

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 27, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

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

ORDER DENYING REQUEST FOR REHEARING AND
MOTION FOR CLARIFICATION

(Issued and Effective April 1, 2014)

BY THE COMMISSION:

INTRODUCTION

On November 4, 2013, the Commission accepted a Reliability Contingency Plan covering the Indian Point Energy Center (IPEC Contingency Plan). The IPEC Contingency Plan consisted of: 1) three transmission projects (referred to as Transmission Owner Transmission Solutions (TOTS)); and, 2) approximately 125 MW of Energy Efficiency/Demand Reduction/Combined Heat and Power (EE/DR/CHP) resources (EE/DR/CHP Program).¹ The November 2013 Order also addressed the Commission's preferred mechanisms for recovering the costs of the TOTS and the EE/DR/CHP Program. Specifically, the

¹ Case 12-E-0503, Generation Retirement Contingency Plans, Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing (issued November 4, 2013) (November 2013 Order).

Commission supported the New York Transmission Owners' (NYTOs) proposal to allocate costs according to a formula developed by the NYTOs, referred to as the NY Transco cost allocation, and to seek cost recovery for the TOTS from the Federal Energy Regulatory Commission (FERC).² The Commission approved the recovery of the EE/DR/CHP Program costs through Con Edison's State tariffs.

In response to the November 2013 Order, the Retail Energy Supply Association (RESA) filed a petition for rehearing on November 29, 2013.³ In addition, the Long Island Power Authority (LIPA) filed a motion for clarification on December 4, 2013.

The Commission sought comments on the RESA and LIPA filings in a notice published in the State Register on December 24, 2013. The NYTOs filed a response to RESA's petition for rehearing on the February 7, 2014 comment deadline. As discussed below, we deny the petition for rehearing filed by RESA. We also deny LIPA's motion for clarification.

PETITION FOR REHEARING

RESA Petition

RESA argues that the NYTOs' proposed cost recovery approach is inconsistent with the Commission's Renewable Portfolio Standard (RPS) and Energy Efficiency Portfolio Standard (EEPS). RESA contends these initiatives and the TOTS

² The NYTOs include Central Hudson Gas and Electric Corp. (CHG&E), Consolidated Edison Company of New York, Inc. (Con Edison)/ Orange & Rockland Utilities, Inc. (O&R), the Long Island Power Authority (LIPA), Niagara Mohawk Power Corporation d.b.a. National Grid, New York State Electric & Gas Corp. (NYSEG)/Rochester Gas and Electric Corp. (RG&E), and the New York Power Authority (NYPA).

³ RESA's petition for rehearing identifies 21 corporate members.

were pursued for public policy purposes, and that the Commission should therefore recover the costs associated with the TOTS through utility retail delivery rates applied to all delivery customers, similar to RPS and EEPS.

RESA also asserts that the Commission lacked a rational basis to adopt the NYTOs' cost recovery proposal. According to RESA, the NYTOs' approach has not been adequately justified or demonstrated to be preferable to the Department of Public Service Staff's (DPS Staff) proposal for recovery under State utility tariffs. RESA suggests that the Commission erred in finding that cost recovery through FERC-approved tariffs would be more efficient, and offer greater certainty and transparency than DPS Staff's proposal.

RESA maintains that the NYTOs' approach may discriminate against Energy Service Companies (ESCOs) if the TOTS costs are not included in the utility's commodity charge, while ESCOs would be compelled to include the TOTS-related charges in their commodity charges. RESA asks that the Commission reconsider its cost recovery approach and accept DPS Staff's proposal.

NYTO Reply Comments

The NYTOs oppose RESA's petition for rehearing on the basis that it fails to demonstrate how cost recovery through FERC-approved tariffs would unduly discriminate, or even discriminate, against ESCOs. The NYTOs contend that the allocation of costs under the NY Transco approach ensures that all Load-Serving Entities (LSEs) will pay for the transmission projects in a manner that is roughly commensurate with the benefits of the projects. The NYTOs note that all LSEs within each transmission district, including ESCOs and NYTOs, would pay the same charge.

The NYTOs further point to evidence in the record justifying the NY Transco cost allocation method. This evidence, according to the NYTOs, supports the Commission's adoption of the NY Transco approach. Finally, the NYTOs point to prior Commission statements recognizing the broad benefits of transmission facilities, and assert that the November 2013 Order was consistent with these statements.⁴

MOTION FOR CLARIFICATION

LIPA seeks clarification that there are four prerequisites to its acceptance of a proposed 16.7% cost allocation under NY Transco (*i.e.*, 1) passage of a law enabling LIPA to join NY Transco; 2) the LIPA Board's authorization to participate in NY Transco; 3) the inclusion of LIPA's Long Island projects in the initial project list pursued by NY Transco; and, 4) FERC's acceptance of the NY Transco cost allocation methodology). LIPA suggests that the Commission's November 2013 Order did not recognize these conditions and simply noted LIPA's agreement with the NY Transco approach and its willingness to accept the proposed cost allocation.

