November 6, 2015

VIA ELECTRONIC MAIL

Hon. Kathleen H. Burgess
Secretary
NYS Department of Public Service
3 Empire State Plaza
Albany, NY 12223

RE: 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 - Edic to Fraser 345 kV Transmission Line and a New Scotland to Leeds to Pleasant Valley 345 kV Transmission Line

COMMENTS OF NORTH AMERICA TRANSMISSION CORPORATION AND NORTH AMERICA TRANSMISSION LLC ON HVSEC REPORTS AND TRIAL STAFF FINAL REPORT AND MOTION

Dear Secretary Burgess:

On September 22, 2015, Department of Public Service (“DPS”) Trial Staff filed its Comparative Evaluation of Alternating Current Transmission Upgrade Alternatives\(^1\) and Motion of DPS Trial Staff for Commission to Declare a Public Policy Need & Take Further Action Regarding Alternating Current Transmission Proposals\(^2\) in the above-referenced proceedings. On the same day, the Hudson Valley Smart Energy Coalition (“HVSEC”) also filed two reports – the first entitled Outlook for the New York Wholesale Power Market and Analysis of the Drivers of Transmission Congestion Within the New York Markets, prepared by London Economics International LLC,\(^3\) and the second entitled Hudson Valley Transmission

\(^1\) Case 13-E-0488: In the Matter of Alternating Current Transmission Upgrades - Comparative Proceeding, Trial Staff Final Report (Filed Sep. 22, 2015) (the “Final Report”)
\(^2\) Case 13-E-0488: In the Matter of Alternating Current Transmission Upgrades - Comparative Proceeding, Motion of DPS Trial Staff for Commission to Declare a Public Policy Need & Take Further Action Regarding Alternating Current Transmission Proposals (Filed Sep. 22, 2015) (the “Trial Staff Motion”).
Prepared by Gidon Eshel. Technical conferences were held on October 8-9, 2015 at which each of these filings, among other things, were discussed. Pursuant to the Public Service Commission’s (the “Commission”), Notice Extending Deadlines, issued September 23, 2015 in these proceedings, North America Transmission, LLC and North America Transmission Corporation (together “NAT”) hereby provide these comments on the Final Report, the LEI Report, the Eshel Report and the Trial Staff Motion.

Introduction

There has consistently been a cost premium for electric energy and capacity for downstate customers. There are many causes of this premium most notably transmission congestion, resulting mainly from a relative imbalance between demand and supply in the load pocket and limited transmission capability, and differences in cost determinants. Retirements of the aging downstate generation fleet and difficulty of siting new generation in the load pocket have also continue to add to the problem As the Final Report and Trial Staff Motion find, there is a need for new transmission capacity. Additional transmission capacity is also supported by other initiatives such as Reforming the Energy Vision (“REV”) which proposes, among other things, an increased deployment of renewables thereby necessitating not only increased transmission capacity but fundamental changes in how the transmission grid is used. Changes in the generation fleet and REV implementation are best managed with a robust transmission grid. These needs for new transmission capacity are recognized by Trial Staff in the Final Report which requests that the Commission declare that there is a Public Policy Requirement for additional transmission capacity between upstate and downstate New York.

NAT generally supports the recommendations of the Final Report. More specifically, NAT supports Trial Staff’s recommendation of Project 11, including competition on various segments, as this Project balances the various objectives of this proceeding. Project 11 was selected based on its overall performance, and due to the fact that it does not require any new right-of-way (“ROW”). Since there is no new ROW, there is minimal impact to landowners, and discussed at the Technical Conference, the impacts would be the same as if the incumbent transmission owner were to rebuild the existing line. The Final Report proposes to conduct a competitive process to select the party or parties to construct, own and operate the project to further the cost control objectives of the proceeding, the benefits of new transmission ultimately outweigh the costs. The Brattle analysis identifies net benefits of Portfolio 11 of $377 million and a benefit to cost ratio of 1.2, which is robust due to the many conservative assumptions including the use of a 30% contingency in the cost estimates, the use of a conservatively high discount rate, etc. Although NAT generally supports the Final Report, additional clarification by

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5 See Final Report, at 159-160.
6 See Final Report, at 159.
the Commission, as discussed further below, is required for the New York Independent System Operator (“NYISO”) to properly review and compare transmission proposals. NAT respectfully requests that the Commission include in its order the requested clarifications set forth herein.

With respect to the Trial Staff Motion, NAT supports Trial Staff’s recommendation that the Commission find that there is transmission need driven by a Public Policy Requirements and affirmatively states that is willing to comply with a Commission request to withdraw portions of its application which are not recommended in the Final Report.

Comments on Eshel Report

The Eshel Report concludes that the projected available assets in downstate New York will be much greater than the forecast peak load, as summarized in Figure 10 of the report copied below.

NAT Figure 1: Figure 10 of Eshel Report.⁷

Even assuming that the load forecast contained in the Eshel Report as well as the assessment of current resources is correct, the Eshel Report cannot be relied upon due to demonstrable errors regarding projection of future available assets.⁸ Although the demand forecast in the Eshel Report places significant emphasis on the methodology and careful selection of predictors the supply forecast does not and instead just assumes an unrealistic completion rate of generation in

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⁷ Eshel Report, at 35.
⁸ The current Summer Capacity for generation in Zones G-K is approximately 19.6 GW, which is consistent with the Eshel Report identification of currently available assets for downstate peak load. See NYISO: 2015 Load and Capacity Data “Gold Book”) (Apr. 2015).
the NYISO queue. For example, the Eshel Report includes a peer reviewed statistical analysis of a load forecast, but does not contain any predictors of future generation availability. In the above chart, it is not at all clear how the past available assets translates into a future forecast of available assets (each represented by a green line). It is also not clear how the Eshel Report accounts for the potential closure of Indian Point in the forecast of available assets. Past transmission system analysis has shown the system cannot operate reliably without Indian Point. The Eshel Report does not perform any transmission system analysis of the ability of resources to serve load, which is central to this proceeding. In addition, the Eshel Report does not take into account any other potential retirements.9

Significantly, the analysis contained in the Eshel Report is based on the flawed assumption that completion rates of proposed queued generation is in the range of 45% to 50%. The best available information regarding completion rates of queued generation proves the assumed completion rates to be extremely optimistic. In the Eshel Report, the assumed completion rates of resources in the queue are approximately four times greater than the historic completion rate of 11.6%. The NYISO queue indicates fifteen (15) different values for “Status” progressing from scoping meeting, various impact studies, interconnection agreement, construction, and completion. Figure 2 is a diagram indicating how generation interconnection requests progress through the PJM queue, similar to that of the NYISO, for a large number of requests (289,742 MW) with a completion rate of 11%.10

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9 More than 40 percent of New York’s existing power generating capacity is over 40 years old and more than 20 percent is over 50 years old. See NEW YORK ENERGY HIGHWAY BLUEPRINT, p. 42, available at: http://www.nyenergyhighway.com/PDFs/BluePrint/EHBPPT/#?page=44.

NAT performed an analysis of the NYISO generation queue since 1999 and found similar results. From 1999 through present, approximately 9,450 MW of new generation has been completed throughout the state, out of over 90,040 MW of generation interconnection requests, or approximately 10.5%. However, 8,859 MW of generation remains in the NYISO queue, so the ultimate completion rate may be somewhat higher, depending on what portion of the generation in the queue reaches completion. Assuming the current queue generation has the same completion rate as the historic rate and considering the 71,727 MW of withdrawn requests results in a completion rate of 11.6%, similar to the rate in PJM.
In addition, only 4,887 MW of the 8,859 MW of proposed generation in the NYISO queue is in Zones G-K. Applying the historic success rate of queued generation to the forecast in the Eshel Report shows that, contrary to the conclusions in the report, the amount of available assets over the future horizon will be insufficient to meet the future peak load forecast (see Figure 5 below for an indication of this supply gap). The inability of generation resources to meet expected load growth can be further demonstrated by analyzing the historic supply in the state. The historic supply in New York State is described in Figure 4. During the period from 1999 to 2015, over 7,000 MW of new generation has been added downstate in Zones G-K. As can be seen in Figure 4, however, these additions have just kept pace with retirements in these zones, with the net generation in Zones G-K relatively flat.\(^\text{12}\)


\(^{12}\) The compound growth rate of generation in Zones G-K from 1999 to 2015 is calculated as +0.3% per year.
Lastly, the predicted available assets in the Eshel Report from 2018 to 2040 escalates at a growth rate that approximates the forecast escalation of peak demand, however there are not queued generation resources during this time frame consistent with this assumption.

