

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on October 15, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Diane X. Burman  
James S. Alesi  
Tracey A. Edwards  
John B. Howard

CASE 20-E-0197 - Proceeding on Motion of the Commission to  
Implement Transmission Planning Pursuant to the  
Accelerated Renewable Energy Growth and  
Community Benefit Act.

ORDER ON PRIORITY TRANSMISSION PROJECTS

(Issued and Effective October 15, 2020)

BY THE COMMISSION:

INTRODUCTION

The Accelerated Renewable Energy Growth and Community Benefit Act (the Act),<sup>1</sup> signed into law by Governor Cuomo on April 3, 2020, requires the Commission to establish new transmission planning processes that will ensure the "timely and cost effective construction of new, expanded and upgraded distribution and transmission infrastructure."<sup>2</sup> The Act's central purpose is to achieve the clean energy and environmental targets established in the Climate Leadership and Community Protection Act (CLCPA).<sup>3</sup>

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<sup>1</sup> L. 2020, ch. 58, Part JJJ.

<sup>2</sup> Id., § 2(2)(b).

<sup>3</sup> L. 2019, ch. 106.

Among its provisions, the Act recognizes a category of bulk transmission projects that are needed on an "expeditious" basis to meet the CLCPA goals.<sup>4</sup> These are defined as "Priority Transmission Projects" (PTPs). The Act charges the Public Service Commission (Commission) with identifying PTPs, as distinct from other projects, and directs the New York Power Authority (NYPA) to undertake their development, subject to the concurrence of NYPA's Trustees.<sup>5</sup>

On July 2, 2020, Department of Public Service Staff (Staff) and NYPA filed a petition in which Staff proposed the adoption of criteria for identifying and designating a PTP, while NYPA proposed that a set of transmission investments in Northern New York (NNY) for designation as a PTP (the NNY Petition). In this Order, the Commission identifies the criteria it will apply to determine which bulk transmission investments should be undertaken by NYPA on the grounds that they are needed "expeditiously" to advance the State's goals. Additionally, given the need to act quickly to meet CLCPA goals, this Order also addresses NYPA's proposal to designate the NNY Project as a PTP.

#### THE PETITION

The NNY Petition consists of two parts. The first section, prepared by Staff, identifies a list of potential criteria that Staff suggests the Commission could use to identify a PTP under Section 7(5) of the Act. Staff's proposed criteria include:

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<sup>4</sup> Act, § 7.4

<sup>5</sup> Id. § 7.5

1. The transmission investment's potential for unbottling existing renewable generation for delivery to load centers in the State;
2. The transmission investment's potential for avoiding future congestion that could impede delivery of expected renewable energy to load centers in the State;
3. The transmission investment's potential for increasing the deliverability of existing and anticipated baseload renewable or low carbon generation in the State, thereby reducing the amount of new generation that must be constructed to meet demand and/or the CLCPA Targets;
4. Whether an early in-service date for the transmission investment would: (a) increase the likelihood that the State will meet the CLCPA Targets; and/or (b) enhance the value of recent, ongoing or anticipated distribution, local transmission, and/or bulk transmission investments, and/or help the State realize benefits from such investments;
5. The ability of the transmission investment to progress expeditiously based on such factors as the planning and design status of the transmission investment, and the transmission investment's eligibility for expedited review under [Public Service Law] Article VII and its implementing regulations;
6. The ability of NYPA (alone or with other participants) to expedite development, considering such factors as:
  - Availability of NYPA rights of way;
  - Availability of other rights of way and transmission assets;
  - Access to other property for siting of the transmission investment, including State-owned or controlled property;
  - NYPA's financial resources and access to capital; and
  - Other potential benefits flowing from NYPA's participation;
7. Whether designating the transmission investment as a Priority Project will advance other State policy goals, including those expressed in the Act and the CLCPA; and

8. Such other criteria deemed by the Commission to be in the public interest.<sup>6</sup>

In the second part of the petition, NYPA describes the project components that, taken together, it refers to as the NNY Project. Specifically, NYPA describes the NNY Project as encompassing:

- Phase 2 completion of NYPA's Smart Path Moses-Adirondack Rebuild as outlined in NYPA's Article VII application.<sup>7</sup>
  - The remaining portion of double circuit 230 kV lattice structures in Massena and the remaining connection to Adirondack Substation in Croghan (approximately 8 miles in total) will be retired and rebuilt with single circuit tubular steel poles at 345 kV, as contemplated under the project's Article VII certificate.
  - Rebuild and/or expansion of the existing Moses and Adirondack substations from 230 kV to 345 kV.
- Rebuild and upgrade of NG AP 1&2 (National Grid's Adirondack to Porter 230 kV transmission lines #1 & 2) to 345 kV.
  - For each circuit, the existing 230 kV horizontal wood H-frames spanning approximately 55 miles are proposed to be rebuilt with single circuit tubular steel poles in a delta configuration at 345 kV with a double bundle conductor and optical ground wire ("OPGW") functionality.
  - Rebuild and/or expansion of the existing Chases Lake, and Porter substations from 230 kV to 345 kV.
- Rebuild and upgrade of NYPA's Moses to Willis 230 kV transmission lines #1 & 2 to 345 kV.

