

151 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

New York Independent System Operator, Inc.

Docket Nos. ER13-102-005
ER13-102-006

ORDER ON REHEARING AND COMPLIANCE

(Issued April 16, 2015)

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1. On July 17, 2014, the Commission issued an order accepting, subject to a further compliance filing,¹ the New York Independent System Operator, Inc.'s (NYISO) and the New York Transmission Owners'² (together, Filing Parties) compliance filing made to

¹ *N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044 (2014) (Second Compliance Order).

² The New York Transmission Owners comprise Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a the Long Island Power Authority (LIPA), New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc. The Filing Parties note that LIPA and New York Power Authority, as transmission owners not subject to the Commission's jurisdiction under section 205 of the Federal Power Act (FPA), have voluntarily participated in the development of the Filing Parties' filing.

comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000³ and the Commission's April 18, 2013 order.⁴

2. On August 18, 2014, the New York State Public Service Commission (New York Commission), the New York Transmission Owners, LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively LS Power), and the Long Island Power Authority and Long Island Lighting Company (collectively LIPA) submitted timely requests for rehearing of the Second Compliance Order.

3. On September 15, 2014, the Filing Parties submitted, pursuant to section 206 of the Federal Power Act (FPA),⁵ revisions to NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to comply with the Commission's directives in the Second Compliance Order. In this order, we grant, in part, and deny, in part, the requests for rehearing. We also accept the Filing Parties' compliance filing, subject to further compliance, as discussed below.

I. Background

4. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890⁶ to require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁴ *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013) (First Compliance Order).

⁵ 16 U.S.C. § 824e (2012).

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

5. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

6. On October 11, 2012, the Filing Parties jointly submitted revisions to Attachment Y of the NYISO OATT to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000. On April 18, 2013, the Commission accepted the Filing Parties' initial compliance filing, subject to modifications.⁷

7. On October 15, 2013, the Filing Parties jointly submitted additional revisions to Attachment Y of the NYISO OATT to comply with the First Compliance Order (October 2013 Filing). On July 17, 2014, the Commission accepted, subject to further compliance, the Filing Parties' filing made to comply with the Commission's First Compliance Order.⁸

II. Requests for Rehearing or Clarification – Docket No. ER13-102-005

8. The New York Commission and the New York Transmission Owners request rehearing of the Commission's finding that the NYISO Board of Directors may elect not to select a transmission solution proposed in the public policy transmission planning process under certain limited circumstances.⁹ In the alternative, the New York Transmission Owners ask the Commission to clarify that NYISO must develop specific criteria or standards for the NYISO Board to consider when exercising its discretion not to select a transmission solution in the public policy transmission planning process.¹⁰ Additionally, the New York Transmission Owners request that the Commission clarify the scope of transmission facilities that would fall within the term upgrade under the

⁷ First Compliance Order, 143 FERC ¶ 61,059.

⁸ Second Compliance Order, 148 FERC ¶ 61,044.

⁹ New York Commission Request for Rehearing at 1-2, 5-8; New York Transmission Owners Request for Rehearing and Clarification at 11-14.

¹⁰ New York Transmission Owners Request for Rehearing and Clarification at 14-16.

NYISO OATT.¹¹ In its request for rehearing, LS Power asserts that the Commission erred by finding that NYISO sufficiently considers cost through the evaluation and selection criteria utilized in the regional transmission planning process.¹² In addition, LS Power contends that the Commission erred when it accepted NYISO's proposal to select a transmission solution in the regional transmission plan for purposes of cost allocation while also, under certain circumstances, triggering a backstop transmission solution.¹³ LS Power also asks the Commission to clarify the dates by which NYISO must submit to the Commission certain *pro forma* agreements that NYISO expects to require from transmission developers.¹⁴ LIPA conditionally requests rehearing of the Commission's decision not to accept LIPA's proposed amendments to the NYISO OATT. LIPA notes that it will continue to work with NYISO and the New York Transmission Owners to ensure the proposed amendments are included in NYISO's compliance filing.¹⁵

9. On September 2, 2014, NYISO filed an answer to the requests for rehearing.

III. Compliance Filings – Docket Nos. ER13-102-006

10. Notice of the Filing Parties' compliance filing was published in the *Federal Register*, 79 Fed. Reg. 56,575 (2014), with interventions and protests due on or before October 6, 2014. Protests and comments were filed in response to the Filing Parties' compliance filing by the New York Commission, LS Power, and LIPA. On October 20, 2014, NYISO filed an answer to the protests. On November 3, 2014, LS Power filed an answer to NYISO's October 20, 2014 answer.

IV. Discussion

A. Procedural Matters

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in Docket No. ER15-102-006 because they have provided information that assisted us in our decision-making process.

¹¹ New York Transmission Owners Request for Rehearing and Clarification at 17-18.

¹² LS Power Request for Rehearing and Clarification at 6.

¹³ *Id.* at 9-14.

¹⁴ *Id.* at 2.

¹⁵ LIPA Request for Rehearing at 2.

12. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2014), prohibits an answer to a request for rehearing. Accordingly, the Commission rejects the answer filed by NYISO in Docket No. ER15-102-005.

B. Substantive Matters

13. We grant, in part, and deny, in part, the requests for rehearing or clarification, as discussed more fully below. We also find that the Filing Parties' compliance filing partially complies with the directives in the Second Compliance Order. Accordingly, we accept the Filing Parties' compliance filing to be effective January 1, 2014, subject to a further compliance filing, as discussed below. We direct the Filing Parties to submit the compliance filing within 30 days of the date of issuance of this order.

1. Overview of NYISO Transmission Planning Process

14. NYISO's regional transmission planning process, the Comprehensive System Planning Process, consists of four components: (1) a local transmission planning process; (2) a reliability transmission planning process; (3) an economic transmission planning process; and (4) a public policy transmission planning process.¹⁶ The Comprehensive System Planning Process begins with the local transmission planning process, during which each Transmission Owner¹⁷ with a transmission district¹⁸ in New York develops a local transmission plan.¹⁹ The reliability, economic, and public

¹⁶ See First Compliance Order, 143 FERC ¶ 61,059 at PP 31-32 & n.41 (citing October 11, 2012 Compliance Filing at 7-10).

¹⁷ Transmission Owner is defined in the NYISO OATT as "the public utility or authority (or its designated agent) that owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff." NYISO OATT, Definitions-T § 1.2. Transmission Owner is defined in the NYISO Agreement as "[a]n entity that owns, controls and operates facilities in New York State used for the transmission of Energy in interstate commerce. A Transmission Owner must own, individually or jointly, at least 100 circuit miles of 115 kV or above in New York State and has become a signatory to the ISO/TO Agreement." NYISO Agreement, Art. 1 (Definitions).

¹⁸ Transmission district refers to the "geographic area served by the [i]nvestor-[o]wned Transmission Owners and the Long Island Power Authority, as well as the customers directly interconnected with the transmission facilities of the Power Authority of the State of New York." NYISO OATT, Attachment Y, § 1.20.

¹⁹ NYISO OATT, Attachment Y, §§ 31.1.1, 31.2.1.

policy transmission planning processes stem from the transmission needs and solutions identified and evaluated during the local transmission planning process.²⁰

15. To develop local transmission plans, each Transmission Owner that has a transmission district conducts an individual local transmission planning process that requires the Transmission Owner to consider market participants' and other parties' comments and to explain any modifications it makes to its local transmission plan in response to such comments.²¹ NYISO reviews each Transmission Owner's local transmission plan to identify any alternative solutions proposed to meet transmission needs driven by reliability needs, congestion, or public policy requirements of the New York Control Area region more efficiently or cost-effectively than solutions proposed in the Transmission Owner's local transmission plan.²²

16. NYISO then utilizes the local transmission plans in the regional reliability transmission planning process as inputs into the base case of the Reliability Needs Assessment – the process by which NYISO, in consultation with all interested parties, identifies reliability transmission needs over a ten year horizon.²³ NYISO solicits and evaluates solutions proposed to address the Reliability Needs²⁴ identified in the Reliability Needs Assessment and reports the results of its analyses in the Comprehensive Reliability Plan.²⁵ For each identified Reliability Need, NYISO solicits: (1) a regulated²⁶

²⁰ See Second Compliance Order, 148 FERC ¶ 61,044 at P 18.

