

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**COMPETITIVE TRANSMISSION)
DEVELOPERS)
)
 COMPLAINANT)
)
 v.)
)
**NEW YORK INDEPENDENT)
SYSTEM OPERATOR, INC.**)
)
 RESPONDENT)
)**

DOCKET NO. EL16-___-000

**COMPLAINT REQUESTING FAST TRACK PROCESSING OF
COMPETITIVE TRANSMISSION DEVELOPERS**

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Pursuant to Sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission),² Boundless Energy NE, LLC, CityGreen Transmission, Inc., and Miller Bros. (collectively, Competitive Transmission Developers) hereby submit this complaint (Complaint) against the New York Independent System Operator, Inc. (NYISO) requesting that the Commission direct the NYISO to reissue a project solicitation for the “AC Transmission Public Policy Transmission Needs Project Solicitation” that properly seeks solutions to meet the identified Public Policy Transmission Needs in accordance with the intent and purpose of the NYISO Open Access Transmission Tariff (OATT or Tariff).

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 18 C.F.R. § 385.206 (2015).

I. EXECUTIVE SUMMARY

Competitive Transmission Developers seek an expedited Commission order directing NYISO to follow the Public Policy Transmission Planning Process outlined in its FERC-approved Tariff. Confronted with a recent order issued by the New York Public Service Commission (NYPSC), the NYISO chose to surrender key aspects of its planning responsibilities to the NYPSC. Without filing Tariff changes with this Commission, the NYISO adopted whole cloth the outcome of the NYPSC proceeding and issued a project solicitation seeking bids for particularized projects chosen by the NYPSC rather than seeking transmission solutions to identified needs, as required by its FERC-approved Tariff. This outcome not only violates the NYISO Tariff, but it is inconsistent with clear Commission directives in Order No. 1000³ and will eliminate the chance for innovative and cost-effective solutions to transmission needs that have been identified for the region.

The Commission has exclusive jurisdiction over the transmission of electric energy in interstate commerce.⁴ Consistent with this regulatory mandate, the Commission requires that the transmission planning function reside with the FERC-jurisdictional public utility. Section 31.4.3 of the NYISO Public Policy Transmission Planning Process establishes that planning function for the NYISO and, as relevant here, requires the issuance of a generalized solicitation for proposed project solutions that address Public Policy Transmission Needs identified by the NYPSC. Rather than following that requirement and requesting project solutions, the NYISO

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 FR 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323, *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 77 FR 64,890 (Oct. 24, 2012), 141 FERC ¶ 61,044 (2012), *review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, No. 12-1232, 2014 WL 3973116 (D.C. Cir. Aug. 15, 2014).

⁴ 16 U.S.C. § 824(b)(1) (2012).

has only solicited facilities that adhere to the very specific transmission project segments identified by the NYPSC.⁵ The NYPSC commissioned its own studies in advance of deciding on those project segments it desired. The NYISO adoption in its own solicitation effectively abdicates its responsibility under its FERC-approved Tariff to review *all* viable technical solutions, including transmission, alternative technologies, generation and non-wires solutions; delegates its planning function to the NYPSC; and, limits NYISO's role to simply a ministerial one to select the lowest cost project bid to develop the NYPSC projects.

The NYISO OATT requires more from the NYISO. As explained in detail below, the OATT requires the NYISO to perform viability and sufficiency evaluations for each project solution to an identified public policy transmission need. Then, the NYISO is required to select the most efficient and cost effective solution from the viable project submissions. The OATT does not permit the NYISO to delegate the planning function to the NYPSC.

The NYISO solicitation also transforms its competitive transmission solicitation process from a solution-based process to a bid-based process, which is inconsistent with the requirements of its OATT. The OATT requires the NYISO to solicit proposals for any viable project solution that addresses the identified need, not just the specific projects identified by the NYPSC. In the event the Commission determines that the NYISO competitive solicitation process is flexible enough to allow the NYISO, without amending its Tariff, to dictate in its solicitation particularized transmission project solutions, Competitive Transmission Developers ask the Commission to confirm that the NYISO, not the NYPSC, is the entity that is required to study and identify the specific project solutions.

⁵ The Competitive Transmission Developers include the Affidavit and supporting exhibits of E. John Tompkins which outlines Boundless' participation in the NYPSC AC Transmission proceedings. Mr. Tompkins' Affidavit is attached hereto in Attachment A.

Competitive Transmission Developers urge that the Commission issue an order consistent with the relief requested below. Absent such an order, FERC loses control over the transmission planning function of a jurisdictional public utility and affected stakeholders are left without any recourse with this Commission for transmission planning determinations of a state regulatory body. FERC's Order No. 1000 policy should ensure that the Commission retains exclusive jurisdiction over the transmission planning process.

II. COMMUNICATIONS

Competitive Transmission Developers request that all correspondence and communications concerning this filing be sent to each of the following persons and that each are included on the Commission's official service list for this filing:⁶

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⁶ Competitive Transmission Developers respectfully request waiver of 18 C.F.R. § 385.203(b)(3) to allow each person listed to be included on the Commission's official service list.

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III. DESCRIPTION OF COMPETITIVE TRANSMISSION DEVELOPERS AND RESPONDENT

A. BOUNDLESS ENERGY NE, LLC

Boundless was incorporated in 1996 as a developer of non-utility transmission and generation projects. Boundless was the original developer of the Neptune Regional Transmission System's high-voltage direct current (HVDC) cable connecting PJM Interconnection, LLC (PJM) with Long Island, New York. Boundless participated in the NYPSC initiated proceeding (Case 12-T-0502) that examined alternating current transmission upgrades, which has been commonly referred to as the AC Transmission Proceeding. In that proceeding, based on the need identified by the NYPSC, Boundless submitted an application for its Leeds Path West Project.

B. CITYGREEN TRANSMISSION, INC.

CityGreen Transmission, Inc. (CityGreen) is a non-incumbent transmission developer interested in developing high-voltage direct current and alternating current transmission facilities. CityGreen participated in the NYPSC initiated proceeding (Case 12-T-0502) that

examined alternating current transmission upgrades, which has been commonly referred to as the AC Transmission Proceeding.

C. MILLER BROS.

Miller Bros. is a utility contracting company experienced in all aspects of the construction industry, including engineering design and construction of large scale utility, electric transmission and distribution, renewable energy, and commercial and industrial projects.

D. NYISO

In accordance with its Market Services and Open Access Transmission Tariff's, the NYISO is the entity responsible for providing non-discriminatory open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. The NYISO is also responsible for the transmission planning and administration of competitive solicitations for new transmission solutions to identified needs at issue in this Complaint pursuant to the provisions of its OATT.

IV. BACKGROUND

In Order No. 1000, the Commission mandated certain transmission planning reforms and required public utility transmission providers to develop procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.⁷ The Commission also instituted non-incumbent transmission developer reforms to provide opportunities for non-incumbent transmission developers to compete for transmission projects eligible for cost allocation under public utility tariffs.⁸

⁷ Order No. 1000 at P 203.