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<sup>6</sup> NNY Petition at 5.

<sup>7</sup> Case 18-T-0207, Application of New York Power Authority for a Certificate of Environmental Compatibility and Public Need for the Rebuild of the Existing Moses-Adirondack 1&2 230 kV Transmission Lines Extending approximately 86 miles from the Robert Moses Switchyard in the Town of Massena, St. Lawrence County to the Adirondack Substation in the Town of Croghan, Lewis County, New York, April 5, 2018 Application, pp. 1-2.

- o For each circuit, the existing 230 kV horizontal wood H-frames spanning approximately 37 miles are proposed to be rebuilt with single circuit tubular steel poles in a delta configuration at 345 kV with a double bundle conductor and OPGW functionality.
- o Rebuild and/or expansion of the existing Moses and Willis substations from 230 kV to 345 kV.
  
- Rebuild and upgrade of NYPA's Willis to Patnode 230 kV circuit.
  - o The existing 230 kV horizontal wood H-frames spanning approximately 8.75 miles are proposed to be rebuilt at 230 kV utilizing tubular steel poles.
  
- Rebuild and upgrade of NYPA's Willis to Ryan 230 kV circuit.
  - o The existing 230 kV horizontal wood H-frames spanning approximately 6.5 miles are proposed to be rebuilt at 230 kV utilizing tubular steel poles.
  
- Additional Scope items and Substation Improvements.
  - o Additional affected substations and improvements to be identified during the project's facilities study. Anticipated ancillary upgrades include but are not limited to protection and control upgrades at interconnecting substations, terminal and equipment upgrades, and other affected system upgrades as anticipated with this type of transmission investment.<sup>8</sup>

While Part 2 of the NNY Petition includes a discussion of the estimated costs of the project and its overall benefits, the remainder of the petition presents NYPA's rationales for how the project meets Staff's proposed PTP criteria.

#### NOTICE OF PROPOSED RULEMAKING

In accordance with the State Administrative Procedure Act (SAPA) § 202(1), a Notice of Proposed Rulemaking was published in the State Register on July 15, 2020. The public comment period expired on September 14, 2020. Comments were

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<sup>8</sup> NNY Petition at 9-10.

received from Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Electric and Gas Corporation, Central Hudson Gas & Electric Corporation, and Niagara Mohawk Power Corporation (collectively, the Joint Utilities); Anbaric; the Natural Resources Defense Council and Alliance for Clean Energy New York (collectively, the Clean Energy Parties); the City of New York; Multiple Intervenors; Invenergy Renewables LLC (Invenergy); New York Transco LLC (Transco); the New York Independent System Operator, Inc. (NYISO); Niagara Mohawk Power Corporation d/b/a National Grid (National Grid); LS Power Grid New York, LLC (LS Power); and, the North Country Chamber of Commerce.

#### SUMMARY OF COMMENTS

##### Anbaric

Anbaric supports the Staff criteria. Anbaric stresses that a transmission investment's potential to unbottle existing renewable generation is "an extremely important factor."<sup>9</sup> The company also agrees that avoiding future congestion should be emphasized. Anbaric explains that new transmission will be essential to avoid curtailment of offshore wind resources, and that planning for this infrastructure will contribute to the goal of delivering offshore wind efficiently and at the least cost to ratepayers. Anbaric also points out that new transmission will help maximize the use of renewable generation assets and reduce the potential to overbuild these resources. The company agrees that earlier in-service dates for PTPs will increase the likelihood of meeting CLCPA targets and supports the acknowledgement of project feasibility as a criterion for

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<sup>9</sup> Anbaric Comments at 3.

designating a PTP. Finally, Anbaric states that the Legislature's authorization of NYPA to select independent transmission developers as partners provides a mechanism for leveraging NYPA's capacities to the benefit of electric ratepayers. The company explains that the Priority Project designation process is "ideally suited" to achieving the CLCPA's offshore wind mandate and asks the Commission to solicit potential Priority Projects designed to facilitate the delivery of offshore wind.

Clean Energy Parties

NRDC and the Alliance for Clean Energy New York (collectively, Clean Energy Parties) submitted comments supporting the Commission's efforts to identify and advance transmission projects that are needed in the near term. They generally comment that the faster the State progresses in building transmission, the more likely it is that New York will meet the CLCPA targets. They agree that the Staff-proposed criteria are appropriate for identifying a Priority Project and urge the Commission to find that the NNY Project qualifies as a PTP under those criteria. The Clean Energy Parties also recommend that NYPA find private sector partners for PTPs as a way to maximize their cost-effectiveness. Finally, the Clean Energy Parties also urge the Commission to take advantage of the NYISO Public Policy Transmission Planning Process and to move quickly to implement the Act's provisions relating to distribution and local transmission upgrades.