Figure 5 is an annotated version of Figure 10 from the Eshel Report with an assumed 11.6% completion rate of queued generation, not accounting for other generation retirements. In addition, the true downstate resource gap without Indian Point is identified, not accounting for transmission requirements to allow for the removal of Indian Point.
As can be seen by Figure 5, the historic queue completion rate, assuming no further retirements, will provide a level of available assets just sufficient to meet the Eshel Report peak load forecast in 2018, and will leave a supply gap in future years, even with Indian Point in service. This analysis also does not account for the system congestion during most hours of the year (not just peak hours) experienced with this supply, or for a reserve margin. If the analysis were to truly account for the potential closure of Indian Point, a significant supply gap would exist.

For the foregoing reasons, the Commission cannot rely on the Eshel Report’s conclusions that supply in the downstate region will be sufficient to meet growing demand. Accordingly, the Commission should, in accordance with the Trial Staff Motion, determine that there is a transmission need in the downstate region driven by Public Policy Requirements.

**Comments on LEI Report**

The LEI Report is based on flawed assumptions regarding new downstate generation supply and natural gas supply in the state. In fact, the assumptions on which the LEI Report are based contradict assumptions used by LEI in other analyses conducted with respect to the New York markets. Because the LEI Report is based on flawed assumptions, it conclusions that should not be relied upon by the Commission.
The LEI Report assumes over 1,250 MW of new incremental generation supply in Zones J and K being placed in service before 2021 from two facilities, Berrians I/II/III and Caithness II (500 MW and 750 MW, respectively). According to the report, LEI conducted its analysis between May through June of 2015. The report notes that the Berrians project was cancelled in July 2015, but such cancellation would not be material to the results based on the report’s assumption that some other developer will determine that a new natural gas combined-cycle generating facility will be economic and build a new generating facility to replace the Berrians project. It is highly speculative to assume that a new generation facility will enter service in this relatively short time period given the many constraints and challenges of siting generation within the downstate load pocket, such as limited real estate, air quality issues and lengthy permitting processes, not to mention, as a practical matter, that a proposal to build a similar facility (i.e., Berrians) has already been abandoned. Similarly, the LEI Report includes the Caithness II facility. The Caithness II facility is not under construction and still faces many challenges. The Caithness II facility requires significant new natural gas pipeline infrastructure which is not yet sited or permitted. The Caithness II facility is also not electrically deliverable and would not be eligible to count as capacity without hundreds of millions of dollars of investment in new transmission upgrades. These transmission upgrades would be required simply to allow the unit to count as capacity and to dispatch within Zone K. Even if the Caithness II facility becomes deliverable in Zone K, there is limited transmission capacity between Zone K and Zone J so Caithness II would have little impact on downstate prices.

Another flawed assumption in the LEI Report is that there will be an equalization of natural gas prices between eastern and western New York. It is highly speculative that the persistent difference in gas prices between eastern and western New York will simply just disappear. A conclusion that the delivered natural gas price would equalize assumes both significant new natural gas pipeline capacity and that the incremental shipping cost on this new natural gas pipeline capacity would be zero. There is no support for such an assumption. In addition, the LEI Report concludes equalization of natural gas prices would result in a convergence of delivered energy and capacity prices. Natural gas prices, however, are only one driver of cost differences. The NYISO (and LEI in other reports) recognize a much higher cost of new entry downstate relative to the rest of the state due to construction costs, emission controls, emission allowance costs, property taxes, labor costs, and many other factors. Moreover, LEI does not appear to have used the same assumptions in at least one other study it conducted with respect to New York markets. The assumptions in the LEI Report prepared on behalf of HVSEC are not consistent with the report completed by LEI on behalf the Champlain Hudson Power Express (“CHPE”) project. The CHPE project, similar to the goals of this proceeding to increase the UPNY/SENY interface, proposes to add approximately 1,000

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13 See LEI Report, at 37, footnote 14.
MW of new capacity to Zone J.\textsuperscript{15} The LEI report prepared on behalf of the CHPE project identified an average of over $800 million per year in energy savings from an additional 1,000 MW of new transmission capacity which is in stark contrast to the report LEI prepared in this proceeding.\textsuperscript{16} In addition, the LEI report on behalf of CHPE identifies many other benefits of new transmission capacity such as impacts on capacity markets, reduction in market power, renewable policy benefits, decreased system losses, and improved system reliability.\textsuperscript{17} Again, the conclusions in the CHPE report are in contrast to the report submitted in the AC Transmission Proceeding.