⁸ See Order No. 1000 at P 313 ("The Commission directs public utility transmission providers . . . to eliminate provisions in FERC-jurisdictional tariffs and agreements that establish

As early as the FERC's transmission planning reforms first established in Order No. 890⁹ and confirmed in Order No. 1000, the Commission made clear to New York, as well as other State regulators, that transmission planning responsibility must ultimately reside with FERC-regulated RTOs and ISOs.¹⁰ At the same time, the FERC respects and honors the states' rights and prerogative to identify public policy requirements, and allows the FERC-jurisdictional RTOs/ISOs to employ, in certain circumstances, fully competitive processes, using data and analysis that is fully consistent with its planning process, to identify projects to satisfy those requirements.

Through a series of compliance filings, the NYISO proposed changes to its OATT to comply with the Order No. 1000 public policy transmission planning mandates that recognize the central role of transmission planning that must be performed by the NYISO, which is a FERC jurisdictional entity. In accordance with FERC's directive, the OATT modifications limit the authority of NYISO to defer to state regulators in that process. The OATT does acknowledge

a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.”).

⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

¹⁰ *See*, Order No. 890 at PP 574-575 (encouraging state commission participation and coordination and affirming that the FERC-ordered transmission planning principles govern). *See also*, Order No. 1000 at P 212; *New York Indep. Sys. Operator*, 143 FERC ¶ 61,059 at PP 77-81 (2013) (rejecting NYISO's proposal to rely on the NYPSC to select transmission projects for inclusion in the regional transmission plan for purposes of cost allocation).

the role of the NYPSC in identifying Public Policy Requirements, but the OATT also makes clear that the NYISO is responsible for soliciting and selecting solutions to identified needs.¹¹

Pursuant to its Tariff, NYISO's Public Policy Transmission Planning Process¹² consists of three independent steps:¹³

- Identify Public Policy Transmission Needs;¹⁴
- Request proposed Public Policy Transmission Projects and Other Public Policy Projects to address those Public Policy Transmission Needs and evaluation of those projects;¹⁵ and
- Select the more efficient or cost-effective Public Policy Transmission Project, if any, to satisfy each Public Policy Transmission Need to be eligible for cost allocation under the NYISO OATT.¹⁶

¹¹ See, *New York Indep. Sys. Operator*, 143 FERC ¶ 61,059 (2013); *order on reh'g*, 148 FERC ¶ 61,044 (2014); *order on reh'g*, 151 FERC ¶ 61,040 (2015); *order on reh'g*, 153 FERC ¶ 61,341 (2015). Competitive Transmission Developers note that the current version of the complete NYISO Tariff available on the NYISO website is out of date and does not incorporate changes that have been approved by the Commission. Competitive Transmission Developers refer in this Complaint to the version of the Tariff that includes changes FERC approved in Docket No. ER16-966-000 with an effective date of February 19, 2016, reflecting the fact that the NYISO's AC Transmission Public Policy Transmission Need Project Solicitation was issued on February 29, 2016, after the effective date of the changes to the relevant NYISO public policy transmission planning process.

¹² Section 31.1.1 of the NYISO OATT defines the Public Policy Transmission Planning Process as: "the process by which the ISO solicits needs for transmission driven by Public Policy Requirements, evaluates *all* Public Policy Transmission Projects and Other Public Policy Projects on a comparable basis, and selects the more efficient or cost effective Public Policy Transmission Project, if any, for eligibility for cost allocation under the ISO Tariffs." (Emphasis added.)

¹³ See NYISO OATT, Attachment Y, § 31.4.1.

¹⁴ See NYISO OATT, Attachment Y, § 31.4.2. Public Policy Transmission Need is defined as: A transmission need identified by the NYPSC that is driven by a Public Policy Requirement pursuant to Sections 31.4.2.1 through 31.4.2.3. (NYISO OATT, Attachment Y, § 31.1.1).

¹⁵ See NYISO OATT, Attachment Y, § 31.4.3.

¹⁶ See NYISO OATT, Attachment Y, § 31.4.8.

As approved by the Commission, the NYISO Public Policy Transmission Planning Process carves out a role for the NYPSC solely with respect to the first step: identification of the Public Policy Transmission Needs driven by Public Policy Requirements, either on NYPSC's own initiative or following submission by the NYISO to the NYPSC, needs proposed by stakeholders or interested parties.¹⁷

Sections 31.4.3 – 31.4.8 of the NYISO Tariff unequivocally place the responsibility for planning (i.e., requesting and evaluating proposed transmission solutions (or other alternative solutions)) to meet those needs with the NYISO itself. These sections also implement the Commission's Order No. 1000 non-incumbent transmission developer reforms through a solution-based solicitation model that requires the NYISO to identify a generalized transmission need and request proposed transmission (and other non-transmission) solutions to meet those needs. The NYISO did not propose in the Order No. 1000 compliance process, nor until its last solicitation did the NYISO Tariff employ, a bid-based solicitation model whereby the NYISO identifies the particularized transmission project that satisfies the need, includes that project in its transmission expansion plan, and puts that transmission project up for competitive solicitation.

In accordance with its Tariff, the NYISO issued its first competitive solicitation on November 1, 2015, to address a Public Policy Transmission Need determination by the NYPSC. Specifically, the NYPSC issued an order on July 20, 2015 finding a Public Policy Transmission Need to alleviate congestion in Western New York.¹⁸ In response to that order, the NYISO issued its Western New York Public Policy Transmission Need Project Solicitation (Western

¹⁷ NYISO OATT, Attachment Y, § 31.4.2.

¹⁸ Case 14-E-0454, In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration, *Order Addressing Public Policy Requirements for Transmission Planning Purposes* at p. 33 (July 20, 2015). (Attachment B).

New York Solicitation)¹⁹ requesting proposed solutions to alleviate that congestion. No specific transmission project, or solution, was included in that solicitation and the NYISO received multiple proposed solutions, both from incumbent transmission providers as well as competitive transmission developers.

On February 29, 2016, the NYISO issued its second competitive solicitation, the AC Transmission Public Policy Transmission Needs Project Solicitation (February 29 Solicitation), that is challenged here.²⁰ The February 29 Solicitation was issued in response to a December 17, 2015 order of the NYPSC related to particular alternating current (AC) transmission enhancements in New York identified by the NYPSC.²¹ That December 17 order was the culmination of several efforts undertaken by the NYPSC to consider transmission congestion in New York. In 2012, the NYPSC initiated a series of proceedings to consider potential actions to address issues related to insufficient transmission capacity between upstate power generation sources (referred to generally as UPNY) and downstate consumers (referred to generally as SENY) on New York's AC bulk electric transmission system. In 2014, the NYPSC expanded the ongoing proceeding “to fulfill its role on behalf of the State of New York pursuant to the Public Policy Transmission Planning Process regulated by the [FERC] to identify transmission needs

¹⁹ The Western New York Public Policy Transmission Need Project Solicitation is attached hereto as Attachment C.

²⁰ The February 29 Solicitation is attached hereto as Attachment D.