Invenergy

Invenergy supports both the Staff criteria and the designation of the NNY Project as a PTP. Specifically, the company states that it is developing over 500 MW in New York that would benefit from construction of the proposed project.

According to Invenergy, CLCPA goals require the installation of more renewable resources in the region of the State where the project would be sited. Invenergy adds that many Northern New York communities are supportive of renewable energy facilities. Finally, the company asserts that constructing the project will help promote efficient outcomes in NYSERDA's procurement process.

#### Joint Utilities

The Joint Utilities (JU), consisting of each of the investor-owned utilities in New York, propose additions to the Staff criteria and other guidance aimed at establishing a process for designating PTPs that it asserts would lead to cost effective investment. Several of the JU comments focus on the impacts a PTP may have on a utility's local transmission system. The JU identify information that it believes should be provided to assist the Commission in defining the need for a PTP and in evaluating a proposed solution, including cost estimates for the project. They further assert that NYPA should consult with the utilities and the NYISO concerning system impacts and that any PTP impacts to JU systems must be resolved before a proposed PTP can proceed. In particular, the JU state that the cost of local system upgrades must be included in the cost of the PTP and allocated in the same manner.

#### LS Power

LS Power suggests changes to the Staff proposed criteria and advises the Commission to use competition to procure transmission infrastructure at a reasonable cost to consumers. LS Power specifically addresses certain criteria and states that nearly every potential project could claim to increase the likelihood of the State meeting the CLCPA targets, and that the Legislature intended a more stringent standard in

the Act. LS Power suggests that the application for PTP designation must include an in-service date and demonstrate that the designation would support that in-service date given the need for timely action to comply with CLCPA targets. LS Power further states that the remainder of the criterion is over-broad and not directly related to the Act's requirements. Addressing a separate criterion, LS Power explains that access to rights-of-way and other real estate is not a factor related to the need to expedite the project and therefore is not appropriate to the analysis.

In the second part of its comments, LS Power urges the Commission to condition any approval of a PTP on NYPA's implementation of a competitive process open to potential co-participants, "with the objective to identify the project configuration ... that delivers the most efficient and cost-effective project for New York State."<sup>10</sup> In addition, LS Power states that, to achieve that goal, the Commission should not allow NYPA to use control of existing rights-of-way as a criterion in selecting any project co-participant.

#### Multiple Intervenors

Multiple Intervenors (MI) state that, because the costs of transmission infrastructure are borne by ratepayers over decades, transmission investments should be "deployed in a logical, reliable, and cost-effective manner."<sup>11</sup> MI points out that a PTP designation amounts to a choice to bypass the existing NYISO public policy planning process and its associated benefits to customers, including its competitive construct, a high level of transparency, cost caps, and an equitable cost allocation methodology. MI asserts that, in contrast, the PTP

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<sup>10</sup> LS Power Comments at 5.

<sup>11</sup> Comments of MI at 3.

designation process is not competitive, does not involve evaluation of alternative solutions, is not fully transparent, and does not include consumer protections. To remedy these asserted deficiencies, MI asks the Commission to adopt provisions similar to those provided by the NYISO process, including, at a minimum, (1) sufficient information to demonstrate that the project is financially viable and cost-effective, (2) a binding cost estimate and cost cap, as well as an explanation of the effect of exceeding the cap, and (3) a proposed cost allocation and recovery methodology.

MI also suggests that the Commission specifically examine whether following the NYISO process would prevent achievement of CLCPA goals before designating a PTP. MI states that Staff's first three criteria are too general and do not allow the Commission to determine what projects are needed expeditiously. In addition, MI states that a decision now on the NNY Project is not in the public interest because a PTP designation should not be made in advance of the power grid study called for in the Act. Further, MI argues that the Commission's criteria should not be applied until they are finalized, and that revisions to the project and the petition would be necessary if the Commission were to modify the criteria in this proceeding.

#### National Grid

National Grid agrees with NYPA that existing renewables in Northern New York are being curtailed and notes that renewable generation continues to be added to the region. The company states that its own studies are consistent with the NYISO studies cited by NYPA in the Petition in demonstrating the need for additional transmission to reduce the high level of curtailments. According to National Grid, the proposed NNY

Project would substantially promote achievement of CLCPA goals and satisfies Staff's criteria for identifying a PTP. In particular, National Grid notes that the project would unbottle a significant amount of existing resources, leading to the avoidance of approximately 7.5 terawatt-hours (TWh) of renewables curtailments annually, starting in 2025.<sup>12</sup> The company also says the project would accommodate the expected growth in renewable generation in this part of the State. The company concurs with NYPA that the use of existing rights-of-way is likely to accelerate development and thus advance progress toward CLCPA goals.

