

MEMORANDUM

To: NEPOOL Participants Committee

From: Brian Thomson (Chair) and David Burnham (Vice Chair), Participating Transmission Owners Administrative Committee (PTO-AC)

Date: February 3, 2025 (revised February 4, 2025)

Subject: Compliance With December 19, 2025, FERC Order on RENEW Northeast's December 13, 2022, Complaint

At the February 6, 2025 NEPOOL Participants Committee (“NPC”) meeting, you will be asked to consider changes to the Open Access Transmission Tariff (“OATT”) proposed by the PTO-AC to comply with FERC’s December 19 order (“December 19 Order”) granting in part and denying in part a complaint (“Complaint”) filed by RENEW Northeast (“RENEW”) against the ISO and the PTOs on December 13, 2022. The central issue in the Complaint was Generator Owners’ responsibility under the OATT for certain ongoing, annual costs associated with the operations and maintenance of certain interconnection upgrades constructed by the PTOs as required by the interconnection procedures under the OATT. In the Complaint, RENEW sought to eliminate these charges to Generator Owners.¹ In the December 19 Order, FERC granted this aspect of RENEW’s complaint and directed the PTOs and ISO-NE to submit a compliance filing by February 18, 2025.

The PTOs initially proposed tariff changes for consideration at the January 29 Transmission Committee meeting. In response to stakeholder feedback at that meeting and further discussion with RENEW, the PTOs have made certain modifications to the proposed tariff changes and now offer them for consideration by the NPC at Attachment 1 to this memo. The PTOs believe that the changes, as now proposed, will fully comply with the December 19 Order. RENEW has communicated to the PTOs that it supports these changes.

Background

The OATT defines several types of interconnection upgrades. Four types of upgrades – Network Upgrades, Stand-Alone Network Upgrades, and Distribution Upgrades (collectively, “Network Upgrades”), and Interconnecting Transmission Owner Interconnection Facilities (“ITOIFs”) are constructed, owned, and operated by the Interconnecting Transmission Owner (i.e., a PTO), and under the OATT the costs of these upgrades are usually allocated to the interconnecting Generator Owner and billed to the Generator Owner by the interconnecting PTO.

¹ For the purposes of this memo, Generator Owner is synonymous with Interconnection Customer

The December 19 Order directs changes to the allocation of certain costs for Network Upgrades. It does not direct any modifications to the allocation of costs for ITOIFs.

At a high level, the provisions in the OATT affected by the December 19 Order address recovery of 1) the initial capital costs of Network Upgrades and ITOIFs constructed by a PTO and related costs such as cost of capital, income taxes, etc. and 2) costs associated with the ongoing operation of the Network Upgrades and ITOIFs, including operations and maintenance (“O&M”) costs, administrative and general (“A&G”) costs, other taxes (payroll taxes, property taxes), etc.

Costs in the latter category are referred to collectively in the December 19 Order as Network Upgrade O&M costs.² They are typically billed by the PTOs to Generator Owners on a monthly basis, though they may also be referred to as annual charges.

Costs in the former category relate to recovery of the PTOs’ initial capital investments in Network Upgrades. These costs may be recovered from Generator Owners as Network Upgrades are constructed, or they may be recovered on an annual basis after the Network Upgrades are placed in-service. Either approach is acceptable under FERC Order No. 2003. When recovered on an annual basis, the annual charges to Generator Owners provide for recovery of the initial investment along with recovery of the PTOs’ cost of capital, federal and state income taxes, and other capital-related related costs.

PTOs’ Analysis of December 19 Order

The December 19 Order specifically directs the PTOs to file revisions to the OATT to remove Generator Owners’ responsibility for any annual Network Upgrade O&M costs. It does not direct any modifications to the allocation of O&M costs for ITOIFs. Nor does it direct any changes to the means of recovery for the PTOs’ initial capital investments in Network Upgrades or other capital-related costs.

Explanation of the PTOs’ proposed tariff changes

As directed by the December 19 Order, the PTOs’ changes propose to remove all language allowing for recovery of O&M costs, A&G costs, annual property and payroll taxes, and related costs for Network Upgrades from Generator Owners.

