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NEETNY Comments on NYISO’s Draft Western New York Public Policy Transmission Planning Report

NextEra Energy Transmission New York, Inc. (“NEETNY”) appreciates the opportunity to provide comments to the NYISO in response to the June 30, 2017 Draft Western New York Public Policy Transmission Planning Report (“Draft Report”), as set forth below:

I. The Selected Developer is Required to Develop its Project

During the July 20 ESPWG/TPAS meeting, there was considerable discussion about the evaluation of projects. The general assumption was that qualified developers who submitted proposals would, if selected by NYISO, develop their project themselves. While developers were asked for material changes prior to the report’s release, it does not appear that these were considered in the Draft Report since Appendix E states that “[t]he review team’s evaluation did not include further review of Developer’s qualifications or credentials beyond the initial screening completed prior to the submittal of proposals.”¹

Prior to the submission of proposals, developers were required to submit their qualifications, which included responses to six questions. See NYISO OATT Attachment Y and NYISO Reliability Planning Process Manual Attachment A. NYISO used these responses to determine whether developers had the expertise, financial backing, ability to operate and maintain transmission facilities, and general capability to develop their respective projects. A new developer cannot be assumed to share these attributes. Therefore, NEETNY notes that NYISO’s tariff specifically requires each developer to be found qualified by NYISO and a project award is premised on this finding. Accordingly, a developer is not permitted under the NYISO tariff to sell or transfer a project to an unqualified developer.²

¹See Substation Engineering Company’s Western New York Public Policy Transmission Need – July 14, 2017 Draft Technical Review Report at 4.

² See NYISO Open Access Transmission Tariff, Section 31.4.4 of Attachment Y. This section also requires to developers to provide updates to its qualifications if there is a material change and gives NYISO the authority to revoke a developers’ status if they are no longer qualified. The tariff provides in relevant part that “[a] Developer shall retain its qualification status for a three-year period following the notification date; *provided, however*, that the ISO may revoke this status if it determines that there has been a material change in the Developer’s qualifications and the Developer no longer meets the qualification requirements. A Developer that has been qualified shall inform the ISO within thirty days of any material change to the information it provided regarding its qualifications.....”

II. Tax Exempt Status Should Not be Considered by NYISO in Evaluating Project Costs

Government entities' tax exempt status means that they will not pay sales taxes for equipment, or property taxes to the municipalities in which the project is built. Other developers will pay such sales and property taxes, thereby benefitting New York state taxpayers as well as easing the tax burden of residents in those communities where the project lies. No proponent should be deemed to have a project cost advantage due to tax exempt status given such a project would provide less taxpayer benefit. To ensure all projects are treated fairly, NEETNY believes that NYISO should continue to impute property and sales taxes on a uniform basis, thereby placing all projects on a level playing field.

III. NYISO Appropriately Addressed Right-of-Way in the Draft Report in Accordance with the Requirements and Policy of the NYPSC

The issue of right-of-way access was a significant focus of discussion during the July 20 ESPWG/TPAS meeting. Specifically, NYPA raised a point with respect to non-incumbent rights to access and use of the incumbent utility's right of way.³ NYISO correctly articulated that each developer was required to "present the NYISO with robust information and a plan with respect to rights-of-way ownership or control in the future and how that plan would affect rights-of-way responsibilities, access and utility use issues going forward."⁴ The NYPSC set forth its policy with respect to developer right-of-way access in the same decision.⁵ As was recognized by the NYPSC, there is the potential for the incumbent utilities to have an unfair advantage during the competitive process if they deny right-of-way access to developers. Therefore, the NYPSC required incumbent utilities to bargain in good faith for the use of the right-of-way which was paid for by utility ratepayers, those same ratepayers who will benefit from the public policy transmission projects. NEETNY expects incumbent utilities to negotiate fair terms comparable

³ NEETNY has not undertaken a legal analysis of New York law on this issue and therefore offers no opinion on NYPA's legal opinion at this time. This question has no bearing on NEETNY's project or schedule.

⁴Case 12-T-0502, *et al.*, Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades, December 17, 2015 Decision at 60.

⁵Case 12-T-0502, *et al.*, Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades, December 17, 2015 Decision at 60 which stated that "[t]he Commission does not expect the utility company owner of the rights-of-way to give away its ratepayer-funded property rights for free. Nor does the Commission expect the utility company owner to allow the use of utility rights-of-way without reasonable operating conditions. Instead, the Commission expects the utility company owner to bargain in good faith to reach an agreement with the developer of the transmission solution as to property access and compensation as it would for other linear project developers that seek to co-locate on utility property. The utility company owner is the steward of the property held for the benefit of its ratepayers, and the beneficiaries of the transmission solution should provide just compensation to the utility company ratepayers that funded the asset."

to those in the lease arrangements between Consolidated Edison and New York Transco and NYSEG and New York Transco, approved by the NYPSC in its April 2016 decision.⁶

IV. Phase-Angle Regulators Provide a Valuable Benefit to the System and Customers

In an increasingly complex power generation landscape and a changing energy market, the capability to control the flow of power is gaining importance and offers considerable system benefit. Phase-Shifting Transformers (“PSTs”), also known as Phase-Angle Regulators (“PARs”), are a time-tested technology for power flow control to protect lines, make grids more reliable, and more efficiently deploy resources. PSTs are among the most economic and cost-effective solutions for power flow management. PSTs improve the stability and flexibility of grids and help grid operators get the most value out of existing hardware. Additionally, PARs are particularly instrumental in supporting the integration of large amounts of renewable resources into the bulk transmission system.

In the case of Western New York, the addition of the PAR on the 345 kV bulk power system provides the next level of controllability necessary to achieve the PPTN objectives with high performance. The PAR, as conservatively modeled by NYISO, enables sustained higher transfers under multiple system conditions which translates into greater system efficiencies and results in higher production cost savings. This benefit was evident in the production cost analyses performed by NYISO for each scenario and forecasted year. NYISO’s simulations of NEETNY’s non-PAR proposal demonstrate high levels of performance, although lower than if a PAR is included. This simulates situations where NYISO would bypass the PAR. The ability to bypass the PAR is included in NEETNY’s proposal as/if/when desired to accomplish other objectives. In addition, NYISO could choose to operate the PAR temporarily to help alleviate maintenance outage impacts, congestion management, and many other system conditions the PAR can impact. For these reasons, NEETNY’s proposal, including the PAR, provide a material technical advantage over other proposals.

V. Outages During Construction Have Been Properly Considered by NYISO During its Project Evaluation

There was also discussion at the July 20 ESPWG/TPAS meeting regarding outages during construction. NEETNY agrees with the Draft Report that such outages will increase congestion costs and make it more difficult to operate the grid reliably, thereby impacting New York residents and businesses dependent on reliable service. Moreover, while the benefits of the Western New York project may accrue over decades, the up-front costs due to construction outages are front-end loaded and potentially very material. NEETNY therefore appreciates that the Draft Report recognizes outages during construction as an important issue.

⁶Case No. 16-E-0012, Joint Petition of New York State Electric and Gas Corporation and New York Transco LLC for Approval of a Transfer or Lease of Assets and Case No. 16-E-0013, Joint Petition of Orange and Rockland Utilities, Inc., Consolidated Edison Company of New York, Inc., and New York Transco LLC for Approval of a Transfer or Lease of Assets, April 21, 2016 Decision.

VI. Developers Can Address Cost Containment Through Their FERC Formula Rate Proposal

Throughout the course of the Western New York solicitation process, including the July 20 ESPWG/TPAS meeting, there has been discussion regarding cost containment provisions and how they would be evaluated/considered by NYISO. NYISO was asked if it would consider cost containment in its evaluation of the Western New York projects. On January 31, 2017, NYISO responded that “[it] will not consider cost containment in selection of more efficient or cost-effective Public Policy Transmission Project because such consideration is not provided for in its tariffs. OATT Attachment Y Section 31.4.8.2 states that ‘Actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by [FERC].’” Cost containment mechanisms can provide benefits to customers, but the key here is what the NYISO has repeatedly made clear: that for this solicitation, it will not consider cost containment in its evaluation process. However, there is nothing to stop any developer from proposing a cost containment mechanism in its FERC formula rate filing.

In conclusion, NEETNY thanks the NYISO, SECO, and the NYPSC for all of their efforts to date. We recognize that this is a demanding and complicated process with implications for all of New York’s energy customers. We look forward to working with NYISO, the NYPSC, and other stakeholders as the process continues.

Please do not hesitate to contact me if you would like to discuss any aspect of these comments.

Sincerely,

Stephen Gibelli

Stephen Gibelli
Director of Regulatory Affairs
On behalf of NextEra Energy Transmission New York, Inc.