

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on February 23, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

- CASE 12-T-0502 - Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades.
- CASE 13-E-0488 - In the Matter of Alternating Current Transmission Upgrades - Comparative Proceeding.
- CASE 13-T-0454 - Application of North America Transmission Corporation and North America Transmission, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for an Alternating Current Transmission Upgrade Project Consisting of an Edic to Fraser 345 kV Transmission Line and a New Scotland to Leeds to Pleasant Valley 345 kV Transmission Line.
- CASE 13-T-0455 - Part A Application of NextEra Energy Transmission New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for the Marcy to Pleasant Valley Project.
- CASE 13-T-0456 - The Part A Application of NextEra Energy Transmission New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for the Oakdale to Fraser Project.
- CASE 13-M-0457 - Application of New York Transmission Owners Pursuant to Article VII for Authority to Construct and Operate Electric Transmission Facilities in Multiple Counties in New York State.

CASE 12-T-0502, et al.

CASE 13-T-0461 - Application of Boundless Energy NE, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for Leeds Path West Project.

CASE 14-E-0454 - In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration.

ORDER DENYING REHEARING

(Issued and Effective February 23, 2016)

BY THE COMMISSION:

INTRODUCTION

In a petition for rehearing (Petition) submitted on January 15, 2016, Boundless Energy NE, LLC (Boundless) seeks rehearing of the Commission's Order Finding Transmission Needs Driven by Public Policy Requirements¹ issued on December 17, 2015 in these proceedings. In the December 17, 2015 Order, the Commission found and determined that there was a transmission need driven by Public Policy Requirements for new 345 kV major electric transmission facilities to cross the Central East and UPNY/SENY interfaces to provide additional transmission capacity to move power from upstate to downstate. By this order, the Commission denies rehearing of the December 17, 2015 Order because the Boundless Petition fails to demonstrate that the Commission committed an error of law or fact, or that new circumstances warrant a different determination.

¹ Case 12-T-0502, et al., Alternating Current Transmission Upgrades, Order Finding Transmission Needs Driven by Public Policy Requirements (issued December 17, 2015)("December 17, 2015 Order").

LEGAL AUTHORITY

The Commission's rules provide that any person interested in an order of the Commission may request rehearing within 30 days of service of the order [16 NYCRR, Section 3.7(a)], and that rehearing may be sought only on the grounds that the Commission committed an error of law or fact, or that new circumstances warrant a different determination [16 NYCRR, Section 3.7(b)].

SUMMARY OF THE BOUNDLESS PETITION

Boundless requests that the Commission grant rehearing and modify its December 17, 2015 Order to only identify the public policy requirement that the New York Independent System Operator (NYISO) should address under the NYISO Open Access Transmission Tariff without establishing a particularized statement of what transmission development in the specified region must be undertaken. Boundless alleges nine errors or new circumstances said to warrant rehearing, as follows:

- (1) Error as a matter of law and in violation of the State Administrative Procedure Act (SAPA) by adopting a portfolio of project proposals as public policy requirements;
- (2) Error as a matter of law and in violation of Attachment Y of the NYISO Open Access Transmission Tariff by adopting a specific portfolio of project proposals to meet the identified public policy requirements;
- (3) Error as a matter of fact by failing to account for the capability increase at the UPNY-SENY interface contributed by the TOTS Projects;
- (4) Error as a matter of law and fact by using proposed projects' impact on the Central East interface as its basis for deciding which proposed projects to adopt to meet the public policy requirement;

- (5) Error as a matter of fact by failing to address the reduced line losses that result from the use of the ACCC conductor proposed by Boundless;
- (6) Error as a matter of fact in its assessment of the environmental impacts of the Boundless projects;
- (7) Error as a matter of fact by adopting three new project fragments;
- (8) Error as a matter of law and fact in its evaluation and selection processes; and
- (9) Error as a matter of fact in calculating refurbishment credits.

ARGUMENTS AND DISCUSSION

The Petition was filed in a timely manner and is properly before the Commission.

SAPA

Boundless notes that there is a distinction recognized by SAPA between rulemaking and adjudication by administrative agencies, and while administrative agencies can undertake both rulemakings and adjudications, they are separate functions, with separate procedural requirements. Boundless goes on to characterize the Commission's December 17, 2015 Order as an "adjudication of specific projects" that is not consistent with SAPA requirements.