For the vast majority of Generator Owners, this will result in no annual charges associated with Network Upgrades. For a limited number of Generator Owners, the initial capital for their associated Network Upgrades was provided by the interconnecting PTO, and the proposed changes retain language related to annual charges that provide for full recovery of and on this initial investment, including cost of capital and associated federal and state income taxes and other capital-related costs.

² See footnote 5 of the December 19 Order, which refers to footnote 3 of the Complaint.

The PTOs are proposing to change the following portions of the OATT.

Schedule 11, Section 3.d

This section describes cost responsibility for Category A and Category B Projects, which are Network Upgrades associated with certain generation projects that were under development in 1998 and 1999. Cost responsibility for these upgrades is split between Regional Network Load and certain Generator Owners. The PTOs' proposed tariff changes eliminate the Generator Owner's obligations for O&M and A&G expenses, and annual property and payroll taxes, and associated costs on Network Upgrades, while retaining Generator Owners' obligations to pay for costs related to the initial capital costs of any PTO-funded upgrades. Edits made subsequent to the January 29 TC meeting better distinguish between and more clearly describe these two categories of costs.

Schedule 11, Section 5

This section describes cost responsibility for Category C Projects, which encompass all other Network Upgrades constructed over the past 25 years. Similar to above, our proposed tariff changes eliminate the Generator Owners' obligations for O&M and A&G expenses, annual property and payroll taxes, and associated costs, while retaining Generator Owners' obligations to pay for costs related to the initial capital costs of any PTO-funded upgrades. Edits made subsequent to the January 29 TC meeting better distinguish between and more clearly describe these two categories of costs.

Schedule 11, Section 7 Contract and Credit Requirements

This section addresses contract and credit requirements. After further discussions with RENEW, the PTOs are proposing additional modifications to this section to 1) clarify that certain language applies only to construction-related costs and 2) confirm that cost exclusions required by FERC in the December 19 Order continue to apply in the event that a Generator Owner goes out of business.

Schedule 11, New Section 8

This section addresses the effective date of the changes and provides for refunds, along with interest, as a result of the December 19 Order. Most importantly, this will allow the PTOs to issue refunds to Generator Owners upon FERC's approval of the tariff changes without requiring modifications to every Interconnection Agreement.

Schedule 22, Appendix 6, Article 10.2

This section addresses O&M expenses, including potential repairs and replacements of Network Upgrades. During the January 29 TC meeting, it was unclear **to the PTOs** whether this section is intended to refer to only expenses associated with operations maintenance, repair, and replacement, or whether the language in this section is intended to extend to recovery of capital costs associated with repairs and replacements. After further consideration, the PTOs believe that the costs addressed by this section are only expenses, for which recovery from Generator Owners is prohibited by the December 19 Order. As a

result, the PTOs have modified our original proposal to ensure that expenses associated with repair and replacement of Network Upgrades would not be assigned to Generator Owners. Thus, neither O&M expenses nor capital costs related to repairs and replacements of Network Upgrades will be assigned to Generator Owners.

Similar edits will also be made to the relevant sections of Schedule 23 and Schedule 25.

Attachment F, Appendix C

This appendix addresses who may participate in the information exchange and challenge procedures under the Formula Rate Protocols. The December 19 Order directed the PTOs to insert language to broaden the definition of Interested Parties to be more consistent with FERC precedent, and to remove other language that prevented all Interested Parties from attempting to resolve potential disputes. The PTOs' edits to the Formula Rate Protocols implement the express directives of the December 19 Order.

Implementation

The PTOs will continue to bill Generator Owners for Network Upgrade O&M costs until receiving FERC approval of the PTO-AC/ISO-NE compliance filing. Until FERC approves the compliance filing, the approved rate on file with the Commission makes Generator Owners responsible for Network Upgrade O&M costs. Ceasing billing for these costs prior to FERC approval of the compliance filing would violate the Filed Rate Doctrine.

Additionally, in order to update billing to remove Network Upgrade O&M costs and to process refunds with applicable interest, the PTOs must perform a detailed review of each interconnection contract and interconnection configuration to determine Generator Owners' ongoing responsibilities for O&M cost associated with ITOIFs. In many cases, the costs associated with Network Upgrades were not tracked separately from costs associated with ITOIFs. The PTOs expect to complete these reviews and communicate the results to Generator Owners by July 15, 2025. If a Generator Owner seeks additional information on how an individual PTO has calculated the related billing adjustments, the Generation Owner should contact the PTO directly and should follow the dispute resolutions contained within the applicable Interconnection Agreement, if necessary.