²¹ See Case 14-E-0454, In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration, *Order Addressing Public Policy Requirements for Transmission Planning Purposes*, at p. 1 (December 17 Order) (Attachment E).

driven by public policy requirements” (collectively, the 2012 and 2014 proceedings are referred to as the AC Proceedings).²²

In the AC Proceedings, the NYPSC initially sought proposals from transmission owners and developers for projects that would improve the existing aging transmission infrastructure and increase the UPNY/SENY transfer capacity by approximately 1,000 MW. The NYPSC then directed the NYPSC Trial Staff (NYPSC Staff) to undertake a comparative evaluation of the project proposals received pursuant to that NYPSC request for proposals. The AC Proceedings declined to include any opportunity for the submission of HVDC transmission technology proposals. As a result, the AC Proceedings did not consider all viable transmission solutions to the needs being studied by the NYPSC.

In its final report, issued on September 22, 2015, the NYPSC Staff identified a list of transmission needs to be satisfied and endorsed two specific project solutions and additional system upgrades that it concluded best satisfied those needs. The NYPSC Staff then recommended that the NYPSC “find and determine that there is a need for the identified portfolio of projects driven by Public Policy Requirements.”²³

Following the NYPSC Staff report, the NYPSC held hearings, and directed additional analysis based on its own desired planning parameters, data and inquiries, which it then used in reaching its order.²⁴ In its December 17 Order, the NYPSC identified the needs broader than just the UPNY/SENY interfaces and more precise than the need to move power from upstate to

²² *Id.* at p. 1.

²³ NYPSC Staff Report at x. The NYPSC Staff Report further concluded that “[t]he NYTOs and NextEra should be invited to apply to build both segments, and NAT should be invited to build the Greenbush or Knickerbocker to Pleasant Valley segment.” (NYPSC Staff Report at 164.) (Attachment F)

²⁴ December 17 Order at p. 33.

downstate. The NYPSC determined that “there is a transmission need driven by Public Policy Requirements for new 345 kV major electric transmission facilities to cross the Central East and UPNY/SENY interfaces to provide additional transmission capacity to move power from upstate to downstate.”²⁵ Then, rather than identify Public Policy Transmission Needs driven by Public Policy Requirements, as those terms are defined in the NYISO Tariff, the NYPSC identified in its Order the particular project solutions that meet those needs in detail and encouraged the sponsors of those particular projects to submit bids in the anticipated NYISO competitive solicitation.

V. COMMUNICATIONS WITH NYISO

Before and subsequent to the issuance of the December 17 Order, the NYISO held several meetings of the Electric System Planning Working Group (ESPWG) and other NYISO committees, which included some of the Competitive Transmission Developers, to discuss the NYISO’s Public Policy Transmission Planning Process, the December 17 Order (including the Public Policy Transmission Needs identified therein), and the anticipated AC Transmission Public Policy Transmission Needs Project Solicitation. In particular, in a presentation prepared for the New England States Committee on Electricity (NESCOE) Competitive Transmission Forum held October 26, 2015 and in documents prepared for a January 21, 2016 ESPWG meeting and a January 26, 2016 Management Committee meeting, NYISO representatives explained its Public Policy Transmission Planning Process and the corresponding competitive

²⁵ Dec. 17 Order at 2. As explained in the supporting Affidavit of E. John Tompkins, project developers were initially informed that any project proposal must have no negative impact on the Central East interface and all study analyses performed on the proposed projects did not include any Central East specifications. It wasn’t until September 2015 that the NYDPS changed course and specified an interest in increasing the transfer capability of the Central East interface. (Tompkins Affidavit at P 7.)

solicitation process.²⁶ Competitive Transmission Developers present during those presentations understood that any project proposal would be eligible for submission in response to a solicitation and that the NYISO would not limit any project solicitation to only particular projects identified by the NYPSC.

It wasn't until the February 5, 2016, ESPWG meeting, however, when members were presented with a draft of the AC Transmission Public Policy Transmission Needs Project Solicitation, which proposed to adopt whole cloth the transmission project solutions identified by the NYPSC in the December 17 Order.²⁷ The presentation led at least some of the representatives of the Competitive Transmission Developers to understand that the NYISO concluded that its Tariff required NYISO to accept the NYPSC definition of those particular projects as Public Policy Transmission Needs.²⁸ In so doing, the NYISO proposed in its draft to transform the solicitation from a solution-based solicitation to a bid-based solicitation.

There were efforts at and after the ESPWG meeting to delay the final issuance of the solicitation while the NYISO considered comments and concerns on its draft. Specifically, a request was made by a representative of Boundless Energy, which is one of the Competitive Transmission Developers,²⁹ to permit time for comments to be provided and considered by the NYISO. Notwithstanding that request, the NYISO issued the solicitation on February 29, 2016.

Representatives of Boundless Energy have been seeking the opportunity in the pending New York litigation, which is discussed below, to achieve an outcome that might allow the

²⁶ Tompkins Affidavit at PP 8, 12.

²⁷ Tompkins Affidavit at P 13.

²⁸ *Id.*

²⁹ *Id.*

NYISO the chance to conduct a proper solicitation without being perceived to be disregarding the will of the NYPSC. When it became clear those efforts would not be successful, the Competitive Transmission Developers prepared and filed this Complaint.

VI. COMPLAINT

A. Requested Findings and Relief

The Complainants request that the Commission make the following findings and direct the following relief:

1. That the NYISO violated its Tariff by deferring its transmission planning responsibilities entirely to the NYPSC to identify specific project solutions that meet Public Policy Transmission Needs.
2. That the NYISO violated its Tariff by issuing a project solicitation that deviates from its FERC-approved solution-based proposal approach and instead seeks bids for specific projects identified by the NYPSC.
3. That the NYISO Tariff does not permit the NYISO to accept particularized project technical specifications based on studies performed at the direction of the NYPSC in a NYPSC proceeding.
4. That the NYISO should reissue an AC Transmission Public Policy Needs solicitation that is consistent with the requirements of its Tariff and allows any project solution to be submitted in response to a competitive project solicitation.

The Competitive Transmission Developers also request that the Commission clarify that, when analyzing proposed project solutions, the NYISO must utilize its normal study process, including base assumptions and generator dispatch modeling, and not rely on studies commissioned by the NYPSC that reflect different assumptions in modeling.

B. Argument

1. The February 29 AC Transmission Public Policy Transmission Needs Project Solicitation violates the NYISO Tariff because it inappropriately delegates the NYISO’s transmission planning function to the NYPSC.

The NYISO Public Policy Transmission Planning Process consists of three independent steps:³⁰

- Identification of Public Policy Transmission Needs;³¹
- Solicitation of proposed Public Policy Transmission Projects and Other Public Policy Projects to address those Public Policy Transmission Needs and evaluation of those projects;³² and
- Selection of the more efficient or cost-effective Public Policy Transmission Project, if any, to satisfy each Public Policy Transmission Need to be eligible for cost allocation under the ISO OATT.³³

As approved by the Commission, the NYISO Public Policy Transmission Planning Process carves out a role for the NYPSC solely with respect to the first step: identification of the Public Policy Transmission Needs driven by Public Policy Requirements, either on its own initiative or following submission by the NYISO to the NYPSC needs proposed by stakeholders or interested parties.³⁴ A Public Policy Transmission Need is defined as: “A transmission need identified by the NYPSC that is driven by a Public Policy Requirement pursuant to Sections 31.4.2.1 through 31.4.2.3.”³⁵

³⁰ See NYISO OATT, Attachment Y, § 31.4.1.

