

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

Industrial Energy Consumers of	)	
of America, et al.,	)	
	)	
Complainants,	)	
	)	
v.	)	Docket No. EL25-44-000
	)	
Avista Corporation, et al.,	)	
	)	
Respondents.	)	

**MOTION FOR LEAVE TO ANSWER  
AND ANSWER OF ISO NEW ENGLAND INC. TO CERTAIN COMMENTS**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),<sup>1</sup> ISO New England Inc. (“ISO-NE” or the “ISO”) submits this Motion for Leave to Answer and Answer to comments filed by certain entities in New England in response to the Complaint of the Industrial Energy Consumers of America *et al.* filed on December 19, 2024 (“Complaint”).<sup>2</sup>

For the reasons explained herein, ISO-NE reiterates its request that it be dismissed as a respondent to the Complaint proceeding. ISO-NE recognizes and appreciates the comments submitted by several New England entities. ISO-NE supports frank discussion of how to improve transmission planning within New England. However, the comments filed by the New England entities do not alter the analysis presented in ISO-NE’s March 20 Motion to Dismiss.<sup>3</sup> Indeed, none of the filed comments differ on the principal fact that ISO-NE does not have legal authority

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<sup>1</sup> 18 C.F.R. §§ 385.212, 385.213 (2024).

<sup>2</sup> Complaint of Consumers for Independent Regional Transmission Planning for All FERC-Jurisdictional Transmission Facilities at 100 kV and Above, Docket No. EL25-44-000 (Dec. 19, 2024) (“Complaint”).

<sup>3</sup> Motion to Dismiss Complaint as to ISO New England Inc., or in the Alternative, to Hold Complaint in Abeyance, and Answer of ISO New England Inc., Docket No. EL25-44-000 (Mar. 20, 2025) (“March 20 Motion to Dismiss”).

to conduct the planning for local facilities that is the subject of the Complaint. Furthermore, ISO-NE acknowledges that asset condition projects are increasingly common within New England and that a collective dialogue on this matter is appropriate. Our caution is that a proceeding under Section 206 of the Federal Power Act (“FPA”) is not the appropriate vehicle, legally or practically, for such a discussion.

## **I. MOTION FOR LEAVE TO FILE ANSWER**

This Answer responds to comments filed by certain entities in New England in response to the Complaint. While the Commission’s rules do not provide for answers to comments as a general matter,<sup>4</sup> the Commission has found good cause to permit answers in various circumstances, including where the answer assures a complete record in the proceeding,<sup>5</sup> leads to a better understanding of the issues in the proceeding,<sup>6</sup> narrows or clarifies issues presented,<sup>7</sup> aids in the disposition of the issues raised by the protests,<sup>8</sup> or otherwise assists the Commission in its decision-making process.<sup>9</sup> This Answer achieves these purposes. Specifically, this Answer explains how the comments of the New England entities relate to the arguments presented in ISO-NE’s March 20 Motion to Dismiss and thus provides information relevant to the Commission’s analysis and decision making.

## **II. ANSWER TO COMMENTS**

This Answer responds to comments filed by certain entities in New England in response to the Complaint. The Complaint as to ISO-NE should be dismissed because, even taking into

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<sup>4</sup> See 18 C.F.R. § 385.213(a)(2).

<sup>5</sup> See, e.g., *High Island Offshore Sys., L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

<sup>6</sup> See, e.g., *CenterPoint Energy–Miss. River Transmission, LLC*, 141 FERC ¶ 61,080, at P 4 (2012).

<sup>7</sup> See, e.g., *TransColorado Gas Transmission Co.*, 111 FERC ¶ 61,208, at P 4 (2005); *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224, at p. 62,078 (1998).

<sup>8</sup> See, e.g., *Transcon. Gas Pipe Line Co., LLC*, 140 FERC ¶ 61,251, at P 10 n.6 (2012).