Illustrative Example of O&M Cost Calculations

Below is a simplified example of a current calculation of O&M and A&G charges for Network Upgrades and ITOIFs for a hypothetical Generator Owner. Also shown is how the calculations would be modified under the proposal to assess these charges only for ITOIFs. Calculations for the allocations of payroll taxes, property taxes, and other associated costs would also be modified to remove any charges associated with Network Upgrades but are not replicated here for brevity. To be clear, this is an illustrative example. The unique breakdown of costs between Network Upgrades and ITOIFs will need to be calculated for each Generator Owner and is not currently available.

Allocation of O&M and A&G costs under current tariff

| Line | Description | Value |
|------|--|-----------------|
| 1 | Initial cost of Network Upgrades | \$6,000,000 |
| 2 | Initial cost of ITOIFs | \$9,000,000 |
| 3 | Total cost of interconnection facilities (Line 1 + Line 2) | \$15,000,000 |
| 4 | Interconnecting transmission owner actual O&M and A&G costs sourced from FERC Form 1 | \$53,000,000 |
| 5 | Interconnecting transmission owner gross transmission plant sourced from FERC Form 1 | \$3,500,000,000 |
| 6 | Base charge ratio (Line 4 / Line 5) | 1.5% |
| 7 | Annual O&M and A&G charge attributed to Network Upgrades (Line 1 * Line 6) | \$90,000 |
| 8 | Annual O&M and A&G charge attributed to ITOIFs (Line 2 * Line 6) | \$135,000 |
| 9 | Total annual O&M and A&G charge (Line 3 * Line 6) | \$225,000 |

Allocation of O&M and A&G costs under proposed tariff

| Line | Description | Value |
|----------|---|-----------------|
| 1 | Initial cost of Network Upgrades No longer included in allocation of costs | - |
| 2 | Initial cost of ITOIFs | \$9,000,000 |
| 3 | Total cost of interconnection facilities (Line 1 + Line 2) | \$9,000,000 |
| 4 | Interconnecting transmission owner actual O&M and A&G costs sourced from FERC Form 1 | \$53,000,000 |
| 5 | Interconnecting transmission owner gross transmission plant sourced from FERC Form 1 | \$3,500,000,000 |
| 6 | Base charge ratio (Line 4 / Line 5) | 1.5% |
| 7 | Annual O&M and A&G charge attributed to Network Upgrades (Line 1 * Line 6) | - |
| 8 | Annual O&M and A&G charge attributed to ITOIFs (Line 2 * Line 6) | \$135,000 |
| 9 | Total annual O&M and A&G charge (Line 3 * Line 6) | \$135,000 |

As shown above, the Generator Owner's annual charges for O&M and A&G costs are reduced from \$225,000 to \$135,000 to reflect only the O&M and A&G costs associated with ITOIFs.

Customer Impacts

The December 19 Order will result in a cost shift from Generator Owners to Regional Network Load and to Local Service customers. Several stakeholders have asked if the PTOs can provide an estimate of the cost shift. As described above, the PTOs must review each interconnection contract and the configuration of each interconnection to determine the reduction in charges to Generator Owners and the resulting increase in costs to load. The PTOs expect to provide an estimate of the cost shift at the RC/TC Summer Meeting on July 15/16.

The PTOs have previously estimated that the total O&M charges for both Network Upgrades and ITOIFs assessed to Generator Owners and credited against RNS rates in 2021 totaled approximately \$9 million.³ The credit to RNS rates in 2021 associated with only Network Upgrades was not estimated by the PTOs but would be less than \$9 million.

Because the changes proposed by the PTOs at the January 29 TC meeting would have eliminated all ongoing O&M charges associated with Network Upgrades, the additional changes proposed for consideration by the NPC will not have any additional impact to the cost shift.

Conclusion

As described above, the tariff revisions reviewed by the TC and subsequently modified for consideration by the NPC will remove all tariff language allowing for assignment of Network Upgrade O&M costs to Generator Owners and fully comply with FERC's December 19 Order. We request that the NPC support these changes.

³ See pages 28 and 29 of the Complaint.

ATTACHMENT 1 – Proposed Tariff Changes

Schedule 11, Section 3(d)

(d) One-half of the Shared Amount (as defined below) of the capital cost of the PTF upgrade shall constitute Pool Supported PTF and be included in Annual Transmission Revenue Requirements under Attachment F to this OATT. The Generator Owner shall be obligated to pay, in addition to the Direct Interconnection Transmission Costs, the other half of the Shared Amount of the capital cost of the PTF upgrade and all of the capital costs in excess of the Shared Amount, and any applicable tax gross-up amounts, and such amounts to be paid by the Generator Owner shall not be included in Annual Transmission Revenue Requirements under Attachment F to this OATT. Following completion of the construction or modification of the Generator Interconnection Related Upgrade, the Generator Owner shall be obligated to pay its pro rata share of all of the annual costs associated with Interconnecting Transmission Owner's Interconnection Facilities (including cost of capital, federal and state income taxes, O&M and A&G expenses, annual property taxes and other related costs) which are allocable to such upgrade pursuant to the interconnection 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. Except for federal and state income taxes, cost of capital, and any other capital-related costs associated with the initial capital cost of PTO-funded Distribution Upgrades, Stand Alone Network Upgrades, and Network Upgrades, annual costs shall not apply to Distribution Upgrades, Stand Alone Network Upgrades, and Network Upgrades.

Schedule 11, Section 5, 4th paragraph

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 associated with Interconnecting Transmission Owner's Interconnection Facilities (including federal and state income taxes, O&M and A&G expenses, annual property taxes and other related costs, but excluding O&M and A&G expenses and annual property and payroll taxes associated with Network Upgrades, Stand-Alone Network Upgrades, and Distribution Upgrades) which are allocable to the Upgrade, 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. Except for federal and state income taxes, cost of capital, and any other capital-related costs associated with the initial capital cost of PTO-funded Distribution Upgrades, Stand Alone Network Upgrades, and Network Upgrades, annual costs shall not apply to Distribution Upgrades, Stand Alone Network Upgrades, and Network Upgrades.

Schedule 11, Section 7 (excerpt)

Contract and Credit Requirements. If a Generator Interconnection Related Upgrade or an Elective Transmission Upgrade Interconnection Related Upgrade (collectively, "Upgrade") is required, the Generator Owner or Elective Transmission Upgrade Interconnection Customer ("ETU IC") requesting such upgrade, at the request of the PTO or its designee responsible for effecting the construction or modification, shall be obligated to pay to the PTO or its designee responsible for effecting the Upgrade an amount equal to its share of the estimated cost of the

construction at one time or in monthly or other periodic installments, including, without limitation, all costs associated with acquiring land, rights of way easements, purchasing equipment and materials, installing, constructing, interconnecting, and testing the facilities; construction-related O&M and engineering costs; all construction-related overheads; and any and all associated taxes and government fees related to the construction. In addition to, or in lieu of said payment, the affected PTO or its designee may require the Generator Owner or ETU IC to provide, as security for its obligation to pay any unfunded balance of the construction costs, a letter of credit or other reasonable form of security acceptable to the PTO or its designee that will be responsible for the construction equivalent to the cost of the upgrade including taxes and consistent with relevant commercial practices, as established by the Uniform Commercial Code.

Schedule 11, Section 7 (excerpt)