³¹ See NYISO OATT, Attachment Y, § 31.4.2.

³² See NYISO OATT, Attachment Y, § 31.4.3.

³³ See NYISO OATT, Attachment Y, § 31.4.8.

³⁴ NYISO OATT, Attachment Y, § 31.4.2.

³⁵ NYISO OATT, Attachment Y, § 31.1.1. Under the NYISO OATT, a Public Policy Requirement is “a federal or New York State statute or regulation, including a NYPSC order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act, any successor statute, or any duly enacted law or regulation passed by a local

The February 29 Solicitation rightfully identifies the Public Policy Transmission Need described by the NYPSC – to reduce congestion in the Central East and Upstate New York/Southeast New York (UPNY/SENY) corridors.³⁶ Had it stopped there and requested proposed solutions to that need, as the NYISO is required to do pursuant to Section 31.4.3 of its OATT, the February 29 Solicitation would have permitted any interested developer to submit a proposal for review by the NYISO of solutions to the Central East and UPNY/SENY congestion.

However, the NYISO then goes too far and adopts, verbatim, without independent review or analysis, the specific transmission solutions selected by the NYPSC. Those specific NYPSC-selected solutions were included in an Appendix to the December 17 Order which the NYISO simply attaches to the February 29 Solicitation. The NYISO solicitation only requests responses that adhere to those very specific transmission project segments, including specified start and end points, substation upgrades, and schematic layout. Thus, if left to stand, the NYISO would have effectively transformed its role with respect to the Public Policy Transmission Planning Process into the simple ministerial role of selecting the lowest cost bid to develop the NYPSC transmission projects.

The NYISO Public Policy Transmission Planning Process dictates the planning function to be performed by the NYISO. Section 31.4.3 of the NYISO OATT requires the NYISO to request “proposed Public Policy Transmission Projects, including Interregional Transmission Projects, to satisfy each Public Policy Transmission Need identified pursuant to Sections 31.4.2.1

governmental entity in New York State, that may relate to transmission planning on the [Bulk Power Transmission Facilities].” *Id.*

³⁶ February 29 Solicitation at p. 2.

though 31.4.2.3.”³⁷ In soliciting both Public Policy Transmission Projects and Interregional Transmission Projects, the NYISO Tariff clearly contemplates a wide range of possible transmission solutions to address Public Policy Transmission Needs and places the responsibility of evaluating each of the proposals with the NYISO. The subservient role played by NYISO staff in response to NYPSC directives during the State regulatory process is not the role required of the NYISO in its Tariff.

The February 29 Solicitation accepts the NYPSC redefinition of Public Policy Transmission Needs to be only those particular projects and forecloses, for example, any opportunity for the NYISO to consider any Interregional Transmission Project because those projects, by definition, don’t meet the requirement of the solicitation. The February 29 Solicitation further forecloses a developer from proposing an intra-state transmission solution that deviates at all from the NYPSC preferred solutions. Nor is there any opportunity for a HVDC transmission solution to even be considered at any point during this process because the NYPSC-run AC Proceeding did not allow the submission of a proposal utilizing this technology. This foreclosure is complete, notwithstanding the very distinct possibility that such alternative solutions, such as an Interregional Transmission Project, an HVDC transmission project, or some other transmission solution, may be viable and sufficient to address the Public Policy

³⁷ NYISO OATT, Attachment Y, § 31.4.3. Public Policy Transmission Projects are defined as “A transmission project or a portfolio of transmission projects proposed by Developer(s) to satisfy an identified Public Policy Transmission Need and for which the Developer(s) seek to be selected by the ISO for purposes of allocating and recovering the project’s costs under the ISO OATT.” Interregional Transmission Projects are defined as: “A transmission facility located in two or more transmission planning regions that is evaluated under the Interregional Planning Protocol and proposed to address an identified Reliability Need, congestion identified in the CARIS, or a transmission need driven by a Public Policy Requirement pursuant to Order No. 1000 and the provisions of this Attachment Y.” (NYISO OATT, Attachment Y, § 31.1.1).

Transmission Need and, ultimately, the most efficient and cost effective solution to alleviate the Central East and UPNY/SENY congestion.

The Commission has clearly stated that the transmission planning function must reside with the FERC-jurisdictional public utility.³⁸ In a highly analogous circumstance, the Commission recently found that the NYISO inappropriately delegated its responsibilities with respect to the evaluation and selection for reliability must-run (RMR) alternatives to the NYPSC.³⁹ In its order, the Commission stated that it is “concerned that, contrary to the Commission’s findings in the [NYISO first Order No. 1000 compliance order], NYISO proposes to allow the [NYPSC] to select a transmission solution that may become permanent outside of the Order No. 1000-compliant comprehensive reliability planning process.”⁴⁰ While acknowledging that the NYPSC “can consult, collaborate, inform, and even recommend a transmission project for selection,”⁴¹ the Commission determined that any recommendation is not a final determination and that the “NYISO *must be the entity that selects the solution.*”⁴²

³⁸ In Order No. 890, the Commission mandated reforms to the *pro forma* OATT to require each public utility transmission provider to have a coordinated, open, and transparent regional transmission planning process subject to FERC compliance and enforcement. *See generally* Order No. 890 at PP 2-8.

³⁹ *New York Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,076 at P 32 (2016) (“We find that NYISO’s proposal inappropriately delegates evaluation and selection of RMR alternatives to the New York Commission and thus does not comply with the RMR Order.”); *see also New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116 at P 14 (2015) (“NYISO must be the entity that makes the determination whether a specific generator is needed to ensure reliable transmission service and thus whether the facility is designated an RMR unit.”)

⁴⁰ *Id.*, at P 37.

⁴¹ *Id.*, at P 39; *quoting New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 at P 79.

⁴² *Id.*, at P 40.

The very same is true here. Indeed, the NYPSC admits that it has selected the preferred project solutions. In its Memorandum of Law in Support of its Answer to the appeals of the December 17 Order, the NYPSC confirms that its order does more than just identify Public Policy Transmission Needs. The NYPSC states that it “conducted a prescreening of proposed needs *and identified the portfolio of projects that would meet those needs.*”⁴³ The NYPSC’s actions here are no different than what the Commission recently said it couldn’t do in identifying RMR alternatives.

By limiting the competitive solicitation to only those specific project solutions identified by the NYPSC in its December 17 Order, the NYISO has effectively and completely delegated its planning function to the NYPSC, a process that is subject to no FERC oversight or review. The Commission has no jurisdiction over the NYPSC AC Proceedings and is not able to consider whether the determination of specific project solutions to meet the Public Policy Transmission Needs was made consistent with the policies of the FERC.⁴⁴ The NYISO may consider the NYPSC’s recommendation of specific projects, but it must not limit its solicitation of possible solutions to the Public Policy Transmission Needs to only those project solutions preferred by the NYPSC.

⁴³ See Memorandum of Law in Support of Verified Answer, p. 20 (May 16, 2016) (attached hereto as Attachment G).

