May 9, 2018

Ms. Yachi Lin
Senior Manager, Transmission Planning
New York Independent System Operator
10 Krey Boulevard
Rensselaer, New York 12144

RE: Short Term Improvements to Transmission Planning Processes

Dear Ms. Lin:

NextEra Energy Transmission New York, Inc. ("NEETNY") appreciates the opportunity to provide comments on the six proposals to improve the transmission planning process as presented at the April 30, 2018 Electric System Planning Working Group ("ESPWG") meeting. NEETNY strongly supports the New York Independent System Operator's ("NYISO") plan to consider cost containment in transmission solicitations, which will provide significant benefits for New York's electric consumers. NEETNY looks forward to further discussion of cost containment and all the NYISO proposals.

1. Two-Stage Public Policy Transmission Planning Process ("PPTPP") Project Proposals

NYISO is proposing that developers submit their project proposals in two stages. The first stage would include submission of those items necessary for NYISO to commence its Sufficiency and Viability review due within 60 days from the date of the initial solicitation. The second stage, which would include detailed project information necessary for NYISO to conduct its evaluation, would be due 60 days thereafter, or 120 days from the date of the initial NYISO solicitation.

NEETNY generally supports the two stage review process. However, NYISO needs to clearly define the submission requirements for the first stage for Sufficiency and Viability review, and developers who fail to submit the minimum requirements for the first stage should not be permitted to submit a second stage proposal 60 days later. If developers fail to provide their initial first stage proposal and are permitted to file their full proposals 60 days later, NYISO would be forced to conduct another set of Sufficiency and Viability reviews which would extend and complicate the process. In order to establish a fair and efficient two stage process, a developer's second stage submission must be consistent with its first stage submission that NYISO evaluated for Sufficiency and Viability. NYISO should develop clear and transparent rules defining what would constitute a material modification of a first stage submission to ensure that developers do not game the process to try to gain an unfair advantage. Proposals submitted in the second stage that have a material modification from the first submission should be disqualified. Finally, project information submitted in the first stage to facilitate the Sufficiency and Viability review should be held confidential until after fully developed proposals are submitted in the second stage and the Sufficiency and Viability Report is issued. This includes the identity of any projects or particular developers.

2. Identical and Simultaneous Transmission Interconnection Application

NYISO proposes that a developer must demonstrate that it submitted a transmission interconnection application or interconnection request, as applicable, at the time of its initial submission of project information. NYISO is also proposing to clarify in its tariff that the project description in the transmission interconnection application or interconnection request, if applicable, is identical to the project description in the PPTPP. NYISO believes that this proposal will expedite the PPTPP study process and increase the efficiency of the studies performed by allowing the NYISO to fully evaluate the interconnection aspects of all projects and avoid the possibility of differences in the project descriptions between the interconnection process and the PPTPP.

NEETNY generally supports this tariff change. NYISO should ensure that the scope of the project submitted with the interconnection application is not shared with Transmission Owners until after all proposals have been submitted for the second stage, if a two stage process, as discussed above, is adopted. This ensures that the Transmission Owners do not gain any advantages before they submit their bids in the second stage of a two stage process.

3. Eliminate Second PSC Review of Need

NYISO's tariff currently requires the Public Service Commission ("PSC"), after the NYISO has completed its Sufficiency and Viability review, to issue an order explaining whether the NYISO should continue to evaluate transmission solutions for a Public Policy Transmission Need ("PPTN"), whether non-transmission solutions should be pursued, or whether the identified need should be cancelled or modified. If the PSC finds that there is no need for transmission solutions or the need has been modified, the NYISO is required to discontinue its evaluation of proposed solutions. NYISO is proposing to eliminate the requirement that PSC issue such an order during the PPTN process. Instead, the NYISO would begin the evaluation and selection of the more efficient or cost-effective transmission solution immediately following the completion of its viability and sufficiency assessment and receipt of additional project information from the developers. Under NYISO's proposal, the PSC would retain the ability to cancel or modify the identified PPTN prior to the NYISO Board of Directors' selection of the more efficient or cost-effective solution.

