

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 14, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

CASE 14-E-0068 - Proceeding on Motion of the Commission to
Establish Policies and Procedures Regarding
Transmission Planning for Public Policy
Purposes.

POLICY STATEMENT ON TRANSMISSION PLANNING
FOR PUBLIC POLICY PURPOSES

(Issued and Effective August 15, 2014)

BY THE COMMISSION:

INTRODUCTION

On July 21, 2011, the Federal Energy Regulatory
Commission (FERC) issued Order No. 1000, which required the New
York Independent System Operator, Inc. (NYISO) to develop a
planning process for the consideration of public policy-driven
transmission needs.¹ On October 11, 2012, the NYISO and New York
Transmission Owners (NYTOs) made an initial compliance filing
with FERC to amend the NYISO's Open Access Transmission Tariff
(OATT) to include this new planning process, which will be

¹ See Docket No. RM10-23-000, Transmission Planning and Cost
Allocation by Transmission Owning and Operating Public
Utilities, Order No. 1000 (issued July 21, 2011), reh'g
denied, Order No. 1000-A (issued May 17, 2012), reh'g denied,
Order No. 1000-B (issued October 18, 2012).

conducted on a two-year cycle.² On April 18, 2013, FERC accepted the filing made by the NYISO and NYTOs, subject to a further compliance filing.³ The NYISO and NYTOs submitted a second compliance filing on October 15, 2013, as directed by the April 2013 FERC Order. On July 17, 2014, FERC accepted the second compliance filing, and directed additional revisions to the NYISO OATT.⁴

The NYISO OATT provisions accepted by FERC rely on the Commission for the identification of any "Public Policy Requirements" that may drive the need for transmission facilities. A "Public Policy Requirement" is defined as a "federal or New York State statute or regulation, including [an order issued by the Commission] adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act, any successor statute, or any duly enacted law or regulation passed by a local governmental entity in New York State, that may relate to transmission planning on the [Bulk Power Transmission Facilities]."⁵

On March 28, 2014, the Commission instituted this proceeding to develop the procedures it will use to identify any such Public Policy Requirements that may drive the need for transmission facilities. When a potential need is identified,

² The NYTOs include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Long Island Power Authority, Niagara Mohawk Power Corporation d.b.a. National Grid, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, and the New York Power Authority.

³ Docket No. ER13-102-000, New York Independent System Operator, Inc., Order on Compliance Filing (issued April 18, 2013) (April 2013 FERC Order).

⁴ Docket Nos. ER13-102-000 et al., New York Independent System Operator, Inc., Order on Rehearing and Compliance (issued July 17, 2014) (July 2014 FERC Order).

⁵ July 2014 FERC Order, ¶¶99, 122.

it would be referred to the NYISO to solicit and evaluate potential solutions.⁶ The March 2014 Order sought comments on a proposed set of procedures. In response to the solicitation, comments were received from the NYTOs, the NYISO, Entergy,⁷ and NextEra Energy Transmission New York, Inc. (NextEra). Upon consideration of these comments, the Commission adopts policies and procedures, as discussed below, to guide the transmission planning process for public policy purposes.

BACKGROUND

The March 2014 Order described a proposed set of procedures for identifying any Public Policy Requirements that may drive the need for transmission and warrant the NYISO soliciting solutions for evaluation. These procedures were comprised of six steps, including: (1) the NYISO submitting proposed Public Policy Requirements that the NYISO or its stakeholders have identified regarding potential transmission needs, which will be posted on the Commission's website; (2) the Commission issuing a notice in the State Register, pursuant to the State Administrative Procedure Act (SAPA), inviting comments on any proposals posted in Step 1, along with any subsequent additions identified by Staff of the Department of Public Service (Staff), and any proposed evaluation criteria the NYISO should apply and analyses it should perform; (3) Staff posting an optional set of preliminary comments, for interested parties to review and comment upon, addressing why any proposed Public

⁶ Case 14-E-0068, Policies and Procedures Regarding Transmission Planning for Public Policy Purposes, Order Instituting Proceeding and Soliciting Comments (issued March 28, 2014) (March 2014 Order).