⁴⁴ Indeed, the NYPSC’s preferred solution may have been determined in large part on the basis of a flawed Benefit/Cost ratio evaluation. When questioned about the source of what some believed to be flawed assumptions used in the NYPSC determination, the independent consultants hired by the NYPSC stated that the assumptions were provided by the NYPSC Staff and were neither recommended by the consultant nor independently verified. The pertinent point here is that by adopting what amounts to a technical specification as the “Public Policy Transmission Need,” rather than a more broadly stated capability requirement, the NYISO has implicitly embraced the Benefit/Cost rate evaluation without independent review by the NYISO. (See Tompkins Affidavit at P 11.)

Moreover, the NYISO OATT requires the NYISO to evaluate each proposed solution independently to determine whether the proposed solution – whether transmission, generation, demand response, or a combination of these resource types – is viable and sufficient to satisfy the Public Policy Transmission Need.⁴⁵ As recently as October 26, 2015, NYISO representatives confirmed the NYISO’s responsibilities with respect to this viability and sufficiency evaluation.⁴⁶ The February 29 Solicitation, however, renders meaningless this critical step as it relates to any proposed transmission solution because the solicitation itself prevents any solution other than the specific transmission projects identified by the NYPSC – in other words, no viability and sufficiency evaluation is necessary for solutions that adhere to the very specific technical specifications included in the February 29 Solicitation.

To be clear, the NYPSC’s AC Transmission Process and its recommendations are not at issue in this Complaint.⁴⁷ The Competitive Transmission Developers recognize that the NYPSC can run its proceedings in any manner in which it sees fit, consistent with New York state laws and regulations. This Complaint is limited to the actions of the NYISO. But the Commission must not be deceived by the expansive and creative reading of the term “Public Policy Transmission Need” to permit a non-jurisdictional State regulatory authority to identify specific project solutions as such a need and to effectively require the NYISO to adopt those particular solutions subject in its bid for projects.

⁴⁵ See NYISO OATT, Attachment Y, §§ 31.4.6.3 and 31.4.6.4.

⁴⁶ See Exhibit 1 to the Tompkins Affidavit at slide 7. This presentation closely tracks an earlier presentation given at the December 12, 2014 Inter-Regional Planning Stakeholder Advisory Committee meeting attached as Exhibit 2 to the Tompkins Affidavit.

⁴⁷ Boundless notes that it has filed appeals of the NYPSC December 17 Order with the state courts in New York. This Complaint is limited to the actions of the NYISO and whether those actions violate the NYISO Tariff.

Faced with a decision to either abide by its Tariff and solicit for any project solution or to seek bids on the very particular and specific project solutions identified by the NYPSC in its December 17 Order, the NYISO chose the latter. Competitive Transmission Developers aver that the December 17 Order does provide what is necessary for the NYISO to issue a Tariff-conforming competitive solicitation. For example, the NYPSC recognized that the transmission need review process was instituted because “the transmission corridors that include the Central East and UPNY/SENY electrical interfaces were persistently congested and contributed to higher energy costs and reliability concerns.”⁴⁸ The NYDPS Trial Staff Final Report, which formulates the basis of the December 17 Order, elaborately describes the public policy needs:

- reduce transmission congestion so that large amounts of power can be transmitted to regions of New York where it is most needed;
- reduce production costs through congestion relief;
- reduce capacity resource costs;
- improve market competition and liquidity;
- enhance system reliability, flexibility, and efficiency;
- improve preparedness for and mitigation of impacts of generator retirements;
- enhance resiliency/storm hardening;
- avoid refurbishment costs of aging transmission;
- take better advantage of existing fuel diversity;
- increase diversity in supply, including additional renewable resources;
- promote job growth and the development of new efficient generation resources Upstate;
- reduce environmental and health impacts through reductions in less efficient electric generation;
- reduce costs of meeting renewable resource standards;
- increase tax receipts from increased infrastructure investment;
- enhance planning and operational flexibility;
- obtain synergies with other future transmission projects; and
- relieve gas transportation constraints.⁴⁹

⁴⁸ December 17 Order at p. 11.

⁴⁹ Comparative Evaluation of Alternating Current Transmission Upgrade Alternatives, Trial Staff Final Report, September 22, 2015, at p. x.

The December 17 Order specifically references these needs, but, creatively, reclassifies these needs as Public Policy Requirements driving the need for the particular and specific project solutions.⁵⁰ The NYISO, in turn, substitutes its own analysis and planning responsibilities for the analysis and planning performed at the direction of the NYPSC in the AC Proceedings.

Simply put, the NYISO must not be permitted to delegate its planning function responsibilities to the NYPSC. In filings before this Commission, the NYISO has asserted that its “role in the transmission planning process is appropriately defined, because NYISO is in the best position to analyze needs and coordinate with stakeholders.”⁵¹ The Commission accepted the proposed role of the NYPSC, where the NYPSC would, “in an open and transparent process, identify transmission needs driven by public policy requirements for which solutions will be evaluated.”⁵² The NYPSC’s involvement in the NYISO Public Policy Transmission Planning Process is necessarily limited to the identification of Public Policy Transmission Needs – the first step in the NYISO Public Policy Transmission Planning Process. If left to stand as currently issued, the February 29 Solicitation would limit NYISO’s role to simply evaluating bids to develop the NYPSC preferred project solutions – a clear violation of the NYISO Tariff.

2. The NYISO violated its Tariff by issuing a project solicitation that deviates from the solution-based proposal approach approved by FERC.

While the argument above addresses the respective roles the NYISO and the NYPSC play in the FERC-approved Public Policy Transmission Planning Process and is sufficient to grant the relief sought in this Complaint, the February 29 Solicitation also violates Section 31.4.3

⁵⁰ December 17 Order at pp 66-67.

⁵¹ *New York Indep. Sys. Operator*, 143 FERC ¶ 61,059 at P 98 (2013).

⁵² *Id.* at P 141.

because it is not consistent with the preferred competitive solicitation model the NYISO adopted in response to Order No. 1000. In Order No. 1000, the Commission eliminated provisions in all “Commission-jurisdictional tariffs and agreements that grant federal rights of first refusal to incumbent transmission providers with respect to the construction of transmission facilities selected in a regional transmission plan for purposes of cost allocation.”⁵³ Generally known as the non-incumbent transmission developer reforms, the Commission directed RTOs to provide opportunities for non-incumbent transmission developers to compete for transmission projects. In compliance with this mandate, RTOs generally proposed two different competitive solicitation models: the sponsorship model, which requires the RTO to identify generalized transmission needs and offer competitive solicitations for project solutions to address those needs;⁵⁴ and the bid-based model, which contemplates the identification by the RTO of specific project solutions to needs and offer competitive solicitations for project bids from all qualified developers.⁵⁵

Unlike MISO, CAISO, and SPP, each of which adopted a bid-based model for competitive solicitations, the NYISO adopted the sponsorship model. Specifically, Section 31.4.3 requires NYSIO to:

request proposed Public Policy Transmission Projects, including Interregional Transmission Projects, to satisfy each Public Policy Transmission Need identified pursuant to Sections 31.4.2.1 though

⁵³ Order No. 1000 at P 284.

⁵⁴ *See* Amended and Restated Operating Agreement of PJM Interconnection, LLC, Schedule 6, Section 1.5; *see also* ISO New England Open Access Transmission Tariff, Section II, Attachment K, Sections 4 and 4A.

⁵⁵ *See, eg.*, Midcontinent Independent Transmission Operator, Inc., Open Access Transmission Tariff, Attachment FF (MISO puts up for bid all Competitive Transmission Projects, defined as: The Competitive Transmission Facilities contained within a Market Efficiency Project or Multi-Value Project approved by the Transmission Provider Board in MTEP Appendix A, subject to Section VIII.A of Attachment FF; *See also* SPP OATT, Attachment Y, Section III; CAISO OATT, Section 24.5.

31.4.2.3. An Interregional Transmission Project shall be: (i) evaluated in accordance with the applicable requirements of the Public Policy Transmission Planning Process of this Attachment Y, and (ii) jointly evaluated by the ISO and the relevant adjacent transmission planning region(s) in accordance with Section 7.3 of the Interregional Planning Protocol. The ISO shall also accept specific proposed Other Public Policy Projects to satisfy a Public Policy Transmission Need identified pursuant to Sections 31.4.2.1 through 31.4.2.3.⁵⁶

This Section, together with Section 31.4.2.1, provides that the NYPSC will identify a Public Policy Transmission Need (a transmission need that is driven by a Public Policy Requirement) and the NYISO will request proposed solutions (Public Policy Transmission Projects) to meet that need. Indeed, the explicit terms of this provision allow for the possibility that the NYISO may be presented with both regional and interregional transmission solutions to a Public Policy Transmission Need.

For those RTOs that have adopted a bid-based model, it is very clear in their respective tariffs that the RTO will identify the specific transmission facility that is eligible for competitive bid. For example, MISO identifies what it has termed a Competitive Transmission Project which is a transmission facility specifically voted on and approved in Appendix A of its transmission expansion plan.⁵⁷ The Southwest Power Pool (SPP) identifies Competitive Upgrades that include pre-identified transmission facilities approved in the plan and that are eligible for competition.⁵⁸ Finally, the California Independent System Operator, Inc. (CAISO) conducts a three phase planning process that requires CAISO to determine which transmission facilities are necessary to be constructed and included in the expansion plan in Phase 2 and then identify

⁵⁶ NYISO OATT, Attachment Y, Section 31.4.3.

⁵⁷ MISO OATT, Attachment FF.

⁵⁸ SPP OATT, Attachment Y, Section III.

which of those specific transmission facilities are eligible for competitive bid in the Phase 3 competitive solicitation.⁵⁹

No comparable provision exists in the NYISO Tariff. The definition of Public Policy Transmission Projects supports the determination that the NYISO model does not contemplate any competitive solicitation initiated by the NYISO that identifies the specific transmission solution for which developers may, in essence, compete on price. A Public Policy Transmission Project is defined as: “A transmission project or a portfolio of transmission projects proposed by Developer(s) to satisfy an identified Public Policy Transmission Need and for which the Developer(s) seek to be selected by the ISO for purposes of allocating and recovering the project’s costs under the ISO OATT.”⁶⁰

The NYISO Tariff does not allow the NYISO to identify the specific transmission solutions that are eligible for competitive bid.⁶¹ Rather, Section 31.4.2 provides for the very opposite: the NYISO will identify the need and developers will be permitted to propose any regional or interregional transmission project(s) that meets the need. The NYISO will then study each proposal to determine whether it is a viable and sufficient solution to address the need, and then evaluate which viable solution is the more efficient or cost effective Public Policy Transmission Project that satisfies the Public Policy Transmission Need.

⁵⁹ CAISO OATT, Section 24.5.

⁶⁰ NYISO OATT, Attachment Y, Section 31.1.1.

⁶¹ The NYISO’s issuance of the November 1, 2015, Public Policy Transmission Need project solicitation to alleviate congestion in Western New York supports Competitive Transmission Developers’ reading of the NYISO OATT. That solicitation is a sponsorship solicitation and requests any proposed solution to alleviate the identified congestion. The February 29 Solicitation is a bid-based solicitation that identifies a specific project solution that would-be developers may bid on. The NYISO’s Order No. 1000 compliance filings cannot be read to suggest that the NYISO can cavalierly choose between the two different solicitation models.

Despite FERC's acceptance of the NYISO's required sponsorship model, and the clear mandate in Section 31.4.3 of its Tariff, the February 29 Solicitation identifies the specific transmission facilities, listed as Segment A and Segment B with start and end points, voltage levels, right-of-ways, and circuitry that are eligible for bid. There can be no mistake that the February 29 solicitation is not consistent with the explicit terms of Section 31.4.3 and transforms the sponsorship model the NYISO employed for its competitive solicitations into a bid-based solicitation. The NYISO must, therefore, reissue the project solicitation to allow a developer to submit any proposed solution that meets the Public Policy Transmission Needs.

3. Assuming, *arguendo*, that the NYISO is permitted to issue a bid-based Public Policy Transmission Needs project solicitation, the NYISO itself must be the entity that identifies which specific solution is put up for bid.

In the unlikely event the Commission determines that the NYISO is permitted to toggle between the sponsorship model and the bid-based model,⁶² the Commission must find that it is the NYISO, not the NYPSC, that should determine – pursuant to NYISO's own planning processes – which project solutions are eligible for competitive bid. First, as argued above, a state commission should not be permitted to perform the transmission planning function for a public utility. Transmission planning is under the exclusive jurisdiction of the FERC.⁶³ FERC mandated transmission planning reforms that require public utilities to perform specific planning obligations in its progeny of Order Nos. 888, 890, and 1000. The NYISO has a FERC-approved Tariff that describes how it will perform its planning function and identify those transmission

⁶² Competitive Transmission Developers believe that the Commission cannot make such a finding without ordering the NYISO to submit a compliance filing that would allow for such a model.

⁶³ Order No. 1000 at PP 99-107. *See generally* Order No. 890 at PP 2-8.

facilities that it believes are necessary to support wholesale power markets and the reliability of the transmission grid.

Second, if left to proceed with this solicitation, there is no recourse for stakeholders to argue that the planning function was performed incorrectly or that the NYISO, if permitted to consider any project solution that meets the Public Policy Transmission Need, would have identified different projects than what was selected by the NYPSC. For example, the NYPSC did not consider any project solution that utilizes HVDC technology. This is a serious flaw in the consideration of potential transmission solutions and ensures that the NYISO itself will not have an opportunity to evaluate all transmission options that may result in the most efficient and cost effective solution to the Public Policy Transmission Need.

Nor is there any way to verify that the studies relied upon by the NYPSC were studied using NYISO's modeling, generator dispatch and other assumptions or whether the NYPSC utilized its own assumptions.⁶⁴ FERC, therefore, would lose control of the planning process and would be unable to ensure that NYISO considered *all* viable and sufficient *solutions* to the identified transmission needs and selected the most efficient and cost effective solution from the viable options – as compared to simply identification of a public policy *need* which may be considered by state commissions. There is no question that consumers are potentially harmed if this process is left to proceed in its current state.

