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**Kimberly A. Harriman**  
General Counsel  
**Kathleen H. Burgess**  
Secretary

Three Empire State Plaza, Albany, NY 12223-1350  
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August 27, 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. EL15-86-000 - ITC Grid Development LLC

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled 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

ITC Grid Development LLC                    )           Docket No. EL15-86-000

NOTICE OF INTERVENTION AND COMMENTS  
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

On July 28, 2015, ITC Grid Development LLC (ITC) filed a petition requesting a declaratory ruling related to the ratemaking treatment that the Federal Energy Regulatory Commission (FERC or Commission) will apply to binding bids submitted by transmission developers as part of planning processes approved pursuant to FERC Order No. 1000 (Petition).<sup>1</sup> In particular, the Petition seeks to ensure that: 1) binding revenue requirement bids that are selected pursuant to a competitive transmission project selection processes will be deemed just and reasonable under Section 205 of the Federal Power Act (FPA); and, 2) such bids may not subsequently be changed by means of a complaint filed under FPA Section 206, unless required under the *Mobile-Sierra* public interest standard.

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<sup>1</sup> See Docket No. RM10-23-000, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000 (issued July 21, 2011), reh'g denied, Order No. 1000-A (issued May 17, 2012), reh'g denied, Order No. 1000-B (issued October 18, 2012).

**NOTICE OF INTERVENTION**

The New York State Public Service Commission (NYPSC) submits its Notice of Intervention and Comments pursuant to the Commission's Notice of Petition for Declaratory Order, issued on July 29, 2015, and Rule 214(a)(2) (18 C.F.R. §385.214) of the Commission's Rules of Practice and Procedure. Copies of all correspondence and pleadings should be addressed to:

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**COMMENTS**

The Petition raises important issues with respect to the Commission's competitive selection process for including projects in regional transmission plans.<sup>2</sup> As the Petition indicates, "[a] basic underpinning of competitive transmission solicitation processes is that bids are meaningful: simply stated, if developers are not held to their bids, the competitive process loses its integrity."<sup>3</sup> The NYPSC agrees with this view and supports developers' efforts to commit to the

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<sup>2</sup> 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.

<sup>3</sup> Petition, p 2.

containment of the costs of transmission projects, particularly where the projects have been selected pursuant to Order No. 1000 as the most "cost-effective" solution to an identified transmission need.

The NYPSC maintains that the competitive process itself should discipline developers' bids to ensure they are just and reasonable. Holding developers to their bids will ensure developers do not intentionally underbid projects in order to be selected by a Regional Transmission Organization (RTO) or Independent System Operator (ISO). In addition, the risk that developers would unreasonably inflate their bids in response to such a commitment is small because they would be taking the risk that their projects would not be selected.

While the Petition focuses on regions where revenue requirement bids are required, the NYPSC urges the Commission to clarify that any developer may submit a binding bid under Order No. 1000-approved transmission planning processes, regardless of whether a binding bid is required.<sup>4</sup> Where it can be demonstrated that a process is effectively competitive and a revenue requirement or construction cost bid is relied upon by an RTO or

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<sup>4</sup> The Petition notes that the Midwest Independent System Operator, Inc. and the Southwest Power Pool, Inc. "require competitive transmission project bidders to submit full revenue requirement bids." Petition, p. 4. The New York Independent System Operator, Inc. (NYISO) does not require such bids, although it does consider construction cost bids.

ISO in selecting a project for cost recovery, the Commission should ensure the integrity of the competitive selection process by holding developers to their bids. In exchange for holding developers to their bids and preventing the recovery of cost over-runs, the Commission should consider granting the relief requested in the Petition subject to a review on a case-by-case basis and the inclusion of any appropriate exceptions. This relief would incent proper cost containment and allow developers, in appropriate circumstances, to retain the financial benefit of a cost under-run, while affording them a reasonable protection against a FPA Section 206 complaint.

This approach is consistent with NYPSC's recent planning initiatives, which have utilized competitive processes that raise the need for meaningful cost containment measures. For example, the NYPSC's order directing the development of New York Transco's proposed transmission projects, which are currently pending in FERC Docket No. ER15-572-000, was tied to the project cost estimates that were provided. Specifically, the NYPSC indicated that the cost estimates submitted for these projects were provided for the purpose of competing with the other projects that responded to the New York Power Authority's Request for Proposals. As such, the transmission projects were proposed in a competitive environment, which should have induced the developers to submit the most competitive price possible.

The NYPSC has sought to retain the benefits of this competitive process for ratepayers by holding the developers' investment costs for these projects to the estimates which they supplied when the project proposals were made.<sup>5</sup>

Further, the NYPSC adopted a risk-sharing mechanism in its on-going proceeding to evaluate AC transmission upgrade projects, two of which are also pending in FERC Docket No. ER15-572-000. For example, the NYPSC indicated that the developer should bear 20% of the actual cost over-runs, while ratepayers would bear 80% of those costs. If actual costs fall below the bid, the developer would retain 20% of the savings. In addition, as a component of the risk-sharing model, if the developer is seeking incentives from FERC above the base ROE otherwise approved by FERC, the developer should not receive any incentives beyond the base ROE on any cost over-runs above the bid price.<sup>6</sup>

Applying this risk-sharing model, the bid price would cap the costs that may be proposed to FERC for incentives. The

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<sup>5</sup> NYPSC Case 12-E-0503, Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans, Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests For Rehearing (issued November 4, 2013), pp. 22, 24.

<sup>6</sup> NYPSC Case 12-T-0502, et al., Proceeding to Examine Alternating Current Transmission Upgrades, Order Establishing Modified Procedures for Comparative Evaluation (issued December 16, 2014) (AC Transmission Upgrades proceedings).

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. To be recoverable, these additional costs would need to exceed a materiality threshold of 5% above the initial bid price.

The NYPSC contends this risk-sharing approach is just and reasonable and comports with FERC's prior acceptance of "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...."<sup>7</sup> Similarly, the Commission has indicated that it "is open to approaches that control transmission development costs and provide more transparency regarding how incentives will be applied to costs beyond initial estimates."<sup>8</sup>

In sum, the Commission should recognize the need for meaningful cost containment measures given that Order No. 1000 establishes a competitive process for selecting projects that

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<sup>7</sup> 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.

<sup>8</sup> Docket No. RM11-26-000, Promoting Transmission Investment Through Pricing Reform, Policy Statement, 141 FERC ¶61,129 (issued November 15, 2012), ¶28.

are identified as the most efficient or "cost-effective." The Commission should ensure the integrity of those processes by looking beyond its traditional ratemaking approach that allows a developer to recover all costs it incurs, unless proven to be imprudently incurred - a high burden for any intervener to meet. The NYPSC respectfully requests the Commission's guidance and leadership with respect to these important issues noted in the Petition and in the above discussion.

Respectfully submitted,

*Kimberly A. Harriman* (SH)

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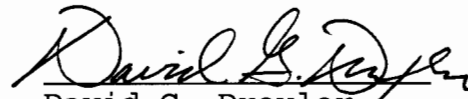
Dated: August 27, 2015  
Albany, New York



CERTIFICATE OF SERVICE

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

Dated: Albany, New York  
August 27, 2015

  
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