

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Secretary

November 26, 2001

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

Re: Docket No.ER01-2967-000 - New York Independent System
Operator, Inc.

Dear Secretary Boergers:

Enclosed for filing please find the Motion for Clarification 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) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Enclosures

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

New York Independent System Operator, Inc.) Docket No. ER01-2967-000

**MOTION FOR CLARIFICATION
OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK**

In compliance with Rules 212 and 713 of the Federal Energy Regulatory Commission's (Commission's or FERC's) Rules of Practice and Procedure, the New York Public Service Commission (NYPSC) hereby submits its Motion for Clarification of the Federal Energy Regulatory Commission's (Commission or FERC) October 26, 2001, Order Accepting Tariff Revisions Subject to Modifications (Order).¹ The Order accepts and modifies the New York Independent System Operator, Inc.'s (NYISO's) proposed Attachment S to its Open Access Transmission Tariff (OATT), which provides rules for the allocation of responsibility for the cost of interconnection facilities required for new generation projects and merchant transmission projects. Attachment S also addresses the preparation of Transmission Planning Assessments.²

We seek clarification of the Commission's decision, insofar as it limited the role of Transmission Owners (TOs) in preparing Transmission Planning Assessments. For the reasons discussed below, the Commission should clarify that by its Order, it did not intend to prohibit the TOs from preparing Transmission Planning Assessments of the local systems. The TOs, which have the greatest experience and knowledge of the electric distribution system at the local level,

¹ On November 6, 2001, the NYPSC submitted a Motion for Late Intervention. Because the NYPSC's intervention is necessary to adequately protect the public interest, will not prejudice any party or disrupt this proceeding and no party has objected to our intervention, the FERC should grant the NYPSC's Motion.

² The Baseline and Reliability Assessments described in the Discussion section below are collectively referred to as "Transmission Planning Assessments."

should be permitted to prepare assessments of the local transmission and distribution system.

The NYPSC also agrees with the Order's decision to modify the Material Impact Standard, which set an arbitrary threshold for allocating System Upgrade Facilities costs among TOs and developers. Costs should be shared equitably among all developers.³

DISCUSSION

I. The Commission Should Clarify the Role of TOs in Conducting Transmission Planning Assessments

As proposed, Attachment S provides that the Annual Transmission Baseline Assessment (Baseline Assessment) be conducted by the TOs and NYISO Staff. The Baseline Assessment is used to identify system upgrades that each TO will need in the next five years to reliably meet its load growth in its transmission district. In addition, an Annual Transmission Reliability Assessment (Reliability Assessment) is performed by the TO and then reviewed by NYISO Staff, in cooperation with affected market participants, to determine the system upgrades required for interconnection on a state-wide basis.

The Commission agreed with Project Developers that “under the proposed rules, the transmission owners’ role is improperly elevated.”⁴ Project Developers claimed that the Transmission Planning Assessments would be subject to undue influence and unfair allocation of costs, given the TOs’ ability to make decisions regarding such Assessments. Based on these

³ In finding that “not allocating costs to a specific project that has a ‘measurable but immaterial’ impact is reasonable,” the Commission left open the possibility for the NYISO to revise the rules with another standard for material impacts. Any new standard should only exempt those developers whose impacts are truly de minimus.

⁴ New York Independent System Operator, Inc., 97 FERC ¶ 61,118 (2001) (hereinafter “October 26, 2001, Order”). The Commission identified the Project Developers as “Consolidate Edison Company of New York, Inc. et al., the Companies, and Calpine Easern and KeySpan-Ravenswood, Inc.”

arguments, FERC directed the NYISO to “eliminate any decision-making role of the [TOs].”⁵

While it is clear that the Order only moves the decision-making role from the TOs to the NYISO, and does not remove TOs from their essential role in performing Transmission Planning Assessments, there may be some misunderstanding that warrants a restatement of the Commission’s intent to draw upon the TOs’ expertise regarding the non-bulk transmission system.

II. The Commission Should Allow the TOs to be Involved in the Transmission Planning Assessments

Because the TOs are uniquely qualified, given their experience and expertise, to model, study and evaluate the system at its most basic level, the NYISO should be permitted to involve the TOs in conducting the Transmission Planning Assessments. Modeling and testing of the transmission system, insofar as it pertains to the non-bulk transmission system, can only be done thoroughly and accurately by the TOs.

The NYISO does not have the necessary experience and knowledge to make critical decisions affecting the local transmission and distribution system. This does not, however, obviate the importance or necessity of the NYISO’s leadership in bulk power transmission planning.⁶ While the NYISO should be accorded the ultimate responsibility to make decisions

⁵ Id. The Commission also relied on a prior FERC decision in ISO New England, Inc. (ISO-NE), which held that the TOs’ decisional role in transmission planning gave the TOs “the ability and the incentive to bias ISO-NE’s transmission planning process in favor of their competitive interests.” ISO New England, Inc., 91 FERC ¶ 61,311 (2000), order on reh’g, 95 FERC ¶ 61,384 (2001). However, that decision dealt with a market that was vertically integrated between generation and transmission and is inapplicable to New York, where the vast majority of generation has been divested from transmission.

⁶ Once the Assessments are completed with the involvement of the TOs, the NYISO can then coordinate and verify the validity of each Assessment to ensure the proposed upgrades are compatible and efficient, in reaching the optimal System Upgrade Facilities on a state-wide basis in terms of cost and reliability.

on a statewide basis, the TOs should be relied upon for the Transmission Planning Assessments on the local level.

CONCLUSION

The Commission should grant the NYPSC's motion for clarification. Specifically, the Commission should clarify that the TOs may be involved in conducting the Transmission Planning Assessments relative to the local transmission and distribution systems.

Respectfully submitted,

Lawrence G. Malone
General Counsel

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Albany, New York 12223-1350
(518) 473-8178

Dated: November 26, 2001
Albany, New York

CERTIFICATE OF SERVICE

I, Karen Houle, do hereby certify that I will serve on November 26, 2001, the foregoing Motion for Clarification of the Public Service Commission of the State of New York by depositing a copy thereof, first class postage prepaid, in the United States mail, properly addressed to each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: November 26, 2001
Albany, New York

Karen Houle