

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

GARRY A. BROWN

*Chairman*

PATRICIA L. ACAMPORA

MAUREEN F. HARRIS

ROBERT E. CURRY JR.

CHERYL A. BULEY

*Commissioners*



PETER McGOWAN  
*Acting General Counsel*

JACLYN A. BRILLING  
*Secretary*

March 13, 2008

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. EL08-39-000 - New York Regional  
Interconnect, Inc.

Dear Secretary Bose:

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  
cc: Service List

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

New York Regional Interconnect, Inc. ) Docket No. EL08-39-000

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

NOTICE OF INTERVENTION

On February 12, 2008, New York Regional Interconnect, Inc. (NYRI) filed a Petition for Declaratory Order for Incentive Rate Treatment (NYRI Petition). The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Notice of Filing, issued February 25, 2008, and Rule 214 of FERC's Rules of Practice and Procedure.

Copies of all correspondence and pleadings should be addressed to:

David G. Drexler  
Assistant Counsel  
New York State Department  
of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350  
david\_drexler@dps.state.ny.us

Howard A. Tarler  
Chief, Bulk Electric Systems  
New York State Department  
of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350  
hat@dps.state.ny.us

BACKGROUND

The Energy Policy Act of 2005 (EPAct) directed the Commission to establish incentive-based rate treatments for the

promotion of "reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all [transmission] facilities."<sup>1</sup> To carry out this mandate, the Commission issued Order 679, which established a process whereby applicants may receive incentives for transmission infrastructure investments that help ensure the reliability of the bulk power transmission system or reduce the cost of delivered power to customers through reducing transmission congestion.<sup>2</sup>

Eligibility for incentive ratemaking requires a demonstration that: 1) "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion"; 2) "the *total* package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant" (including an explanation and support to evaluate each element of the package and interrelationship of all elements of the

---

<sup>1</sup> EPCRA, Subtitle D, §1241 (codified at 16 U.S.C. §824s(b)(1)). EPCRA also required the Commission to "provide a return on equity that attracts new investment in transmission facilities." 16 U.S.C. §824s(b)(2).

<sup>2</sup> Docket No. RM06-4-000, Promoting Transmission Investment through Pricing Reform, Order 679 (issued July 20, 2006) (Order 679); reh'g granted, Order 679-A (issued December 22, 2006) (Order 679-A); reh'g granted, Order on Rehearing (issued April 19, 2007).

package); and, 3) the "resulting rates are just and reasonable."<sup>3</sup> The Commission applies a rebuttable presumption that a project is "needed to ensure reliability or reduces the cost of delivered power by reducing congestion" in situations where an appropriate state siting authority has evaluated these issues.

#### INTRODUCTION AND SUMMARY

NYRI intends to construct a 400 kV transmission line, with a rated power flow of 1,200 MW, extending approximately 190 miles from Marcy, New York to New Windsor, New York (the Project). NYRI estimates the Project will require an investment of approximately \$1.8 to \$2.1 billion.

In its Petition, NYRI indicates that "[b]ecause the Project will be financed by private investors through an independent transmission company at no risk to ratepayers or taxpayers, it requires [incentive] rate treatment...in order to obtain construction financing and continue development activities."<sup>4</sup> NYRI seeks authorization to use a 13.5% Return on Equity (ROE) for the life of the Project for purposes of calculating the equity component of Allowance for Funds Used During Construction (AFUDC). Alternatively, NYRI requests approval of a 13.5% ROE during the first three years the line is in commercial operation, followed by an ROE that includes

---

<sup>3</sup> 18 CFR §35.35; Order 697-A at ¶27.

<sup>4</sup> NYRI Petition at p. 2.

various basis point adders (i.e., 50 basis points for joining a Transmission Organization, 150 basis points for a transmission incentive, 100 basis points for formation of an independent transmission company, and 100 basis points for employing advanced technology).

The NYPSC opposes NYRI's Petition because it is premature. According to the Commission's regulations, NYRI is ineligible for incentive rates until it demonstrates that the Project will ensure reliability or reduce the cost of delivered power through reducing transmission congestion. NYRI intends to make the requisite demonstration in New York's siting process, but that proceeding is ongoing and no findings have been made to date. Moreover, NYRI's Petition fails to adequately justify the requested level of incentives. In particular, NYRI has not demonstrated that the total level of incentives is tailored to address the risks or challenges it faces, or that the resulting rates will be just and reasonable. Accordingly, the Commission should deny NYRI's Petition.

#### DISCUSSION

##### I. The Commission Should Deny NYRI's Petition Because It Is Premature

Before the Commission may authorize incentive rates, an applicant must demonstrate that their project will either ensure reliability or reduce the cost of delivered power by

reducing transmission congestion.<sup>5</sup> However, NYRI is currently seeking siting approval from the NYPSC, in a proceeding where the developer intends to establish that "the Project increases reliability and decreases congestion."<sup>6</sup> While NYRI concedes it "does not seek a Commission determination on these matters," it nonetheless seeks an ROE determination "conditioned upon NYRI obtaining siting approval and, thus, satisfying the rebuttable presumption under Order 679."<sup>7</sup>

NYRI has not yet obtained siting approval. It therefore is not entitled to a rebuttable presumption that the Project will ensure reliability or reduce the cost of delivered power by reducing transmission congestion, conditioned or otherwise. Therefore, NYRI's Petition is premature and should be denied until a siting determination is issued.<sup>8</sup>

**II. The Commission Should Deny NYRI's Petition Because It Fails To Adequately Justify The Requested Level Of Incentives**

An applicant seeking incentive rates must demonstrate that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant, including an explanation and support for each element of the

---

<sup>5</sup> 18 CFR §35.35(d).

<sup>6</sup> NYRI Petition at p. 7.

<sup>7</sup> NYRI Petition at p. 7.

<sup>8</sup> The NYPSC's siting regulations require an applicant to "indicate specific benefits with respect to reliability and economy to the applicant and the interconnected network." 16 NYCRR §88.4(a)(2).

package and interrelationship of all elements of the package.<sup>9</sup>  
In addition, an applicant must show that the resulting rates are just and reasonable.<sup>10</sup>

Although NYRI's Petition discusses the basis for each incentive rate element, it fails to demonstrate why the total package of incentives is appropriate or how these elements are interrelated. For example, there is no explanation why a total of 400 basis points above a baseline ROE is appropriate for NYRI. There is also no mention of why 150 basis points are appropriate as a transmission incentive, in addition to 100 basis points for formation of an independent transmission company and on top of 100 basis points for employing advanced technology.

We also note that Order 679 requires applicants, like NYRI, which seek a fixed-term during which their incentive-based proposals will not be re-opened, to explain how ratepayers can be assured that such proposal is delivering the benefits that formed the basis for the approval.<sup>11</sup> NYRI's Petition is devoid

---

<sup>9</sup> 18 CFR §35.35(d); Order 697-A at ¶27.

<sup>10</sup> 18 CFR §35.35(d).

<sup>11</sup> Order 679 at ¶36.

of any such assurances.<sup>12</sup> As such, NYRI's Petition is devoid of justification sufficient to form a basis for a decision that the resulting rates will be just and reasonable.

CONCLUSION

As discussed above, the NYRI Petition lacks the requisite basis to support incentive rates and should therefore be denied.

Respectfully submitted,



Peter McGowan  
Acting General Counsel  
Public Service Commission  
of the State of New York

By: David G. Drexler  
Assistant Counsel  
3 Empire State Plaza  
Albany, NY 12223-1305  
(518) 473-8178

Dated: March 13, 2008  
Albany, New York

---

<sup>12</sup> We believe that the ultimate ROE should only be determined after the applicable ratepayers have been identified and interested parties have had an opportunity for a hearing to cross-examine NYRI on its basis for the requested ROE. This approach is necessary to ensure that affected ratepayers have adequate notice and the ability to ensure NYRI's rates are just and reasonable. Notwithstanding the need for a hearing, as an initial matter we note that because there is no estimate of the debt/equity ratio applicable to the Project, there is no basis to support any ROE, let alone an ROE of 13.5%.

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve on March 13, 2008, the foregoing Notice of Intervention and Comments of the New York State Public Service Commission upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

  
Ruth Tarrance

Dated: March 13, 2008  
Albany, New York