UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

RENEW Northeast, Inc. )
Complainant, )
) )
v. ) )
ISO New England, Inc. and ) Docket No. EL23-___-000
New England Participating Transmission )
Owners, )
Respondents )

COMPLAINT OF RENEW NORTHEAST, INC.

December 13, 2022

Francis Pullaro
Executive Director
RENEW Northeast, Inc.
PO Box 383
Madison, CT 06443
Tel: 646-734-8768
fpullaro@renew-ne.org

Linda Walsh
Sylvia Bartell
Husch Blackwell LLP
1801 Pennsylvania Ave., NW, Suite 1000
Washington, DC  20006
Tel: 202-378-2308
linda.walsh@huschblackwell.com
sylvia.bartell@huschblackwell.com

Counsel for RENEW Northeast, Inc.
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RENEW Northeast, Inc. (RENEW) hereby submits this Complaint against ISO New England, Inc. (ISO-NE) and the New England Participating Transmission Owners (NE PTOs). RENEW requests that the Commission issue an order determining that Schedules 11 and 21 of Part II of the ISO-NE Transmission, Markets, and Services Tariff (Tariff) are unjust and unreasonable to

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2 The NE PTOs include: Town of Braintree Electric Light Department; Central Maine Power Company; Chicopee Electric Light Department; Connecticut Municipal Electric Energy Cooperative; Connecticut Transmission Municipal Electric Energy Cooperative; Eversource Energy Service Company on behalf of The Connecticut Light and Power Company, Public Service Company of New Hampshire, and NSTAR Electric Company (East and West); Fitchburg Gas and Electric Light Company; Green Mountain Power Corporation; Town of Hudson Light and Power Department; Maine Electric Power Company; The City of Holyoke Gas and Electric Department; Massachusetts Municipal Wholesale Electric Company; Town of Middleborough Gas & Electric Department; New England Power Company d/b/a National Grid; New Hampshire Electric Cooperative, Inc.; New Hampshire Transmission, LLC; Town of Norwood Municipal Light Department; Town of Reading Municipal Light Department; Shrewsbury Electric and Cable Operations; Stowe Electric Department; Taunton Municipal Lighting Plant; The United Illuminating Company; Unitil Energy Systems, Inc.; Vermont Electric Cooperative, Inc.; Vermont Electric Power Company, Inc.; Vermont Public Power Supply Authority; Vermont Transco, LLC; Versant Power; Town of Wallingford, Connecticut Department of Public Utilities Electric Division; and The Narragansett Electric Company d/b/a Rhode Island Energy.
the extent they permit transmission owners to directly assign to Interconnection Customers O&M costs associated with Network Upgrades, Stand-Alone Network Upgrades and Distribution Upgrades (collectively referred to as Network Upgrades) constructed to facilitate an interconnection. Schedules 11 and 21 impose an impermissible cost shift in violation of the Commission’s O&M cost allocation policy that results in unjust and unreasonable and unduly discriminatory rates. ISO-NE and NE PTOs should be directed to modify Schedules 11 and 21 and other tariff provisions, if necessary, to eliminate the direct assignment of Network Upgrade O&M costs to Interconnection Customers. RENEW also requests that the Commission determine that RENEW should be considered an Interested Party under the Formula Rate Protocols or direct the NE PTOs to revise the protocols to include RENEW to afford adequate opportunity for participation and access to information about transmission rates. Finally, at a minimum, the Commission should direct the NE PTOs to provide greater transparency regarding O&M costs in the interconnection process.

RENEW requests that the Commission establish a refund effective date of December 13, 2022, the earliest possible effective date. RENEW also requests that the Commission issue an order granting the Complaint by April 14, 2023 (approximately 60 days prior to the June 15, 2023.

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3 The term “O&M costs,” as used herein, includes operation and maintenance expenses, administrative and general expenses and certain taxes. In some instances, such costs are referred to as part of the direct assignment facility (DAF) charges.

4 Schedule 21 consists of a Schedule 21-Common and TO-specific Schedule 21s, some of which contain explicit provisions regarding the derivation and applicability of DAF charges and some which do not. The requested relief in this complaint includes a revision to Schedule 21-Common to explicitly state that any NE PTO providing service pursuant to Schedule 21-Common and/or its own TO-specific Schedule 21 shall not directly assign to Interconnection Customers O&M costs or any other costs including DAF charges beyond the installed capital cost of Network Upgrades.

5 The Commission’s general policy is to provide maximum protection to customers by setting the earliest possible refund effective date. E.g. La. Public Service Comm’n v. System Energy Resources Inc., 166 FERC ¶ 61,022 at P 30 (2019); Idaho Power Co., 145 FERC ¶ 61,122 at P 15 (2013); Canal Elec. Co., 46 FERC ¶ 61,153, order on reh’g, 47 FERC ¶ 61,275 (1989).
2023 deadline for the NE PTOs to publish a draft of the Annual Update to the data used in the transmission formula rate).

I. INTRODUCTION AND SUMMARY

In ISO-NE, interconnection-related Network Upgrades are “participant funded.” This means that Interconnection Customers pay all capital costs of upgrades beyond the point of interconnection (POI), unless the upgrades are found to benefit the network.\(^6\) In addition to capital costs, under Schedule 11 of the ISO-NE Tariff, an Interconnection Customer is directly assigned the O&M costs for Pool Transmission Facilities (PTF) Network Upgrades for the duration of the Interconnection Customer’s interconnection agreement. Under Schedule 21 for some NE PTOs, Interconnection Customers are directly assigned O&M costs for non-PTF Network Upgrades and Distribution Upgrades. These provisions often require Interconnection Customers to accept a 20 to 40-year obligation to pay millions of dollars in O&M costs in addition to the capital costs for the Network Upgrades.

ISO-NE is the only region in the United States in which Interconnection Customers are directly assigned all capital cost \textit{and all ongoing O&M costs} for Network Upgrades, regardless of who causes the Network Upgrades or who benefits from the Network Upgrades. Direct assignment of Network Upgrade-related O&M costs is contrary to the Commission’s O&M cost allocation policy established prior to Order No. 2003.

The Commission’s policy since Order No. 2003 has been to require interconnection customers initially to fund the cost of any network upgrades that would not have been required “but for” the specific interconnection (subject to reimbursement through transmission service

\(^6\) ISO-NE Tariff, Schedule 11. This complaint does not challenge the portion of Schedule 11 that provides for the participant funding of capital costs.
credits or tradable transmission rights). The Commission has also allowed transmission owners in an ISO/RTO region to adopt a participant funding methodology for allocating the capital costs of network upgrades to Interconnection Customers. However, it has never been Commission policy to allow transmission owners to directly assign to Interconnection Customers, ongoing O&M costs related to network upgrades. Even before the Commission established standardized interconnection requirements in Order No. 2003, it specifically rejected requests that network upgrade-related O&M costs be directly assigned to Interconnection Customers:

Since Network Upgrades provide a system-wide benefit, expenses associated with owning, maintaining, repairing, and replacing them shall be recovered from all Transmission Customers rather than being directly assigned to the Interconnection Customer.

In Order No. 2003-A, the Commission indicated that it might consider an exception to this O&M cost allocation policy if one was proposed by an ISO or RTO. ISO-NE is the only ISO/RTO in which transmission owners are charging O&M costs in connection with interconnection-related Network Upgrades. The Commission, however, has never articulated

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8 Order No. 2003, 104 FERC ¶ 61,103 at PP 28, 695-696.

9 The Commission’s O&M cost allocation policy was established in a series of orders starting in 2001, and reiterated by the Commission in Order No. 2003. Duke Energy Corp., 95 FERC ¶ 61,279 at 61,980 (2001) (Duke) (“Regarding the O&M charges, in so far as the facilities are network upgrades, we find that it is not appropriate to assess [the interconnection customer] for O&M costs, since the costs at issue relate to network upgrades and not to direct assignment facilities. These [O&M] costs may be included in a system-wide transmission rate.”).

why ISO-NE’s departure from the Commission’s long-standing O&M cost allocation policy is just and reasonable.

Schedules 11 and 21 of ISO-NE’s Tariff are unjust and unreasonable insofar as they permit transmission owners to directly assign to an interconnection customer transmission-related O&M costs associated with Network Upgrades that are constructed to facilitate the Interconnection Customer’s interconnection pursuant to a Large Generator Interconnection Agreement (LGIA). As discussed further below, any historical consideration that might have been the basis for the Commission’s generic acceptance of the direct assignment cost recovery provisions in Schedules 11 and 21 is now obsolete. There was never any rationale behind this exemption from the Commission’s O&M policy other than it having been a transitional measure included in New England Power Pool’s (NEPOOL) transition to an ISO and its Order No. 2003 compliance filing. Continued direct assignment of O&M costs to Interconnection Customers is not just and reasonable and should be rejected.

Specifically, as discussed below, direct assignment of O&M costs is unjust and unreasonable and unduly discriminatory for several reasons:

1. Directly assigning O&M costs to Interconnection Customers violates the Commission’s O&M cost allocation policy.

2. There is no justification for continued direct assignment of O&M costs. Circumstances in the ISO-NE region have changed significantly, overriding any historical justification that may have existed at the time Schedules 11 and 21 were initially approved.

3. Direct assignment of O&M costs is not necessary to incent efficient siting decisions or manage congestion.

4. Directly assigning O&M costs to Interconnection Customers for replacement, upgrading or relocation of existing facilities unjustly shifts exiting O&M costs from transmission customers (load) to Interconnection Customers. When required Network Upgrades involve the replacement, upgrading or relocation of existing facilities, Interconnection Customers are required to pay the O&M Costs for the
conductors, transformers, and equipment, replaced, upgraded or located on these existing facilities that were otherwise recovered from transmission customers in Regional Network Service ("RNS") transmission rates or Local Network Service ("LNS") rates, including Local Point-to-Point Transmission rates. As a result of Schedules 11 and 21, NE PTOs are able to shift O&M Cost responsibility for these existing facilities from transmission customers to Interconnection Customers simply because an Interconnection Customer is funding the installation of higher-rated replacement equipment.

(5) The process of directly assigning O&M costs to Interconnection Customers is not transparent. Often, Interconnection Customers are not informed of the O&M costs they will be responsible for paying until the final stages of the interconnection process – when they receive their LGIA. Even then, the manner in which the O&M costs are calculated is often not disclosed and the costs can change over time without notice. This violates the Commission’s long-standing filed-rate doctrine because most of the O&M cost calculation methodologies are not on file with the Commission.\(^\text{11}\)

(6) The direct assignment of Network Upgrade O&M costs is highly burdensome to Interconnection Customers. This cost burden creates a barrier to entry of new generation development in New England and may cause projects to withdraw at late stages of the interconnection process. On the other hand, the impact of including such O&M costs in transmission rates is very small.