City of New York

The City of New York (City) supports the Staff criteria that address deliverability of renewable generation to load but asks the Commission specifically to consider a project's potential to deliver energy into the New York City area as another criterion for identifying a PTP. The City argues that this approach will accelerate progress toward CLCPA goals by reducing the City's reliance on fossil generation. At the same time, the City believes the Commission should not act on the NYPA petition until after the power grid study described in the Act is completed, in order to allow for an evaluation in the context of the state bulk transmission plan.

NYISO

In its comments, the NYISO indicates that achieving the State's renewable energy goals will require expanded transmission linking the northern region to downstate regions. The NYISO concurs with NYPA that transmission constraints are currently curtailing generation from existing wind resources in upstate New York, even as new wind and solar resources are being

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<sup>12</sup> Grid comments at 12.

developed. The NYISO maintains that the Commission can use the Act's process for designating priority transmission projects "in tandem" with the NYISO's public policy planning process to build the transmission infrastructure needed to meet the CLCPA. The NYISO states that its process has been used successfully to develop transmission in response public policy needs identified by the Commission; i.e., the Western New York and AC Transmission projects.<sup>13</sup> Further, the NYISO describes recent initiatives aimed at streamlining aspects of its process and asserts that the modified process can be completed in approximately 18 months.

The North Country Chamber of Commerce

The North Country Chamber of Commerce (Chamber) states that it is the largest business and economic development organization in the Northern New York region, representing more than 4,000 employers. The Chamber expresses support for the continued development of renewable energy resources in the region. To build on the region's potential, the Chamber believes renewable suppliers must have transmission access to markets. The Chamber states its "strong and wholehearted support for the NYPA proposal submitted to the PSC for a major upgrade of its transmission capacity across the North Country," and notes that the project would benefit existing and planned renewable energy facilities.

Transco

Transco states that Staff's proposed criteria do not adequately define whether a project is "needed expeditiously" to achieve CLCPA benefits. Transco explains that the need for a project should be evaluated with reference to the timing of the NYISO public policy planning process. If the effect on CLCPA

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<sup>13</sup> NYISO Comments at 7-8.

targets is the same regardless of whether a project proceeds under the NYISO tariff or as a PTP, Transco believes the "needed expeditiously" standard is not met. Therefore, Transco suggests the Commission should make a threshold determination concerning whether CLCPA targets can be met following the normal course of the NYISO's process and identify a priority project only when CLCPA targets are at risk. Transco further states that the Commission should adopt additional criteria, taken from the NYISO tariff, to ensure that the analyses underlying the Commission's determinations meet similar standards as those applied in the NYISO process.

#### STATUTORY AUTHORITY

The Act provides the Commission with authority to both adopt criteria to determine whether a project should be given priority treatment and to identify a PTP based upon application of that criteria. The core provisions of the Act direct the Commission to establish planning and investment programs to identify projects that "are necessary or appropriate to achieve the CLCPA targets."<sup>14</sup> In particular, the Act requires the Commission to develop a state-wide bulk transmission plan and to establish a prioritized schedule for the implementation of needed projects.<sup>15</sup>

The Act recognizes two avenues to advancing the investments identified in the bulk transmission plan. First, Section 7(4) directs the Commission to refer to NYPA "those projects for which the Commission has determined there is a need to proceed expeditiously to promote the state's public policy

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<sup>14</sup> Act, Sections 7(3) and 7(4).

<sup>15</sup> Id., § 7(4).

goals.”<sup>16</sup> Second, the Act requires the Commission to submit other “necessary” projects to the public policy planning process administered by the NYISO.<sup>17</sup>

While the Act assigns the Commission responsibility for deciding which transmission investments should proceed via the first or second mechanism, it does not specify what project characteristics or process the Commission should use to make that determination. Thus, the Act leaves the Commission discretion to determine what kinds of projects are needed expeditiously and should therefore be referred to NYPA. Section 7(5) indicates that the Legislature understood the combination of NYPA’s existing asset base and particular experience would facilitate implementation of certain bulk transmission projects, noting:

The Legislature further finds and determines that [NYPA] owns and operates backbone electric transmission assets in New York, has rights-of-way that can support in whole or in part bulk transmission investment projects, and has the financial stability, access to capital, technical expertise and experience to effectuate expeditious development of bulk transmission investments needed to help the state meet the CLCPA targets, and thus it is appropriate for [NYPA] . . . to develop those bulk transmission investments found by the commission to be needed expeditiously to achieve CLCPA targets.<sup>18</sup>

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<sup>16</sup> Id.

<sup>17</sup> Id. The Commission understands this language to refer to the NYISO’s Public Policy Transmission Planning Process, set out in Section 31.4 of the NYISO Open Access Transmission Tariff (OATT).

<sup>18</sup> Id., § 7(5).

DISCUSSION

Criteria for Qualification of a PTP

We start by considering the fitness of Staff's proposed criteria to the determinations the Act assigns to us. We conclude that, with modifications, Staff's proposal provides helpful guidance for assessing whether a project qualifies as a PTP. We decline to adopt additional criteria at this time, but conclude that, in developing the Bulk Transmission Plan called for in the Act (the Plan), other factors may be developed.