²¹ NYISO OATT, Attachment Y, § 31.2.1; *see also* First Compliance Order, 143 FERC ¶ 61,059 at P 46.

²² NYISO OATT, Attachment Y, § 31.2.1.1.3.

²³ *Id.* § 31.2.3.

²⁴ A Reliability Need is defined in the NYISO OATT as “a condition identified by [NYISO] [during the Reliability Needs Assessment] as a violation or potential violation of one or more Reliability Criteria.” NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

²⁵ See First Compliance Order, 143 FERC ¶ 61,059 at P 33 (citing October 11, 2013 Compliance Filing at 12).

²⁶ The term “regulated” refers to a transmission solution for which the proponent seeks to obtain regional cost allocation. See First Compliance Order, 143 FERC ¶ 61,059 at P 32 & n.45; October 15, 2013 Compliance Filing at ii n.8 (explaining that a regulated solution refers to a transmission solution for which the developer is seeking to obtain regional cost allocation through the NYISO OATT or a non-transmission solution for which the developer is seeking to obtain regional cost allocation through the appropriate

backstop solution (i.e., a solution that the Responsible Transmission Owner²⁷ proposes for selection in the regional transmission plan for purposes of cost allocation); (2) alternative regulated solutions (i.e., solutions a nonincumbent Transmission Owner or Other Developer²⁸ proposes for selection in the regional transmission plan for purposes of cost allocation); and (3) market-based solutions (i.e., solutions a Transmission Owner or Other Developer proposes but not for selection in the regional transmission plan for purposes of cost allocation).²⁹ NYISO then evaluates the proposed solutions with a preference for market-based solutions to remedy reliability transmission needs.³⁰ If NYISO determines that neither market-based nor regulated proposals can satisfy the reliability needs by the need date, NYISO will decide whether a Gap Solution³¹ is

state agency).

²⁷ Responsible Transmission Owner is defined as “[t]he Transmission Owner or Transmission Owners designated by [NYISO], pursuant to section 31.2.4.2, to prepare a proposal for a regulated backstop solution to a Reliability Need or to proceed with a regulated solution to a Reliability Need. The Responsible Transmission Owner will normally be the Transmission Owner in whose Transmission District [NYISO] identifies a Reliability Need.” NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

²⁸ Other Developers are defined in NYISO’s OATT as “[p]arties or entities sponsoring or proposing to sponsor regulated economic projects, transmission solutions driven by [p]ublic [p]olicy [r]equirements, or regulated solutions to Reliability Needs who are not Transmission Owners.” NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

²⁹ NYISO OATT, Attachment Y, § 31.2.4.3 (providing that NYISO shall “request market based responses from the market place”). According to NYISO’s Comprehensive Reliability Planning Process Manual, “market-based project developers obtain revenues through the NYISO’s energy and capacity markets, ancillary services sales, and bilateral contracting arrangements.” *See* NYISO, Comprehensive Reliability Planning Process Manual at 6-2.

³⁰ *See* NYISO OATT, Attachment Y, § 31.2.7 (providing that “if [NYISO] determines that a market-based solution will not be available in time to meet a Reliability Need, and finds that it is necessary to take action to ensure reliability, it will state in the [Comprehensive Reliability Plan] that implementation of a regulated solution (regulated backstop or alternative regulated solution) is necessary”).

³¹ A Gap Solution is defined as “[a] solution to a Reliability Need that is designed to be temporary and to strive to be compatible with permanent market-based proposals. A permanent regulated solution, if appropriate, may proceed in parallel with a Gap Solution.” NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

necessary and will also request the Responsible Transmission Owner to seek a Gap Solution, which may include generation, transmission, or demand side resources.³² The results of NYISO's evaluation of proposed solutions are incorporated into the Comprehensive Reliability Plan, which, like the Reliability Needs Assessment, is subject to stakeholder and Market Monitoring Unit review and comment as well as approval by the NYISO Board of Directors (NYISO Board).³³

17. Following the reliability transmission planning process, NYISO conducts the economic and public policy transmission planning processes.³⁴ NYISO's economic transmission planning process is a two phase process through which NYISO identifies factors that may produce or increase congestion and evaluates projects proposed to reduce congestion. Specifically, in Phase I, NYISO develops the Congestion Analysis and Resource Integration Study and prepares, with review and comment by interested parties, a draft report that discusses NYISO's assumptions and inputs, and the results of the analysis.³⁵ In Phase II, NYISO evaluates specific projects, including market-based or regulated solutions proposed by New York Transmission Owners and Other Developers.³⁶

18. In its review of project proposals, NYISO completes a benefit-cost analysis for all types of solutions in coordination with stakeholders and uses a metric that evaluates the cost of the project compared to the total New York Control Area-wide production cost reduction that it would provide.³⁷ Proposed transmission solutions are eligible to be included in the regional transmission plan for purposes of cost allocation if the proposed

³² *Id.* § 31.2.10.

³³ First Compliance Order, 143 FERC ¶ 61,059 at P 37 & n.61 (citing NYISO OATT, Attachment Y, § 31.2.6).

³⁴ *Id.* PP 38-39, 92 n.174.

³⁵ First Compliance Order, 143 FERC ¶ 61,059 at P 39; NYISO OATT, Attachment Y, § 31.3.1 (Congestion Assessment and Resource Integration Study for Economic Planning); NYISO, NYISO Tariffs, MST, Attachment O (Market Monitoring Unit), § 30.4.6.8.5 (7.0.0) (providing that the draft report is reviewed in the NYISO stakeholder process, evaluated by the Market Monitoring Unit, and approved by the NYISO Board).

³⁶ First Compliance Order, 143 FERC ¶ 61,059 at PP 38-41; NYISO OATT, Attachment Y, § 31.3.2 ([Congestion Assessment and Resource Integration Study] Review Process and Actual Project Proposals) (2.0.0).

³⁷ NYISO OATT, Attachment Y, §§ 31.3.2.4, 31.5.4.3 (Project Eligibility for Cost Allocation).

project provides benefits in excess of its costs over the ten years from the expected date of service, costs at least \$25 million, and receives a positive vote from at least 80 percent of the designated beneficiaries determined on the basis of savings in zonal load payments or location-based marginal pricing.³⁸

19. NYISO's public policy transmission planning process includes the identification of transmission needs driven by public policy requirements and the evaluation of transmission solutions proposed to address those transmission needs driven by public policy requirements identified for evaluation. NYISO provides a 60-day period for stakeholders and other interested parties to submit, or NYISO on its own initiative to identify, proposed transmission needs that are being driven by public policy requirements.³⁹ At the conclusion of the 60-day period, NYISO posts all submittals on its website and submits them to the New York State Department of Public Service (NYDPS) and the New York Commission for consideration. With input from interested parties and NYISO, the NYDPS reviews the proposed transmission needs, identifies the transmission needs for which transmission solutions should be requested and evaluated,⁴⁰ and issues a written statement with an explanation of why certain transmission needs driven by public policy requirements were identified for further evaluation and why transmission solutions to other suggested transmission needs should not be evaluated.⁴¹

20. NYISO then provides a 60-day period during which both Transmission Owners and Other Developers may propose specific transmission solutions to address the transmission needs driven by public policy requirements identified for further evaluation.⁴² NYISO evaluates the proposed solutions with stakeholder input and prepares a report that identifies the assumptions, inputs, and methodologies that NYISO used, including the results of NYISO's analyses.⁴³ This report is subject to stakeholder and Market Monitoring Unit review and comment as well as approval by the NYISO Board.⁴⁴

³⁸ *Id.* §§ 31.5.4.3, 31.5.4.6.

³⁹ *Id.* § 31.4.2.

⁴⁰ *Id.* § 31.4.2.1.

⁴¹ *Id.* § 31.4.2.1.

⁴² *Id.* § 31.4.3.1.

⁴³ First Compliance Order, 143 FERC ¶ 61,059 at P 99; NYISO OATT, Attachment Y, §§ 31.4.8.2 (ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Public Policy Transmission Need), 31.4.10 (Public Policy Transmission Planning Report).

⁴⁴ *Id.* § 31.4.10.

