



June 13, 2019

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

*Sent Via Email to Public Policy Planning Mailbox*

RE: NYISO Proposal for Cost Containment

Dear Ms. Lin:

NEETNY is supportive of NYISO's cost containment proposal, which offers flexibility to developers and provides an effective methodology to compare different solutions on a qualitative and quantitative basis. However, NEETNY does not support NYISO's proposal to establish an incumbent Transmission Owners' ("TOs") Right of First Refusal ("ROFR") for system upgrades. Given the New York Public Service Commission's ("Commission") preference to replace aging infrastructure and/or utilize existing utility Rights-of-Way ("ROW"), the implementation of the proposed TO ROFR would deprive New York customers the benefits of competition. NEETNY offers the following comments for NYISO's consideration.

1. *Developers should retain the right to recover costs and earn a return on upgrades that were included in their proposals*

Competition has benefited New York customers, in that the most cost effective solutions have included system upgrades. With a TO ROFR for system upgrades, developers would be less incentivized to propose more cost effective system upgrades. Given the Commission's preference to replace aging infrastructure and/or utilize existing utility ROW, developers should have an incentive to continue to develop comprehensive solutions that would include system upgrades. Therefore, it is in the interests of New York customers to allow developers to propose and earn a return on system upgrades. This will ensure that developers will offer the most cost effective and efficient transmission solution to address transmission needs.

As an alternative, developers should have the option to develop, construct, and offer cost containment for proposed system upgrades at the time they submit their proposal. If the Developer does not offer cost containment on a system upgrade, then NYISO should "assign" the upgrade to the TO for development and construction. Where an upgrade was not identified by a developer, but identified through the Transmission Interconnection Process, those upgrades should be assigned to the TO since the developer would not have been able to offer cost containment. This allows New York customers to realize the benefits of cost containment for system upgrades.

2. Environmental mitigation costs and Allowance for Funds Used During Construction (“AFUDC”) should be eligible for cost containment

NEETNY supports the inclusion of environmental costs and AFUDC in cost contained proposals. Just as a developer must assess risk associated with construction costs, the developer is also capable of assessing risks associated with environmental mitigation costs and AFUDC. Including these items as part of cost contained proposals will offer more protection to New York customers.

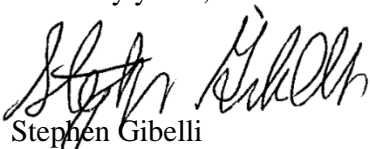
3. Cost containment can be enforced through the Development Agreement

During the May 31, 2019 ESPWG/TPAS meeting there was some stakeholder discussion regarding the enforceability of a cost containment commitment in a proposal. 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 developer 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].”<sup>1</sup> 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.<sup>2</sup> Accordingly, the NYISO can enforce cost-contained proposals through its Development Agreement with the selected developer. The cost-contained proposal would then be enforceable by FERC when a formula rate or other rate-structure is on file within the NYISO tariff that incorporates the cost containment commitments.


4. NEETNY does not support a limited quantitative analysis of proposed Return on Equity (“ROE”) and incentives

A more detailed review of actual Annual Transmission Revenue Requirements would be required to account for all metrics (*i.e.* capital structure, O&M costs, cost of debt, etc.). ROE and incentives are not the only items that could impact the revenue requirement of a project, therefore, NEETNY does not support a limited quantitative analysis.

Sincerely yours,



Stephen Gibelli  
Senior Director, Regulatory Affairs and Strategy  
NextEra Energy Resources



John Binh Vu  
Director Transmission Development  
NextEra Energy Transmission New York

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<sup>1</sup> 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.

<sup>2</sup> *Midcontinent Independent System Operator, Inc.*, 153 FERC ¶ 61,168 (2015).