Discussion

The Boundless discussion on SAPA is incomplete and, among other things, fails to note the further distinction between "hard" rules and "soft" rules under SAPA. "Hard" rules are of "general applicability" and are codified in the New York Code of Rules and Regulations (NYCRR) [SAPA § 102(2)(a)(i)]. "Soft" rules can be of "general or particular applicability" and are not codified in the NYCRR [SAPA § 102(2)(a)(ii)]. Pursuant to SAPA, "rules" are adopted pursuant to the rule making

procedures set forth in SAPA Article 2 [SAPA § 202], and "licenses" such as Article VII certificates which are required by law to be preceded by notice and an opportunity for a hearing are adopted pursuant to the adjudicatory proceedings procedures set forth in SAPA Article 3 [SAPA § 401(1)].

Boundless is incorrect in its characterization of the December 17, 2015 Order as an "adjudication of specific projects". The December 17, 2015 Order did not grant any entity an Article VII certificate or "license". The December 17, 2015 Order also did not deny any entity an Article VII certificate or "license". As a matter of law, no "adjudication" of any kind occurred as a result of the December 17, 2015 Order. All of the findings and determinations made by the Commission in the December 17, 2015 Order were made in compliance with the rule making procedures set forth in SAPA Article 2 as required pursuant to the NYISO Open Access Transmission Tariff.² The Boundless Petition does not establish an error of law in regard to SAPA compliance.

Attachment Y

Boundless asserts that the role of the Commission pursuant to the Public Policy Transmission Planning Process is to identify public policy transmission needs to be evaluated by the NYISO, but not to identify specific projects to meet that need or to decide which projects, or developers are allowed to submit projects to meet that identified need. Boundless claims that in the December 17, 2015 Order, the Commission acted illegally and in violation of the NYISO OATT by dictating to the NYISO specific projects that meet the requirement identified by the Commission.

² Attachment Y of the NYISO Open Access Transmission Tariff contains a provision that requires the Commission to follow the rule making procedures of SAPA in making the findings and determinations required by the NYISO tariff.

Discussion

The characterizations made by Boundless are baseless. The December 17, 2015 Order did not dictate to the NYISO specific projects that meet the requirement identified by the Commission. To the contrary, the Order recognizes that transmission, generation and demand-side solutions can be proposed by any entity to the NYISO in response to the solicitation. The Boundless Petition does not establish an error of law in regard to Attachment Y compliance.

TOTS Projects Capability

Boundless argues that the Commission's original goal to increase the transfer capability across the UPNY-SENY electric transmission interface by 1,000 MW should be reduced to 793 MW to reflect a 207 MW contribution from the Transmission Owners Transmission Solutions (TOTS) projects previously approved by the Commission. Boundless submits that the failure of the Commission to account for the transfer capability already achieved as a result of the TOTS Projects requires correction as a clear mistake to follow the available facts to the correct conclusion.

Discussion

The 900 MW increase at UPNY/SENY figure was established in the December 17, 2015 Order as a criterion upon which the NYISO should evaluate proposed transmission solutions that took into account the likely contribution of the TOTS projects. The 900 MW figure is not the result of a math error. Given that all of these numbers are projections, the Commission is satisfied that a 100 MW reduction in the UPNY/SENY goal is a reasonable and conservative way to reflect the likely contribution of the TOTS projects. The Boundless Petition does not establish an error of fact in that regard.

Impact on the Central East Interface

Boundless in its Petition restates legal arguments it had previously made in its comments that hinge on the citation of a judicial decision regarding contract law. Boundless is essentially asserting that it is illegal for the Commission to change the terms of a solicitation after the bids have been received.

Discussion

As already noted in the December 17, 2015 Order, the Commission is not entering into any contracts. Contract law is irrelevant. Any Commission decision in these proceedings will hinge on the statutory requirements of the Public Service Law as to required Article VII findings and determinations and/or on the requirements stated in the NYISO Open Access Transmission Tariff. The restatement by Boundless of earlier comments that were already considered and rejected by the Commission does not establish an error of law.

Reduced Line Losses

In the Petition, Boundless claims that the Commission erred by not recognizing all the economic and environmental benefits provided by the conductor type (aluminum conductor composite core or "ACCC") proposed by Boundless.

Discussion

Boundless was treated the same as all of the other developers. Boundless provided the technical specifications of its conductor to the NYISO. The NYISO used the information Boundless provided as input to model the proposed projects and perform the powerflow analyses that are used to calculate changes in transfer capability and which inherently include the line loss characteristics of the various proposals. The Boundless Petition does not establish an error of fact in regard to the assessment of the Boundless conductor proposals.