Based on our evaluation on the statute, we find that the Act requires the Commission to identify bulk transmission projects that are "necessary or appropriate" to meeting the CLCPA goals, and then to prioritize them. Successful prioritization of projects will likely depend on the assumptions the Commission makes in estimating how long it takes to develop and build transmission projects, how one project may depend on or complement another, and how the timing of transmission development contributes to the expansion of renewable generation.

The Legislature provided guiderails for the prioritization task by recognizing two project implementation mechanisms. While all projects that are ultimately included in the Plan will be necessary to meet the CLCPA objectives, the Act distinguishes one category of CLCPA-supporting projects as "needed expeditiously" while other necessary projects may be referred to the NYISO's established public policy transmission planning process. This distinction suggests that the Legislature considers the NYISO process to be an appropriate vehicle for meeting some CLCPA transmission objectives, but inadequate to solve all of the expected transmission needs. Further, in order to make prioritization decisions, the Act

implicitly requires us to weigh the needs the projects are designed to address. With this understanding of the Act's scope and intent, we find Staff's proposed criteria help us to identify the characteristics of a project that is "needed expeditiously."

Staff's first three criteria, which overlap in substance, cite both the need to unbottle existing renewable generation and the need to address potential congestion related to renewable generation that has yet to come on-line. We find that addressing the deliverability of existing generation is a key and perhaps determinative factor for this analysis. These operating generators represent substantial State and private investments, and the fact that they are not able to offer their full capacity due to transmission constraints is a strong indicator of whether traditional planning processes have kept pace with State policy. These investments must be fully realized in order to meet State targets, and we agree with Staff that a project's ability to unbottle existing renewable generation is a marker for a potential PTP.<sup>19</sup>

We are less certain regarding the importance of Criterion 2 because preparing to avoid possible congestion based on future generation development does not have the same urgency as securing the value of investments already made. We believe that the NYISO process can be used to align transmission and generation development over a multi-year horizon. We agree with the NYISO that the PTP designation can work in tandem with the public policy planning process to achieve State goals. We direct Staff to consult with NYISO planners about how the

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<sup>19</sup> We caution, however, that the amount of existing generation that is bottled is a relevant consideration, to be analyzed as a matter of the costs and benefits of any particular project.

alignment of generation proposals and the identification of transmission needs could be made more efficient and offer renewable developers and policy makers greater certainty about the future availability of transmission through the NYISO process.<sup>20</sup>

However, we also find that the presence of generation in the planning queue that will benefit from solving a transmission constraint affecting existing generation should be given some weight in deciding whether to identify a PTP. Projects that are in the NYISO interconnection process are not speculative, and the Commission's designation of the PTP may accelerate their development. Thus, while not by itself an indicator that the transmission project is needed "expeditiously," the likelihood of facilitating completion of planned generation projects adds to a needed project's benefits. We conclude that it is appropriate to consider the project's impact on generation already in the NYISO study process.

Accordingly, we modify Staff's first three criteria into a single criterion as shown below. As modified, we adopt the following criterion for designating a PTP:

The transmission investment's potential for unbottling existing renewable generation, as well as projects that are in the NYISO interconnection process, for delivery to load centers in the State, thereby reducing the amount of new generation that must be constructed to meet the CLCPA Targets.

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<sup>20</sup> We note that the NYISO has recently made adjustments to its project evaluation and selection process. The NYISO estimates that the approximate time frame for that process is now eighteen months. While this is an improvement, we believe that the urgency of the State's goals requires further work to reduce the decision-making time.

Staff's fourth criterion focuses on whether "an early in-service date" provides benefits to the State's overall program. We understand the "early in-service date" to be "early" by comparison to the completion timeframe for a project selected through the NYISO process.<sup>21</sup> We agree with Staff that, where acting to solve a transmission problem outside the NYISO process will increase the likelihood of meeting the CLCPA deadlines, the proposed transmission project may qualify as a PTP. We also find that a transmission project that would "enhance the value of recent, ongoing or anticipated distribution, local transmission, and/or bulk transmission investments, and/or help the State realize benefits from such investments" *because it can be placed in-service sooner than the NYISO process would allow* may receive priority status. With the addition of the italicized language, we accept Staff's fourth criterion.<sup>22</sup>

We find the proposed fifth criterion, which focuses on the planning and design status of the project, is not helpful in determining whether "expeditious" action is necessary. The fact that NYPA has invested design resources to an advanced point does not by itself mean that the Commission should ask NYPA to continue to develop the project.<sup>23</sup> Our task in prioritizing

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<sup>21</sup> To this extent, we concur with the commenters who urged us to assess the exigency of a need in the context of the typical course of the NYISO Public Policy Planning process.

<sup>22</sup> One result of these principles is that, in future applications, NYPA must provide the Commission with its best calculation of the project's likely in-service date, taking into account development, financing, and siting considerations.

<sup>23</sup> NYPA may, of course, pursue such projects as its Trustees authorize, regardless of this Commission's determination on the PTP question.

projects is to ensure that the transmission system is expanded through efficient ratepayer investments. A PTP is a project that is needed "expeditiously" not because it has already been engineered at the time it is proposed but because early construction serves a particular CLCPA objective. Further, we do not believe the availability of expedited permitting regulations is a distinguishing factor. For these reasons, we reject the fifth criterion.

The sixth criterion asks us to consider NYPA's ability to develop and construct projects. We agree with Staff that NYPA's significant development capabilities are relevant to the PTP analysis, but they do not themselves establish a basis for distinguishing among transmission needs. Thus, we will not rely on this factor as defining a PTP. However, NYPA's capacity to develop a project efficiently and on an expedited schedule is certainly relevant to our analysis under the other criteria we are adopting. For example, the fourth criterion depends on a showing that an "early in-service date" will capture important benefits, and a demonstration of how NYPA is situated to meet that date would support the identification of a PTP under that criterion. Control of the rights-of-way needed for the project, access to other project real estate, and the availability of capital are all factors that NYPA can use to demonstrate how project development will be expedited to meet its estimated in-service date. Therefore, while the Commission finds the capabilities listed in criterion six to be relevant, we will consider them in the context of Criterion 4. For this reason, we do not believe it necessary to create a separate criterion for their consideration.

Staff's seventh criterion would have the Commission consider whether a project would "advance other State policy

goals" in determining whether it should be designated as a PTP. Again, we are not persuaded that this inquiry distinguishes projects that are "needed expeditiously" from others that may develop through the NYISO process. For any project to be considered for the bulk transmission plan, it must contribute to meeting the policy goals of the CLCPA. When selecting among alternative projects proposed to meet the same transmission need, we would expect to consider the range of State policies that those alternatives might support. However, the Act suggests that a PTP serves CLCPA goals in a unique way, and our analysis should focus on how the proposed project satisfies those goals. The possibility of other policies also being served is not relevant to the central determination. For these reasons, we reject Staff's seventh criterion.

Staff correctly noted as its eighth criterion that the Commission might find other criteria should be applied when identifying a PTP. We decline to set additional identifying criteria at this time. However, we agree with several of the commenters that future PTP applications would benefit from an enhanced evaluation process.

Application of the Criteria to the Northern New York Project

Having considered Staff's proposed criteria, we now turn to the proposed projects to determine whether they qualify for PTP treatment. In the NNY Petition, NYPA addresses each of Staff's original criteria. With respect to the first three, NYPA says the Northern New York Project will unbottle existing renewable generation capacity in the region, citing its own studies to show that the proposed project will avoid 7.5 TWh of renewable generation curtailments annually. NYPA further asserts that its project will facilitate the delivery of energy

from renewable generators that are currently in the NYISO's interconnection planning queue. NYPA identifies approximately 2,400 MW of such planned generation that it says would not be deliverable to downstate load without expansion of the Northern New York transmission network.<sup>24</sup> Invenergy asserts that it has over 500 MW of generation under development for this area.

As discussed above, we find that the presence of a significant amount of existing renewable generation that is currently not served by the transmission system indicates that a project to unbundle that generation is "needed expeditiously." We also find that the number of interconnection applications that are being studied by the NYISO suggests there is strong developer interest in this area of the State, and that advancing the NNY Project would help capture the investment these applications represent, increasing the overall benefits of the project.

Discussing the fourth criterion, NYPA asserts, without explaining its development timeline, that an early in-service date for the NNY Project would increase the likelihood of meeting the CLCPA Targets. NYPA states that the early construction of the NNY Project is critical to ensuring that the benefits of the proposed renewable generation in the NYISO queue will be fully realized, raising the risk that the State will not meet its goals on time. NYPA correctly points out the importance of developing transmission so that "renewable developers perceive there will be sufficient transmission available to ensure reliable delivery to load and avoid curtailment."<sup>25</sup>

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<sup>24</sup> NNY Petition at 17\_.

<sup>25</sup> NNY Petition at 19.

NYPA also states that the project would enhance the value of ongoing transmission developments: the Smart Path project, now under construction, and the AC Transmission Upgrade project, which is in the final stages of PSL Article VII licensing. Both of these projects upgrade the 345 kV system, and NYPA's proposed NNY Project would result in a continuous 345 kV path that NYPA argues would increase the deliverability of renewable generation from northern and western New York to downstate areas.

While we agree with NYPA's observations, we find that NYPA's petition on the fourth criterion falls short. The aim of this criterion is to address circumstances where there is a high risk to program objectives that the NYISO transmission planning processes cannot alleviate. In such a case, the Act authorizes the Commission and NYPA jointly to take action to protect the State's program. Therefore, the fourth criterion requires NYPA to show that the project will have specific CLCPA-supporting benefits *because it can be constructed sooner* than a similar project developed through the NYISO process. In other words, the expected in-service date for the PTP "unlocks" specific CLCPA benefits that would otherwise be lost. For these reasons, an application for PTP designation under the fourth criterion must include the proposed project's in-service date. NYPA did not provide this information in this proceeding.<sup>26</sup>

Of course, in preparing the petition, NYPA did not have the benefit of the discussion we provide here. Nevertheless, the current status of the alternative NYISO planning process supports a finding that the fourth criterion is met. We take notice of the fact that the NYISO only recently

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<sup>26</sup> Our discussion here should be read as guidance for any future PTP application that NYPA makes.

initiated the 2020 public policy planning cycle, under which it would be several months before NYPA could even submit the NNY Project for evaluation. We conclude that this factual circumstance supports the finding that the NNY project is likely to be placed in-service earlier than a comparable project selected by the NYISO would be, even though the petition does not provide a specific in-service date.

Considering the fifth criterion, we again recognize that NYPA did not have our views of Staff's proposed criteria at the time it prepared the NNY Petition. NYPA presents a solid case for its preparedness to undertake the NNY Project, explaining that a significant amount of engineering work has been completed and underscoring its commitment to expedited development.<sup>27</sup> However, as we stated above, the fifth criterion does not actually indicate whether "expeditious" action is necessary or whether a transmission need should be referred to the NYISO. Since we do not adopt the fifth criterion, we will not rely on it here.<sup>28</sup>

NYPA similarly makes a strong case for the sixth criterion, showing that it can use its existing rights-of-way for about 50 percent of the upgraded circuit miles included in the project. NYPA further explains that it has been conducting engineering analyses with National Grid and expects that the project could utilize substantial portions of National Grid's existing rights-of-way. Access to existing rights-of-way indicates that development can be pursued efficiently, particularly in a region of the State where obtaining new rights

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<sup>27</sup> NNY Petition at 20-21.

<sup>28</sup> We anticipate that NYPA will bring its considerable resources to bear in carrying out any PTP that we identify, in service of our common responsibility to meet the CLCPA goals.

may be especially difficult. However, we found above that the sixth criterion does not define a PTP; rather, it lists development capabilities that may be highly relevant factors to the analysis of the timeliness of a project under other criteria.

On the seventh criterion, the NNY Petition identifies several benefits of the project that support other important State policy goals. NYPA cites production cost savings, environmental and air quality benefits, and job creation among those benefits.<sup>29</sup> However, we have determined that the identification of a PTP must rest on its specific relationship to the CLCPA goals. Any transmission project that is "necessary or appropriate" for inclusion in the Plan may contribute to other State policies; that factor does not help to distinguish the projects that NYPA should undertake from other needed projects.

Finally, Staff's proposal recognizes that the Commission may identify additional criteria. Several commenters, including the JU, LS Power, IPPNY and MI, offered suggestions for additional process and analysis in the course of designating a PTP, including a process more akin the NYISO's public policy transmission planning process. Given the narrow objectives of the Act, we decline to consider any of these proposals as definitional criteria. However, as discussed more fully below, we believe future applications would benefit from an enhanced level of engineering and economic information that the Commission and the public could evaluate when a PTP is proposed. In addition, as we develop the State's transmission

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<sup>29</sup> NNY Petition at 22.

plan, we may find other criteria should be applied to the determination of a PTP.<sup>30</sup>

We find that NYPA has shown a sufficient basis for identifying the NNY Project as a PTP based on the criteria that we have adopted herein. The NNY Petition makes clear that the State's investments in renewable generation in the northern region are not being fully realized due to transmission limitations. NYPA has shown that a significant amount of existing renewable generation is subject to curtailment because of those limitations, and that the costs and benefits of addressing the problem by constructing the project are in rough balance. National Grid made the same point in its comments. NYPA has also shown that there is a reasonable expectation that additional renewable resources already planned for this region will benefit from the project, adding to the project's overall benefits and supporting progress towards the State's renewable energy targets. Further, we have found that the NYISO process cannot meet the same goals in the same time frame that NYPA may achieve. Thus, we conclude that the NNY Project is "needed expeditiously."

#### Responses to Individual Comments

The foregoing discussion does not address all of the comments received in response to the SAPA Notice. In this section, we respond to the remaining material issues raised by the commenters.

Both MI and the City argue that the Commission should not identify a PTP in advance of considering the power grid study called for in the Act. We are aware of the Act's

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<sup>30</sup> We decline at this time to identify in-City deliverability as a stand-alone criterion, as our efforts so far are limited to defining criteria that of general applicability.

requirements concerning the study, and we expect to make bulk transmission planning decisions following our review of the study results. At the same time, we find nothing in the text of the Act that precludes NYPA from seeking a PTP designation prior to completion of the study, and we find that, given the urgency of the need for expanded transmission in Northern New York, it is appropriate for the Commission to act on the petition now.

The JU, Transco, and MI suggested that the Commission should adopt a more analytical approach and metrics regarding the viability and cost-effectiveness of a proposed PTP, similar to the process employed by the NYISO in its public policy transmission planning process. The JU raised a separate issue regarding the need for appropriate ratepayer protections to be in place. The Commission does not believe that the process to determine whether a project should be given priority status should replicate the NYISO's tariff; indeed, the Act provides that the PTP designation is a separate and distinct pathway to implementing CLCPA goals. However, we share these commenters' interest in ensuring the PTP process is transparent by a showing that a PTP is cost-effective, and that consumers should understand its cost impacts. In particular, we believe a PTP should satisfy a threshold level of cost/benefit analysis. The information requirements in the NYISO's public policy transmission planning process provide guidance. The engineering and economic analyses submitted by NYPA when seeking a PTP designation should provide similar information, although it may be streamlined; for example, a single year's production cost study may be adequate for a project that is needed expeditiously, as with the proposed NNY project.<sup>31</sup>

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<sup>31</sup> The NNY Petition states that the project would result in production cost savings of approximately \$99 million per year

While the Commission declines to impose a specific benefit/cost criterion, we believe that the engineering and economic analyses provided by NYPA in support of the Northern New York Project were sufficient in evaluating that project. The Commission encourages NYPA to continue to provide sufficient detail concerning those costs. As for requiring NYPA to present, as part of its petition, the expected method for the recovery and allocation of those costs in future applications, we encourage NYPA to provide more detailed analyses of this matter moving forward assuming, as required under the Act, it ultimately determines to undertake the project. Given that the Act was only recently enacted, the Commission did not expect NYPA to necessarily be prepared to provide information related to cost recovery and allocation as part of the petition but certainly may make it a required criterion moving forward. In any event, we expect NYPA to include a cost containment/risk-sharing mechanism as part of its NNY Project, similar to the approach NYPA has agreed to accept as part of its development of the Segment A AC Upgrades projects that are being undertaken with LS Power.<sup>32</sup>

The Joint Utilities also point out that a PTP may have impacts on local transmission systems. We agree that, in preparing future applications, NYPA should consult with the affected local transmission owner and develop estimates for the costs of any necessary local system upgrades. This information - the scope of the local upgrades and their anticipated costs -

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and a net present value of approximately \$1.05 billion over a twenty-year period for the project. When considering production cost savings and no other benefits, NYPA estimates the project has a benefit/cost ratio of 1.0.

<sup>32</sup> See, FERC Docket No. EL19-88-000 - New York Power Authority.

should be provided to the Commission with the cost estimate for the proposed PTP.

Anbaric asks the Commission to solicit potential PTPs designed to facilitate the delivery of offshore wind. We do not intend to act on this suggestion. The Act contemplates direct applications for PTP designations and leaves the nature of the proposed project up to NYPA. We expect that NYPA will propose projects related to offshore wind if NYPA concludes that, under the Act and the criteria we have adopted here, one or more projects qualify as "needed expeditiously."

The Clean Energy Parties urge the Commission to make use the NYISO Public Policy Transmission Planning Process and to implement the Act's provisions relating to distribution and local transmission upgrades. We note that the Act requires the Commission to identify bulk transmission needs for referral to the NYISO process by April 1, 2021.<sup>33</sup> We also note that the Commission's May 14, 2020 Order in this proceeding initiated various activities and studies related to planning and investment in the distribution and local transmission systems.<sup>34</sup> Thus, the implementation work the Clean Energy Parties recommend is already underway.

As for LS Power's recommendation for the Commission to condition any approval of a PTP on NYPA's implementation of a competitive process open to potential co-participants, we note that the Act requires NYPA to use competitive bidding to develop projects that are not "substantially within" its existing rights

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<sup>33</sup> The Act, section 7(4).

<sup>34</sup> Case 20-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (May 14, 2020).

of way.<sup>35</sup> We expect NYPA will comply with these Legislative directions. With respect to LS Power's request to prevent NYPA from using its rights-of-way as a basis for arguing against allowing participation of competitive developers, we believe the Act leaves the criteria for selecting a project partner up to NYPA, and we expect NYPA to develop those criteria in light of the Act's objectives.

#### CONCLUSION

In accordance with the Act, the Commission adopts criteria it will apply to determine which bulk transmission investments should be undertaken by NYPA on the grounds that they are needed "expeditiously" to advance the State's clean energy goals. Given the need to achieve the CLCPA goals in a timely manner, the Commission finds the NNY Project is consistent with these criteria and refers the NNY Project to NYPA as a PTP.

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<sup>35</sup> The Act, Section 7(5). We further urge NYPA to implement effective cost controls in any competitive solicitation.

The Commission orders:

1. The Northern New York project shall be referred to the New York Power Authority, as discussed in the body of this Order, for development pursuant to Section 7(5) of the Accelerated Renewable Energy Growth and Community Benefit Act.

2. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary