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May 30, 2018

Leigh Bullock
New York Independent System Operator, Inc.
10 Krey Boulevard, Rensselaer, NY 12144
Sent via E-Mail: lbullock@nyiso.com

Re: Short Term Improvements to Transmission Planning
Processes

Dear Ms. Bullock:

The Staff of the New York State Department of Public Service (DPS Staff) hereby provides comments on the New York Independent System Operator, Inc's. (NYISO) proposals for "Short Term Improvements to Transmission Planning Processes," which were presented at the Electric System Planning Working Group on April 30, 2018. DPS Staff respectfully requests that the NYISO consider these comments in its decision-making process and adopt the recommendations contained herein.

Although the NYISO's proposal encompasses six potential process improvements, these comments focus on two proposals of particular importance. Specifically, "Short Term Process Improvement 6: Cost Containment," is addressed first given the critical need to implement meaningful and enforceable

cost containment provisions as part of the competitive bidding and transmission project selection process. Second, the "Short Term Process Improvement 3: Eliminate Pause Point" is addressed due to implications upon the New York State Public Service Commission's (NYPSC) responsibilities specified under the planning process.

Improvement 6: Cost Containment

The NYISO proposes that "all Developers may submit a capped cost amount for certain elements of their Public Policy Transmission Projects." It appears that the NYISO would limit these elements to capital costs (e.g., development costs, equipment and construction costs, rights-of-way, and land leases), along with standard terms and exclusions. As envisioned, the cost cap would be enforceable by the NYISO and Federal Energy Regulatory Commission (FERC). While pursuing these cost containment provisions, the NYISO seeks to ensure the process is not burdensome or time consuming.

DPS Staff strongly supports the implementation of a meaningful and enforceable set of cost containment provisions. These provisions are necessitated by FERC's Order No. 1000 and orders on compliance, which established a competitive bidding process for transmission developers with the NYISO making the ultimate selection as to the "more efficient or cost-effective" transmission project. However, the NYISO's proposal fails to identify and consider the very significant costs that may vary by developer related to revenue requirement. These costs may have a profound impact on which project is truly more cost-effective and should be taken into consideration.

To ensure a truly "apples to apples" comparison of developers' projects, the NYISO must also take into consideration the key financial terms used to establish the developer's revenue requirement, such as Return on Equity (ROE),

ROE incentive adders, debt/equity capital structures, and depreciation. Administering a process that considers this information would be relatively simple to accomplish in a timely manner, since developers could be allowed to voluntarily provide this binding information along with their capital costs, and the projected revenue requirement for each project could be easily calculated over an identified period. This approach would also obviate the need for intervenors to participate in multiple rate proceedings before FERC since the selected developer would be required to adhere to the terms contained in its bid when filing for rate recovery.

Alternatively, in the event a developer chooses to not submit a binding bid with respect to capital and/or revenue requirement costs, the NYISO could include, as a qualification to bid on a project, that a developer have an applicable tariff approved by FERC. The information in the tariff could be used, along with an independent estimate of the capital costs (which the NYISO already does), to provide a reasonable comparison between binding and non-binding bids.

It should also be noted that stakeholders within PJM Interconnection (PJM) have recently approved a proposal that "will require PJM to evaluate cost commitments – including construction costs, return on equity and capital structure – in its analysis of competitive bids for transmission construction."¹ This proposal should also be considered by the NYISO.

Given a binding set of capital costs and revenue requirement provisions that would be enforceable through the Development Agreement (or a reasonable proxy under the foregoing alternative approach), the NYISO Board would be better equipped

¹ <https://www.rtoinsider.com/pjm-ls-power-cost-containment-transmission-bids-93186/>

to select a project that is more "cost-effective," without leaving a significant portion of the costs to be identified subsequently. While these costs would establish a basis for selecting a project, the NYISO could allow developers to utilize a cost cap that is escalated to reflect a predetermined level of contingencies (e.g., 15%) and increases in supply costs between the time a developer submits its bid and the developer is selected and can procure the necessary supplies. DPS Staff is also supportive of the conceptual approach that excludes from the cost cap (and allows developers to recover) certain costs that are truly beyond their control, such as those identified on slide 22 of the presentation (e.g., unforeseeable costs).

The NYISO also seeks comments on incentives and penalties to address situations where the ultimate costs are either under or over the cost cap, such as the 80%/20% ratepayer/shareholder sharing approach identified by the NYPSC in the AC Transmission Upgrades proceeding (See Case 12-T-0502, et al.). DPS Staff maintains that where a binding bid approach is undertaken, such as the one advanced herein, there is no need to implement a penalty provision since the terms identified in the winning developers' bid would establish an upper bound and serve to contain costs. However, to incent further efficiencies on the part of the developer to reduce costs below the cost cap (exclusive of the contingency amount), an enhanced ROE may be appropriate.

Improvement 3: Eliminate Pause Point

As the NYISO indicates, this improvement would eliminate the need for a NYPSC order confirming that, based upon the NYISO's Viability and Sufficiency (V&S) Assessment, the NYISO should proceed directly to a full evaluation of transmission solutions. Instead, the NYISO would commence a full evaluation upon completion of the V&S Assessment. However,

the NYISO proposes that the PSC would be able to "cancel or modify the identified Public Policy Transmission Need prior to the NYISO Board of Director's selection of the more efficient or cost-effective solution, which would halt the NYISO's evaluation."

While the stated purpose of this improvement is to expedite the study process and increase the NYISO's efficiency in performing studies, DPS Staff notes that this proposal may introduce new inefficiencies. For instance, in the event the NYPSC determines, upon its review of the V&S Assessment, that a non-transmission solution should be pursued to address public policy needs, any work completed by the NYISO up to the date of the NYPSC's order could be rendered meaningless. The NYISO should recognize the existence of this risk if it continues to advance the proposal further.

The NYISO should also acknowledge that the process improvement it proposes would require the NYPSC to revisit and amend its Policy Statement on Transmission Planning for Public Policy Purposes (NYPSC Policy Statement), issued on August 15, 2014, in Case 14-E-0068. The NYPSC's Policy Statement explicitly contemplates a process whereby the NYPSC will confirm that the NYISO should proceed with a full evaluation of proposed transmission projects, or that a non-transmission alternative is preferable.² The NYISO initially indicated that it supported this step because it enabled the NYISO to avoid expending significant time and resources on performing a potentially meaningless evaluation.³ In order to fully understand the NYISO's rationale for this process improvement, the NYISO should

² PSC Policy Statement, p. 9.

³ PSC Policy Statement, p. 10.

explain why its concerns are no longer applicable, or why it has changed its position.