

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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## PUBLIC SERVICE COMMISSION

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June 18, 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 Supplemental 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

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

**BACKGROUND**

On February 12, 2008, New York Regional Interconnect, Inc. (NYRI) filed a Petition for Declaratory Order for Incentive Rate Treatment (NYRI Petition).<sup>1</sup> In response to NYRI's Petition, the New York State Public Service Commission (NYPSC) submitted a timely Notice of Intervention and Comments on March 13, 2008.

On May 13, 2008, FERC's Office of Energy Market Regulation indicated that NYRI's Petition was deficient and requested additional information and clarifications in order to process NYRI's Petition (FERC Deficiency Letter). NYRI filed its response to FERC's Deficiency Letter on May 28, 2008 (NYRI Deficiency Filing). The Commission issued a Notice of Filing on June 4, 2008, and invited the submission of comments on NYRI's Deficiency Filing by June 11, 2008.

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<sup>1</sup> 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.

On June 11, 2008, the NYPSC submitted a Motion for Extension of Time to file comments on the NYRI Deficiency Filing. The Commission issued a Notice of Extension of Time on June 17, 2008, which granted the NYPSC's request to file comments by June 18, 2008.

### **SUPPLEMENTAL COMMENTS**

The NYPSC appreciates the additional time provided by the Commission to review and comment upon NYRI's Deficiency Filing. We continue to oppose NYRI's Petition and Deficiency Filing because they are premature. According to the Commission's regulations, NYRI is only eligible for incentive rates if it demonstrates, among other matters, that the Project will ensure reliability or reduce the cost of delivered power through reducing transmission congestion.<sup>2</sup> While NYRI has indicated that it is not seeking a Commission determination on these matters and that it intends to make such demonstration

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<sup>2</sup> Under FERC Order 679, 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 package); and, 3) the "resulting rates are just and reasonable." 18 CFR §35.35; 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 at ¶27 (issued December 22, 2006) (Order 679-A); reh'g granted, Order on Rehearing (issued April 19, 2007).

within the NYPSC's siting proceeding,<sup>3</sup> that process has not yet been completed.<sup>4</sup> For example, the NYPSC notified NYRI of various deficiencies in its siting application, including a system reliability impact study showing expected flows on the line and its effects on the stability of the transmission system.<sup>5</sup> Because NYRI has not yet obtained siting approval, it is not entitled to the rebuttable presumption that the Project will ensure reliability or reduce the cost of delivered power by reducing transmission congestion. Therefore, it is premature to conclude that NYRI's project will ensure reliability or reduce congestion until a siting determination is issued.<sup>6</sup>

Assuming arguendo that an adequate demonstration is made that the Project will ensure reliability or reduce

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<sup>3</sup> NYRI Petition at p. 7.

<sup>4</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. NYRI seeks an ROE determination "conditioned upon NYRI obtaining siting approval and, thus, satisfying the rebuttable presumption under Order 679." NYRI Petition at p. 7.

<sup>5</sup> Case 06-T-0650 - New York Regional Interconnect Inc. - Application for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the New York (letter dated March 24, 2008). The New York Independent System Operator, Inc. (NYISO) Operating Committee denied approval of NYRI's system reliability impact study on May 22, 2008, and that denial is currently being appealed within the NYISO stakeholder process.

<sup>6</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).

congestion, the Commission should still conduct an evidentiary hearing and allow interested parties an opportunity to cross-examine NYRI on its claim to the requested incentives and Return on Equity. An evidentiary hearing will afford stakeholders and ratepayers, who are yet to be identified, with adequate notice and the ability to challenge the veracity of NYRI's Petition and Deficiency Filing.

Various issues were raised in NYRI's Petition and Deficiency Filing that indicate an evidentiary hearing is needed. For example, NYRI's selection of the proxy group should be examined, including the presence within the proxy group of ITC Holdings. It may not be an appropriate utility to include in the proxy group because of its high Return on Equity and growth rate, which may not be sustainable. Moreover, a factual dispute may arise regarding the removal of certain utilities from the proxy group, based on NYRI's claims that their financial information is not reported by both Thompson Financial First Call and Value Line.<sup>7</sup> In fact, it seems Value Line covers these utilities and their growth rates are presented by Yahoo Finance, which derives its information from Thompson (i.e., the parent company of First Call).<sup>8</sup>

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<sup>7</sup> NYRI Deficiency Filing at p. 2 (excluding Central Vermont Public Service Corporation and UIL Holding Company).

<sup>8</sup> See, <http://finance.yahoo.com/q/ae?s=uil> and <http://finance.yahoo.com/q/ae?s=cv>; see also, Value Line Investment Survey, published May 30, 2008, at pp. 153 and 171.

**CONCLUSION**

As discussed above, the Commission should deny NYRI's Petition because it is premature. In the event that an adequate demonstration is made that the Project will ensure reliability or reduce congestion, the Commission should conduct an evidentiary hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is written in a cursive, flowing style.

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: June 18, 2008  
Albany, New York

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve on June 18, 2008, the foregoing Supplemental 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: June 18, 2008  
Albany, New York