The Competitive Transmission Providers acknowledge that the NYISO Tariff permits the NYPSC to specify additional evaluation criteria and the type of analyses the NYISO should run when it considers which project solutions are the most efficient or cost-effective solution to a

⁶⁴ As mentioned above the NYISO has embraced the NYPSC Benefit/Cost ratio evaluations which have not been independently verified or reviewed by the NYISO.

Public Policy Transmission Need.⁶⁵ The NYPSC December 17 Order and the February 29 Solicitation, however, do more than just provide additional evaluation criteria. Together, they transform the state regulatory process into a competition outside of the FERC jurisdictional process for the selection of project specific technical criteria. Such determinations can and should only be permitted as part of the planning function analysis that is required to be performed by the NYISO itself.⁶⁶

Competitive Transmission Providers question whether the projects selected by the NYPSC were studied using modeling, generator dispatch and other assumptions that may deviate from the assumptions that NYISO typically uses in performing similar studies. The Commission addressed the role of state commissions in general and the NYPSC role in particular during the Order No. 1000 compliance process – it did not allow state commission’s to take control of transmission planning.⁶⁷

In this instance, the Commission should confirm that the NYISO itself should be required to identify the specific project solution that addresses a Public Policy Transmission Need identified by the NYPSC and that is eligible for competitive bid. Each of the RTOs that have

⁶⁵ See NYISO OATT, Attachment Y, Section 31.4.2.1 (“The NYPSC’s statement may also provide (i) additional criteria for the evaluation of transmission solutions and non-transmission projects, (ii) the required timeframe, if any, for completion for the proposed solution, and (iii) the type of analyses that it will request from the ISO.”)

⁶⁶ For example, the “criteria” include specifications that any proposed solution to Segment A (Central East) must include all project components included in Segment A and that any proposed solution to Segment B (UPNY/SENY) must include all project components included in Segment B.

⁶⁷ *New York Indep. Sys. Operator*, 143 FERC ¶ 61,059 at PP 77-81 (2013) (rejecting NYISO’s proposal to rely on the NYPSC to select transmission projects for inclusion in the regional transmission plan for purposes of cost allocation).

adopted bid-based competitive solicitation processes determine the eligible projects through their FERC-approved planning processes. The Commission should find the same here.

4. A Commission order is necessary to provide guidance to market participants on the rules and procedures that govern the NYISO's competitive solicitation process.

A Commission ruling in this proceeding is critically important for Competitive Transmission Developers to understand the entirety of the NYISO competitive solicitation process. If the Commission approves the February 29 Solicitation and, in effect, the underlying NYPSC process where specific transmission solutions can rightfully be determined to be Public Policy Transmission Needs, the Commission must be aware that it is endorsing a two-pronged competitive process: 1) a competition before the NYPSC to determine which project solutions are selected to meet Public Policy Transmission Needs, and 2) a competition issued by the NYISO to determine which developer is chosen to construct the project.

As a policy matter, it is important for all competitive transmission developers to understand the process under which the NYISO will administer competitive solicitations. This process has clearly demonstrated that a two-pronged competition leads to confusion and bifurcated proceedings that leave little assurance that either competition will withstand scrutiny. It also materially increases costs to competitive transmission developers and risks materially limiting new competitors in the process.

The Commission should not take lightly the affect any Commission determination here is likely to have on its Order No. 1000 initiative. The response to Order No. 1000, while largely favorable at the outset, has recently given way to questions of its efficacy and whether the reforms have resulted in any meaningful expansion of non-incumbent transmission developer opportunities. The FERC recently noticed its intent to hold a two day technical conference to

discuss issues related to competitive transmission development processes and other ratemaking issues.⁶⁸ While the Competitive Transmission Developers applaud the Commission's commitment to ensure that the competitive solicitation processes generally promote vibrant and meaningful participation by non-incumbent transmission developers, the NYISO specific actions here are a ready example of the difficulties those developers who are not affiliated with incumbent public utilities have in promoting viable, cost effective projects.

There are greater policy implications if the Commission determines that the NYISO can effectively accede its planning obligation to a state commission. Competitive Transmission Developers are at a significant disadvantage because it is exceedingly difficult to obtain investor funds for ongoing financing of a project proposal that is not designed in a manner that meets all of the technical components of the NYPSC recommended transmission solutions. Unlike incumbent transmission developers, Competitive Transmission Providers do not have a rate mechanism in place that could be used to recover planning costs. This impedes the Commission's laudable policy goals of actually increasing opportunities for non-incumbent transmission developers.

It should not be the intent of the Order No. 1000 non-incumbent transmission developer reforms to allow a state regulator to conduct one aspect of the competition and the FERC-jurisdictional entity to conduct a second aspect. Not only is this delegation of its planning responsibilities from a FERC-jurisdictional entity to a state regulator improper, stakeholders should have recourse with this Commission for resolution in the event any discrepancies arise during the solicitation. FERC's Order No. 1000 policy should ensure that the Commission retains exclusive jurisdiction over the transmission planning process.

⁶⁸ See *Competitive Transmission Development Technical Conference*, Docket No. AD16-18-000 (May 16, 2016).

5. The Commission should clarify that, when analyzing proposed project solutions, the NYISO must utilize its normal study process, including base assumptions and generator dispatch modeling, and not rely on studies performed at the direction of the NYPSC in a NYPSC proceeding.

Irrespective of the FERC's determinations in this complaint proceeding, the Commission should take this opportunity to clarify that the NYISO must utilize its normal study process, including base assumptions and generator dispatch modeling, when analyzing proposed project solutions, and not rely on assumptions and similar studies performed by or at the direction of the NYPSC or the NYDPS Trial Staff.

In the extensive NYPSC Staff Report, upon which the December 17 Order is based, the NYPSC Staff applied a number of assumptions to the twenty-two distinct proposals the NYPSC Staff reviewed.⁶⁹ Those assumptions ultimately played a significant role in the NYPSC's public policy determination. Boundless is concerned that the NYISO intends to adopt the modeling and assumptions relied upon by the NYPSC in determining its preferred project solutions.

This would clearly be a violation of the NYISO Tariff. Pursuant to the FERC-approved public policy planning process, it is the NYISO's role to evaluate the proposed specific solutions.⁷⁰ Should NYISO adopt the NYPSC's assumptions, NYISO would be ceding its role as transmission project evaluator to a non-regulated state entity. The Commission must, at the very least, direct NYISO to follow its Tariff by independently evaluating the proposed project solutions.

VII. REQUEST FOR FAST TRACK PROCESSING

⁶⁹ See, e.g., Attachment F, NYPSC Trial Staff Report at 72 (“Trial Staff added additional Legal and Insurance costs to Boundless’ estimates along with a 30% contingency, insulator assembly costs, engineering costs, and costs for upgrades at the Roseton Terminal”).

⁷⁰ NYISO OATT, Attachment Y, § 31.4.1.

The issues raised in this Complaint require expeditious resolution and warrant fast track processing under Rule 206 of the Commission's Rules of Practice and Procedure.⁷¹ Responses to the February 29 Solicitation were submitted on or before April 29, 2016, and the NYISO has already begun the evaluation process. The NYISO should receive and analyze all bids, in an open and competitive process, that would resolve the needs of reduced congestion between upstate generation and downstate consumers. Competitive Transmission Developers and New York consumers will all be harmed by improper limits placed on this solicitation. Once the NYISO selects a project, or projects, it will issue a Public Policy Transmission Planning Report, which will trigger stakeholder and market monitoring review, and subsequently lead to NYISO Board action. Each of these steps requires time and resources for NYISO and project developers.

It is therefore imperative that the Commission expeditiously act on this complaint. Delay in a decision will also delay the proper identification of appropriate solutions, thereby increasing costs to consumers. The Commission must act to ensure that the NYISO considers and selects solutions through a process that properly adheres to FERC-approved Tariff provisions. Quite simply, delay will waste limited resources on a flawed process. Accordingly, Competitive Transmission Developers request that the Commission act expeditiously and issue an order granting this Complaint as soon as possible and in no event later than July 31, 2016.

VIII. ADDITIONAL REQUIREMENTS OF RULE 206

Pursuant to Rule 206, Competitive Transmission Developers set forth below the following information that is not provided elsewhere in the Complaint:

Rule 206(b)(4)&(5): Financial Impact and Nonfinancial Impacts on Complainants

⁷¹ 18 C.F.R. 385.206(b)(11); 385.206(h).

Competitive Transmission Developers are unable to accurately quantify the aggregate dollar impact of the Respondent's actions. Because of the limited nature of the February 29 Solicitation, Competitive Transmission Developers are at a significant disadvantage because it is exceedingly difficult to obtain investor funds for ongoing financing of a project proposal that is not designed in a manner that meets all of the technical components of the NYPSC recommended transmission solutions. Unlike incumbent transmission developers, Competitive Transmission Providers do not have a rate mechanism in place that could be used to recover planning costs.

The non-financial impacts of Respondent's actions are significant. Respondent's actions foreclose any opportunity for Competitive Transmission Developers to propose any project solution to satisfy the Public Policy Transmission Needs that deviates from the NYPSC's recommended project solutions. Consumers are disadvantaged because the NYISO will not be able to consider or analyze viable project solutions that may be more efficient and cost effective than the project solutions recommended by the NYPSC.

Rule 206(b)(6): Related Proceedings

Complainant is not aware of any other proceedings before the Commission related to the subject matter of this Complaint.

Rule 206(b)(7): Specific Relief Requested

The Complainant requests that the Commission make the following findings:

1. That the NYISO violated its Tariff by deferring its transmission planning responsibilities entirely to the NYPSC to identify specific project solutions that meet Public Policy Transmission Needs.
2. That the NYISO violated its Tariff by issuing a project solicitation that deviates from its FERC-approved solution-based proposal approach and instead seeks bids for projects identified by the NYPSC.

3. That the NYISO Tariff does not permit the NYISO to accept particularized project technical specifications based on studies performed at the direction of the NYPSC in a NYPSC proceeding.
4. That the NYISO should reissue an AC Transmission Public Policy Needs solicitation that is consistent with the requirements of its Tariff and allows any project solution to be submitted in response to a competitive project solicitation.

The Competitive Transmission Developers also request that the Commission clarify that, when analyzing proposed project solutions, the NYISO must utilize its normal study process, including base assumptions and generator dispatch modeling, and not rely on studies commissioned by the NYPSC that reflect different assumptions in modeling.

Rule 206(b)(8): Documents that Support the Complaint

Documents supporting the Complaint include:

- Attachment A – Supporting Affidavit and Exhibits of E. John Tompkins
- Attachment B – Case 14-E-0454, In the Matter of New York Independent System Operator, Inc.’s Proposed Public Policy Transmission Needs for Consideration, *Order Addressing Public Policy Requirements for Transmission Planning Purposes* (July 20, 2015)
- Attachment C – Western New York Public Policy Transmission Need Project Solicitation
- Attachment D – AC Transmission Public Policy Needs Project Solicitation
- Attachment E – Case 14-E-0454, In the Matter of New York Independent System Operator, Inc.’s Proposed Public Policy Transmission Needs for Consideration, *Order Addressing Public Policy Requirements for Transmission Planning Purposes* (December 17, 2015)
- Attachment F – September 22, 2015 NYPSC AC Transmission Staff Report
- Attachment G – NYPSC Memorandum of Law in Support of Verified Answer - Supreme Court of the State of New York - Albany County - Index No.: 1200-16 - May 13, 2016

Rule 206(b)(9): Dispute Resolution

Competitive Transmission Developers did not contact the Commission's Enforcement Hotline, Dispute Resolution Service or other forms of dispute resolution because the issuance of the February 29 Solicitation opens a short 60-day competitive solicitation window for the submission of proposed projects. As noted above and in the Tompkins Affidavit, based on the comments made by NYISO representatives, Competitive Transmission Developers believed until very late in the process that the solicitation would permit any project solution to be submitted for consideration. Representatives from Boundless also attempted to stay the solicitation pending resolution of the appeals of the December 17 Order it filed, consistent with NYISO indications that its Tariff required such a stay, but the NYISO issued the solicitation and indicated that it would not delay consideration of proposals responding to the solicitation. Competitive Transmission Developers aver that there is no current opportunity or possibility of resolution of the issues underlying this Complaint given the short time from included in the NYISO Tariff for the issuance of a competitive solicitation.

Rule 206(b)(10): Notice of Complaint

A form of notice suitable for publication in the *Federal Register* is attached to this Complaint.

Rule 206(c): Service

A copy of this Complaint has been served on the following via e-mail:

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X. CONCLUSION

For the reasons set forth herein, the Complainant respectfully requests that the Commission (1) order the NYISO to reissue an AC Transmission Public Policy Transmission Needs Project Solicitation that allows any project solution to be submitted consistent with the requirements of its Tariff; (2) clarify that, when analyzing proposed project solutions, the NYISO must utilize its normal study process, including base assumptions and generator dispatch modeling, and not rely on studies performed by the NYPSC; and (3) grant such other relief that the Commission deems appropriate.

Respectfully submitted,

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June 10, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the following individuals:

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Dated at Washington, DC, this 10th day of June, 2016

/s/ James B. Blackburn
James B. Blackburn
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Washington, DC 20005

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**COMPETITIVE TRANSMISSION)
DEVELOPERS)
)
 COMPLAINANT)
)
 v.)
)
**NEW YORK INDEPENDENT)
SYSTEM OPERATOR, INC.**)
)
 RESPONDENT)**

DOCKET NO. EL16-___-000

NOTICE OF COMPLAINT

(June 10, 2016)

Take notice that on June 10, 2016, Boundless Energy NE, LLC, CityGreen Transmission, Inc., and Miller Bros. (collectively, Competitive Transmission Developers) filed a complaint against the New York Independent System Operator, Inc. (“NYISO”) pursuant to sections 206 and 306 of the Federal Power Act alleging violation of the NYISO Open Access Transmission Tariff and requesting that the Commission direct the NYISO to reissue a project solicitation for the “AC Transmission Public Policy Transmission Needs Project Solicitation.”

Competitive Transmission Developers certify that a copy of the complaint was served on a representative from NYISO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on Competitive Transmission Developers.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online Service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary