

State of New York Public Service Commission

- 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 American 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 345kV Transmission Line and a New 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 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.

**PETITION FOR CLARIFICATION AND/OR REHEARING
OF THE INDICATED NEW YORK TRANSMISSION OWNERS**

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PRELIMINARY STATEMENT

This petition for clarification and/or rehearing is submitted on behalf of Central Hudson Gas and Electric Corporation (“Central Hudson”), Consolidated Edison Company of New York, Inc. (“Con Edison”), Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), New York State Electric & Gas Corporation (“NYSEG”), and the New York Transco LLC (“NY Transco”), all entities hereinafter identified as “Indicated NYTOs” for ease of reference, seeking clarification and/or rehearing of the New York Public Service Commission’s (“Commission”) December 16, 2014 Order in the above proceedings (the “Order”) to the extent set forth below. Pursuant to Article VII of the New York State Public Service Law and the Orders of the Commission establishing the comparative evaluation process for the above referenced proceedings, the Indicated NYTOs have participated in the above proceedings and have several projects currently proposed, both original projects with applications filed in October of 2013 and now, alternative projects, filed on January 7, 2015.¹

While the Indicated NYTOs fully support the Commission’s efforts in this proceeding to choose the project or projects that best serve the public interest and meet the Commission’s stated public policy objectives, the Indicated NYTOs are seeking a clarification and/or rehearing of certain aspects of the Order. The Indicated NYTOs fully support the Commission’s cost containment goals and are not adverse to risk-sharing mechanisms. In fact, we fully support a fully transparent and comprehensive comparison of all project proposal costs and benefits. However, in the absence of the clarifications requested herein, we believe that the cost estimate

¹ Formerly the New York Power Authority (“NYPA”) and Con Edison were participants in the filing on October 1, 2013. Since the date of that filing, their projects, known as the TOTS projects, have been withdrawn from this proceeding. The two TOTS projects included in the October 1, 2013 submission to the Commission were the Ramapo to Rock Tavern 345 kV transmission line project being developed by Con Edison (Case 13-T-0586) and the Marcy South Series Compensation (“MSSC”) project being developed by NYPA. Because of the withdrawal of these projects from this proceeding and because they are not sponsoring any other projects, Con Edison and NYPA were not parties to the January 7, 2015 filing and NYPA is not a party to this petition for rehearing. Con Edison, as an affiliate of the NY Transco, joins in this petition.

and risk-sharing provisions set forth in the Order will lead to inaccurate project comparisons, higher ratepayer costs and will not further the public interest.

Pursuant to New York Public Service Law Section 22, any person or corporation interested in an Order may seek a rehearing from the Commission. Pursuant to 16 NYCRR § 3.7, a petition for rehearing may be sought “on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination.”

The Indicated NYTOs as Parties to the above proceedings (the “AC Proceedings”) qualify as interested corporations. Indeed, as participants they have proposed projects in the AC Proceedings which will be affected by the Order and the manner in which it proposes to address cost recovery and risk-sharing. In particular, as set forth in more detail below, the Commission’s determinations regarding cost estimates and risk-sharing, unless clarified, do not comply with the Commission’s statutory obligation to provide an adequate basis for its administrative determinations, and have potentially placed the Indicated NYTOs and other developers in a precarious and untenable position. Consequently, the Indicated NYTOs are seeking clarification and/or rehearing of the Order. *See, e.g., Matter of Entergy Nuclear Power Marketing, LLC v. New York State Pub. Serv. Comm.*, 122 A.D.3d 1024 (3d Dep’t 2014).

