

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.
JAMES L. LAROCCA
Commissioners



PETER McGOWAN
General Counsel

JACLYN A. BRILLING
Secretary

November 23, 2009

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. AD09-8-000 - Transmission Planning
Processes Under Order No. 890

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,

A handwritten signature in cursive script that reads 'David G. Drexler'.

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning Processes) Docket No. AD09-8-000
Under Order No. 890)

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

NOTICE OF INTERVENTION

On October 8, 2009, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Request for Comments (Notice) in the above-captioned proceeding. The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments pursuant to the Commission's Notice and Notice Granting Extension of Time, issued October 30, 2009, and Rule 214 of the Commission'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

William Heinrich
Chief, Policy Coordination
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
william_heinrich@dps.state.ny.us

BACKGROUND

In Order No. 890, the Commission directed transmission providers, such as the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners, to establish open, transparent, and coordinated transmission planning processes.¹ While various proposals throughout the country were subsequently determined to conform with Order No. 890, the Commission indicated an interest in further refinements and improvements to the planning processes as additional experience is gained.

In September 2009, three regional technical conferences were held to receive feedback from interested stakeholders. Participants at the conferences addressed the effectiveness of current planning processes, including cost allocation and recovery methods, the treatment of resources in the planning process, and the development of regional and inter-regional transmission plans. The Notice seeks comments regarding these issues.

¹ See, Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890 (issued February 16, 2007), *order on reh'g*, Order No. 890-A (issued December 28, 2007), *order on reh'g*, Order No. 890-B (issued June 23, 2008), *order on reh'g*, Order No. 890-C, (issued March 19, 2009).

INTRODUCTION

The NYPSC welcomes this opportunity to provide comments on the issues identified by the Commission in the Notice. We share the Commission's interest in encouraging prudent investments in transmission facilities. However, it is important to recognize that engaging in a transmission-only planning process may result in greater expense and/or environmental impacts than other alternatives, such as a generation or demand-response solution, which could satisfy the same reliability and/or economic needs.

New York's reliability and economic planning processes are unique in that they consider all resource solutions (i.e., transmission, generation and demand-response) utilizing comparable "beneficiaries pay" cost allocation methodologies at both the FERC and State PSC level, depending on applicable jurisdiction. This creates a level playing field for evaluating all resource solutions on an equal basis and identifying a preferred approach from a public interest perspective.

Having uniform cost allocation methodologies whereby beneficiaries pay is important to ensure that there is no undue discrimination against the use of generation or demand response resources compared with transmission solutions. Moreover, 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 look forward to working with the Commission and stakeholders to further enhance the existing transmission planning processes and ensuring those processes are adequate to meet future needs. The following discussion provides responses to the Commission's specific questions, as laid out in the Notice.

DISCUSSION

I. Enhancing Regional Transmission Planning Processes

- 1a) Are existing transmission planning processes adequate to identify and evaluate potential solutions to needs affecting the systems of multiple transmission providers?

The current Independent System Operator/Regional Transmission Organization and regional configurations in the eastern interconnection provide broad aggregation of utility service territories for planning purposes. Over time, there has been an increased collaboration between New York and its neighbors to advance planning efforts that will provide regional benefits. We expect that the initiation of the Eastern Interconnection Planning Collaborative (EIPC) will provide a good opportunity to move beyond current planning efforts, which

are mostly limited to the individual ISO/RTO level, and achieve a comprehensive interconnection-wide plan.

- 1b) Should prospective transmission developers coordinate their projects in the interest of "right-sizing" facilities to make the best possible use of available corridors and minimize environmental impacts?**

The NYPSC supports the full utilization of available corridors in order to minimize environmental impacts. We believe that coordination among prospective transmission developers would provide an opportunity to achieve such utilization. However, combining different developers' projects into a "right-sized" facility raises numerous issues that would need to be resolved, such as how the necessary property rights will be obtained, and how the associated costs will be allocated and recovered. Therefore, any such coordination efforts should also involve interested stakeholders, as well as the regulatory entities with siting authority. As an initial step, the planning authorities should be encouraged to identify potential projects to resolve reliability needs and certain economic constraints, and to make such information available.

