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Three Empire State Plaza, Albany, NY 12223-1350  
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November 13, 2017

**SENT VIA ELECTRONIC FILING**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Docket No. ER18-125-000 - NextEra Energy Transmission  
New York, Inc.

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Protest of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

*David G. Drexler*

David G. Drexler  
Managing Attorney

Attachment

CC: Service List

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

NextEra Energy Transmission                    )           Docket No. ER18-125-000  
New York, Inc.                                    )

**NOTICE OF INTERVENTION AND PROTEST  
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION**

**INTRODUCTION AND SUMMARY**

On October 20, 2017, NextEra Energy Transmission New York, Inc. (NEET NY) requested that the Federal Energy Regulatory Commission (Commission) approve certain incentive rate treatments with respect to its transmission project that was selected to address a Public Policy Transmission Need identified by the New York State Public Service Commission (NYPSC) in Western New York (WNY Project). In particular, NEET NY sought to address the risks and challenges of developing the WNY Project by allowing: 1) recovery of 100% of prudently incurred costs in the event the project is abandoned for reasons beyond its reasonable control; 2) inclusion of 100% of Construction Work In Progress (CWIP) in rate base; 3) a 50 basis point adder to its authorized Return on Equity (ROE) to act as an "Incentive Adder;" and, 4) a further 50 basis point ROE adder for being an independent transmission company (collectively, the October 2017 Filing).

The requested treatment in the October 2017 Filing was proposed in addition to the formula rate and other incentive rate treatments that were subsequently approved by the Commission on November 3, 2017.<sup>1</sup> The November 2017 Order granted a 50 basis point ROE adder for providing the New York Independent System Operator, Inc. (NYISO) with operational control of the WNY Project, along with other regulatory incentives, such as a Regulatory Asset Incentive and the use of a hypothetical capital structure composed of 60% equity and 40% debt.<sup>2</sup> The Commission, however, found that the proposed base ROE of 10.5% may not be "just and reasonable," and set the matter for hearing in the event the parties are unable to reach a settlement.<sup>3</sup>

As discussed below, the NYPSC is concerned that the cumulative effect of the regulatory incentives sought by NEET NY

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<sup>1</sup> Docket Nos. ER16-2719, et al., NEET NY, Order Accepting, Subject to Condition, and Suspending Formula Rate, Establishing Hearing and Settlement Judge Procedures, and Granting Incentive Rates (issued November 3, 2017) (November 2017 Order).

<sup>2</sup> The Regulatory Asset Incentive allows NEET NY to recover all prudently-incurred pre-commercial costs not capitalized prior to its formula rate being effective.

<sup>3</sup> November 2017 Order, ¶51.

will result in rates that are unjust and unreasonable.<sup>4</sup> While the NYPSC recognizes the need for financial stability of companies engaged in transmission development, the Commission must carefully balance that interest with those of the public to ensure that rates are not excessive.<sup>5</sup> The October 2017 Filing, however, seeks certain ROE incentive adders that are unnecessary and duplicative given other regulatory treatments sought by NEET NY that would achieve the same objectives. In particular, NEET NY seeks ROE incentive adders to address project risks and challenges that would already be addressed by the abandonment and CWIP regulatory incentives that it seeks.

Moreover, NEET NY overstates many of the financial risks that it suggests warrant these additional incentives. Significantly, NEET NY asks the Commission to ignore the fact that its parent company has revenues of approximately \$16.2 billion and that it already has access to capital. As NEET NY points out, it "will receive initial funding support from [its

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<sup>4</sup> The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York State Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

<sup>5</sup> See, Farmers Union Cent. Exchange, Inc. v. FERC, 734 F.2d 1486, 1502 (D.C. Cir. 1984) (noting that rates must that "fall within a 'zone of reasonableness,' where rates are neither 'less than compensatory' [for producers] nor 'excessive'" to consumers).

affiliate NextEra Energy Capital Holdings, LLC (NEECH)].”<sup>6</sup> The Commission should recognize these material facts and not treat NEET NY as a “new” entity merely because it was set up as such by its much larger parent company.

In addition, the Commission should recognize that NEET NY was selected by the NYISO to develop the WNY Project after a competitive process was held pursuant to Order NO. 1000, in order to determine the most cost-effective and efficient project. Ratepayers should be afforded the benefits of this competitive process by having NEET NY apply proposed cost containment mechanisms to its bid, rather than an estimate developed by the NYISO’s consultant. Accordingly, the NYPSC respectfully requests that the Commission ensure that ratepayers are not exposed to excessive rates by holding NEET NY to its competitive bid and by rejecting the unnecessary and duplicative regulatory incentives.

#### **NOTICE OF INTERVENTION**

The NYPSC submits its Notice of Intervention and Protest pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§385.211 and

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<sup>6</sup> October 2017 Filing, p. 14.

385.214(a)(2)), and the Commission's Combined Notice of Filings #1, issued on October 23, 2017.<sup>7</sup>

Copies of all correspondence and pleadings should be addressed to:

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## DISCUSSION

### I. The Commission Should Reject NEET NY's Proposed ROE Incentive Adders That Are Unnecessary and Excessive

The October 2017 Filing makes several assertions regarding the risks and challenges purportedly facing NEET NY in undertaking the WNY Project. Many of these assertions, however, are overstated or incorrect. Regarding the financial challenges, it should be recognized that NEET NY has adequate access to capital through its parent, NextEra Energy, Inc., which has revenues of approximately \$16.2 billion and its

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<sup>7</sup> The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State, and is therefore a State Commission as defined in section 3(15) of the Federal Power Act (FPA)(16 U.S.C. §796(15)).

affiliate, NEECH, which is already prepared to provide the initial financing for the project.<sup>8</sup>

To the extent additional capital may be needed, investors will be cognizant of the scale and financial strength of NEET's ultimate parent and would not view it as a risky start-up. Further, due to its selection by the NYISO, NEET NY will be ensured of a tariff mechanism to fully recover all prudently incurred costs, as well as annual true-ups through its formula rate that will prevent any prolonged financial shortfalls. The Commission's November 2017 Order further mitigates any financial challenges by approving the use of the Regulatory Asset Incentive, use of a 60/40 hypothetical capital structure, and a 50 basis point ROE adder for participating in the NYISO.

The risks and challenges of developing the WNY Project can be further mitigated by allowing recovery of 100% of prudently incurred costs in the event the project is abandoned and by including 100% of CWIP in rate base. It is unclear that any significant risk would remain once these two additional incentives are in place. As a result, with these two further incentives, as well as the other favorable regulatory treatment already afforded to NEET NY in the November 2017 Order, it is

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<sup>8</sup> October 2017 Filing, p. 14.

likely that any potential investors' concerns would be significantly ameliorated, if not eliminated.

The base ROE, once approved, and hypothetical 60/40 capital structure should offer more than adequate cash flow to adequately compensate investors for the risks inherent in the WNY Project, making the other incentives (i.e., a 50 basis point adder for independent transmission ownership and a 50 basis point adder for an additional incentive) duplicative, redundant, and excessive. The Commission should not ignore these salient facts and treat NEET NY as a "new" and standalone corporate entity.

Regarding the regulatory and site control challenges and risks cited by NEET NY, it is incorrect to suggest that there is no precedent for ensuring the use of an incumbent utility's existing rights of way. The NYPSC previously addressed this matter in approving New York Transco, LLC's use of the incumbent utilities' rights of way.<sup>9</sup> This same process can be used in the case of NEET NY to eliminate the "considerable uncertainty" it suggests.<sup>10</sup> Likewise, it is incorrect for NEET NY to suggest that it risks challenges to

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<sup>9</sup> See, Case 16-E-0013, New York State Electric & Gas Corp. and New York Transco, LLC, Order Authorizing Transfers Subject to Conditions and Modifications (issued April 21, 2016).

<sup>10</sup> October 2017 Filing, p. 16.



"the underlying public policy approved by the NYPSC."<sup>11</sup> Because any such challenges would need to have been brought within four months of a final NYPSC determination, and the NYPSC issued a final order over a year ago, it cannot be claimed that any such risk exists.<sup>12</sup>

In sum, NEET NY fails to present any risks or challenges that are unique to it, or that won't already be addressed through the regulatory incentives that have previously been afforded to it. The addition of the abandonment and CWIP regulatory incentives should adequately address any remaining risks, without having to further reward them with additional ROE incentive adders.

## **II. The Commission Should Ensure the Integrity of the Competitive Process by Holding NEET NY to Its Bid**

A significant aspect of the WNY Project is that NEET NY was selected by the NYISO as the winning developer as part of the competitive planning process established by the Commission under Order No. 1000. This process resulted in the NYISO finding that NEET NY's project was the most cost-effective and

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<sup>11</sup> October 2017 Filing, p. 18.

<sup>12</sup> See, Case 14-E-0454, NYISO's Proposed Public Policy Transmission Needs for Consideration, Order Addressing Public Policy Transmission Need for Western New York (issued October 13, 2016); see also, New York State Civil Practice Law and Rules §217.

efficient. While any other competitive process would mean that the winning bidder shall apply the terms used as the basis for its selection, NEET NY seeks to depart from its bid and to instead use the NYISO consultant's cost estimate (i.e., \$181 million) as the limit on applying the ROE Incentive Adder.

Considering that NEET NY was selected pursuant to a competitive process, ratepayers should be afforded the benefits of that process by having NEET NY's bid serve as the basis for its commitment to a cost estimate. Moreover, NEET NY should be required to apply a meaningful cost containment mechanism and to limit the application of all incentive adders, which should include curtailing the application of the NYISO participation adder and any other ROE incentive adders, to any costs above its bid. This approach will help ensure the integrity of the competitive planning process and protect ratepayers from excessive rates.

#### **CONCLUSION**

In accordance with the forgoing discussion, the Commission should reject the proposed incentive rate adders that

are excessive and necessary, and ensure ratepayers receive the benefits of the competitive process.

Respectfully submitted,

*Paul Agresta*

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of the State of New York  
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Dated: November 13, 2017  
Albany, New York

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: Albany, New York  
November 13, 2017

*David G. Drexler*

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