That portion of the construction or modification costs or deposit paid by the Generator Owner or ETU IC may, by mutual agreement of the PTO and the Generator Owner or ETU IC, either be retained by the PTO, or be refunded to the Generator Owner or ETU IC upon the Generator Owner or ETU IC executing a contract with the PTO obligating the Generator Owner or ETU IC to pay the PTO the ongoing transmission revenue requirement associated with its share of the Upgrade, including but not limited to cost of capital, and federal and state income taxes, but excluding O&M and A&G costs, annual property taxes and all other related costs associated with Network Upgrades, Stand Alone Network Upgrades, and Distribution Upgrades, and providing the PTO with an irrevocable letter of credit or other form of security acceptable to the PTO. In the event the Generator Owner or ETU IC's portion of the construction or modification costs is retained by the PTO or its designee in accordance with the preceding sentence, the Generator Owner or ETU IC will be obligated (i) to pay the federal and state income taxes required to be paid by the PTO with respect to the retained amount, and (ii) to pay annually its percentage of the O&M and A&G costs, annual property taxes and all other related costs associated with Upgrades other than Network Upgrades, Stand Alone Network Upgrades, and Distribution Upgrades, except for those costs required to be paid under (i) or any costs that are retained by the PTO in accordance with the interconnection agreement. If the Generator Owner or ETU IC for whatever reason goes out of business, or otherwise abandons its Generating Facility or Elective Transmission Upgrade project and the Upgrade has already been partially or completely constructed, the Generator Owner or ETU IC shall be responsible for all of the unrecovered ongoing costs of the upgrade that would not have been incurred but for the proposed generation or ETU project, but excluding O&M and A&G costs, annual property taxes and all other related costs associated with Network Upgrades, Stand Alone Network Upgrades, and Distribution Upgrades.

Schedule 11, New Section 8

Network Upgrade O&M costs. Effective December 19, 2024, Interconnection Customers, including those with Interconnection Agreements executed or amended prior to that date, shall not be responsible for those costs associated with Network Upgrades, Stand Alone Network Upgrades, or Distribution Upgrades directed by the Commission for removal in a final order issued in Docket No. EL23-16, notwithstanding any obligations to the contrary enumerated in the Interconnection Customers' Interconnection Agreements.

Any payments made by Interconnection Customers on or after December 19, 2024 for costs associated with Network Upgrades, Stand Alone Network Upgrades or Distribution Upgrades (i) directed by the Commission for removal in a final order issued in Docket No. EL23-16, and (ii) that accrued after December 19, 2024, shall be returned to Interconnection Customers with interest calculated in accordance with the methodology set forth in the Commission's regulations at 18 CFR §35.19a(a)(2)(iii) from the date payment was made by Interconnection Customer to the date Interconnecting Transmission Owner refunds such payment to Interconnection Customer.

Schedule 22, Appendix 6, Article 10

Operating and Maintenance Expenses. Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities; (2) operation, maintenance, repair and replacement of Interconnecting Transmission Owner's Interconnection Facilities, ~~Stand Alone Network Upgrades, Network Upgrades and Distribution Upgrades.~~

Schedule 23, Article 4.2

Distribution Upgrades

The Interconnecting Transmission Owner shall design, procure, construct, install, and own the Distribution Upgrades described in Attachment 6 of this Agreement. If the Interconnecting Transmission Owner and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades that are located on land owned by the Interconnection Customer. The actual cost of designing, procuring, constructing, and installing the Distribution Upgrades, including overheads, shall be directly assigned to the Interconnection Customer. ~~The Interconnection Customer shall be responsible for its share of all reasonable expenses, associated with operating, maintaining, repairing, and replacing such Distribution Upgrades,~~ except to the extent that a retail tariff of, or an agreement with, the Interconnecting Transmission Owner or its distribution company affiliate, if appropriate, provides otherwise.

Schedule 23, Exhibit 1, Attachment 6

The Interconnecting Transmission Owner shall describe Upgrades and provide an itemized best estimate of the cost to design, procure, construct and install, including overheads, of the Upgrades ~~and annual operation and maintenance expenses associated with such Upgrades.~~ The Interconnecting Transmission Owner shall functionalize Upgrade costs ~~and annual expenses~~ as either transmission or distribution related.

Schedule 25, Appendix 6, Article 10.2

Operating and Maintenance Expenses. Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities; (2) operation,

maintenance, repair and replacement of Interconnecting Transmission Owner's Interconnection Facilities, ~~Stand Alone Network Upgrades, Network Upgrades and Distribution Upgrades.~~

Attachment F, Appendix C, Section II

Interested Party(ies) shall ~~mean~~include, but is not limited to, 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.

Attachment F, Appendix C, Section VI.7

7. Informal and Formal Challenges by an Interested Party regarding a single PTO's costs, expenditures or data included in the Annual Update, including Informal and Formal Challenges concerning the allocation of costs among a PTO's Tariff Rates, shall be directed to such PTO. ~~Informal and Formal Challenges of Local Service rates or Schedule 12C costs shall be limited to the Affected Parties.~~