2. Transmission Developer Agreements

a. Second Compliance Order

21. In the Second Compliance Order, the Commission accepted the Filing Parties' proposed enrollment process by which entities, including non-public utility transmission providers, make the choice to become part of the NYISO transmission planning region.⁴⁵ The Commission noted that the Filing Parties' revisions "specify that an interested entity may enroll in NYISO's transmission region to fully participate in NYISO's governance process by becoming a party to NYISO's Independent System Operator Agreement."⁴⁶ NYISO had noted in a supplemental filing that it was "developing agreements it expects to require in implementing" the revised regional transmission planning process, specifically a *pro forma* development agreement with a transmission developer selected to construct a transmission project and a *pro forma* operating agreement "comparable to the Agreement between [NYISO] and Transmission Owners – for a non-incumbent developer to execute upon its transmission project entering into service."⁴⁷ However, NYISO did not propose such agreements and the Commission did not address them in the Second Compliance Order.

b. Request for Clarification

i. Summary of Request for Clarification

22. LS Power states that it "does not oppose the concept of a *pro forma* development agreement or a *pro forma* operating agreement," but asserts that the Commission must clarify that both agreements must be filed with the Commission. LS Power adds that such agreements should be filed "within 60 days of the Commission's Order."⁴⁸ LS Power claims that the Commission has consistently required such agreements to be filed, adding that "their Commission approved content must be known before submission of developer qualifications, or at the very least the first NYISO planning process proposal window."⁴⁹

⁴⁵ Second Compliance Order, 148 FERC ¶ 61,044 at P 38.

⁴⁶ *Id.* P 33 (citing NYISO OATT, Attachment Y, § 31.1.7; *see* NYISO Agreement, Art. 2, § 2.02).

⁴⁷ NYISO, Supplemental Filing, Docket Nos. ER13-102-003 (July 2, 2014).

⁴⁸ LS Power Request for Rehearing and Clarification at 2.

⁴⁹ *Id.*

ii. Commission Determination

23. We grant LS Power's request for clarification and find that, consistent with prior Commission orders, because the Filing Parties propose to require a contractual agreement between the transmission developer and NYISO for transmission projects selected in the regional transmission plan for purposes of cost allocation, the Filing Parties must file a *pro forma* contract for this arrangement for the Commission's review.⁵⁰ According to the Filing Parties' proposal, the execution of a development agreement between NYISO and a transmission developer will significantly impact whether a transmission project selected in a regional transmission plan for purposes of cost allocation remains selected in a regional transmission plan for purposes of cost allocation.⁵¹ The filing of a *pro forma* agreement for the Commission's review is thus necessary to ensure that similarly situated transmission developers, whether incumbent transmission owners or nonincumbent transmission developers, will be processed in a not unduly discriminatory manner consistent with Order No. 1000. Therefore, we direct the Filing Parties to submit any such *pro forma* agreement for review by the Commission in a compliance filing within 30 days from the date of the issuance of this order.

3. Selecting Regional Transmission Projects in the Regional Transmission Plan for Purposes of Cost Allocation

a. Second Compliance Order

24. In the Second Compliance Order, the Commission found that, for the reliability transmission planning process, the Filing Parties' proposed process to select transmission solutions in the regional transmission plan for purposes of cost allocation "partially complies with Order No. 1000's requirement that NYISO have a process to select in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions."⁵² The Commission explained that the selection process "includes procedures for NYISO to select a regulated transmission solution as the more efficient or cost-effective solution."⁵³ The Commission found that NYISO's transmission

⁵⁰ See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 280 (2013); *South Carolina Electric & Gas Company*, 143 FERC ¶ 61,058, at P 208 (2013); *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054, at P 229 (2013).

⁵¹ See Filing Parties' September 15, 2014 Compliance Filing at 9; NYISO OATT, Attachment Y, proposed § 31.2.8.1.6.

⁵² Second Compliance Order, 148 FERC ¶ 61,044 at P 68.

⁵³ *Id.* PP 69-70. The Commission noted that in the first phase of the evaluation process, "NYISO will evaluate all proposed transmission and non-transmission solutions regardless of the resource type and whether the proposing developer seeks regional cost

planning process provided a two-phase process under which NYISO first would evaluate both transmission and non-transmission solutions to determine if they would address a specific reliability need. Second, NYISO would evaluate proposed regulated transmission solutions to determine if any is a more efficient or cost-effective transmission solution and select that transmission solution in the regional transmission plan for purposes of cost allocation, if the Trigger Date⁵⁴ of any such transmission solution will occur within thirty-six months of NYISO presenting the results of the first phase of evaluation.⁵⁵ The Commission noted that NYISO will also indicate in the regional transmission plan, the Comprehensive Reliability Plan, whether a selected transmission solution should be triggered.⁵⁶

25. The Commission also found that NYISO may continue to trigger a regulated backstop solution⁵⁷ to an identified reliability transmission need where NYISO has selected a more efficient or cost-effective transmission solution to that reliability transmission need in the regional transmission plan for purposes of cost allocation.⁵⁸ The Commission noted that the provisions allowing NYISO to request a Responsible Transmission Owner to provide a regulated backstop solution for an identified reliability transmission need have been a component of NYISO's reliability transmission planning process since the Commission accepted NYISO's filing to establish the comprehensive system planning process in 2004.⁵⁹ The Commission explained that giving NYISO the

allocation" to determine if each proposed solution is viable and sufficient to address the transmission need. *Id.* P 69.

⁵⁴ Trigger Date is defined as "the date by which [NYISO] must request implementation of a regulated backstop solution or an alternative regulated solution pursuant to section 31.2.8 in order to meet a Reliability Need." Second Compliance Order, 148 FERC ¶ 61,044 at P 46 n.91 (citing NYISO OATT, Attachment Y, § 31.1.1).

⁵⁵ Second Compliance Order, 148 FERC ¶ 61,044 at P 69-70.

⁵⁶ *Id.* P 70.

⁵⁷ As described in the Second Compliance Order, pursuant to NYISO's regional transmission planning process, NYISO identifies reliability transmission needs, designates a Responsible Transmission Owner for each need, and requests the Responsible Transmission Owner to develop a regulated backstop solution to that reliability transmission need. The Responsible Transmission Owner will normally be the transmission owner in whose transmission district NYISO identifies the reliability transmission need. Second Compliance Order, 148 FERC ¶ 61,044 at PP 18-20.

⁵⁸ Second Compliance Order, 148 FERC ¶ 61,044 at P 72.

⁵⁹ *Id.* (citing *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372, at PP 2, 34

discretion to request a Responsible Transmission Owner to provide a regulated backstop solution for an identified reliability transmission need is not inconsistent with Order No. 1000, as nothing in Order No. 1000 required NYISO to change its existing process that allows NYISO to direct an incumbent transmission provider to develop a regulated backstop solution for an identified reliability transmission need.⁶⁰

26. Further, the Commission found that this separate process is consistent with statements the Commission made related to an incumbent transmission provider's reliability obligation and reasonably provides NYISO the ability to ensure that a solution is available to timely address a reliability transmission need.⁶¹ Further, the Commission found that it is reasonable for the transmission developer of a regulated backstop solution to be provided with the opportunity to recover costs prudently incurred to meet its obligation.⁶² The Commission also determined that, because the costs of a regulated backstop solution will be allocated pursuant to the regional cost allocation method, the Responsible Transmission Owner must provide project specific data related to the regulated backstop solution when making any future section 205 filing to recover the costs of that transmission solution.⁶³

27. However, the Commission found that the Filing Parties must make further revisions to comply with Order No. 1000's requirements. The Commission found that it was unclear "under what circumstances NYISO will 'determine[...]' prior to or at the Trigger Date for the regulated backstop solution that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution in parallel with the selected alternative regulated transmission solution' or 'that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution.'"⁶⁴ Therefore the Commission required that the Filing Parties propose on compliance revisions to explain the circumstances under which NYISO will determine that it is necessary for a regulated backstop project to proceed in parallel with the alternative regulated solution, and the circumstances under which NYISO will determine that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution.⁶⁵

(2004)).

⁶⁰ *Id.*

⁶¹ *Id.* P 74.

⁶² *Id.* P 75.

⁶³ *Id.* P 76.

⁶⁴ *Id.* at P 75 (citing NYISO OATT, Attachment Y, §§ 31.2.8.1.3, 31.2.8.2.1).