<sup>9</sup> See, e.g., *S. Cal. Edison Co.*, 141 FERC ¶ 61,100, at P 5 (2012); *ISO New England Inc.*, 140 FERC ¶ 61,177, at P 6, *reh’g denied*, 141 FERC ¶ 61,173 (2012).

account the additional filings made by New England entities, the Complaint and supporting comments do not present the substantial evidence needed to satisfy core threshold requirements as to continuing a Complaint against ISO-NE.<sup>10</sup> Accordingly, as explained in ISO-NE's March 20 Motion to Dismiss, ISO-NE requests summary disposition and dismissal of ISO-NE as a respondent to this Complaint under Rule 217 because it raises no genuine issue of material fact and, even if the allegations against ISO-NE in the Complaint are accepted as true and viewed in the light most favorable to Complainants, ISO-NE is still entitled to dismissal from this proceeding as a matter of law.<sup>11</sup> Moreover, Complainants have not met their burden under Section 206 of the FPA to establish a *prima facie* case against ISO-NE.<sup>12</sup> The comments of the New England entities do not alter this analysis.

#### **A. Background**

The Commission received comments from multiple entities in New England in response to the Complaint. The New England Transmission Owners<sup>13</sup> oppose the Complaint and request that the Commission dismiss the Complaint arguing, *inter alia*, that the Complaint has failed to

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<sup>10</sup> *California ex rel. Lockyer v. British Columbia Power Exch. Corp.*, 130 FERC ¶ 63,017, at P 217 (2010) (recognizing that the complainant(s) “bear the burden of proof” as to “each respondent”), *aff’d*, 135 FERC ¶ 61,113 (2011), *reh’g denied*, 139 FERC ¶ 61,211 (2012), *vacated sub nom. California ex rel. Harris v. FERC*, 784 F.3d 1267 (9th Cir. 2015), *on remand*, 153 FERC ¶ 61,137 (2015), *order on clarification*, 154 FERC ¶ 61,154 (2016), *aff’d sub nom. California ex rel. Bonta v. FERC*, No. 16-70680, 2022 WL 16847837 (9th Cir. Nov. 10, 2022).

<sup>11</sup> 18 C.F.R. § 385.217. The Commission has held that Rule 217 is analogous to Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure. Therefore, summary disposition is appropriate where, viewing the evidence in the light most favorable to Complainants, there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

<sup>12</sup> *Alterna Springerville LLC v. Tucson Elec. Power Co.*, 153 FERC ¶ 61,125, at P 16 (2015) (“Having filed the Complaint under section 206 of the FPA, it was Complainants’ burden to establish a *prima facie* case . . .”) (citation omitted); *see also Ass’n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at P 184 (2014) (recognizing that *prima facie* case requires presentation of “substantial evidence that the challenged rates may be unjust and unreasonable, as required by section 206 of the FPA.”), *order on clarification*, 156 FERC ¶ 61,060 (2016).

<sup>13</sup> New England Transmission Owners includes: Eversource Energy Service Company on behalf of The Connecticut Light and Power Company, Public Service Company of New Hampshire, and NSTAR Electric Company; Central Maine Power Company, Maine Electric Power Company, Inc., and The United Illuminating Company; New England Power Company d/b/a National Grid; The Narragansett Electric Company d/b/a Rhode Island Energy; Vermont Electric Power Company, Inc. and Vermont Transco LLC; and Versant Power.

meet its burden under Section 206, is speculative, and that the remedy proposed is underdeveloped and overly broad.<sup>14</sup> Conversely, several entities filed comments in support of the Complaint, including the New Hampshire Office of the Consumer Advocate,<sup>15</sup> the New England Conference of Public Utilities Commissioners,<sup>16</sup> the Massachusetts Office of the Attorney General,<sup>17</sup> the Connecticut Office of Consumer Counsel,<sup>18</sup> the Maine Public Utilities Commission,<sup>19</sup> and the New England States Committee on Electricity (“NESCOE”).<sup>20</sup>

While the New England entities that support the Complaint agree with the Complaint’s argument that asset condition projects in New England represent a significant share of transmission-related spending and that such projects may warrant additional transparency and oversight, they do not agree on the appropriate remedy. Some support the remedy proposed in the Complaint, while other entities seek a different approach.<sup>21</sup> For instance, NESCOE requests that the Commission require revisions to tariff provisions and any other relevant governing documents, rules, policies, or procedures to require that transmission investments recovered through ISO-NE’s Regional Network Service rate be planned through an ISO-NE administered

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<sup>14</sup> Motion to Dismiss and Answer of the Indicated New England Transmission Owners to Complaint of Consumers for Independent Regional Transmission Planning for All FERC-Jurisdictional Transmission Facilities at 100 kV and Above, Docket No. EL25-44-000 (Mar. 20, 2025) (“NETOs Comments”).

