STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans **Case 12-E-0503**

REPLY COMMENTS OF NUCOR STEEL AUBURN, INC. ON COST ALLOCATION STRAW PROPOSAL

I. INTRODUCTION

On July 22, 2013, Nucor Steel Auburn, Inc. ("Nucor"), among other parties, filed comments regarding the Staff "Straw Proposal" concerning cost allocation and cost recovery for supply and transmission resources that may be required to satisfy system reliability needs in contemplation of the potential retirement of the Indian Point Energy Center ("Indian Point" or "IPEC") nuclear units. Nucor submits these reply comments to the initial comments of New York's regulated transmission owning utilities and power authorities that collectively propose to build a series of regulated transmission system upgrades in the State through a to-be-formed FERC-regulated entity known as "NY Transco."[1] Three of the NY Transco-proposed regulated transmission solutions ("TOTS") are part of the proposed reliability contingency plan ("Contingency Plan" or "RCP") jointly filed by Consolidated Edison Company of New York, Inc. and the New York Power Authority ("NYPA"). On March 28, 2013, Nucor filed comments on the Reliability Contingency Plan.

In brief, as described in its initial comments, Nucor generally supports the cost allocation, cost recovery and rate design described in the Straw Proposal for regulated TOTS projects that may be approved by the Commission to address reliability needs arising from the potential early retirement of the IPEC nuclear units. The Straw Proposal correctly begins with, and adheres to,

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[1] Although NY Transco does not exist at this time, the comments of NY Transco's putative members are referenced herein as "NY Transco" for ease of reference.

the bedrock requirement that such costs must be allocated and recovered consistent with the "beneficiaries pay" principle, generally aligns the proposed treatment for IPEC replacement resources with the cost allocation applicable for comparable reliability investments under NYISO's existing tariff (which is especially important), aligns cost recovery with cost causation, and recognizes that the capital costs of utility plant investment (transmission) required for reliability purposes should be allocated and recovered on a demand basis.

NY Transco argues for rejecting the Straw Proposal in all key respects, and proposes substituting its "adjusted" load ratio share methodology (*i.e.*, state-wide socialization of TOTS project costs) which it borrowed from the NY Transco proposal in the parallel AC Transmission Expansion docket, Case 12-T-0502. For reasons stated below, Nucor urges the Commission to adopt the Staff Straw Proposal for the purposes of this docket (i.e., reliability based resources intended to replace IPEC) and decline to adopt the NY Transco counter-proposal. Further, the Commission should, in the clearest possible terms, discourage the alternate venue and forum-shopping that is implicit in the NY Transco request for "flexibility" in seeking cost allocation methodologies.

II. COMMENTS

The TOTS projects proposed by NY Transco for the purposes of this IPEC-related case are:

- A second Ramapo to Rock Tavern 345 kV line. The stated purpose of the RRT project is to increase energy import capability into Southern New York.[2]
- Staten Island Un-bottling. The SIU project aims to relieve a contingency limit within New York City.[3]

[2] Contingency Plan, Exhibit C, at p. 15.

[3] *Id.*, Exhibit D at p. 23.

- Marcy South Series Compensation and Fraser to Coopers Corners Reconductoring (to be developed by NYPA and NYSEG). The MSSC upgrades aim to increase power transfers Downstate across the Total East Interface.[4]

The first two projects plainly benefit only the New York metropolitan area, and the third serves the same purpose with possible production cost savings benefits to the Hudson Valley. Neither the RCP nor the NY Transco filing in Case 12-T-0502 purport to meet an Upstate reliability need that is not already addressed by the NYISO Comprehensive Reliability Planning Process ("CRPP").[5]

Notably, NY Transco simultaneously argues that the proposed projects are needed for reliability reasons (this docket), congestion relief/economic reasons (Case 12-T-0502) and Public Policy Requirement ("PPR") purposes (both dockets). The actual physical effect of two of the upgrades, as described in this docket and in Case 12-T-0502, is congestion relief to facilitate increased power transfers from Upstate generation to Downstate loads. This is a subject that the NYISO studies extensively. Moreover, the NYISO OATT, which has been approved by FERC following a process that invites stakeholder input, specifies cost allocation methodologies for both reliability and economic transmission investments based on the "beneficiaries pay" principle. Thus, the fundamental purpose for seeking a PPR designation for congestion relief projects is to effectuate socialized cost recovery state-wide in a manner negotiated among the NY Transco participants without the benefit of other stakeholder participation, and without any meaningful attempt to match cost allocation with the expected system benefits of the TOTS investments.

