

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Proceeding on Motion of the Commission to Implement Transmission
Planning Pursuant to the Accelerated Renewable Energy Growth and
Community Benefit Act**

Case 20-E-0197

**COMMENTS OF
MULTIPLE INTERVENORS
ON PRIORITY TRANSMISSION
PROJECT PETITIONS**

Dated: September 14, 2020

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PRELIMINARY STATEMENT

Pursuant to the Notice of Proposed Rulemaking published in the July 15, 2020 edition of the New York State Register (I.D. No. PSC-28-20-00026-P), Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments on the *Petition Requesting Adoption of Criteria for Guiding Evaluation of Whether a Bulk Transmission Investment Should Be Designated as a Priority Transmission Project, and for Designation of Certain Transmission Investments in Northern New York as a Priority Transmission Project* (“Criteria Petition”), jointly filed by New York State Department of Public Service Staff (“Staff”) and the New York Power Authority (“NYPA”) on July 2, 2020 in the above-captioned proceeding, and the *Petition Requesting Designation of Certain Transmission Investments in Western New York as a Priority Transmission Project, Or in the Alternative Requesting the Public Service Commission to Direct the Construction of the Project Components by the Affected Utilities* (“WNYEL Petition”), filed by NYPA on July 13, 2020 in the above-captioned proceeding.

Both Petitions relate to the Accelerated Renewable Energy Growth and Community Benefit Act (“Act”). The Act, in relevant part, seeks the development of new transmission within the State to facilitate achievement of the Climate Leadership and Community Protection Act’s (“CLCPA”) targets.¹ The Act prescribes a comprehensive process to ensure that the transmission investments needed to achieve the CLCPA’s targets are pursued in a logical and cost-effective manner.² At the very end of the Act’s prescribed process, the Commission refers identified

¹ E.g., L. 2020, ch. 58, Part JJJ (“Act”) at § 7(2).

² E.g., *id.*

projects to the New York State Independent System Operator, Inc.’s (“NYISO”) Public Policy Transmission Planning Process (“PPTPP”), or, if “needed expeditiously,” to the New York Power Authority (“NYPA”).³

In the Criteria Petition, Staff proposes eight Criteria for the Commission to employ to decide whether a transmission investment identified as part of the Act’s process is “needed expeditiously,” and therefore directed to NYPA for development.⁴ In the same Petition, NYPA also requests that the Commission designate its proposed Northern NY project as a priority transmission project needed expeditiously because it allegedly satisfies the Criteria that Staff is proposing.⁵ Similarly, in the WNYEL Petition, NYPA requests that the Commission designate its proposed Western New York Energy Link (“WNYEL”) project as a priority transmission project needed expeditiously, again alleging that it satisfies the Criteria Staff is proposing.⁶

Transmission infrastructure is expensive and long-lived; the costs associated with it will be borne mostly, if not exclusively, by electricity consumers for many decades. Accordingly, Multiple Intervenors offers the following comments in the interest of ensuring that any transmission developed as part of this proceeding is deployed in a logical, reliable, and cost-effective manner.

First, the Criteria will determine whether a project will bypass the PPTPP, a comprehensive, competitive process for developing transmission and allocating the costs thereof. Therefore, any project seeking priority designation should be cost-effective, sufficiently detailed, have an equitable cost allocation methodology, and a binding cost estimate in the interest of

³ *Id.* at § 7(4).

⁴ Criteria Petition at 4-6.

⁵ *Id.* at 6.

⁶ WNYEL Petition at 1.

protecting customers. Below, Multiple Intervenors recommends specific modifications to the Criteria to improve customer protections.

In addition, the Commission should not grant NYPA's request for priority status for either the Northern NY project or the WNYEL project at this time. The Act mandates a process for systematically and comprehensively assessing the electricity grid, identifying needed upgrades, and scheduling those upgrades. The priority determination sought now by NYPA is made at the end of that process. Without commenting on the merits of the NYPA requests, as a procedural matter, those determinations should not be made now.

COMMENTS

POINT I

THE CRITERIA SHOULD BE MODIFIED TO ENSURE THAT PRIORITY PROPOSALS ARE COST-EFFECTIVE AND SUFFICIENTLY JUSTIFIED

The Staff Criteria are designed to guide the Commission in deciding which projects are “needed expeditiously.”⁷ Designating a project a priority transmission project is not just a matter of timing, however. Fundamentally, this designation also amounts to a choice between using the NYISO's PPTPP to develop transmission, or, if “needed expeditiously,” to NYPA for development instead through a separate, NYPA-only process.⁸ The two processes for project review are distinctly different.

