STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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September 29, 2010

SENT 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. RM10-23-000 - Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities

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

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities	)))	Docket No. RM09-18-000

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

NOTICE OF INTERVENTION

On June 17, 2010, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Proposed Rulemaking (NOPR) proposing to reform the Commission's electric transmission planning and cost allocation requirements for public utility transmission providers. The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments pursuant to the NOPR published in the Federal Register on June 30, 2010, the Commission's Notice Extending Comment Period, issued on August 10, 2010, 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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BACKGROUND

The NOPR proposes several revisions to the Commission's electric transmission planning requirements in order to: 1) provide that local and regional transmission planning processes account for transmission needs driven by public policy requirements established by State or Federal laws or regulations; 2) improve coordination between neighboring transmission planning regions regarding interregional facilities; and, 3) establish cost allocation methods for intraregional and interregional transmission planning processes in which the beneficiaries of new transmission facilities are identified. Through these proposed revisions and others, the Commission seeks to improve existing regional transmission planning processes by supporting the development of transmission facilities, and increasing the "likelihood that facilities included in regional transmission plans are actually constructed."

INTRODUCTION AND SUMMARY

The NYPSC generally supports the Commission's NOPR, which proposes an approach that is similar in many respects to the planning processes already in place in New York. We have worked closely with the New York Independent System Operator, Inc. (NYISO) and stakeholders to develop these processes, and are encouraged that the Commission's efforts are consistent with and support the progress that has already been made in New York with respect to transmission planning and investment in transmission infrastructure.[1] These comments recommend several clarifications and modifications to the NOPR.

In particular, the NYPSC supports several of the principles articulated in the NOPR. We agree with the Commission that if a region does not receive any benefits that it should not be involuntarily allocated any costs. In addition, costs should not be allocated to a region that does not host the facilities. Similarly, we agree that if a transmission provider is not a participant in the planning development, then they cannot be allocated costs. However, the Commission should articulate that meaningful participation in the planning development is necessary, including the ability to provide input on how the study is conducted and how solutions are identified.

We also support the Commission's proposal to develop a planning process that evaluates potential transmission and non-transmission solutions to identified needs. This type of all-resource planning has been implemented within the NYISO along with comparable cost allocation methodologies, regardless of the

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[1] NOPR at ¶33.

resource developed, to ensure all resource solutions are evaluated on an equal basis.[2] In addition, having all resource solutions evaluated side-by-side should make it more likely that a project, once it is determined to be preferable, will be supported. We encourage the Commission to pursue comparable "beneficiaries pay" cost allocation methodologies at both the Federal and State level depending on which entity has jurisdiction over the project.

The Commission should also clarify that transmission projects will not be favored over other types of projects that may be preferable from a public interest perspective. For example, the Commission's incentive rates promoting transmission projects may inappropriately favor transmission projects versus a preferable generation or demand response proposal. We ask that the Commission suspend the application of its incentive rates in the context of a comprehensive mandated planning

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[2] The NYPSC has adopted comparable cost allocation methodologies for generation and demand-response solutions to the Commission's mechanisms for transmission solutions. Case 07-E-1507, Long-Rage Electric Resource Plan and Planning Process, Revised Policy Statement on Backstop Project Cost Recovery and Allocation (issued June 26, 2009).

process that studies generation, transmission and demand response projects on an equal footing.[3]

As discussed in detail below, the NYPSC also concurs with the Commission's proposal to account for public policy requirements established by State or Federal laws or regulations in the transmission planning process, although the Commission should modify the process to allow states to identify which state-level policies should be included in the planning process. In addition, the Commission should clarify that these policies may include public policies derived pursuant to such statutory or regulatory authority, such as those created pursuant to regulatory orders or state energy plans.