28. In addition, the Commission found that tying eligibility for cost allocation to NYISO triggering the alternative regulated transmission solution, which occurs after NYISO selects the transmission facility in the regional transmission plan for purposes of cost allocation, was inconsistent with Order No. 1000.⁶⁶ The Commission explained that Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that makes each transmission facility selected in the regional transmission plan for purposes of cost allocation eligible for such cost allocation.⁶⁷ The Commission determined that the Filing Parties must propose on compliance revisions to clarify that, pursuant to the reliability transmission planning process, once NYISO has identified the more efficient or cost-effective regional transmission facility in the Comprehensive Reliability Plan, that transmission facility is selected in the regional transmission plan for purposes of cost allocation, making the transmission developer of that solution eligible to use the regional cost allocation method.⁶⁸

b. Requests for Rehearing or Clarification

i. Summary of Requests for Rehearing and Clarification

29. LS Power requests rehearing of the Commission's decision to allow NYISO to trigger a regulated backstop solution to a reliability transmission need if NYISO has selected another transmission solution in the regional transmission plan for purposes of cost allocation. LS Power argues that the issue is whether incumbent transmission owners may be compensated under the regional cost allocation method when another transmission project was selected as the more efficient or cost-effective transmission solution, and not whether Order No. 1000 requires NYISO to change its existing policy of ensuring a regulated backstop solution is available for reliability transmission needs.⁶⁹

30. LS Power asserts that Order No. 1000 prohibits the Filing Parties' proposal to provide cost recovery under the regional cost allocation method to a transmission project not selected as the more efficient or cost-effective transmission solution.⁷⁰ Further, LS Power argues, the Commission erred by relying on holdings in Order No. 1000 that

⁶⁵ *Id.*

⁶⁶ *Id.* P 71.

⁶⁷ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 335).

⁶⁸ *Id.*

⁶⁹ LS Power Request for Rehearing and Clarification at 10.

⁷⁰ *Id.* at 10-11 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323

pertain only to local transmission projects, arguing that the Filing Parties' proposal would trigger an incumbent transmission owner to continue development of a transmission solution subject to the regional cost allocation method despite the fact that another transmission project and transmission developer have been selected as the more efficient or cost-effective alternative.⁷¹ Additionally, LS Power asserts that the Commission's finding that the Filing Parties' proposal allows NYISO to ensure a solution is available to timely address a reliability transmission need disregards the Commission holding in Order No. 1000 that the incumbent transmission owner and the system are adequately protected by the mandated provisions regarding reevaluation.⁷²

31. LS Power also argues that allowing NYISO to trigger a regulated backstop solution in parallel with a transmission solution selected in the regional transmission plan for purposes of cost allocation "shift[s] to the New York Public Service Commission the real decision on which project will move forward," because both triggered solutions will "more forward 'until a selected alternative regulated solution satisfies certain requirements including receipt of Article VII certification.'" ⁷³ LS Power argues that if the incumbent transmission owner wants to move its transmission project forward, it should do so as a local transmission project, billed only to its ratepayers or at the risk of its shareholders.⁷⁴

ii. Commission Determination

32. Petitioners argue on rehearing that the Commission erred in finding that NYISO may continue to trigger a regulated backstop solution to an identified reliability transmission need where NYISO has selected a more efficient or cost-effective transmission solution to that reliability transmission need in the regional transmission plan for purposes of cost allocation. In denying rehearing, we confirm the Commission's finding in the Second Compliance Order that allowing NYISO the discretion to request a Responsible Transmission Owner to provide a regulated backstop solution for an identified reliability transmission need "is not inconsistent with Order No. 1000."⁷⁵

at PP 5, 563).

⁷¹ *Id.* at 11-12.

⁷² *Id.* at 13.

⁷³ *Id.* at 12-13 (internal citations omitted).

⁷⁴ *Id.* at 13 n.35.

⁷⁵ Second Compliance Order, 148 FERC ¶ 61,044 at P 72.

33. In Order No. 1000, the Commission determined that the reforms “are not intended to diminish the significance of an incumbent transmission provider’s reliability needs or service obligations.”⁷⁶ The requests for rehearing, by contrast, seek to expand Order No. 1000’s reforms, by asserting that Order No. 1000 required NYISO to change its existing process that allows NYISO to direct an incumbent transmission provider to develop a regulated backstop solution for an identified reliability transmission need.

34. In the Second Compliance Order, the Commission carefully considered similar arguments in determining whether it is appropriate to prohibit NYISO from triggering a regulated backstop solution to an identified reliability transmission need where NYISO has selected a more efficient or cost-effective transmission solution to that reliability transmission need in the regional transmission plan for purposes of cost allocation. The Commission found that it is not appropriate to require NYISO to eliminate such provisions, because they “reasonably provide[] NYISO the ability to ensure that a solution is available to timely address a reliability transmission need.”⁷⁷ As the Commission stated, “the provisions allowing NYISO to request a Responsible Transmission Owner to provide a regulated backstop solution for an identified reliability transmission need have been a component of NYISO’s reliability transmission planning process” since 2004 when the Commission accepted NYISO’s filing to establish the comprehensive system planning process.⁷⁸

35. Additionally, contrary to petitioners’ assertions, the Commission addressed in the Second Compliance Order whether Order No. 1000 prohibits NYISO from providing regional cost allocation under the OATT to a transmission project not selected as the more efficient or cost-effective transmission solution. The Commission found that “it is reasonable for the transmission developer of a regulated backstop solution to be provided with the opportunity to recover costs prudently incurred to meet its obligation.”⁷⁹ However, the provisions in the NYISO OATT ensuring that transmission developers of regulated backstop solutions have the opportunity to recover prudently incurred costs do not make such transmission facilities “eligible” for the Order No. 1000 regional cost allocation method as such terms are used in Order No. 1000. Rather, the provisions allowing transmission developers to allocate the costs of regulated backstop solutions across customers in New York State pre-date NYISO’s Order No. 1000 compliance and compliance with Order No. 1000 does not necessitate their removal.⁸⁰ While NYISO’s

⁷⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 262; *see also* Second Compliance Order, 148 FERC ¶ 61,044 at P 74.

⁷⁷ Second Compliance Order, 148 FERC ¶ 61,044 at P 74.

⁷⁸ *See id.* P 72 (citing *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372, at PP 2, 34 (2004)).

⁷⁹ *Id.* P 75.

regional transmission planning process requires NYISO to consider whether the regulated backstop solution is a more efficient or cost-effective solution to an identified reliability need, this aspect of NYISO's regional transmission planning process does not transform the regulated backstop solution into a regional transmission project unless NYISO selects the regulated backstop solution in the regional transmission plan for purposes of cost allocation.

c. Compliance

i. Summary of Filing Parties' Compliance Filing

36. The Filing Parties propose to revise NYISO's OATT to state that the transmission developer of an alternative regulated transmission solution shall be eligible for cost allocation and cost recovery for its transmission project once that project is selected in the regional transmission plan for purposes of cost allocation.⁸¹ In addition, the Filing Parties propose to make conforming revisions throughout NYISO's OATT to clarify that the transmission developer of an alternative regulated transmission solution will become eligible to use the regional cost allocation method for, and to recover the costs of, its transmission project once NYISO selects the project, rather than when NYISO triggers the project.⁸²

37. In addition, the Filing Parties propose to revise NYISO's OATT to require that the transmission developer of an alternative regulated transmission solution that NYISO selects in the regional transmission plan for purposes of cost allocation must submit to

⁸⁰ *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372, at PP 28-29 (2004), *on reh'g*, 111 FERC ¶ 61,182, at P 24 (2005) (The Commission accepts NYISO's "proposed provisions setting up a rate mechanism separate from the transmission service charge and the transmission adjustment charge that is limited to the recovery of transmission-related costs incurred to meet a reliability need included in the [Comprehensive Reliability Plan.] The proposal provides for full recovery of all reasonably incurred costs related to the regulated solutions and development undertaken pursuant to the [Comprehensive System Planning Process]. . . . We support NYISO's plan to develop a full cost allocation methodology. . . ."); *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 91 (2008) (accepting NYISO's "proposed cost allocation methodology for transmission projects constructed in response to reliability needs," including regulated backstop solutions and finding that the proposed cost allocation methodology "is consistent with the requirements of the cost allocation principle stated in Order No. 890 as it applies to the planning activities performed by NYISO").

