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Secretary

March 13, 2003

Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. PL03-1-000 - Proposed Pricing Policy
for Efficient Operation and Expansion of
Transmission Grid

Dear Secretary Salas:

For filing, please find the Notice of Intervention and 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,

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Proposed Pricing Policy for)
Efficient Operation and Expansion) Docket No. PL03-1-000
of Transmission Grid)

**NOTICE OF INTERVENTION AND COMMENTS OF THE
NEW YORK STATE PUBLIC SERVICE COMMISSION
ON TRANSMISSION INCENTIVES POLICY**

Pursuant to the Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid issued January 15, 2003, and Rule 214 of the Commission's Rules of Practice and Procedure, the New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments in the above-captioned proceeding.

Copies of all correspondence and pleadings should be addressed to:

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INTRODUCTION AND SUMMARY

On January 15, 2003, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Proposed Policy Statement for Efficient Operation and Expansion of Transmission Grid (Proposed Policy). Under this Proposed

Policy: (1) any entity that transfers operational control of transmission facilities to a Commission-approved Regional Transmission Organization (RTO) would qualify for an incentive adder of 50 basis points on its return on equity (ROE) for all such facilities transferred; (2) forming an Independent Transmission Company (ITCs) that participates in an RTO would qualify for an incentive equivalent to 150 basis points; and (3) new transmission facilities consistent with an RTO's planning needs would qualify for an incentive equal to 100 basis points.

The NYPS&C shares the Commission's goal of establishing competitive energy markets through open and equal access. A critical component of this goal is ensuring that control over transmission rests with an independent entity, such as an Independent System Operator (ISO) or RTO. As the Commission is aware, New York's utilities divested essentially all of their generation assets from their transmission assets, becoming solely transmission owners (TOs).¹ Moreover, we approved the transfer of operational control over transmission facilities to

¹ See, e.g., Case 96-E-0897, In the Matter of Consolidated Edison Company of New York, Inc.'s Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to PSL, Sections 70, 108 and 110, and Certain Related Transactions, et al., Opinion and Order Adopting Terms of Settlement Subject to Conditions and Understandings (issued November 3, 1997).

the New York Independent System Operator (NYISO).² Combined with FERC's efforts, these initiatives have provided market participants in New York with open and equal access to transmission and markets administered by an independent entity. We believe that this structure satisfies the objectives of the first two incentives in the Proposed Policy and enhances competition in supply as well.

While a financial incentive for public utilities to transfer control of their transmission assets to an independent entity may make sense for those parts of the country that are reluctant to do so, we urge the Commission to provide for regional variation in areas where an independent entity already maintains operational control over transmission, such as the NYISO does. A FERC authorized incentive is unnecessary in states such as New York, where TOs were previously provided incentives for divesting their generation and cooperating in the development of the NYISO. Likewise, it is premature to consider any incentives associated with ITCs in New York. To date, we have not seen a fully developed proposal that includes New York participants. Therefore, we have no way of evaluating what additional benefits an ITC would bring to warrant an incentive.

² See, Case 99-E-0745, Joint Petition of Central Hudson Gas & Electric Corporation, et al. (issued August 19, 1999).

We are encouraged by the Commission's emphasis on investments in new transmission facilities. However, we recommend that the Commission address the threshold issue of whether incentives for investment in new transmission facilities are necessary. It is premature to consider incentives for new facilities prior to a demonstration that a regional planning process will not bring forth the necessary facilities. Finally, if the Commission chooses to pursue the Proposed Policy, we recommend that it carefully consider whether these incentives will artificially favor transmission expansion over new generation.

DISCUSSION

I. The Commission Should Accommodate Regional Variations

New York supports FERC's goal of encouraging participation in larger regional organizations. As the Commission concluded, "RTOs would help eliminate the opportunity for unduly discriminatory practices by transmission providers, reduce the need for overly intrusive regulatory oversight, and instill trust among competitors that all are playing by the same rules."³ However, these same benefits, which the Proposed Policy envisions, may be achieved through alternative means, such as an

³ Proposed Policy at ¶ 3.

ISO. For example, the NYISO currently maintains operational control over transmission facilities, thereby minimizing opportunities for TOs to engage in discriminatory behavior. Moreover, the opportunity for such behavior is virtually eliminated in New York because, in most instances, the New York TOs no longer own generation assets. Providing incentives to TOs that have already transferred control of their transmission facilities to an independent entity, such as an RTO or ISO, is unnecessary. As part of divestiture, the New York TOs received various incentives in exchange for their cooperation in developing the NYISO. Thus, a FERC-approved increase in New York TOs' rate of return would not be an incentive, but rather an unnecessary windfall.

II. It Is Premature To Consider Incentives Associated With Independent Transmission Companies

Although we recognize there may be potential benefits of ITCs, in New York there has not yet been a fully developed proposal to form an ITC. Consequently, the specific benefits associated with a New York ITC are still unknown. However, it is our understanding that the greatest potential benefit of an ITC is the operation of transmission by an independent entity separate from generation ownership interests. Since this benefit has been achieved in New York, the Commission should not establish a generic incentive policy, but rather reconsider

whether an incentive is necessary where the majority of benefits associated with ITCs have already been achieved.

III. Incentives For Investment In New Transmission Facilities May Be Unnecessary

The Proposed Policy presumes that incentives are necessary for investment in needed transmission upgrades. We anticipate that a regional planning process will identify the necessary reliability and economic upgrades. It is clearly premature to consider incentives, however, prior to a demonstration that such planning process will not bring forth the necessary upgrades.

Incentives for reliability projects should not be needed given that states have the primary responsibility for ensuring reliability and the authority to require the necessary transmission upgrades.⁴ Incentives for economic upgrades should be put on hold until the market has sufficient time to respond to the results of the planning process. Even before the Proposed Policy was issued, there has been interest in transmission expansions by both merchant and non-merchant developers in New York.⁵

⁴ See New York Public Service Law §§ 66 and 72.

⁵ See, e.g., Case 00-T-1831, Application of Cross Sound Cable Company (New York) for a Certificate of Environmental Compatibility and Public Need for the Construction of a 300 Megawatt, 24-Mile HVDC Transmission Cable Under Long Island Sound from New Haven, CT to the Town of Brookhaven, Suffolk County, et al.; Case 01-T-1474, Application of PSEG Power Cross Hudson Corporation for a Certificate of Environmental
(Footnote continued on next page)

Instead of focusing on incentives at this early juncture, the Commission should settle the important questions that must be answered if economic projects remain undeveloped. For example, who will construct those upgrades; who will pay the construction costs; and how will the costs be recovered? Answering these questions should provide further certainty to regulated utilities and assuage the concerns of investors.

If the Commission ultimately determines that economic projects remain unexploited and incentives are needed, the Commission must be careful not to artificially distort pricing signals by tilting the markets to favor transmission over generation or other capital improvements. The Proposed Policy may unwittingly do so by only providing incentives for transmission projects.

Compatibility and Public Need for the Construction of a 1,200 Megawatt, 345 kV Electric Generator Lead from PSEG's Generating Station in Ridgefield, New Jersey, to a Consolidated Edison Company of New York, Inc. Electric Substation Located on West 49th Street in New York City; Case 02-T-0061, Application of GenPower New York, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of the Hudson Energy Project, an Approximately 1,400 Kilometer Offshore Submarine High-Voltage Direct-Current Power Transmission Cable from Goldboro, Nova Scotia, Canada to New York City; and Case 02-T-0036, Application of Neptune Regional Transmission System, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Two 600 Megawatt (+/- 500 kV) High-Voltage Direct-Current Submarine/Underground Electric Transmission Cables to Connect Load Centers in New York with Transmission and Generation Resources in New Jersey.

CONCLUSION

We request that the Commission reconsider the Proposed Policy in light of our concerns identified above.

Respectfully submitted,

Dawn K. Jablonski
General Counsel

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of the State of New York
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Dated: March 13, 2003
Albany, New York

CERTIFICATE OF SERVICE

I, Jacquelynn Nash, do hereby certify that I will serve on March 13, 2003 the foregoing Notice of Intervention and Comments of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: March 13, 2003
Albany, New York

Jacquelynn Nash