Assessment of Environmental Impacts

Boundless claims that the Commission's assertions that all projects which cross the Hudson River had an environmental ranking higher than "Low" is simply erroneous. Boundless claims instead that Trial Staff implicitly ranked both of Boundless' projects as having a low environmental ranking with respect to the Hudson River crossing.

Discussion

Boundless is the one that has made the error of fact. Table 1 attached to the Trial Staff Final Report explicitly ranks the Hudson River crossing for Boundless Project 20 as "Medium" and the Hudson River crossing for Boundless Project 21 as "Medium". The Boundless Petition does not establish an error of fact in regard to the assessment of environmental impacts.

Three New Project Fragments

Boundless complains that what it calls the "project fragments" have not been studied and analyzed in a manner comparable to all of the other projects submitted in these proceedings and there is no basis in the record before the Commission for the selection of these project fragments comparable to the selection of Project 11. Boundless in particular claims that there is insufficient cost and transfer capability information. Boundless asserts that it has been discriminated against because it was not invited to propose a transmission solution to the NYISO thereby making Boundless eligible for cost recovery of costs incurred in preparing its NYISO submission. Boundless also claims that because only project fragments competing with Project 11 are under consideration, there is no evidence that the selection of the Knickerbocker to Pleasant Valley corridor is superior to other corridor options, including particularly projects on the west side of the Hudson River.

Discussion

Boundless is incorrect as to the scope of cost, transfer capability, environmental impact and other information in the record as to what it calls "project fragments". The Commission is satisfied that the record is robust and that the assertions now made by Boundless are without basis and do not establish errors of law or fact.

Evaluation and Selection Processes

Boundless in its Petition restates arguments it had previously made in its comments claiming that since the Commission precluded project sponsors from changing their projects after January 7, 2015, it may not allow some developers to now change their proposals. In its Petition, Boundless further simultaneously claims that although Central East congestion was never the focus of the Commission's stated goals in this proceeding, the Commission committed error by not acknowledging an offer by Boundless to address reducing congestion at the Central East interface. Boundless further argues that the two distinct issues of congestion on UPNY/SENY and congestion on Central East are two separate transmission interfaces that necessarily must be addressed independently. Finally, Boundless claims in the Petition that the Commission does not explain in the December 17, 2015 Order why all the transmission facilities that constitute components of the Central East and UPNY/SENY interfaces are not a necessary and appropriate part of the Public Policy Requirement, rather than just the reduced corridor of facilities identified. Boundless argues that the identification of a lesser corridor is an error of fact.

Discussion

In the December 17, 2015 Order, after the comparative evaluation had been completed, the Commission invited some

developers to propose their solutions to the NYISO with the opportunity of some recovery of preparation costs if they made minor modifications to satisfy the Commission. The Commission did not allow any developers on their own to change their projects after the Part A filing deadline for the purposes of the comparative evaluation, the integrity of the comparative evaluation process being the purpose of the prohibition on changes by developers. The restatement by Boundless of earlier comments that were already considered and rejected by the Commission does not establish an error of law or fact. Boundless' claim that its proposals included reconductoring from Leeds to New Scotland and back to Marcy and Edic if needed in order to address congestion at Central East is belied by the Part A filings made by Boundless for the comparative evaluation. In the Part A filings, which were to be the basis of the comparative evaluation, Boundless did not identify any facilities north of Greene and Columbia Counties as being in any way a part of the two Boundless proposals. The current claim by Boundless is therefore baseless and inappropriate. The Commission is satisfied that the December 17, 2015 Order adequately explains the relationship between the two interfaces and the basis for the Commission's findings and determinations in the Order and that there is no error of law or fact in that regard.

Calculation of Refurbishment Credits

Boundless in its Petition restates factual arguments it had previously made in its comments criticizing the level of refurbishment credit assigned to Project 11 for avoiding the rebuild of existing transmission lines from Marcy/Edic to New Scotland.

Discussion

In the December 17, 2015 Order, the Commission determined that the Trial Staff methodology for assigning refurbishment credits, established in consultation with the consultant Brattle, appears to be reasonable and to have been fairly applied across all the projects. The restatement by Boundless of earlier comments that were already considered and rejected by the Commission does not establish an error of fact.

CONCLUSION

Pursuant to 16 NYCRR §3.7(b), rehearing may be sought only on the grounds that an error of law or fact was committed or that new circumstances warrant a different determination. The Commission's review of the Petition has identified no error of law or fact, nor any new circumstances that would warrant a different determination, therefore rehearing is denied.

The Commission orders:

1. The petition for rehearing of Boundless Energy NE, LLC is denied.
2. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary