

**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  
REQUEST FOR EXTENSION OF SCHEDULE**

Petitioners:

Clinton Concerned Citizens  
Columbia Land Conservancy  
Dutchess County  
Farmers and Families for Claverack  
Farmers and Families for Livingston  
Omega Institute for Holistic Studies, Inc.

Pleasant Valley Concerned Citizens  
Scenic Hudson, Inc.  
Town of Clinton  
Town of Livingston  
Town of Milan  
Town of Pleasant Valley

## **PRELIMINARY STATEMENT**

This Petition for Clarification and Request for Extension of Schedule (“Petition”) is submitted on behalf of Clinton Concerned Citizens; Columbia Land Conservancy; Dutchess County; Farmers and Families for Claverack; Farmers and Families for Livingston; Omega Institute for Holistic Studies, Inc.; Pleasant Valley Concerned Citizens; Scenic Hudson, Inc.; the Town of Clinton; the Town of Livingston; the Town of Milan; and the Town of Pleasant Valley (“Joint Petitioners”). All of the petitioners are parties to Case 13-E-0488: In the Matter of Alternating Current Transmission Upgrades - Comparative Proceeding (“Proceeding”), and are members of the Hudson Valley Smart Energy Coalition (“HVSEC”). HVSEC a broad-based coalition of community groups and officials that seek to protect Hudson Valley communities from the potential negative impacts of the new AC transmission lines that are being considered in this Proceeding. HVSEC supports the creation of a modern, comprehensive energy plan for the Hudson Valley and New York State that identifies and implements sustainable energy solutions that do not jeopardize our environment.

This Petition seeks procedural clarification of the New York Public Service Commission’s (the “Commission”) December 16, 2014 Order Establishing Modified Procedures for Comparative Evaluation (“December 16 Order”). As noted in the December 16 Order, Joint Petitioners have submitted comments in the Proceeding questioning the need for a transmission solution to address congestion and requesting that the Commission suspend the Proceeding pending a determination of need, as well as an analysis of alternative non-transmission congestion solutions. This call for an early determination of the threshold issue of need is based on evidence submitted in the Proceeding showing that there is no reliability need; congestion and its associated costs are trending downward; and alternative solutions such as energy efficiency would be a more cost-beneficial solution than new transmission. In response to these comments, the Commission’s December 16 Order modifies the schedule for the Proceeding to include a technical conference and a Commission determination on the issue of need.

Joint Petitioners commend the Commission for expanding the process and appreciate the Commission’s concern and attention to our comments. In order to best achieve what we understand to be the Commission’s goals and purposes in scheduling the technical conference, we request procedural clarification of the December 16 Order as set forth below. We also respectfully request extension of two of the timeframes in the schedule for the Proceeding as

modified by the Commission's December 30, 2014 Ruling on Extension Request ("December 30 Ruling").

## I. REQUEST FOR CLARIFICATION

### **The Joint Petitioners Request Clarification That Parties Will be Provided the Opportunity to Present Relevant and Clarifying Information on the Record on the Question of the Need for New Transmission at the Technical Conference and that the Commission Will Subsequently Issue a Decision as To Whether the Proposed Transmission Facilities are Needed and Whether Non-Transmission Solutions Present a Preferred Alternative.**

At the December 11, 2014 Commission session where the Proceeding was discussed as an agenda item, Assistant Counsel Drexler stated that Department of Public Service Staff ("Staff") was recommending responding to the Joint Petitioners' comments "by addressing, upfront, the basis of the need for these projects."<sup>1</sup> In her remarks, Commission Chair Zibelman recognized the "considerable concern that the Commission has not paid enough attention to the question of need ... and that we needed to build in the opportunity to present information and to really consider is our moving forward with building transmission something that is of benefit to – to this state and are there other alternatives."<sup>2</sup> Chair Zibelman continued that a technical conference would be held to "give people an opportunity to present the information... and would expect that that would come back to us as some sort of interim decision."<sup>3</sup>

Thereafter, the Commission issued a press release on December 12, 2014, entitled "Need for Transmission Upgrades to be Studied and Examined," with the subtitle "PSC Lays Out New Process in Transmission Upgrade Proceeding to Determine Need." It states that the Commission "will determine the exact extent of the need for relief of persistent congestion" by convening a

---

<sup>1</sup> December 11, 2014 Regular Meeting Transcript, p. 107.

<sup>2</sup> Id. p. 109.

<sup>3</sup> Id. p. 110.

technical conference.<sup>4</sup> It goes on to state that Staff will “reexamine the issues and re-determine the extent of the need” and host a technical conference open to all the parties to “present its findings” and “ensure all parties can raise questions about its recommendations.”<sup>5</sup> The Order further states that parties will have an “opportunity to demonstrate that a transmission solution is not needed, or that an alternative solution is preferable, before any further decisions are made on any specific applications. In the event a determination of need is made, the process contemplates a Commission decision in August or September of 2015.”<sup>6</sup>

Acknowledging comments questioning the need for a transmission solution to the identified congestion, the December 16 Order states that the Commission “responds to those concerns by expanding the process to address the issue of the basis of the need before proceeding to a full Article VII review.”<sup>7</sup> The December 16 Order further states that the Commission “expects all the parties to cooperate and assist Trial Staff in the creation of a record on these issues for the Commission’s consideration.”<sup>8</sup> The December 16 Order gives a deadline of June 10, 2015 for the Trial Staff Report and Motion, which should, among other things, “provide Trial Staff’s recommendations regarding whether transmission facilities are needed to address the identified congestion as compared to other non-transmission solutions that might be available as an alternative.”<sup>9</sup>

The December 16 Order concludes:

---

<sup>4</sup> December 12, 2014 Public Service Commission Press Release, “Need for Transmission Upgrades to be Studied and Examined.”

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> December 16 Order p 2.

<sup>8</sup> December 16 Order p. 32. Applicants are required, in their Part A submissions, to submit (among many other things) “an explanation of need for the proposed facility” as required by 16 NYCRR § 85-2.8; a “summary of anticipated benefits with respect to reliability and economy to applicant interconnected network,” with specific benefits to be submitted in Part B; and a “general demonstration” of how the project meets the benefits and objectives identified by the Commission in Case 12-T-0502, with details provided with the Part B filing. December 16 Order Appendix D.

<sup>9</sup> December 16 Order p. 34, fn. 35.

The Commission finds that the comparative evaluation should proceed because there is sufficient evidence of significant constraints at the Central East and UPNY-SENY interfaces to support the decision to investigate possible transmission solutions, and because resolving that congestion could produce significant benefits for ratepayers, But the Commission has heard the concerns of the many parties that question the need for a transmission solution. As noted above, Commission is requiring that the need question be addressed beginning with a Trial Staff report and a technical conference. The parties remain free to develop arguments that alternative non-transmission congestion solutions rebut the need for designating the congestion relief as a Public Policy Requirement, or for the granting of an Article VII certification to a proposed AC transmission project.<sup>10</sup>

Based on the foregoing, the Commission appears to be stating that parties will be provided the opportunity to present evidence at the technical conference, through both written and oral presentation, regarding the threshold question of whether new transmission facilities are needed, as well as cost-benefit analysis, identification of potential alternatives to transmission, and other relevant information.<sup>11</sup>

In order for parties to present evidence at the technical conference, intervenor parties will need to rely on experts during their presentation and, if appropriate, to challenge the conclusions of the Staff Report and Motion (and the positions of other parties). Certainly the applicants, the New York Independent System Operator (“NYISO”) and Staff will have experts on the relevant issues in attendance prepared to present their conclusions, and intervenors should be afforded the same opportunity. Without such an opportunity to develop a full record, it is difficult to see how the Commission could make a determination as to whether the proposed projects are needed.

---

<sup>10</sup> December 16 Order pp. 37-38.

<sup>11</sup> However, the December 16 Order also states that the majority of the various technical conferences held in this and related proceedings thus far haven been for purposes of discussion and to answer questions only. See, e.g., December 16 Order FNs 7, 8, 9, describing prior technical conferences. A fourth technical conference, held on March 19, 2014 was for NYISO to provide an explanation of its process and results for its initial screening level analysis. See, e.g., December 16 Order FNs 7, 8, 9, describing prior technical conferences.