NEETNY generally supports changes like this proposal, which expedite the planning and review process. NEETNY further suggests that subsequent changes or modifications to the PPTN that are required by the PSC would benefit from stakeholder input pursuant to the State Administrative Procedures Act ("SAPA") process prior to the PSC issuing an order.

4. Interest on Study Deposits

The current tariff requires project developers to submit with its project information, a deposit of $100,000 for each proposed project submitted in response to a Public Policy Transmission Need. The NYISO then bills developers for NYISO's actual costs in evaluating the proposals on a monthly basis, while continuing to hold the full amount of the study deposit until settlement of the final monthly invoice, unless a Developer fails to timely pay an invoice. The tariff requires the NYISO to return any remaining portion of the study deposit with interest at the FERC rate specified under the Commission's Rules and Regulations (18 CFR §35.19a(a)(2)). NYISO is proposing to revise the tariff to pay the actual amount of interest earned, instead of the FERC rate, on deposits held in escrow accounts for any portion of the deposit to be refunded to a developer.

NEETNY understands that the current process poses a financial burden on NYISO because it may be required to pay a higher interest rate than it earns on deposits. NEETNY supports changes to this process that would alleviate such a burden. However, we believe that NYISO should draw down on the deposit to cover actual expenses, instead of holding the entire deposit amount. This "pay as you go" approach is consistent with how other regions cover their costs for proposal reviews and would alleviate much of the interest issue because the deposit amount would reduce over time. This approach would reduce refund amounts and reduce the amount of interest earned on deposits because the deposits would be smaller.

5. 20-year CARIS evaluation period

NYISO proposes to change the evaluation period for the cost-effectiveness of project costs and benefits in the economic planning process from ten years to twenty years. NYISO is proposing these changes so that the evaluation periods for the economic and public policy planning processes are identical.

NEETNY supports the change to evaluate the costs and benefits of a project across 20 years. Additionally, NEETNY proposes that NYISO evaluate costs as well as anticipated project benefits in a consistent manner in all of its planning processes and utilize the 20-year evaluation in the CARIS evaluation process as well as the reliability and PPTN processes. In other words, in evaluating projects in the PPTN or reliability processes, NYISO should estimate the costs using the present value of a proxy revenue requirement for 20 years as it does in the CARIS process, instead of the overnight construction cost.

6. Cost Containment

NYISO also proposes changes to its tariff which would require NYISO to consider cost containment for PPTN proposals. NYISO believes that standardization of uniform cost containment parameters will aid NYISO in making an "apples to apples" comparison across all transmission projects.

NEETNY strongly supports requiring NYISO to consider cost containment proposals. As the PSC has recognized, risk-sharing mechanisms are appropriate "[t]o help ensure the quality and comparability of the bids, and that ratepayers retain the benefit of this comparative evaluation process."[1] Proposals with strong cost containment measures protect New York's energy customers. Cost containment protects customers from cost overruns and ensures that NYISO does not select a project based on an unreasonably low bid that then results in customers paying for a substantially more expensive project than was selected. We understand that NYISO may be concerned that a developer will low-ball a bid, then not actually complete the project when selected due to cost. As far as we know, developers offering cost contained proposals in CAISO, PJM, MISO, and AESO, some of which include hard cost caps, have not later abandoned the projects. NEETNY supports robust cost containment mechanisms which provide as much protection to customers as possible.

It should be noted that due consideration of cost contained bids is consistent with the goals of the 2015 New York State Energy Plan, which calls for a cleaner, more resilient, and more affordable electric system for New York citizens and businesses. According to the U.S. Energy Information Administration, New Yorkers spend $21 billion annually on electricity, the fourth highest total of any state. Moreover, the average retail rate as of January 2018 was 14.7 cents/kWh, the ninth highest of any state and 40% above the national average rate of 10.5 cents/kWh. Therefore, cost contained proposals which protect New York ratepayers from project overruns should be fully considered by NYISO in its evaluation process.

NEETNY proposes a simple approach that will utilize NYISO's existing evaluation procedures, while allowing developers to choose how much risk to take through cost containment. Developers should be permitted to propose a cost cap, and then a risk share percentage (between 0 and 100) for costs above the cost cap. Under this structure, developers would not recover their costs on the proposed percentage of the costs that exceed the cap. This structure would provide more robust cost containment and be significantly easier to evaluate than alternative structures, such as a structure that only limits ROE above the cost cap. NYISO should define the items that it will evaluate as being subject to the cost cap and also define excluded items, as it has proposed, that would not be subject to cost containment. Under this proposed approach, NYISO would only be required to evaluate cost containment on the cost to develop and build a project. NEETNY does not believe that NYISO should consider caps on lifecycle costs or full revenue requirements at this time, which would require a significant expansion of NYISO's current evaluation process. Under NEETNY's proposed structure, NYISO would continue to focus on development and construction costs.[2] NYISO would continue its practice of developing an independent estimate for each project, but would evaluate

[1] Case 12-T-0502, *et al.*, *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades*, Order Establishing Modified Procedures for Comparative Evaluation at 43 (Dec. 16, 2014) ("PPR Order").

[2] NEETNY believes that there are merits to more robust cost containment structures that allow developers to offer containment on lifecycle costs and revenue requirement. NYISO should consider those types of more expansive cost containment in the future, but NEETNY's current proposal is designed to be easy to implement and administer for the next PPTN. NEETNY's approach does not address whether a developer can earn additional incentives for being under the proposed cost cap, because NYISO's evaluation would be limited to development and construction costs. NEETNY believes that incentives for completing a project for less than the proposed cost cap may be appropriate, but such incentives would not be a focal point of NYISO's evaluation.

the cost of the project based upon the amount of risk share that each developer proposes. We believe that this approach is simple to administer, allows an apples-to-apples comparison of proposals, and allows developers to choose how much risk to take while providing customers the benefit of robust cost containment. The table below demonstrates how this approach would work:

	80/20 Risk Share		50/50 Risk Share		0/100 Risk Share (Hard Cap)	
	Contained Costs	Excluded Costs	Contained Costs	Excluded Costs	Contained Costs	Excluded Costs
Developer Proposal	100	75	100	75	100	75
Independent Estimate	200	75	200	75	200	75
Adjusted Estimate for Evaluation[3]	**180**	**75**	**150**	**75**	**100**	**75**

a. <u>NYISO should define which project costs will be evaluated for cost containment</u>

NEETNY supports NYISO's proposal to specify which project costs will be evaluated under cost containment. Standardization of costs subject to containment will permit NYISO to efficiently evaluate the proposal with minimal modification to its existing processes. NEETNY recommends that NYISO evaluate cost containment for the following cost components:

1) development costs (project management, engineering, legal, insurance, permitting, bond costs);
2) equipment and construction costs;
3) private rights-of-way and land lease costs;[4]
4) escalation factor;
5) AFUDC; and
6) contingency.

b. <u>NYISO should also define which project costs will be excluded from cost containment</u>

NEETNY also supports NYISO's proposal to specify certain project costs that will be excluded from cost containment. Standardization of excluded costs will permit NYISO to efficiently evaluate proposals using its existing independent cost estimate process. Notably, many of these excluded items, such as unforeseeable costs and change of law, would not be

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[3] The difference between the independent cost estimate and the proposal is treated as an overrun. The developer's proposed cost is adjusted by multiplying the applicable risk share percentage by the overrun. Excluded costs would be based solely on the independent estimate.

[4] Costs of obtaining land or rights-of-way from a utility would be excluded, as discussed below.

reflected in a cost estimate for evaluation purposes because they would only arise after selection. NEETNY recommends that NYISO exclude the following cost components:

1) unforeseeable costs (e.g., Force Majeure events, actions or inactions of governmental or regulatory agencies on permitting, court orders);
2) changes required during the Public Service Law Article VII process;
3) transmission work not performed by the developer (e.g., network upgrades, system upgrades, attachment facilities, removal of facilities);
4) land costs associated with obtaining utility property;
5) project changes or delays due to acts or omissions of the NYISO or connecting/interconnecting/affected transmission owners;
6) changes in laws which impact the project; and
7) changes in sales and property taxes.

c. *NYISO should evaluate cost containment consistently across all three planning processes*

There is no justification for treating costs differently across the three planning processes – reliability, CARIS and public policy. For example, for the reliability planning process, proposals must resolve the reliability issue. Irrespective of cost containment, a proposal that does not solve the reliability need would simply be removed from further consideration. However, of the remaining proposals that are found to adequately address the reliability need, there is no reason not to consider cost containment for proposals. Identical to the process outlined above, cost estimates would be adjusted based on the independent consultant's estimate, reduced by the amount of risk sharing a developer proposes. It is common for developers to identify similar solutions to address a reliability need, and NYISO should not deprive customers the benefit of cost containment. The same approach should also be utilized for the CARIS process and the adjusted cost would be used to calculate the benefit-to-cost ratio. While each process may have different objectives, cost is a critical factor in all three planning processes.

d. *Cost containment can be enforced by contract and FERC has indicated it will enforce cost capped proposals*

With regard to the enforceability of a cost containment commitment in a proposal, NEETNY agrees with NYISO that capped amounts and terms/exclusions can be effectively memorialized in the Development Agreement. The cost containment would be enforceable by NYISO as a matter of contract. FERC has explicitly accepted cost containment provisions in a binding agreement between developers and an independent system operator. In response to a California Independent System Operator ("CAISO") request, FERC stated that it expects the NEETNY affiliate awarded the project to abide by its binding cost cap, and operation and maintenance caps, per its agreement with CAISO. "As NEET West and CAISO are both parties to [a developer agreement] for the Projects, we expect that the parties would abide by the terms set forth and mutually agreed upon in the [contract]."[5] FERC has also approved the Midcontinent Independent System Operator's use of a developer agreement that includes specific cost containment measures proposed by the developer.[6] Accordingly, the NYISO can enforce cost-contained proposals through its Development Agreement with the selected developer.

e. NYISO should continue to protect confidential information

As we continue these discussions on process improvement, NEETNY also wants to ensure that the ESPWG address confidentiality. It is imperative that certain aspects of a developer's proposal, as designated by the developer, should remain confidential and not subject to public disclosure. Accordingly, when presenting evaluation results, NYISO should continue to show detailed independent cost estimates as well as the total adjusted project cost that includes the proposed cost cap, the risk sharing adjustment and the excluded costs. NYISO should not publicly disclose detailed costs proposed by a developer.

NEETNY would once again like to thank the NYISO for commencing the discussion of ways to improve the transmission planning process, but particularly the discussion on cost containment. We recognize that evaluating cost containment proposals could be a challenge, especially the first time, for NYISO and believe that our proposal is simple and easy to implement.

Please do not hesitate to contact me if you would like to discuss any aspect of this letter. We look forward to participating in future ESPWG meetings to discuss these proposals.

Sincerely,

Stephen Gibelli

Stephen Gibelli
Senior Director of Regulatory Affairs and Policy
NextEra Energy Transmission

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[5] Docket Nos. ER15-2239-000 and ER15-2239-001, Order On Participating Transmission Owner Tariff and Rate Incentives Proposal, and Establishing Hearing and Settlement Judge Procedures, (Issued January 8, 2016), FN 127 at 32.

[6] *Midcontinent Independent System Operator, Inc*., 153 FERC ¶ 61,168 (2015).