso-ne.com/static-assets/documents/100012/eversource\\_x178\\_stakeholder\\_feedback\\_memo.pdf](https://www.iso-ne.com/static-assets/documents/100012/eversource_x178_stakeholder_feedback_memo.pdf); Eversource June 20, 2024 PAC Presentation, at Slides 11-22, available at [https://www.iso-ne.com/static-assets/documents/100012/a04\\_line\\_x178\\_follow\\_up\\_presentation.pdf](https://www.iso-ne.com/static-assets/documents/100012/a04_line_x178_follow_up_presentation.pdf).

<sup>38</sup> Eversource October 23, 2024 PAC Presentation, at Slides 1 and 9, available at [https://www.iso-ne.com/static-assets/documents/100016/a07\\_pac\\_line\\_x178\\_rebuild\\_followup.pdf](https://www.iso-ne.com/static-assets/documents/100016/a07_pac_line_x178_rebuild_followup.pdf).

<sup>39</sup> *Id.* at Slide 16.

the persistent information asymmetry between transmission owners and stakeholders.”<sup>40</sup>

To provide another, even more recent example, on February 26, 2025, Eversource presented a new asset condition project, the “Eastern Massachusetts Underground Cable Modernization Program,” to the PAC.<sup>41</sup> In its presentation, Eversource explained that, based on its own assessment of alternative approaches, it is developing a multi-decade plan to modernize its Eastern Massachusetts underground cable facilities.<sup>42</sup> Eversource explained that its underground transmission lines in Eastern Massachusetts “consist of a mix of high-pressure fluid-filled (HPFF) pipe-type cables (PTCs) and solid dielectric cables using cross-linked polyethylene (XLPE) technology”, and that “[g]oing forward, Eversource plans to address HPFF line asset condition issues primarily by replacing HPFF lines with XLPE cable systems.”<sup>43</sup> Eversource explained that it evaluated four alternatives (the four alternatives being (1) repair failures as they occur, (2) refurbish existing HPFF cables and pipes, (3) replace existing HPFF cables with new XLPE cables in new ductbanks, and (4) convert existing HPFF cables to XLPE within existing pipes), and has chosen alternative (3), replacing HPFF lines with XLPE cable systems in new ductbanks as the “preferred alternative.”<sup>44</sup> Eversource explained that its preferred

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<sup>40</sup> NESCOE Response Re: New Hampshire Line X-178 Rebuild, at page 1-2 (Dec. 18, 2024), available at [https://www.iso-ne.com/static-assets/documents/100019/pac\\_stakeholder\\_feedback\\_eversource\\_x178\\_rebuild\\_project.zip](https://www.iso-ne.com/static-assets/documents/100019/pac_stakeholder_feedback_eversource_x178_rebuild_project.zip).

<sup>41</sup> See Eversource February 26, 2025 PAC Presentation, available at [https://www.iso-ne.com/static-assets/documents/100020/a05\\_2025\\_02\\_26\\_pac\\_eastern\\_massachusetts\\_underground\\_cable\\_modernization\\_program.pdf](https://www.iso-ne.com/static-assets/documents/100020/a05_2025_02_26_pac_eastern_massachusetts_underground_cable_modernization_program.pdf).

<sup>42</sup> *Id.* at Slide 35.

<sup>43</sup> *Id.* at Slide 2.

<sup>44</sup> *Id.* at Slides 27-33.

alternative will be constructed over time, beginning in 2025 and extending into the 2040s.<sup>45</sup> Given the scope of this project, Eversource has not yet provided cost estimates, and stated that cost estimates will be developed for individual projects and presented to the PAC when available (although Eversource estimated the cost to be between \$46 million and \$51 million per mile of new, underground, double-circuit 115 kV ductbank, with approximately 179 miles of PTG HPFF circuits under evaluation for replacement with XLPE as part of this program).<sup>46</sup>

Eversource notes that lines forecasted to be overloaded in the ISO-NE Boston 2033 Needs Assessment will be prioritized as part of this program.<sup>47</sup> However, it is important to note that Eversource determined that this asset condition project is the preferred approach without the benefit of ISO-NE's solution studies for this area, as the Boston 2033 Solutions Study Report has not yet been issued.<sup>48</sup> By determining the preferred technology for the "refurbishment" without the benefit of the results of ISO-NE's studies, Eversource has deprived the PAC, and ISO-NE, of the ability to determine the most cost effective solution for the reliability needed for the region.

As explained by the Complainants, and as demonstrated in the examples provided above, there is a lack of meaningful review of asset condition projects in New England.<sup>49</sup>

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<sup>45</sup> *Id.* at Slide 35.

<sup>46</sup> *Id.* at Slides 35 and 39.

