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PUBLIC SERVICE COMMISSION

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August 18, 2014

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. ER13-102-000 - New York Independent  
System Operator, Inc.

Dear Secretary Bose:

For filing, please find the Request for Rehearing of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

Handwritten signature of David G. Drexler.

David G. Drexler  
Assistant Counsel

Attachment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System     )     Docket No. ER13-102-000  
Operator, Inc.                     )

REQUEST FOR REHEARING OF THE NEW YORK STATE  
PUBLIC SERVICE COMMISSION

INTRODUCTION

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure (18 C.F.R. §385.713), the New York State Public Service Commission (NYPSC) hereby seeks rehearing of the Commission's Order on Rehearing and Compliance that was issued on July 17, 2014 (July 2014 Order). As discussed below, the July 2014 Order arbitrarily and capriciously departed from the Commission's previous order, which determined that the New York Independent System Operator, Inc. (NYISO) "has an *affirmative obligation to select* more efficient and cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation."<sup>1</sup> Instead of adhering to its order, the Commission inexplicably accepted tariff provisions that permit the NYISO to select a solution at its discretion. The

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<sup>1</sup> Docket No. ER13-102, New York Independent System Operator, Inc., Order on Compliance Filing, 143 FERC ¶61,059 (issued April 18, 2013) (April 2013 Order), ¶145 (emphasis added).

provisions authorize this unwarranted change in policy by allowing the NYISO Board of Directors (Board) to "not select a transmission solution to satisfy a Public Policy Transmission Need" if the Board believes a project is not economic or would adversely affect price signals.<sup>2</sup>

The Commission's abrupt and unexplained change of course has far-reaching implications that must be remedied. Providing the NYISO Board with discretion to decline to select a transmission solution, which would be the most cost-effective or efficient solution, is contrary to the Commission's goal of addressing transmission needs for public policy purposes. Furthermore, authorizing the NYISO to avoid selecting such a solution would effectively allow it to override a duly-promulgated public policy. Granting the NYISO the power to second-guess the legitimacy of a public policy driving the need for transmission is patently inappropriate. The NYPSC therefore urges the Commission to reconsider its July 2014 Order and apply its prior decision placing an *"affirmative obligation* [on the NYISO] *to select* more efficient and cost-effective transmission solutions."<sup>3</sup>

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<sup>2</sup> July 2014 Order, ¶125.

<sup>3</sup> April 2013 Order, ¶145.

## BACKGROUND

On July 21, 2011, the Commission issued Order No. 1000 and directed the NYISO to amend its Open Access Transmission Tariffs (OATT) to create a transmission planning process that would provide for evaluation of Public Policy Requirements.<sup>4</sup> On October 11, 2012, the NYISO submitted a compliance filing that addressed the Commission's directives by proposing that the NYPSC would select the public policy transmission solution that would be eligible for cost recovery.<sup>5</sup>

On April 18, 2013, the Commission issued an Order that rejected delegating to the NYPSC sole responsibility for undertaking selection, and concluded that the NYISO "has an *affirmative obligation to select* more efficient and cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation."<sup>6</sup> Accordingly, the April 2013 Order directed the NYISO to submit a compliance filing containing "OATT revisions providing the process by which NYISO *will select* in the regional transmission plan for purposes of

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<sup>4</sup> Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, 136 FERC ¶61,051 (2011), *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶61,132 (2012).

<sup>5</sup> Docket No. ER13-102, New York Independent System Operator, Inc., NYISO Compliance Filing (filed October 11, 2012), pp. 39, 47.

<sup>6</sup> Docket No. ER13-102, New York Independent System Operator, Inc., Order on Compliance Filing, 143 FERC ¶61,059 (issued April 18, 2013) (April 2013 Order), ¶145 (emphasis added).

cost allocation more efficient or cost-effective solutions from among transmission projects proposed to meet transmission needs driven by public policy requirements...."<sup>7</sup>

On October 15, 2013, the NYISO submitted a filing addressing the Commission's directives in the April 2013 Order, but included tariff provisions that lodged in the NYISO Board the discretion to decline to select a transmission solution. Consequently, even if a transmission solution exists that qualifies as "more efficient or cost-effective," the NYISO Board would not have an affirmative obligation to select that solution for cost allocation purposes if it believes the project will "adversely affect price signals in the NYISO's wholesale electricity markets."<sup>8</sup> As the NYISO sees it, if a transmission project would "send price signals directly contrary to economic investment decisions, as measured by production cost savings and [Installed Capacity (ICAP)] savings as compared to the costs of the transmission project, the NYISO's Board [would] reserve the discretion to deny regulated cost recovery to that project."<sup>9</sup>

On November 14, 2013, the NYPSC submitted a Protest to the NYISO's October 2013 compliance filing, and indicated that the filing inappropriately authorized the NYISO Board to second-

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<sup>7</sup> Id.

<sup>8</sup> Docket No. ER13-102, New York Independent System Operator, Inc., NYISO Compliance Filing (filed October 15, 2013), p. 41.

<sup>9</sup> Id.

guess federal, State, and local public policies, and could hinder the successful implementation of duly-enacted Public Policy Requirements. Notwithstanding the NYPSC's Protest, the July 2014 Order accepted the NYISO's proposal to provide the NYISO Board with the discretion to avoid selecting a transmission solution needed to satisfy a Public Policy Requirement.

### REQUEST FOR REHEARING

#### I. STATEMENT OF ISSUE

Whether FERC erred in accepting the NYISO's tariff permitting it to select a transmission solution at its discretion, and failing to explain a departure from its prior orders directing the NYISO to fulfill its affirmative obligation to select a transmission solution that is more efficient or cost-effective.<sup>10</sup>

#### II. DISCUSSION

The Commission Erred In Failing To Ensure That The NYISO Selects, For Cost-Allocation Purposes, The More Efficient or Cost-Effective Transmission Solution To Address A Public Policy Requirement

In issuing Order No. 1000, the Commission recognized the imperative to properly plan for transmission needs driven by

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<sup>10</sup> 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; ANR Pipeline Co. v. FERC, 71 F.3d 897 (D.C. Cir. 1995) (vacating FERC's order that was contrary to its precedents without providing a reasoned explanation).

Public Policy Requirements. As noted above, the Commission's April 2013 Order concluded that the NYISO "has an *affirmative obligation to select* more efficient and cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation."<sup>11</sup> The Commission therefore directed the NYISO to file OATT revisions whereby the NYISO "will select in the regional transmission plan for purposes of cost allocation more efficient or cost-effective solutions from among transmission projects proposed to meet transmission needs driven by public policy requirements..."<sup>12</sup> Therefore, although the Commission assigned responsibility for selecting solutions to the NYISO, the Commission carefully circumscribed and constrained the NYISO's discretion in evaluating solutions to meet Public Policy Requirements identified by the NYPSC.

The July 2014 Order, however, found that vesting the NYISO Board with the discretion to deny cost recovery to a transmission project, which may otherwise be the more efficient or cost effective solution, was "not inconsistent with the requirements of Order No. 1000."<sup>13</sup> In doing so, the Commission

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<sup>11</sup> April 2013 Order, ¶145 (emphasis added). An "affirmative obligation" is synonymous with a "duty," which is defined as a "legal obligation that is owed or due to another and that needs to be satisfied." See, BLACK'S LAW DICTIONARY 580 (9th ed. 2009).

<sup>12</sup> April 2013 Order, ¶145 (emphasis added).

<sup>13</sup> July 2014 Order, ¶125.

ignored its prior determination that placed an "affirmative obligation" on the NYISO to "select" from among proposals the more efficient or cost-effective transmission solution.

Therefore, the July 2014 Order was arbitrary and capricious because FERC failed to follow its own precedents or provide an explanation for its departure therefrom.

Moreover, providing the NYISO Board with discretion to deny cost recovery for a transmission project, which may otherwise be the more efficient or cost-effective solution, is inappropriate and could hinder the successful implementation of duly-enacted Public Policy Requirements, including those driven by federal or State laws and regulations. In this arena, the NYISO Board should not assume the authority to second-guess federal or State public policy requirements. Furthermore, while the NYISO Board's consideration of certain savings (i.e., production cost savings and ICAP savings) are valid inputs as part of an economic planning process, they are insufficient for evaluating public policies that are designed to capture various externalities (e.g., environmental emissions). The Commission should acknowledge these wide-ranging implications of its July 2014 Order, and avoid them through adherence to its prior directive requiring the selection of the more efficient or cost-effective transmission solution.



Finally, the Commission should recognize that despite the NYISO's suggestion that a transmission project could adversely affect the wholesale markets, new transmission facilities would not only advance legitimate public policy objectives, but also broaden wholesale markets by allowing certain generators to compete more economically. This would serve to enhance competition and be consistent with the Commission's goal of promoting the development of new transmission facilities. As a result, a provision allowing the NYISO Board to decline to select the transmission project that is more efficient or cost-effective is unnecessary.

#### CONCLUSION

In accordance with the foregoing discussion, the NYPSC respectfully requests that the Commission grant rehearing and direct tariff amendments placing an affirmative obligation on

the NYISO to select the more efficient or cost-effective transmission solution that meets a Public Policy Requirement.

Respectfully submitted,



Kimberly A. Harriman  
General Counsel  
Public Service Commission  
of the State of New York

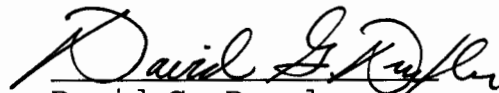
By: David G. Drexler  
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3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 473-8178

Dated: August 18, 2014  
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 list compiled by the Secretary in this proceeding.

Dated: Albany, New York  
August 18, 2014



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