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October 3, 2016


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. AD16-18-000 - Competitive Transmission
Development Technical Conference

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
Managing Attorney

Attachment
cc: Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Competitive Transmission Development) Docket No. AD16-18-000
Technical Conference)

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

INTRODUCTION

On June 27-28, 2016, the Federal Energy Regulatory Commission (FERC or Commission) held a Commissioner-led technical conference to discuss issues related to competitive transmission development processes, including, but not limited to, the use of cost containment provisions, the relationship of competitive transmission development to transmission incentives, and other ratemaking and transmission planning and development issues (Technical Conference). On August 3, 2016, the Commission issued a Notice Inviting Post-Technical Conference Comments (Notice Inviting Comments) seeking input from interested entities.

The New York State Public Service Commission (NYPSC) strongly supports the Commission's initiative, as directed under Order No. 1000,¹ to promote competitive transmission development processes. The NYPSC participated as a panelist at the

¹ 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).

Technical Conference and welcomes this opportunity to provide follow-up comments.² Based on recent experience involving several transmission planning processes, the NYPSC has gained valuable insight into where process improvements may be made to ensure the integrity of the competitive process and that ratepayers obtain the benefits purported to accompany new transmission facilities. As discussed more fully below, these improvements focus on two aspects of the Regional Transmission Organization (RTO) or Independent System Operator (ISO) processes for implementing Order No. 1000.

First, there is a need to establish, prior to RTO/ISO selection of a project, the key financial parameters that would be used to set transmission revenue requirements. Currently, certain RTO/ISO tariffs implementing Order No. 1000, such as those administered by the New York Independent System Operator, Inc. (NYISO), fail to take the potentially significant variations in revenue requirements into account when selecting a

² During the Technical Conference, Panel 2 included NYPSC representative Raj Addepalli. Similar to those comments made during the Technical Conference, 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.

project.³ As a result, these RTOs/ISOs cannot ensure that a project selected through the planning process is the most cost-effective solution. By identifying revenue requirement inputs up-front, the RTOs/ISOs and the Commission can ensure that projects are evaluated on a level playing field and that all developers responding to the same need (e.g., reliability, economic, or public policy) are treated comparably.

Second, project developers should be required to contain costs to the construction estimates relied upon by the RTOs/ISOs in selecting their projects, while allowing for limited exceptions, such as unforeseen siting requirements that push the costs beyond the contingency budget. In the NYPSC's experience, cost estimates may increase significantly throughout the planning process, and may increase to the point that the purported benefits of a project are no longer justified. Although there are several likely factors that contribute to these variations, the NYPSC believes that a primary driver is the Commission's traditional ratemaking process that allows for recovery of all prudently incurred costs. Because this is a very low threshold, there is little to no incentive for developers to control their costs. Therefore, a tariff

³ The Midwest Independent System Operator, Inc. and the Southwest Power Pool, Inc. require competitive transmission project bidders to submit full revenue requirement bids. The NYISO, however, does not require such bids, although it does consider construction cost bids.

mechanism is needed to ensure that construction costs will be contained and that a project, once selected, will remain the most cost-effective solution in the future. Effective cost containment can help to ensure that this goal will be met.

NOTICE OF INTERVENTION

The NYPSC submits its Notice of Intervention and Comments pursuant to the Commission's Notice Inviting Comments, and the Notice of Extension of Time For Filing Post-Technical Conference Comments issued on August 15, 2016, as well as 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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DISCUSSION

FERC Order No. 1000 was a landmark decision that represented a fundamental shift toward promoting competitive transmission development processes. By fostering competition, the Commission sought to ensure that ratepayers would receive the benefits of projects identified as the most efficient or

cost-effective. However, without an equally fundamental shift in how FERC traditionally sets rates, these benefits could remain illusory. Typically, the Commission establishes the revenue requirement for a transmission project *after* a project is selected, and the only upward bound on project costs is the potential that a developer will be found imprudent - an exceedingly difficult burden for intervenors to prove. As a result, the costs of a project, once deemed to be the most cost-effective, could escalate to the point where a different project would in-fact have been the more cost-effective option, or worse, the costs of the project could exceed the benefits. These results run counter to the Commission's planning objectives and present a compelling reason to implement effective and meaningful cost containment mechanisms.

The NYPSC recognizes the difficulties in reconciling traditional ratemaking approaches with the shift toward competitive transmission development processes. A threshold issue concerns the basis of the costs used by an RTO/ISO in selecting a project for development. In the case of the NYISO, it may select a project based on a preliminary construction cost estimate. However, those costs represent an incomplete basis for selection because the Commission will typically establish, subsequently, a developer-specific revenue requirement for a project.

As the Commission is well aware, the financial metrics that are used to set a developers' revenue requirement, such as base return-on-equity (ROE), ROE incentive adders, and capital structure, can have a significant impact on the ultimate ratepayer costs for a project. These metrics, along with the capital investment used to set rates and ongoing expenses such as operation and maintenance (O&M) expenses and property taxes, produce a revenue requirement that will have to be paid by customers.

Although traditional ratemaking practices would suggest that a revenue requirement would need to be set for each developer proposing a project in order to allow an RTO/ISO to make an "apples-to-apples" comparison for purposes of selecting the most cost-effective project, this approach appears to be overly burdensome and may be too constraining on developers, given the many possible circumstances that could materially change a project's revenue requirement over time. These changes include such things as changes in the cost of capital (in particular ROE requirements) and unexpected O&M or property tax expenses. Given these uncertainties, if developers were to be bound by a preset revenue requirement, they would factor significant risk premiums into their estimates. To reduce these premiums, updates to certain components of the revenue requirement could be allowed after a given period of time,

including updating the ROE, capital structure, or ongoing expenses.

As an alternative to using fixed revenue requirements to compare bids, the Commission should strongly consider establishing the key financial parameters that would be used to establish the revenue requirement for a project that is finally selected, regardless of the developer or the specific configuration of the project. While RTOs/ISOs could establish such parameters in their tariffs, potential developers should have the burden of demonstrating that the pre-defined revenue requirement is unjust and unreasonable. These parameters, such as ROE and capital structure, could be put in place for a defined period of time at the start of a project (e.g., five years) and be subject to update by the Commission in the future.

In addition to pre-established financial parameters, developers should be obligated to contain their costs consistent with the project estimates relied upon by the RTO/ISO to select the most cost-effective project. Although the competitive process itself should discipline developers' bids to ensure that they are just and reasonable, the regulatory regime should place developers at some level of risk for deviations from their up-front bids/cost estimates relied upon to select the project, to ensure developers do not have the perverse incentive to intentionally underbid projects in order to be selected.

However, some limited exceptions should be accommodated, such as subsequent regulatory-imposed modifications and mandates that were unforeseen and substantially increase project costs. The risk that developers would unreasonably inflate their bids in response to such a binding commitment should be small because they would be taking the risk that their projects would not be selected.

One possible scenario for constraining up-front construction costs is to require binding bids, where the developer is responsible for any cost over-runs, with limited exceptions, but is able to keep the savings associated with any cost savings. This would shift 100% of the risk of cost over-runs onto the developer.

A variation on developers sharing in the risk of cost over-runs has been pursued in New York. The NYPSC's recent planning initiatives have sought to hold developers' investment costs to the estimates which they supplied when the project proposals were made. In particular, the NYPSC, in its on-going proceeding to evaluate AC transmission upgrade projects, proposed that the Commission adopt a risk-sharing mechanism. 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 on any cost over-runs above the bid price.⁴

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

The NYPSC contends that a risk-sharing approach, whether a binding bid or some level of cost sharing, 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

⁴ 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).

recovered....”⁵ 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.”⁶

CONCLUSION

In sum, the Commission should look beyond its traditional ratemaking approaches to ensure the integrity of the competitive processes established under Order No. 1000 for selecting projects that are identified as the most efficient or cost-effective. The Commission should establish, at the outset of the process, the key financial inputs that would be used to set the revenue requirement for a project that is ultimately

⁵ 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.

⁶ Docket No. RM11-26-000, Promoting Transmission Investment Through Pricing Reform, Policy Statement, 141 FERC ¶61,129 (issued November 15, 2012), ¶28.

selected. In addition, effective and meaningful cost containment measures should be adopted to protect ratepayers.

Respectfully submitted,

Paul Agresta

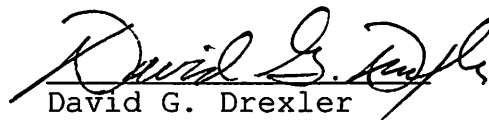
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Dated: October 3, 2016
Albany, New York

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
October 3, 2016



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