Instead of directly assigning O&M costs to Interconnection Customers, NE PTOs should be required to include them as a transmission expense in their transmission formula rates. As shown below, the inclusion of these costs in transmission rates would result in a \textit{di minimis} increase in transmission rates: 0.344% in RNS rates and between 0.034 to 2.956% in LNS rates, based on information provided by the NE PTOs.\(^\text{12}\) Accordingly, RENEW respectfully requests that the Commission direct ISO-NE to modify Schedule 11 of the Tariff to remove the provisions under which Interconnection Customers are required to pay O&M Costs associated with Network Upgrades, and direct NE PTOs to modify their Schedule 21 and other provisions to conform with the changes made to Schedule 11.

\(^{11}\) Schedule 21-NEP and Schedule 21-CMP appear to have the only tariff provisions that contain explicit formula rates for DAF charges that have been approved by FERC.

\(^{12}\) \textit{Exhibit 1}, Affidavit of Steven S. Garwood at 8; See also Tables 1 and 2 below.
In RENEW’s experience, there is a lack of transparency not only in the O&M cost calculation for direct assignment to Interconnection Customers, but also for how NE PTOs ensure that such costs are not also included in transmission rates (i.e., double counted). RENEW has not been afforded an adequate opportunity for participation and access to information about transmission rates as a result of the NE PTOs’ interpretation of the Formula Rate Protocols. Thus, RENEW also requests in this Complaint that the Commission determine that RENEW should be considered an Interested Party under the Formula Rate Protocols or direct the NE PTOs to revise the Protocols to include RENEW. Finally, at a minimum, RENEW requests that the Commission direct the NE PTOs to provide greater transparency regarding O&M costs in the interconnection process should the Complaint not be granted expeditiously.

II. BACKGROUND

A. Description of Complainants

RENEW is a non-profit entity that advocates for the business interests of renewable power generators in New England. RENEW unites environmental advocates and the renewable energy industry to advance the goal of increasing environmentally sustainable energy generation in the Northeast from the region’s abundant, indigenous renewable resources. RENEW members own, develop, and operate large-scale renewable energy projects, energy storage resources and high-voltage transmission facilities across the Northeast.\(^\text{13}\)

B. Description of Respondents

ISO-NE is the private, non-profit entity that serves as the regional transmission organization (RTO) for the six New England states. ISO-NE plans and operates the New England bulk power system and administers New England’s organized wholesale electricity

\(^{13}\) More information about RENEW’s members is available here: [https://renewne.org/members/](https://renewne.org/members/)
markets pursuant to the ISO-NE Tariff. In its capacity as an RTO, ISO-NE also has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the North American Electric Reliability Corporation (NERC) and the Northeast Power Coordinating Council (NPCC). ISO-NE administers the Schedule 11 provisions of the Tariff at issue in this Complaint.

The NE PTOs own transmission and distribution facilities, a portion of which are operated by ISO-NE and they are the Interconnecting Transmission Owners who are parties to LGIAs and SGIAs with Interconnecting Customers. A list of the NE PTOs is included in footnote 2 above. ISO-NE and the NE PTOs are parties to a Transmission Operating Agreement that gives the NE PTOs certain FPA Section 205 rights to modify rates included in the Tariff.  

III. FACTUAL BASIS FOR COMPLAINT

A. Proposed Changes to Tariff Provisions and Rate Schedules

Schedule 11 of the ISO-NE Tariff addresses allocation of the costs of upgrades for generators interconnecting to the ISO-NE transmission system. Schedule 11 requires the Interconnection Customer to bear all costs of Direct Interconnection Transmission Costs and the costs of “but for” Network Upgrades, Stand Alone Network Upgrades and Distribution

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14 Under Section III.04(b) of the Transmission Operating Agreement between the PTOs and ISO-NE, the PTOs, acting jointly, have the ability to make filings under FPA Section 205 with respect to certain rate and cost allocation matters.

15 Tariff Schedule 11 at (5). “Network Upgrades shall mean the additions, modifications, and upgrades to the New England Transmission System required at or beyond the Point of Interconnection to accommodate the interconnection of the Large Generating Facility to the Administered Transmission System.” ISO-NE Tariff at Schedule 22 – Large Generator Interconnection Procedures at Section 1.

16 Tariff Schedule 11 at (5). “Stand Alone Network Upgrades shall mean Network Upgrades that are not part of an Affected System that an Interconnection Customer may construct without affecting day-to-day operations of the New England Transmission System during their construction.” ISO-NE Tariff at Schedule 22 – Large Generator Interconnection Procedures at Section 1.
Upgrades\textsuperscript{17} (collectively referred to as Network Upgrades) unless ISO-NE determines that the Network Upgrades provide system-wide benefits.\textsuperscript{18}

RENEW proposes the following change to Schedule 11 to eliminate the direct assignment of O&M costs:

Following completion of the construction or modification, the Generator Owner or ETU IC shall be obligated to pay all (or, in the case of an Upgrade identified under Clustering, its share) of the annual costs (including federal and state income taxes, O&M and A&G expenses, annual property taxes and other related costs) which are allocable to the Upgrade but excluding annual costs associated with Distribution Upgrades, Stand Alone Network Upgrades, and Network Upgrades, pursuant to the interconnection agreement (or support agreement) with the individual PTO or its designee which is responsible for the construction or modification, and such agreement may be filed with the Commission by the PTO, either signed or unsigned, on its own or at the request of the Generator Owner or ETU IC.

\textit{Exhibit 2} contains the full language of Schedule 11 with a highlight showing the proposed changes to Schedules 11(3) and 11(5). Other changes will be required to fully eliminate the direct assignment of O&M costs. Some NE PTOs have a TO-specific Schedule 21 that may need to be revised. Because each NE PTO’s Schedule 21 is unique, RENEW requests that the Commission order the changes to the generally applicable Schedule 11 and then direct the NE PTOs to make appropriate changes to Schedule 21 and other Tariff provisions.\textsuperscript{19}

\textsuperscript{17} Tariff Schedule 11 at (5). “Distribution Upgrades shall mean the additions, modifications, and upgrades to the Interconnecting Transmission Owner’s Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer’s wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.” ISO-NE Tariff at Schedule 22 – Large Generator Interconnection Procedures at Section 1.

\textsuperscript{18} Tariff Schedule 11 provides that, if ISO-NE determines that interconnection-related upgrades provide certain benefits to the system, the upgrades may be classified as Reliability Upgrades and the interconnection customer is not required to fund the construction cost or pay O&M costs related to those upgrades. Tariff Schedule 11 at (5).

\textsuperscript{19} For example, in addition to revising Schedule 11 and Schedule 21, ISO-NE and the PTOs would need to revise Section 10.2 of its LGIA set forth in Appendix 6 to Schedule 22 of the Tariff.
B. History of Schedule 11 and the Direct Assignment of O&M Costs

In 2000, when the New England Power Pool (NEPOOL) was undergoing a multi-year transition into ISO-NE, the Commission accepted Schedule 11 as part of the restructuring.\(^\text{20}\) NEPOOL and ISO-NE spent many years litigating the ISO’s formation and the initial market rules. The O&M Cost recovery element of Schedule 11 was a small, largely overlooked, part of a larger set of ISO-NE rules. The key events in the history of Schedule 11 include:

- On July 22, 1998, NEPOOL filed Schedule 11 as part of its ISO restructuring proceeding, during which it maintained the “full integration” interconnection standard.\(^\text{21}\) At that time, Schedule 11 provided that upgrade costs (both construction costs and O&M Costs) be split 50/50 (subject to a cap), \(i.e.,\) 50\% assigned to the generator and 50\% to be recovered in transmission rates.\(^\text{22}\) NEPOOL claimed that this 50/50 compromise would give generators certainty about upgrade costs while incentivizing “proper siting” of new facilities.\(^\text{23}\)

- In June 1999, FERC accepted NEPOOL’s proposed new interconnection standard – the Minimum Interconnection Standard (MIS) – which required only that the requested interconnection not degrade transfer capability.\(^\text{24}\) The Commission deferred review of Schedule 11 and the 50/50 sharing of all construction and O&M


\(^{21}\) The “full integration” interconnection standard required new generators to be fully integrated with the NEPOOL system on a basis that permitted firm delivery of their output, and as a result the generators would have rights equal to all other “firmly integrated resources” and would not be assessed costs for subsequent system expansions. *New England Power Pool*, 85 FERC ¶ 61,141 at 61,550, 61,552 (1998) (“NEPOOL’s existing criteria assume that, in addition to ensuring that the interconnection of a generator does not affect the reliability and stability of the transmission system, each planned generator must be guaranteed an exclusive and unconstrained firm transmission path to reach every load serving entity in NEPOOL.”).


\(^{23}\) *Id.* at 3, proposed Schedule 11.

\(^{24}\) *New England Power Pool*, 87 FERC ¶ 61,347 (1999); see also *New England Power Pool*, 109 FERC ¶ 61,155 at P 6 (2004) (describing the still effective MIS to be that “an interconnection applicant is required to demonstrate that the interconnection of its unit to the NEPOOL PTF will not degrade the existing transfer capability of the PTF and non-PTF. If this test is satisfied, the interconnected generator gains full market rights.”).
Costs until the Commission acted on ISO-NE’s yet-to-be filed congestion management program.\textsuperscript{25}

- In 2000, ISO-NE submitted Tariff revisions addressing the congestion management system and proposing significant market design changes. Among other things, ISO-NE proposed to move from a single settlement market to day-ahead and real-time markets; it instituted three-part bidding for energy; and it prescribed a new system to manage transmission congestion through locational energy prices and financial congestion rights.\textsuperscript{26} Embedded in the proposal was a modified Schedule 11 pursuant to which 100% of the network upgrade costs would be directly assigned to the interconnection customer and no longer shared 50/50 with load.\textsuperscript{27} There was significant opposition to ISO-NE’s change from the 50/50 allocation by generators claiming that 100% cost allocation to generators would encourage transmission owners to overbuild the transmission system at generators’ expense. There was no discussion by the parties or the Commission about whether O&M costs were appropriately included in the 100% cost allocation revision.\textsuperscript{28}

- On June 28, 2000, the Commission approved most of ISO-NE’s proposed Tariff revisions, including the new Schedule 11 and its allocation to Interconnection Customers of all costs necessary to meet NEPOOL’s new Minimum Interconnection Standard (MIS) standard.\textsuperscript{29} All of the arguments and analyses presented by ISO-NE focused only on the choice between 50% or 100% of “but for” upgrade costs. No one

\textsuperscript{25} \textit{New England Power Pool}, 87 FERC ¶ 61,347 at 62,341 (1999) (“In the October 29 Order, the Commission deferred ruling on NEPOOL’s proposed Schedule 11 to the NEPOOL Tariff, which addresses the sharing of system expansion costs associated with the interconnection of new generators. We held that NEPOOL’s expansion cost pricing proposal should be considered in tandem with NEPOOL’s congestion pricing proposal. In its compliance filing, NEPOOL proposes no changes to Schedule 11, at this time, but notes that changes may be appropriate, pending the development of its congestion management plan.”).


\textsuperscript{27} \textit{Congestion Management Order}, 91 FERC ¶ 61,311 at 62,079-61,080; \textit{Congestion Management Filing}, Appendix D at 33. Revised Schedule 11 grandfathered a 50/50 cost sharing approach for some interconnection requests then-pending in the queue.

\textsuperscript{28} Generators offered an alternative proposal under which, among other things, interconnection-related upgrade costs would have continued to be allocated 50/50 because this allocation would better discourage transmission owners from “gold plating” the transmission system at the generator’s expense, which was more likely under a 100% allocation. \textit{New England Power Pool}, Supporting Generators Comprehensive Proposal for a Congestion Management System, Multi-Settlement System and Related Transition Mechanisms for the New England Power Pool at 37-45, Docket No. ER00-2016-000 \textit{et al.} (Mar. 20, 2000). See also \textit{Congestion Management Order}, 91 FERC ¶ 61,311 at 62,079.

\textsuperscript{29} \textit{Congestion Management Order}, 91 FERC ¶ 61,311 at 62,079 (approving ISO-NE’s generator cost allocation proposal as “a reasonable element of this congestion management/expansion proposal”).
addressed whether allocating any associated O&M Costs to the Interconnection Customer was just and reasonable.

- In 2001-2002, the Commission issued at least two orders, including Duke\textsuperscript{30} and Boston Edison Co. (BECO),\textsuperscript{31} stating its policy that interconnection customers should not be required to pay ongoing network upgrade associated O&M costs and that the Commission intended to follow that policy when it issued its Order No. 2003 Final Rule on standardizing interconnection procedures. At that time, NEPOOL asked its counsel for an “opinion concerning the ongoing effectiveness of Schedule 11” in light of the Commission’s recent rulings and the pending rulemaking.\textsuperscript{32} NEPOOL’s Schedule 11 Opinion Letter stated that Schedule 11’s direct assignment of O&M Costs was inconsistent with the Commission’s orders.\textsuperscript{33}

- In its Order No. 2003 compliance filing, NEPOOL discussed Schedule 11 in general terms as a recently accepted portion of a package of Tariff revisions that resolved litigation surrounding its transition to an ISO and the establishment of its organized markets.\textsuperscript{34} The Commission allowed Schedule 11’s treatment of O&M Costs to remain in effect after Order No 2003, but never addressed the merits of the direct assignment of O&M Costs.\textsuperscript{35}

The history of Schedule 11 shows that it was initially accepted as part of a larger package of Tariff revisions that implemented structural changes in the New England region. The Commission never discussed the merits of directly assigning O&M costs to Interconnection Customers and thus never provided a rationale for allowing ISO-NE’s deviation from the Commission’s pro forma O&M cost allocation policy preventing such direct assignment, other than its having been included as a transitional measure included in a much larger Tariff filing.

\textsuperscript{30} Duke, 95 FERC ¶ 61,279 at 61,980.

\textsuperscript{31} BECO, 98 FERC ¶ 61,200 at 61,697.

\textsuperscript{32} Exhibit 3, NEPOOL Opinion Letter at 1 (June 13, 2002) (Letter from David T. Doot to Paul B. Shortley, Chair, NEPOOL Tariff and Reliability Committees).

\textsuperscript{33} Id. at 11 (“[W]e have concluded that neither Duke Energy or BECO require NEPOOL to change its arrangements or their implementation, even though the rule prohibiting direct assignment of post-construction network facility-related costs stated by the Commission in those decisions is inconsistent with the allocation contemplated by Schedule 11”).


C. Summary of the Commission’s Order No. 2003 Cost Allocation Policies

1. Order No. 2003

Facilities needed to accommodate a generator interconnection are classified as either interconnection facilities or network upgrades. Interconnection facilities are located between the interconnecting generator and the POI with the transmission system and are paid for entirely by the interconnection customer. Facilities at or beyond the POI are considered network upgrades and include Distribution Upgrades or Network Upgrades, i.e., those upgrades that would not have been needed “but for” the interconnection of the customer’s generation facility. Under the Commission’s Order No. 2003 cost allocation policy, the interconnection customer is required initially to fund the full cost of network upgrades and is intended to be fully reimbursed for such costs via its receipt of transmission service credits or some other form of compensation.

36 Order No. 2003, 104 FERC ¶ 61,103 at P 21.
37 Id.; Pro forma LGIA § 1 (“. . . Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider’s Transmission System”); id. at § 5.10 (“Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICIF . . . .”). See also Entergy Services, Inc., 89 FERC ¶ 61,079 at 61,235-36 (1999). The ISO-NE LGIA and LGIP use the same language in their definition of Interconnection Facilities. ISO-NE Tariff at Schedule 22 – LGIP at Section 1 and Appendix 6 LGIA at Section 1. Pro Forma LGIA § 1 (“Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider’s Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider’s Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider’s Transmission System.”); id. at § 11.3.
38 Order No. 2003, 104 FERC ¶ 61,103 at P 694 (“The Commission determined that it is appropriate for the Interconnection Customer to pay initially the full cost of Interconnection Facilities and Network Upgrades that would not be needed but for the interconnection, but once the Generating Facility commences operation and delivery service begins, it must receive transmission service credits for the cost of the Network Upgrades.”); Pro Forma LGIA § 11.4.1. See also Consumers Energy Co., 95 FERC ¶ 61,233, reh’g denied, 96 FERC ¶ 61,132 at 61,560 (2001) (“Having a standard policy that requires credits for customer-funded network upgrades minimizes the incentive for utilities to ‘gold plate’ their systems at customers’ expense . . . .”). RTOs/ISOs, as independent transmission providers, have some flexibility to adopt mechanisms under which the interconnection customer is directly assigned network upgrade capital
The Commission has acknowledged that it does not matter that the network upgrades were installed to meet a particular customer’s request for service.\(^{39}\) Even if the upgrades would not have been needed but for the interconnection, those upgrades, once operational, nonetheless are deemed to be used by and to benefit all users of the integrated grid.\(^{40}\)

The Commission has allowed RTOs/ISOs to implement participant funding whereby the Interconnection Customer pays all capital costs of network upgrades.\(^{41}\) However, the Commission’s approval of participant funding allocation policies does not extend to direct assignment of O&M costs on network upgrades. To the contrary, such O&M costs have not been deemed appropriate for direct assignment even in RTOs/ISOs with participant funding.

2. O&M Cost Allocation Policy

Under the Commission’s O&M cost allocation policy, once operational, the interconnecting generator is responsible for the cost of operating and maintaining any sole use interconnection facilities that will be owned by the transmission owner.\(^{42}\) In contrast, the O&M Costs related to any required network upgrades are to be recovered from transmission customers rather than being directly assigned to Interconnection Customers.\(^{43}\) This O&M Cost allocation policy does not depend on whether the network upgrade has been shown to provide system

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\(^{39}\) Order 2003, 104 FERC ¶ 61,103 at PP 698-703.

\(^{40}\) Id.; Order No. 2003-A, 106 FERC ¶ 61,220 at PP 583-85; Entergy Gulf States, Inc., 98 FERC ¶ 61,014 at 61,023, reh'g den., 99 FERC ¶ 61,095 (2002) (“The Commission’s long-standing policy prohibits the direct assignment of network facilities. Network facilities include all facilities at or beyond the point where the customer or generator connects to the grid. This prohibition is without distinction or regard as to the purpose of the upgrade (e.g. to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration).”).

\(^{41}\) Order No. 2003, 104 FERC ¶ 61,103 at PP 65-66, n. 108.

\(^{42}\) Id. at P 680; Order No. 2003-A, 106 FERC ¶ 61,220 at PP 421-424; Pro Forma LGIA § 10.5.

\(^{43}\) Order No. 2003-A, 106 FERC ¶ 61,220 at PP 421-424; Pro Forma LGIA § 10.5.
benefits. Indeed, the Commission’s consistent position is that all network upgrades provide system benefits, and that, regardless of the rules that apply to the funding of capital costs of network upgrades, “expenses associated with owning, maintaining, repairing, and replacing them shall be recovered from all Transmission Customers rather than being directly assigned to the Interconnection Customer.”

44 This policy applies in RTO/ISO regions and non-RTO/ISO regions alike.

In fact, this policy was expressly articulated in the ISO-NE region in the BECO case and acknowledged by NEPOOL counsel at the time.

In BECO, Boston Edison Co. submitted an unexecuted Interconnection Agreement between Boston Edison Co. and IDC Bellingham, LLC, an independent power producer. Bellingham protested Boston Edison’s proposal to impose an Annual Facilities Charge (AFC) to

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45 See e.g., PJM Interconnection, L.L.C., 102 FERC ¶ 61,161 (2003) (interconnection customer could not be assigned O&M expenses associated with network upgrades as opposed to including these charges in a system-wide transmission rate); PJM Interconnection, L.L.C, 104 FERC ¶ 61,154 (2003), reh’g denied, 109 FERC ¶ 61,236 at P 23 (2004) (finding that under PJM’s tariff, “a generator would not be responsible for the O&M costs related to the Network Upgrade, i.e., a new circuit breaker required to interconnect its generating plant to the system.”); Southern, 105 FERC ¶ 61,221 at P 13 (2003) (direct assignment of operating and maintenance charges is improper where the facilities are network upgrades as opposed to interconnection facilities); S. Carolina Electric & Gas Co., 106 FERC ¶ 61,265 at P 25 (2004), reh’g denied, 118 FERC ¶ 61,185 (2007); Ontelaunee Power Operating Co., LLC v. Metropolitan Edison Co., 119 FERC ¶ 61,181 at P 47 (2007) (“under the PJM tariff, O&M costs for network upgrades (as that term is defined in the PJM tariff) are the responsibility of the transmission owner, and O&M costs for Attachment Facilities are the responsibility of the interconnecting generator.”); Niagara Mohawk Power Corp. d/b/a National Grid, 121 FERC ¶ 61,104 at P 19 (2007), reh ’g, 123 FERC ¶ 61,144 (2008) (“we find that these facilities are network facilities and, as such, Niagara Mohawk cannot directly charge only Alliance for the O&M performed on the three-breaker ring bus configurations or the system protection equipment located within the substations serving AG Energy and Seneca, including the communication circuits. Accordingly, Niagara Mohawk is directed to remove all language from the unexecuted IAs with Alliance that would permit it to recover O&M costs on these facilities from Alliance.”); NYISO, 123 FERC ¶ 61,093 at PP 44-46 (2008), clarif., 124 FERC ¶ 61,156 (2008) (rejecting Con Ed’s attempts to directly assign oversight, O&M and tax costs to Linden under Attachment S).

46 BECO, 98 FERC ¶ 61,200 at 61,696-61,697; Exhibit 3, NEPOOL Opinion Letter at 10 (“As things now stand with BECO, the door to controversy has been reopened and the Commission has indicated quite clearly its current preference for the entire ongoing costs for network upgrades to be borne by all transmission customers.”).
operate and maintain facilities that are part of Boston Edison’s integrated transmission system.

Bellingham argued that the O&M charges should be recovered through the system-wide transmission charge instead. The Commission agreed with Bellingham, holding:

We agree that Boston Edison cannot impose on Bellingham ongoing charges to operate and maintain facilities that are part of Boston Edison’s integrated transmission system. In *Duke Energy*, we held that for facilities that are network upgrades, it is not appropriate to assess O & M charges. Thus, the Bellingham facilities that are part of Boston Edison’s integrated transmission system should not be assessed O & M costs.\(^{47}\)

The Commission accepted the Interconnection Agreement on the grounds that, *inter alia*, it “provides that only facilities that are not part of Boston Edison’s integrated transmission system will face the AFC.”\(^{48}\)

ISO-NE was the only RTO/ISO to include a provision directly assigning O&M costs on Network Upgrades in an Order No. 2003 compliance filing. Even though the provision was accepted, as discussed below in Section IV.B, there was no discussion of how the provision was a just and reasonable variation from Order No. 2003’s cost allocation policy.

**D. RENEW’s Recent Efforts to Change Schedule 11 Through the Stakeholder Process Received More Than Half, But Less than the Two-Thirds, Vote Required for a Change.**

In the ISO-NE stakeholder process, RENEW proposed to revise Schedule 11 so that annual costs associated with Distribution Upgrades, Stand Alone Network Upgrades and Network Upgrades would no longer be allocated to Interconnection Customers, and instead would be recovered from Transmission Customers. A copy of RENEW’s presentation to the NEPOOL Transmission Committee is included in *Exhibit 4*.

\(^{47}\) *BECO*, 98 FERC ¶ 61,200 at 61,697.

\(^{48}\) *Id.*
The Transmission Committee considered the proposed Schedule 11 revisions over the
course of four meetings and, at its October 26, 2021 meeting, voted on the proposal. To pass,
RENEW’s proposal required a two-thirds vote of those present and voting in favor of the change.
RENEW’s proposal received a 55.47% vote in favor, but missed the two-thirds vote required to
pass.\textsuperscript{49} Even if the RENEW proposal had received the two-thirds vote, no changes would have
been made unless the NE PTOs agreed to make the necessary tariff changes.

IV. COMPLAINT

A. Standard of Review for Complaint Proceedings

A Complainant’s burden of proof under FPA Section 206 is to demonstrate that the
existing tariff provision, rate schedule or practice is unjust and unreasonable.\textsuperscript{50} In reviewing a
Section 206 complaint, the Commission must determine whether “any rate, charge,
classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly
discriminatory, or preferential[.]”\textsuperscript{51} The Commission may find that previously accepted tariff
provisions, rates, rules, or practices are unjust and unreasonable in a later proceeding.\textsuperscript{52} The fact

\textsuperscript{49} The Transmission Committee roll call vote was 55.47% in favor, with individual Sector votes as
follows: Generation (16.70% in favor, 0.00% opposed, 0 abstentions), Transmission (0.00% in favor,
16.70% opposed, 1 abstention), Supplier (16.70% in favor, 0.00% opposed, 2 abstentions), Publicly
Owned Entity (0.00% in favor, 16.70% opposed, 2 abstentions), Alternative Resources (16.50% in favor,
0.00% opposed, 1 abstention), and End User (5.57% in favor, 11.13% opposed, 2 abstentions). \textit{Exhibit 6},

\textsuperscript{50} See, e.g., \textit{Atl. City Elec. Co. v. FERC}, 295 F.3d 1, 10 (D.C. Cir. 2002); \textit{Emera Me. v. FERC}, 854 F.3d

\textsuperscript{51} 16 U.S.C. § 824e(b) (2018).

\textsuperscript{52} E.g. \textit{Oxy USA v. FERC}, 64 F.3d 679, 690 (D.C. Cir 1995) (citing \textit{Texas Eastern Trans. Corp. v. FERC},
893 F.2d 767, 774 (5th Cir. 1990) (“The fact that a rate was once found reasonable does not preclude a
finding of unreasonableness in a subsequent proceeding.”).
that the Schedule 11 provisions at issue in this Complaint were previously approved does not preclude them from being challenged here as being no longer just and reasonable.\textsuperscript{53}

If the Commission finds that the rate, rule, or practice is unjust, unreasonable, or unduly discriminatory, the Commission must establish a just and reasonable alternative rate, rule, or practice.\textsuperscript{54} As demonstrated in this Complaint, the ISO-NE Tariff Schedule 11 (and corresponding Schedule 21 provisions) are unjust and unreasonable, and unduly discriminatory. Schedule 11 and Schedule 21s should be modified to remove language allowing direct assignment of O&M costs to Interconnection Customers.

\textsuperscript{53} Caithness Long Island, LLC and Moxie Freedom LLC, 176 FERC ¶ 61,201 at PP 34-35 (2021) (a proceeding under FPA Section 206 “is the appropriate forum to consider changes” to existing tariff and market rules); Consolidated Edison Co. of New York, Inc. v. NYISO, 150 FERC ¶ 61,139 at P 49 (2015) (“Modifying existing tariff provisions under section 206 of the FPA is not barred by the fact that the Commission originally accepted the provisions at issue.”); Interstate Power and Light Co. v. ITC Midwest, LLC, 144 FERC ¶ 61,052 at PP 18, 33 (2013) (“IPL states that the Commission has acknowledged the right of transmission customers to file a complaint with the Commission under section 206 of the FPA if the application of a cost allocation provision under a tariff results in an unduly discriminatory outcome, and in the context of that complaint, the Commission will assess the merits of the customer's claim. . . . The Commission finds that ITCM’s interconnection reimbursement policy, in the context of MISO’s zonal rate structure, results in an improper subsidy and is therefore unjust, unreasonable and unduly discriminatory or preferential.”); MISO, 133 FERC ¶ 61,221 at P 335 (2010) (“To the extent that commenters wish to challenge the justness and reasonableness of an accepted tariff provision, the appropriate forum would be a complaint under section 206 of the FPA”) (citing FPA Section 206, 16 U.S.C. § 824e). See also Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 at P 159 (2003) (“We stated that should we determine that sellers’ currently effective tariffs are unjust and unreasonable or may lead to unjust and unreasonable rates without the inclusion of Market Behavior Rules, we would require that these tariffs be revised, but only on a prospective basis, as Section 206 requires.”).

B. The Commission Should Find that Schedules 11 and 21 are Unjust and Reasonable and Unduly Discriminatory to the Extent They Allow Direct Assignment of Network Upgrade O&M Costs to Interconnection Customers in Violation of the Commission’s O&M Cost Allocation Policy.

1. Past Approval of Schedule 11 Does Not Justify Continued Direct Assignment of O&M Costs.

Order No. 2003 was issued several years after Schedule 11 was first approved. Order No. 2003 deemed it inappropriate for O&M costs on network upgrades to be directly assigned to interconnection customers even in RTOs with participant funding (i.e., direct assignment of capital costs). When ISO-NE made its Order No. 2003 compliance filing, it provided no explanation as to why the Schedule 11 practice of directly assigning O&M costs should be approved as an independent entity variation, despite having knowledge that the practice was inconsistent with Order No. 2003 and a recommendation from NEPOOL counsel to address the inconsistency in the compliance filing.\(^55\)

In its Order on NEPOOL’s Order No. 2003 compliance filings the Commission did not discuss the merits of direct assignment of O&M Costs.\(^56\) The Commission made no specific decision on whether direct assignment of O&M Costs was just and reasonable or whether it was sufficient to justify an independent entity variation from the Order No. 2003 O&M cost allocation policies.\(^57\)

\(^55\) In addressing the merits of arguments that NEPOOL may put forth to justify a deviation from the Commission’s O&M cost allocation policy, the NEPOOL Opinion Letter states: “The underlying concern with these arguments, however, is that they suggest effectively that NEPOOL’s new congestion management system, which comports in virtually all respects with the Commission’s proposed standard market design, somehow justifies a cost allocation rule for new interconnections that is different from a general cost allocation policy which the Commission has now articulated in the Interconnection NOPR.” Exhibit 3, NEPOOL Opinion Letter at 10.


\(^57\) See New England Power Pool, 109 FERC ¶ 61,155.
The doctrine of collateral estoppel does not preclude challenges to matters that were not actually litigated and decided.\textsuperscript{58} Thus, RENEW’s challenge to the direct assignment of O&M costs does not constitute an improper collateral attack on the Commission’s Order on NEPOOL’s Order No. 2003 compliance filings because such costs were not specifically addressed in that prior Order.

In any event, RENEW is not challenging the Commission’s Order on NEPOOL’s Order No. 2003 compliance filing and whether Schedule 11 was just and reasonable at that time. A lot has changed since Schedule 11 went into effect. RENEW is challenging the continued direct assignment of O&M costs on a prospective basis, which, as discussed below, is unjust and unreasonable and unduly discriminatory.

2. Continued Direct Assignment of Network Upgrade O&M Costs is Burdensome Due to Changed Circumstances in New England and is Thus Unjust and Unreasonable and Unduly Discriminatory.

Major changes have occurred in New England since the O&M cost direct assignment provisions of Schedule 11 were approved. These changed circumstances confirm that continued direct assignment of O&M costs is unjust and unreasonable and unduly discriminatory.

Any ISO transitional considerations that may have formed the basis for Schedule 11 are no longer present. ISO-NE’s 1999 Minimum Interconnection Standard is no longer applicable. ISO-NE now operates a Forward Capacity Market (“FCM”) and participating generators are

\textsuperscript{58} Connecticut Light & Power Co. v. FPC, 557 F.2d 349, 353 (2nd Cir. 1977) (“the [collateral estoppel] doctrine is operative only as to facts that were actually litigated and decided.”); Alabama Rivers Alliance v. FERC, 325 F.3d 290, 295 n. 7 (D.C. Cir. 2003) (collateral estoppel “only applies to issues in substance the same as those resolved in an earlier proceeding . . . and bars relitigation only by those parties who actually litigated the issue in the prior proceeding”) (internal citation omitted); Resale Power Group of Iowa and WPPI Energy v. ITC Midwest LLC, 133 FERC ¶ 61,006 at PP 31, 35 (2010) (granting complaint in part over the objections of respondents and recognizing complainant’s arguments that “collateral estoppel does not bar the Complaint because none of the prior proceedings litigated or decided the issue”); Cargill Power Markets LLC v. Public Service Co. of New Mexico, 132 FERC ¶ 61,079 at P 21 (2010), \textit{reh’g den.}, 141 FERC ¶ 61,141 (2012).
required to be Capacity Network Resources ("CNRs") and obtain CNR Interconnection Service ("CNRIS"). The cost of network upgrades funded by Interconnection Customers today is far more extensive than it was when Schedule 11 was approved. Interconnection Customers are being required to pay millions of dollars more to fund the Network Upgrades necessary for them to obtain the same interconnection rights as were available in 2000 when Schedule 11 was approved. Under the FCM rules, Interconnection Customers are also required to pay additional millions of dollars in capital costs to fund additional CNR upgrades. On top of that, Interconnection Customers are required to take on a 20 to 40-year obligation to pay O&M costs in addition to the millions of dollars they pay for capital costs for Network Upgrades on a participant funded basis.

These costs can be extensive as shown in the Affidavit of Steven S. Garwood. It is a significant burden on Interconnection Customers to pay both the capital costs of Network Upgrades and the ongoing O&M costs for those upgrades. Because the O&M costs can be assessed for the 20-30 year duration of the LGIA, the Interconnection Customer could pay O&M costs that exceed the capital costs of the Network Upgrades themselves. For example, the Clear

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59 “Capacity Network Resource (‘CNR’) shall mean that portion of a Generating Facility that is interconnected to the Administered Transmission System under the Capacity Capability Interconnection Standard.” ISO-NE Tariff at Schedule 22 – Large Generator Interconnection Procedures at Section 1. “Capacity Network Resource Interconnection Service (‘CNR Interconnection Service’) shall mean the Interconnection Service selected by the Interconnection Customer to interconnect its Large Generating Facility with the Administered Transmission System in accordance with the Capacity Capability Interconnection Standard. An Interconnection Customer’s CNR Interconnection Service shall be for the megawatt amount of CNR Capability. CNR Interconnection Service does not in and of itself convey transmission service.” Id.

60 As an example, refer to Clear River Energy Center LLC v. ISO New England, Clear River Complaint at 8-9, 26, Docket No. EL18-31-000 (Nov. 17, 2017) (hereinafter Clear River Complaint).

61 See e.g., Clear River Complaint at 8-9.

62 Exhibit 1, Affidavit of Steven S. Garwood at 5-6.
River project, with a capital cost of Network Upgrades of $60 million, would have paid a total of $82 million in O&M costs over the term of a 20-year LGIA and $123 million in O&M costs over the term of a 30-year LGIA.\(^6\) This significant cost burden can discourage new generation development. It can also create too much financial risk for Interconnection Customers to continue developing a project that is already underway. Generators dropping out of the interconnection queue at late stages creates inefficiencies in the interconnection process and deprives customers of new sources of generation. Thus, the direct assignment of O&M Costs as provided in Schedule 11 is unjust and unreasonable and unduly discriminatory.

3. Direct Assignment of O&M Costs to Interconnection Customers is Not Necessary to Incent Efficient Siting Decisions or to Manage Congestion.

A common reason cited for implementing a participant funding cost allocation methodology, which directly assigns the capital costs, is that it incentivizes Interconnection Customers to make efficient siting decisions.\(^6\) The theory is that if the Interconnection Customer is required to pay all upgrade capital costs, the Interconnection Customer will choose a point of interconnection with the lowest costs. This same argument was used by the NE PTOs to argue that direct assignment of O&M Costs was necessary.\(^6\) However, the “efficient-siting” justification as a basis for allowing participant funding of capital costs is not persuasive as a justification for direct assignment of O&M Costs. While an Interconnection Customer may be

\(^{6}\) Id. at 6.

\(^{64}\) E.g. Order No. 2003, 104 FERC\[\text{¶} 61,1103 at P 695.

\(^{65}\) Clear River v. ISO New England, Answer of the New England PTOAC to Complaint of Clear River at 3, 6, 21, 23, Docket No. EL18-31 (Dec. 7 2017) (“[D]irect assignment of costs is the only way generators contribute to the transmission system they benefit from, thereby appropriately incentivizing generators to make economically efficient siting decisions.”); Clear River v. ISO New England, Motion for Leave to Answer and Answer of the New England PTOAC at 6-7, n. 13, Docket No. EL18-31 (Jan. 11, 2018); Clear River v. ISO New England, Motion for Leave to Answer and Answer of the NEPOOL Participants Committee at 7-8, Docket No. EL18-31 (Jan. 2, 2018).
able to model and predict its Network Upgrade capital costs at the time of siting, it has no ability to predict its O&M cost responsibility at the time of siting due to the lack of transparency in the calculation in the ISO-NE Tariff and the fact that the NE PTOs have near total discretion over the O&M costs and timing. No other RTO/ISO that utilizes participant funding of capital costs for network upgrades also directly assigns O&M costs.

To have an impact on siting decisions, the O&M costs would need to be known to the Interconnection Customer at the time siting decisions are made. There is no transparency in O&M Cost development and Interconnection Customers do not get that information until the very last stage of the interconnection process. As discussed below in Section IV.E, Interconnection Customers are not aware of the amount of the O&M Costs they will have to pay until late stages of the interconnection process. Thus, all siting decisions are already made before O&M costs could be considered.

It has also been argued that Schedule 11 is based on the “still applicable cost allocation principle of assigning costs to those who cause them and who are in the best position to manage them.” Generators, however, are not in the best position to manage a Transmission Owner’s O&M costs. Transmission Owners have full control over their own O&M costs. In fact, the O&M Costs that are directly assigned to an Interconnection Customer are not the actual costs to maintain the Network Upgrades funded by the Interconnection Customer. Instead, the directly assigned O&M Costs are based on average costs, calculated as part of a carrying charge, that is applied to the dollar amount of the Network Upgrades funded by the Interconnection Customer.

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66 Exhibit 4, RENEW’s Presentation to the NEPOOL Transmission Committee at 6. See also Clear River Complaint at 11.

67 Exhibit 1, Affidavit of Steven S. Garwood at 6-7, 9.

Finally, NE PTOs (and others) in New England have defended the direct assignment of O&M costs as justified because Interconnection Customers receive capacity rights in exchange. However, the receipt of capacity rights is a questionable justification for the direct assignment of capital costs of Network Upgrades, and is no support for the direct assignment of O&M Costs.

Removing direct assignment of O&M costs will provide Interconnection Customers with more cost certainty, will remove the prohibitive cost burden that is placed on some Interconnection Customers, and increase the likelihood that an interconnection request will result in a developed generating facility.

C. Directly Assigning O&M Costs to Interconnection Customers for Replacements, Upgrades and Relocations of Existing Facilities Unfairly Shifts Current O&M Costs from Load to Interconnection Customers.

If the Commission does not direct that Schedule 11 provisions allowing direct assignment of O&M Costs be removed altogether, the Commission should at a minimum disallow the direct assignment of O&M Costs where the Interconnection Customer’s Network Upgrades include the replacement, upgrading, or relocation of existing facilities. Each time an Interconnection Customer’s Network Upgrades call for the replacement, upgrading, or relocation of existing facilities, the current O&M costs for the replaced, upgraded or relocated facility are then directly

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70 Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, ANOPR, 176 FERC ¶ 61,024 at P 113 (2021) (“While the interconnection customer may receive well-defined capacity rights associated with the increased transfer capability caused by the interconnection-related network upgrade, these well-defined capacity rights do not compensate the interconnection customer for the broad range of benefits that the interconnection-related network upgrades can provide to the transmission system . . .”).

71 See id. at PP 125, 140.
assigned to the Interconnection Customer. Thus, the existing O&M cost that was previously included in transmission rates is shifted to a direct assignment charge to the Interconnection Customer. Direct assignment in this context is a clear and egregious form of cost shifting from transmission customers (load) to Interconnection Customers.\textsuperscript{72}

As discussed above, directly assigning the O&M Costs of Network Upgrades is inconsistent with the O&M cost allocation policy. Shifting existing O&M costs on existing facilities from transmission customers to Interconnection Customers is a further example of the fundamental unfairness of the current Schedules 11 and 21 provisions. When required to replace, upgrade or relocate existing facilities, the Interconnection Customer is required to pay 100% of the costs for which load benefits in two ways: (1) load benefits from the replaced or upgraded facilities themselves, and (2) load benefits by not having to pay the O&M costs on those facilities going forward. Even if the O&M costs are not directly assigned, as RENEW requests, load would benefit from reduced O&M on existing facilities through replacement of older facilities with new facilities because upgrades to existing facilities often decreases the O&M cost of those facilities in the short term. Thus, it is unjust and unreasonable to directly assign the O&M Cost of Network Upgrades that call for the replacement, upgrading or relocation of existing network facilities.

\textsuperscript{72} For example, as noted in the Clear River Complaint, about 90% of the estimated $60 million cost for the NGrid Network Upgrades represents the replacement and relocation of existing equipment. Clear River Complaint at 29, 32-33. Accordingly, about $3.7 million of the $4.1 million estimated DAF charge for O&M Costs assigned to Clear River was related to the replacement and relocation of facilities for which O&M Costs were recovered in Tariff transmission rates. Clear River Complaint at 29, n.25.
D. The Direct Assignment of O&M Costs is Burdensome to Interconnection Customers, While the Impact of Including O&M Costs in Transmission Rates is *De Minimis*.

In some cases, the total amount of O&M costs directly assigned to an Interconnection Customer over the term of its interconnection agreement is likely to exceed the total capital cost of the Interconnection Customer’s specific Network Upgrades or Distribution Upgrades and thus is a heavy burden to place on Interconnection Customers. Such a heavy financial burden acts as a barrier to entry for new resources in New England.

An example of how direct assignment of O&M costs is burdensome can be found in the recent Section 206 complaint filed by Clear River Energy Center LLC (Clear River). The Clear River project sought to interconnect to transmission facilities owned by National Grid and operated by ISO-NE. The Clear River project was assigned an estimated $60 million to fund new network facilities, upgrades to existing network facilities, and relocation of an existing 345 kV network facility on the National Grid system. Additionally, it was assigned an estimated $4.6 million to fund a network upgrade on the Eversource transmission system. Clear River estimated the initial direct assignment of O&M Costs for the National Grid upgrades to be $4.1 million *annually*. This would have cost $82 million in direct assignment O&M charges over

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73 *Clear River Energy Center LLC v. ISO New England*, Docket No. EL18-31-000. Clear River later withdrew its complaint, stating “the relief sought by Clear River has proven contentious in the Rhode Island Energy Facility Siting Board (‘EFSB’) proceeding regarding Clear River’s application for the permits necessary for the Project to be constructed. Accordingly, in order to remove this issue from being considered in any way in the EFSB proceeding – and to eliminate even the false perception of negative ratepayer impact – Clear River is submitting this notice of withdrawal of the Complaint.” *Clear River Energy Center LLC v. ISO New England*, Withdrawal of Complaint at 2, Docket No. EL18-31-000 (Jan. 23, 2018).