The Joint Petitioners seek confirmation that their understanding of the technical conference process is correct, because certain language in the December 16 Order seems to reduce the importance of the technical conference to an opportunity for Staff to “explain the results in the Report and Motion” and “present its findings” while allowing all parties to “raise questions about its recommendations.”<sup>12</sup> The Order also states that “information available at the time of the technical conference will also inform parties of the potential need for congestion relief.”<sup>13</sup> The December 16 Order directs Trial Staff to prepare a report addressing the question of need and “present its findings in a technical conference open to all the parties so that there can be a full airing and discussion among the stakeholders of the basis of the need for transmission facilities and the viability of potential alternatives.”<sup>14</sup>

The majority of the technical conferences held in this and related proceedings so far have been for purposes of discussion, sharing information and asking questions about process and analysis only. Some of the language in the December 16 Order lends itself to an interpretation that the technical conference currently scheduled for June 17-18, 2015 might be similar to those held previously in this Proceeding. If there is not a true opportunity for parties to present evidence through the use of experts and to question Staff and other parties’ conclusions, a technical conference would amount to a mere dialogue between the parties to better understand Staff’s analysis and conclusions. While such a discussion would have some limited utility, it is difficult to see how it could possibly provide sufficient information on the record to lead the Commission to make a determination on the issue of need.

An early determination of the threshold issue of need will maximize the efficiency of the proceeding for all parties. Joint Petitioners plan to seek intervenor funding to hire consultants to

---

<sup>12</sup> December 12 Press Release.

<sup>13</sup> December 16 Order p. 34.

<sup>14</sup> December 16 Order p. 31.

develop the record in this Proceeding as to whether the proposed projects are needed. It would be inefficient and a waste of resources if parties devoted substantial time and money to vet the issue of need, but no true opportunity existed for experts to contest other parties' findings. In order for the technical conference to provide an opportunity for intervenors to present evidence that could be sufficient to lead the Commission to a finding that there is no need for the proposed projects, Joint Petitioners believe that intervenors should be allowed to present evidence challenging the need for the facilities, including the use of independent experts.

For the foregoing reasons, the Joint Petitioners respectfully request clarification that: (1) parties will be provided the opportunity to present written and oral evidence on the question of the need for the proposed transmission facilities at the technical conference; and (2) that the Commission will subsequently issue a decision as to whether the proposed transmission facilities are needed and whether non-transmission solutions present a preferred alternative. Clarification on this issue will help to define the scope, factual basis, and significance of the Commission's decision regarding the Staff Report and Motion, expected in the August or September session. Moreover, clarification on this issue will assist all parties in properly preparing for the technical conference, and will not prejudice any party.

## **II. REQUEST FOR EXTENSION OF SCHEDULE**

The Joint Petitioners respectfully request that the Commission grant an extension of the procedural schedule as set forth in the December 30 Ruling. The Joint Petitioners are sensitive to the impact of the uncertainty that exists during the pendency of this Proceeding, and of the Commission's and all parties' interest in moving forward expeditiously. However, in order for the intervening parties to meaningfully participate in the Proceeding and submit the most useful and relevant information into the record for the Commission's consideration, we respectfully

request an extension of two separate time periods within the schedule in the December 30 Ruling.

First, the original schedule adopted in the December 16 Order provided over six weeks (45 days) for parties to review and comment on the full Part A submissions. The December 30 Ruling reduced this time period to 28 days.<sup>15</sup> The December 16 Order stated that “parties that have information to contribute to the record for these issues should avail themselves of the comment opportunity provided,” with “these issues” being all of the information required from the applicants as set forth in Appendices B, C and D to the December 16 Order. The range of information required by these appendices as Part A submissions for comparative evaluation is broad, and includes additional studies and voluminous and complex submissions. The burden on intervening parties to review and prepare comments in just 28 days on not just one application as in a typical Article VII proceeding, but on four different applications, each one having numerous permutations and alternatives, is substantial and significant. In fact, the information submitted as of January 20, 2015, which does not even comprise complete Part A submissions, already entails thousands of pages of narrative, maps, design drawings, alternatives, and other materials. In order to fully contribute to the record as requested by the Commission, the Joint Petitioners respectfully request that parties be provided the same amount of time as allowed in the original schedule adopted in the December 16 Order – 45 days -- to prepare comments on the Part A submissions.

---

<sup>15</sup> The December 16 Order provided filing deadlines of January 7 and January 19 for complete submission of Part A requirements in two parts (First data required for NYISO analysis; and then the remainder of Part A proposals for comparative evaluation). Part A submission filing deadlines have now been split into three parts rather than two, in accordance with December 30 Ruling: Part A data required for NYISO analysis was due January 7, 2015; Part A data required by Appendix D pages 1-5 (except detailed cost information) was due January 20, 2015; and Part A data required by Appendix D pages 6-10 (and detailed cost information) is due March 2, 2015. Written comments on all of these materials are now due on March 30, 2015, only 28 days later.



Second, the schedule provides only one week between the release of the Staff Report and Motion (June 10, 2015) and the technical conference (on or about June 17-18, 2015). If the technical conference is intended to be an opportunity for parties to “demonstrate that a transmission solution is not needed, or that an alternative solution is preferable”<sup>16</sup> this is clearly insufficient time for parties and their consultants to review the Staff Report and Motion and prepare written and oral materials for presentation at the technical conference. This is especially true given the importance of the technical conference with regard to the Commission’s expected determination on the need for new transmission as a result of the technical conference.

Based on the foregoing, the Joint Petitioners respectfully request that these two time frames be extended to provide more time for parties to review the full Part A application materials and prepare comments, and to prepare for the technical conference, so that there is a full record before the Commission for its decision.

Specifically, we request that the comment period on the complete Part A submissions be restored to at least 45 days, and that the period between the Staff Report and Motion and the technical conference be extended to at least two weeks, with all other time frames remaining the same. Under this proposed schedule, written comments on the Part A submittals will be due April 15, 2015 (45 days from the applicants’ filing deadline of March 2), and reply comments will be due April 29. If Staff is allowed an eight week timeframe from reply comment submission to submission of the Staff Report and Motion, it will be due on or before June 23, and the technical conference could be scheduled for the week of July 6. The remaining timeframes on the schedule would not be changed. This proposed schedule will still leave time for a Commission decision on need in the September session.

---

<sup>16</sup> December 12 Press Release.

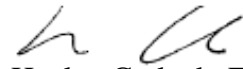
The Joint Petitioners respectfully request that to allow for sufficient time to review the voluminous application materials and prepare submissions and for the technical conference so that there is a full record for the Commission's decision, the timeframes be extended to 45 days and two weeks, respectively.

### CONCLUSION

For the foregoing reasons, the undersigned respectfully request that the Commission grant clarification and an extension of time in the schedule for the Proceeding to the extent indicated above.

Dated: January 26, 2015  
Poughkeepsie, New York

Respectfully submitted,

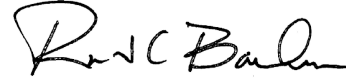
  
Hayley Carlock, Esq.  
Scenic Hudson, Inc.

/s/Gary Bowitch/  
Gary Bowitch, Esq.  
Attorney for Clinton Concerned Citizens  
Pleasant Valley Concerned Citizens  
Town of Clinton

/s/Daniel P. Duthie/  
Daniel P. Duthie, Esq.  
Attorney for Farmers and Families for Claverack  
Farmers and Families for Livingston  
Town of Milan  
Town of Pleasant Valley

/s/Peter Paden/  
Peter Paden  
Columbia Land Conservancy

/s/Allan Page/  
Allan Page  
For Dutchess County

A handwritten signature in black ink, appearing to read "Robert Backus". The signature is fluid and cursive, with the first name "Robert" and last name "Backus" clearly distinguishable.

Robert Backus  
Omega Institute for Holistic Studies

cc: Active Parties