However, we are concerned that the Commission may intend to automatically allow for cost allocation/recovery if a transmission project is identified in the FERC's planning process as capable of addressing the state's policy needs. This could undermine the state's objectives in achieving a desired mix of resources to ensure resource adequacy, and could prevent market signals from working as intended. For example, allowing automatic recovery of costs for a transmission project that could be used to deliver renewable resources being pursued

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[3] With regard to this issue, the NYPSC joins in the comments filed by the Coalition of State Utility Commissions, Consumer Advocates, End-Users, Municipal Utilities, and Rural Electric Cooperatives.

through a state's renewable portfolio standard could inappropriately shift cost responsibilities from developers to ratepayers. This could undermine price signals that promote the efficient siting of new resources at appropriate locations.

Given the NYPSC's concerns, the Commission should clearly indicate when a project will be entitled to cost recovery relative to receiving a cost allocation. While these terms have traditionally had different meanings, it is unclear whether the Commission is now considering a cost allocation to be synonymous with cost recovery. For instance, the NOPR refers to the use of a benefit to cost threshold that may be used for purposes of determining which facilities are included in a regional plan and allocated costs. The allocation of costs in such circumstances may be interpreted as a mechanism to allow for automatic cost recovery.

To the extent the Commission intends to allow cost recovery along with cost allocation, it is important to recognize that the FERC's proposed review process does not examine whether a project is in the general public interest. While the FERC process would determine if a transmission project is a valid solution, and whether the cost of the project is reasonable for what is being constructed, the FERC process would not examine whether a project is the most efficient solution, or whether a project (transmission or otherwise) is in the ratepayer's or public's interest to pursue. Therefore, the planning process and cost allocation/recovery should not be automated to the point that state reviews and determinations of ratepayer and public interest are bypassed.

We also seek clarification, as discussed below, regarding which transmission projects will be allocated costs. The NOPR suggests that any projects included in a transmission plan will receive an allocation, although it is not necessary to do so in all instances, such as for merchant-based projects. We recommend that an allocation only be provided for transmission projects that would serve as a reliability "backstop," similar to how the NYISO tariff currently operates.

Finally, in accordance with the following discussion, we note that a benefit to cost ratio of 1.25 is extremely low, and does not adequately take into account the uncertainty in cost estimates and potential cost overruns. Therefore, the NYPSC recommends that the Commission allow stakeholders to determine what, if any, cost-benefit ratio is appropriate.

DISCUSSION

I. The Commission Should Allow States To Identify Which State-Level Public Policies Should Be Included In The Planning Process

It is important that the Commission not unnecessarily limit the scope of the policies included in the planning process. The NOPR proposes to require that "local and regional transmission planning processes explicitly provide for consideration of public policy requirements established by State or Federal *laws or regulations* that may drive transmission needs."[4] However, the Commission should clarify that state-level public policy initiatives that are derived pursuant to state laws or regulations may also be included in the planning process. For example, the NYPSC has adopted a Renewable Portfolio Standard and Energy Efficiency Portfolio Standard pursuant to regulatory orders.[5] Likewise, there may be public policies that are developed as an outcome of a state energy plan, which is mandated by statute or executive order. These may include significant public policies that should be recognized in the planning process despite not being specifically identified in a State statute or the official state codes, rules and regulations.

Furthermore, the Commission proposes to identify public policies for inclusion in the transmission plans by requiring transmission providers to coordinate with customers and other stakeholders.[6] Similarly, the Commission recognizes that public policies not specifically required by State or Federal laws or regulations may be included in the planning process, but leaves this

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4 NOPR at ¶64 (emphasis added).

5 Case 03-E-0188, Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004); Case 07-M-0548, Energy Efficiency Portfolio Standard, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008).

6 NOPR at ¶65.

to the discretion of the transmission provider after consulting with stakeholders. The identification of public policies should not be left to stakeholders to decide. Because states are in the best position to identify which of their policies should be included in the planning process, and the extent to which those policies should be reflected therein, the Commission should allow states to identify state-level policies for inclusion in those plans.

While the NOPR should establish a mechanism for reflecting public policies in the planning process, the NYISO's tariff already adequately accommodates public policy planning and should be left unchanged. Under sections 3.8.1 and 4.5.7.1 of the NYISO OATT, the NYPSC may request studies and the development of transmission solution options. The NYISO regularly includes state mandated programs in its planning process. We are comfortable that the NYISO is following federal and state laws related to planning, and that existing provisions in the NYISO OATT adequately addresses the need to incorporate state-level public policies, whether or not they are codified. Moreover, the NYPSC has sufficient mechanisms to pursue facilities required to support New York's policies and to affect cost recovery for those facilities.