⁷ Entergy includes Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Fitzpatrick, LLC, and Entergy Nuclear Operations, Inc, collectively.

Policy Requirements warrant, or do not warrant, the NYISO soliciting projects for evaluation; (4) the Commission issuing an order identifying the potential transmission needs, based on Public Policy Requirements, that warrant the NYISO soliciting solutions (along with an explanation of proposed Public Policy Requirements that do not warrant referral to the NYISO), and an identification of any proposed evaluation criteria the NYISO should apply and analyses it should perform;⁸ (5) the Commission posting the Order issued under Step 4 on its website and providing it to the NYISO; and, (6) the Commission determining, after reviewing the NYISO's viability and sufficiency analyses of any proposed transmission or non-transmission solutions, that a transmission solution should or should not be pursued further.⁹

Following these steps, assuming the Commission determines that a transmission solution should be pursued further under Step 6, it was envisioned that the NYISO would apply any applicable evaluation criteria in preparing analyses, and "select" the most efficient or cost-effective transmission project.¹⁰ The selected transmission project would become eligible for cost allocation and recovery under the NYISO's OATT.¹¹

⁸ The Commission may also find that none of the suggested policies constitute Public Policy Requirements, or that transmission is not needed to address them.

⁹ The NYISO preliminarily evaluates all proposed solutions to determine whether each is a viable and sufficient solution to satisfy the transmission need identified under the Public Policy Requirement. OATT §§ 31.4.6.3 and 31.4.6.4. On the basis of the NYISO's preliminary analysis or the Commission's independent analysis, the Commission could find that a generation or demand side project is preferable to a transmission solution.

¹⁰ The full process is described in Section 31.4 of the OATT.

¹¹ Cost recovery is only available to transmission projects.

COMMENTS

NYTOs

The NYTOs request additional language specifying that the Commission's procedures are related to consideration of transmission needs driven by Public Policy Requirements. In addition, the NYTOs seek to establish a 60-day time period from the receipt of "proposed transmission needs from the NYISO" in which Staff must issue a SAPA notice. The NYTOs also suggest a 60-day time period for the Commission to issue an order after the close of the SAPA comment period. Lastly, the NYTOs ask that the Commission's procedures expressly provide that "at any time after the NYISO's viability and sufficiency analyses are completed, the Commission, after notice and comment, may determine that there is no longer a transmission need driven by Public Policy Requirements that warrants further evaluation of proposed transmission by the NYISO."¹²

NYISO

The NYISO, similar to the NYTOs, requests clarification that the Commission's procedures are intended to identify public policy transmission needs. The NYISO also supports the NYTOs request to establish a 60-day period for issuance of a SAPA notice and a 60-day period for making a determination following the close of the SAPA comment period. In order to ensure any such transmission needs are posted on its website, as required under its OATT, the NYISO seeks clarification that Public Policy Transmission Needs proposed by the Commission or Staff will be submitted to the NYISO.

Entergy

Entergy seeks to limit the Commission's decision-making authority to identifying any public policy transmission needs that warrant the NYISO soliciting solutions. Entergy

¹² NYTO Comments, p. 2.

maintains that the Commission should be prevented from selecting between a transmission and non-transmission solution to satisfy an identified Public Policy Requirement. Entergy argues that the NYISO should be responsible for making that election.

Entergy also seeks to clarify that any evaluation criteria provided by the Commission would be in addition to the criteria the NYISO is obligated to apply under the OATT. Further, Entergy requests clarification that any additional criteria identified by the Commission would only be applied, as directed under the OATT, to the extent compliance with such criteria and analyses are feasible. Lastly, Entergy suggests that the Commission specify that its determination whether to refer transmission needs to the NYISO will be in accordance with the requirements of SAPA.

NextEra

NextEra recommends clarification that the Commission will solicit comments not only on Public Policy Requirements, but also on any proposed transmission need that is driven by a Public Policy Requirement. Similar to the NYTOs, NextEra recommends that the term "Public Policy Requirements" be replaced with "transmission needs driven by Public Policy Requirements."¹³ Likewise, NextEra supports the NYTOs' proposal for posting a SAPA notice within 60 days of receipt of notice from the NYISO and issuance of a determination within 60 days after the close of the SAPA comment period.