1c) If so, what process should govern the identification and selection of projects that affect multiple systems?

Ultimately, the siting of a project is a state and/or federal function, and the selection of a project should be governed by those entities, especially where ratepayer dollars are required to support the project.

2) Are there adequate opportunities for stakeholders to participate in planning activities that span different regions, including for example those undertaken pursuant to bilateral agreements?

As noted above, planning efforts between New York and its neighbors have increased and presented opportunities to develop plans spanning different regions, such as the initiation of EIPC. However, opportunities to participate in interregional planning activities are limited by the availability of adequate resources. While such activities may be open to all stakeholders, interested entities do not always have the capability to meaningfully participate in the processes. The Department of Energy is currently making funds available for state participation in interconnection-wide planning efforts.

- 3) **Is there adequate coordination among planning entities to provide consistency in the data, assumptions and models being used in planning activities?**

The NYISO participates in a protocol planning process that coordinates base cases among New England, New York, PJM, Ontario, Quebec and the Maritimes. The quality of the studies has steadily improved since the protocol was put in place.

- 4a) **Will the interconnection-wide processes adopted pursuant to funding opportunities under the American Recovery and Reinvestment Act of 2009 result in an ongoing process for jointly identifying and evaluating alternatives to solutions identified in transmission plans developed through existing sub-regional and regional planning processes?**

Yes. Moreover, the process anticipates significant state participation, which should result in the development of adequate studies and analyses that can later assist in the state siting process. This information should greatly improve the ability of projects with demonstrated needs to successfully move through the siting process.

- 4b) **Will the scope and function of these interconnection-wide planning activities be sufficient to help address the concerns identified above?**

Yes.

4c) How will planning activities conducted on an interconnection-wide basis be integrated into the development of sub-regional and regional transmission plans and vice versa?

We envision an iterative process between local, regional, and interconnection-wide planning activities. Local plans will be integrated, as appropriate, into larger plans; the larger planning processes will then evaluate whether there are alternative projects, on a broader scale, that may present a more efficient solution to the needs identified in the smaller planning processes. The results will be incorporated into the plans developed during the next planning cycle.

5a) How are reliability impact studies aligned with economic-based evaluations of sub-regional or regional projects and assessments of projects needed to satisfy renewable energy standards?

There are three focuses of planning studies: reliability, economic, and public policy. Existing regional entities already have processes to study each of these areas, as well as different permutations of each. For example, an economic analysis may be performed to identify any potential benefits of advancing the construction of projects that will be required for reliability purposes. Sensitivity studies may also be performed as part of reliability and economic analyses to

evaluate changes in policy goals and provide information on how plans may be changed to encompass larger goals.

5b) If not aligned, how can reliability assessments and economic evaluations be aligned in order to better identify options that meet regional needs?

N/A

6a) How should merchant and independent transmission projects be treated for purposes of regional transmission planning?

We recommend an approach similar to the NYISO's planning process, whereby stringent criteria are required for inclusion of a planned project in the base cases, regardless of facility ownership. If a project is not included, then it is studied in a sensitivity case so that sufficient information is provided to the marketplace. This appears to be a sound approach that is fair to all developers.

6b) Should they be required to participate in the planning process and, if so, at what point must they engage in the planning process?

Merchant and independent transmission developers should be required to participate in planning process once their projects have moved beyond the conceptual phase and appear to be viable. Requiring their participation will contribute to the

development of comprehensive plans that will be useful to decision-makers.

- 6c) Do rights of first refusal for incumbent transmission owners unreasonably impede the development of merchant and independent transmission? If so, how can this impediment be addressed?

In New York, incumbent transmission owners do not have a right of first refusal.

- 6d) Are there other barriers to the development of merchant and independent transmission in the transmission planning process?

The NYPSC is not aware of any such barriers in New York.

- 6e) Should similar assumptions regarding resource availability be used for generation owned by the transmission owner and merchant or independent developers?

In New York, most generation has been divested, and assumptions regarding resource availability are not based on ownership. Independent developers have demonstrated that their facilities can be well maintained and perform at levels comparable to generation that is owned by traditional utilities and supported by a rate base.

