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November 9, 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. ER16-2719-000 - NextEra Energy Transmission New York, Inc.

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Protest 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

David G. Drexler
Managing Attorney

Attachment
cc: Service List

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NextEra Energy Transmission New York, Inc.	))	Docket No. ER16-2719-000

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

INTRODUCTION

On September 30, 2016, NextEra Energy Transmission New York, Inc. (NEET) sought approval to establish a formula rate template and implementation protocols for recovering the costs of NEET's investment in transmission facilities located in the New York Independent System Operator, Inc. (NYISO) region, along with certain incentive rate treatments. On November 4, 2016, NEET filed amendments to the responsibilities of the NYISO and NEET under the protocols (collectively, "the Filings").

According to the Filings, NEET was formed to develop, construct, finance, own, operate, and maintain high-voltage electric transmission facilities in the NYISO region as a portfolio, and plans to become a transmission-owning member of NYISO. As part of the Filings, NEET seeks incentive ratemaking treatment, including a hypothetical capital structure with a 60% equity and 40% debt ratio, as well as a 10.50% base return on equity (ROE), plus 50 basis point adder for NYISO participation.

As discussed below, the New York State Public Service Commission (NYPSC) is concerned that NEET's requested incentive ratemaking treatment and total of 11% ROE is unjust and unreasonable. The Filings raise various issues of fact that warrant further examination. In particular, NEET's proxy group does not meet the Commission's selection criteria, or reflect an appropriate zone of reasonableness for setting an ROE. Moreover, the relief requested is excessive and unreasonable because a capital structure based on a 47.0% equity ratio and 8.0%-9.3% ROE would be sufficient to attract capital investments. The NYPSC therefore respectfully requests that the Commission conduct a hearing to evaluate the reasonableness of NEET's proposed rate treatment, and recognize that the ROE adder for NYISO participation is unwarranted and not justified under the circumstances.

NOTICE OF INTERVENTION

The NYPSC submits its Notice of Intervention and Protest pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 C.F.R. §§385.211 and 385.214(a)(2)), and the

Commission's Combined Notice of Filings #1, issued on November 7, 2016.[1]

Copies of all correspondence and pleadings should be addressed to:

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DISCUSSION

The Commission Should Conduct a Hearing to Ensure NEET's Requested Incentive Ratemaking Treatment and Total Return on Equity is Just and Reasonable

The NYPSC maintains that NEET's Filings, which request the use of a hypothetical capital structure incentive with a 60% equity and 40% debt ratio, combined with its request for a 10.50% base ROE, plus 50 basis point adder for NYISO membership, would result in unjust and unreasonable rates. As a result, adoption of NEET's request would unreasonably burden New York transmission ratepayers. The relief requested is clearly excessive and unreasonable given that: 1) an ROE of 8.0% - 9.3%

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[1] The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State, and is therefore a State Commission as defined in section 3(15) of the Federal Power Act (FPA)(16 U.S.C. §796(15)).

and a capital structure based on a 47.0% equity ratio are more than sufficient to attract capital investments; 2) the requested application for a pre-commercial regulatory asset incentive reduces development risks; 3) the ultimate parent of NEET, NextEra Energy, Inc. (NextEra), has extensive experience in transmission development; and, 4) current low interest rates support the likelihood of favorable financing terms.

An evidentiary hearing is needed to allow interested parties an opportunity to cross-examine NEET's witnesses on their factual claims with respect to the requested incentives and ROE. For example, NEET's witness with respect to cost of equity (Mr. Adrien M. McKenzie) should be examined to ensure all of the companies included in his proxy group meet the Commission's selection criteria. For instance, Mr. Mckenzie's inclusion of Avangrid does not appear to meet the Commission's proxy group selection criteria. The Commission affirmed the use of Value Line electric utility industry as the appropriate source for developing a proxy group in its Opinion number 531, issued on June 19, 2014. The inclusion of Avangrid appears to be inappropriate since it upwardly biases NEET's Discounted Cash Flow (DCF) results. Alternatively, in the event Avangrid should be included in the proxy group, the Commission should recognize that it may not be necessary to include any ROE incentive adder to an already enhanced base ROE.