By seeking a PPR designation and cost allocation for conventional congestion relief projects, NY Transco is asking the Commission to establish a parallel and competing venue for

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[4] *Id.*, Exhibit B at p. 10.

[5] Nucor's comments filed on March 28, 2013 in this docket contain a more detailed discussion of the fact that the listed TOTS project will provide economic and environmental benefits only to Downstate zones while actually increasing costs to consumers and emissions Upstate. NY Transco's comments make no effort to address the observations made in Nucor's previous comments.

determining cost allocation for such transmission projects. This was not the intent of FERC Order No. 1000[6] or NYISO's still-pending compliance filing to that order.

In branding transmission investments as PPR projects and in deciding the associated cost allocation for those projects, the Commission must be un-mistakably clear that those decisions will supplement and not circumvent the NYISO's established stakeholder-driven processes. There is only one way to do that. The costs of AC transmission projects that are primarily designed to resolve reliability issues (resource or reliability criteria violations) must be allocated in a manner comparable to that provided under NYISO's OATT, Section 31, Attachment Y. The costs of projects that are designed to provide congestion relief to enhance economic power flows also must be allocated in a manner comparable to that portion of Attachment Y.[7] The costs of projects approved by the Commission principally for some other purpose (*e.g.*, to connect wind farms or other clean energy alternatives to the electric network) should be allocated based upon a broader assessment of state benefits and policies.

A. The Staff Straw Proposal Circulated in this Docket Has Not Been Superceded by Subsequent Events

NY Transco maintains that FERC's conditional approval of the NYISO Order No. 1000 compliance plan[8] has created "a currently effective cost allocation method" that covers the NY Transco TOTS proposals.[9] This is inaccurate in several respects. First, NYISO has yet to make a conforming compliance filing at this date, and that compliance filling must satisfy FERC's

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6 *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶61,051, FERC Stats. & Regs. §31,323 (2011), *Order on Reh'g and Clarification*, Order No. 1000-A, 139 FERC ¶61,132 (2012).

7 *See* NYISO OATT Sections 31.4.2.1 (reliability needs) and Section 31.4.3 (economic).

8 Docket No. ER13-102-000, New York Independent System Operator, Inc., *Order on Compliance Filing*, 143 FERC ¶61,059, issued April 18, 2013 ("Compliance Order").

9 Comments of the New York Transmission Owners on Behalf of the New York Transco With Respect to the Indian Point Cost Allocation Straw Proposal ("NY Transco Comments") at p. 3.

concern with respect to load ratio share cost allocation for PPR projects.[10] Second, the NYISO compliance filing does not establish any particular method for allocating the costs of PPR projects. Rather, that plan proposes a suite of options for project developers, DPS Staff and the Commission to propose cost allocation approaches, with the fourth and final default option being socialization of such costs. The Commission's power to decide PPR cost allocation questions does not arise organically from its rate-setting powers under the Public Service Law, but has been delegated to the Commission by FERC based on its approval of the NYISO Order No. 1000 Compliance Plan. This means that the Commission must follow the six principles for allocating PPR transmission costs that FERC established in Order No. 1000, beginning with the mandate that "beneficiaries pay" and non-beneficiaries must not be forced to pay the costs of projects for which they do not receive a commensurate benefit.[11]

FERC's conditional, or final for that matter, approval of the NYISO Order No. 1000 compliance plan does not endorse or compel the socialization concept that NY Transco proposes. It only establishes that the Commission shall decide what investments qualify as PPR projects and what cost allocation method (consistent with the stated Order No. 1000 principles) should apply to any given project. NY Transco's suggestions to the contrary are incorrect both in general and as applied to the extraordinary circumstances associated with IPEC in this docket.

B. Consideration of Public Policy Requirements in the NYISO Transmission Planning Process In Addition to Reliability and Economic Factors Does Not Support Alternative Cost Allocation Methods for Reliability Projects.