II. The Commission Should Clarify That Not All Projects Included In A Regional Transmission Plan Need To Be Allocated Costs

The Commission proposes to "require that every public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plan…."[7] This approach does not appear to account for the presence of merchant-based projects, or facilities driven by transmission owners' local plans or State mandates, where the costs for these types of projects do not necessarily need to be allocated.

New York's planning process allows market-based projects to come forward with proposed solutions to identified needs, in the first instance. This approach is preferable since it allows an opportunity for competitive markets to step forward with a solution that avoids ratepayers automatically assuming the risks and costs of projects. If a merchant developer proposes a project that satisfies a need, reliability or otherwise, there is no need to allocate the costs associated with the project because the cost recovery will be effectuated through competitive negotiated arrangements.

Merchant projects should appropriately become part of the plan that is used to ensure reliability needs, but their

[7] NOPR at ¶159.

existence and design is for the profitability of the project developer and is offered as a merchant project. Therefore, the fact that a project is present in a planning process should not make it automatically deserving of cost reimbursement from ratepayers through regulatory mechanisms outside the market. It is only in situations where no market-based solutions are forthcoming, and where the NYISO finds there is a need for a "backstop" project, that cost-based rates may be allocated for a project.[8]

Similarly, the Commission should clarify that a new transmission facility ordered by a state or developed in a utility's local plan are not necessarily subject to the Commission's cost allocation methodology, merely because the facility is included in either intra- or inter-regional plans. If a state orders a facility to be constructed, it should be able to independently identify an appropriate methodology for cost allocation and recovery. For example, a state may order an upgrade to a facility and find that it is just and reasonable to include the costs in the utility's ratebase. Under the FERC's proposed cost allocation process in the NOPR, all beneficiaries would have to be identified and allocated costs. Accordingly, the Commission should accommodate the inclusion of the above

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[8] NYISO Open Access Transmission Tariff, Attachment Y.

types of projects within a regional plan, without necessarily allocating costs to such projects.

Moreover, the Commission should afford interested parties with sufficient flexibility to pursue agreement on different methodologies on a case-by-case basis for cost allocation that may be superior to whatever cost allocation approach the Commission ultimately determines should be pre-established in the tariff. However, given the uncertainty in whether the Commission intends to utilize a pre-established cost allocation methodology as an automatic right of cost recovery, the NYPSC does not take a position at this time regarding the Commission's legal authority to establish such allocation methodology. We therefore request that the Commission clearly indicate when a project will be entitled to cost recovery relative to receiving a cost allocation.

III. <u>The Commission Should Allow Stakeholders To Determine What Constitutes An Appropriate Benefit To Cost Threshold For The Purpose Of Cost Allocation</u>

The NOPR indicates that if a cost threshold is used to determine which facilities have sufficient net benefits to be included in a regional transmission plan for the purpose of cost allocation, "such a threshold may not include a ratio of benefits to costs that exceeds 1.25" unless a greater ratio is justified.[9] While we concur with the FERC's goal of trying to prevent a benefit/cost threshold from becoming a hurdle that cannot be overcome, establishing a maximum ratio of 1.25 is too low.

With a ratio of 1.0, ratepayers would be indifferent to whether the project is constructed or not. In a planning study performed at the level envisioned by the Commission, cost estimates may be off by as much as 50%, even before taking into account project risks and the associated costs. Therefore, a ratio of 1.25 is too low of a screening threshold that may result in projects being allocated costs where those costs outweigh the benefits. However, the precise threshold should be left to stakeholders to discuss and propose, as appropriate. Allowing stakeholders to propose an appropriate threshold will help ensure cost are, in fact, allocated where net benefits will be derived.

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9 NOPR at ¶164.

CONCLUSION

As discussed above, the Commission should clarify and modify its proposal in issuing any final rulemaking.

Respectfully submitted,

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of the State of New York

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