

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Competitive Transmission Development            )  
Technical Conference                                )                   Docket No. AD16-18-000

PREPARED STATEMENT OF STUART M. NACHMIAS  
ON BEHALF OF THE NEW YORK TRANSCO LLC

Thank you for the opportunity to participate on Panel 3 of the Competitive Transmission Development technical conference. This panel will focus on competitive transmission development and the continued use of the transmission incentives in the competitive transmission solicitation process. I am Stuart Nachmias, President of the New York Transco LLC (“NY Transco”), a transmission owner and developer focused on New York State electric transmission development. The NY Transco participates in the NYISO’s transmission planning and development processes, including proposing transmission projects needed to address identified New York State public policy objectives. The NY Transco recently became the owner of the first new bulk power transmission assets built in New York in more than two decades.

The competitive public policy transmission planning process, while just starting in New York, appears to be good for consumers while maintaining reliability and meeting policy objectives. The NYISO uses a sponsorship model to identify transmission solutions in response to identified public policy needs. This model requires the ISO to issue a solicitation for projects that allows transmission and non-transmission developers

to put forth solutions that will meet the state's public policy needs. Developers are encouraged to propose innovative, efficient and/or cost effective solutions, with costs only being one factor in the NYISO selection process. The NYISO has already received 26 competitive transmission solutions in response to two separate solicitations.

**I. Emphasis on Cost Containment Provisions May Undermine the Expected Benefits of Order No. 1000**

I will first discuss cost containment issues, and then suggest a solution using the Commission's incentive policy.

Cost containment provisions can be useful in a competitive bidding model for transmission investment and project management. However, if such provisions are not adequately defined in the competitive process, they may be a fool's errand that could undermine the Commission's objectives to encourage transmission development, and to meet public policies. A cost containment proposal described by a developer as a firm guarantee to build a project at a specified cost oversimplifies the process of investing and developing capital-intensive public infrastructure. Using cost as a primary factor in project selection is particularly problematic because: (1) unlike the hype ascribed to cost containment provisions, a "firm guarantee" is a risk to both customers and developers; and (2) RTOs/ISOs are potentially being asked to act as an economic regulator, a position that only the Commission can and should fulfill.

First, cost containment provisions may be illusory because perceived savings can be outweighed by higher overall costs. Due to the significant risk undertaken by a developer with a binding cost containment provision, it is likely that a developer will

require higher returns on equity (“ROEs”) and experience higher debt costs due to the increased risks. The outcome is that costs are not all known, and cost containment does not eliminate risk. In fact, the consequence could increase overall costs to consumers.

Moreover, developers will likely ask for circuit breakers for unexpected events that can occur leading up to or even during construction. The overall cost of a project becomes clearer through the implementation of the project, when execution details are finalized. If prudent costs are spent and exceed “firm” cost caps, and developers are not able to recover these costs, developers will be harmed. This will be especially true if these risks are not adequately monetized. As a result, customers are harmed, with the potential result being unexpected project delay or, worse, project abandonment. While this may be an extreme outcome, it must be considered when developing policy, as we are doing here.

Second, only the Commission has the mandate under the Federal Power Act, and the processes and precedent developed over decades, to ensure rates are just and reasonable. RTOs/ISOs may require cost estimates from developers, but having them evaluate cost containment provisions is not only redundant to the Commission’s role, but may come with a high price tag. This can be both in the form of increased consultants and/or employees as well as increased litigation exposure by the RTOs/ISOs. In any event, many of the provisions in a cost containment proposal will differ (various off-ramps) leaving numerous issues and details open and subject to the Commission’s review and approval. With all of these complications and considerations, requiring RTOs/ISOs

to consider cost containment provisions may further delay project selection, increasing what is an already long lead time for transmission development.

Finally, and perhaps more critical, emphasis on cost containment provisions overlooks other legitimate aspects of competitive transmission project proposals, including innovation, design formation, operation and performance flexibility, the ability to further expand the system, and construction timelines. This is particularly true for those regions that have embraced a sponsorship model.

## **II. The Commission Should Use its Ratemaking and Transmission Incentives Policy to Encourage Effective Project Management**

So, what is the solution? I recommend that the Commission to use its ratemaking and transmission incentive policies to encourage developers to manage their project costs within a range of proposed cost estimates and timelines provided as part of their proposals.

Specifically, ROE adders should be used as a tool for encouraging effective cost management. Larger basis point adders should be granted to developers to address the “residual risk” that the developer is taking on by participating in a competitive transmission solicitation and agreeing to meet a targeted cost estimate.<sup>1</sup> If the project comes in on budget, the full basis point ROE adder would be retained, with the potential to consider further incentives if the project comes in under budget. If, instead, the project

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<sup>1</sup> See *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (“Residual risk” are those risks remaining after “risk reducing” incentives have been authorized, including recover of 100 percent construction work in progress, 100 percent recovery of abandonment costs to the extent a project is abandoned beyond a developer’s control.)

comes in over budget, the ROE basis point adders could be reduced. Such a structure encourages effective management, while also affording developers the opportunity to recover actual and prudently-incurred capital costs. With this structure, incentives will effectively encourage transmission developers to deliver projects on-time and under/on budget. Moreover, it will work in tandem with existing developer commitments and effectively recognizes overall business processes, including: (1) developer management oversight; (2) investor requirements; and (3) need to establish a positive track record to effectively compete in a competitive solicitation process.

### **III. Conclusion**

While cost containment provisions may seem effective, they may have unintended consequences that undermine the Commission's overall goals to encourage transmission development, and may also limit the pool of potentially qualified developers. Moreover, should a developer incur legitimate but unrecoverable costs, that could chill further transmission development – certainly an unintended consequence of good intentions.

In the sponsorship model, costs, in the form of cost estimates, should remain a key, but not a primary or overriding factor in transmission project selection. Order No. 1000's competitive process drives developers to come up with innovative and resourceful ways to expand the electric grid. It is this innovation of transmission solutions, not an overreliance on cost, that should drive project selection and bring benefits of transmission to customers.

Thank you again for the opportunity to participate in this conference. I look forward to discussing this proposal further, and directly addressing the questions outlined by the Commission for this panel as well as any additional questions you may have.