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PUBLIC SERVICE COMMISSION

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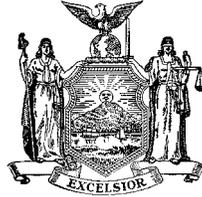
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March 6, 2006

Sent via E-mail

Office of Electricity Delivery
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Attention: EPACT 1221 Comments
U.S. Department of Energy
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1000 Independence Ave., SW.
Washington, D.C. 20585
E-mail: EPACT1221@hq.doe.gov

Re: Notice of Inquiry Requesting Comments For
Considerations On Transmission Congestion Study
and Designation of National Interest Electric
Transmission Corridors

To Whom It May Concern:

Attached, please find the Comments of the New York
State Public Service Commission in the above-entitled
proceeding. Should you have any questions, please feel free
to contact me at (518) 473-8178.

Very truly yours,

/s/

David G. Drexler
Assistant Counsel

Attachment

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

Consideration for Transmission Congestion Study and Designation
of National Interest Electric Transmission Corridors

**COMMENTS OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK**

BACKGROUND

On February 3, 2006, the United States Department of Energy (DOE) issued a notice in the Federal Register seeking comment and information on its plans for an electricity transmission congestion study and the criteria to be used in the study for possible designation of National Interest Electric Transmission Corridors (NIETCs) (Notice). Pursuant to the Energy Policy Act of 2005, the Secretary of Energy (Secretary) is required to conduct a nationwide study of electric transmission congestion, and issue a report based on the study in which the Secretary may designate "any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a [NIETC]."¹ If the Secretary designates an area as a NIETC, the Federal Energy Regulatory Commission (FERC) is authorized to issue permits for the construction and

¹ Energy Policy Act of 2005, §1221.

modification of electric transmission within the NIETC, provided certain findings are made.²

The New York State Public Service Commission (NYPSC) hereby submits its comments pursuant to the Notice in the Federal Register. Copies of all correspondence should be addressed to:

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EXECUTIVE SUMMARY

The NYPSC appreciates this opportunity to provide comments on DOE's draft criteria for designating NIETCs. We commend the DOE in undertaking this difficult task and acknowledge the considerable progress it has made to date. As our comments indicate, designating NIETCs is a complicated task, and doing so must carefully balance the designation with the impacts on competitive markets and consumers.

² Id. Among other findings, FERC must determine that in states, such as New York that have authority to approve the siting of transmission facilities, that the state has withheld approval for more than one year after the filing of an application, or conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion or is not economically feasible.

As indicated in the Notice, the DOE seeks to "avoid designating NIETCs in ways that might unduly affect stakeholders' decisions about how to meet specific needs, confer advantage on transmission options as opposed to non-wires options or generation options, or favor some transmission options over others." To address this concern, we recommend that DOE adopt a clear economic measure of congestion that reflects national, rather than parochial interests, and require the allocation of project costs to beneficiaries. This recommendation should narrow the selection of NIETCs and avoid favoring inefficient projects that could harm competitive markets and impose unnecessary costs on consumers.

The DOE should evaluate its designation of NIETCs for reliability purposes recognizing the existing regional planning processes approved by FERC. For example, in New York, the New York Independent System Operator (NYISO) has worked closely with the NYPSC and other stakeholders to develop a Comprehensive Reliability Planning Process. The NYISO planning process identifies reliability needs based on clearly defined criteria, and allows market participants to step forward with proposals (i.e., generation, transmission, or demand-response) to meet those needs. Adherence to this type of approach will help ensure that the designation of NIETCs is made in a workable manner that does not unnecessarily interfere with the workings

of the market, and will recognize that the development of transmission alternatives, such as generation or demand-response may, in some cases, be superior from a cost and/or reliability perspective. This approach will also provide competitive markets with a chance to flourish, while ensuring reliability needs are met at the least cost.