<sup>15</sup> Comments of the Office of the New Hampshire Office of the Consumer Advocate, Docket No. EL25-44-000 (Mar. 20, 2025) (“NH OCA Comments”).

<sup>16</sup> Comments of the New England Conference of Public Utilities Commissioners, Docket No. EL25-44-000 (Mar. 20, 2025) (“NECPUC Comments”).

<sup>17</sup> Comments of the Massachusetts Office of the Attorney General, Docket No. EL25-44-000 (Mar. 20, 2025) (“Massachusetts AG Comments”).

<sup>18</sup> Comments of Connecticut Office of Consumer Counsel, Docket No. EL25-44-000 (Mar. 20, 2025) (“Connecticut Consumer Counsel Comments”).

<sup>19</sup> Notice of Intervention and Comments of the Maine Public Utilities Commission, Docket No. EL25-44-000 (Mar. 18, 2025) (“MPUC Comments”).

<sup>20</sup> Comments of the New England States Committee on Electricity, Docket No. EL25-44-000 (Mar. 20, 2025) (“NESCOE Comments”).

<sup>21</sup> See, e.g., Connecticut Consumer Counsel Comments at 3 (requesting that FERC only allow deviations from the 100+ kV threshold that “prove more inclusive versus more permissive”).

regional transmission planning process.<sup>22</sup> Others oppose a “one-size-fits-all” approach,<sup>23</sup> or are silent on the adoption of a 100+ kV threshold.<sup>24</sup> All the New England entities that support the Complaint also support the use of an Independent Transmission Planner—which presents a contested matter to the Commission.<sup>25</sup>

## **B. Comments Filed by New England Entities Do Not Change the Need for Dismissal of ISO-NE as a Respondent.**

All New England entities, whether they support or oppose the Complaint, recognize that ISO-NE plays solely an advisory and information coordination role as it relates to the planning of asset condition projects in the New England region.<sup>26</sup> Given that ISO-NE does not conduct or control planning for such projects in New England, the Complaint is simply not properly directed

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<sup>22</sup> NESCOE Comments at 2-3.

<sup>23</sup> See, e.g., NECPUC Comments at 6; MPUC Comments at 1, 9-10, 19 (“MPUC cautions against any remedies that may infringe on state jurisdiction which may disrupt existing frameworks, such as Maine’s existing statutes.”).

<sup>24</sup> See generally Massachusetts AG Comments.

<sup>25</sup> See, e.g., NH OCA Comments at 10; Massachusetts AG Comments at 7; Connecticut Consumer Council Comments at 5. Proponents of the establishment of an Independent Transmission Planner have not put forth a unified vision for the obligations and responsibilities of such a position. Compare, e.g., NH OCA Comments at 10, with Massachusetts AG Comments at 7-8; see also NESCOE Comments at 3 (“The specific duties and processes for an [Independent Transmission Monitor], or some comparable independent entity, should be developed by the region to meet New England’s current region-specific needs.”).

