

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

ISO New England Inc. and)
New England Power Pool) Docket No. ER21-1637-000

**COMMENTS OF PUBLIC INTEREST ORGANIZATIONS
IN SUPPORT OF THE NEPOOL ALTERNATIVE**

Introduction

Acadia Center, Conservation Law Foundation, Natural Resources Defense Council, Sierra Club, and Sustainable FERC Project (collectively, “Public Interest Organizations” or “PIOs”) respectfully submit these comments on the Joint Filing of ISO New England Inc. (“ISO-NE” or “the ISO”) and New England Power Pool (“NEPOOL”) submitted on April 7, 2021, in Docket No. ER21-1637 regarding Offer Review Trigger Prices (“ORTPs”) in ISO-NE’s Forward Capacity Market (“FCM”). ISO-NE and NEPOOL offer competing proposals to update ORTPs, which determine whether a resource seeking to enter the FCM is subject to review of its offer by the Independent Market Monitor (“IMM”) and potential exclusion from the market. The primary difference between ISO-NE’s proposal and NEPOOL’s alternative is that ISO-NE proposes significantly higher ORTPs for clean energy resources, especially offshore wind and solar photovoltaic (“PV”) generation. In contrast, NEPOOL proposes ORTPs of \$0.000/kW-month for offshore wind and solar PV resources, reflecting the continuing trend of significant cost reductions for these resource types.

While ISO-NE paints NEPOOL’s alternative as an indirect attack on the Minimum Offer Price Rule (“MOPR”), the joint filing makes clear that NEPOOL’s proposal simply reflects the most accurate and up-to-date information regarding the real-world costs of clean energy resources. In contrast, ISO-NE relies on confidential analysis and inaccurate assumptions about

these resource types to inflate their ORTPs, subjecting them to administratively burdensome IMM review and potential exclusion from the FCM. Erroneously obstructing participation of low-cost clean energy resources in the FCM would raise capacity prices as higher cost gas-fired resources take their place. The ultimate costs of such inflated capacity prices would be borne by New England consumers, forced to pay higher electricity bills to procure unneeded fossil fuel capacity resources at odds with their states' clean energy mandates. In sum, only NEPOOL's alternative proposal complies with the requirements of Section 205 of the Federal Power Act ("FPA"), as it is just, reasonable, and not unduly discriminatory or preferential. The Commission should adopt it in full.

I. Standard of Review

The Commission may only approve a filing under Section 205 of the FPA if it finds the proposal to be just and reasonable, and not unduly discriminatory or preferential.¹ Under the NEPOOL Participants Agreement, the ISO's proposal and the NEPOOL alternative are on equal footing before the Commission, which "may adopt any or all" of either proposal "as it finds, in its discretion, to be just and reasonable and preferable."² Accordingly, the Commission must first determine whether the two proposals are just and reasonable, and not unduly discriminatory or preferential; if it finds that both meet the requirements of Section 205, it may adopt the proposal it finds in its discretion to be preferable. As detailed below, only the NEPOOL alternative meets the requirements of Section 205.

¹ 16 U.S.C. § 824d.

² See ISO-NE & NEPOOL, *Participants Agreement*, at § 11.1.5 (Jan. 14, 2011) <http://nepool.com/uploads/Op-PA.pdf>; See also *ISO New England Inc. & New England Power Pool*, 130 FERC ¶ 61,105 at P 4, n.4 (2010) ("alternate proposals are to be treated as co-equals, unlike the usual rate change application submitted under section 205 of the FPA.").

II. ISO-NE, not NEPOOL, is attempting to advance a policy agenda through inaccurate ORTPs.

The ISO accuses NEPOOL of attempting to “indirectly eliminate the MOPR through the adoption of inaccurate ORTPs,”³ arguing that “setting an ORTP *too low* would permit resources that *ought* to be reviewed under the MOPR to avoid undergoing that review.”⁴ ISO-NE has it backwards. The NEPOOL alternative represents stakeholders’ good faith attempt to work within the capacity market rules as they currently exist, including the MOPR, with ORTPs based on up-to-date, real-world project costs. In contrast, the ISO’s proposal evinces prejudgment regarding which resources “*ought*” to be subject to the MOPR and insists on imposing inaccurate assumptions regarding wind and solar generation and energy storage that artificially inflate the costs of those resources.