I. REQUESTS FOR CLARIFICATION

The Indicated NYTOs Request Clarification that the Order Will Not Deny Project Sponsors the Ability to Propose Risk Sharing Mechanisms Other than the Mechanism Set Forth in the Order

- (a) *The Commission should clarify that the Order does not mandate the adoption of the risk-sharing mechanism set forth in the Order and that the Commission will permit project sponsors to propose alternatives that may meet the Commission’s objectives as well or better than the mechanism set forth in the Order.*

The Order acknowledges that the AC transmission project costs will be recovered through the NYISO’s FERC regulated tariff in accord with the Public Policy Planning provisions

of the tariff.² In recognizing that any risk sharing mechanism must be consistent with FERC policies the Order states that it also “*expects this approach will ultimately be subject to FERC’s approval.*”³ FERC’s policy on risk sharing does not mandate any specific risk sharing proposal but rather leaves it up to developers to propose a risk sharing approach-- which is what the Indicated NYTOs have done at the FERC with respect to their proposed AC Projects. See “*Promoting Transmission Investment Through Pricing Reform,*” Policy Statement, 141 FERC ¶ 61,129, at P 28 (2012) (“Incentive Rate Policy”); “*Application for Acceptance of Transmission Formula Rate and Approval of Transmission Rate Incentives and Cost Allocation Method,*” filed December 4, 2014 in FERC Docket No. ER15-572-000 at 51.

In approving the NYISO’s evaluation criteria for public policy projects, the FERC approved a process whereby the “NYISO will consider, and consult with the NYDPS regarding, the capital cost estimates for all components of the proposed solution.” *NYISO*, 148 FERC ¶ 61,044 at P 206 (July 17, 2014). The FERC also stated that “[w]e therefore reject the assertion that cost must be the primary factor in NYISO’s selection of the more efficient or cost-effective transmission solution.” *New York Independent System Operator, Inc.*, 148 FERC ¶ 61,044 at P 252 (2014).

Accordingly, the NYPSC should clarify that it is not mandating that developers adhere to any specific cost estimate or risk sharing mechanism but rather will consider any risk sharing proposal submitted as part of project proposals along with all other factors in determining the best project to meet the public interest. The Commission should also clarify that its Order is not attempting to supersede or override any aspect of the NYISO tariff.

² Order at 41-42.

³ Order at 44-45.

It is also important for the Commission to clarify that it will be willing to consider all aspects of projects including all of the impacts that will result from specific risk sharing proposals. Risk sharing mechanisms have significant implications for the cost of project debt and equity (*e.g.*, those issues are currently pending at FERC with respect to our AC projects). An upfront regulatory prohibition on recovery of prudently incurred costs (as proposed under the PSC's 80/20 risk sharing mechanism) could lead to inflated project cost estimates and associated increases in costs of debt and equity capital. Moreover, the mechanism described in the Order contemplates that where the final cost is less than the estimate the developer will be able to recover 20% of any reduction in cost. Although a mechanism allowing recovery above actual cost may be adopted for a project, such risk sharing mechanism must be ultimately approved by FERC, as the Commission states in its Order. And, in considering whether to approve any proposal the FERC will, of course, examine all rate implications.

(b) The Commission should clarify that the current cost estimates that were submitted are not binding and may be modified to allow recovery of costs that were beyond the control of the developer, including government mandated project costs.

Important information not currently available will impact project costs. For example, important information will be developed in the Environmental Management and Construction Plan ("EM&CP") process, including defining the location of possibly thousands of poles, the identification of necessary access and road design, and the environmental measures needed to mitigate construction impacts especially with respect to any affected wetlands or other sensitive construction locations.

The Order contemplates recovery of "additional, identifiable and verifiable costs necessary to comply with Commission imposed modifications and mandates that could not have been reasonably anticipated in formulating the original bid price." There is no reason to

differentiate between any such Commission-mandated costs and other costs incurred by direction of any governmental authority or pursuant to any lawful tariff. Any such distinction would be arbitrary. The same is true of any arbitrary materiality requirement or threshold. All such costs are valid project costs that should be recoverable. The Commission should clarify that it did not intend to differentiate between Commission-mandated costs and costs that result from any other governmental authority.

The Commission should also clarify that all project cost comparisons will include all interconnection costs including the cost of System Upgrade Facilities (“SUF”) or other related costs incurred pursuant to the provisions of the NYISO tariff. These costs can be significant and the failure to include them would result in inaccurate project comparisons.

II. Request for Rehearing

In the Absence of the Clarifications Requested Above, the Indicated NYTOs Request Rehearing of the Order.

In the absence of the clarifications requested above the Indicated NYTOs seek rehearing of the Order on the grounds that the cost estimate and risk-sharing provisions of the Order are unsupported, unjust and unreasonable, not in the public interest and inconsistent with the NYISO’s FERC regulated tariff.

As discussed above, the Commission must adequately consider all aspects of project proposals including all cost impacts of any cost estimate or risk sharing proposal. Failure to do so would result in inaccurate project comparisons and harm the public interest. Moreover, any prescriptive approach would lead to inaccurate project comparisons by not fully considering all cost ramifications that could result. It is important to consider all ratemaking determinations that will be made by the FERC, including with respect to debt and equity costs and the ultimate

recovery or non-recovery of project costs. Without such consideration, it cannot be reasonably determined that the risk-sharing mechanism will produce lower costs for consumers, will result in the selection of the best project proposals, or will further the public interest.

It is also well known that the construction of major utility facilities often experience significant unforeseen problems during construction, that result in actual costs above original estimates. Regulatory policy has long recognized that it is in the public interest to provide protection from these risks in order to ensure that financing will be available for these important projects and to avoid the related significantly higher capital costs that would eventually be passed on to consumers. While it may be contended that imposing these unforeseeable risks on developers and having consumers absorb the higher capital costs may be beneficial to consumers, that conclusion cannot reasonably be arrived at without considering the related capital cost increases. The risk sharing mechanism that is the focus of the Order involved no such analysis.

The Commission should make it clear that it will entertain any proposal to share project cost risks and will not mandate the non-recovery of prudently incurred costs that are beyond a developer's control or subject them to any arbitrary threshold. Any such requirement would serve no useful purpose and would result in unintended consequences that will harm consumers. In particular, the Commission must confirm that all project proposals can allow for the recovery of all costs that result from government mandates including but not limited to those resulting from Commission mandates. Any requirement to the contrary would serve no useful purpose and would be contrary to the public interest.

The Order states that “[t]o encourage creativity, developers will be allowed to propose alternative risk-sharing proposals if they are submitted in addition to the developer's bid

prepared in the above described partial pass-through model.”⁴ However, project sponsors should not be required to submit a risk-sharing proposal with which they disagree and which they consider to be contrary to the public interest. This is especially true, when such a mandate would be inconsistent with the NYISO’s Public Policy Planning process and FERC’s cost recovery policy. Consequently, to the extent that the Order was intended to mandate the adoption of the risk-sharing mechanism set forth in the Order, rehearing should be granted to eliminate the mandate and to permit project sponsors to propose other cost recovery proposals that they believe may provide benefits equal to or superior to the risk-sharing mechanism set forth in the Order, when all relevant factors are considered.

Finally, as the Commission acknowledges, cost recovery for the AC transmission projects will be subject to the provisions of the NYISO’s Public Policy Planning Process. However, to the extent that the Order was intended to state otherwise, rehearing should be granted.

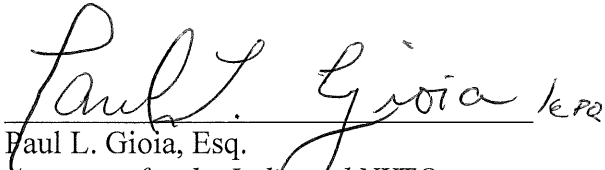
CONCLUSION

For the foregoing reasons, the Indicated NYTOs respectfully request that the Commission grant clarification and/or rehearing of the Commission’s December 16, 2014 Order to the extent indicated above.

Dated: Albany, New York
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⁴ Order at 7-8.