<sup>26</sup> NH OCA Comments at 5 (recognizing that the ISO New England Planning Advisory Committee (“PAC”) is “an entirely advisory body”); NECPUC Comments at 4 (“ISO-NE, the regional transmission planner, is largely shut out of this process and is limited to using the asset condition project designs developed by transmission owners as inputs in the ISO-driven reliability planning process.”); Massachusetts AG Comments at 6 (“[T]he PAC is advisory only . . . .”); Connecticut Consumer Council Comments at 2, 4 (recognizing that the PAC “does not vote” on projects); MPUC Comments at 10-11; NESCOE Comments at 7 (“Yet, ISO-NE, the regional system planner, is largely shut out of this process.”); NETOs Comments at 9-10 (“Section 3.09(a) of the TOA provides that each PTO retains the right to engage in local planning for the local facilities within each PTO’s respective footprint.”). See also ISO-NE Open Access Transmission Tariff (“OATT”), Attachment K (2024) (“Attachment K”), available at [https://www.iso-ne.com/static-assets/documents/2021/07/sect\\_ii\\_att\\_k.pdf](https://www.iso-ne.com/static-assets/documents/2021/07/sect_ii_att_k.pdf); see also ISO-NE, Transmission Operating Agreement, Section 3.09 (“TOA”), available at [https://www.iso-ne.com/static-assets/documents/regulatory/toa/v1\\_er07\\_1289\\_000\\_toa\\_composite.pdf](https://www.iso-ne.com/static-assets/documents/regulatory/toa/v1_er07_1289_000_toa_composite.pdf) (“Each PTO shall perform all of its responsibilities, and exercise each of its rights, with respect to the planning and expansion of the New England Transmission System in accordance with the ISO OATT and Schedule 3.09(a) hereto.”). Repairs, maintenance, or replacement of Transmission Facilities that are owned by the Participating Transmission Owners (“PTOs”) are referred to as “asset condition projects” in the ISO-NE footprint. See ISO-NE, Transmission Owner Asset Management, <https://www.iso-ne.com/system-planning/transmission-planning/transmission-owner-asset-management/> (last visited Apr. 4, 2025).

at ISO-NE as the respondent with authority to redress Complainants' concerns. Therefore, ISO-NE should be dismissed as a respondent.

In its March 20 Motion to Dismiss, ISO-NE has already explained that ISO-NE should be dismissed as a respondent in the Complaint as a matter of law. ISO-NE has no legal or material role in planning a Participating Transmission Owner's ("PTO") Local System Plans or asset condition projects, and it does not hold any ownership or pecuniary interest in the transmission assets in New England which are the subject of the Complaint.<sup>27</sup> To the extent ISO-NE has any involvement in a PTO's local planning, it is solely an advisory and information coordination role.<sup>28</sup>

Moreover, the terms establishing PTOs as the entity with planning authority for the Non-Pool Transmission Facility ("PTF") system and asset condition projects are explicitly made subject to *Mobile Sierra*<sup>29</sup> under Section 11.04(c) of the TOA. Thus, undoing these carefully crafted, regional arrangements for planning of the New England Transmission System would require the Complainants to establish that the current local planning arrangements in New England are contrary to the public interest under the *Mobile Sierra* standard. Neither the Complainant nor supporting New England entities have made such a showing. In fact, none of the comments filed by New England entities even mention the *Mobile Sierra* public interest standard, let alone attempt to explain why the public interest necessitates Commission action to

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<sup>27</sup> See generally Complaint at 101-06.

<sup>28</sup> See generally Attachment K; see also TOA, Section 3.09 ("Each PTO shall perform all of its responsibilities, and exercise each of its rights, with respect to the planning and expansion of the New England Transmission System in accordance with the ISO OATT and Schedule 3.09(a) hereto.").

<sup>29</sup> See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); see also *Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash. v. Am. Elec. Power Serv. Corp.*, 100 FERC ¶ 61,296, at P 30 (2002) ("The Commission's long-standing policy, consistent with a substantial body of Supreme Court and other judicial precedent, has been to recognize the sanctity of contracts.").

undo the FERC-approved regional arrangements for planning the New England Transmission System.

Furthermore, the comments filed by New England entities in support of the Complaint do nothing to change the underlying lack of a *prima facie* case against ISO-NE. Simply, there is no *prima facie* case that the ISO-NE Tariff is unjust, unreasonable, or unduly discriminatory or preferential, and the additional comments do not correct the Complaint's shortcoming on this core requirement.<sup>30</sup> For the reasons explained in our March 20 Motion to Dismiss, Complainants fail to make any case that the current approach to stakeholder briefings and information tracking is the cause of assertedly unjust and unreasonable decisions made by PTOs in their local planning and asset management process regarding the identification, scope, and timing of local projects.<sup>31</sup> The comments filed by New England entities in support of the Complaint do not resuscitate the Complaint's failing claims against ISO-NE; they merely repeat the misdirected allegations made in the Complaint. Therefore, the Complaint, even taking into consideration the comments filed by entities in New England that support the Complaint, still fails to present a *prima facie* case against ISO-NE.