The PPTPP is a well-established, transparent, and competitive process with distinct benefits for customers. The NYISO evaluates the viability and sufficiency of proposed solutions to a public policy need, selecting the “more efficient or cost-effective” solution.⁹ The PPTPP thus

⁷ Criteria Petition at 4-5.

⁸ Act at § 7(4).

⁹ New York State Independent System Operator Open Access Transmission Tariff Attachment Y (“OATT”) § 31.4.1.

leverages competition to address public policy needs cost effectively. Moreover, the PPTPP is a transparent process. Developers are required to submit highly detailed proposals sufficient to allow the NYISO to assess viability and sufficiency.¹⁰ Developers are also required to submit detailed cost information and a cost cap, allowing the NYISO to assess cost effectiveness and protect customers against cost overruns.¹¹ Finally, the PPTPP includes an equitable “beneficiaries pay” cost allocation and cost recovery methodology,¹² allowing the NYISO and all stakeholders to fully understand the cost impacts of a proposed solution.¹³ Thus, the PPTPP includes several important safeguards designed to ensure a cost-effective result.

The Act’s process for developing priority transmission projects contrasts with the PPTPP. Initially, the process begins with a single solution to a need – a project NYPA “has agreed to develop” – rather than several potential solutions to a need.¹⁴ From there, NYPA solicits potential co-participants, and may, at its discretion, elect to undertake a project with co-participants.¹⁵ Other than requiring the process through which NYPA solicits potential co-participants to be “public,” the Act includes no further process.¹⁶ This process is not competitive,¹⁷ and not necessarily transparent. It also does not include any of the customer protections in the PPTPP process, namely detailed project information and cost estimates, a cost cap, and cost allocation and recovery methodologies.

¹⁰ *E.g., id.* at § 31.4.5.1.1.

¹¹ *Id.* at § 31.4.5.1.8.

¹² *E.g., Cases 12-T-0502 et al., Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades, Order finding Transmission Needs Driven by Public Policy Requirements* (issued December 17, 2015) at 52.

¹³ OATT at § 31.5.

¹⁴ Act at § 7(5).

¹⁵ *Id.*

¹⁶ *See id.*

¹⁷ There is a slightly different process for priority transmission projects that are not substantially in NYPA’s existing rights of way that the Act does mandate be competitive. *Id.*

In light of these differences, Staff’s Criteria by which the Commission will choose projects to direct to NYPA should not only consider what characteristics make a project “needed expeditiously to achieve CLCPA targets,”¹⁸ but also incorporate consumer protections that track the best features of the PPTPP. Accordingly, Multiple Intervenors proposes the following revisions to Staff’s Criteria. First, Multiple Intervenors recommends that Staff’s Criteria be modified so projects include a binding cost estimate and a proposal regarding what happens if a cost cap is exceeded.¹⁹ Furthermore, projects should include sufficient detail so that cost-effectiveness can be fairly evaluated. Without these safeguards, the State risks deploying transmission investments that are not cost-effective. Although the State is mandated to meet the CLCPA targets, it should strive to do so at least cost. Finally, cost allocation and recovery information is vital to determining the impacts to customers and whether transmission deployment is done in an equitable manner. Accordingly, to protect customers, the Staff Criteria should be amended to require that the proposal have: (1) sufficient detail so that the financial viability of the project can be ascertained; (2) a binding cost estimate and cost cap, as well as the effect of exceeding the cap; (3) a demonstration of its cost-effectiveness;²⁰ and (4) a proposed equitable cost allocation and recovery methodology.²¹

¹⁸ Act at § 7(5).

¹⁹ Cases 12-T-0502 *et al.*, *supra*, *Order Establishing Modified Procedures for Comparative Evaluation* (issued December 16, 2014) at 42-45 (describing reliable and binding cost estimates as necessary to fully evaluate costs to customers).

²⁰ “Cost-effectiveness of upgrades and investments in promoting development of major renewable energy facilities and relieving or avoiding constraints” is also one of the underlying issues that the Acts recommends be considered in the power grid study. *Id.* at § 7(2).

²¹ The cost allocation generally should mirror the cost allocation methodology the Commission developed that utilizes a “beneficiaries pay” approach for public policy transmission projects by allocating 75% of costs to quantifiable economic beneficiaries and 25% of costs statewide to account for less-quantifiable and/or non-economic benefits. Cases 12-T-0502 *et al.*, *supra*, *Order Establishing Modified Procedures for Comparative Evaluation* at 40-42. The NYISO subsequently adopted this methodology. *See* Electric System Planning Working Group presentation, dated June 19, 2020, and available at:

Second, Criteria 4 and 7 should be refined to specifically consider whether proceeding pursuant to the PPTPP would prevent achievement of the goals identified in those Criteria. For example, Criterion 4 considers whether priority designation would enhance other transmission or local distribution projects, and whether it would increase the likelihood of meeting CLCPA targets.²² Criterion 7 considers whether priority designation would “advance other state policy goals.”²³ The relevant question is: could those same goals be met if the projects were considered under the PPTPP process? In other words, what is the basis for prioritizing specific projects so that they avoid the rigid review under the PPTPP? These refinements would ensure that PPTPP’s procedural advantages are not eschewed without good reason.