In contrast to Case 12-T-0502, this docket very specifically concerns transmission and supply (generation or demand response) resources that are required to address reliability needs that may be occasioned by the early closure of the IPEC units. The Staff Straw Proposal quite correctly focuses upon such supplemental reliability needs, and NY Transco offered the TOTS

[10] *See* Compliance Order, P 320-323.

[11] Order No. 1000 P 585-586.

projects as a system reliability solution. NY Transco's suggestion that the "applicability of a reliability cost allocation method is neither appropriate nor necessary" (because it wants a PPR branding for the TOTS projects in order to achieve cost socialization)[12] precisely illustrates the competing-track pitfall the Commission must avoid, and which the Staff Straw Proposal successfully manages by focusing on the character of the problem solved rather than the label a project developer would like to attach.

It may well be that the Commission will select the TOTS projects as part of the solution to the early closure of IPEC, a circumstance that is not addressed in the CRPP because the unit's owner (Entergy) continues to pursue a license extension from the NRC and has given no indication that it plans to retire the unit. This unusual situation does not in any way affect the basic underlying fact that the Commission, in this docket, is assessing the resources needed to preserve system reliability. The costs of transmission projects selected for that purpose must necessarily be treated as reliability projects and allocated accordingly, just as the Staff Straw Proposal recommends.

C. The Pendency of the Parallel AC Transmission Expansion Proceeding Should Have No Bearing on the Cost Allocation for Selected Projects in This Docket.

NY Transco notes that TOTS projects proposed in this docket are also listed in the NY Transco Statement of Intent in Case 12-T-0502, and asserts that it should be afforded the flexibility to suggest a portfolio specific cost allocation for all of the transmission projects that NY Transco may be contemplating. NY Transco Comments at pp. 3-4. In this regard, the NY Transco accepts only that the "NYISO OATT recognizes a role for this Commission in helping to develop cost allocation methodologies to be applied to selected public policy projects…" NY Transco Comments at pp. 3-4. This curiously understated assessment of the Commission's responsibilities in this area needs correction. Under the NYISO compliance plan, project

[12] NY Transco Comments at p.3.

developers may propose cost allocation methods, but the Commission actually will decide which method to apply based upon the stated principles in FERC Order No. 1000.

The flexibility that NY Transco requests undermines the clarity and transparency objectives that are important to actually securing resources that may be needed to replace IPEC. It also encourages forum shopping that pits the Commission's PPR designation against NYISO's established transmission planning processes. The Staff Straw Proposal avoids creating that dynamic by basing cost allocation on the character of the solution, and Nucor strongly encourages the Commission to follow that approach.

D. NY Transco's Reference to Other Putative Benefits of the TOTS Projects Have No Particular Applicability in This Case

Most meaningful upgrades to New York's highly interconnected AC network will have some effect on power flows and system capabilities. This means that upgrades performed primarily for reliability purposes may have economic effects (positive or negative), and primarily economic upgrades may affect reliability performance. This is a reason why transmission cost allocation is challenging. It is also the reason why the NYISO undertakes a rigorous reliability needs assessment on a regular basis and similarly assesses potential economic investments to mitigate system congestion through its Congestion Assessment and Resource Integration Study, or "CARIS" process. New York's market-based power markets are dependent upon those stakeholder driven processes to sort through the need for, and the appropriate cost allocation method to be applied to, reliability and economic investments. In this case, NY Transco suggests that those established processes should be disregarded and that its socialized cost allocation proposal should be adopted in deference to other putative benefits of the TOTS projects apart from the core purpose for which they have been designed (i.e., congestion relief). *See* NY Transco Comments at pp. 11-13.

It clearly is not sufficient to perform cost allocation based upon hypothetical or presumed benefits that are not actually expected. This could never lead to a sustainable finding that cost allocation is commensurate with expected benefits. In the case of the three TOTS projects offered in this case, this requires a more detailed examination.

- **Economic Benefits - 100% of the economic benefits associated with the TOTS projects are destined for Downstate loads.** The IPEC RCP does not discuss the electric bill and rate impacts associated with its proposed state-wide allocation of estimated TOTS costs, and the record is not any clearer in Case 12-T-0502. In Case 12-T-0502, NY Transco claims that the projects listed there will provide state-wide energy production cost savings based on the results of the NYISO April 2012 STARS Phase II Report.[13] In data request responses concerning its Statement of Intent filing, the NY Transco estimates average residential rate increases throughout New York of $0.22 p/month due to the TOTS projects, but this is misleading. That general assessment assumes annual state-wide production cost savings of $175 million.[14] **None of those production cost savings are expected to occur Upstate.** The STARS report estimates that production costs are expected to increase, not decrease, in all zones west of the Central East Interface.[15] NYSEG, for its part, concedes that production costs for the Upstate areas it serves could increase.[16] Thus, Upstate New York consumers would see higher rates to pay for the NY Transco projects in order to affect an increase in their energy costs. A rate mechanism that, by design, produces higher costs and adverse economics obviously is contrary to the prime objective of improving Upstate New York's energy cost competitiveness.

- **Environmental Benefits.** NY Transco asserts that generation-related emissions may decrease state-wide as a result of some TOTS projects if higher-emitting In-City resources can be displaced by generation from cleaner Upstate sources (including incremental emissions associated with transmission losses), but the NY Transco projects will lead to increased air pollutant emissions in Upstate regions.[17]

- **Rebuilding Aging Infrastructure.** New York's transmission owners have an on-going obligation to replace aging and obsolete equipment, and activities such as replacing and re-conductoring lines are a basic component of transmission capital budgets discussed in rate cases as well as the NYISO's CRPP process. There is no specifically identified need for the three TOTS projects based on aging or obsolete equipment.

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[13] *See* response to Nucor data request 1.21 (Attachment B to Nucor's comments filed March 28, 2013).

[14] *See* response to Nucor data request 1.4 (Attachment A, p. 3 to Nucor's comments filed March 28, 2013).

[15] *See* response to Nucor data request 1.2 and page 615 of the STARS Phase II Report.

[16] *See* response to Nucor data request 1.21 (Attachment B to Nucor's comments filed March 28, 2013).

[17] *See* response to Nucor data request 1.5 (Attachment C to Nucor's comments filed March 28, 2013).

- **Enhanced System Reliability and Resiliency.** The TOTS projects are intended to relieve on-going congestion and are not offered to enhance reliability performance beyond what is measured and addressed in the NYISO planning process.

- **Entry and Exit of Generation.** The TOTS projects are not linked in any way to the construction of specified new conventional or renewable energy resources.

- **Economic Development, Job Growth and Increased State Tax Revenues.** As noted in its March 28, 2013 comments, Nucor strongly supports infrastructure improvements in New York, but the fact is that the economic development benefits of the TOTS projects will be confined to the towns and counties where those projects are located unless the project developers utilize New York vendors for materials and services.

In sum, the three TOTS projects proposed in this case offer defined benefits to the NYC metropolitan area, but only higher costs and increased emissions in the Upstate areas that are west of the Central East Interface. The claimed economic development and other benefits similarly will not reach the Upstate zones. There is, therefore, no factual justification for applying a state-wide socialized approach to cost allocation, as the Staff Straw Proposal correctly recognized.

E. The "Adjusted" Load Ratio Share Method NY Transco Proposes to Apply to the TOTS Projects Does Not Cure the Fundamental Failings of that Proposal

The NY Transco comments place exceptional reliance on the adjustments that it proposes to a straight application of a load-ratio methodology for recovering the estimated costs of the TOTS projects. NY Transco Comments at pp. 8-10. While the adjustments claim to shift more project costs to Downstate transmission owners, no substantiation is offered for what amounts to a negotiated arrangement among the NY Transco putative owners with no other stakeholder input. There is no attempt to establish that the adjusted proposed ratios are commensurate in any way with expected benefits (*see* discussion above).

III. CONCLUSION

Nucor urges the Commission to adopt the comments described above, as well as the recommendations and comments contained in Nucor's initial comments filed on July 22, 2013, and its prior comments filed on March 28, 2013, in its final rulings concerning resource replacements to the IPEC nuclear units in the event that those units do not receive license extensions from the NRC.

Respectfully submitted,

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