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<sup>30</sup> See, e.g., *Joint Cal. Complainants v. Pac. Gas & Elec. Co.*, 161 FERC ¶ 61,179, at P 18 (2017) (Complaint failed to meet burden under Section 206 because it offered “nothing more than a reiteration of prior arguments that were considered by the Commission and either rejected or set for hearing in [another docket]”), *reh'g denied*, 163 FERC ¶ 61,112 (2018); cf. *FERC v. Maxim Power Corp.*, 196 F. Supp. 3d 181, 197-98 (D. Mass. 2016) (“[T]he factual allegations in the petition” must nudge the “claims across the line from conceivable to plausible. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . In assessing a claim’s plausibility, the court must construe the petition in FERC’s favor, accept all non-conclusory allegations as true, and draw any reasonable inferences in favor of FERC.”) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *San Gerónimo Caribe Project, Inc. v. Acevedo-Vilá*, 687 F.3d 465, 471 (1st Cir. 2012)).

<sup>31</sup> See generally March 20 Motion to Dismiss.

**C. The Commission Should Not Initiate a New Section 206 Proceeding with Respect to Asset Condition Projects in New England.**

Certain New England entities request that, in the event the Commission decides that the record in this Complaint proceeding is insufficient to support a finding that the ISO-NE Tariff is unjust and unreasonable, the Commission open a new investigation under Section 206 of the FPA to address asset condition projects in New England.<sup>32</sup> This request is not in the best interest of any New England entity. Proceeding under Section 206 at this stage would be premature, counterproductive, and a waste of scarce resources.

Proceeding under Section 206 would short circuit the productive conversations that have been underway related to asset condition projects in New England. The New England states have been engaged in bilateral discussions with the New England Transmission Owners, and the ISO recently joined the conversations with the states and transmission owners on these matters. In light of the discussions that already have been initiated, it is consistent with past practice for the Commission to deny the Complaint so as to not interfere with ongoing stakeholder discussions.<sup>33</sup> This approach would allow stakeholders the opportunity to work together to cooperatively address any concerns regarding the current local planning processes within the New England system.

Furthermore, Section 206 investigations proceed under *ex parte* rules, which severely limit communication between interested parties and the Commission. This limitation would be

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<sup>32</sup> See NESCOE Comments at 32; MPUC Comments at 19.

<sup>33</sup> *New England Power Generators Ass'n, Inc. v. ISO New England Inc.*, 150 FERC ¶ 61,053, at P 43, *reh'g denied*, 153 FERC ¶ 61,223 (2015), *aff'd sub nom. New England Power Generators Ass'n, Inc. v. FERC*, 879 F.3d 1192 (2018) (2015). See also, e.g., *FirstSolutions Energy Corp. v. PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,158, at P 1 (dismissing complaint without prejudice given, among other things, "PJM's commitment to develop a comprehensive report detailing the circumstances resulting in the [concerns raised in the complaint] for stakeholder review and discussion"), *reh'g denied*, 140 FERC ¶ 61,051 (2012); *Blumenthal v. ISO New England Inc.*, 117 FERC ¶ 61,038, at P 87 (2006) (denying complaint and agreeing with ISO-NE that "market rules should be revised through the stakeholder process"), *reh'g denied*, 118 FERC ¶ 61,205 (2007), *aff'd sub nom. Blumenthal v. FERC*, 552 F.3d 875 (2009).



especially problematic here where the development of an approach to asset condition projects will greatly benefit from a more open exploration of the issues raised.

### III. CONCLUSION

For the reasons explained above and in ISO-NE's March 20 Motion to Dismiss, ISO-NE respectfully reiterates its request that it be dismissed as a respondent to the Complaint proceeding. The comments filed by the New England entities do not alter the analysis presented in ISO-NE's March 20 Motion to Dismiss. ISO-NE does not have legal authority to conduct the planning for local facilities that is the subject of the Complaint. Still, ISO-NE acknowledges that asset condition projects are increasingly common within New England and that a collective dialogue on this matter is appropriate. The Commission should not short circuit that process by instituting yet another Section 206 proceeding.

Respectfully submitted,

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DATED: April 4, 2025

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2024).

Dated at Washington, D.C. this 4th day of April 2025.

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