If DOE designates a NIETC primarily for economic purposes, we recommend that a cost-benefit analysis be performed by the applicable Independent System Operators/Regional Transmission Organizations to ensure that a transmission solution will be the most economical from a national interest perspective. In particular, such analysis should examine savings to the system on the whole, by focusing more broadly than on only the positive benefits to downstream load. A useful measure of national interest is a long-run societal cost-benefit test (i.e., whether or not the long-run benefits of greater imports into high-cost load centers, including savings in production costs and the reduced need for generators in the high-cost areas, exceed the long-run costs of constructing the transmission upgrade).³ Only where a clear net positive benefit is shown, should a NIETC be designated. Requiring the relief of all congestion, even

³ A load pocket is a portion of the electric system that is characterized by having more load than local generation and has limited transfer capability from the bulk transmission system.

where the costs exceed the benefits, could interfere with market signals and unnecessarily raise costs to consumers.

Finally, we offer responses to several of the questions posed in the Notice. Specifically, we address physical versus contractual congestion and suggest that DOE focus exclusively on physical congestion and not attempt to resolve contractual congestion, which can be handled through FERC rules governing provision of transmission service; we recommend that DOE distinguish between persistent and dynamic congestion, and only designate a NIETC for persistently constrained interfaces where net benefits would be derived from investments in the electric system; and, provide references to several NYISO transmission studies that would be useful in DOE's review.

DISCUSSION

I. The DOE Should Develop A Clear Measure of Congestion To Avoid Over-Broadly Designating National Interest Electric Transmission Corridors

The Notice broadly measures congestion as "adversely affect[ing] consumers," and where "end markets...may be constrained by lack of adequate or reasonably priced electricity," or where "economic growth...may be jeopardized." Similarly, Draft Criterion 2 (i.e., "Action is needed to achieve economic benefits for consumers") proposes to use estimates of the aggregate economic savings per year to consumers over a relevant geographic area and market, while Draft Criterion 3

suggests that “[a]ctions are needed to ease electricity supply limitations in end markets served by a corridor, and diversify sources.” However, these criteria are so broad as to make almost any region a NIETC. For instance, building new transmission facilities in most instances would provide greater access to supply and reduce costs for customers downstream from supply sources.

In order to designate NIETCs that are most in need of attention, we recommend that DOE adopt an objective measurement of congestion similar to that used by the NYISO. In particular, the NYISO reports the cost of congestion as the change in bid production costs that result from transmission congestion.⁴ The NYISO determines the change in bid production costs based on the differences in costs between the actual constrained system computed in the NYISO's day-ahead market and a simulation of an unconstrained system.⁵ We note that the NYISO's analysis to date has been limited to measuring changes in energy costs in the short-run, by holding the stock of generation constant. An additional consideration should also be the long-run ability of

⁴ NYISO Open Access Transmission Tariff, Attachment Y, Appendix A, §2. The NYISO also reports the following elements of congestion-related costs: 1) impact on load payments; 2) impact on generator payments; and 3) hedged and unhedged congestion payments.

⁵ Id.

additional transmission capacity to allow new generators to locate in lower-cost regions instead of in higher-cost load centers (subject to reliability requirements).

Criteria 1 (i.e., "Action is needed to maintain high reliability") should also be clarified to ensure it does not over-broadly designate NIETCs. The concept of "high" reliability appears to blend two concepts that should be considered individually (i.e., relieving congestion to comply with reliability requirements and relieving congestion for further reliability benefits beyond what is required). Currently, FERC is undertaking a process that will lead to enforceable national bulk electric system reliability standards. Compliance with these standards will lead to a reliable electric transmission system. Designation of a NIETC in an area that does not meet applicable reliability standards, in the event that the FERC-approved planning process developed by the NYISO as well as other such organized markets proves insufficient, could complement FERC's efforts and could assist in having needed facilities constructed.

However, Criteria 1 appears to imply moving beyond compliance with reliability standards and using higher than required reliability to justify economic upgrades. System upgrades relying on reference to higher than required reliability standards should instead be subject to a societal

cost-benefit analysis. Therefore, we suggest that applicable Independent System Operators/Regional Transmission Organizations perform a cost-benefit analysis to ensure that transmission solutions, which go beyond satisfying reliability standards, satisfy a societal cost-benefit analysis.

II. The DOE Should Ensure That Designation of National Interest Electric Transmission Corridors Do Not Interfere With Competitive Markets By Harmonizing The DOE Process With Regional Planning Processes

Congestion can be relieved through a number of means, including investments in generation facilities located within load pockets, increased transmission capacity into load pockets, or investment in demand reduction within load pockets. In restructured markets, generation, demand reduction and transmission are three tools that can achieve the same objective. In other words, carefully sited generation facilities or investments in demand reduction can offset the need for transmission investments. While there may be congestion at certain points of the transmission system, mitigating that congestion does not necessarily require investments in transmission. It may include investments in generation, or demand reduction, or both.

Because there may be a number of superior alternatives to transmission that may also relieve congestion, we recommend that DOE harmonize its process of designating NIETCs with regional

planning processes that allow competitive markets to develop such solutions. For instance, the NYISO currently utilizes a Comprehensive Reliability Planning Process to identify long-term reliability needs for the bulk transmission system looking ten years ahead.

The NYISO's Planning Process starts with clearly defined reliability rules, and provides a well-defined process for determining reliability needs on the bulk transmission system. This process affords an opportunity for market participants to present proposed solutions, such as generation, transmission or demand-response, which meet the identified needs. Where the NYISO identifies any reliability concerns, its regional planning process encourages market participants to step forward with solutions, shifting the risk for these types of investments from ratepayers to developers. If no market-based solutions materialize, the affected utility is responsible for facilitating a regulated solution, considering generation, transmission, and/or demand-response solutions that may address the reliability need.⁶

However, there is currently no mechanism envisioned in the Notice to recognize FERC-approved planning processes being done

⁶ The regulated back-stop solutions are overseen by the NYISO and implemented by traditional investor-owned utilities, with costs allocated on the basis of "beneficiaries pay."

at the regional level, which may cause developers of bona fide generation or demand-response projects to decide against going forward with their proposals due to the possibility that the proposed projects will be supplanted by a NIETC transmission facility. Therefore, DOE should develop a process that accommodates input from such regional planning processes and builds upon what is being accomplished regionally.

III. The DOE Should Consider The Following Responses To Specific Questions Presented In The Notice

A. Physical Versus Contractual Congestion

The DOE seeks further comment on whether it should distinguish between physical congestion and contractual congestion. We suggest that DOE focus exclusively on physical congestion and not attempt to resolve contractual congestion. Attempting to resolve contractual congestion could unnecessarily interfere with ISO/RTO market rules governing the provision of transmission service, which have been approved by FERC.

B. Persistent Versus Dynamic Congestion

We recommend that DOE distinguish between persistent congestion (i.e., historical energy flows indicate uneconomic congestion has consistently occurred and is projected to continue in the future) and dynamic congestion. Dynamic congestion, as we define it, refers to congestion that is temporary in nature, such as a major generation unit outage,

changes in buying patterns or in fuel costs. Given this temporary nature, we suggest that a designation of a NIETC be made only for persistently constrained interfaces where net benefits would be derived from investments in the electric system.

C. Transmission Studies

The Notice asks what specific transmission studies, in addition to those listed in Appendix A of the Notice, should the DOE review. In addition to those studies identified in Appendix A, the DOE should review the NYISO's Initial Planning Process Report dated May 15, 2004 (Chapter 13 - Historical Congestion Reporting),⁷ and the NYISO's Final Comprehensive Reliability Planning Process Report, scheduled to be completed in June, 2006. It would also be useful for DOE to look at flow patterns on target corridors within New York going back 10 years.⁸

CONCLUSION

The NYPSC thanks the DOE for its consideration of the above comments in its decision-making process. We look forward to

⁷ See, http://www.nyiso.com/public/webdocs/committees/bic_espwg/meeting_materials/2004-05-26/ippmaydiscussiondraft.pdf.

⁸ Over time, patterns of congestion can shift due to changes in load, market rule modifications, additions and retirements of facilities, etc. Reaching back one planning period (i.e. 10 years) to review historical flows coupled with future system forecasts can provide a reasonable base to determine if congestion is persistent.

working with DOE in the future as it performs and issues its study on electric transmission congestion.

Respectfully submitted,

/s/

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Dated: March 6, 2006
Albany, New York