



**Public Service
Commission**

Public Service Commission

Audrey Zibelman

Chair

Patricia L. Acampora

Gregg C. Sayre

Diane X. Burman

Commissioners

Kimberly A. Harriman

General Counsel

Kathleen H. Burgess

Secretary

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

May 4, 2015

SENT VIA ELECTRONIC FILING

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER15-572-000 - New York Independent
System Operator, Inc., et al.

Dear Secretary Bose:

For filing, please find the Request for Rehearing of the New York State Public Service Commission in the above-referenced proceeding. The parties have also been provided with a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment
cc: Service List

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System)	
Operator, Inc.)	
New York Transco, LLC)	
Central Hudson Gas & Electric Corp.)	
Consolidated Edison Company)	
of New York, Inc.)	Docket No. ER15-572-000
Niagara Mohawk Power Corp.)	
d/b/a National Grid)	
New York State Electric & Gas Corp.)	
Orange & Rockland Utilities, Inc.)	
Rochester Gas and Electric Corp.)	

REQUEST FOR REHEARING OF THE NEW YORK
STATE PUBLIC SERVICE COMMISSION

INTRODUCTION AND SUMMARY

The New York State Public Service Commission (NYPSC) respectfully requests rehearing of the Federal Energy Regulatory Commission's (FERC or Commission) April 2015 Order,¹ pursuant to Section 313 of the Federal Power Act (16 U.S.C. §8251) and Rule 713 of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.713).² The NYPSC urges the Commission to revise its

¹ Docket No. ER15-572-000, New York Independent System Operator, Inc., et al., Order on Transmission Formula Rate, Return on Equity, Cost Allocation, and Transmission Incentives, 151 FERC ¶61,004 (issued April 2, 2015) (April 2015 Order).

² The NYPSC filed a timely Notice of Intervention on December 16, 2014. The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

determination in the April 2015 Order that the New York Investor-Owned Utilities (IOUs), through their newly-created affiliate NY Transco, LLC (NY Transco), shall be allowed to recover all costs incurred in undertaking their five identified transmission projects, "[a]bsent a showing that costs have been imprudently incurred."³ These projects stem from a competitive procurement process, three of which come from a completed process, and two of which are being considered in an ongoing process. The Commission, however, failed to recognize the competitive process the NYPSC adopted to ensure that ratepayers receive the benefits expected from the transmission upgrades that are selected for development as in the public interest. To achieve this goal, the NYPSC adopted cost containment measures that hold the IOUs to their cost estimates as a condition in accepting of the IOUs' three "Transmission Owner Transmission Solutions" (TOTS) for development. Similarly, the NYPSC adopted cost containment measures that would apply to the IOUs' other two projects, referred to as the "AC Upgrades," which are still under review in the NYPSC's comparative evaluation process. By guaranteeing recovery of all prudently incurred costs no matter

³ April 2015 Order, ¶111. The IOUs, which are also Transmission Owners as defined under the NYISO tariff, include Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc. (Con Edison), Niagara Mohawk Power Corp. d/b/a National Grid, New York State Electric & Gas Corp. (NYSEG), Orange & Rockland Utilities, Inc., and Rochester Gas and Electric Corp.

what their effect on project economics, FERC is depriving ratepayers of the benefits derived from the competitive process and is eliminating the significant protections that the cost containment measures afford to ratepayers. Upon reconsideration, the Commission should establish a recovery mechanism that reflects the intent of the competitive process - a cost containment structure established by the NYPSC.

Moreover, FERC, contrary to the result reached in the April 2015 Order, has accepting cost containment provisions within the California ISO's (CAISO) tariff. In that case, the Commission found that the CAISO tariff should reflect "a transmission developer's demonstrated cost containment capability and specific, binding cost control measures that the transmission developer agrees to accept, including any binding agreement by the transmission developer and its team to accept a cost cap that would preclude project costs above the cap from being recovered through CAISO's transmission access charge."⁴ The Commission should ensure similar provisions are adopted in this proceeding and that meaningful cost containment measures are in place. Without such measures, there is no incentive for developers such as the IOUs or NY Transco to submit reliable

⁴ Docket Nos. ER13-103-000 et al., California Independent System Operator Corporation, Order on Compliance Filing (issued April 18, 2013), 143 FERC ¶61,057, ¶233.

bids during a competitive selection process or to limit cost overruns, other than to avoid an imprudence finding.

In addition, the NYPSC seeks rehearing of the Commission's acceptance of the IOUs' proposed Return-on-Equity (ROE) adder in order to "incent" the IOUs to turn over operational control of their transmission projects to the New York Independent System Operator, Inc. (NYISO). While the NYPSC is supportive of ROE incentive adders that are truly reflective of risks or promote use or development of innovative technologies that benefit consumers, the NYPSC asks that the Commission reconsider this 50 basis point ROE adder for NYISO participation, which unnecessarily and inappropriately rewards the IOUs for outcomes that would occur regardless of whether the NY Transco were formed or not. Because the IOUs have already agreed to place their transmission facilities under the NYISO's control and have been compensated for doing so, granting such an incentive is arbitrary and capricious under these circumstances.

REQUEST FOR REHEARING

I. STATEMENT OF ISSUES

- A. Whether the Commission erred in failing to recognize the competitive process for selecting projects and the attendant necessary cost containment measures, and in departing from precedent adopting such measures.⁵
- B. Whether the Commission was arbitrary and capricious in granting a transmission incentive adder for participation in the NYISO, given that such participation is already required and has been rewarded.⁶

II. DISCUSSION

A. The Commission Should Grant Rehearing To Ensure Necessary Cost Containment Measures Are Implemented

The NYPSC's Protest explained the importance of the competitive process that relied upon the IOUs' cost estimates and resulted in the selection of the TOTS for development.⁷ The IOUs' estimates were a key factor in determining that net benefits could be anticipated if the TOTS projects were developed. In order to ensure ratepayers received these benefits, the NYPSC adopted cost containment measure as

⁵ In reviewing agency determinations, courts shall "hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,...or, unsupported by substantial evidence." 5 U.S.C. §706; Docket Nos. ER13-103-000 et al., California Independent System Operator Corporation, Order on Compliance Filing (issued April 18, 2013), 143 FERC ¶61,057.

⁶ Id.

⁷ Docket No. ER15-572-000, New York Independent System Operator, Inc., et al., NYPSC Protest (filed January 16, 2015) (NYPSC Protest).

conditions prerequisite to development. In particular, the NYPSC determined that TOTS cost recovery "should be limited to actual costs or to the estimates provided here, whichever is lower."⁸ Having accepted this outcome of the competitive process, as evidenced by forgoing the rehearing authorized under Section 22 of the New York Public Service Law of the NYPSC's order imposing these conditions, the IOUs should not now be permitted to seek to escape the conditions by forum shopping in front of the Commission. The April 2015 Order undermines the NYPSC's competitive process and deprives ratepayers of the net benefits associated with the TOTS by providing recovery of all prudently incurred costs, including the significant increases to the cost estimates that the IOUs have belatedly identified.

The NYPSC has also adopted cost containment provisions for the AC Upgrades that are under consideration in another competitive process. As previously noted, the NYPSC determined that the developer should bear 20% of the actual cost over-runs, while ratepayers should bear 80% of those costs. If actual costs fall below the bid, the developer would retain 20% of the savings. To preserve this feature of the risk-sharing mechanism, even if the developer were to obtain incentives from FERC above the base ROE otherwise approved by FERC, those incentives should not adhere to any cost overruns over the bid

⁸ Id. at Appendix A, p.25.

price.⁹ The initial bid price, however, could be updated to reflect additional identifiable and verifiable costs associated with regulatory-imposed modifications and mandates, the cost of which the developer could not have anticipated in formulating the initial bid price. Recovery of additional costs, however, is limited to circumstances where a materiality threshold of 5% above the initial bid price is exceeded.¹⁰

The Commission, however, failed to address the NYPSC's arguments supporting the need for cost containment measures with respect to the TOTS and AC Upgrades. Furthermore, the Commission failed to address its departure from precedents accepting "specific, binding cost control measures that the transmission developer agrees to accept, including any binding agreement by the transmission developer and its team to accept a cost cap that would preclude project costs above the cap from being recovered...."¹¹

The Commission should ensure that ratepayers receive the benefits arrived at through New York's competitive selection process by limiting the IOUs' recovery of costs that exceed the estimates provided to the NYPSC, or alternatively impose a

⁹ NYPSC Protest at pp. 22-23.

¹⁰ Id. at p. 23.

¹¹ Docket Nos. ER13-103-000 et al., California Independent System Operator Corporation, Order on Compliance Filing (issued April 18, 2013), 143 FERC ¶61,057, ¶233.

mechanism for sharing 20%/80% between NY Transco's shareholders and ratepayers, respectively, of the cost overruns above the estimates that the NYPSC relied upon. These measures are essential to avoid the significant increases in revenue requirement between what the NYPSC assumed in accepting the TOTS projects for development, and what the IOUs have requested from FERC. The IOUs' requests could result in an increased revenue requirement for the TOTS of approximately hundreds of millions of dollars over the service life of the projects.

The NYPSC also notes two items in the April 2015 Order that warrant clarification or rehearing. Specifically, the April 2015 Order notes that the IOUs will be held to "their commitment to limiting the application of the ROE incentive adder for risks and challenges, granted above, to a cost estimate."¹² The Commission should clarify that if the adder is not rejected in its entirety, for the reasons discussed below, the IOUs will also not be allowed to apply to above-estimate costs an ROE incentive adder for participation in the NYISO. Further, the Commission should specify the "cost estimate" the IOUs will be held to. These cost estimates should be the same ones the IOUs provide to the NYPSC in the competitive process and that the NYPSC relies upon in selecting any projects for development.

¹² April 2015 Order, fn 162.

The NYPSC's approach to cost containment is consistent with the goals of the Commission's November 2012 Policy Statement.¹³ There, the Commission stated "the Commission expects applicants for an incentive ROE based on a project's risks and challenges to commit to limiting the application of the incentive ROE based on a project's risks and challenges to a cost estimate."¹⁴ The Commission recognized the difficulty of determining what cost estimate to use, but suggested that limiting incentives "to the last cost estimate relied upon to include or retain the project in a regional transmission planning process" is reasonable.¹⁵ Here, the NYPSC's competitive evaluation process stands as the equivalent of the regional transmission planning process, to the extent that both involve cost comparisons in the ultimate ranking of competing transmission proposals. Therefore, use of the estimates relied upon by the NYPSC is appropriate.

B. The Commission Should Grant Rehearing To Eliminate The Unnecessary And Unwarranted ROE Adder For Participation in the NYISO

The April 2015 Order granted a 50 basis point adder provided that: "(1) NY Transco takes all the necessary steps to

¹³ Docket No. RM11-26-000, Promoting Transmission Investment Through Pricing Reform, Policy Statement, 141 FERC ¶61,129 (issued November 15, 2012).

¹⁴ Id. at ¶28.

¹⁵ Id. at ¶29.

turn over operational control of the projects to the NYISO, and (2) NY Transco becomes a transmission-owning member of NYISO.”¹⁶

The Commission found this adder was consistent with its prior order stating that it would “authorize incentive-based rate treatment for public utilities that are or will continue to be members of regional transmission organizations” like the NYISO.¹⁷

A NYISO participation ROE adder is unnecessary and unwarranted under the particular circumstances where the IOUs have already transferred operational control of their transmission facilities to the NYISO, and are expected to make a similar transfer of control for any new facilities.¹⁸

Moreover, the 50 basis points adder for NYISO membership should be rejected because all of the companies in the NY Transco are already NYISO members. When the IOUs first ceded their transmission assets to NYISO control, the companies were engaged in NYPSC-approved rate plans that compensated them for the divestiture of their generating assets and transferring operational control of their bulk transmission assets to the NYISO. Awarding this compensation achieved the Commission’s goal of incentivizing the creation of the NYISO and the IOUs’

¹⁶ April 2015 Order, ¶88.

¹⁷ Id.

¹⁸ See, NYISO/Transmission Owner Agreement, http://www.nyiso.com/public/markets_operations/documents/legal_regulatory/index.jsp (requiring the NYISO to exercise operational control of the transmission facilities owned by the Transmission Owners).

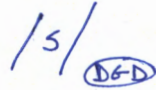
transfer of operational control of their transmission facilities to the NYISO.

The Commission should recognize that the TOTS projects are essentially improvement to existing NYTO facilities already under the operational control of the NYISO. Since NY Transco is merely a combination of the existing IOUs into a successor entity, and these companies have already been compensated for joining the NYISO, it would be an unreasonable double count to bestow this additional incentive upon NY Transco. Moreover, because the NYTOs are already obligated to transfer operational control of whatever transmission facilities they build to NYISO, awarding them an ROE incentive for what they must do in any event is nonsensical since the incentive will have no effect on their behavior. An incentive is a reward for making a choice, but the NYTOs have no choice to make here. Therefore, awarding a 50 basis point adder for joining an ISO is both unnecessary and unreasonably excessive. If granted, the adder would be a windfall to NY Transco owners at the expense of New York transmission customers.

CONCLUSION

In accordance with the foregoing discussion, the NYPSC respectfully requests that the Commission grant rehearing of the April 2015 Order.

Respectfully submitted,

Handwritten signature in blue ink, consisting of the initials 'DGD' inside a circle, with a vertical line through the circle.

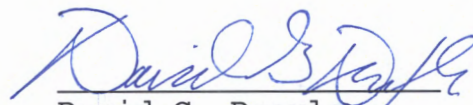
Kimberly A. Harriman
General Counsel
Public Service Commission
of the State of New York
By: David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178

Dated: May 4, 2015
Albany, New York

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated: Albany, New York
May 4, 2015

A handwritten signature in blue ink, appearing to read "David G. Drexler", is written over a horizontal line.

David G. Drexler
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 473-8178