STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 20-E-0197 – Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act

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COMMENTS OF NEW YORK POWER AUTHORITY

Pursuant to the Notice of Proposed Rulemaking published in the State Register on November 18, 2020, the New York Power Authority (NYPA) submits these comments on the Compliance Report by Electric Utilities on Developing Distribution and Local Transmission in Accordance with the Accelerated Renewable Energy Growth and Community Benefit Act (Report), submitted by Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., Long Island Power Authority, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, New York State Energy Research and Development Authority, Orange & Rockland Utilities, Inc. and Rochester Gas and Electric Corporation (Transmission Working Group).[1]

On November 2, 2020, the Transmission Working Group filed the Report in the above-referenced proceeding in compliance with the Commission's May 14, 2020 Order on Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCB Act), L. 2020, Ch. 58, Part JJJ (May Order).[2] The Report included

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[1] The Notice was identified in the State Register as I.D. No. PSC-46-20-00008-P.

[2] The Long Island Power Authority and the New York State Energy Research and Development Authority were not under order to comply with the Commission's May Order but did participate in the filing.

recommendations for project investment criteria, prioritization, and adoption of planning processes to accelerate select future local transmission and distribution projects (CLCPA Projects) that are related to achieving the goals of the Climate Leadership and Community Protection Act (CLCPA). Among these recommendations, the Report identifies specific CLCPA Projects, and provides possible mechanisms the Commission may consider to recover the costs of the CLCPA Projects via an equitable state-wide load-ratio share basis.

On November 18, 2020, the Department of Public Service Staff (Staff) submitted its Supplement to Utility Transmission and Distribution Investment Working Group Report (Supplemental Report) in the same proceeding. The Supplemental Report provided an additional cost recovery methodology for CLCPA Projects that was not included in the original Report. Staff's Supplemental Report suggests that the Commission could find it just and reasonable to include both the costs of such improvements and compensating transfers among local distribution providers through retail rates. The Commission could authorize a retail charge that appropriately distributed costs among the utilities pursuant to a Commission-approved mechanism.

Overall, NYPA supports and appreciates the collaborative and thorough work of the Transmission Working Group and Staff. NYPA was a participant in the development process of the Report, and provided its own perspective to the working group. It is NYPA's uniqueness that separates NYPA from the rest of the participants. As a result of certain constraints on NYPA discussed below that are not applicable to others, NYPA would have difficulty with some of the cost allocation proposals, while other proposals could effectively distribute the costs in an equitable manner.

BACKGROUND

NYPA

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of the State, and operating pursuant to Title 1 of Article 5 of the Public Authorities Law. In summary, NYPA generates, transmits, and sells electric power and energy throughout the State of New York. NYPA sells low-cost power under numerous state statutory programs for the purpose of supporting economic development in the state. NYPA also is authorized by federal and state law to sell power to municipal electric utilities and rural electric cooperatives for resale to end-use customers. NYPA also may sell power to other public entities.

The Working Group Report

Within its May Order, the Commission initiated a proceeding "to develop and consider proposals for implementing the provisions of the AREGCB Act with respect to distribution and transmission upgrades, capital expenditures and planning," which were further detailed in the body of the May Order.[3] The Commission directed the utilities[4] to submit filings regarding CLCPA Projects.[5] In response, the Transmission Working Group members collaborated to answer the Commission's directive and provide a cohesive document.

Cost Compensation Proposal

Within the Report, the Transmission Working Group discussed the issue of cost allocation and cost recovery for a transmission owner who builds an improvement that benefits

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3 May Order at 10.

4 Consolidated Edison of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation; Central Hudson Gas & Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid.

5 May Order at 10.

the CLCPA policy goals. The Transmission Working Group recommends that all State consumers pay for CLCPA Projects, and provided the following four potential approaches for cost allocation and cost recovery: (i) a rate case-based approach, (ii) voluntary agreements, (iii) NYSERDA payments, and (iv) renewable generation sponsorship. In addition, Staff provided an additional proposal within its Supplemental Report. NYPA is concerned that some of these proposals may not include NYPA customers in the cost allocation. However, some of the proposals could include NYPA's customers in the cost sharing, but certain options may more equitably distribute the costs amongst all consumers in New York. Each cost allocation proposal is reviewed below to determine whether it would operate well with NYPA's unique characteristics.

COMMENTS

I. A REVIEW OF EACH PROPOSED COST ALLOCATION APPROACH

Within the Report, the Transmission Working Group provided a thorough description of the above-referenced four proposals for cost allocation and recovery. Additionally, Staff presented an alternative proposal within its Supplemental Report. NYPA takes this opportunity to provide its perspective on the potential issues relating to the implementation of each approach when working with the unique characteristics of NYPA. A number of these approaches could appropriately distribute costs, depending on how they are developed. NYPA wishes to take this opportunity to highlight issues that need to be resolved within the structure of a cost allocation proposal so the one selected by the Commission does not cause unforeseen problems.