DISCUSSION

As discussed in the March 2014 Order, the NYISO plans to institute a planning process that involves the evaluation of potential transmission needs driven by Public Policy Requirements. The OATT process envisions that the planning

¹³ NextEra Comments, p. 3.

decisions will be based on an "open and transparent" process that offers a "meaningful opportunity" for interested parties to provide input prior to our decision on whether any Public Policy Requirements should be addressed.¹⁴ The policies and procedures adopted below, which will be observed in coordinating the Commission's role and responsibilities with the NYISO's public policy planning process, are intended to achieve these objectives and align the Commission's resource planning and policy efforts with the NYISO's new planning activities. These procedures are described in the Appendix, and are generally consistent with the six steps noted above that were proposed as part of the March 2014 Order.

Public Policy Planning Coordination Procedures

As an initial matter, several comments suggest that the Commission refer to its procedures as a process for the consideration of "transmission needs driven by Public Policy Requirements."¹⁵ This characterization is rejected as a misnomer, given that the NYISO process, in response to an identified Public Policy Requirement, involves an evaluation of other resources besides transmission, such as generation and demand response. The type of resource to be pursued is a threshold question, as discussed further below, which suggests that the process should be characterized more broadly than as solely related to transmission needs. Accordingly, the Commission's determination, as indicated in the Appendix, will be referred to as "the identification of Public Policy Requirements that may drive the need for transmission."

Since Step 4 (i.e., a PSC Order concerning any Public Policy Requirements warranting evaluation) may include the

¹⁴ NYISO OATT §31.4.2.1.

¹⁵ NYTOs Comments, p. 1; NYISO Comments, p. 3; NextEra Comments, p. 2.

designation of a Public Policy Requirement for the first time, any such designation will be preceded by the issuance of a SAPA notice, sufficient under that statute. This requirement is already set forth at Step 2.¹⁶ This addresses one of Entergy's requested clarifications with respect to Step 4.

In response to the NYISO's requested clarification with respect to Step 2 (i.e., the issuance of the SAPA notice), a procedure will be devised for providing the NYISO with any Public Policy Requirement that may drive the need for transmission, which is identified by the Commission subsequent to the NYISO's submission contemplated in Step 1. As the NYTOs, NYISO, and NextEra propose, a deadline is appropriate for the posting of a SAPA notice under Step 2 following receipt of the NYISO's submission. However, 45 days, instead of 60 days, should be more than sufficient for posting the notice in the State Register.

While Entergy seeks clarification that, pursuant to Step 4, any evaluation criteria or analyses that the Commission identifies would only apply to the extent compliance with such criteria and analyses are feasible, such limiting language need not be stated within the procedures. The NYISO OATT already contains such language that will govern the NYISO's process. Entergy, however, properly points out that any evaluation criteria the Commission identifies would be in addition to those under the OATT. Any additional criteria identified by the Commission will be characterized accordingly.

Contrary to the suggestion of the NYTOs, NYISO, and NextEra, a 60-day deadline will not be adopted for issuance of

¹⁶ The NYISO OATT recognizes that a Public Policy Requirement may prescribe a cost allocation method. To the extent the Commission may prescribe such a method in designating a Public Policy Requirement, the SAPA notice will accordingly seek comments.

an order under Step 4. While the Commission will strive to make a timely decision in any event, myriad issues that cannot be foreseen may prevent action within the rigid deadline suggested. Since such a deadline unnecessarily constrains the time frame for rendering a decision, the time period for issuance of an Order is left open under Step 4.