The Commission should also afford interested parties an opportunity to cross-examine NEET's cost of equity witness regarding his proposed IBES-based zone of reasonableness of 7.01% to 11.97%, and Value Line-based zone of reasonableness of 6.66% to 12.81%. The NYPSC's initial analysis, subject to update, raises important questions of fact and suggests a lower range of approximately 5.44% to 10.58%, with a midpoint of 8.0% ((i.e., 5.44% + 10.58%) ÷ 2). Given the current low interest rate environment and the relatively lower business risk associated with a typical transmission-only entity, as compared with the proxy group companies, the 8.0% ROE is reasonable. However, if the Commission decides otherwise, then a 9.30% ROE, a point estimate that is halfway between the 8.0% midpoint of the zone of reasonableness and the 10.58% top of the zone, is reasonable and supported by the Commission's DCF methodology.[2] This zone of reasonableness, as detailed on page 1 of Appendix

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[2] Appendix A, p.1.

A, was determined using a proxy group of 26 companies that met Commission-established criteria.[3]

1. **NEET's Proposed Hypothetical Capital Structure Is Excessive and Unnecessary**

The Filings request a hypothetical capital structure consisting of 60% equity and 40% debt until NEET's first asset is placed into service. NEET claims that this equity ratio is necessary to assure access to capital and to help level the playing field with incumbents in competing for projects. According to NEET, it will operate as a stand-alone company with no previous operating history, weak initial cash flow, and high capital expenditures incurred for complex projects.

The NYPSC's analysis demonstrates that NEET's proposed hypothetical capital structure, with a 60% equity/40% debt ratio, is excessive and that a common equity ratio of no more than 47.0% is reasonable and would allow NEET to attract sufficient capital.

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[3] Each company in the proxy group met the following Commission criteria: (1) the company must be a domestic publicly-traded electric utility followed by the Value Line Investment Survey (Value Line); (2) the company must have Moody's and S&P investment grade bond ratings and within a comparable risk band which is one notch below and above the target entity's credit rating(NextEra Energy's(Parent), credit rating of "Baa1/A-"used as a proxy); (3) the company must have IBES-determined growth rate estimates (obtainable from Yahoo.Finance.com); (4) the company must not be known to be a recent party to significant merger and acquisition activity; and,(5) for the past six months, the company must have consistently paid dividends without any cuts to their dividends.

Based on the NYPSC's review of the same proxy group of 26 transmission and distribution companies used to determine a range of reasonableness from 5.44% to 10.58%, which is presented on page 1 of Appendix A, the average common equity ratio of the proxy group as of second quarter of 2016 was 47.0%, rounded down from 47.17%.[4] This common equity ratio was adequate to support a Moody's average bond rating of "Baa1" and an S&P rating of "BBB+." These ratings allowed the proxy group companies to access capital at costs and terms that were reasonable.

NEET's ultimate parent company, NextEra, currently has an average Moody's bond rating of "Baa1" and an average S&P rating of "A-". These ratings are supported by a common equity ratio of just under 43.0%, based on June 30, 2016 of financial data. Given this data, as shown on page 2 of Appendix A, the NYPSC recommends a common equity ratio of no higher than 47.0%, based on the NYPSC proxy group's average common equity ratio of 47.0%. Given that the ultimate parent's own common equity ratio is nearly 43.0%,[5] the NYPSC's recommended 47.0% common equity ratio is conservative and reasonable.

2. **<u>NEET's Proposed Regulatory Asset Incentive Ratemaking Treatment Will Reduce NEET's Risks</u>**

NEET seeks authorization to recover all pre-commercial costs not capitalized, and to establish a regulatory asset that

[4] Appendix A, p. 2.

