

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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July 9, 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. OA08-52-000 - New York Independent  
System Operator, Inc.

Dear Secretary Bose:

For filing, 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,

David G. Drexler  
Assistant Counsel

Attachment  
cc: Service List

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System                    )     Docket No. OA08-52-000  
Operator, Inc.                                    )

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

**INTRODUCTION**

On June 18, 2008, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff (OATT) to incorporate a cost allocation methodology and a cost recovery process for regulated reliability projects that may be proposed and constructed pursuant to the NYISO's Comprehensive Reliability Planning Process (CRPP) (June 18 Filing). The New York State Public Service Commission (NYPSC) hereby submits its Comments in the above-captioned proceeding pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Combined Notice of Filings #1, issued June 23, 2008.

**BACKGROUND**

In order to increase the ability of customers to access new generating resources and promote the efficient utilization of transmission resources, the Commission issued Order No. 890, which required transmission providers, such as the NYISO and the New York Transmission Owners (NYTOs), to establish an open, transparent, and coordinated transmission

planning process.<sup>1</sup> On December 7, 2007, the NYISO submitted its compliance filing in accordance with Order 890, which proposed to expand its existing CRPP to include local transmission planning by the NYTOs and an enhanced economic planning process, cumulatively referred to as the Comprehensive System Planning Process.<sup>2</sup> The NYISO sought additional time to satisfy the planning principle mandated in Order 890 related to cost allocation for regulated reliability solutions.<sup>3</sup> The Commission granted an extension of time to address the state jurisdictional issues regarding non-transmission regulated reliability projects, and to develop comparable cost allocation methodologies, regardless of the type of regulated resource.<sup>4</sup>

The June 18 Filing proposes amendments to the OATT to reflect a cost allocation methodology for transmission projects

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<sup>1</sup> Docket No. RM05-17-000 et al., Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890 (issued February 16, 2007), reh'g, Order No. 890-A (issued December 28, 2007), reh'g, order No. 890-B (issued June 23, 2008).

<sup>2</sup> On January 7, 2008, the NYPSC filed a timely Notice of Intervention and Comments in response to the NYISO's December 7, 2007 filing in this proceeding.

<sup>3</sup> Regulated reliability solutions refer to projects that are implemented to satisfy reliability needs identified by the NYISO as part of the CRPP.

<sup>4</sup> The NYISO's CRPP handles all resources in a comparable manner, such that transmission, generation, and demand response resources are eligible for consideration as regulated reliability solutions. A comparable cost allocation/recovery methodology is essential to ensuring that there is no undue discrimination against the use of generation or demand response resources compared with transmission solutions.

implemented in accordance with the CRPP. The June 18 Filing also indicates that the NYTOs' obligations under the OATT are limited to proposing and implementing regulated backstop reliability projects involving transmission upgrades. In addition, the June 18 Filing contained revisions to the NYISO/NYTO Reliability Agreement to clarify the rights and obligations of the NYTOs under the CRPP, including the right to submit an informational filing prior to recovering costs through a rate recovery mechanism.

#### DISCUSSION

The NYPSC acknowledges and appreciates the considerable efforts undertaken by the NYISO and NYTOs to accommodate the jurisdictional boundary between the Commission and the NYPSC, which culminated in the June 18 Filing. As the NYISO accurately reported, "developing a non-discriminatory process was difficult given that jurisdiction over cost allocation and recovery is divided among FERC (with respect to transmission upgrades), the NYPSC (with respect to non-transmission upgrades by NYTOs other than LIPA or NYPA), and LIPA and NYPA."<sup>5</sup> Accordingly, the NYISO and NYTOs propose to incorporate a cost allocation methodology and cost recovery process within the NYISO's FERC-approved OATT for regulated reliability transmission projects, while the costs of a

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<sup>5</sup> June 18 Filing at p. 7.

regulated reliability non-transmission project would be allocated and recovered pursuant to New York State law.