A. The Rate Case-Based Approach

The utilities may seek recovery of costs by appearing before the Commission and petitioning for recovery through a bundled rate case. Upon review, the Commission would determine whether the cost in question was just and reasonable, and if so, the cost is passed to the utility's customers. Through this approach, each utility will internalize the costs of their local CLCPA Projects. The utility may submit the allocated cost of a CLCPA Project to the Commission for review. The Commission would review such costs in a rate proceeding, and if approved, would pass the costs through to the consumers of that utility.

This approach would be acceptable for NYPA. While NYPA is not regulated by the Commission, the vast majority of its customers[6] receive distribution service from a utility. Since a Commission-approved cost would be included in utility rates, the NYPA customer would pay its share of any CLCPA Project costs included in its delivery charge. Through the rate case approach, NYPA customers would pay their share of State policy-based improvements.

However, while this approach may be inclusive of NYPA, it may not be equitable statewide. One utility could have more CLCPA Projects developed in its territory when compared to others. This means that some utility customers would pay more for projects that are designed to benefit all of New York. As such, the rate case-base approach is not optimal from an equitable perspective. When Zones J and K will most likely require interconnection projects for

[6] NYPA has very few customers that receive service directly from NYPA, without a local distribution connection from a utility. These few customers would not be captured by the rate-based approach. However, the presence of these NYPA direct customers was discussed in the rate recovery proceedings of the Transmission Owner Transmission Solutions (TOTS), and the allocation arrangement was deemed just and reasonable notwithstanding their existence. See, Case No. 12-E-0503, Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans; see also, FERC Docket ER15-572-000, New York Transco, LLC, et al.

9,000 MW off-shore wind generation, it is highly unlikely that CLCPA Projects will be distributed equitably throughout New York. To most equitably allocate the costs of CLCPA Projects throughout the State, the Working Group participants agreed that the costs of the CLCPA Projects should be allocated by load-ratio share. Thus, while the rate-based cost allocation method would capture NYPA's customers, it may not be the best method to equitably distribute the CLCPA Project costs.

B. Voluntary Utility Agreements

Retail distribution providers could voluntarily agree to share the costs of CLCPA Projects. The Report describes two means to allocate costs through voluntary agreements. The first method addressed in the Report is a co-tenancy agreement. Under such an arrangement, retail providers may co-own a CLCPA Project and charge their share of costs to their customers. As noted in the Report,[7] this approach would not work if NYPA were asked to sign such a co-tenancy agreement, because NYPA would be unable to pass such costs on to its customers with long-term service contracts. However, if NYPA did not directly join a co-tenancy agreement but such an agreement existed between the utilities, CLCPA Project costs would then fall into local transmission charges. In this case NYPA customers would pay their fair share of local distribution service charges, which would include the CLCPA Project costs.

The second form of voluntary agreements noted in the Report works for NYPA, and has been utilized as a cost allocation tool in the past. Under a participant funding agreement, the retail providers would agree to share CLCPA Project costs without any corresponding equity ownership, as noted in the Report.[8] In other words, each retail provider would agree to

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[7] Report at 52.
[8] Id.

contribute to the costs of a CLCPA Project regardless of whether a particular provider owned any portion of the Project. This approach creates an equitable distribution of costs throughout all distribution providers that execute the voluntary agreement.

However, the rate would require approval from the Federal Energy Regulatory Commission (FERC), and recovery would be established through FERC and not in rates set by the New York Commission. This means that the process of creating a rate would be at FERC. The process and the rate established would be under FERC jurisdiction. Since it is a FERC jurisdictional rate, the costs of the CLCPA Project are then paid through NYISO charges. NYPA customers pay NYISO charges, so this approach captures NYPA customers and equitably distributes costs based on a load-ratio share.

NYPA has been a participant in a participant funding agreement for the Marcy South Series Compensation Project, one of the Transmission Owner Transmission Solutions (TOTS) that is a part of the Indian Point contingency planning proceeding before the Commission.[9] This project is an instrumental example of a participant funding agreement, because it is recognized as the first cost sharing for a project that benefits the entire State.

Participant funding worked for NYPA because the costs flow through a NYISO charge, which are paid by NYPA's customers. While this approach works, the rates set and recovery would fall within FERC jurisdiction and would be outside any rates set by the Commission.

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9 Case No. 12-E-0503, Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans.

C. NYSERDA Payments

This cost allocation approach provides that NYSERDA would pay for transmission improvements supporting CLCPA policy goals through the System Benefits Charge (SBC) funds. However, NYPA customers do not pay SBC, and NYSERDA does not have legal authority to charge NYPA's municipal customers. In order to develop such a mechanism, it may be necessary to create additional legislative authorization. Even then, this new additional charge would contrast with many of NYPA's present long-term contracts and may be unenforceable. Thus, this approach is extremely difficult to exercise with NYPA.

D. Renewable Generation Sponsorship

The Report details steps that would be required to effectuate this approach. First, the retail provider would coordinate with a renewable generation owner or developer of a new renewable generation facility to identify a transmission project that would unbottle the electricity produced from the facility. Second, the retail provider and generator owner would enter into an agreement for recovery of the costs of the transmission project, and would file a rate at the Federal Energy Regulatory Commission (FERC) consistent with their agreement. The rate filed would be for the recovery of the costs of the transmission project. Third, when the last of either the generation or transmission enters service, the generator is charged for costs of the transmission project, as reflected in the agreement filed at FERC. The Report notes that if the transmission project begins construction prior to the renewable generation facility being placed in-service, the distribution provider would recover its costs from customer delivery charges through a Commission-approved rate. The generation owner would begin paying for the transmission project when the generation facility enters service, at which time the distribution provider's customers are refunded by the generator's payments for charges previously incurred.

Overall, this approach could work for NYPA. If the cost ultimately is resolved through a delivery rate approved by the Commission, NYPA customers would again pay their share through a delivery charge. However, NYPA does not endorse this approach. Through its policy goals, New York is attempting to promote renewable energy. Saddling individual renewable generation projects directly with the cost of transmission projects that are intended to benefit the entire state would likely stifle development and investments. This approach could create a business risk that developers would unable or unwilling to incur. This proposal stands contrary to the intent of the Commission's May Order.

E. Staff's Alternative Proposal

Staff's Supplemental Report stated that the utilities and the Commission should consider another option for cost recovery. Staff proposed to have both the prudently-incurred costs of CLCPA Projects and any compensating transfers among the Utilities to be recovered through Commission-jurisdictional retail rates.

Staff suggested that in the context of the more centralized planning regime contemplated by the Act, it will be possible to estimate CLCPA-driven local transmission expenditures through the coordinated review of the utilities' CLCPA investment plans. Staff voiced its agreement with the Report by stating that each utility district will no doubt incur CLCPA-driven costs, and that the cost of CLCPA Projects may be best allocated among ratepayers on a load-ratio share basis. However, Staff notes that as planning progresses, and these investments come into service, disparities in the cost burden will be realized. The Commission may determine that including both the project costs and compensation for transfers among the utilities in retail rates is a just and reasonable method to fund CLCPA Projects.

After agreeing with the foregoing within the Report, Staff provided an alternative method for cost recovery. Staff stated that to ensure an equitable distribution of the costs of CLCPA projects, the Commission could authorize a retail charge that would be distributed as appropriate among utilities pursuant to a Commission-approved adjustment mechanism.

NYPA supports Staff's proposal. This method would work similarly to a participant funding agreement method, but would remain within the jurisdiction of the Commission. This means cost recovery would be set within retail rates, and would not require a proceeding at FERC or any additional approval.

CONCLUSION

NYPA commends the Working Group for their collaborative efforts and the Report filed as a product of their good work. Pursuant to the Commission's May Order, the Report will assist the Commission in future decision-making related to CLCPA Projects. Based on NYPA's unique characteristics and the circumstances presented, some of the cost recovery methods presented in the proposal are not as effective as others. The rate base approach will capture NYPA customers in cost recovery, it will most likely lead to an inequitable distribution of charges. Such an approach could work if all retail distribution providers incurred the same costs from CLCPA Projects, which is unlikely. A co-tenancy agreement does not work for NYPA if the Authority is requested to execute the agreement, but it can be a viable approach if NYPA does not sign, and if retail distribution providers hold a co-tenancy agreement and share their costs through retail wires charges. A participant funding agreement has worked for NYPA in the past and has been successful, but it would fall under FERC authority and approval. An approach where NYSERDA would pay for CLCPA Projects and recover costs through SBC funds may take too long to implement when expediency is necessary to advance state policy goals.

Considering such an approach could require legislative action, this is likely not the swiftest means to promote the desired CLCPA Projects. Similar to the participant funding agreement approach, Staff's alternative approach of a retail charge would capture NYPA's customers and equitably distribute CLCPA Project costs while remaining under the jurisdiction of the Commission. Based on the foregoing, NYPA supports Staff's approach as a valuable alternative the Commission may wish to employ; it appears to be manageable within this Commission's jurisdiction, it is inclusive of NYPA customers, and may be established in an equitable manner statewide.

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Albany, New York

Respectfully submitted,

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