74 *Id.* at 4.

75 *Id.* at 4-5.
the initial 20-year term of the Clear River LGIA, $123 million over a thirty-year term, and $164 million over a forty-year term.\textsuperscript{76}

Of the $60 million in upgrades on the National Grid system, Clear River calculated that roughly $54 million, or 90%, was attributable to the replacement and relocation of existing equipment, for which National Grid’s transmission customers were already paying the O&M charges in transmission rates.\textsuperscript{77} However, because Clear River was required to replace or relocate those existing facilities as part of its network upgrades, the O&M costs for those facilities was shifted to Clear River. Specifically, Clear River would be directly assigned more than $3.7 million annually (90% of the estimated $4.1 million annual direct assignment O&M charge) for O&M costs that that were previously paid for by transmission customers in transmission rates.\textsuperscript{78} Thus, Schedules 11 and 21, which require direct assignment of the ongoing O&M costs for the life of the Network Upgrades, can be a substantial burden on Interconnection Customers and can cause an unfair shifting of O&M costs from transmission customers to Interconnection Customers.

By contrast, including all O&M costs related to Network Upgrades in the annual transmission revenue requirement of the NE PTOs would have a \textit{de minimis} impact on transmission rates. In the 2021 ISO-NE stakeholder process, the NE PTOs provided information to RENEW indicating that direct assignment of O&M costs (“annual charges”) totaled approximately $19.166 million in 2020.\textsuperscript{79} In 2021 the total RNS transmission revenue

\textsuperscript{76} Id. at 5.
\textsuperscript{77} Id. at 29.
\textsuperscript{78} Id.
\textsuperscript{79} \textit{Exhibit 4}, RENEW’s Presentation to the NEPOOL Transmission Committee at p. 16. It is not clear whether this figure includes annual charges on both Network Upgrades and directly assigned
requirement was $2.572 billion. The impact of including the entire $19.166 million in RNS transmission rates at that time would have been 0.74%.

More recently, in response to the Massachusetts Attorney General’s (MASS AG’s) information requests in the NE PTOs’ most recent Annual Formula Rate Update process, the NE PTOs identified the 2021 revenue credits for O&M charges directly assigned to Interconnection Customers as $9,162,507 for the RNS rate. When compared to the ATRR for RNS service for 2023, the percentage impact on the RNS transmission rate of no longer directly assigning that amount to Interconnection Customers is only 0.3435%.

Table 1: RNS Transmission Rate Impact

<table>
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<tr>
<th>Utility</th>
<th>RNS Revenue Credit</th>
<th>RNS ATRR</th>
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</tbody>
</table>

For the LNS rates, the percentage impact on the LNS transmission rate of no longer directly assigning the non-PTF direct assignment charges is also very small, and most systems would not be affected at all.

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80 Exhibit 1 – Attachment 2, Rate Table Workpaper; Exhibit 1, Affidavit of Steven S. Garwood at 8. Exhibit 7, NE PTO Responses to Information Requests.

81 Exhibit 1 – Attachment 2, Rate Table Workpaper. The following NE PTOs indicated that they currently have no annual costs excluded from RNS or LNS rates that are allocated to Interconnection Customers, or they have no LNS customers: Versant Power, Maine Electric Power, Holyoke Gas & Electric Dept., CTMEEC/CMEEC, Fitchburg Gas, New Hampshire Transmission LLC, Braintree Electric Light Dept., Reading Municipal Light Dept., Wallingford Electric Dept., Shrewsbury Electric and Cable Operations, Middleborough Gas & Electric Dept., Taunton Municipal Lighting Plant, Norwood Municipal Light Dept., Chicopee Electric Light Dept.
Table 2: LNS Rate Impact

<table>
<thead>
<tr>
<th>Utility</th>
<th>LNS Revenue Credit</th>
<th>LNS ATRR</th>
<th>Percentage Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSTAR East</td>
<td>$792,696</td>
<td>$118,573,034</td>
<td>0.6432</td>
</tr>
<tr>
<td>NSTAR West</td>
<td>$129,300</td>
<td>$47,890,578</td>
<td>0.270</td>
</tr>
<tr>
<td>New England Power</td>
<td>$3,300,000</td>
<td>$172,698,940</td>
<td>1.911</td>
</tr>
<tr>
<td>United Illuminating</td>
<td>$264,000</td>
<td>$130,046,813</td>
<td>0.203</td>
</tr>
<tr>
<td>Central Maine Power</td>
<td>$2,458,873</td>
<td>$83,186,141</td>
<td>2.956</td>
</tr>
<tr>
<td>Green Mountain</td>
<td>$8,519</td>
<td>$25,351,599</td>
<td>0.0336</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$6,953,388</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Some of the O&M revenue credits allocated to LNS rates as specified above may be allocated differently between RNS and LNS in future rate years.\(^{82}\) If additional O&M amounts are allocated to RNS instead of LNS in the future, the rate impact will be even smaller. Thus, as demonstrated above, directly assigning Network Upgrade O&M Costs presents a substantial burden to Interconnection Customers, and discontinuing such direct assignment would have a *de minimis* effect on transmission rates.

**E. The Lack of Transparency in the Direct Assignment of Schedule 11 O&M Costs is Unjust and Unreasonable.**

The Commission has held that “the integrity and transparency of formula rates are critically important to ensuring just and reasonable rates.”\(^{83}\) A formula rate is transparent if it is

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\(^{82}\) Tariff Schedule 11(5); PTO-specific Tariff Schedule 21s; *Exhibit 4*, RENEW’s Presentation to the NEPOOL Transmission Committee at 17-18.

\(^{83}\) *ISO-NE*, 153 FERC ¶ 61,343 at P 6 (2015). *E.g.*, *MISO*, 143 FERC ¶ 61,149 at P 83 (2013) (“Both a formula rate and its inputs must be transparent; it is essential to their being just and reasonable.”); *Empire Dist. Electric Co.*, 148 FERC ¶ 61,030 at P 4 (2014) (“Such formula rate protocols, in order to fulfill this purpose, should afford adequate transparency to affected customers, state regulators or other interested parties, as well as provide mechanisms for resolving potential disputes; they can be an important tool in ensuring just and reasonable rates.”); *Delaware Division of the Public Advocate v. Baltimore Gas and Electric Co.*, 148 FERC ¶ 61,134 at PP 27-28 (2014).
“sufficiently clear that all parties can determine what costs go into the rate and how it will be calculated.”

The NE PTOs have historically charged rates that lack basic transparency.

In 2015, the Commission held that the ISO-NE Tariff “lacks adequate transparency and challenge procedures with regard to the transmission formula rate for ISO-NE [PTOs]” and instituted an FPA Section 206 proceeding into the NE PTOs’ RNS and LNS formula rates. In instituting the FPA Section 206 proceeding, the Commission stated that “[t]he formula rates appear to lack sufficient detail in order to determine how certain costs are derived and recovered in the formula rates” and “the rates lack adequate safeguards to ensure that the input data is correct and accurate, that calculations are performed consistently with the formula rate, and that the costs to be recovered in the formula rate are reasonable and prudently incurred.” The Commission established hearing and settlement procedures to develop transmission formula rates that provide “sufficient specificity, clarity, and transparency so as to be understandable and reviewable by those affected by them and by the Commission.”

In 2019, Commission rejected the NE PTOs’ contested settlement in the Section 206 proceeding based on, inter alia, “the overall lack of necessary detail and transparency throughout the Settlement . . . .” Commission Trial Staff strongly opposed the settlement on the grounds

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84 *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053 at P 120 (2005); *Maine Yankee Atomic Power Co.*, 42 FERC ¶ 61,307 at 61,923 (1988); *MISO*, 143 FERC ¶ 61,149 at PP 81, 83 (2013) (“We find that MISO’s formula rate protocols provide insufficient transparency with respect to information about the transmission owners’ costs and revenue requirements.”).


86 *Id.*

87 *Id.* at P 6.

88 *Id.* at P 9.

that it was “woefully inadequate in transparency”\textsuperscript{90} such that “a reviewer cannot understand and review the proposed formula without additional information from the NETOs.”\textsuperscript{91} In 2020, the Commission accepted a separate uncontested settlement.\textsuperscript{92} However, that settlement did not address the justness and reasonableness of Schedule 11 and the NE PTOs’ ability to directly assign O&M Costs for Network Upgrades to Interconnection Customers.\textsuperscript{93}

Today, the NE PTOs continue to charge direct assignment O&M costs on Network Upgrades to Interconnection Customers that lack fundamental transparency and that cannot be understood without additional information from the NE PTOs. Interconnection Customers are often not informed of the O&M Costs that will be directly assigned to them until the final stages of the interconnection process, such as when they receive their LGIA. In addition, the manner in which O&M Costs are calculated is not disclosed, the amounts can change over time without notice, and it is often not specified how long O&M charges will continue vis-à-vis the executed interconnection agreement. This violates the filed-rate doctrine to the extent the O&M Cost calculation methodology is not on file with the Commission.\textsuperscript{94}

\textsuperscript{90} Initial Comments of the Commission Trial Staff Opposing the Offer of Settlement and Settlement Agreement as Filed at 36, Docket Nos. EL16-19 and ER18-2235 (Sept. 6, 2018).

\textsuperscript{91} Id. at 76.

\textsuperscript{92} ISO-NE, 173 FERC ¶ 61,270 (2020).

\textsuperscript{93} See id.; ISO-NE, Certification of Uncontested Settlement, 172 FERC ¶ 63,017 (2020); ISO-NE, Transmittal Letter to Settlement Compliance Filing at 2, Docket No. ER20-2054 (Jan. 27, 2021).

\textsuperscript{94} See, e.g., Oklahoma Gas and Electric Co. v. FERC, 11 F.4th 821, 829-30 (D.C. Cir. 2021) (“These statutory provisions ‘mandating the open and transparent filing of rates and broadly proscribing their retroactive adjustment are known collectively as the ‘filed rate doctrine.’ The so-called ‘doctrine’ is shorthand for the interconnected statutory requirements that bind regulated entities to charge only the rates filed with FERC and to change their rates only prospectively. When it applies, the filed rate doctrine is ‘a nearly impenetrable shield’ and does not yield, ‘no matter how compelling the equities.’”) (internal citations omitted). The filed rate doctrine “forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority.” Ark. La. Gas Co. v. Hall, 453 U.S. 571, 577 (1981); Pac. Gas & Elec. Co. v. FERC, 373 F.3d 1315, 1319 (D.C. Cir. 2004). Federal Power Act § 205 requires public utilities to “keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the
RENEW has tried to obtain more information regarding the direct assignment of O&M costs, but has been met with obstacles. As discussed below, in the current annual transmission Formula Rate Information Exchange process, some NE PTOs refused to answer a simple request to identify the tariff or rate schedule that specifies how the directly assigned O&M Costs are derived. Some NE PTOs objected on the grounds that the requests were beyond the scope of the Interim Formula Rate Protocols.