Although the NYPSC adopted a cost allocation methodology for non-transmission projects that differs from the consensus approach subsequently reached among the NYTOs and reflected in the June 18 Filing, the NYPSC is committed to reviewing any such revised methodologies so that comparable treatment for both transmission and non-transmission resources can be ensured. As the NYPSC stated in its Policy Statement on Backstop Project Cost Recovery and Allocation (NYPSC Policy Statement), which is included as attachment VII of the June 18 Filing, "[w]e will revisit allocation methodologies at the request of the parties if improved methodologies are offered or if changes are required to address any market bias in transmission versus non-transmission cost allocation methodologies."<sup>6</sup>

We expect the NYTOs will file a revised cost allocation methodology for non-transmission projects, which is comparable to the one contained in the June 18 Filing, for consideration and approval by the NYPSC. The Department of Public Service Staff have reviewed the cost allocation

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<sup>6</sup> Case 07-E-1507, Long-Range Electric Resource Plan and Infrastructure Planning Process, NYPSC Policy Statement (issued April 24, 2008) at p. 15.

methodology contained in the June 18 Filing, and based on that review, the methodology, including the modification to the NYPSC-adopted cost allocation methodology, does not appear to be objectionable. However, the NYPSC will not take a position on the merits of the specific methodology contained in the June 18 Filing until it has had an opportunity to evaluate such a filing, including any public comments received in response to that filing. The NYPSC will advise the Commission of its determination once it is issued.

Regarding the June 18 Filing, it should be recognized that despite the proposal to explicitly indicate that the "Transmission Owners' obligation to propose and implement regulated backstop solutions under [the OATT] is limited to regulated transmission solutions,"<sup>7</sup> there will not be any gaps in the types of facilities considered within the planning process. Notwithstanding this language, the NYTOs will still have an obligation under New York Public Service Law to "provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable,"<sup>8</sup> which may include generation, demand response or transmission resources. Moreover, alternative regulated project developers will remain

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<sup>7</sup> June 18 Filing, Attachment II (revising §7.1(a) of Attachment Y of the OATT).

<sup>8</sup> New York Public Service Law §65(1).

free to propose solutions from this full range of resource options.

With these understandings in mind, we seek one clarification from the Commission. In particular, we ask that the FERC indicate its intent to review and approve the final costs and resulting revenue requirements for transmission projects before those costs are recovered from ratepayers. The proposed revisions to the NYISO/NYTO Reliability Agreement seek assurances that the cost recovery mechanism for transmission related costs "will provide for any increased rates to become effective upon the submission of an informational filing with FERC by the appropriate Transmission Owner(s) setting forth the final project cost and resulting revenue requirement."<sup>9</sup> While recovery of reasonably-incurred costs is appropriate, it is inappropriate to allow recovery of those costs without first determining they are reasonable. The NYISO/NYTO Reliability Agreement appears to bypass this critical determination by envisioning rate recovery upon the submission of a filing.

Under the Federal Power Act, "[a]ll rates and charges...by any public utility for or in connection with the transmission...of electric energy subject to the jurisdiction of the Commission...shall be just and reasonable."<sup>10</sup> Thus, it is

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<sup>9</sup> June 18 Filing, Attachment V, §3.03.

<sup>10</sup> 16 U.S.C. §824d(a).

incumbent upon the Commission to protect ratepayers by reviewing transmission project costs and the resulting revenue requirements to ensure that the rates charged to consumers are just and reasonable. We therefore request that the Commission clarify the process that will be followed before any increase in rates become effective, and indicate that the underlying project costs and resulting revenue requirement will be subject to the Commission's review and approval prior to cost recovery.

**CONCLUSION**

As discussed above, the Commission should clarify that the costs of regulated transmission reliability solutions will be reviewed prior to recovery from ratepayers in order to ensure the resulting rates will be just and reasonable.

Respectfully submitted,



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

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

Dated: July 9, 2008  
Albany, New York

CERTIFICATE OF SERVICE

I, Ruth Tarrance, do hereby certify that I will serve on July 9, 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: July 9, 2008  
Albany, New York