

171 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

ISO New England Inc.

Docket No. EL19-90-000

ORDER ON SECTION 206 INVESTIGATION

(Issued June 18, 2020)

1. On October 17, 2019, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 209(a) of the Commission's Rules of Practice and Procedure,² the Commission instituted proceedings to consider how the exemption for immediate need reliability projects that the Commission permitted to Order No. 1000's³ requirement to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission developer with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation is being implemented.⁴ In this order, we find that there is insufficient evidence in the record to find under FPA section 206 that ISO New England Inc.'s (ISO-NE) implementation of the exemption for immediate need reliability projects is unjust, unreasonable, or unduly discriminatory or preferential.⁵ Accordingly, we terminate this FPA section 206 proceeding.

¹ 16 U.S.C. § 824e (2018).

² 18 C.F.R. § 385.209(a) (2019).

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁴ *ISO New England Inc.*, 169 FERC ¶ 61,054 (2019) (October 2019 Order).

⁵ The October 2019 Order instituted proceedings against ISO-NE, PJM Interconnection, L.L.C. (PJM), and Southwest Power Pool, Inc. (SPP). PJM's and SPP's

I. Background

A. Immediate Need Reliability Project Exemption

2. In Order No. 1000, the Commission required that public utility transmission providers, among other things: (1) “eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal⁶ for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation”;⁷ (2) “establish . . . procedures to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation . . . [that] could be, for example, a non-discriminatory competitive bidding process . . . [and] could also allow the sponsor of a transmission project selected in a regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project”;⁸ and (3) provide that “a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.”⁹

3. In its Order No. 1000 compliance filing, ISO-NE proposed to create an exemption where a federal right of first refusal may be retained for transmission facilities that are

implementation of the exemption for immediate need reliability projects are addressed in Docket Nos. EL19-91-000 and EL19-92-000, respectively.

⁶ The phrase “a federal right of first refusal” refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

⁷ “Transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs.” Order No. 1000, 136 FERC ¶ 61,051 at P 63.

⁸ *Id.* P 336.

⁹ *Id.* P 332. The Commission also stated that “the cost of a transmission facility that is not selected in a regional transmission plan for purposes of cost allocation, whether proposed by an incumbent or by a nonincumbent transmission provider, may not be recovered through a transmission planning region’s cost allocation method or methods.” *Id.*

needed in a short time frame to address reliability needs (i.e., immediate need reliability projects). The Commission partially accepted this proposal,¹⁰ explaining that, to avoid delays in the development of projects needed to resolve a time-sensitive reliability criteria violation, it was just and reasonable for ISO-NE to create a class of transmission projects that are exempt from competition.¹¹ The Commission also stated that “such an exception should only be used in certain limited circumstances.”¹² To that end, the Commission established five criteria for the exemption, which it believed would place reasonable bounds on ISO-NE’s discretion to determine whether there is sufficient time to permit competition and, as a result, would ensure that the exemption is used only in limited circumstances.¹³ Those five criteria are:

- i. The project must be needed in three years or less to solve reliability criteria violations (Criterion One);¹⁴
- ii. The Regional Transmission Organization (RTO) must separately identify and then post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity (Criterion Two);
- iii. The RTO must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier (Criterion Three);

¹⁰ *ISO New England Inc.*, 143 FERC ¶ 61,150, at PP 235-239 (2013) (ISO-NE First Compliance Order), *order on reh’g and compliance*, 150 FERC ¶ 61,209, at PP 221-226; *order on reh’g and compliance*, 153 FERC ¶ 61,012 (2015).

¹¹ ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 236.

¹² *See id.* (finding the exemption is acceptable “in limited circumstances”).

¹³ *Id.*

¹⁴ The Commission has stated that it is proper to use the date a reliability need must be addressed rather than the expected in-service date of the project chosen to address that need to calculate whether a transmission project qualifies as an immediate need reliability project. *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, at PP 22-24 (2016).

- iv. Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available (Criterion Four); and
- v. The RTO must maintain and post a list of prior year designations of all immediate need reliability projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. The RTO must also file the list with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year (Criterion Five).

B. Order Instituting Section 206 Proceedings

4. In the October 2019 Order, the Commission stated that, based on initial analysis, it was concerned that ISO-NE may be implementing the exemption in a manner that is inconsistent with the Commission direction and, therefore, may be unjust and unreasonable, unduly preferential and discriminatory.¹⁵ The Commission therefore directed ISO-NE to respond to questions outlined in the October 2019 Order to: (1) demonstrate how it is complying with the immediate need reliability project criteria; (2) demonstrate that the provisions in its Transmission, Markets, and Services Tariff (Tariff), as implemented, containing certain exemptions to the requirements of Order No. 1000 for immediate need reliability projects remain just and reasonable; and (3) consider additional conditions or restrictions on the use of the exemption for immediate need reliability projects to appropriately balance the need to promote competition for transmission development and avoid delays that could endanger reliability.¹⁶

II. Notice of Section 206 Investigation and Responsive Pleadings

5. Notice of the institution of the instant section 206 proceeding and the refund effective date was published in the *Federal Register*, 84 Fed. Reg. 57,726 (Oct. 28, 2019) with interventions due within 21 days of publication of notice in the *Federal Register*. RTO responses were due 60 days from the publication of notice, and comments on the RTO responses were due 30 days after the due date of the RTO response.

6. On December 27, 2019, ISO-NE filed its response to the October 2019 Order (Response). Arkansas Public Service Commission; Connecticut Public Utilities Regulatory Authority (PURA); Louisiana Public Service Commission; Maryland Public

¹⁵ October 2019 Order, 169 FERC ¶ 61,054 at P 1.

¹⁶ *Id.* PP 1, 4, 16.

Service Commission; Massachusetts Department of Public Utilities; Mississippi Public Service Commission and Mississippi Public Utilities Staff; New Jersey Board of Public Utilities; and Pennsylvania Public Utility Commission filed notices of intervention.

7. American Transmission Company LLC; Anbaric Development Partners, LLC; Avangrid Networks, Inc. (Avangrid); Calpine Corporation; Connecticut Attorney General William Tong (Attorney General Tong); Connecticut Office of Consumer Counsel; Developers Advocating Transmission Advancements (DATA);¹⁷ East Texas Electric Cooperative, Inc.; Edison Electric Institute (EEI); Energy New England, LLC; Eversource Energy Service Company (Eversource); LSP Transmission Holdings II, LLC (LS Power); Massachusetts Attorney General Maura Healey (Attorney General Healey); Massachusetts Municipal Wholesale Electric Company; Mid-Kansas Electric Company, Inc.; National Grid USA (National Grid); National Rural Electric Cooperative Association; New England Power Pool Participants Committee (NEPOOL); New England States Committee on Electricity (NESCOE); New Hampshire Electric Cooperative, Inc.; New York Transmission Owners;¹⁸ New York Transco, LLC; NextEra Energy Transmission, LLC; Northeast Texas Electric Cooperative, Inc.; Sustainable FERC Project and Natural Resources Defense Council; NRG Power Marketing LLC; Public Citizen, Inc.; Public Service Electric and Gas Company; Sunflower Electric Power Corporation; and Xcel Energy Services Inc. filed timely motions to intervene. Connecticut Department of Energy and Environmental Regulation and Maine Office of the Public Advocate filed motions to intervene out-of-time.

8. Avangrid; Attorney General Healey; Attorney General Tong; PURA; Connecticut Public Utilities Regulatory Authority; DATA; EEI; Eversource; Industrial Energy Consumers of America; LS Power; National Grid; New England State Agencies;¹⁹ Public Systems;²⁰ NEPOOL; and NESCOE filed comments. Avangrid and Eversource (jointly);

¹⁷ DATA is an ad hoc coalition of transmission-owning affiliates of National Grid, PSEG Companies, Ameren Services Co., and ITC Holdings Corp.

¹⁸ New York Transmission Owners comprise Central Hudson Gas & Elec. Corp.; Consolidated Edison Co. of New York, Inc.; Long Island Lighting Company; Long Island Power Authority; Niagara Mohawk Power Corp.; New York Power Authority; New York State Elec. & Gas Corp.; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corp.

¹⁹ New England State Agencies include Attorney General Healey; Attorney General Tong; Connecticut Department of Energy and Environmental Protection; Connecticut Office of Consumer Counsel; and the Maine Office of the Public Advocate.

²⁰ Public Systems consist of Massachusetts Municipal Wholesale Electric Company and New Hampshire Electric Cooperative, Inc.

ISO-NE; LS Power; National Grid; and New England State Agencies filed reply comments.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Connecticut Department of Energy and Environmental Regulation and Maine Office of the Public Advocate's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

11. We find that there is insufficient evidence in the record to find under FPA section 206 that ISO-NE's implementation of the immediate need reliability project exemption is unjust, unreasonable, or unduly discriminatory or preferential. We also find insufficient evidence in the record to find that ISO-NE implemented the immediate need reliability project exemption in a manner that is inconsistent with or more expansive than the Commission directed. We find that ISO-NE complies with the five criteria established for the immediate need reliability project exemption. We therefore terminate the proceeding, as discussed below.

1. ISO-NE's Compliance with and Implementation of the Immediate Need Reliability Project Exemption

a. Overview of ISO-NE's Response

12. ISO-NE asserts that its implementation of the immediate need reliability project exemption has been consistent with its Tariff.²¹ To provide context for its assertion that it complies with the five criteria, ISO-NE describes its transmission planning process as set forth in its Open Access Transmission Tariff (OATT),²² Transmission Planning Process Guide (Process Guide), and Transmission Planning Technical Guide (Technical Guide). ISO-NE explains that it continually conducts Needs Assessments²³ for certain

²¹ ISO-NE Response at 19.

²² The OATT is section II of the Tariff.

²³ Section 4.1 of Attachment K to the OATT explains that, "[o]n a regular and

study areas to determine whether Pool Transmission Facility²⁴ upgrades are required. ISO-NE states further that Needs Assessments go through a development process in which ISO-NE reviews the scope, assumptions, and results with the Planning Advisory Committee. During this process, ISO-NE seeks comments on the draft assessments from stakeholders.²⁵

13. ISO-NE explains that, when a Needs Assessment identifies reliability needs, ISO-NE deems the needs to be either time-sensitive or non-time-sensitive based on either the date when ISO-NE expects the reliability criteria violation to occur or on the date when the violation has already occurred. Time-sensitive needs are those associated with violations that occur in three years or less from the completion of the Needs Assessment report.²⁶ ISO-NE states that timelines for Needs Assessments vary depending on several factors, including the scope of the study; the amount and complexity of system concerns;

ongoing basis, [ISO-NE], in coordination with the [Participating Transmission Owners] and the Planning Advisory Committee, shall conduct assessments (i.e., Needs Assessments) of the adequacy of the PTF system, as a whole or in part, to maintain the reliability of such facilities while promoting the operation of efficient wholesale electric markets in New England. A Needs Assessment shall analyze whether the PTF in the New England Transmission System: (i) meet applicable reliability standards; (ii) have adequate transfer capability to support local, regional, and inter-regional reliability; (iii) support the efficient operation of the wholesale electric markets; (iv) are sufficient to integrate new resources and loads on an aggregate or regional basis; or (v) otherwise examine various aspects of its performance and capability. A Needs Assessment shall also identify: (i) the location and nature of any potential problems with respect to the PTF and (ii) situations that significantly affect the reliable and efficient operation of the PTF along with any critical time constraints for addressing the needs of the PTF to facilitate the development of market responses and to initiate the pursuit of regulated transmission solutions.” ISO-NE, Tariff, § II, attach. K (24.0.0), § 4.1.

²⁴ ISO-NE’s transmission facilities are divided into two classifications: (1) regional transmission facilities, called Pool Transmission Facilities (PTF); and (2) local transmission facilities, called Non-Pool Transmission Facilities. Transmission service in New England is similarly classified based on the transmission facilities over which service is taken: (1) Regional Network Service is offered over PTFs; and (2) Local Network Service over Non-Pool Transmission Facilities. ISO-NE’s regional transmission planning and cost allocation apply to PTFs, while incumbent transmission owners plan and allocate costs within their territories for the Non-Pool Transmission Facilities.

²⁵ ISO-NE Response at 1-2.

²⁶ *Id.* (citing Technical Guide, § 4.1.4.1).

the amount and timing of stakeholder interest; changes in resources that have cleared the Forward Capacity Market or are selected in a state-sponsored request for proposal or receive a financially binding obligation pursuant to a contract; resource retirements; changes in the load forecast; and changes in forecasted energy efficiency and photovoltaic generation. ISO-NE states that any changes in these assumptions can lead to moving back in the study process.²⁷

14. ISO-NE explains that solutions to needs are created either through the Solutions Study process, in which incumbent transmission owners develop and build the solutions, or through the Competitive Solution process, in which incumbents and nonincumbents propose solutions in response to a request for proposal (RFP). If needs are time-sensitive and the requirements of section 4.1(j) of Attachment K of the OATT (described below) are met, ISO-NE initiates the Solutions Study process for those needs.²⁸

15. ISO-NE explains that a transmission project that solves a time-sensitive need is considered an immediate need reliability project. ISO-NE explains that the date on which a transmission project is designated an immediate need reliability project is the date ISO-NE posts a final Solutions Study to the Planning Advisory Committee website. ISO-NE explains that a project's need-by date, as established through the Needs Assessment process, is associated with the time-sensitivity of the need.²⁹

16. As an illustration, ISO-NE states that, consistent with the process described above, it has separately undertaken the Southeastern Massachusetts/Rhode Island 2026 (SEMA/RI 2026) and Boston 2028 Needs Assessments. ISO-NE explains that, while it tracks component projects individually, the need for all component projects is the result of the two Needs Assessments. ISO-NE contends that, in other words, these component projects, while listed individually, were developed as a comprehensive solution to correct the violations identified in each Needs Assessment.³⁰ ISO-NE states that, in June 2019, it completed the Boston 2028 Needs Assessment, which identified both time-sensitive needs and non-time-sensitive needs. ISO-NE explains that it worked with Eversource and National Grid to develop a transmission solution to the time-sensitive needs. ISO-NE states that it then completed a Needs Assessment Update that incorporated the solution to the time-sensitive needs and updated resource assumptions to the latest

²⁷ *Id.* at 3.

²⁸ *Id.* at 2 (citing Technical Guide, § 4.1.4.1). ISO-NE also notes that section 4.1(i) of Attachment K of the OATT requires ISO-NE to use a Solutions Study to address time-sensitive needs. ISO-NE Response at 7.

²⁹ *Id.* at 3-4 (citing Technical Guide, § 4.1.4.1).

³⁰ *Id.* at 3.

available data. ISO-NE states that non-time-sensitive needs remained and were therefore addressed through the Boston RFP, which was ISO-NE's first RFP.³¹

17. After providing this background information, ISO-NE explains how it complies with each of the five exemption criteria.

i. **Criterion One: The project must be needed in three years or less to solve reliability criteria violations.**

18. ISO-NE explains that it has separate protocols for determining when a violation occurs, based on whether the need relates to short circuit, off-peak load levels, and peak load periods. ISO-NE states that the time-sensitivity of a short circuit need is based on the expected in-service date of a future project that causes the equipment to exceed its capabilities.³² ISO-NE explains that, if needs are identified at off-peak load levels, the needs are then deemed to be time-sensitive because these off-peak load levels are possible under current system conditions.³³ ISO-NE states that, for peak load periods, ISO-NE creates time-sensitive base cases (i.e., at most three years in the future) and performs steady-state thermal and voltage analysis on these base cases. ISO-NE explains that all needs identified in the 10-year study horizon base case that still appear as a result of the analysis using the time-sensitive base cases are considered time-sensitive needs. ISO-NE states that the need-by date for time-sensitive needs observed at peak load is set to June 1 of the time-sensitive year. ISO-NE states that non-time-sensitive needs are needs that ISO-NE observed in the analysis using the 10-year study horizon base cases that are no longer present in the analysis using the time-sensitive base cases.³⁴

ii. **Criterion Two: The RTO must separately identify and then post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity.**

19. ISO-NE states that section 4.1(j) of Attachment K of its OATT requires that, among other things, ISO-NE “post on its website an explanation of the reliability criteria violations and system conditions that the region has a time-sensitive need to solve within

³¹ *Id.* at 6.

³² *Id.* at 4 (citing Planning Guide, § 4.1.4.2).

³³ *Id.* (citing Planning Guide, § 4.1.4.3).

³⁴ *Id.* at 4-5 (citing Planning Guide, § 4.1.4.4).

three years of the completion of the relevant Needs Assessment.”³⁵ ISO-NE also states that, pursuant to section 4.1(j) of Attachment K, it presents explanations of “reliability violations and system conditions” to the Planning Advisory Committee in advance.³⁶

- iii. **Criterion Three: The RTO must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier.**

20. ISO-NE states that, consistent with section 4.1 of Attachment K to its OATT, it presents to the Planning Advisory Committee the reasons a solution was designated to the incumbent transmission owner, including an explanation of: (1) alternate solutions reviewed; (2) the circumstances that generated the immediate reliability need; and (3) the reason the need was not identified earlier. ISO-NE explains that section 6 of the SEMA/RI 2026 Needs Assessment and section 7 in the Boston 2028 Needs Assessment detail why the projects were designated to the incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of alternate solutions to the immediate need reliability project that were considered. ISO-NE also states that section 5 of both Needs Assessments details the circumstances that generated the immediate reliability need. Specifically, ISO-NE states that the needs were not identified in previous transmission planning cycles because each was caused by changed circumstances and assumptions, such as resource retirements and changes in minimum load level assumptions.³⁷

³⁵ *Id.* at 7. Section 4.1(j) of Attachment K of the OATT also requires ISO-NE to separately identify the reliability criteria violations.

³⁶ *Id.* at 9.

³⁷ *Id.* at 10-11.

- iv. **Criterion Four: Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available.**

21. ISO-NE states that the Planning Advisory Committee process includes multiple meaningful opportunities for stakeholders to provide input regarding immediate need reliability projects and is described in the Process Guide.³⁸ ISO-NE states that stakeholders have the chance to provide comments for 30 days following each Planning Advisory Committee presentation.³⁹ ISO-NE explains that stakeholders have an additional opportunity to provide comments during a stakeholder review period following the posting of draft Needs Assessments to the Planning Advisory Committee section of the ISO-NE external website. ISO-NE states that stakeholder comments and ISO-NE responses to those comments for the SEMA/RI 2026 and Boston 2028 Needs Assessments and addendums and updates are publicly available on ISO-NE's website.⁴⁰

- v. **Criterion Five: The RTO must maintain and post a list of prior year designations of all immediate need reliability projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. The RTO must also file the list with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year.**

22. ISO-NE states that section 4.1(j) of Attachment K of its OATT requires it, among others things, to maintain and post on its website a list of prior year designations of all

³⁸ *Id.* at 11 (citing Process Guide, § 2.7.1.1).

³⁹ ISO-NE notes that, due to recent Tariff changes, the time period for comments under section 4.1(j) of Attachment K is now 15 days. *Id.* at 3 n.10.

⁴⁰ *Id.* at 11.

projects needed to address time-sensitive needs.⁴¹ ISO-NE includes the list in its annual filing in Docket No. ER13-193-000.⁴²

b. Comments and Reply Comments

23. Avangrid, EEI, Eversource, and National Grid assert that ISO-NE has shown that it complies with the five criteria, and Avangrid provides further evidence that ISO-NE's implementation satisfies the criteria.⁴³

24. ISO-NE, Avangrid, and Eversource note that no party in this proceeding claims that ISO-NE fails to comply with either its Tariff or the five criteria.⁴⁴

2. ISO-NE's Current Tariff and Business Practices

a. ISO-NE Response

25. ISO-NE asserts that, as described above, its implementation of the immediate need reliability project exemption has been consistent with Order No. 1000 and the Commission's regulations and is working as intended.⁴⁵

b. Comments and Reply Comments

26. NEPOOL states that it continues to support an immediate need reliability project exemption for transmission facilities that are needed within three years.⁴⁶ Eversource argues that ISO-NE's Tariff remains just and reasonable, pointing out that nothing in New England has changed since the Commission crafted the immediate need reliability

⁴¹ *Id.* at 7.

⁴² *Id.* at 6.

⁴³ Avangrid Comments at 7-8, 11-25; EEI Comments at 3; Eversource Comments at 4; National Grid Comments at 8.

⁴⁴ ISO-NE Reply Comments at 3 (noting that no party alleges that ISO-NE has violated its Tariff, though parties do advocate for Tariff changes); Avangrid and Eversource Reply Comments at 4, 6 (claiming that no party alleges that ISO-NE is incorrectly applying its Tariff provisions).

⁴⁵ ISO-NE Response at 19.

⁴⁶ NEPOOL Comments at 5.

project exemption.⁴⁷ Avangrid and National Grid also argue that, in its response, ISO-NE has shown that its Tariff provisions remain just and reasonable and are not unduly discriminatory or preferential.⁴⁸ Avangrid contends that the Commission has not satisfied its burden under FPA section 206 to show that ISO-NE's Tariff language regarding the immediate need reliability project exemption and ISO-NE's implementation of that language are unjust and unreasonable, unduly discriminatory, or preferential.⁴⁹ DATA asserts that ISO-NE implements the immediate need reliability project exemption in a just and reasonable and not unduly discriminatory manner.⁵⁰

27. Several commenters criticize the existence of the immediate need reliability project exemption, as well as several aspects of the exemption and ISO-NE's implementation of it.⁵¹ New England State Agencies argue that most of ISO-NE's immediate need reliability projects will not be in service in three years and therefore should not be exempt from competition.⁵² PURA similarly asserts that the need-by date is not the relevant comparison if the noncompetitive solution misses that date.⁵³ Avangrid counters these arguments by noting that the Commission has previously rejected a proposal to reference a transmission project's in-service date instead of its need-by date when defining an immediate need reliability project.⁵⁴ ISO-NE points out that the Commission has agreed with PJM that "the purpose behind the Immediate-need Reliability Exception is to avoid delay in solving reliability violations that must be addressed immediately. The fact that it may take longer than three years to build a solution to an immediate reliability need is not a persuasive justification for potentially

⁴⁷ Eversource Comments at 4, 12.

⁴⁸ Avangrid Comments at 8-9, 25, 30-31; National Grid Comments at 8.

⁴⁹ Avangrid Comments at 9, 25-29.

⁵⁰ DATA Comments at 2.

⁵¹ Some commenters advocate for an exemption to be available only with Commission approval on a case-by-case basis. LS Power Comments at 6, 11; NESCOE Comments at 18; Public Systems Comments at 2, 11.

⁵² New England State Agencies Comments at 11.

⁵³ PURA Comments at 14.

⁵⁴ Avangrid Comments at 34 (citing *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, at PP 22-24 (2016)).

further delaying the solution.”⁵⁵ EEI claims that issues related to siting and construction that are out of the RTO’s control can cause delays in putting a project into service (e.g., an immediate need reliability project’s in-service date may exceed three years).⁵⁶ DATA, ISO-NE, and National Grid make similar arguments.⁵⁷ DATA also asserts that, because need-by date assessments are based on publicly available, objective criteria that are largely codified in Commission-jurisdictional agreements, they are not susceptible to gaming of the immediate need reliability project exemption to remove certain transmission projects from the solicitation process.⁵⁸

28. PURA states that, because ISO-NE performs its Needs Assessments under assumptions that are more conservative than those used by day-to-day operations, the need-by dates are artificially more immediate.⁵⁹ ISO-NE concedes that it often performs Needs Assessments with a more conservative set of assumptions than what is experienced in typical day-to-day operations. ISO-NE states that it does so to ensure that the transmission system is designed in a robust manner, which allows for reliable service to load under a wide range of operating conditions. ISO-NE explains that its transmission planning process is designed to yield the system that is needed to meet all reliability and planning obligations, while the daily operation of the transmission system involves operating the system as it exists to ensure reliability.⁶⁰

29. LS Power argues that the immediate need reliability project exemption is no longer just and reasonable because there is no evidence that there is a defined category of reliability projects where the need is so immediate that the project must be exempt from competition. LS Power also contends that the exemption incentivizes transmission owners to do short-term planning to avoid competition. LS Power states that the exemption also incentivizes other behaviors that could trigger a need for upgrades in less

⁵⁵ ISO-NE Reply Comments at 8 (citing *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,033, at P 27 (2018)).

⁵⁶ EEI Comments at 7-11.

⁵⁷ DATA Comments at 1, 8-9; ISO-NE Reply Comments at 7; National Grid Comments at 13-14, 27; National Grid Reply Comments at 2-5.

⁵⁸ DATA Comments at 9.

⁵⁹ PURA Comments at 7.

⁶⁰ ISO-NE Response at 13-14.

than three years, such as not reporting a transmission asset's end of life until it becomes a short-term need.⁶¹

30. New England State Agencies point out that ISO-NE is the only RTO that has not completed a competitive transmission procurement, even though it faces broadly the same reliability issues and planning complexities.⁶² ISO-NE and other commenters respond by noting that, in Order No. 1000, the Commission stated that the rule was “focused on the transmission planning *process* and not on any substantive outcomes that may result from this process.”⁶³ Avangrid and Eversource also point out that ISO-NE has completed two Solutions Studies since the exemption's implementation and that only one of the studies did not result in an RFP.⁶⁴

31. Commenters criticize the efficiency of New England's spending on transmission construction;⁶⁵ ISO-NE's accommodation of non-transmission solutions (an accommodation they perceive as deficient);⁶⁶ and ISO-NE's reactive transmission planning process in which Needs Assessments occur based on triggers like generation retirements and changes in load forecasts, rather than a predetermined schedule.⁶⁷ DATA and National Grid dispute the claims of economic inefficiency by citing the 2019 data

⁶¹ LS Power Comments at 8-11.

⁶² New England State Agencies Comments at 11.

⁶³ ISO-NE Reply Comments at 4 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 12 (emphasis in original)); National Grid Reply Comments at 2 n.6 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 113); Avangrid and Eversource Reply Comments at 6-7 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 188).

⁶⁴ Avangrid and Eversource Reply Comments at 6-7.

⁶⁵ LS Power Comments at 3; New England State Agencies Comments at 7-16; NESCOE Comments at 17. In supporting their claims of inefficiency, New England State Agencies cite data analysis found in *Cost Savings Offered by Competition in Electric Transmission*, an April 2019 study conducted by The Brattle Group. New England State Agencies Comments at 12 n.39 (citing FERC, *2017 Transmission Metrics Staff Report*, at 22 (2017), <https://www.ferc.gov/legal/staff-reports/2017/transmission-investment-metrics.pdf>).

⁶⁶ New England State Agencies Comments at 16-21; PURA Comments at 6, 8-9.

⁶⁷ LS Power Comments at 6, 8-10; NESCOE Comments at 4-9; New England State Agencies Comments at 21-22; Public Systems Comments at 4-7, 11-13; PURA Comments at 2, 9-10.

analysis in *Building New Transmission: Experience To-Date Does Not Support Expanding Solicitations*.⁶⁸ They argue that there are doubts that competitive processes deliver any appreciable benefits to customers, noting that many of the cost caps and cost containment measures submitted by nonincumbent developers in prior solicitations contain so many exceptions that they drive the cost of the project well above the initial bid amount.⁶⁹ In its reply comments, ISO-NE argues that changes to its planning process, including issues related to non-transmission solutions, are beyond the scope of this proceeding.⁷⁰

3. Additional Conditions or Restrictions on the Immediate Need Reliability Project Exemption

a. October 2019 Order

32. The October 2019 Order included several questions regarding additional conditions or restrictions that the Commission could consider imposing on the immediate need reliability project exemption to help maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances. Specifically, the Commission suggested that those additional conditions or restrictions could include the following: (1) shortening the current three-year time frame for immediate need reliability projects (Question 15a); (2) requiring the use of the anticipated in-service date instead of the need-by date to determine immediate need reliability project eligibility (Question 15b); (3) requiring each relevant incumbent transmission owner to provide the RTO and stakeholders periodic, detailed status reports on each immediate need reliability project (Question 15c); (4) requiring the RTO to reevaluate each immediate need reliability project that does not go into service by its need-by date (Question 15d); (5) prohibiting projects with specific characteristics from qualifying as immediate need reliability projects (e.g., those that exceed a certain voltage level, line mile, or capital cost thresholds) (Question 15e); and (6) creating an abbreviated competitive process for immediate need reliability projects (Question 15f).

⁶⁸ See, e.g., National Grid Reply Comments at 12 (citing *Concentric Energy Advisors, Building New Transmission: Experience To-Date Does Not Support Expanding Solicitations* (2019), https://ceadvisors.com/wp-content/uploads/2019/06/CEA_Order1000report_final.pdf), a June 2019 study conducted by Concentric Energy Advisors.

⁶⁹ *Id.*

⁷⁰ ISO-NE Reply Comments at 10-12, 13-14.

33. ISO-NE states that, because the exemption is working as intended, no changes are necessary.⁷¹ ISO-NE believes that a time period shorter than three years for time-sensitive projects would result in delays in the development and construction of solutions, which could adversely impact system reliability and obligate ISO-NE to use operational tools to work around potential violations.⁷²

34. To use in-service dates instead of need-by dates, ISO-NE claims that the following process is required: (1) ISO-NE conducts a Needs Assessment; (2) ISO-NE works with the transmission owner to develop a solution; (3) the transmission owner determines an anticipated in-service date; (4) ISO-NE decides whether the solution is time-sensitive; (5) if ISO-NE determines the solution cannot be constructed in three years or less, then ISO-NE issues an RFP to address the need identified in step one. ISO-NE argues that this process would be inefficient and would reveal transmission-owner-developed solutions, including costs, to others prior to issuing the RFP, thereby creating a non-level playing field for any subsequently issued RFP.⁷³

35. ISO-NE also believes that the frequency by which transmission owners currently communicate the status of their projects is sufficient. ISO-NE states that transmission owners provide project status updates to ISO-NE through the RSP Project List,⁷⁴ which are presented to the Planning Advisory Committee three times a year. ISO-NE adds that it reports on the status of projects monthly to the NEPOOL Participants Committee based on the information provided by the transmission owners. ISO-NE believes that increasing these reporting obligations is unlikely to result in projects constructed sooner and will not result in faster resolution of identified reliability issues.⁷⁵

36. Regarding the potential requirement to reevaluate each immediate need reliability project that does not go into service by its need-by date, ISO-NE states that requiring additional studies without a change in circumstance will only confirm the original result, which is an inefficient use of planning resources.⁷⁶

⁷¹ ISO-NE Response at 19.

⁷² *Id.* at 17.

⁷³ *Id.* at 17-18.

⁷⁴ *Id.* at 18. The RSP Project list is a list of all of the transmission projects in the Regional System Plan, and their status of development.

⁷⁵ *Id.*

⁷⁶ *Id.*

37. ISO-NE also argues that placing artificial or arbitrary bounds around the types of projects that qualify for the time-sensitive needs exemption is unlikely to result in faster deployment of solutions. ISO-NE notes that it does not know what solutions could resolve a given violation until it determines that a need is time-sensitive and completes a Solutions Study.⁷⁷

38. ISO-NE contends that an abbreviated competitive process for immediate need reliability projects would be problematic because any solicitation would take additional time. If a competitive submissions process was introduced, ISO-NE anticipates that it would take one to two years to conduct the solicitation of solutions and then review all proposed solutions received, with the further possibility of delays in, or litigation challenges of, ISO-NE's project selection. ISO-NE asserts that, instead, its Solutions Study process allows for the parallel processing of solutions so that, as transmission owners propose solutions, ISO-NE can simultaneously study those solutions.⁷⁸

39. Avangrid argues that any consideration of additional conditions or restrictions is outside the scope of an FPA section 206 proceeding. Avangrid contends that it is more appropriate to address the conditions or restrictions that the Commission proposed in the October 2019 Order in *Competitive Transmission Development Technical Conference*, Docket No. AD16-18-000, where the Commission has already compiled a robust record related to the RTOs' implementation of Order No. 1000 and how regional transmission planning processes can potentially be improved to accommodate competitive transmission development.⁷⁹ Avangrid argues that, when reforming transmission planning processes in the past, the Commission has initiated a technical conference. Avangrid asserts that the Commission's proposed administrative process to create additional conditions or restrictions on the immediate need reliability project exemption ignores past Commission practice and could undo the reasonable balance once struck between the goals of Order No. 1000 to remove barriers to new entry and the need to avoid delays that could adversely affect reliability. Avangrid contends that the Commission should terminate this proceeding because the use of an FPA section 206 proceeding to investigate transmission planning procedures in this manner is an abuse of agency discretion.⁸⁰

⁷⁷ *Id.*

⁷⁸ *Id.* at 18-19.

⁷⁹ Avangrid Comments at 10, 31-40.

⁸⁰ *Id.* at 10-11, 38-42 (citing ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 239; *Southwest Power Pool*, 143 FERC ¶ 61,059, at P 198 (2013); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 250 (2013)).

40. DATA and EEI argue that no further restrictions to the immediate need reliability project exemption are warranted and that the exemption remains necessary to support transmission owners' and system operators' ability to meet their reliability obligations. EEI asserts that some of the potential conditions and restrictions described in the October 2019 Order go beyond the scope of this proceeding.⁸¹

41. National Grid states that the exemption is serving the purpose for which it was designed and accepted by the Commission, and there is no merit to limiting or curtailing its application. National Grid argues that the Commission's potential modifications will not help to ensure just and reasonable rates and will jeopardize electric system reliability by increasing the time required to implement solutions to identified system needs and increasing costs to customers.⁸²

42. Avangrid, EEI, and National Grid each present arguments about why the Commission should not adopt each of the potential conditions and restrictions.⁸³

43. New England State Agencies argue that the ISO-NE Tariff needs to reflect the fact that most immediate need reliability projects will not be in service in three years and therefore should not be exempted from competition.⁸⁴ PURA asserts that two years is a more appropriate time frame for immediate need reliability projects. PURA also believes that the time threshold should be driven by the anticipated in-service date as much as by the need-by date.⁸⁵ Public Systems argue that, if the transmission owner cannot build the project by the need-by date, then the project should be put out for bid with the expected in-service date serving as one criterion to be considered in deciding who should be the winning bidder.⁸⁶

44. PURA suggests that ISO-NE use an abbreviated competitive process for immediate need reliability projects and a more expansive competitive process when more time is available. PURA disputes ISO-NE's contention that the extra time required for a competitive process could harm reliability. PURA states that, for this to be true, the

⁸¹ DATA Comments at 1-3; EEI Comments at 3, 5.

⁸² National Grid Comments at 3.

⁸³ Avangrid Comments at 32-38; EEI Comments at 12-20; National Grid Comments at 21-34.

⁸⁴ New England State Agencies Comments at 11.

⁸⁵ PURA Comments at 14.

⁸⁶ Public Systems Comments at 6.

following must occur: (1) the need-by date of the solution must be relatively immediate; (2) infusing competition must add materially to the timing of the solution; (3) stopgap measures must not be available that can delay the need-by date; and (4) failing to secure a solution by the need-by date must result in material reliability issues. PURA argues that, if any one of these fails to occur or is unlikely to occur, then infusing competition will not endanger reliability.⁸⁷

45. LS Power accuses ISO-NE of overstating how long a competitive process may take by assuming the worst, even though there are ways to shorten a competitive process. LS Power notes that, in the first phase of ISO-NE's competitive process, the incumbent transmission owner prepares a backstop proposal, presumably the same proposal that would become the immediate need reliability project. Thus, LS Power argues that, if the backstop solution turns out to be the solution, not all the time spent on the competitive process is lost because engineering and other activities for the backstop proposal are advanced during the process.⁸⁸

46. LS Power adds that ISO-NE could adopt a streamlined competitive process like in PJM. For instance, LS Power argues that ISO-NE could focus on project cost and expected in-service date and eliminate qualification-related criteria that has been previously reviewed prior to identifying an entity as a qualified transmission service provider.⁸⁹

47. NESCOE supports the implementation of a tailored competitive process to meet time-sensitive reliability needs in New England. NESCOE states that, although ISO-NE should continue to use the sponsorship model⁹⁰ as the primary vehicle for solving reliability needs, the competitive bidding model⁹¹ provides a ready mechanism to

⁸⁷ PURA Comments at 9.

⁸⁸ LS Power Comments at 7.

⁸⁹ LS Power Comments at 8.

⁹⁰ Under the sponsorship model, the transmission planning region identifies regional transmission needs; then qualified transmission developers (both incumbent and nonincumbent) propose transmission projects to meet those needs. *See Supplemental Notice of Technical Conference and Request for Speakers, Competitive Transmission Development Technical Conference*, Docket No. AD16-18-000, May 10, 2016, at 9.

⁹¹ Under the competitive bidding model, the transmission planning region identifies regional transmission needs and selects solutions to meet those needs; then qualified transmission providers (both incumbent and nonincumbent) submit bids to provide those solutions. *See Supplemental Notice of Technical Conference and Request*

introduce competition for time-sensitive needs. NESCOE explains that, on a case-by-case basis, the Commission could permit ISO-NE to justify that the potential for delays for a time-sensitive need warrants the development of a solution outside of the competitive bidding process. NESCOE adds that, given ISO-NE's extensive use of the current exemption, the Commission should consider requiring project-specific filings in initial years as a condition for employing the carve-out.⁹²

48. Public Systems suggest an accelerated competitive solicitation process for time-sensitive needs. Specifically, Public Systems propose adjusting the time frames for four key milestones of the existing competitive solicitation process. Under Public Systems' proposal, a competitive solicitation could be completed in 279 days, less than half of the 630-day time frame ISO-NE has established for the Boston RFP. Public Systems state that ISO-NE would retain the ability to seek a waiver from competitive solicitation when ISO-NE demonstrates that taking the time to put a project out for competitive bid (even using a streamlined process) would pose a reliability risk.⁹³

49. PURA supports ISO-NE prohibiting certain projects with specific characteristics from qualifying as immediate need reliability projects, especially projects that are large, costly, time-consuming, or involved, when the benefits of competition are likely to be significant and the cost of pursuing competition small in comparison. PURA suggests that the Commission set appropriate thresholds on such things as voltage level, line miles, or capital costs.⁹⁴

50. NESCOE argues that the criteria that ISO-NE uses to assess time-sensitivity are put in doubt when ISO-NE has not yet selected projects to meet needs that it classified as time-sensitive years ago. NESCOE states that a list tracking the development of solutions to time-sensitive needs could help clarify why solutions have not yet been selected or may no longer be needed.⁹⁵

for Speakers, Competitive Transmission Development Technical Conference, Docket No. AD16-18-000, May 10, 2016, at 9.

⁹² NESCOE Comments at 13-18.

⁹³ Public Systems Comments at 2.

⁹⁴ PURA Comments at 14-15.

⁹⁵ NESCOE Comments at 20.

b. Commenter-Proposed Conditions or Restrictions

51. Commenters propose several changes to both the five criteria and ISO-NE's transmission planning process. LS Power argues that an alternative approach would be for ISO-NE to request approval from the Commission on a case-by-case basis to designate a project needed immediately to the transmission owner. LS Power explains that ISO-NE would be required to prove to the Commission that it is infeasible for it to conduct a competitive solicitation and that no short-term operational tools are available to ensure reliability in the meantime.⁹⁶

52. PURA argues that, in some cases, ISO-NE can take interim steps like short-term fixes or delayed resource retirements to postpone the need-by date and allow time for a competitive solution. PURA also suggests a limit on the percentage of transmission projects that can have a noncompetitive solution. PURA proposes to base this limitation on the number of annually identified transmission reliability need projects or on the amount of dollars expected to be spent on such projects. PURA proposes this limitation to ensure an appropriate balance between promoting competition for transmission development and avoiding delays that could endanger reliability.⁹⁷

53. NESCOE contends that ISO-NE should establish a single webpage that provides information on ISO-NE's determination of time-sensitive needs and how each designated project meets the five criteria.⁹⁸

54. PURA argues that ISO-NE should start conducting thorough reviews of the ramifications of operating the transmission system past the need-by date. PURA states that knowing these ramifications would help ISO-NE and others know when a longer time frame with more competition is preferable to a shorter time frame with less competition. PURA suggests that ISO-NE develop iterations of the competitive process to fit various time frames.⁹⁹

IV. Commission Determination

55. We find that ISO-NE has demonstrated that it remains in compliance with the five criteria established for the immediate need reliability project exemption. We further find that the record in this proceeding does not support a finding under FPA section 206

⁹⁶ LS Power Comments at 10-11.

⁹⁷ PURA Comments at 15.

⁹⁸ NESCOE Comments at 20.

⁹⁹ PURA Comments at 12.

that the provisions in ISO-NE's Tariff containing the immediate need reliability project exemption are unjust, unreasonable, or unduly discriminatory or preferential. We also find no evidence in the record to support a finding that ISO-NE has implemented the immediate need reliability project exemption in a manner that is inconsistent with or more expansive than the Commission directed. Finally, we find that we need not impose additional criteria on the immediate need reliability exemption. We therefore terminate the proceeding.

56. As an initial matter, no party has argued that ISO-NE has violated its Tariff. We also note that no party has identified any change in implementation or circumstances since the immediate need reliability project exemption provisions' origin that would render the provisions unjust, unreasonable, or unduly discriminatory or preferential today. Furthermore, as discussed below, we disagree with commenters' arguments asserting that the immediate need reliability project exemption provisions, or their implementation, are not just and reasonable.

57. First, we reject requests by LS Power and Industrial Energy Consumers of America for the Commission to no longer allow RTOs to have an immediate need reliability project exemption. The Commission has already found the exemption to be just and reasonable, and neither LS Power nor Industrial Energy Consumers of America has provided information showing that the exemption itself to be unjust and unreasonable, unduly preferential and discriminatory.¹⁰⁰

58. With respect to ISO-NE's implementation of the five criteria established for the immediate need reliability project exemption, PURA argues that ISO-NE's need-by dates are artificially early because ISO-NE performs its Needs Assessments under assumptions more conservative than those used by day-to-day operations.¹⁰¹ ISO-NE explains that it uses more conservative assumptions to ensure that the system is designed in a robust manner, allowing for reliable service to load under a wide range of operating conditions and meeting certain reliability and planning obligations. As it explains, in some instances, ISO-NE's operators do not have to respect certain contingencies if the contingencies do not have impacts outside of the local area where they occur. Additionally, operators have access to a wider range of equipment ratings and system

¹⁰⁰ Because we are not removing the immediate need reliability project exemption, we also reject LS Power's request to implement the immediate need reliability project exemption on a case-by-case basis necessary. We also agree with the commenters that argue that having a case-by-case approval process is impractical because it may cause delays in addressing time-sensitive reliability violations.

¹⁰¹ PURA Comments at 7.

operating conditions than are allowed in transmission planning.¹⁰² As ISO-NE explains, “ISO-NE’s planning process is designed to yield the system that is needed to meet all reliability and planning obligations, whereas the daily operation of the system involves operating the system as it exists to ensure reliability.”¹⁰³ We find that ISO-NE has sufficiently justified why ISO-NE uses more conservative assumptions when performing its Needs Assessments.

59. We also decline to implement new criteria for the immediate need reliability project exemption. LS Power argues that the exemption incentivizes transmission owners to do short-term planning and partake in other behavior to avoid competition. We disagree that these incentives themselves render the exemption unjust and unreasonable. Furthermore, we are not convinced that we should modify Criterion One to shorten the current three-year time frame for immediate need reliability projects or to require the use of the anticipated in-service date instead of the need-by date to determine immediate need reliability project eligibility. There are a multitude of factors in determining the appropriate length of time needed to solve reliability criteria violations and when a project can be placed in service, such as the time needed to open a proposal window, the consideration of alternatives, siting and permitting, and construction, in proposing a three-year time frame. These hurdles are largely out of the control of the RTO, so we do not believe Criterion One should be modified to link the time frame for immediate need reliability projects to factors beyond the reliability criteria violation and need-by date. Commenters argue that, because the in-service dates of most immediate need reliability projects in New England are more than three years in the future, the current exemption applied to projects needed three years or less to solve reliability criteria violations is not just and reasonable. Thus, we find that the three-year time frame outlined in Criterion One and the practice of using the need-by date to calculate the three-year time frame for immediate need reliability projects continues to strike a reasonable balance and find there is insufficient evidence to support shortening that time frame at this time.

60. New England State Agencies ask the Commission to find that the current immediate need reliability project exemption unjust and unreasonable because ISO-NE is the only RTO that has not completed a competitive transmission procurement. Although ISO-NE’s lack of a competitive solicitation was one reason the Commission instituted this proceeding,¹⁰⁴ this outcome is not a sufficient reason to find the relevant Tariff provisions unjust and unreasonable. As commenters note, in Order No. 1000, the Commission stated that the rule was “focused on the transmission planning *process* and

¹⁰² ISO-NE Response at 14.

¹⁰³ *Id.*

¹⁰⁴ October 2019 Order, 169 FERC ¶ 61,054 at P 15.

not on any substantive outcomes that may result from this process.”¹⁰⁵ ISO-NE has followed that process, as required, and each time ISO-NE has needed a time-sensitive project, it has followed the criteria in its Tariff. We also recognize that, since the exemption’s implementation, ISO-NE has completed only the Solutions Studies associated with the SEMA/RI 2026 and Boston 2028 Needs Assessments, providing the potential for only two competitive solicitations. We find encouraging that one of the potentialities has been realized through the current competitive solicitation associated with the Boston 2028 Solutions Study.

61. In addition, we find that the record does not support changing the criteria to require the RTO to create an abbreviated competitive process for immediate need reliability projects.

62. Finally, as explained in the October 2019 Order, this proceeding addresses whether ISO-NE is complying with the immediate need reliability project criteria, and whether the ISO-NE Tariff provisions related to the immediate need reliability project exemption, as well as their implementation, remain just and reasonable. It also addresses whether the Commission should implement new criteria for the immediate need reliability project exemption. We find that arguments regarding the efficiency of New England’s spending on transmission construction, ISO-NE’s accommodation of non-transmission solutions, and ISO-NE’s reactive planning process in general are beyond the scope of this proceeding and decline to address them here.

63. Accordingly, we find that the criteria for the immediate need reliability exemption adopted by the Commission appropriately maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances. Thus, we will not impose additional conditions or restrictions on the immediate need reliability project exemption and do not require ISO-NE to include additional conditions or restrictions, either those proposed in the October 2019 Order or those proposed by commenters, on the use of the exemption for immediate need reliability projects and terminate the proceeding.

¹⁰⁵ Order No. 1000, 136 FERC ¶ 61,051 at P 12 (emphasis in original).

The Commission orders:

The proceeding in Docket No. EL19-90-000 is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.