Moreover, the information needed to understand the cost inputs that comprise the O&M charges and how they are calculated was inaccessible through the ISO-NE stakeholder process. In 2021, through the ISO-NE stakeholder process, RENEW sought information from the NE PTOs on what portion of the O&M Costs is related to Network Upgrades or Interconnection Facilities, how the annual charges are applied as credits to LNS or RNS revenue requirements, and the impact on RNS and LNS rates if such annual charges were not collected from Interconnection Customers. In response, the NE PTOs refused to provide the requested information, or indicated that they did not know the answers. The NE PTOs stated, “These are not simple questions to answer. To develop a response will require considerable time and effort on the part of the PTO’s. Unfortunately, this is something that the PTO’s cannot commit to at this time.”

Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.” 16 U.S.C. § 824d(c).

95 Exhibit 7, NE PTO Responses to Information Requests (for example: Versant Power Response to Massachusetts Attorney General Request 1-6(b) (“Versant Power objects to Request 1.6(b) insofar as it seeks information that is beyond the scope of the Information Exchange Process.”)).

96 Exhibit 4, RENEW’s Presentation to the NEPOOL Transmission Committee at pp. 17-18.

97 Id. at p. 18; Exhibit 5, NE PTO Response to 2021 Information Requests.
More recently, RENEW and the MASS AG submitted timely information requests to the NE PTOs through the currently effective Interim Formula Rate Protocols process. As shown in Exhibit 7, RENEW and the MASS AG’s information requests appropriately sought data regarding the amount of annual O&M costs included in transmission rates and the amount excluded from transmission rates to be directly assigned to Interconnection Customers. A representative sample of the NE PTOs’ objections is included in Exhibit 7. The objections state that RENEW is not an “Interested Party” under the Interim Formula Rate Protocols, despite the fact that the vast majority of RENEW’s members are individually Interested Parties. The MASS AG is specifically listed in the Interim Formula Rate Protocols as an Interested Party, but many of the NE PTO’s objected on the basis that the MASS AG’s requests are beyond the scope of the Interim Formula Rate Protocols. Nevertheless, a few of the NE PTOs provided some substantive data as discussed in the tables above.

Finally, on November 15, 2022, RENEW submitted an Informal Challenge pursuant to the Interim Formula Rate Protocols. In response, many of the NE PTOs stated that RENEW’s Informal Challenge was a letter and not a proper Informal Challenge because RENEW was not an Interested Party. They also claim that RENEW’s inquiries regarding the appropriate inclusion of O&M costs in transmission rates versus direct assignment of such O&M costs is

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98 The Interim Formula Rate Protocols are located at Tariff Section II, Attachment F, Appendix C (Version 1.0.0).

99 A representative sample of PTO responses is provide in Exhibit 8, RENEW’s Informal Challenge and NE PTO Responses to Informal Challenge. Central Maine Power Company, National Grid, Eversource, Maine Electric Power Co., and the United Illuminating Company all responded: “. . . RENEW Northeast, Inc’s (‘RENEW’) November 15, 2022, letter (‘RENEW Letter’) is not an Informal Challenge under the Interim Transmission Formula Rate Protocols (‘Interim Protocols’) because RENEW is not an Interested Party under the Interim Protocols . . . ” (footnotes omitted). These PTOs “reiterate[d] [their] objections that RENEW is not an Interested Party under the Interim Protocols and therefore is not entitled to participate in this Information Exchange Period through information requests or informal challenges.” Vermont Transco LLC and Green Mountain Power Corp. similarly responded that RENEW is not an Interested Party and the RENEW Informal Challenge was not actually an Informal Challenge.
beyond the scope of the Interim Formula Rate Protocols.\textsuperscript{100} Thus, the lack of transparency continues.

In the event that the Commission does not direct removal of O&M Costs from the direct assignment provisions of Schedules 11 and 21, the Commission should at a minimum direct the NE PTOs to provide greater transparency in the calculation of Network Upgrade O&M Costs. Specifically, the NE PTOs should be required to file formulas that reasonably allow Interconnection Customers to calculate such costs. In addition, each NE PTO should be required to make an annual informational filing with the Commission showing the calculation of the annual charge with sources of data inputs comparable to what the NE PTOs are required to do with their transmission rates. Finally, each NE PTO should be required to notify Interconnection Customers earlier in the interconnection process with an estimate of the O&M Costs they will be expected to pay, such as when the System Impact Study results are provided.

F. RENEW Should Be Considered an “Interested Party” Under the Formula Rate Protocols or the Protocols are Unjust and Unreasonable and Should Be Revised.

As discussed above, many of the NE PTOs have taken the position that RENEW is not an Interested Party under the Interim Formula Rate Protocols. The current NE PTOs’ Protocols contain the following definition:

**Interested Party(ies)** shall mean Transmission Customers under the ISO-NE Tariff, New England state utility regulatory commissions, New England consumer advocacy agencies, NESCOE, New England state attorneys general, NEPOOL as an organization and including members of the NEPOOL Transmission Committee, and ISO-NE.

\textsuperscript{100} \textit{Id.} Central Maine Power Company, National Grid, Eversource, Maine Electric Power Co., the United Illuminating Company, and Vermont Transco LLC all responded: “...RENEW identifies no way in which the Annual Update of ...[the] PTOs is contrary to the Formula Rate” and “...claims related to the justness and reasonableness of the Formula Rate are beyond the scope of the Interim Protocols ...”
These NE PTOs argue that RENEW does not fall under any of the enumerated categories. As a result, they claim that RENEW’s November 15, 2022 Informal Challenge is not a valid Informal Challenge under the Interim Formula Rate Protocols and that RENEW is not entitled to participate at all in the information exchange or challenge process under the Protocols.  

The NE PTOs’ interpretation of Interested Parties under the Protocols is unjust and unreasonable because it does not afford adequate opportunity for participation and access to information about transmission rates. Thus, RENEW is challenging the NE PTOs’ interpretation of the Protocols under FPA Section 206 and requests that the NE PTOs be directed to conform their definition of Interested Party with the definition accepted by the Commission in the MISO Protocol Orders and the many Show Cause Orders subsequently issued by the Commission.

In the MISO Protocol Orders, the Commission established its policy regarding transmission formula rate protocols to ensure just and reasonable rates. The Commission adopted a definition of Interested Party that states:

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101 Exhibit 8, RENEW’s Informal Challenge and NE PTO Responses to Informal Challenge. For example, Versant Power argues, “Therefore, RENEW is not entitled to participate in this Information Exchange Period through information requests or challenges.” Id.

102 Interim Formula Rate Protocols at VI.3 (“Subject to any moratorium . . ., failure to file an Informal Challenge or a Formal Challenge shall not bar anyone from making a Federal Power Act section 206 filing.”). RENEW is not subject to the formula rate settlement moratorium approved in Docket No. ER20-2054 because it was not a Settling Party. Additionally, refer to FERC Office of Public Participation, Formula Rates in Electric Transmission Proceedings: Key Concepts and How to Participate (last updated July 5, 2022) (If there is not an open FERC proceeding addressing the utility’s formula rate protocols “you may be able to file a complaint under Section 206 of the Federal Power Act (FPA) if you believe that the utility’s formula rate protocols are unjust and unreasonable.”) available at https://www.ferc.gov/formula-rates-electric-transmission-proceedings-key-concepts-and-how-participate


104 MISO Compliance Order, 146 FERC ¶ 61,212 at P 18.
all interested parties in information exchange and review processes, including but not exclusive to customers under the [MISO] Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorney[s] general.\textsuperscript{105} (emphasis added)

In the Show Cause orders issued after the MISO Compliance Order was issued, the Commission directed the applicable utility to provide an updated definition of Interested Parties in line with what the Commission accepted in the MISO Compliance Order or “show cause why it should not be required to do so.”\textsuperscript{106}

RENEW is an Interested Party because its members are mostly Transmission Customers (i.e., interconnection customers) or members of NEPOOL as an organization. Nothing in the Interim Formula Rate Protocols expressly precludes Interested Parties from submitting Information Requests or participating through an association, such as RENEW. The Commission’s language in the MISO Compliance Order clarifies that Interested Parties are not limited to the enumerated categories. The NE PTOs’ interpretation of Interested Party in the Protocols unreasonably limits participation of entities in the formula rate and information exchange process. As discussed above, this prevents RENEW from obtaining necessary data on behalf of its Interconnection Customer members to verify inputs to the formula rates and to ensure that both transmission rates and O&M costs are just and reasonable.\textsuperscript{107}

\textsuperscript{105} \textit{Id.} See also \textit{SPP}, 180 FERC ¶ 61,022 at PP 13-14 (2022).

\textsuperscript{106} \textit{See, e.g., Public Service Co. of Colorado,} 179 FERC ¶ 61,057 at PP 15-16 (2022) (Order on Formula Rate Protocols and Establishing a Show Cause Proceeding); \textit{Southwest Power Pool, Inc.}, 180 FERC ¶ 61,024 at PP 16-17 (2022) (NPPD Order on Formula Rate Protocols and Establishing a Show Cause Proceeding); \textit{Omaha Public Power District,} 180 FERC ¶ 61,025 at PP 14-15 (2022); \textit{PacifiCorp,} 179 FERC ¶ 61,053 at PP 15-16 (2022); \textit{Alabama Power Co.}, 178 FERC ¶ 61,207 at PP 19-20 (2022).

\textsuperscript{107} As noted above in footnote 73, some Interconnection Customers may be reluctant to participate in such rate inquiries on their own behalf.
Thus, the Commission should either clarify that RENEW is an Interested Party under the Protocols as currently drafted, or, like in the recent Show Cause orders, direct the NE PTOs to revise the definition of Interested Party so that it includes entities such as RENEW. This request applies to both versions of the NE-PTOs’ Protocols that are on file with the Commission.