Consistent with the proposal in the March 2014 Order, the determinations that are necessary to the implementation of the public policy planning process should be made by the Commission, rather than Staff. No comments addressed the distinction between the Commission and Staff. However, because the NYISO's OATT refers to both Staff and Commission actions in the planning process, conforming amendments to the OATT may be needed to clarify that the Commission will be responsible for any such determinations.¹⁷

Contrary to Entergy's suggestion, Step 6 is an important element to the public policy planning process procedures and it will be retained. The results of the NYISO's viability and sufficiency analyses will be reviewed in determining whether to pursue a transmission or non-transmission solution. If, after review of the viability and sufficiency analyses and any related public comments, transmission is an appropriate response to the identified need, the Commission will confirm that the NYISO should proceed with the full evaluation of the proposed transmission projects. However, it may also be determined upon review that a non-transmission alternative is preferable. Once it is decided that an identified Public Policy Requirement is no longer driving the need for a transmission solution, the identification of that Public Policy Requirement

¹⁷ Under the Public Service Law (PSL), the Commission, rather than Staff, "possesses the powers and duties" specified therein and "all powers necessary or proper to enable it to carry out the purposes of [the PSL]". PSL §4(1).

will be withdrawn, and non-transmission alternatives will be pursued as appropriate.

While Step 6 is not specified in the NYISO's OATT, it comports with the design of the planning process, which appropriately recognizes the Commission's jurisdiction to determine needs and to decide what resources to deploy to meet them. The NYISO does not object to this step. It notes that Step 6 would enable it to avoid expending significant time and resources on performing a detailed evaluation and selection when it is the Commission's ultimate authority to determine whether or not a transmission solution is needed and a certificate authorizing construction should be granted. Conforming OATT amendments may also be needed to make this additional step explicit.

While the NYTOs suggest that Step 6 may occur at any time after the NYISO's viability and sufficiency analysis are completed, this step will be deployed to either confirm that the NYISO should proceed with the full evaluation of the proposed transmission projects, or to provide for the withdrawal of the referral of a transmission need to the NYISO because a non-transmission alternative should be pursued instead.

Of course, any such review will be concluded in a timely manner following the NYISO's preliminary viability and sufficiency analysis. While any determination under Step 6 will be preceded by a SAPA notice and comment process, the same as within Step 4, no timeframe for the issuance of a decision will be specified under Step 6 for the same reasons noted with respect to Step 4.

Statutory Authority

In the March 2014 Order, it was decided that the Commission has authority under the PSL to pursue transmission planning efforts for public policy purposes, independent of

Order No. 1000. In particular, PSL §5(2) establishes the authority to "encourage all persons and corporations subject to [the Commission's] jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources."¹⁸ The broad language of PSL §5(2) extends to requiring electric utilities, which include the NYISO¹⁹ and New York investor-owned utilities, to study various alternatives for meeting future electric system needs, whether through transmission, generation, and demand-side management options. Moreover, PSL §66(5) authorizes the Commission to direct such improvements to utility systems as are reasonable. Other provisions of the PSL lodge jurisdiction over transmission planning and siting with the Commission.²⁰

¹⁸ PSL §5(2) has been held to confer "broad discretion" to promote energy conservation. See Multiple Intervenors v. NYPSC, 166 A.D.2d 140 (3rd Dept. 1991). Furthermore, PSL §5(2) was determined to provide the Commission with jurisdiction to require utilities to file plans outlining how they would adapt to a competitive electric industry. See Energy Association of New York State v. NYPSC, 169 Misc. 2d 924 (Supreme Ct. 1996) (noting that PSL §5(2) transformed "the traditional role of the Commission from that of an instrument for a simple case-by-case consideration of rates requested by utilities to one charged with the duty of long-range planning for the public benefit").

¹⁹ Case 00-E-1380, New York Independent System Operator, Inc. - Provision of Information and Data, Order Directing Provision of Data and Information (issued August 14, 2000).

²⁰ See PSL §126(1) (providing that before the Commission may site a major electric utility transmission facility, the Commission must find and determine, in relevant part, the basis of the need for the facility, that such facility "will serve the interests of electric system economy and reliability," and that the facility will serve the "public interest, convenience, and necessity").

Entergy's argument that adopting Step 6 of the procedures is preempted by the Federal Power Act (FPA) lacks merit. By determining whether a transmission or non-transmission alternative should be pursued, the Commission is not setting, directly or indirectly, the rate for any wholesale sales regulated by FERC under the FPA. Ensuring the safety and adequacy of electric service is a core function under the PSL, which the FPA expressly reserves to states. Moreover, the Commission views a determination whether a transmission or non-transmission alternative should be pursued to be akin to integrated resource planning.²¹ As a result, we reject Entergy's argument that Step 6 is "field" preempted as an impermissible intrusion upon exclusive federal authority. The process adopted herein harmonizes the State's siting and planning authority with FERC's wholesale rate authority, and should provide further regulatory clarity to developers.