The LEI report on behalf of CHPE also identifies a continued natural gas price basis between Western New York, Eastern New York, and New York City/Long Island.\textsuperscript{18} The LEI report on behalf of CHPE also recognizes regional differences in costs other than natural gas prices in New York State.\textsuperscript{19} The assumptions and conclusions of the LEI Report for HVSEC conflict with the assumptions and conclusions of the LEI Report for CHPE. While some differences in pricing assumptions may be expected due to the passage of time, the methodology and basic approach should be the same. The conclusions of the LEI Report for HVSEC are unreliable due to the misleading assumptions entered into the analysis and therefore should not be relied upon by the Commission.

**Trial Staff Final Report - NYISO Process**

The Trial Staff Final Report provides the following recommendations regarding the NYISO Process:

"In making its analysis of the applications it receives, the NYISO should consider the following factors:

- Cost
- Technology Being Used
- ROW Acquisition Costs by Non-Transmission Owners
- Reliability/Operational Considerations of Proposed Work
- Differences in Power Flows Between Applicants"


\textsuperscript{16} Id. at 23.

\textsuperscript{17} Id. at 23-24.

\textsuperscript{18} Id. at 72, Figure 72.

\textsuperscript{19} Id. at 77.
Further, any Applicant seeking to build the Knickerbocker-Pleasant Valley project must also work with Orange and Rockland Utilities, Inc. to ensure that the Shoemaker-Chester-Sugarloaf line is upgraded as necessary to address identified system contingencies, and with Central Hudson Gas & Electric Corporation to ensure that the Rock Tavern Substation terminal upgrades are made.\(^{20}\)

With respect to the NYISO review process, NAT provides the following comments.

**Evaluation Factor of Cost**

NAT agrees with Trial Staff that cost should be a major consideration in the NYISO process. Additional detail, however, must be provided on how cost should be considered by the NYISO. Throughout this proceeding it has been NAT’s position that an apples-to-apples comparison of life cycle costs is the only way to identify the least cost option. To this point, it has not been clearly established that this is the standard for comparison. Additional guidance must be provided to NYISO to ensure an equitable comparison of life cycle costs:

- **Common Scope of Capital Cost Estimates.** The Commission recommend that the NYISO not just to consider the overall cost estimates, but to account for assumptions and potential differences in scope. The submissions in this proceeding from various applicants do not include the same scope and are not readily comparable. For example, some estimates may not include demolition costs, or right-of-way acquisition costs, or properly account for access. The Commission should recommend to the NYISO that sufficient cost detail should be required to allow a meaningful, apples-to-apples comparison of estimates.

- **Required Risk Mitigation.** The Commission should include in its order direction to the NYISO that capital cost estimates be supported by 80/20 risk mitigation. Risk mitigation has been clearly identified as a benefit of competition in this proceeding and was a stated requirement by the Commission.\(^{21}\) As such, risk mitigation must also be considered as part of the NYISO process. In addition, recognition of risk mitigation as a necessary evaluation factor will provide structure to the cost estimates helping to ensure that costs remains well below the projected benefits. If the Commission no longer supports aspects of the 80/20 risk mitigation approach, than a new risk mitigation requirement should be set. An application that does not meet a minimum risk mitigation requirement should be rejected as insufficient by the NYISO. Without a uniform risk mitigation

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\(^{20}\) Final Report, at 159; as corrected by Errata in Trial Staff Final Report and Motion (Oct. 2, 2015).

\(^{21}\) Case 13-E-0488: *In the Matter of Alternating Current Transmission Upgrades - Comparative Proceeding*, Order Establishing Modified Procedures for Comparative Evaluation (Dec. 16, 2014) (stating that “[t]o help ensure the quality and comparability of the bids, and that ratepayers retain the benefit of this comparative evaluation process, the Commission finds that a risk-sharing mechanism is appropriate.”)
approach, a comparison of various proposals is not meaningful. Selection of a proposal without risk mitigation, that is just based on a cost estimate with no consequences of cost overruns, could lead to selection of a proposal that is in the best interests of the ratepayers.

