

Public Service Company of New Hampshire d/b/a Eversource Energy, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty, and Unitil Energy Systems, Inc. (together the “Electric Utilities”)

Docket No. DE 23-026

Date Request Received: March 09, 2023

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Request from: New Hampshire Public Utilities Commission

Request:

In order to develop a record sufficient to support the analysis required by RSA 362-A:2-b, the Commission requires each of the Electric Utilities to file the following information:

- a. copies of any and all applicable transmission owner operator agreements, accompanied by a description of the process for amending those agreements;
- b. copies of any and all applicable ISO-NE open access tariffs, accompanied by a description of the process for amending those tariffs; and
- c. copies of any studies of avoided transmission costs based upon additional energy resources in the respective Electric Utilities’ service territories or within the ISO-NE regional transmission area.

Response:

Public Service Company of New Hampshire d/b/a Eversource Energy, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty, and Unitil Energy Systems, Inc. (together the “Electric Utilities”) have collaborated to provide this joint response to the information requests included in the Commission’s Commencement of Adjudicative Proceeding and Notice of Prehearing Conference issued on March 9, 2023 (the “March 9 Order”).

I. MATERIALS REQUESTED

A. Key Documents and Amendment Process

The March 9 Order requests:

- a. copies of any and all applicable transmission owner operator agreements, accompanied by a description of the process for amending those agreements;*

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b. copies of any and all applicable ISO-NE open access tariffs, accompanied by a description of the process for amending those tariffs;

Given both the size (whether in number of pages or MB) of the relevant portions of the documents referenced in the March 9 Order and the high frequency at which they are amended, the (multiple) website links to the three documents included in this response best satisfy the requests in subparts (a) and (b), as the websites regularly update the referenced documents, and so are less likely to become outdated compared to a static copy of the documents. By providing links to the three documents identified below, the Electric Utilities are not conceding that these are the only documents, regulations, or policies that are relevant to the issues raised in this proceeding, as the record will be developed by the parties over the course of the docket, including at hearing, if a hearing is necessary.

Although links to the ISO New England, Inc. (“ISO-NE”) website *should* provide accurate copies of ISO-NE documents, the FERC eTariff system can best provide the most up-to-date version of such documents at any moment in time. Under the FERC eTariff system, public utilities create one or more databases,¹ to house FERC-jurisdictional documents, which documents are often divided into tariff records or “Sections.”² The eTariff system accounts for how rapidly these documents are amended by allowing viewers to check which version of any

¹ ISO-NE has two such databases dedicated to it in the eTariff system.

² A more robust discussion of eTariff is found at <https://www.ferc.gov/ferc-online/etariff>.

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given Section is currently in effect, but also by indicating if any version of that Section is “Pending” and the date the Pending version may be implemented (which date may be retroactive in some cases).

Generally, FERC-jurisdictional documents fall into three categories – tariffs (of general applicability), rate schedules (contracts between two or more parties), and service agreements (contracts that are entered into under a tariff). The former two categories are most relevant here and how they *generally* are amended varies slightly, as discussed below. But, how any *specific* FERC-jurisdictional document or any *provision* in a FERC-jurisdictional document may be amended may deviate somewhat from the general rules. It should be noted that FERC has held, and that holding has been upheld upon judicial review, that state utility regulatory commissions are prohibited from ordering any public utility to file or amend a FERC-jurisdictional tariff, rate schedule, or service agreement. The intent of this principle is to prevent interference with exclusive federal regulatory authority.³

B. Relevant FERC Jurisdictional Tariff

1. ISO-NE Website Location

The ISO New England Inc. Transmission, Markets And Services Tariff (ISO-NE Tariff): <https://www.iso-ne.com/participate/rules-procedures/tariff/>. Note that the Open Access Transmission Tariff (OATT) is Section II of the ISO-NE Tariff (the OATT is only 600

³ *Western Mass. Electric Company*, 23 FERC ¶ 61,025 (1983), *reh’g denied*, 23 FERC ¶ 61,345 (1983), *aff’d Mass. v. FERC*, 729 F.2d 886, 888 (1st Cir. 1984); *see also Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283 at P 66 (2008).

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pages, while the entire ISO-NE Tariff is several thousand pages, as is typical of an ISO/RTO Tariff).

2. FERC eTariff Location

The ISO-NE Tariff also is found in FERC’s eTariff system in the ISO New England Inc. Transmission, Markets And Services Tariff eTariff database, located at:

<https://etariff.ferc.gov/TariffBrowser.aspx?tid=1507>. The Tariff is comprised of six primary parts and hundreds of tariff records.

3. Tariff Amendment Processes

Section 205(d) of the Federal Power Act (“FPA”) allows a public utility providing service under a FERC-jurisdictional tariff to change any portion of its tariff after 60-days’ notice through a process established by FERC, if the change is found to be just and reasonable. If FERC does not initially find the revision just and reasonable, it may reject it or, as is much more common, set it for hearing and/or settlement, subject to refund.⁴ FERC has adopted regulations that govern the filing of changes to tariffs (as well as rate schedules and service agreements) in [18 C.F.R. Section 35.13](#). Depending on the circumstances, there may be restrictions on the

⁴ By setting the tariff for hearing/settlement subject to refund, the public is protected against rates, terms, and conditions that are unjust and unreasonable in that if it is shown that aspects of the relevant document(s) are in fact unjust and unreasonable, the Commission can alter those rates, terms, and conditions that are unjust and unreasonable retroactively to the filing date and order the utility to pay refunds if a rate was set too high. Most typically, settlement discussions are held for months or even years and then a FERC case settles. A small minority of cases actually are decided through the hearing process (which includes FERC review and possibly a judicial appeal).

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ability of a public utility to make a change to a tariff.⁵ Additionally, some tariffs involve multiple service providers and thus provide that multiple public utilities will have Section 205 filing rights (and even non-jurisdictional utilities may be provided equivalent rights). The ISO-NE Tariff falls into this category.

Section 206 of the FPA allows FERC to amend a tariff by initiating a proceeding on its own motion or as a result of a complaint filed under Section 206 by another entity. If FERC finds a tariff rate, term, or condition to be unjust and unreasonable, it may determine the just and reasonable rate, term, or condition. Most typically, Section 206 proceedings are initiated by entities other than FERC, e.g., by customers or eligible customers (customers who are eligible to take service but have not done so) under the tariff. The process for filing a complaint seeking to amend a tariff using Section 206 is found at [18 C.F.R. Section 385.206](#).

FPA Section 206 is also the vehicle FERC uses to implement rulemakings, sometimes compelling public utilities to amend tariffs or file new tariffs. For example, FERC may find that every tariff of a certain type is unjust and unreasonable unless amended in a specific manner. The public utility would submit a Section 206 compliance filing proposing how it would change its tariff to abide by the new rule in such case.

⁵ Such restrictions typically are adopted for set time periods under settlements. In the case of ISO tariffs, the ISO and transmission owners may adopt permanent restrictions.

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Section 3.04 of the Transmission Operating Agreement governs the ISO-NE and Participating Transmission Owners’ FPA Section 205 and 206 rights under the ISO-NE OATT. For example, that Section sets forth whether the ISO-NE, or a single Transmission Owner, or the Transmission Owners as a group possess authority under Section 205 to amend particular OATT Sections. Such rights vary based on what topic an OATT Section addresses. Using a simple example, a typical Transmission Owner has a formula rate that is used to annually calculate its transmission revenue requirement. That formula rate must be part of the ISO-NE OATT, but the Transmission Owner *alone* has Section 205 authority to unilaterally modify its own rate consistent with the approved formula. In contrast, the ISO-NE itself generally is the only entity with Section 205 authority to change terms and conditions relating to open access transmission service. As to the other parts of the ISO-NE Tariff, the general rights described above apply. See ISO-NE Tariff § I.8.

C. Relevant FERC-Jurisdictional Agreements

1. ISO-NE Website Location

Transmission Operating Agreement: <https://www.iso-ne.com/participate/governing-agreements/transmission-operating-agreements>.

Participants Agreement: <https://www.iso-ne.com/participate/governing-agreements/participants-nescoe-mou>.

2. FERC eTariff Location

ISO-NE’s second FERC eTariff database is named ISO New England Inc. Agreements and Contracts and it is located at <https://etariff.ferc.gov/TariffBrowser.aspx?tid=2390>. This database contains various rate schedule and service agreements. Some of the

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documents are a single Section (tariff record), while others are divided into several Sections. Where Sectionalized, a relevant document is listed by the name of the first and last Section:

Transmission Operating Agreement: TOA, Transmission Operating Agreement.

Participants Agreement: PA Title Page– Participants Agreement Title Page through Schedule 2, Schedule 2 - Operating Proc in Effect on the Operations Date.

3. Agreement Amendment Process

Because a rate schedule is always a two (or more) party agreement, the right of either party to amend it using their FPA Section 205 rights in the same manner as described above may or may not be restricted by agreement between or among the parties. Each rate schedule must be examined to determine how the parties intend for it to be amended and the relevant standard under which FERC will review any changes.⁶

⁶ Although there is only one legal standard – “just and reasonable” – the *Mobile-Sierra* doctrine allows parties to place a higher burden on those seeking to change an agreement. “Under the *Mobile-Sierra* doctrine, [FERC] ‘must presume that the rate set out in a freely negotiated wholesale-energy contract meets the ‘just and reasonable’ requirement.’ *Morgan Stanley [v. Public Util. Dist. No. 1 of Snohomish Cty.]*, 554 U.S. [527,] at 530 [(2008)], 128 S.Ct. 2733; see *Mobile Gas Serv. Corp.*, 350 U.S. 332, 76 S.Ct. 373; *Sierra Pac. Power Co.*, 350 U.S. 348, 76 S.Ct. 368. The presumption ‘may be overcome only if FERC concludes that the contract seriously harms the public interest.’ *Morgan Stanley*, 554 U.S. at 530, 128 S.Ct. 2733. This standard of review is known as the public-interest standard. *Id.* at 535, 128 S.Ct. 2733.” *Wabash Valley Power Ass’n, Inc. v. FERC*, 45 F.4th 115, 118 (D.C. Cir. 2022).

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A rate schedule can be amended through Section 206 by a party, FERC, or under some circumstances, a third-party,⁷ in the same manner as a tariff. Again, however, the parties themselves may restrict one another’s Section 206 rights within the agreement. As to the relevant documents:

Transmission Operating Agreement: The provision relating to amendments to the Transmission Operating Agreement are found in Section 11.04. The TOA also addresses Section 205 rights under the ISO-NE OATT (i.e., Section II of the ISO-NE Tariff) in Section 3.04.

Participants Agreement: The provision relating to amendments to the Participants Agreement is found in Section 17.2.

D. Avoided Transmission Cost Studies

The Commission’s March 9 Order of Notice requests:

c. copies of any studies of avoided transmission costs based upon additional energy resources in the respective Electric Utilities’ service territories or within the ISO-NE regional transmission area.

The wording of SB 321 (RSA 362-A:2-b, XI(a)) has different language and consequently different implications than the language used in the Commission’s information request. The statute states, in relevant part:

The sponsors of a pilot, ... may petition the commission to determine, ... how *credits* for *actual avoided transmission charges*

⁷ In order for a third-party to file a Complaint under Section 206 against a rate schedule or other agreement, it would need to establish standing, if challenged. Standing is construed broadly by FERC. For example, an end-use customer of a utility that will pay that some portion of a rate when flowed through its retail bill would have standing to challenge the utility’s wholesale rate, but by implication, a retail customer of a wholly unrelated utility would not.

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are to be made for exports to the distribution grid by limited producers during hours of coincident peak on which transmission costs are allocated to reduce the retail load measured at the point of interconnection between the distribution system under state jurisdiction and transmission facilities under federal jurisdiction.

Emphasis added. The statute refers to credits for “avoided transmission charges,” which is a different concept than “avoided transmission costs,” as those terms would generally be used in the industry. The differences between “charges” and “costs” as applied in this context creates uncertainty as to the purpose of the request.

Generally, “avoided transmission charges” means that a customer takes an action that reduces the amount it must otherwise pay for transmission service, holding all other variables constant. In the context of the ISO-NE, hypothetically, a Network Customer can “avoid” transmission charges by reducing its Monthly Regional Network Load (“RNL”). There are multiple ways a Network Customer could reduce its overall coincident system peak load, e.g., through demand response and/or energy efficiency measures. Most relevant here, the ISO-NE Tariff states: “Monthly Regional Network Load shall exclude . . . load offset by any resource that is not a Generator Asset.”⁸ Thus, some distributed energy resources can reduce Monthly RNL.

⁸ ISO-NE Tariff § II.21.2. The ISO-NE Tariff defines “Generator Asset” as a device (or a collection of devices) that is capable of injecting real power onto the grid that has been registered as a Generator Asset in accordance with the Asset Registration Process. ISO-NE Tariff § I.2.2.

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However, the legislation is not focused on avoided transmission charges but on the concept that there would be credits, evidently funded by some pool of cost savings, associated with a reduction in Monthly RNL. Under the ISO-NE transmission rate construct and the various state Commission-approved transmission cost recovery mechanisms,⁹ no funds for credits would be generated associated with a reduction in Monthly RNL. The ISO-NE Transmission Owners use formula rates that true-up both forecast costs and forecast loads such that all transmission costs billed on Monthly RNL (including regional network services (RNS) and local network service (LNS) incorporate all load reductions of all Network Customers. And, the Network Customers that are distribution utilities use a transmission mechanism to pass through RNL-based transmission charges based *only* on the quantity of Monthly RNL determined by the ISO-NE.

As a result of these dual mechanisms, there are ultimately no excess transmission charges collected from retail transmission customers if Monthly RNL is reduced; and to the extent there are excess amounts in a given year (i.e., due to actual loads being higher than anticipated), those amounts would be used to lower rates in the next cycle due to load being under forecast in the prior cycle). In sum, there is no money permitted to be collected from retail transmission customers of distribution utilities through their transmission rate mechanisms that could fund or

⁹ Such mechanisms include PSNH’s Transmission Cost Adjustment Mechanism, Until’s Schedule External Delivery Charge, and Granite State’s “Transmission Charge” (approved in Order No. 23,041).

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create a pool of credits that could be awarded to any third party. Due to preemption, the focus of the instant proceeding, the Commission cannot authorize the assessment of transmission charges in excess of those set by FERC to fund the LEEP Act’s transmission credits. If third parties were awarded transmission credits, an entirely separate retail rate “tax” would have to be set up by the Commission to fund such credits. But, the Legislature did not authorize the Commission in the LEEP ACT to create and implement such a retail rate adder. Thus, studies of avoided transmission charges alone would not resolve the legal issue presented.

The concept of “avoided transmission costs” is generally used in the industry to refer to the notion that a transmission provider can avoid (or delay) constructing new transmission or avoid building a more costly transmission project and instead construct a smaller, less-costly project. There are multiple means of avoiding transmission costs, including siting generation near load (including by installing distributed generation), through demand response, and/or with energy efficiency programs. In each such case, it is likely that the amount of load reduction achieved by such means would have to be substantial in order to avoid, defer, or reduce the cost of a new transmission project(s).

The document request, as posed, appears to seek studies showing that energy resources (i.e., which the Electric Utilities assume means generation, including generation coupled with storage) *of any size*, if located in the ISO-NE footprint, could avoid the construction of transmission (or reduce the amount of new transmission capacity needed). The Electric Utilities

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are not aware of ISO-NE specific studies on this issue. The regional AESC Study¹⁰ regarding energy efficiency and avoided transmission costs, is the only relevant responsive study the Electric Utilities could locate and are aware of. That said, the relevance of such studies to RSA 362-A:2-b, XI is unclear. As noted above, the legislation appears to be focused on credits for avoided transmission *charges*, not potential future transmission *costs*.

¹⁰ Avoided Energy Supply Components in New England: 2021 Report:
https://www.synapse-energy.com/sites/default/files/AESC%202021_20-068.pdf .