The ISO correctly notes that an ORTP is “simply a *screen* to determine which resource offers require additional scrutiny from the IMM to assess whether those offers are uncompetitively low.”⁵ Accordingly, “ORTPs are intended to represent the low end of the range of potential competitive offers, to prevent new resources from offering at prices significantly below their true net cost of entry.”⁶ However, ISO-NE’s “artificially low” standard⁷ has no basis in the language of its Commission-approved Transmission, Markets, and Services Tariff (“Tariff”). The word “artificial” does not even appear in the part of the Tariff that pertains to the calculation of ORTPs, Section III.A.21.1.2.

³ ISO-NE Transmittal Letter, at 9, Docket No. ER21-1637-000 (Apr. 7, 2021), Accession No. 20210407-5305 (“ISO-NE Transmittal Letter”).

⁴ *Id.* at 8 (emphasis in original).

⁵ *Id.* at 14 (emphasis in original).

⁶ *Id.*

⁷ *Id.* at 36 (“NEPOOL’s Use of Its Economic Life Proposal in its Discounted Cash Flow Analysis Produces an Artificially Low ORTP for Offshore Wind”).

By calling NEPOOL’s ORTPs artificially low, ISO-NE seems to imply that they are somehow detached from reality in a way that ISO-NE’s ORTPs are not. However, the Tariff provides no basis for privileging ISO-NE’s methodological choices over NEPOOL’s. Section III.A.21.1.2 provides a number of components that must be input into the “capital budgeting model” used to calculate a resource’s ORTP—i.e., capital costs, expected non-capacity revenues and operating costs, assumptions regarding depreciation, taxes, and discount rate—but it does not mandate the use of specific methods to calculate those inputs. NEPOOL has provided detailed analysis and documentation for each of the inputs used to derive its ORTPs and expert affidavits explaining its methodological choices. While ISO-NE may disagree with the methodologies employed by NEPOOL’s experts to derive its ORTPs, it cannot dismiss these values out of hand with baseless accusations of artificiality.

Adoption of the NEPOOL alternative would not “indirectly eliminate the MOPR.”⁸ While offshore wind and solar PV resources would no longer trigger offer review by the IMM, this would simply reflect the reality that these resources are so cost-competitive that they do not require revenue from the capacity market to break even. These resources are low cost, so there is no risk of undue price-suppression that would warrant application of the MOPR. Indeed, the ISO already recognizes this principle as applied to onshore wind resources, for which it proposes an ORTP of \$0.000/kW-month.⁹ The MOPR would remain in place for those resources that require capacity market revenues to break even—particularly gas generators—and thus create a risk of “the exercise of buyer-side market power that could inappropriately suppress capacity prices.”¹⁰ Inaccurately inflating the ORTPs of renewable resources would raise capacity prices with no

⁸ *Id.* at 9.

⁹ *Id.* at 19.

¹⁰ *Id.* at 15 (quoting *Order on Paper Hearing and Order on Reh’g*, 135 FERC ¶ 61,029 at P 166 (2011)).

corresponding benefit to consumers. ISO-NE is incorrect that there is “no economic risk” to suppliers if ORTPs are too high;¹¹ offer review by the IMM plainly increases the uncertainty and administrative burden on resources seeking to participate in the FCM, and creates the risk that cost-competitive renewable resources will be erroneously excluded from the market.¹² Excluding low-cost renewable resources from the FCM raises capacity prices, and the cost of these unnecessarily high capacity prices is inevitably borne by New England consumers. The FPA’s just and reasonable standard requires a balancing of consumer as well as investor interests, and needlessly inflating the cost of capacity for consumers falls short of that standard.¹³

III. The Commission should approve the NEPOOL alternative in full and reject the ISO-NE alternative, which is unjust, unreasonable, and unduly discriminatory.

NEPOOL’s alternative ORTPs are supported by robust and transparent data and analysis, which were presented to ISO-NE and stakeholders and made publicly available during a multi-month stakeholder process. At the conclusion of this process, the NEPOOL alternative earned the support of over 70 percent of NEPOOL stakeholders, well above the Participants Agreement’s supermajority threshold to trigger a jump ball proceeding, and with support from members of all six NEPOOL sectors. ISO-NE’s alternative, in contrast, received only 19 percent support after months of discussions with stakeholders.¹⁴ The overwhelming rejection of the ISO-

¹¹ *Id.* at 15–16 (emphasis in original).