V. REQUESTED RELIEF

RENEW respectfully requests that the Commission issue an order:

(1) finding that ISO-NE’s Tariff is unjust and unreasonable, and unduly discriminatory to the extent that it allows direct assignment of O&M Costs to Interconnection Customers in connection with Network Upgrades the Interconnection Customer is required to fund;

(2) directing ISO-NE and the NE PTOs to modify Schedule 11 and other related Tariff provisions, including the pro forma LGIA, to remove provisions related to the direct assignment of O&M Costs;

(3) directing NE PTOs to modify their respective Schedule 21 to conform with the changes to Schedule 11 and to remove any direct assignment of O&M Costs on Network Upgrades;

(4) prohibiting NE PTOs from collecting or attempting to collect such O&M Costs on Network Upgrades through direct assignment charges or otherwise from existing and future Interconnection Customers;

(5) directing removal of direct assignment of O&M Costs on replaced or relocated facilities, if the Commission does not disallow direct assignment of O&M Costs entirely; and

108 Refer to Orders cited above in footnotes 104-106. See also Puget Sound Energy, Inc., 181 FERC ¶ 61,185 (2022) (accepting protocol definition as “all interested parties in information exchange and review processes, including but not exclusive to customers under the Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorney[s] general.”); Southwest Power Pool, Inc., 180 FERC ¶ 61,025 P 15 (2022) (“[W]e find that Omaha Power’s formula rate protocols should be revised to provide a definition of the “interested parties” that can participate in customer meetings, information exchange, and challenge procedures, and to provide all interested parties access to information about the Annual Updates as provided by the MISO Protocol Orders and subsequent precedent, or SPP should show cause why it should not be required to do so.”); Black Hills Power, Inc., 150 FERC ¶ 61,198, P9 (2015) (accepting protocols broadly defining an interested party as including, but not limited to, customers under the Joint Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorneys general).

109 On June 15, 2023, the currently effective Interim Formula Rate Protocols will be replaced with the Formula Rate Protocols located in Tariff Section II, Attachment F, Appendix C, (Version 2.0.0). Both versions of Protocols contain the same narrow definition of “Interested Party(ies).”
(6) clarifying that RENEW is an “Interested Party” or directing ISO-NE and the NE PTOs to modify the definition of Interested Party(ies) in the Interim Formula Rate Protocols and the Formula Rate Protocols as discussed above.

If the Commission does not direct removal of O&M Costs from the direct assignment provisions of Schedules 11 and 21 and grant the other relief requested above, the Commission should set the Complaint for an evidentiary hearing. In any event, at a minimum, the Commission should direct the NE PTOs to:

(7) provide greater transparency in the calculation of O&M Costs by filing formulas that reasonably allow Interconnection Customers to calculate such costs and each NE PTO should be required to make an annual informational filing with the Commission showing the calculation of the annual charge with sources of data inputs comparable to what the NE PTOs are required to do with their transmission rates;

(8) require NE PTOs to notify Interconnection Customers earlier in the interconnection process with an estimate of the O&M Costs they will be expected to pay, such as when the System Impact Study results are provided.

RENEW requests a refund effective date of December 13, 2022. RENEW also requests that the Commission issue an order granting the Complaint by April 14, 2023, which is approximately 60 days prior to the June 15, 2023 deadline for the NE PTOs to publish a draft of the Annual Update to the data used in the transmission formula rate.

VI. COMMUNICATIONS

Complainant requests that all correspondence and communications regarding this filing be addressed to the following persons, who should be placed on the Commission’s official service list in this proceeding:

Francis Pullaro
Executive Director
RENEW Northeast, Inc.
PO Box 383
Madison, CT 06443
Tel: 646-734-8768
fpullaro@renew-ne.org

Linda Walsh
Sylvia Bartell
Husch Blackwell LLP
1801 Pennsylvania Ave., NW, Suite 1000
Washington, DC 20006
Tel: 202-378-2308
linda.walsh@huschblackwell.com
sylvia.bartell@huschblackwell.com
VII. RULE 206 FILING REQUIREMENTS

A. Rules 206(b)(1) and (2): How Action or Inaction Violates Applicable Statutory Standards or Regulatory Requirements

As discussed above in Section IV.B through IV.F, Schedules 11 and 21 of the ISO-NE Tariff are unjust and unreasonable and unduly discriminatory in violation of the FPA to the extent they allow direct assignment to Interconnection Customers of O&M Costs related to the Network Upgrades that an Interconnection Customer is required to fund.

B. Rule 206(b)(3): Business, Commercial, Economic or Other Issues Presented by the Action or Inaction as Such Relate to or Affect the Complainants

As demonstrated above, directly assigning O&M costs to Interconnection Customers violates the Commission’s cost allocation policy and presents a barrier to entry for new generation resources in New England. The ISO-NE Tariff provisions at issue suppress Complainant’s members’ business activities within the ISO-NE footprint because developing generation in ISO-NE is less economically viable and more discriminatory than in other ISOs and RTOs.

C. Rules 206(b)(4) and (5): Quantification of the Financial Impact or Burden Created for the Complainants and the Practical, Operational, or Other Nonfinancial Impacts Imposed as a Result of the Action or Inaction

As discussed above in Section IV, the financial impact on Interconnection Customers is substantial. As discussed above in Section IV, Interconnection Customers are required to pay for O&M Costs over which they have no control.

D. Rule 206(b)(6): Whether the Issues Presented are Pending in an Existing Commission Proceeding or a Proceeding in Any Other Forum in Which the Complainant(s) is a Party, and if so, Why Timely Resolution Cannot be Achieved in that Forum

The issues raised in the Complaint are not pending in an existing Commission proceeding or a proceeding in any other forum.
E. **Rule 206(b)(7): Specific Relief or Remedy Requested, Including Any Request for Stay or Extension of Time, and the Basis for that Relief**

RENEW’s specific relief requested is discussed above in Section V.

F. **Rule 206(b)(8): Documents that Support the Facts in the Complaint in Possession of, or Otherwise Attainable by, the Complainant, including, but not limited to, Contracts and Affidavits**

The following exhibits are attached in support of the Complaint:

- **Exhibit 1** - Affidavit of Steven S. Garwood
  - *Attachment 1* – Curriculum Vitae and List of Prior Testimony
  - *Attachment 2* – Rate Table Workpaper
- **Exhibit 2** – Proposed Changes to Schedules 11(3) and 11(5)
- **Exhibit 3** – NEPOOL Opinion Letter (June 13, 2002)
- **Exhibit 4** – RENEW’s Presentation to the NEPOOL Transmission Committee (for the October 26, 2021 meeting)
- **Exhibit 5** – NE PTO Response to 2021 Information Request
- **Exhibit 6** – Memorandum Re: Vote on Participant Proposal to Change Schedule 11 Cost Allocation (Oct. 27, 2021)
- **Exhibit 7** – NE PTO Responses to Information Requests
- **Exhibit 8** – RENEW’s Informal Challenge and NE PTO Responses to Informal Challenge
- **Exhibit 9** – Form of Notice

G. **Rule 206(b)(9): (i) Whether the Enforcement Hotline, Dispute Resolution Service, Tariff-based Dispute Resolution Mechanisms, or Other Informal Dispute Resolution Procedures were Used, or Why These Procedures Were Not Used; (ii) Whether the Complainants Believe that Alternative Dispute Resolution (ADR) under the Commission’s Supervision Could Successfully Resolve the Complaint; (iii) What Types of ADR Procedures Could be Used; and (iv) Any Process That Has Been Agreed on For Resolving the Complaint**

This matter is properly before the Commission. For several years, RENEW and other parties have attempted to reach a resolution of these issues directly with the ISO-NE and NE PTOs without success. See Section III.D above for a discussion of the recent stakeholder process in which RENEW proposed revisions to Schedule 11. The proposed revisions received a 55.4% vote in favor, which narrowly fell short of the required two thirds vote.
In addition, as discussed in Sections IV.E and F, RENEW sought information about O&M charges through the NE PTO’s annual formula rate update process. Many of the NE PTOs refused to provide information to RENEW based on their objections that RENEW was not an “Interested Party” as defined in the ISO-NE Interim Formula Rate Protocols and that the requests were otherwise beyond the scope of the annual formula rate update process.

Given the lack of meaningful voluntary engagement by the ISO-NE and the NE PTOs and their likely non-compliance with the Information Exchange requirements in the ISO-NE Interim Formula Rate Protocols, RENEW does not believe that the use of any other alternative dispute mechanisms under the Commission’s supervision would be useful in resolving the issues raised in this Complaint. Neither RENEW nor any of its members have contacted the Commission’s Enforcement Hotline or Dispute Resolution Service in connection with the issues discussed in this Complaint.

**H. Rule 206(b)(10): Form of notice of the complaint suitable for publication in the FEDERAL REGISTER in accordance with the specifications in §385.203(d) of this part**

The form of notice shall be on electronic media as specified by the Secretary. A form of notice suitable for publication in the Federal Register is attached to this complaint as *Exhibit 9.*

**I. Rule 206(b)(11): Need for Fast Track processing and why the standard processes are not adequate**

RENEW is not requesting Fast-Track processing of this Complaint, but requests that the Commission issue an order expeditiously granting the Complaint or setting it for hearing.

**J. Rule 206(c): Service of the Complaint on the Respondent, Affected Regulatory Agencies, and Others the Complainant Reasonably Knows may be Expected to be Affected by the Complaint**

A copy of this Complaint and all exhibits has been served in accordance with this requirement.
VIII. CONCLUSION

RENEW respectfully requests that the Commission issue an order on an expedited basis determining that Schedules 11 and 21 of Part II of the ISO-NE Tariff are unjust and unreasonable to the extent they permit transmission owners to directly assign to Interconnection Customers O&M Costs associated with Network Upgrades constructed to facilitate a generator interconnection. Schedule 11 imposes an impermissible cost shift in violation of the Commission’s O&M cost allocation policy and creates unjust and unreasonable and unduly discriminatory rates. In addition, the NE PTOs should be directed to modify their Schedule 21 and other tariff provisions, if necessary, to eliminate the direct assignment of Network Upgrade O&M Costs to Interconnection Customers. RENEW requests that the Commission issue an order on an expedited basis granting the Complaint or setting it for hearing. RENEW also requests that the Commission establish a refund effective date of December 13, 2022, the earliest possible effective date. RENEW also requests that the Commission issue an order granting the Complaint by April 14, 2023, which is approximately 60 days prior to the June 15, 2023 deadline for the NE PTOs to publish a draft of the Annual Update to the data used in the transmission formula rate.

Respectfully submitted,

/s/ Linda Walsh

Francis Pullaro
Executive Director
RENEW Northeast, Inc.
PO Box 383
Madison, CT 06443
Tel: 646-734-8768
fpullaro@renew-ne.org

Linda Walsh
Sylvia Bartell
Husch Blackwell LLP
1801 Pennsylvania Ave., NW, Suite 1000
Washington, DC 20006
Tel: 202-378-2308
linda.walsh@huschblackwell.com
sylvia.bartell@huschblackwell.com

Counsel for RENEW Northeast, Inc.

Dated: December 13, 2022