

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
www.dps.ny.gov

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November 14, 2013

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 Protest 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,

A handwritten signature in cursive script that reads '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.)

PROTEST OF THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

INTRODUCTION

The Federal Energy Regulatory Commission's (FERC or Commission) Order No. 1000 directed, in part, that the New York Independent System Operator, Inc. (NYISO) and New York Transmission Owners (NYTOs) amend their Open Access Transmission Tariffs (OATT) to provide procedures for the consideration of transmission needs driven by Public Policy Requirements in local and regional transmission planning processes.¹ On October 11, 2012, the NYISO and NYTOs submitted a compliance filing to address the Commission's directives specified in Order Nos. 1000 and 1000-A. On April 18, 2013, the Commission issued an Order which accepted, in part, the NYISO and NYTOs' October 11, 2012

¹ 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).

compliance filing, and directed the filing of certain OATT revisions and clarifications.²

On October 15, 2013, the NYISO and NYTOs submitted a filing to address the Commission's directives in the April 18 Order (October 15 Compliance Filing).³ Although it was not directed to do so as part of the April 18 Order, the NYISO included language in the October 15 Compliance Filing that would provide the NYISO Board of Directors (Board) with the "authority to elect to not select a transmission solution for cost allocation purposes to satisfy a Public Policy Transmission Need if the Board determines that the project will adversely affect price signals in the NYISO's wholesale electricity markets."⁴ According to the NYISO, 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."⁵

² Docket No. ER13-102, New York Independent System Operator, Inc., Order on Compliance Filing, 143 FERC ¶61,059 (issued April 18, 2013) (April 18 Order).

³ The NYPSC filed a Notice of Intervention and Comments on November 26, 2012.

⁴ October 15 Compliance Filing, p. 41.

⁵ Id.

The New York Public Service Commission (NYPSC) hereby protests the proposal in the October 15 Compliance Filing to allow the NYISO Board to reject the more efficient and cost-effective transmission projects that are needed for public policy purposes.⁶ As discussed below, such a proposal is inconsistent with the April 18 Order, as well as FERC Order Nos. 1000 and 1000-A, and could hinder the development of transmission projects necessary to advance Public Policy Requirements, including those driven by federal or state laws and regulations. Moreover, any such transmission projects would further serve to enhance competition by broadening wholesale markets, rather than undermining competition, as suggested by the NYISO. Accordingly, the NYPSC respectfully requests that the Commission reject this aspect of the October 15 Compliance Filing.

DISCUSSION

Under the transmission planning process for public policy purposes, which was accepted in the April 18 Order, the NYPSC is responsible for identifying which Public Policy Requirements "drive" transmission needs, and thus warrant evaluation by the NYISO. The April 18 Order directed OATT

⁶ The NYPSC's Protest is being filed pursuant to Rule 211 of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.211).

revisions whereby the "NYISO will select in the regional transmission plan for purposes of cost allocation ... from among transmission projects proposed to meet transmission needs driven by public policy requirements... ." ⁷ As the Commission explained, 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." ⁸ In assigning the NYISO this relatively objective function, the Commission circumscribed an appropriate role for the NYISO when responding to public policy needs identified by the State.

The October 15 Compliance Filing would expand the NYISO's well-defined role and replace its "affirmative obligation" to select a transmission project on the basis of being more efficient and cost-effective with an entirely discretionary determination. The newly-created test would allow the NYISO Board to deny cost recovery to a transmission project if the Board believes the project is not "economic" or would "adversely affect price signals." This discretionary approach is inconsistent with FERC Order Nos. 1000 and 1000-A, and the April 18 Order, which requires the selection of a transmission

⁷ April 18 Order, ¶145 (emphasis added).

⁸ Id. (emphasis added). An "affirmative obligation" may be considered 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).

project for purposes of cost recovery so long as it meets the "more efficient and cost-effective" test. Furthermore, providing the NYISO Board with the discretion as to whether a transmission project qualifies for cost allocation and recovery under the OATT 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 Board should not assume authority to second-guess state or federal public policy requirements.

The NYISO argues that the Board's discretion whether to select a transmission project is necessary in order to "fulfill its responsibility to maintain economically competitive markets that send price signals for investment in new transmission and resources would be undermined."⁹ While the NYISO is responsible for administering wholesale energy markets in New York, this responsibility should not be interpreted to include the discretion to prohibit cost recovery for certain transmission projects that would implement federal or state public policies. This is particularly true in the case of an

⁹ October 15 Compliance Filing, p. 41. The NYISO cites to provisions in the ISO Agreement whereby it is "obligated to administer competitive markets and to 'maintain the reliable, safe, and efficient operation of the NYS Power System (including adjustment of generation, and coordination of maintenance and outage schedules of certain Generators and transmission facilities)'" and is responsible for hiring an outside market advisor and providing them with access to all necessary information.

open and transparent transmission planning process that identifies valid Public Policy Requirements, evaluates any transmission projects proposed to implement those Public Policy Requirements, and identifies which of those projects would be more efficient and cost-effective.

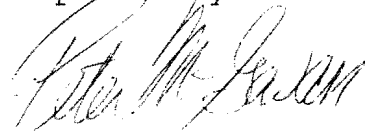
The NYPSC recognizes that the addition of transmission to serve a Public Policy Requirement may have an impact on wholesale markets. However, there is no basis to infer that a new transmission facility would undermine competitive markets by adversely affecting price signals. Instead, it is expected that new transmission facilities could 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 new transmission facilities. Precluding cost recovery for transmission projects driven by Public Policy Requirements, which may need to be pursued outside of the NYISO's "economic" planning process, would be contrary to this goal.¹⁰

¹⁰ The NYISO's planning process for "economic" projects is referred to as the Congestion Assessment and Resource Integration Study or CARIS.

CONCLUSION

As discussed above, the Commission should reject the proposal in the October 15 Compliance Filing that would provide the NYISO Board with discretion to refuse the allocation and recovery of costs for any transmission projects evaluated as part of the planning process for implementing Public Policy Requirements, including those driven by federal or state laws and regulations.

Respectfully submitted,



Peter McGowan
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: November 14, 2013
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
November 14, 2013



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