¹² The process for unit-specific review of ORTPs often recreates the same administrative pricing dynamics that underlie default ORTPs, such as rejection of project-specific financing costs that depart from industry averages. Joshua Macey & Robert Ward, MOPR Madness, University of Chicago Coase-Sandor Institute for Law & Economics, at 45–50 (Oct. 18, 2020), <http://dx.doi.org/10.2139/ssrn.3714345>.

¹³ *Wisconsin Pub. Power, Inc. v. FERC*, 493 F.3d 239, 262–63 (D.C. Cir. 2007) (“[S]etting a just and reasonable rate necessarily ‘involves a balancing of the investor and the consumer interests.’” (citing *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)); *New England Power Generators Ass’n, Inc.*, 146 FERC ¶ 61,039 at P 52 (Jan. 24, 2014) (“[I]t has long been established that the ‘fixing of ‘just and reasonable’ rates, involves a balancing of the investor and consumer interests.’”).

¹⁴ NEPOOL Transmittal Letter at 1–2, Docket No. ER21-1637-000 (Apr. 7, 2021), Accession No. 20210407-5305 (“NEPOOL Transmittal Letter”).

NE alternative reflects stakeholder consensus that ISO-NE's ORTP proposal is deeply flawed and inconsistent with the standards of both the Tariff and the FPA.¹⁵

A. ISO-NE's reliance on confidential information prevents full evaluation of the justness and reasonableness of its proposal.

For consumers and members of NEPOOL's End User sector, including PIOs,¹⁶ the lack of transparency in ISO-NE's proposal is concerning. As NEPOOL's filing and expert testimony make clear, NEPOOL's proposed ORTPs reflect observed economic behavior and industry expectations, while ISO-NE's proposed ORTPs for renewable energy resources are well outside the bounds of these data. The ORTPs used in New England's FCM have a meaningful impact on consumer costs, including the costs and opportunities for energy savings as the region transitions to an increasingly clean grid. Setting ORTPs too high for new renewable energy would threaten to delay and increase the costs of this transition by excluding cost-competitive resources from the market and unnecessarily raising consumers' energy burdens.

Under Section 205 of the FPA, ISO-NE and NEPOOL must demonstrate that their respective proposals are just and reasonable. NEPOOL meets this burden through

¹⁵ ISO-NE suggests that it was responsive to stakeholders as it refined its proposal during the NEPOOL process. *See, e.g.*, ISO-NE Transmittal Letter at 12. However, NEPOOL stakeholders' overwhelming and repeated rejections of multiple versions of ISO-NE's proposal over a period of months at the NEPOOL Markets and Participants Committees in late 2020 and early 2021 show that, fundamentally, the ISO did not respond to stakeholders' concerns. *See* ISO-NE, *Actions of the Markets Committee*, at 8 (Nov. 11, 2020), https://www.iso-ne.com/static-assets/documents/2020/11/11_9_thru_10_mc_meeting_actions_final.pdf (ISO-NE received just 16.667% support for its original ORTP proposal at the Markets Committee on November 9–10, 2020); NEPOOL, *NEPOOL Participants Committee Minutes*, at 13 (Dec. 3, 2020), https://nepool.com/wp-content/uploads/2021/01/Minutes_NPC_2020_1203.pdf (ISO-NE received just 18.33% support for its original ORTP proposal at the Participants Committee on December 3, 2020); ISO-NE, *Actions of the Markets Committee*, at 3 (Feb. 25, 2021), https://www.iso-ne.com/static-assets/documents/2021/02/a00_mc_2021_02_24_actions.pdf (ISO-NE received 0% support for a modified ORTP proposal at the Markets Committee on February 24, 2021); ISO-NE, *Actions of the Markets Committee*, at 3 (Mar. 19, 2021), https://www.iso-ne.com/static-assets/documents/2021/03/a00_mc_2021_03_19_actions.pdf (ISO-NE received just 18.76% support for its final modified ORTP proposal at the Markets Committee on March 19, 2021); NEPOOL, *Noticed Actions of the NEPOOL Participants Committee*, at 2 (Mar. 24, 2021), https://nepool.com/wp-content/uploads/2021/03/NPC_NOA_20210324.pdf (ISO-NE received just 19.04% support for its final modified ORTP proposal at the Participants Committee on March 24, 2021).

¹⁶ PIO signatories Acadia Center, Conservation Law Foundation, and Natural Resources Defense Council are members of NEPOOL's End User Sector.

comprehensive, transparent analysis using a wide variety of publicly available sources and a proposal that, as discussed further below, is within the bounds of reasonableness. Yet while the Commission and stakeholders can evaluate the veracity and strength of NEPOOL’s proposal by consulting its sources, key elements of ISO-NE’s proposal remain hidden behind the ISO’s reliance on non-public assumptions drawn from its consultant’s “confidential database.”¹⁷ Throughout its filing, ISO-NE emphasizes the importance of “transparent” studies,¹⁸ but the ISO’s own proposal is troublingly opaque. Given the incongruity between observed trends and the ISO’s proposed ORTPs, and in light of the substantial risks that its proposal would both unnecessarily increase costs and shift these costs to consumers, ISO-NE has failed to demonstrate that its proposal is just and reasonable.

B. NEPOOL’s economic life proposal reflects real-world operational expectations.

In its filing, ISO-NE states, “[t]here is no one-size-fits-all ‘magic number’ for the time horizon to be used” in setting ORTPs.¹⁹ PIOs agree. NEPOOL rationally proposes to calculate technology specific ORTPs using the actual operational expectations of new resources as they enter the market. For different resource types, different time horizons are appropriate, based on the expected economic lives of different technologies. As NEPOOL’s filing establishes, for example, the expected economic lives for wind and solar resources are at least 25 years and 30 years, respectively. These are conservative values that reflect current industry expectations and knowledge. Many wind and solar developers anticipate even longer resource lives.²⁰ Under NEPOOL’s proposal, resources of all types subject to IMM review would further have the

¹⁷ See, e.g., ISO-NE Transmittal Letter, at 29, 35.

¹⁸ E.g., *id.* at 39 (“Further, each such decision and adjustment must be supported by data and evidence that, in turn, must be transparently documented so that it may be evaluated for reasonableness and accuracy.”).

¹⁹ *Id.* at 22.

²⁰ NEPOOL Transmittal Letter, Attach. N-1b, Test. of Abigail Krich, at 10–15.

opportunity to present data to the IMM that supports the use of longer economic lives in their financial calculations, and the Tariff would more clearly state the standards for this review.

Given the ISO's statement that there is no one-size-fits all magic number for use in calculating ORTPs, it is curious that ISO-NE nonetheless insists that 20 years be used as a one-size-fits-all magic number for the expected lives of all new resources. The ISO's circular and inflexible reasoning appears to reflect a bias for preserving existing practices rather than incorporating the best available data and understanding into ORTPs. Tariff Section III.A.21.1.2(a) requires that ORTPs "shall be recalculated using updated data for the Capacity Commitment Period beginning on June 1, 2025, and no less often than once every three years thereafter." The Commission should enforce this mandate by approving the NEPOOL alternative which relies on such updated data and rejecting the ISO's alternative which does not.

Shoehorning renewable energy into shorter 20-year expected lives as ISO-NE proposes is not only technically unjustifiable but would be unduly discriminatory as well. Longer economic lives for renewable energy resources reflect the actual operational and commercial expectations for these resources. Ignoring these expectations would unduly discriminate against renewable energy by discounting their future anticipated revenues and thus artificially inflating the costs these resources need to recover from the FCM. Artificially constraining the economic lives of renewable energy will not only harm the developers of such resources, but will also harm consumers by denying them access to lower cost capacity resources that would otherwise clear in the market and forcing consumers to pay for higher cost, less competitive resources instead.

ISO-NE is simply incorrect that NEPOOL's proposed longer economic lives for wind and solar resources are unduly discriminatory to other resources.²¹ NEPOOL's filing shows that wind

²¹ ISO-NE Transmittal Letter at 26.

and solar resources have longer than 20-year economic lives. This fact should be reflected in the ORTPs established for these resource types in the Tariff. The ISO is welcome to present evidence of broadly-applicable longer economic lives for other resource types as well, if such evidence exists. No such showing has been made to date. In the absence of such a showing, maintaining the current 20-year assumption for other resources' economic lives makes sense and is neither unduly discriminatory nor preferential. Beyond the default ORTPs, NEPOOL's proposal would also better enable developers of non-wind and non-solar resources to make the case to the IMM to use longer economic lives for their specific resources where warranted.

C. NEPOOL's proposed ORTPs for offshore wind, solar PV, and energy storage device—lithium-ion battery resources are just, reasonable, and preferable.

NEPOOL's proposed ORTPs for clean energy resources are supported by the record and should be adopted by the Commission. Unlike the ISO's proposal, the NEPOOL alternative reflects the purpose of ORTPs to provide a screen for uncompetitively low offers. Where specific capacity technologies do not require substantial (or any) revenues from the FCM to be cost-competitive in New England, ORTP values for these resources should reflect reality by being set at appropriately low levels. NEPOOL's comprehensive and transparent analysis shows this is the case for offshore wind, solar PV, and energy storage from lithium-ion batteries.

For both offshore wind and solar PV, the use of accurate, resource-specific economic lives is an essential factor in developing just and reasonable ORTPs that are neither unduly discriminatory nor preferential. NEPOOL's ORTPs appropriately incorporate the best available data, which shows new wind and solar PV resources have expected economic lives of at least 25 and 30 years, respectively. ISO-NE's inflexible and unsupported application of a 20-year economic life for both of these resource types would result in unjustly and unreasonably high ORTPs that unduly discriminate against these renewable energy technologies.

In the case of offshore wind, the ISO’s proposed ORTP assumes capital costs that significantly and unreasonably exceed prevailing market conditions. Because the ISO’s offshore wind ORTP calculation is opaque, the precise reasons for the discrepancy are unclear; however, the numerous examples compiled by NEPOOL from publicly available literature on the costs of offshore wind unambiguously show that ISO-NE’s assumptions are outside the mainstream of observed commercial costs and expectations.²²

ISO-NE’s attacks on NEPOOL’s calculation of lower offshore wind capital costs are unfounded. While the ISO argues for adoption of its capital cost figure because it relied on a “bottom-up” analysis, a bottom-up approach to the capital costs used in ORTPs is neither mentioned nor required under the Tariff.²³ NEPOOL’s proposal is based on a comprehensive and transparent analysis of costs that has been reviewed and vetted by stakeholders and benchmarked through an extensive literature review. Unlike the ISO’s proposal, NEPOOL’s capital cost figure compares favorably with nearly two dozen other publicly available calculations of offshore wind capital costs, including a recent bottom-up analysis performed by the state of New York.²⁴

With respect to the proposed ORTP for energy storage—lithium-ion battery resources, PIOs also urge the Commission to adopt the NEPOOL proposal. While the ISO-NE and NEPOOL proposals are less divergent for this technology than they are for offshore wind and solar PV, the ISO’s proposal nevertheless inappropriately inflates the ORTP for lithium-ion batteries. ISO-NE acknowledges that it is “reasonable to assume” that energy storage providers will operate their resources in a way that optimizes their revenues, as proposed by NEPOOL,

²² NEPOOL Transmittal Letter at 17–20.

²³ Unable to support its capital costs argument with language from the Tariff, the ISO relies instead on a Wikipedia entry. ISO-NE Transmittal Letter at 40.

²⁴ NEPOOL Transmittal Letter at 17–20.

rather than a way that does not, as proposed in the ISO’s model.²⁵ Given that ORTPs are intended to be a screen on uncompetitive bidding only and “are intended to represent the low end of the range of potential competitive offers,”²⁶ it is most reasonable to calculate the ORTP for energy storage—lithium-ion batteries in a way that reflects optimal, competitive behavior by resource owners.

As with the use of accurate economic lives in calculating ORTPs, using reasonable assumptions about capital costs and resource operation as only NEPOOL’s proposal does is essential to ensure a just and reasonable market that will protect consumers from being forced to pay too much for capacity.

D. NEPOOL’s proposal on the federal PTC and ITC better ensures that ORTPs reflect reasonable commercial behavior and circumstances.

Given the impact of federal tax law on the development of clean energy resources, it is likewise essential that ORTPs accurately reflect the ways in which the current structure of and potential future changes to the Production Tax Credit (“PTC”) and Investment Tax Credit (“ITC”) affect commercial wind and solar developers’ expectations and behavior. In comparison to the ISO’s proposal, NEPOOL’s proposal more accurately reflects rational economic behavior of project developers under the ITC and will better ensure that ORTPs in future years account for changes in federal tax law that have a material effect on project costs and finances.²⁷

Just as ISO-NE updated its original ORTP proposal to account for the December 2020 extension of the ITC,²⁸ potential future extensions of the ITC and PTC should also be reflected in the market rules, as NEPOOL proposes. ISO-NE’s complaint that incorporating these changes

²⁵ ISO-NE Transmittal Letter at 47.

²⁶ *Id.* at 14.

²⁷ NEPOOL Transmittal Letter at 20–22.

²⁸ *Id.* at 22.

in future years is “potentially complicated,”²⁹ rings hollow in the context of the multibillion-dollar FCM. Consumers, who are also federal taxpayers, have a right to expect that the costs they pay in the FCM are reflective of federal tax law and are not inflated because the market operator has ignored federal tax law to the detriment of clean energy. Because changes in the federal PTC and ITC affect the financing of clean energy resources, in the absence of NEPOOL’s proposal, presumably individual resource developers would be able to seek case-by-case IMM review for a lower ORTP that incorporates federal tax law changes. Rather than creating this unnecessary burden on and uncertainty for each individual project developer, the Tariff should require a transparent change that reflects these broadly available federal tax credits.

E. NEPOOL’s proposal on ORTPs for combined resources is needed to provide clarity.

Finally, PIOs urge the Commission to adopt NEPOOL’s proposed clarification to the Tariff on how ORTPs are to be calculated for combined resources. As noted in NEPOOL’s filing, combined resources are being proposed in the region with greater frequency, and greater clarity on their ORTP treatment is needed to enable their development.³⁰ As with the other elements of NEPOOL’s proposal, providing clarity on combined resource ORTPs will better ensure just and reasonable application of the Tariff to new clean energy resources and help avoid higher than necessary capacity prices, leading to corresponding consumer benefits.

CONCLUSION

For the foregoing reasons, we respectfully request that the Commission approve the NEPOOL alternative and reject the ISO-NE alternative.

²⁹ ISO-NE Transmittal Letter at 54.

³⁰ NEPOOL Transmittal Letter at 24–29.

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Respectfully submitted,

/s/ Carter Hall

Carter Hall
Senior Associate Attorney
Earthjustice
1001 G Street, N.W., Suite 1000
Washington, DC 20009
(202) 797-4304
chall@earthjustice.org
Counsel for Sierra Club

/s/ John N. Moore

John N. Moore
Director and Senior Attorney
Sustainable FERC Project
20 North Wacker Drive, Suite 1600
Chicago, IL 60606
(312) 651-7927
moore.fercproject@gmail.com

/s/ Sarah Krame

Sarah Krame
Associate Attorney
Sierra Club Environmental Law Program
50 F St. NW, 8th Floor
Washington, DC 20001
(202) 548-4597
Sarah.krame@sierraclub.org

/s/ Bruce Ho

Bruce Ho
Senior Advocate
Natural Resources Defense Council
40 W. 20th St.
New York, NY 10011
(212) 727-4513
bho@nrdc.org

/s/ Deborah Donovan

Deborah Donovan
Senior Policy Advocate/Massachusetts
Director
Acadia Center
8 Summer Street
P.O. Box 583
Rockport, ME 04586-0583
617-742-0054, ext 103
ddonovan@acadiacenter.org

/s/ Priya Gandbhir

Priya Gandbhir
Staff Attorney
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
617-850-1777
pgandbhir@clf.org

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. § 385.2010 upon each party designated on the official service list in this proceeding by email.

Dated: April 28, 2021.

/s/ Carter Hall

Carter Hall

Senior Associate Attorney

Earthjustice

1001 G Street, N.W., Suite 1000

Washington, DC 20009

(202) 797-4304

chall@earthjustice.org