<sup>47</sup> *Id.* at Slide 26; and *see id.* at Slide 37 (providing a list of proposed Phase 1 HPFF conversion projects and noting which were marked as overloaded in the Boston 2033 Needs Assessment).

<sup>48</sup> See ISO-NE Boston 2033 Solutions Study Update, at Slide 25 (Oct. 23, 2024), available at [https://www.iso-ne.com/static-assets/documents/100016/a04\\_pac\\_final\\_boston\\_2033\\_solutions\\_study\\_update.pdf](https://www.iso-ne.com/static-assets/documents/100016/a04_pac_final_boston_2033_solutions_study_update.pdf).

<sup>49</sup> Complaint at 101-106.

In an attempt to remedy stakeholder concerns regarding the lack of meaningful review, the New England transmission owners recently published an Asset Condition Process Guide (“Guide”) to provide stakeholders with “additional insights” into the New England transmission owners’ decision-making processes for asset management projects.<sup>50</sup> The Guide states that transmission owners may present asset condition projects to the PAC at any point during a project’s development.<sup>51</sup> The Guide also states that transmission owners are to use “best efforts” to provide draft presentations to ISO-NE at least one month prior to the PAC meeting and may address feedback received from ISO-NE before posting the final copy of the presentation.<sup>52</sup> However, in practice, stakeholders are often only given a very limited amount of time to review transmission owners’ presentations before they are made to the PAC. Stakeholders also have a limited amount of time to provide feedback after such presentations—for asset condition projects of \$50 million or more, stakeholders are provided a mere 15 days to provide written comments.<sup>53</sup> And the Guide does not change the fact that the New England transmission owners are also under no obligation to incorporate stakeholder feedback into their projects.

In addition, Complainants point out that while customers may challenge asset condition projects through formula rate filings made by public utilities, such review

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<sup>50</sup> See Overview of Planned Updates to New England Transmission Owner (NETO) Asset Condition Process Guide, at Slide 3 (Aug. 21, 2024), available at [https://www.iso-ne.com/static-assets/documents/100014/a06\\_pac\\_acpg\\_presentation.pdf](https://www.iso-ne.com/static-assets/documents/100014/a06_pac_acpg_presentation.pdf).

<sup>51</sup> Joint New England Transmission Owner Asset Condition Process Guide, at Section 5.2 (October 23, 2024), available at [https://www.iso-ne.com/static-assets/documents/100018/acpg\\_v1.pdf](https://www.iso-ne.com/static-assets/documents/100018/acpg_v1.pdf).

<sup>52</sup> *Id.* at Appendix D, Section 3.1 (Nov. 1, 2024), available at [https://www.iso-ne.com/static-assets/documents/100018/acpg\\_v1\\_appendix\\_d.pdf](https://www.iso-ne.com/static-assets/documents/100018/acpg_v1_appendix_d.pdf).

<sup>53</sup> *Id.* at Appendix D, Section 3.1, Table 1.

occurs after the project is built, at which point the project is presumed to be prudent.<sup>54</sup> In New England, stakeholders have found the transmission owners unwilling to provide such information. During the New England transmission owners' 2023 Annual Update process, the Maine Office of the Public Advocate ("Maine OPA") requested, among other things, that the New England transmission owners provide information regarding the procedures and processes employed to evaluate asset condition projects, whether transmission owners consider project alternatives that are more efficient, including non-transmission alternatives, whether transmission owners evaluate the potential deferral of projects as well as more limited projects as alternatives to asset condition projects, and whether transmission owners maintain an asset condition data base.<sup>55</sup> In response, New England transmission owners pointed to then-ongoing work around defining the asset condition project planning process and objected to the information request as beyond the scope of the ISO-NE Open Access Transmission Tariff Attachment F Protocols, particularly that the information request did not address the prudence of actual costs and expenditures.<sup>56</sup> Maine OPA submitted an Informal Challenge, which the transmission owners argued did not meet the minimum requirements of an Informal Challenge under the Protocols and, again, argued that the request was outside of the scope of the Protocols as it did not address actual costs.<sup>57</sup> Consequently, Maine OPA submitted a Formal Challenge before FERC, alleging that transmission owners violated the applicable

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<sup>54</sup> Complaint at 34-35, 186-187.

<sup>55</sup> 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, Docket No. ER20-2054-000, at Attachment B (Jan. 31, 2024).

<sup>56</sup> *Id.* at Attachments C and E.

<sup>57</sup> *Id.* at Attachment A.



Protocols by refusing to answer questions regarding investment policies and practices related to the prudence of asset condition projects.<sup>58</sup> Maine OPA argued 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.”<sup>59</sup> Several parties supported the Formal Challenge, noting that “[asset condition project] costs represent a significant expense to ratepayers, and ratepayers deserve access to transparent information sufficient to assess the prudence of these costs.”<sup>60</sup> As the Maine OPA’s challenge exemplifies, at least in New England, there is no meaningful review of asset condition projects during after-the-fact formula rate annual update review processes.

**B. The State of Maine Reviews Asset Condition Projects for Assets Within Maine, but This Process Does Not Solve the Broader Issue of a Lack of Adequate Regional Review.**

Maine has several statutory requirements regarding asset condition project review for assets that exist within its boundaries. Each transmission utility must annually file with the MPUC and the Public Advocate, for review by a “nonwires alternative coordinator”, a schedule of transmission line rebuild projects that it intends to carry out during the next five years that will become, or will remain at, voltages of 69 kV or more.<sup>61</sup> To the extent the MPUC determines that an investigation of any transmission

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<sup>58</sup> 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, Docket No. ER20-2054-000 (Jan. 31, 2024).

<sup>59</sup> *Id.* at 4.

<sup>60</sup> Comments of the Massachusetts Attorney General, the Connecticut Office of Consumer Counsel, the New Hampshire Office of the Consumer Advocate, and the Rhode Island Division of Public Utilities and Carriers, Docket No. ER20-2054-000, at 7-8 (Feb. 21, 2024).

<sup>61</sup> Me. Rev. Stat. tit. 35-A, §3132(3); *and see id.* at §3132-C (providing for nonwires alternatives investigation methods, cost-benefit analysis, and recommendations); *id.* at §3132-D (noting that grid-side alternatives are recoverable in rates).

line rebuild project is warranted, the transmission utility may not rebuild the line unless the MPUC issues a certificate of public convenience and necessity approving construction.<sup>62</sup> In approving a proposed transmission line, MPUC will consider nonwires alternatives and will give preference to the nonwires alternatives that are able to address the identified need most cost-effectively.<sup>63</sup> When the cost-effectiveness is reasonably equal, the MPUC will give preference to the alternatives that produce the lower amount of local air emissions.<sup>64</sup> The MPUC also reviews and considers nonwires alternatives for 69 kV and above transmission substation upgrades<sup>65</sup> and below 69 kV transmission line upgrades.<sup>66</sup> While this process for reviewing asset condition projects within Maine is useful for the projects subject to it, it does not solve the broader issue of a lack of adequate review at the regional level.

**C. The One-Size-Fits-All Remedy Proposed by the Complainants is Inappropriate; the Commission Should Reject the Proposed Remedy and Institute a Section 206 Investigation to Determine the Appropriate Remedy.**

ISO-NE operates the transmission system pursuant to the TOA, which prescribes the responsibilities of the New England transmission owners, including that transmission owners are solely responsible for asset condition projects, some of which must be presented before the ISO-NE PAC. While MPUC agrees with Complainants that this

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<sup>62</sup> *Id.* at §3132(3).

<sup>63</sup> *Id.* at §3132(5).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at §3132-A.

<sup>66</sup> *Id.* at §3132-B.

process is insufficient, the Complainants' requested remedy is inappropriate to fit the structures already in place in New England.<sup>67</sup>

As noted above, Maine has a statutory framework for annual reporting of asset condition projects within the state of Maine, including review by a nonwires alternative coordinator and an opportunity for further investigation of such projects. The Complainants offer, as part of the suggested remedy, that transmission facilities at voltages lower than 100 kV may be subject to the regional review processes.<sup>68</sup> MPUC cautions against any remedies that may infringe on state jurisdiction and which may disrupt existing frameworks, such as Maine's existing statutes.

Given the contractual and statutory frameworks that are already in place, the Complainants' requested one-size-fits-all remedy is not appropriate for New England and may not be appropriate for other areas of the country. Accordingly, MPUC suggests that the Commission open a Federal Power Act Section 206 investigatory proceeding(s) to further consider the important issues and concerns raised in the Complaint and to allow for consideration of remedies that will reflect needed regional flexibility.

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<sup>67</sup> Should the FERC agree with MPUC's suggestion to initiate an investigation under Section 206 of the Federal Power Act, and entertain remedies specific to each region to fill the regulatory gap demonstrated by Complainants as to ISO-NE, the MPUC believes there is a remedy within the current ISO-NE structure; namely, to modify Section 3.08(f) of the TOA to provide for a more precise delineation between projects that do and do not require transmission planning oversight by ISO-NE.

<sup>68</sup> Complaint at 240 and 242.

## V. CONCLUSION

For the reasons set forth hereinabove, MPUC respectfully requests that the Commission reject the remedy proposed by Complainants, and immediately institute a Section 206 investigation or investigations regarding the important concerns raised by Complainants. At a minimum, MPUC requests that one such Section 206 investigation be instituted by FERC to specifically address the ISO-NE transmission planning issues and concerns as set forth in these Comments.

Dated: March 18, 2025

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BAR

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 18th day of March, 2025.

/s/ Harry A. Dupre

Harry A. Dupre

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