Comments of LS Power Grid New York, LLC on
Cost Containment for Transmission Project Evaluation
in Public Policy Process and Draft Tariff Changes
August 14, 2019

LS Power Grid New York, LLC ("LS Power") offers the following comments in response to the continuing discussion on Cost Containment Metric for Transmission Project Evaluation in Public Policy Process as discussed at the August 6, 2019 Electric System Planning Working Group ("ESPWG") meeting. LS Power appreciates the efforts by NYISO staff and stakeholders in incorporating cost containment into the Public Policy Process, and believes the current proposal represents an approach that seems to be acceptable to stakeholders and will provide value to ratepayers.

Treatment of Environmental Mitigation Costs

One area that would benefit from additional detail in the proposed tariff language is the treatment of environmental mitigation costs. The proposed tariff language includes "expected environmental site remediation and environmental mitigation costs," to be within the scope of a proposal's Cost Cap, and "unforeseeable environmental remediation and environmental impact mitigation costs" to be Excluded Costs." LS Power agrees with this basic approach but has concerns that without additional detail there could be an opportunity for gaming, as described in our December 11, 2018 comments. It would be helpful to ensure a consistent baseline for bidders in order to avoid gaming. Otherwise bidders would have an incentive to exclude environmental mitigation from the scope, and rely on the ability to recover such costs as Excluded Costs. Environmental mitigation costs could be a significant percentage of the overall project costs in New York, including matting through wetland and agricultural areas, wetlands mitigation including offsets, and potentially undergrounding of highway crossings. To avoid gaming, and ensure a consistent starting point for all bidders, LS Power suggests that NYISO, through its independent consultant or perhaps state permitting agencies, provide a list of "expected environmental mitigation costs" for transmission facilities in New York. A redlined change to proposed Section 31.4.4.3.1 incorporating this provision is included below.

31.4.4.3.1 Following the posting of the NYPSC's determination of a Public Policy Transmission Need in accordance with Sections 31.4.2.1 through 31.4.2.3 and before issuing a solicitation for solutions in accordance with Section 31.4.3, the ISO shall hold a technical conference with Developers and interested parties to obtain their input on the ISO's application of the selection metrics set forth in Section 31.4.8.1 for purposes of soliciting solutions to the Public Policy Transmission Need. To the extent practicable, before issuing a solicitation for solutions in accordance with Section 31.4.3, the ISO will present to Developers and interested parties any contingency percentage, ~~and~~ escalation factors, and expected environmental mitigation that its independent consultant will use in formulating capital cost estimates for proposed Public Policy Transmission Projects.

Use of Independent Cost Estimate vs. Cost Containment Bid

NYISO continues to propose the use of a Hard Cap in the evaluation process, even if the Hard Cap is greater than the independent cost estimate. This approach potentially penalizes a proposal with a Hard Cap, by having it evaluated for several metrics, such as estimated capital cost and cost per MW, less favorably than a proposal without any cap. NYISO has defended this proposal by saying past experience has been that the independent cost estimate has been relatively conservative. However, bidders do not know at the time of developing a bid how conservative an independent cost estimate may be. A bidder proposing a Hard Cap is accepting a significant amount of risk, even if a Hard Cap were to have a relatively high level of contingency. Even a relatively high amount of contingency would protect ratepayers against a case where costs ended up being significantly higher than the independent cost estimate, a risk that ratepayers would be exposed to with no cap, or still significantly exposed to with a Soft Cap. A bidder proposing a Hard Cap should not be penalized in the evaluation based on the level of contingency relative to the independent cost estimate. In the case where a Hard Cap is higher than the independent cost estimate, ratepayers would still expect to pay only the amount of the estimate, and the evaluation should reflect that. A redlined change to proposed tariff Section 31.4.8.2.1 is included below to reflect this change.

31.4.8.2.1.1 If the Developer submits a hard Cost Cap for the Included Capital Costs of its proposed Public Policy Transmission Project, ~~and the hard cap amount is above, below, or the same as the estimate for the Included Capital Costs determined by the ISO's independent consultant for that project,~~ the ISO will use the lower of the ISO's independent consultant estimate or ~~amount of~~ the Developer's Cost Cap as the amount for Included Capital Costs.

Alternative Adjustment

At the August 6 ESPWG, NYISO presented a proposed "Alternative Adjustment" methodology for incorporating a Hard Cap or Soft Cap into the bid evaluation, included on slides 22-23. LS Power favors a simple algebraic adjustment described as the Nextera Method on slide 10 in the evaluation. The Alternative Adjustment overvalues a Soft Cap, and in particular overvalues a soft cap with 80/20 risk sharing. This can be seen in the example on slide 23. The Alternative Adjustment would evaluate the 80/20 Risk Share proposal in the example at $225 million, while ratepayers would expect to pay $255 million (as calculated on Slide 10). Suppose another bidder had a proposal for the same project with a Hard Cap of $240 million. Under the NYISO's proposed methodology, the 80/20 Risk Share proposal would be evaluated as $15 million less expensive, even though ratepayers would expect to pay $15 million more, and would be exposed to even potentially much higher costs. This would flow through not just to the expected cost metric, but other metrics such as cost per MW, and benefit to cost ratio. If NYISO does adopt the Alternative Adjustment approach, it would need to be very careful to take this effect into account in the overall evaluation.

Language Related to Included Capital Costs

Similar language appears in several areas of the proposed tariff language that could use revision. Section 15.3 of the pro forma Development Agreement, referenced in Section 31.7 of the tariff includes the following language: "The Developer agrees to file this Cost Cap for Included Capital Costs with the Commission together with a rate that does not exceed the amount of the Cost Cap in accordance with the requirements in Rate Schedule 10 of the ISO OATT. The Developer further agrees that it shall not seek to recover through its transmission rates for the Transmission Project or through any other means costs for the Included Capital Cost above its agreed-upon Cost Cap; *provided,* *however*, the Developer may recover costs above its agreed-upon Cost Cap resulting from one of the following excusing conditions, but only to the extent the costs arise from, and solely for the duration, of the excusing condition:"

The second sentence of this excerpt appropriately captures what the cost containment proposals entail, that the Developer is agreement not to recover costs above an agreed-upon cap. However, the first sentence is not technically correct; the developer is not agreeing to a rate (which does not have a specific meaning but implies an annual revenue requirement) that does not exceed the cap. A redlined change to proposed tariff provision is included below to reflect this comment.

15.3 Cost Recovery … The Developer agrees to file this Cost Cap for Included Capital Costs with the Commission ~~together with a rate that does not exceed the amount of the Cost Cap in accordance with the requirements in Rate Schedule 10 of the ISO OATT~~. The Developer further agrees that it shall not seek to recover through its transmission rates for the Transmission Project or through any other means costs for the Included Capital Cost above its agreed-upon Cost Cap; *provided, however*, the Developer may recover costs above its agreed-upon Cost Cap resulting from one of the following excusing conditions, but only to the extent the costs arise from, and solely for the duration, of the excusing condition all in accordance with the requirements in Rate Schedule 10 of the ISO OATT:"

Similar proposed redlined changes to Section 31.4.8.3(ii) and 6.10.6.1 are provided below.

31.4.8.3(ii) shall file at the Commission its Cost Cap and agrees that it shall not seek to recover through its transmission rates or through any other means costs for the Included Capital Costs above its agreed-upon Cost Cap ~~together with a rate that does not exceed the amount of the Cost Cap~~ in accordance with Section 6.10.6 of the ISO OATT.

6.10.6.1 The Developer of an Eligible Project that is a Public Policy Transmission Project selected by the ISO pursuant to Sections 31.4.8.2 and 31.4.11 of Attachment Y to the ISO OATT shall file with the Commission as part of its required rate filing for cost recovery under Sections 6.10.4 or 6.10.5, as applicable: (i) any Cost Cap that it proposed for its Public Policy Transmission Project, including any excusing conditions described in Section 6.10.6.2, and (ii) and agrees that it shall not seek to recover through its transmission rates or through any other means costs for the Included Capital Costs above its agreed-upon Cost Cap~~a rate that does exceed the amount of the Cost Cap~~.