CONCLUSION

The policies and procedures contained in the Appendix appropriately guide the Commission's roles and responsibilities with respect to the NYISO's public policy planning process. The Commission may revisit these policies and procedures in the future, as appropriate, in order to properly align them with the State's public policy objectives and the NYISO's approved process.

²¹ The July 2014 FERC Order explicitly recognizes that Order No. 1000 does not touch upon "specific substantive matters traditionally reserved for the states, including integrated resource planning." July 2014 FERC Order, ¶340.

The Commission orders:

1. The policies and procedures identified in the Appendix, and described in the body of this order, are adopted to guide a transmission planning process for public policy purposes.

2. This proceeding is continued.

By the Commission,

KATHLEEN H. BURGESS
Secretary

Procedures for the Identification of Public Policy Requirements That May Drive the Need for Transmission Facilities, and for Coordination With The NYISO's Public Policy Planning Process

Step 1: Staff posts on the Commission's website (www.dps.ny.gov) any proposed Public Policy Requirements that may drive the need for transmission that the NYISO receives from stakeholders or are proposed by the NYISO during the NYISO's 60-day solicitation period.

Step 2: A notice will be issued within 45 days of Step 1, pursuant to the State Administrative Procedure Act (SAPA), inviting comments within the applicable SAPA time period on whether any of the proposals posted on the Commission's website in Step 1 qualify as Public Policy Requirements that may drive the need for transmission and should be referred to the NYISO to solicit and evaluate potential solutions. The notice will also solicit comments on any such Public Policy Requirements that may drive the need for transmission that are proposed by the Commission,¹ and on whether the Commission should provide evaluation criteria to the NYISO or require the NYISO to perform specific analyses as part of its project review process. In addition, the SAPA notice may seek views as to whether any proposed Public Policy Requirements might be addressed by transmission or non-transmission solutions. To the extent the Commission may prescribe a cost allocation method in designating a Public Policy Requirement, the SAPA notice will accordingly seek comments. The Secretary to the Commission may provide additional time for comments beyond the time allowed by SAPA.

¹ Any Public Policy Requirements that may drive the need for transmission that are identified by the Commission subsequent to the NYISO's submission contemplated in Step 1 will be provided to the NYISO for posting on the NYISO's website.

Step 3: Staff may post preliminary comments addressing why any proposed Public Policy Requirements warrant or do not warrant the NYISO soliciting projects for evaluation. Interested parties will be provided no less than 14 days to submit comments in response to any such preliminary Staff comments.

Step 4: Following review of all comments, the Commission will issue a written Order explaining why any proposed Public Policy Requirements may drive the need for transmission and should be referred to the NYISO to solicit and evaluate solutions. The Order identifying a Public Policy Requirement that may drive the need for transmission may also establish evaluation criteria and describe any specific analysis for the NYISO to undertake. In the event the Commission identifies any such evaluation criteria or analyses, the Commission will specify that such criteria and analyses are in addition to those criteria and analyses that the NYISO is required to apply under its OATT. The Commission's Order will also explain why any proposed Public Policy Requirements do not warrant being referred to the NYISO to solicit solutions.

Step 5: The Commission's order will be provided to the NYISO and posted on the Commission's website (www.dps.ny.gov).

Step 6: If the Commission Order in Step 4 identifies potential transmission needs that should be referred to the NYISO to solicit and evaluate solutions, the Commission will review the results of the NYISO's subsequent viability and sufficiency analyses of potential solutions. The Commission will thereafter issue a written Order, following its issuance of a SAPA notice

and review of any comments, explaining whether a transmission solution should continue to be analyzed by the NYISO, or whether a non-transmission solution should be pursued instead. In the event a non-transmission alternative will be pursued, the Commission will determine that there is no longer a Public Policy Requirement driving the need for a potential transmission solution that warrants further evaluation by the NYISO.