Finally, the Commission should consider eliminating or according little weight to Criteria 1, 2, and 3, which are largely unnecessary. Staff’s Criteria 1 through 3 seek projects that would facilitate the transmission of existing and expected renewable energy to load centers.²⁴ The very purpose of Section 7 of the Act, which creates the process for identifying and prioritizing transmission investments, is “to achieve CLCPA targets.” These three Criteria reflect the characteristics of all potential transmission investments identified via the process set forth in the Act. Their inclusion does not assist the Commission in determining which projects are needed expeditiously. Instead, their inclusion only makes a priority designation more likely.

<https://www.nyiso.com/documents/20142/13200831/AC%20Transmission%20Cost%20Allocation.pdf/9b8f8c8b-0a9e-cef1-2cf7-ba5cf1051566>.

²² *Id.*

²³ *Id.*

²⁴ Criteria Petition at 5.

POINT II

DESIGNATING THE NORTHERN NY AND WNYEL PROJECTS AS PRIORITY TRANSMISSION PROJECTS AT THIS TIME IS NOT IN THE PUBLIC INTEREST

The Act prescribes a process for the transmission upgrades needed to meet the objectives of the CLCPA. First, the process requires a power grid study, a “comprehensive study for the purpose of identifying distribution upgrades, local transmission upgrades, and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of the CLCPA targets.”²⁵ Thereafter, the Commission is directed to initiate two other studies – a distribution and local transmission upgrade program for each utility,²⁶ and a bulk transmission system investment plan.²⁷ This latter plan “identifies bulk transmission investments that the Commission determines are necessary or appropriate to achieve the CLCPA targets” and creates a schedule for their implementation.²⁸ Based on the projects identified in the bulk transmission plan, the Commission determines which projects should use the NYISO’s PPTPP, and which are “needed expeditiously” and use the NYPA-only process.²⁹ Thus, the process established in the Act serves an important function: the series of studies and plans are designed to ensure that the transmission investments are considered comprehensively and holistically, with the goal of avoiding piecemeal, duplicative, or needlessly expensive transmission upgrades.

²⁵ Act at § 7(2).

²⁶ *Id.* at § 7(3).

²⁷ *Id.* at § 7(4).

²⁸ *Id.* See also Order at 10 (“we will initiate a second proceeding in the near future to establish decisional criteria for the bulk transmission planning and investments necessary to meet CLCPA mandates.”).

²⁹ *Id.* at §§ 7(4) and 7(5).

Deciding whether the Northern NY and WNYEL projects should receive priority transmission status now, in advance of the studies required by the Act, is not in the public interest.³⁰ In addition to contravening the plain language of the Act, bypassing the Act's process would not allow consideration of how NYPA's proposals fit into an upgraded transmission system that considers state-wide needs, which is the purpose of conducting the studies required by the Act. Approving the NYPA projects now would be putting the cart before the horse, and deny a comprehensive evaluation of their ability to cost-effectively achieve the goals of the Act and, more broadly, the CLCPA.

Finally, Staff has only *proposed* the Criteria; this is the first time stakeholders have had an opportunity to comment on the Criteria, and they are certainly not finalized. It would be premature to apply the Criteria before they are finalized, as NYPA has requested. For example, as discussed *supra*, Multiple Intervenors requests that the Criteria be amended to require binding cost estimates, a cost-effectiveness assessment, and a proposed cost allocation methodology that is consistent with Commission precedent. These and other changes, if adopted, would necessitate at minimum a revision and resubmission of the Petitions at the end of the Act's process, if not a complete reevaluation of NYPA's proposals.

Accordingly, for the reasons set forth herein, Multiple Intervenors requests that the Commission refrain from deciding NYPA's Petitions at this time. Instead, the Commission should make those decisions at the end of the process required by the Act, after the power grid study and the bulk transmission investment plan have been completed, and based on Criteria that have been reviewed, potentially modified, and adopted.

³⁰ Multiple Intervenors objections are based on process-related concerns. Multiple Intervenors takes no position now on the merits of NYPA's proposed transmission upgrades.

CONCLUSION

For the foregoing reasons, Multiple Intervenors urges the Commission to adopt the recommendations set forth in these Comments.

Dated: September 14, 2020
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Respectfully submitted,

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