7a) Is the interconnection queue process hindering the ability to plan the transmission system to integrate new generation?

There is a strong likelihood that the interconnection process in New York is delaying the inclusion of new generation projects within transmission plans. A significant factor in this delay is the massive amount of interconnection requests, including wind developers supporting New York's renewable generation initiatives, and the time-consuming work associated with each request. Moreover, there may be interconnection requirements hindering the process that were adopted on a generic basis, yet are not warranted with respect to certain types of projects.

7b) Would any reforms to the Commission's interconnection procedures support efficient planning of the transmission system?

We support a review of the Commission's interconnection processes to determine if opportunities exist to streamline and improve those processes.

8a) Should there be consistency in the way transmission providers treat demand resources, such as demand response, energy efficiency and distributed storage, in the transmission planning process?

Yes. An all-resource planning process, such as the NYISO practices, is crucial to ensuring that ratepayers are well served by the planning process. This process provides side-by-side analysis of options (e.g., generation, transmission, and demand response) that inform the industry as to the best possible solutions to problems, and provides the basis for a successful siting application.

8b) Are there preferred methods of modeling or otherwise accounting for demand resources in the planning process?

The model currently being used by the NYISO appears to be adequate, although further improvements may be identified.

8c) Does the planning process investigate transmission needs at fine enough granularity to identify beneficial demand resource projects?

While the NYISO's process does not identify specific project, doing so might inappropriately interfere with the marketplace. The NYISO process identifies the benefits to a generic demand response project if it can be accomplished at a certain cost. However, it is left to the marketplace to

determine whether a solution can be crafted within those boundaries and to propose a project.

- 9) **Are existing dispute resolution procedures in transmission provider tariffs adequate to address disputes that arise in the planning process?**

The NYISO's process seems to be working adequately.

It should be noted that if a project requests regulated cost recovery, the proposed project must be subject to careful scrutiny and due process to protect ratepayers from the risk of stranded costs. In the case of projects intended to provide economic benefits, the NYISO process gives appropriate deference to market-based projects. However, the NYISO's economic planning process provides an opportunity for projects to obtain regulated cost recovery under the NYISO tariff, subject to a NYISO determination that the project has a benefit/cost ratio of at least 1.0 and the approval by a supermajority vote (80% of Load Serving Entities benefiting from the project), to ensure that the intended beneficiaries clearly support the project. Of course, projects may also be developed on a merchant basis or supported by contracts.

II. Allocating the Cost of Transmission

- 1) To the extent that a lack of up-front certainty about cost allocation is inhibiting transmission development, describe the relative impact of this concern on specific projects and as it relates to other impediments to development.

While the NYISO has processes in place that should lead to certainty, the processes have not yet been tested given the absence, thus far, of a need for either reliability-based or economic-based projects. The sufficiency of these processes should become apparent over time as experience is gained.

- 2a) Should processes be established to help stakeholders address cost allocation matters over larger geographic regions?

Processes are already under development to address cost allocation issues over broader regions. For example, state regulators in New York and New England have been working on cost allocation processes, and we are aware that state regulators in the mid-west are in discussions regarding that region. The state organization, Eastern Interconnection States' Planning Council, which will be working with the EIPC, has the potential to resolve cost allocation issues on an interconnection-wide basis, and should be provided the opportunity to address those issues in the first instance.

2b) What is an appropriate scope for those regions?

It is premature to determine an appropriate scope until stakeholders have fully vetted their issues and been provided an opportunity to negotiate regarding an acceptable approach. Until a process is functioning at the interconnection-wide level, however, project-by-project negotiations should take place for projects that overlap planning area boundaries.

2c) Should they align with the regions for which planning is conducted?

While the scope may ultimately be consistent with planning regions, alignment with regional boundaries should not be required. As noted above, this issue should be addressed as part of the negotiations.

3) Are there regional cost allocation methodologies outside RTOs, and broader regional cost allocation within RTOs, that should be considered or established? If so, how should this be done?

We believe that, in general, the best allocation principle is that beneficiaries should pay. Proposed projects should be able to demonstrate the benefits of their projects by garnering the strong support of the beneficiaries through contracts or super-majority votes (e.g., 80% of benefiting Load Serving Entities in NYISO's economic planning process).

- 4) **Should each transmission provider hold an open season solicitation of interest for needed transmission projects identified through the transmission planning process in order to assist in cost allocation determinations?**

The NYISO has addressed this issue for both reliability and economic projects. The NYISO reliability and economic planning processes rely primarily upon independent developers to step forward with projects to address identified needs. Cost allocation processes were also developed amongst stakeholders. The process that has been developed should be allowed an opportunity to work as intended.

- 5a) **How can the customers that benefit from a particular facility be determined?**

Please see the response to question 5c.

- 5b) **Is there a preferred method?**

Please see the response to question 5c.

- 5c) **Should the method vary depending on the nature of the facility?**

The NYISO has developed preferable methodologies in its tariff for determining beneficiaries based on reduced locational-based marginal pricing, which applies to any solution that can be developed in response to an identified need. This methodology garnered broad stakeholder support amongst NYISO market participants.

- 6a) Should costs for base upgrades needed for existing reliability or economics be allocated differently than excess capacity expected to be needed for later-developed resources?**

Under the NYISO interconnection rules, projects allocated costs for upgrades are eligible for reimbursement by future resources taking advantage of excess capacity on that upgrade. This approach appears to be fair.

- 6b) Should the allocation of costs for certain projects take into account the risk of under-subscribed "right sized" lines?**

Please see the response to the previous question.

- 6c) If so, how should costs be re-allocated over time as such lines become subscribed by new customers?**

Please see the response to question 6a.

- 7) Should cost allocation mechanisms continue to differ based on whether a project is deemed necessary based on reliability and adherence to approved reliability standards versus economic considerations?**

Yes, especially if projects are pursued by merchant developers. Where a reliability need exists, a clear identification of the reliability benefit can be determined. Economic projects are discretionary investments based on the forecasted benefits to both the ratepayer and developer. The

two very different classifications of projects dictate that cost allocation should be left open to alternative approaches.

8) Should the determination of beneficiaries of a transmission facility include generators as well as loads?

Under the NYISO's tariff, generators seeking to sell energy into the marketplace are required to pay for the cost to interconnect their facilities. With the NYISO's recent establishment of a "deliverability" test for purposes of interconnecting as an Installed Capacity provider, new generating units may also be required to pay the costs of any transmission facilities necessary to deem them "deliverable." However, this approach may be undermined by defining the beneficiaries of a transmission facility solely with respect to loads, and allowing generators to escape the costs of such facilities. Moreover, generation which is "bottled" by transmission constraints will suffer lower energy prices and should thus have an incentive to help fund a transmission project that would "unbottle" it. Therefore, it may be appropriate, in some instances, to consider generators to be beneficiaries of a transmission facility.

9a) Should benefits be recalculated over time?

No. Recalculations would lead to unnecessary regulatory uncertainty, and likely drive up the cost of a project. As a result, the beneficiaries could be discouraged from supporting the project.

9b) Would recalculations negatively affect usage decisions?

Please see the response to the previous question.

10) How should non-quantifiable costs or benefits be identified, factored in or otherwise weighted?

The planning processes should identify all non-monetary impacts (e.g., emissions changes, added increments of reliability, a cushion of capacity for future use, etc.) and provide the information for decision-makers to evaluate what project should be pursued to resolve an identified need.

CONCLUSION

The NYPSC is committed to working with the Commission, planning authorities, and interested stakeholders to develop and refine the transmission planning processes. We appreciate the

opportunity to comment on these questions and look forward to developing further improvements to the existing processes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is fluid and cursive, with the first name "Peter" and last name "McGowan" clearly distinguishable.

Peter McGowan
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: November 23, 2009
Albany, New York

CERTIFICATE OF SERVICE

I, David G. Drexler, do hereby certify that I will serve on November 23, 2009, 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.

Dated: November 23, 2009
Albany, New York



David G. Drexler