DISCUSSION

RESA Petition for Rehearing

Pursuant to the Commission's regulations, rehearing may only be sought "on the grounds that the [C]ommission committed an error of law or fact or [on the grounds] that new

⁴ The NYTOs cite to the Commission's recognition that a State-wide cost allocation approach may be reasonable for certain transmission projects. See, Case 12-T-0502, Proceeding on Motion to Examine Alternating Current Transmission Upgrades, Order instituting Proceeding (issued November 30, 2012), at p. 2; see also, FERC Docket No. ER13-102, NYPSC Answer to Protests of NYISO Compliance Filing with Order No. 1000 (filed December 11, 2012), at pp. 12-13.

circumstances warrant a different determination.”⁵ RESA does not claim any errors of fact or new circumstances that may warrant a different outcome. Instead, RESA relies on its claims that the November 2013 Order lacked a rational basis, improperly departed from Commission precedent, and is discriminatory. As discussed herein, we do not find that any of these claims constitute an error of law.

We find that a sufficient basis exists to treat cost recovery for the TOTS differently from the Commission’s RPS and EEPS initiatives. As we noted in the November 2013 Order, the NYTOs, in conjunction with their negotiations to form the NY Transco, have identified 18 potential transmission projects throughout the State, including the TOTS. These projects have been proposed to improve the State’s transmission system. Our analysis found that the TOTS provide net benefits both with and without IPEC in service. Moreover, we found that “the benefits from resource adequacy solutions for the replacement of the IPEC, such as the TOTS, do not accrue solely to downstate consumers. Rather, we agree[d] with the NYTOs that these solutions should also provide some reliability benefits statewide.”⁶ Based on these circumstances and the other factors noted in the November 2013 Order, we continue to support the use of the NYTOs’ proposed cost allocation and recovery mechanism for the TOTS.

We agree with the NYTOs that RESA has failed to articulate how the NYTOs’ cost recovery approach would discriminate against ESCOs. We are satisfied with the NYTO’s explanation that all LSEs within each transmission district, including ESCOs, would pay the same charge. Notwithstanding our

⁵ 16 NYCRR §3.7(b).

⁶ November 2013 Order, p. 32.

opinion in this proceeding, RESA's arguments are best addressed before FERC at the time the NYTOs' cost allocation and recovery proposal is filed.

LIPA Motion for Clarification

We also reject LIPA's suggestion that the Commission failed to recognize that prerequisites exist under the NYTOs' approach in order for the NYTOs to allocate and recover the TOTS costs. Although the Commission did not speak to the particular circumstances facing each of the NYTOs, the Commission explicitly acknowledged that the NYTOs' proposal was subject to FERC's approval of tariffs providing for cost recovery.⁷ We also recognized implicitly that the NYTOs needed to undertake various efforts in preparation of a filing with FERC, and accordingly directed Con Edison, in consultation with NYPA, to provide periodic reports on the progress of such filing.⁸ We expect these reports to contain relevant updates concerning any needed statutory changes or NYTO Board approvals. While the Commission recognizes that some of these matters may affect LIPA's participation in NY Transco, we decline to opine as to which prerequisites are controlling for individual NYTOs.

CONCLUSION

After considering the arguments raised by RESA, we find that RESA has not presented a sufficient basis warranting a determination different from the outcome the Commission reached in its November 2013 Order. Accordingly, we find that the petition for rehearing filed by RESA should be denied.

We also find that LIPA's motion for clarification should be denied. The Commission is fully cognizant that

⁷ November 2013 Order, p. 17.

⁸ November 2013 Order, p. 18.

certain prerequisites exist for LIPA's participation in NY Transco. We expect Con Edison to provide periodic reports on any outstanding conditions that may affect LIPA's, as well as any of the other NYTO's, participation in NY Transco.

The Commission orders:

1. The petition for rehearing filed by the Retail Energy Supply Association is denied, as discussed in the body of this Order.
2. The motion for clarification filed by the Long Island Power Authority is denied, as discussed in the body of this Order.
3. This proceeding is continued.

By the Commission,

KATHLEEN H. BURGESS
Secretary