[5] Appendix A, p. 2.

will include all such expenses, including those incurred prior to the Filings and before costs first flow through to customers, including authorization to accrue carrying charges at NEET's weighted cost of capital and to amortize the regulatory asset over five years beginning in the first year when the projects become operational and costs, as approved by the Commission, are charged to customers under the formula rate plan. While the NYPSC supports the principle behind the requested ratemaking treatment as a means for reducing the risks of NEET and to avoid the need for additional ROE incentive adders, the NYPSC does not support the use of a carrying charge on the pre-commercial regulatory asset at NEET's weighted cost of capital prior to the time when rates begin to be charged to customers. Such approach is inconsistent with the Commission's precedent.[6] Instead, the NYPSC supports an authorization that will allow NEET to accrue carrying charges at a rate equal to its allowance for funds used during construction (AFUDC) on the unamortized balance of the regulatory asset for the pre-commercial and formation costs beginning on the date the Commission authorizes the creation of the regulatory asset accounting treatment and continuing until

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[6] See, e.g., Docket No. ER15-1682-000 TransCanyon DCR LLC, 152 FERC ¶ 61,017 at P32 (issued July 6, 2015); Docket Nos. ER15-2239-000 & ER15-2239-001, NEETWest, 154 FERC ¶ 61,009 at P33 (issued January 8, 2016); and, Docket Nos. ER16-453-000 & ER16-453-001; 155 FERC ¶ 61,097 at P43 (issued April 26, 2016).

the pre-commercial regulatory asset begins to be recovered in rate base, at which point NEET should be allowed to use its weighted cost of capital. This ratemaking treatment would also obviate the need for an assumed equity ratio greater than 47.0%. It should also be recognized that the establishment of a formula rate that will be updated annually will eliminate the risk of sustained under-earnings that NEET will otherwise experience.

3. The ISO Participation Adder Is Not Justified Under The Circumstances

NEET requests an additional 50 basis points as a reward for becoming a member of the NYISO and turning over operational control of its transmission facilities to the NYISO. NEET believes that this incentive is consistent with the Commission's policy to incentivize utilities to place their transmission facilities under the control of an ISO.

While the NYPSC is supportive of ROE incentive adders that are truly reflective of risks or present innovative technologies that benefit consumers, the NYPSC recommends that the 50 basis points adder for NYISO membership should not be applied where NEET is selected to construct transmission facilities as a result of the NYISO planning process and receives rate-based treatment. Under such circumstances, NEET will be required to turn over operation control of its transmission facilities to the NYISO. Therefore, the NYISO participation adder is unwarranted and lacks a rational basis.

CONCLUSION

NEET's Filings raise various factual issues requiring further examination. The Commission should therefore direct a hearing to ensure NEET's proposed rate treatment is just and reasonable.

Respectfully submitted,

Paul Agresta

Paul Agresta
General Counsel
Public Service Commission
of the State of New York

By: David G. Drexler
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Dated: November 9, 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
November 9, 2016

David G. Drexler

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PSC STAFF DCF ANALYSIS USING FERC COST OF EQUITY MODEL

	Company	Moody's Rating	S&P Rating	Dividend Yield	I/B/E/S Growth Rate	GDP Growth Rate	Composite Growth Rate	Adj. Div. Factor	Adj. Div. Yield	DCF Results with low-end Outliers	DCF Results without low-end Outliers
1	ALLETE, Inc.	A3	BBB+	3.45%	5.00%	4.35%	4.78%	1.024	3.53%	8.31%	8.31%
2	Alliant Energy Corp.	Baa1	A-	3.08%	6.60%	4.35%	5.85%	1.029	3.17%	9.02%	9.02%
3	Ameren Corp.	Baa1	BBB+	3.43%	5.60%	4.35%	5.18%	1.026	3.52%	8.70%	8.70%
4	American Electric Power Co. Inc.	Baa1	BBB+	3.44%	1.89%	4.35%	2.71%	1.014	3.48%	6.19%	6.19%
5	Avista Corp.	Baa1	BBB	3.27%	5.00%	4.35%	4.78%	1.024	3.35%	8.13%	8.13%
6	CenterPoint Energy Inc.	Baa1	A-	4.47%	5.11%	4.35%	4.86%	1.024	4.58%	9.44%	9.44%
7	CMS Energy Corp.	Baa2	BBB+	2.89%	7.27%	4.35%	6.30%	1.031	2.98%	9.28%	9.28%
8	Consolidated Edison Inc.	A3	A-	3.51%	2.14%	4.35%	2.88%	1.014	3.56%	6.44%	6.44%
9	Dominion Resources, Inc.	Baa2	BBB+	3.76%	5.83%	4.35%	5.34%	1.027	3.86%	9.19%	9.19%
10	DTE Energy Co.	Baa1	BBB+	3.18%	5.63%	4.35%	5.20%	1.026	3.26%	8.47%	8.47%
11	Edison International	A3	BBB+	2.66%	1.93%	4.35%	2.74%	1.014	2.70%	5.44%	5.44%
12	El Paso Electric Co.	Baa1	BBB	2.68%	7.00%	4.35%	6.12%	1.031	2.77%	8.88%	8.88%
13	Eversource Energy	Baa1	A	3.17%	5.82%	4.35%	5.33%	1.027	3.25%	8.58%	8.58%
14	Great Plains Energy Inc.	Baa2	BBB+	3.68%	8.00%	4.35%	6.78%	1.034	3.80%	10.58%	10.58%
15	IDACORP Inc.	Baa1	BBB	2.69%	4.10%	4.35%	4.18%	1.021	2.75%	6.93%	6.93%
16	Northwestern Corporation	A3	BBB	3.40%	4.50%	4.35%	4.45%	1.022	3.47%	7.92%	7.92%
17	OGE Energy Corp.	A3	A-	3.72%	4.00%	4.35%	4.12%	1.021	3.80%	7.91%	7.91%
18	Otter Tail Corp.	Baa2	BBB	3.76%	6.00%	4.35%	5.45%	1.027	3.87%	9.32%	9.32%
19	PG&E Corp.	Baa1	BBB+	3.12%	5.58%	4.35%	5.17%	1.026	3.21%	8.38%	8.38%
20	Pinnacle West Capital Corp.	A3	A-	3.35%	4.45%	4.35%	4.42%	1.022	3.43%	7.84%	7.84%
21	Portland General Electric Co.	A3	BBB	2.96%	6.20%	4.35%	5.58%	1.028	3.04%	8.62%	8.62%
22	PPL Corp.	Baa2	A-	4.19%	2.40%	4.35%	3.05%	1.015	4.26%	7.31%	7.31%
23	Public Service Enterprise Group Inc.	Baa2	BBB+	3.73%	1.82%	4.35%	2.66%	1.013	3.78%	6.44%	6.44%
24	Sempra Energy	Baa1	BBB+	2.80%	6.50%	4.35%	5.78%	1.029	2.88%	8.67%	8.67%
25	WEC Energy Group	A3	A-	3.23%	6.77%	4.35%	5.96%	1.030	3.33%	9.29%	9.29%
26	Xcel Energy Inc.	A3	A-	3.23%	5.72%	4.35%	5.26%	1.026	3.31%	8.57%	8.57%

	DCF Results with low-end Outliers	DCF Results without low-end Outliers
Min	**5.44%**	**5.44%**
Max	**10.58%**	**10.58%**
Average	**8.23%**	**8.23%**
Median	**8.52%**	**8.52%**
Midpoint of Zone of Reasonableness of 5.44% to 10.58%	**8.01%**	**8.01%**
FERC's 75th Percentile of Zone of Reasonableness	**9.30%**	**9.30%**
Low-end Outlier Threshold	**5.34%**	**5.34%**

PSC Staff Proxy Group: Common Equity Ratio and Credit Rating as of Second Quarter of 2016

	Company	Long-term Debt (LTD, $M)	Current portion of LTD ($M)	Total Long-term Debt($M)	Pref. Stock ($M)	Minority Interest ($M)	Customer Deposits ($M)	Common Equity($M)	Total Capital	Common Equity Ratio	Moody's Rating	S&P Rating
1	ALLETE, Inc.	$1,499	$65	$1,563	$0	$0	$0	$1,852	$3,416	54.23%	A3	BBB+
2	Alliant Energy Corp.	$3,588	$314	$3,902	$0	$200	$0	$3,790	$7,893	48.02%	Baa1	A-
3	Ameren Corp.	$6,605	$431	$7,036	$0	$142	$0	$6,922	$14,100	49.09%	Baa1	BBB+
4	American Electric Power Co. Inc.	$17,537	$2,006	$19,544	$0	$19	$335	$18,386	$38,284	48.03%	Baa1	BBB+
5	Avista Corp.	$1,522	$126	$1,648	$0	$0	$0	$1,617	$3,265	49.53%	Baa1	BBB
6	CenterPoint Energy Inc.	$7,780	$763	$8,543	$0	$0	$0	$3,397	$11,940	28.45%	Baa1	A-
7	CMS Energy Corp.	$8,486	$897	$9,383	$0	$37	$0	$4,156	$13,576	30.61%	Baa2	BBB+
8	Consolidated Edison Inc.	$13,747	$746	$14,493	$0	$8	$0	$13,950	$28,451	49.03%	A3	A-
9	Dominion Resources, Inc.	$22,576	$1,526	$24,102	$0	$1,200	$0	$14,252	$39,554	36.03%	Baa2	BBB+
10	DTE Energy Co.	$8,551	$157	$8,708	$0	$21	$0	$8,778	$17,507	50.14%	Baa1	BBB+
11	Edison International	$10,845	$696	$11,541	$0	$2,191	$0	$11,557	$25,289	45.70%	A3	BBB+
12	El Paso Electric Co.	$1,278	$0	$1,278	$0	$0	$0	$1,011	$2,289	44.16%	Baa1	BBB
13	Eversource Energy	$9,436	$179	$9,615	$0	$156	$14	$10,509	$20,294	51.79%	Baa1	A
14	Great Plains Energy Inc.	$3,495	$328	$3,823	$39	$0	$0	$3,646	$7,509	48.56%	Baa2	BBB+
15	IDACORP Inc.	$1,745	$1	$1,746	$0	$4	$0	$2,090	$3,840	54.42%	Baa1	BBB
16	Northwestern Corporation	$1,774	$0	$1,774	$0	$0	$0	$1,628	$3,401	47.85%	A3	BBB
17	OGE Energy Corp.	$2,630	$0	$2,630	$0	$0	$0	$3,322	$5,952	55.81%	A3	A-
18	Otter Tail Corp.	$494	$52	$546	$0	$0	$0	$636	$1,182	53.80%	Baa2	BBB
19	PG&E Corp.	$16,525	$160	$16,685	$0	$252	$0	$16,746	$33,683	49.72%	Baa1	BBB+
20	Pinnacle West Capital Corp.	$3,898	$294	$4,191	$0	$134	$0	$4,585	$8,911	51.46%	A3	A-
21	Portland General Electric Co.	$2,324	$0	$2,324	$0	$0	$0	$2,303	$4,627	49.77%	A3	BBB
22	PPL Corp.	$19,079	$225	$19,304	$0	$0	$0	$10,325	$29,629	34.85%	Baa2	A-
23	Public Service Enterprise Group Inc.	$10,273	$663	$10,936	$0	$1	$0	$13,318	$24,255	54.91%	Baa2	BBB+
24	Sempra Energy	$13,178	$907	$14,085	$0	$782	$0	$11,781	$26,648	44.21%	Baa1	BBB+
25	WEC Energy Group	$8,902	$96	$8,998	$0	$30	$0	$8,834	$17,862	49.45%	A3	A-
26	Xcel Energy Inc.	$13,105	$710	$13,815	$0	$0	$1	$10,703	$24,519	43.65%	A3	A-
	Total	**$197,767**	**$10,632**	**$208,399**	**$39**	**$5,176**	**$349**	**$179,391**	**$393,355**			
	Average	$7,911	$425	$8,336	$2	$207	$14	$7,176	$15,734	47.19%	Baa1	BBB+
	Median	$7,780	$225	$8,543	$0	$8	$0	$4,585	$13,576	49.09%	Baa1	BBB+
	Total Capital= Common Equity+Total LTD+Customer Deposits+Pref Stock+Minority Interest											
	Source:											
1	NextEra Energy, Inc.	$27,001	$3,125	$30,126	$0	$708	$0.0	$23,174	$54,008	42.91%	Baa1	A-