STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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June 27, 2005

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

Re: Docket No. AD05-7-000, Long Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators

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 proceedings. Should you have any questions, please feel free to contact me at (518) 474-6513.

Very truly yours,

Kimberly A. Harriman
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Long Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators	)))))	Docket No. AD05-7-000

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

INTRODUCTION

On May 11, 2005, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice Inviting Comments on the establishment of mandatory long term transmission rights (LTTRs) for Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) with locational pricing. Generally, FERC seeks comments on: (1) the need for LTTRs and the problems caused by a lack of them; (2) impacts of and impediments to introducing LTTRs; (3) plans of RTOs and ISOs to address LTTRs; and (4) substantive and procedural options for addressing LTTRs.

The New York State Public Service Commission (NYPSC) submits its Notice of Intervention and Comments pursuant to the May 11, 2005 Notice, and Rule 214 of the Commission's Rules of Practice and Procedure. Copies of all correspondence and pleadings should be addressed to:

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SUMMARY

FERC should carefully consider the implications of mandatory LTTRs,[1] and in New York's case, FERC should not establish mandatory LTTRs. Requiring mandatory LTTRs can lead to insufficient buyers, artificially discounted prices, and harm to transmission customers in the form of reductions in revenues from transmission assets for transmission owners, as seen in 2000 with the New York Independent System Operator's (NYISO) auction of five-year LTTRs. Further, the ability of certain market participants to obtain LTTRs could lead to the exercise of market power in the form of a market participant obtaining unjust profits by artificially increasing the value of the LTTRs that it holds.

While there may be some interest of New York market participants for a two-year LTTR auction, such an auction should, at a minimum, be done on a voluntary basis as a pilot program in order to safeguard against the problems of NYISO's

[1] LTTRs are defined by the Notice as transmission rights of more than one year.

past LTTRs auction – insufficient buyer participation and artificially discounted prices - from reoccurring.

While the New York market may not be ripe for the establishment of mandatory LTTRs, the market is in need of the establishment of rules and procedures for allocating new transmission rights. Absent such rules and procedures, it will be much more difficult for new transmission to be built in New York.

BACKGROUND

With the advent of the NYISO, the rights to New York's existing transmission capacity were allocated to preserve the financial benefits that customers had under the prior system of physical transmission rights.

Under the NYISO's tariff, most transmission rights are sold as Transmission Congestion Contracts (TCC), which are equivalent to Financial Transmission Rights. These TCCs are auctioned as six month or one year contracts, allowing market participants to adjust the amounts of their congestion hedges. The revenues produced by the TCC auctions are used to offset the transmission owner's transmission service charge, thereby benefiting customers.

NYISO's current tariff provides for TCC auctions of up to five years. In 2000, NYISO administered two-year and five-year TCC auctions. The selling price of five-year TCCs was generally no higher than the selling price of two-year TCCs, with the result that the transmission owners essentially received no value for the sale of the three "out" years. Apparently, buyers were reluctant to forecast the value of congestion that far into the future, resulting in insufficient buyer interest and artificially discounted prices. Consequently, transmission owners received insufficient revenues for their transmission assets.

COMMENTS

1. The need for long term transmission rights and the problems caused by the lack of them. Are such rights needed more by certain types of entities or in markets in certain regions?

Requiring transmission owners to sell LTTRs no matter the interest and number of market participants willing to purchase those LTTRs, can lead to under-pricing of LTTRs. As seen in New York in 2000, relatively few market participants sought five-year or greater LTTRs, resulting in artificially discounted LTTRs prices. Consequently, transmission owners' unreasonably experienced a decline in revenues from transmission assets. Although the NYISO was at its infancy when the LTTRs auction was held in New York, the fundamental issue – forcing sellers to sell LTTRs when there may be insufficient buyers – continues to be a factor regardless of the maturity of the market.

In addition, speculative accumulation of multi-year LTTRs could create or exacerbate market power in the energy markets. For example, shutdown of a generator in a load pocket might increase congestion and thereby increase the value of LTTRs into the load pocket. If the generation owner were to purchase LTTRs, it might then find it profitable to shut down on or more of its generators in the load pockets in order to profit from the higher congestion rents earned by its LTTRs. Such gaming is much less profitable with short-term auctions because profits are limited to the term of the auction.

2. The impacts of introducing long term rights. What specific impediments or problems must be addressed?

The principal impediment to the establishment of a LTTRs market is the fact that the actual transfer capacity of an alternating current transmission line is often impacted by the load, generation and distribution needs associated with the line and the transfer capabilities of other parallel lines. As these factors change with time, so does the transfer capacity of the given line. Consequently, LTTRs may be unattractive to market participants who are unwilling to take on a right that may be altered in the future due to changes in system configuration or procedural changes.

3. The plans of specific RTOs and ISOs to address long term transmission rights.

Rather than focus on establishing LTTRs in New York, the NYISO and market participants should concentrate their efforts on establishing rules and procedures for allocating transmission rights for new transmission investments. The absence of such rules is one impediment to the development of new transmission, including transmission that may be needed for reliability in the future.

4. Substantive and procedural options for the Commission to address long term transmission rights.

While we do not think that mandatory LTTRs are necessary for New York, if FERC decides to pursue LTTRs for the New York market, it should proceed slowly, first instituting a voluntary pilot program for the auction of limited shares of transmission rights and only for a two-year term. Such an approach would be valuable to potential buyers who may find it easier to predict their load requirements and potential transmission system changes for two years than they would for a longer term. Additionally, the risk of a shortfall in transmission revenues from this program should be minimized by the fact that a small number of transmission rights are being auctioned.

CONCLUSION

For all the reasons above, the Commission should decline to mandate multi-year LTTRs for the New York market. However, if the Commission decides to pursue LTTRs, it should do so only on a pilot basis. Additionally, the NYISO and its market participants should reduce the difficulties associated with the development of new transmission by establishing rules and procedures for allocating new transmission rights.

Respectfully submitted,

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Albany, New York