- **Additional Optional Risk Mitigation.** The Commission should recommend to the NYISO that it allow additional risk mitigation provisions, in addition to whatever uniform minimum risk mitigation requirement is set, to allow for creativity from applicants, and to allow additional ratepayer benefits from risk mitigation.

- **Annual Revenue Requirement.** The Commission should clarify in its order that the NYISO should consider how each capital cost proposal translates into an annual revenue requirement. Applicants may have differences beyond the capital costs that will translate into real costs to ratepayers, such as capital structure, return on equity and incentive adders. The impacts on ratepayers of these differences can be larger than differences in capital cost estimates, to the point where the lowest capital cost estimate might result in the highest net-present value cost to ratepayers. The Commission should recommend that the NYISO to fully evaluate the differences in the annual revenue requirement from the project capital costs.

- **Weighting of Cost.** The Commission should recommend to the NYISO that it identify how cost is to be weighted in the evaluation process relative to the other factors. There are tradeoffs between costs and design made by applicants in the development of their bids. For example shorter towers directly results in much higher costs. Without a clear understanding of how costs will be weighted relative to other factors, bidders have no way to make reasoned design decisions, and will be more likely to miss the target.

Throughout this proceeding, NAT has repeatedly addressed the issue of enforceability of risk mitigation and other cost protection provisions. As previously raised by NAT, there is Federal Energy Regulatory Commission (“FERC”) precedent for risk mitigation measures in approval of fixed prices under power purchase agreements, in approval of market-based (as opposed to cost based) rates for merchant transmission developers, and in approval of shared savings provisions in rates. Risk mitigation measures should be applied here and there is FERC support for doing so. For example, FERC Commissioner LaFleur has stated:

“Order No. 1000’s competitive solicitation processes – and in some cases, the mere prospect of competitive solicitation processes – have already led to a host of innovative rate structures and cost containment proposals that, if properly designed, could provide significant benefits for customers. I believe that these efforts should be encouraged, both by the Commission and in the regional
transmission planning processes, to foster a dynamic environment for new transmission development.”

In the NYISO solicitation process, having bidders willingly submit a proposal with risk mitigation provisions, for example, will allow for the commitments to be incorporated in binding agreements, such as the Development Agreement between the applicant and the NYISO, and be enforced through binding commitments in FERC rates. Failure for the winning applicant to follow through on its risk mitigation proposal could then be grounds for terminating the agreement with the entity as well as grounds for denying the ability to receive cost recovery through FERC rates.

Evaluation Factor of “Technology Being Used”

NAT also requests that the Commission clarify how “Technology Being Used” will be considered in the NYISO evaluation. More specifically, the Commission should clarify whether “Technology” refers to the conductor, or tower types/height, or construction techniques of a proposal. In addition, the Commission should clarify whether the use of technology as an evaluation criterion means a proposal with innovative technologies would be given greater weight. Lastly, clarification is required as to whether the NYISO should value a more expensive, innovative proposal over a less expensive alternative. This point goes hand in hand with the “Weighting of Cost” point discussed above. Specificity as to what is required related to a description of a proposals technology and how technology factors into the evaluation to be conducted by NYISO will result in proposals that better fit with the Commission’s objectives in this proceeding.

Evaluation Factor of ROW Acquisition Costs by Non-Transmission Owners

Trial Staff’s proposed directive that the NYISO consider “ROW Acquisition Costs by Non-Transmission Owners” as an evaluation criteria would be unduly discriminatory because, as phrased, the criteria implies a false assumption that NYTOs’ proposals do not include any ROW Acquisition Costs. Based on filings made in this proceeding, it appears that New York Transco, LLC would have to acquire ROW as would any other applicant. More specifically, the NYTOs include in their detailed cost estimates for P11, in the format requested by DPS Staff, an amount of $49,622,000 for “Land and Right of Way Acquisition.” Accordingly, limiting the evaluation factor to be “ROW Acquisition Costs by Non-Transmission Owners” could lead to significant inequalities in the NYISO’s evaluation of non-transmission owner applicants’ submissions when compared to those of the NYTOs. NAT submits that the ROW Acquisition Costs by all applicants raises several policy questions that need to be addressed by the Commission prior to the NYISO process: 1) the appropriate for applicants to pay an incumbent utility for a ROW (i.e. book value; fair market value; or some other amount), and 2) whether the

difference between the payment made by an applicant for ROW acquisition and book value, if the payment is greater, accrues to shareholders or ratepayers. In any event, the amount paid by applicants should be identical for each segment – whether a payment by New York Transco, LLC, NAT or NEETNY. The NYISO’s analysis should include an allowance for the exact same payment to the incumbent utility for ROW on each segment for each applicant. The ROW acquisition costs should be equal for all parties on each segment, essentially removing such costs as evaluation criteria.

**ROW Access Rights by Non-Transmission Owners**

Although NAT believes that alternative legal means exist for private developers to gain access to utility ROW, Trial Staff notes in the Final Report that “questions remain regarding competitive applicant’s access to existing ROW.”23 Staff further stated, however, that “Staff does not resolve how competitive developers would gain such access.”24 NAT believes that the Commission’s existing broad powers under the PSL grant it the authority to direct the utilities to allow non-transmission owners access to any and all necessary ROWs in order to construct approved transmission facilities. Such authority was, in fact, confirmed by the Commission earlier in this AC Transmission Proceeding.25 In the event that the Commission does not provide for such access in its order, NAT respectfully requests that the Commission provide guidance for the NYISO’s evaluation process as land rights are an integral part of the NYISO’s review. Absent Commission guidance, a truly fair comparative process may not be possible.

In the event that the Commission does not direct the utilities to allow private applicants access to ROWs, there are essentially two alternatives for non-transmission owners, such as NAT, to obtain easements for or other access to an existing ROW. The private developer could negotiate an easement with the utility that owns the ROW. Negotiation should be straightforward if the Commission has already set the value of compensation for the ROW as recommended above. If the utility is not willing to entertain this option, the private developer would then be in position to initiate a proceeding under New York’s Eminent Domain Procedure Law (“EDPL”) to condemn space in the utility-owned ROW necessary to construct the transmission facilities.26

23 Final Report, at 161, footnote 42.
24 Id.
25 See Case 12-T-0502: Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades, Order Adopting Additional Procedures and Rule Changes for Review of Multiple Projects Under Article VII of the Public Service Law (Sep. 19, 2013), at 14-15 (stating “[i]n accordance with PSL §§ 4 (1), 5 (2), and 66 (1), we . . . require electric corporations that control existing ROW to allow parties filing Part A application materials to have reasonable access to those portions of the electric corporation ROW that are subject of those applications.”)
26 The New York State Transportation Corporations Law (“TCL”) provides that “[a]n electric corporation and a gas corporation shall have power and authority to acquire such real estate as may be necessary for its corporate purposes and the right of way through any property in the manner prescribed by the eminent domain procedure law.” TCL § 11 (3-a). Once an applicant obtains a certificate of environmental compatibility and public need under Article VII, it may then commence a condemnation proceeding and the applicant is exempt from most of the requirements of the Eminent Domain Procedure Law (“EDPL”). See EDPL § 206. The fact that a utility’s ROW is
Whether the utility allow the private developer access to existing ROWs or the private developer acquires such access through condemnation, the process must also satisfy the NYISO’s requirements under Attachment Y to the Open Access Transmission Tariff (“OATT”) regarding the Public Policy Requirements process. According to Attachment Y, any applicant proposing a transmission solution to the NYISO is required to indicate that it has “has the property rights, or ability to obtain the property rights, required to implement the solution.”27 In making its determination, the NYISO will consider, in consultation with the DPS,28 whether the Developer:

(i) already possesses the rights of way necessary to implement the solution;

(ii) has completed a transmission routing study, which (a) identifies a specific routing plan with alternatives, (b) includes a schedule indicating the timing for obtaining siting and permitting, and (c) provides specific attention to sensitive areas (e.g., wetlands, river crossings, protected areas, and schools); or

(iii) has a specified a plan or approach for determining routing and acquiring property rights.29

Trial Staff’s comments regarding a private applicant’s ability to gain access to utility ROW raises questions about the ability of a private developer to meet this third requirement. As Attachment Y requires that the NYISO consult with the Commission, NAT respectfully requests that the Commission state in its order that a developer’s plan to acquire access through either negotiation, or if negotiation is not successful then eminent domain, should satisfy the requirements of the NYISO’s Attachment Y.

Shoemaker-Sugarloaf Upgrade and Rock Tavern Substation Improvements

The Trial Staff Final Report identifies for the first time two additional system upgrades, and includes each upgrade as a “Required Add-On” for Competition B for bidders on the Knickerbocker – Pleasant Valley segment.30 These upgrades include an upgrade to the Shoemaker-Chester-Sugarloaf 138 kV transmission line and upgrades to terminal equipment at the Rock Tavern Substation. This is also reflected in the Trial Staff Motion. NAT respectfully requests that the Commission clarify what is requested of bidders related to these upgrades and to provide clarification regarding the necessity for these additional upgrades in the scope of Competition B.

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27 Attachment Y, § 31.4.8.1.6.
28 Attachment Y, § 31.4.8.1.
29 Id.
30 See Final Report, at xxvi and 161.
The Final Report’s recommended upgrade to the Shoemaker-Chester-Sugarloaf 138 kV transmission line is also not clearly defined. It is defined both as an upgrade of the existing double-circuit 69 kV line from Shoemaker to Sugarloaf to a new double-circuit 138 kV line,\(^3\) or as an upgrade of the 69 kV line from Sugarloaf to Chester to a 138 kV line,\(^3\) or as an upgrade of the existing 138 kV line from Shoemaker-Chester-Sugarloaf.\(^3\) The Commission should clarify the exact scope of the required upgrade to this line.

In addition, it is not clear what Trial Staff means for an applicant to “work with” the respective utilities to ensure these upgrades are completed. If what is meant is for the cost of these system upgrades to be paid by the applicants, it could only be as a pass-through in rates, outside of any risk mitigation of an applicant’s proposal. It is not appropriate to require each applicant to include the work within the scope of its proposal. A portion of the work from Sugarloaf to Shoemaker and all of the Rock Tavern upgrades are within existing utility substations. Work inside an existing transmission owner’s substation should be left out of the competitive bid scope since standards of owners are unknown and existing transmission owners would have an unfair advantage. This work should be assigned directly to the TOs. If it is expected for applicants to propose the scope of work, the scope of work, including incumbent transmission owner’s requirements, must be more clearly stated. Work outside of the existing transmission owners’ substations could be performed by non-transmission owner applicants and included in their proposals but again the scope of the upgrades needs to be clearly identified as discussed above.

### Additional Selection Criteria

NAT respectfully requests that the Commission include one additional factor to be considered by the NYISO in its evaluation. For over the past three years, applicants have contributed significantly to the scope of the necessary upgrades and the process for selecting applicants to construct the facilities in a way that is in the best interest of ratepayers and other constituents. An applicant’s participation in this process could, however, prove to be a disadvantage in the NYISO process since applicants have divulged to other competitors the details of their proposals, most notably detailed cost estimates. Participation in the AC Transmission Proceeding also brings certain advantages that should be recognized in the NYISO process. The Commission should clarify that the applicants with a Part A application filed in 2013, and amended in 2015, each with the appropriate public notice, have a better ability to meet a required in-service date, which should be recognized by the NYISO in its

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31 See Final Report, Appendix 5 (containing no reference to an upgrade of the existing Sugarloaf to Shoemaker 138 kV line).
32 Final Report, at 96 (containing no identification of the number of circuits or identification of a need from Chester to Shoemaker).
33 In the additional information provided in response to the technical conference requests, the upgrade is described as the need to raise the STE rating of the existing 138 kV line to “closer to 400 MW” without identifying a specific rating, and without identifying any changes to the 69 kV lines.
evaluation. The addition of this type of evaluation criteria would be consistent with similar provisions in other FERC compliant Order 1000 processes.

Conclusion

For the foregoing reasons, and subject to the adoption of NAT’s recommendations and suggested clarifications, NAT supports the Commission’s adoption of the findings contained in the Final Report and Trial Staff Motion.

Respectfully submitted,

HARRIS BEACH PLLC

/s/ Steven D. Wilson

Steven D. Wilson

Attorneys for North America Transmission LLC and North America Transmission Corporation

cc: Active Parties