⁸¹ Proposed NYISO OATT, Attachment Y, § 31.2.6.5.2.

⁸² *Id.* §§ 6.10.1, 6.10.2, 6.10.2.2, 6.10.5.1, 6.10.5.2, 31.2.8.2.3, 31.5.3.2.1, 31.5.3.2.1.6, and 31.5.5.1.

NYISO for approval a proposed schedule and scope of work describing any work that the developer must perform prior to its project's Trigger Date, including a good faith cost estimate of such work, within 30 days of NYISO's selection.⁸³ The Filing Parties state that this requirement will ensure that the transmission developer of an alternative regulated transmission solution selected in the regional transmission plan for purposes of cost allocation proceeds to develop its transmission project and to incur costs as needed on an appropriate schedule in light of its project's Trigger Date, necessary development schedule, and updated project information.⁸⁴

38. Given that the transmission developer of an alternative regulated transmission solution is eligible to use the regional cost allocation method for its transmission project when the project is selected rather than triggered, the Filing Parties also propose to revise NYISO's OATT to specify when the transmission developer's eligibility to use the regional cost allocation method will end if NYISO decides not to trigger a regulated transmission solution because market-based solutions are progressing. Specifically, NYISO's revised OATT provides that if NYISO determines that sufficient market-based solutions are progressing to meet the reliability need by the need date prior to or at the Trigger Date of the regulated transmission solution, NYISO will not trigger the regulated transmission solution, and the transmission developer will be eligible to recover its costs incurred up to that date.⁸⁵

39. To address the Commission's directive that they explain the circumstances under which NYISO will determine that it is necessary for a regulated backstop solution to proceed in parallel with the alternative regulated solution, and the circumstances under which NYISO will determine that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution, the Filing Parties propose several OATT revisions. First, the Filing Parties propose to revise NYISO's OATT to clarify that NYISO will review market-based solutions and, based on this review, will not trigger a regulated solution if it determines prior to or at the Trigger Date of the regulated solution that sufficient market-based solutions are timely progressing to satisfy the reliability need.⁸⁶ Under NYISO's OATT, if NYISO determines that there are not sufficient market-based solutions to meet an identified reliability need by the need date, NYISO will trigger the alternative regulated transmission solution or regulated backstop solution, as applicable.⁸⁷ The Filing Parties propose to revise NYISO's OATT to clarify

⁸³ *Id.* § 31.2.6.5.2.

⁸⁴ October 15, 2013 Compliance Filing at 8.

⁸⁵ Proposed NYISO OATT, Attachment Y, § 31.2.8.1.1.

⁸⁶ *Id.* § 31.2.8.1.1.

⁸⁷ *Id.* §§ 31.2.8.1.2, 31.2.8.1.3, 31.2.8.1.4.

that if NYISO determines at the time of the issuance of its Comprehensive Reliability Plan that sufficient market-based solutions will not be available in time to meet a reliability need, it will state in the Comprehensive Reliability Plan that the development of a regulated transmission solution is necessary,⁸⁸ with further clarification that NYISO will make its determination regarding the triggering of a regulated transmission solution in the Comprehensive Reliability Plan or at any time before the approval of the next Comprehensive Reliability Plan.⁸⁹

40. In addition, the Filing Parties propose to revise NYISO's OATT to state that, where the Trigger Date for an alternative regulated transmission solution selected in the regional transmission plan for purposes of cost allocation precedes the Trigger Date for a regulated backstop solution, prior to the Trigger Date of the regulated backstop solution NYISO will review the status of the development of the selected alternative regulated transmission solution, including whether the transmission developer has executed a development agreement with NYISO, has provided construction milestones to NYISO, and has received its New York Public Service Law Article VII transmission siting certification or other applicable siting permits or authorizations under New York State law.⁹⁰ The Filing Parties state that if NYISO determines that an alternative regulated transmission solution that has been selected in the regional transmission plan for purposes of cost allocation may not be in service by the reliability need date, it will also trigger the regulated backstop solution to proceed in parallel with the selected alternative regulated transmission solution and will report the reasons for its determination to its stakeholders.⁹¹ Specifically, the Filing Parties propose to revise NYISO's OATT to state that:

If, based on its review, the ISO determines prior to or at the Trigger Date for the regulated backstop solution that is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution in parallel with the selected alternative regulated transmission solution to ensure the identified Reliability Need is satisfied by the need date, the ISO will trigger the regulated backstop solution and report to stakeholders the reasons for its determination.

The Filing Parties also propose to revise NYISO's OATT to provide that, if NYISO determines that it is not necessary to trigger the regulated backstop solution, NYISO will inform the Responsible Transmission Owner that the regulated backstop solution is no

⁸⁸ *Id.* § 31.2.7.

⁸⁹ *Id.* § 31.2.8.1.5.

⁹⁰ *Id.* § 31.2.8.1.3.

⁹¹ October 15, 2013 Compliance Filing at 9.

longer needed, and the Responsible Transmission Owner will be eligible to recover the costs that it incurred up to that point.⁹²

ii. Protests

41. LS Power contends that NYISO will, in almost all cases, trigger the incumbent transmission owner's regulated backstop solution even when an alternative regulated transmission solution has been determined to be the more efficient or cost-effective solution and is actively under development. LS Power states that NYISO will not determine the likelihood of an alternative regulated transmission solution being in service by the need date, but rather will assume that it will not be in service unless it has permits in-hand by the trigger date of the regulated backstop solution. As a result, LS Power argues, the regulated backstop solution will be triggered in almost all instances because the alternative regulated transmission solution is highly unlikely to have its permits. Moreover, LS Power states, NYISO will trigger both the alternative regulated transmission solution and the regulated backstop solution without any review if the Trigger Date of the regulated backstop solution is earlier than that of the alternative regulated transmission solution.⁹³

42. According to LS Power, because NYISO has already determined that the alternative regulated transmission solution can meet the required in-service date, NYISO should only trigger the regulated backstop solution if NYISO identifies a specific intervening development that calls that conclusion into question. LS Power requests that the Commission require the Filing Parties to revise NYISO's OATT to provide that when an alternative regulated transmission solution has been determined to be the more efficient or cost-effective transmission project, NYISO will only trigger the regulated backstop solution if NYISO makes a specific determination that the alternative regulated transmission solution will not meet the reliability need date. LS Power contends that otherwise, NYISO's OATT shifts the ultimate decision of which transmission project to select in the regional transmission plan for purposes of cost allocation to the state permitting agency because both the alternative regulated transmission solution and backstop regulated solution must move forward until a permit is received.⁹⁴

iii. NYISO's Answer

43. In response to LS Power, NYISO contends that LS Power incorrectly states that NYISO will not make an actual determination regarding the need to trigger a regulated backstop solution, but would instead focus solely on whether or not the alternative

⁹² Proposed NYISO OATT, Attachment Y, § 31.2.8.1.3.

⁹³ LS Power Protest at 2-6.

⁹⁴ *Id.* at 6-7.

regulated transmission solution selected in the regional transmission plan for purposes of cost allocation has received its required permits. NYISO argues that the proposed tariff revisions do not limit the factors that NYISO can consider in making its determination, nor do they require that NYISO automatically trigger the regulated backstop solution simply because the alternative regulated transmission solution selected in the regional transmission plan for purposes of cost allocation has not yet received its necessary permits.⁹⁵

44. Moreover, NYISO states, the Second Compliance Order did not require revisions to the OATT provision providing that NYISO will trigger both the alternative regulated transmission solution and the regulated backstop solution without any review if the Trigger Date of the regulated backstop solution is earlier than that of the alternative regulated transmission solution. NYISO contends that in this scenario, it will not have sufficient information regarding whether an alternative regulated transmission solution selected in the regional transmission plan for purposes of cost allocation will timely progress to be constructed and satisfy the reliability need before determining whether to trigger a regulated backstop solution at its earlier Trigger Date.⁹⁶

45. NYISO also states that LS Power incorrectly suggests that NYISO does not need to take any steps beyond its evaluation of an alternative regulated transmission solution selected in the regional transmission plan for purposes of cost allocation to have a reasonable assurance that it will be able to complete permitting, construction, and commissioning to satisfy the reliability need by the need date. NYISO contends that the information that NYISO considers during the various stages of its evaluation process to determine whether a proposed alternative regulated transmission solution will meet a need date is subject to further development and revision by the transmission developer and does not take into account changes in circumstances that occur after an alternative regulated transmission solution has been selected in the regional transmission plan for purposes of cost allocation.⁹⁷

46. Finally, NYISO states that LS Power's argument that NYISO's OATT shifts the ultimate decision of which transmission project to select in the regional transmission plan for purposes of cost allocation to the state permitting agency is a collateral attack on the Second Compliance Order, which found that NYISO has satisfied the requirement to have a process to evaluate and select the more efficient or cost-effective transmission solutions to meet regional transmission needs and that NYISO's process to trigger a regulated backstop solution in parallel with an alternative regulated transmission solution

⁹⁵ NYISO Answer at 4-5.

⁹⁶ *Id.* at 7-8.

⁹⁷ *Id.* at 5-6.

that has been selected in the regional transmission plan for purposes of cost allocation under certain circumstances is permissible under Order No. 1000.⁹⁸

iv. LS Power's Response to NYISO's Answer

47. LS Power states that while NYISO is correct that the tariff does not specifically provide that NYISO will automatically trigger the regulated backstop simply because the selected solution has not yet received its necessary permits, NYISO informed stakeholders that it would implement the tariff in this manner. LS Power states that NYISO does not deny that it told stakeholders, repeatedly, that the regulated backstop solution would always be triggered if the more efficient or cost-effective alternative solution does not have necessary Article VII permits at the time of the NYISO trigger decision.⁹⁹ LS Power requests that the Commission reject the third compliance filing and require that NYISO make a meaningful review and explain this review in its tariff language, before triggering the regulated backstop solution when a more efficient or cost-effective alternative project has been selected since no project is going to have its Article VII approval at the time of transmission selection or trigger date.¹⁰⁰

v. Commission Determination

48. The Commission finds that the Filing Parties' proposed revisions partially comply with the directives in the Second Compliance Order requiring the Filing Parties to revise NYISO's OATT to: (1) clarify that, pursuant to the reliability transmission planning process, once NYISO has identified the more efficient or cost-effective regional transmission facility in the Comprehensive Reliability Plan, that transmission facility is selected in the regional transmission plan for purposes of cost allocation making the transmission developer of that solution eligible to use the regional cost allocation method, and (2) explain the circumstances under which NYISO will determine that it is necessary for a regulated backstop solution to proceed in parallel with the alternative regulated solution, and the circumstances under which NYISO will determine that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution.

49. LS Power requests that the Commission require NYISO to revise tariff sections 31.2.8.1.3 and 31.2.8.1.4 to provide that when an alternative regulated solution has been determined to be the more efficient or cost-effective transmission project, NYISO will only trigger the regulated backstop solution if NYISO makes a specific determination that the alternative regulated solution will not meet the reliability need date. The Commission finds that LS Power's requested revisions are a collateral attack

⁹⁸ *Id.* at 6-7 (citing Second Compliance Order, 148 FERC ¶ 61,044 at PP 72-75).

⁹⁹ LS Power Response to NYISO's Answer at 3.

¹⁰⁰ *Id.* at 5-6.

on an issue that the Commission has already addressed in the Second Compliance Order. The Second Compliance Order states:

Thus, we find that the Filing Parties' proposal that gives NYISO the discretion to request a Responsible Transmission Owner to provide a regulated backstop solution for an identified reliability transmission need is not inconsistent with Order No. 1000 as nothing in Order No. 1000 required NYISO to change its existing process that allows NYISO to direct an incumbent transmission provider to develop a regulated backstop solution for an identified reliability transmission need.¹⁰¹

50. However, we find that the Filing Parties' proposed revision to section 31.2.8.1.3 is ambiguous, because the OATT language conflicts with NYISO's characterization of the provision in its answer. Specifically, the NYISO OATT states that NYISO, when evaluating the status of a selected alternative regulated solution, will consider, *among other things*, whether the transmission developer of the selected alternative regulated transmission solution has "received its Article VII certification or other applicable siting permits or authorizations under New York State law."¹⁰² In addition, section 31.2.8.2.2 provides, among other things, that NYISO, after triggering a regulated backstop solution, will halt the regulated backstop solution if the selected alternative regulated solution has "both satisfied the requirements of section 31.2.8.1.6 and received its Article VII certification or other applicable siting permits or authorizations under New York State law."¹⁰³ NYISO explains in its answer that "the proposed tariff revisions in no way limit the factors that the NYISO can consider in making its determination, nor does section 31.2.8.1.3 provide that the NYISO will automatically trigger the regulated backstop solution simply because the selected solution has not yet received its necessary permits."¹⁰⁴ Nevertheless, we find that the language of section 31.2.8.1.3, read in concert

¹⁰¹ Second Compliance Order, 148 FERC ¶ 61,044 at P 72.

¹⁰² Proposed NYISO OATT, Attachment Y, § 31.2.8.1.3.

¹⁰³ *Id.* § 31.2.8.2.2. The "requirements of [s]ection 31.2.8.1.6" include "within 60 days of the [NYISO's] triggering the proposed solution, or such other reasonable time period as determined by [NYISO]: (i) execute an agreement with [NYISO] committing the Other Developer or Transmission Owner to seek all necessary approvals required for its proposed project, to develop and construct its proposed project if approvals are received, and to abide by the related requirements set forth in Attachment Y of the ISO OATT, the ISO Tariffs, and ISO Procedures, and (ii) provide construction milestones necessary to develop and construct its proposed project to achieve the required in-service date, including milestone dates for obtaining all necessary approvals." Proposed NYISO OATT, Attachment Y, § 31.2.8.1.6.

with provisions in section 31.2.8.2.2, suggests that a selected alternative regulated solution's receipt of Article VII certification or other applicable siting permits or authorizations may be a de facto condition, rather than a one of numerous factors, that NYISO considers in determining whether to trigger a regulated backstop solution.¹⁰⁵

51. While we agree that considering whether the selected alternative regulated solution has received its Article VII certification or other applicable siting permits or authorizations may be useful in reviewing the status of an alternative regulated transmission solution that is under development, whether a selected alternative regulated transmission solution has received Article VII certification or other applicable siting permits or authorizations must not be a de facto condition to NYISO concluding that it is unnecessary to trigger a regulated backstop solution. Therefore, the Filing Parties must provide on compliance, within 30 days of the date of issuance of this order, OATT revisions to clarify that whether a selected alternative regulated solution has received its permits or authorizations under New York State law, including Article VII certification or other applicable siting permits, will be treated as just one factor in NYISO's determination whether to trigger the regulated backstop solution for an identified reliability transmission need.

4. Affirmative Obligation to Plan

a. Second Compliance Order

52. In the Second Compliance Order, the Commission found that, absent regional transmission solutions proposed by interested parties, NYISO has no process to determine whether alternative regional transmission solutions might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning processes.¹⁰⁶ The Commission required the Filing Parties to submit a further compliance filing that revises NYISO's OATT to clarify how NYISO “‘will review the Transmission Owners’ [local transmission plans] as they relate to [Bulk Power Transmission Facilities]’ to determine whether alternative transmission solutions might meet the reliability, congestion, or public policy transmission needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning processes, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider.”¹⁰⁷

¹⁰⁴ NYISO Answer at 4-5.

¹⁰⁵ See Proposed NYISO OATT, Attachment Y, §§ 31.2.8.1.3, 31.2.8.2.2.

¹⁰⁶ Second Compliance Order, 148 FERC ¶ 61,044 at P 87.

b. Summary of Filing Parties' Compliance Filing

53. The Filing Parties propose to revise NYISO's OATT to provide that NYISO will evaluate whether a regional transmission solution could satisfy a regional transmission need on the New York Bulk Power Transmission Facilities more efficiently or cost-effectively than transmission solutions contained in the New York transmission owners' local transmission plans. Specifically, the Filing Parties propose to revise NYISO's OATT to state that NYISO will review the transmission owners' local transmission plans and evaluate whether a regional transmission solution, including, but not limited to, regional transmission solutions proposed by transmission developers, could satisfy an identified regional transmission need on the New York Bulk Power Transmission Facilities that impacts more than one Transmission District more efficiently or more cost-effectively than a local transmission solution identified in a transmission owner's local transmission plan. This provision applies to regional transmission solutions that could satisfy regional reliability needs, reduce congestion, and address transmission needs driven by public policy requirements. The Filing Parties propose to further revise NYISO's OATT to state that NYISO will report the results of its evaluation solely for informational purposes in the relevant ISO planning report, and that the transmission owners shall not be required to revise their local transmission plans based on the results of NYISO's evaluation.¹⁰⁸

c. Commission Determination

54. We find that the Filing Parties' proposed revisions comply with the directives in the Second Compliance Order to clarify how NYISO will review the Transmission Owners' local transmission plans as they relate to Bulk Power Transmission Facilities to determine whether alternative transmission solutions might meet the reliability, congestion, or public policy transmission needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning processes.

¹⁰⁷ *Id.* P 87 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 12, 80, 147-148); *see also Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 56 (2013).

¹⁰⁸ Proposed NYISO OATT, Attachment Y, § 31.2.1.3.

5. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process

a. New York Commission's Role in NYISO's Public Policy Transmission Planning

i. Summary of Filing Parties' Proposed Clarification

55. The Filing Parties state that, on August 15, 2014, the New York Commission issued the New York Commission Public Policy Order establishing the procedures through which it will identify any public policy requirements that may drive the need for transmission (Public Policy Transmission Need).¹⁰⁹ The Filing Parties propose to make clarifications to their public policy transmission planning process to accommodate the procedures adopted by the New York Commission for the identification of Public Policy Transmission Needs.¹¹⁰ The Filing Parties state that the New York Commission Public Policy Order clarified that “the determinations that are necessary to the implementation of the public policy planning process should be made by the [New York Commission], rather than [NYDPS].”¹¹¹ For this reason, the Filing Parties propose revisions to clarify which actions must be performed by the New York Commission and which will be performed by the NYDPS. Since the New York Commission, instead of the NYDPS, will be the entity making the determination regarding Public Policy Transmission Needs, the Filing Parties propose revisions to provide that any disputes concerning the New York Commission's determination regarding a transmission need will be addressed “through judicial review in the courts of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules.”¹¹²

56. In addition, the New York Commission Public Policy Order provides that the New York Commission will review the results of NYISO's viability and sufficiency analysis of proposed solutions to a Public Policy Transmission Need and will issue a

¹⁰⁹ Policy Statement on Transmission Planning for Public Policy Purposes, Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Transmission Planning for Public Policy Purposes, Case No. 14-E-0068 (August 15, 2014) (New York Commission Public Policy Order).

¹¹⁰ Proposed NYISO OATT, Attachment Y, § 31.4.

¹¹¹ New York Commission Public Policy Order, Case No. 14-E-0068 at 9.

¹¹² NYISO OATT, Attachment Y, § 31.4.2.2. The proposed revisions replace the language that the Commission previously accepted, which stated that “[d]isputes about any NYDPS decision to either accept or deny a proposed transmission need...will be addressed through the submittal of a petition to the [New York Commission]....” *Id.*

written order indicating whether NYISO should continue to evaluate transmission solutions or whether non-transmission solutions should be pursued. In the latter case, the New York Commission will issue an order withdrawing its determination of a Public Policy Transmission Need. To reflect the New York Commission's Public Policy Order, the Filing Parties propose to insert a new provision to provide that the New York Commission can withdraw its determination of a Public Policy Transmission Need following NYISO's analysis of the viability and sufficiency of proposed solutions. In that case, NYISO will not perform an evaluation of, or select, a more efficient or cost-effective transmission solution in that planning cycle.¹¹³ Filing Parties state that this will avoid NYISO and transmission developers spending time and resources on proposing, developing, evaluating and selecting a transmission project for which the New York Commission has determined there is no need and, therefore, would not grant siting certification under state law.¹¹⁴

ii. Comments of the New York Commission

57. The New York Commission states that it supports the proposed clarifications to the public policy transmission planning process that reflect the role of the New York Commission. Accordingly, the New York Commission requests that the Commission approve the revisions.¹¹⁵

iii. Commission Determination

58. We accept, subject to compliance, the Filing Parties' proposed revisions to clarify the New York Commission's role in NYISO's public policy transmission planning process. We find that the proposed revisions clarify the respective roles of the NYDPS and the New York Commission in the public policy transmission planning process and the impact of the New York Commission choosing a non-transmission solution instead of a transmission solution in NYISO's public policy transmission planning process. Nevertheless, we require the Filing Parties' to submit an additional compliance filing revising the provision concerning disputes, in the public policy planning process, about any New York Commission "decision to either accept or deny a proposed transmission need as one for which transmission solutions should be requested."¹¹⁶ While the Commission has found that NYISO's OATT may provide a "dispute resolution process at the state level . . . for matters that are not within this Commission's exclusive jurisdiction," the Commission has maintained that "only disputes within the New York

¹¹³ Proposed NYISO OATT, Attachment Y, § 31.4.6.6.

¹¹⁴ October 15, 2013 Compliance Filing at 12.

¹¹⁵ New York Commission Comments at 3.

¹¹⁶ See proposed NYISO OATT, Attachment Y, § 31.4.2.2.

Commission's jurisdiction may be subject to judicial review in the courts of the State of New York, since matters within our jurisdiction under the Federal Power Act may only be appealed to a Circuit Court of Appeals of the United States."¹¹⁷

59. We find that the Filing Parties' proposed revision for the public policy planning process providing that "[d]isputes about any [New York Commission] decision to either accept or deny a proposed transmission need as one for which transmission solutions should be requested shall be addressed through judicial review in the courts of the state of New York pursuant to Article 78 of the New York Civil Practice Law and Rules," could be read to make matters beyond those solely within the New York Commission's jurisdiction subject to judicial review in the courts of the State of New York.¹¹⁸

Therefore, we direct the Filing Parties to propose, on compliance, revisions to state that only disputes within the New York Commission's sole jurisdiction may be subject to judicial review in the courts of the State of New York. We note here that Filing Parties propose a similar provision in the LIPA-related revisions discussed in the following section and we require Filing Parties to make the same revisions to the LIPA-related provision.¹¹⁹ Additionally, as we explained in the Second Compliance Order, "[t]o the extent that disputes regarding matters over which all the participating commissions have jurisdiction and responsibility for action, the Commission will entertain a request from the New York Commission or the parties for a joint or concurrent hearing to resolve the dispute, consistent with our regulations."¹²⁰

b. NYISO Board's Discretion Not to Select Transmission Solutions

i. Second Compliance Order

60. In the Second Compliance Order, the Commission accepted the Filing Parties' proposed process for NYISO to select more efficient or cost-effective transmission solutions to satisfy public policy transmission needs in the regional transmission plan for purposes of cost allocation. The Commission explained that to the extent that a

¹¹⁷ *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372, at P 19 (2004); *see also* Second Compliance Order, 148 FERC ¶ 61,044 at P 78.

¹¹⁸ *See* proposed NYISO OATT, Attachment Y, § 31.4.2.2.

¹¹⁹ NYISO OATT, Attachment Y, § 31.4.2.3(vi) ("Disputes regarding a decision by the Long Island Power Authority to either accept or deny a proposed transmission need solely within the Long Island Transmission District shall be addressed through judicial review in the courts of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules.").

¹²⁰ Second Compliance Order, 148 FERC ¶ 61,044 at P 78 & n.180 (citing *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 at P 19).

transmission facility to address transmission needs driven by public policy requirements is selected in the regional transmission plan for purposes of cost allocation, NYISO must make that selection. However, the Commission also emphasized that Order No. 1000 does not require public utility transmission providers to select any particular transmission facility to address transmission needs driven by public policy requirements in the regional transmission plan for purposes of cost allocation. Thus, the Commission held, the Filing Parties' proposal to allow the NYISO Board of Directors (NYISO Board) "to elect not to select a transmission solution" to satisfy a public policy transmission need "is reasonable and is not inconsistent with the requirements of Order No. 1000."¹²¹

61. The Commission directed the Filing Parties to revise NYISO's OATT to require the NYISO Board, in making a decision regarding the more efficient or cost-effective transmission solution to a transmission need driven by public policy requirements, to provide an explanation of why any proposed solutions determined to be sufficient and viable were not selected in the regional transmission plan for purposes of cost allocation. The Commission explained that it is important that any decision relating to the selection of more efficient or cost-effective transmission solutions allow for stakeholder participation and transparency. The Commission also stated that it expected the NYISO Board to consider any relevant stakeholder comments related to the findings in the public policy transmission planning report in its final decision.¹²²

ii. Requests for Rehearing or Clarification

(a) Summary of Requests for Rehearing and Clarification

62. The New York Commission and the New York Transmission Owners contend that the Commission erred by allowing the NYISO Board discretion to elect not to select a transmission solution proposed to address a transmission need driven by a public policy requirement in the regional transmission plan for purposes of cost allocation. They assert that the Commission's finding is inconsistent with Order No. 1000 and the First Compliance Order.¹²³

63. The New York Transmission Owners argue that Order No. 1000 requires implementation of a regional cost allocation method and, therefore, does not give the transmission provider "unlimited discretion to refuse to select any of the proposed transmission solutions" in the regional transmission plan for purposes of cost allocation.¹²⁴

¹²¹ *Id.* P 124.

¹²² Second Compliance Order, 148 FERC ¶ 61,044 at P 125.

¹²³ New York Public Service Commission Request for Rehearing at 7; New York Transmission Owners Request for Rehearing at 8.

The New York Transmission Owners add that transmission developers “will now face the prospect of expending large sums of money” to propose solutions to transmission needs driven by public policy requirements, “without any way of knowing whether the [NYISO] Board will exercise its discretion. . . .”¹²⁵ Further, they argue that NYISO’s proposal goes beyond the scope of the directives in the First Compliance Order.¹²⁶ The New York Commission similarly argues that the Commission “carefully circumscribed and constrained the NYISO’s discretion in evaluating solutions” to meet transmission needs driven by public policy requirements, thereby placing “an ‘affirmative obligation’ on the NYISO to ‘select’ from among proposals the more efficient or cost-effective transmission solution.”¹²⁷

64. The New York Commission asserts that the provision is contrary to the Commission’s goal of addressing transmission needs driven by public policy requirements and will enable the NYISO Board effectively to override a duly-promulgated public policy.¹²⁸ For example, the New York Commission argues that, while the considerations of production cost savings and installed capacity savings are valid inputs as part of an economic planning process, they are insufficient for evaluating public policies that are designed to capture various externalities, such as environmental emissions. Allowing the NYISO Board discretion not to select transmission solutions is unnecessary, the New York Commission asserts, because new transmission facilities would not only advance legitimate public policy objectives, but also enhance competition, particularly by broadening opportunities in wholesale energy markets.¹²⁹

65. The New York Transmission Owners contend, in the alternative, that NYISO must develop specific criteria or standards for the NYISO Board to use when exercising its discretion not to select a transmission solution in the regional transmission plan for purposes of cost allocation.¹³⁰ In particular, they assert that the NYISO Board must

¹²⁴ New York Transmission Owners Request for Rehearing at 10 (emphasis omitted).

¹²⁵ *Id.* at 11.

¹²⁶ New York Transmission Owners Request for Rehearing at 13 (citing *Sea Robin Pipeline Co., LLC*, 138 FERC ¶ 61,131, at PP 31-32 (2012); *NorthWestern Corp.*, 113 FERC ¶ 61,215, at P 9 (2005); *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 61,154, at P 13 (2002)).

¹²⁷ New York Commission Request for Rehearing at 6-7.

¹²⁸ New York Public Service Commission Request for Rehearing at 2, 7.

¹²⁹ *Id.* at 7.

consider the public policy requirements and related transmission needs that the transmission project was designed to address and the benefits and detriments to the proposed transmission solution. In addition, they contend that the NYISO Board must provide a “detailed explanation of why the adverse effects of the proposed transmission projects outweigh the benefits that would be provided. . . .”¹³¹ The New York Transmission Owners argue that a selection process that allows the NYISO Board to reject all proposed transmission projects based upon criteria identified *ex post* is not transparent.¹³² Therefore, they argue that the NYISO Board must provide stakeholders notice of any “preliminary determination to exercise its discretion and the basis for its determination,” as well as permit stakeholders to comment on the NYISO Board’s “proposed exercise of discretion.”¹³³

(b) Commission Determination

66. We deny the requests for rehearing and affirm the Commission’s finding in the Second Compliance Order that the Filing Parties’ proposal to allow the NYISO Board to elect, subject to certain transparency requirements, not to select a transmission solution to satisfy a public policy transmission need “is reasonable and is not inconsistent with the requirements of Order No. 1000,” which “does not require public utility transmission providers to select any particular transmission facility to address transmission needs driven by public policy requirements in the regional transmission plan for purposes of cost allocation.”¹³⁴ In the First Compliance Order, the Commission determined that it must be NYISO that selects transmission solutions in the regional transmission plan for purposes of cost allocation and not the New York Commission. As the Commission explained in the Second Compliance Order, “to the extent that a transmission facility is selected in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective transmission solution, the public utility transmission providers in the transmission planning region must make that selection.”¹³⁵

67. However, while Order No. 1000 required public utility transmission providers in the transmission planning region, in this case NYISO, to be the entity that selects more efficient or cost-effective transmission solutions in the regional transmission plan for

¹³⁰ *Id.* at 14.

¹³¹ *Id.* at 16.

¹³² *Id.* at 15-16.

¹³³ *Id.* at 16.

¹³⁴ See Second Compliance Order, 148 FERC ¶ 61,044 at P 124.

¹³⁵ *Id.* P 248 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331).

purposes of cost allocation, as the Commission explained in the Second Compliance Order, “neither the First Compliance Order nor Order No. 1000 dictates that any particular transmission solutions be selected in the regional transmission plan for purposes of cost allocation.”¹³⁶ Furthermore, in Order No. 1000, the Commission stated that, “[w]hether or not public utility transmission providers within a region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is an efficient or cost-effective solution to their needs.”¹³⁷ The Commission did not require NYISO to adopt a regional transmission planning process that necessarily results in the selection of a transmission solution. Rather, the Commission found that NYISO’s regional transmission planning process must include procedures for NYISO, the public utility transmission provider in the transmission planning region, to evaluate and select more efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation.

68. Furthermore, as noted above, the Commission found that “it is important that any decision relating to the selection of more efficient or cost-effective transmission solutions allow for stakeholder participation and transparency.”¹³⁸ In addition, the Commission directed the Filing Parties to revise NYISO’s OATT to “require the NYISO Board, in making a decision regarding the more efficient or cost-effective transmission solution,” to provide “an explanation of why any proposed solutions, determined to be sufficient and viable were not selected in the regional transmission plan for purposes of cost allocation.”¹³⁹ The Commission added that it expects the NYISO Board to consider “any relevant stakeholder comments” related to the findings in the public policy transmission planning report in its final decision.¹⁴⁰ Therefore, we find that the provision allowing the NYISO Board to elect not to select a proposed transmission solution, coupled with the openness and transparency the Commission required of the NYISO Board’s review process, strikes an appropriate balance between the flexibility the Commission allowed public utility transmission providers in developing a process for the consideration of transmission needs driven by public policy requirements,¹⁴¹ and ensuring sufficient detail exists in the NYISO OATT to allow stakeholders to participate in the transmission planning process. For similar reasons, we find that the New York Transmission Owners’ request that the

¹³⁶ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331).

¹³⁷ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331).

¹³⁸ *Id.* P 125.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

Commission require the Filing Parties to propose OATT revisions including the specific criteria or standards for the NYISO Board to use when exercising its discretion is unnecessary, because the Commission required such transparency in the Second Compliance Order. Nothing in Attachment Y or the Commission's order prohibits stakeholders from requesting, in their comments to the NYISO Board, that the NYISO Board must consider the public policy requirements and related transmission needs that the transmission project was designed to address, or from arguing that production cost savings and installed capacity savings are insufficient factors for evaluating transmission needs driven by public policy requirements.

69. We disagree with the New York Transmission Owners that NYISO's proposal and the Commission's acceptance of the proposal go beyond the scope of compliance required in the First Compliance Order. Contrary to the New York Transmission Owners' assertion, the Commission did not limit the compliance directive to revising only "the identity of the entity responsible for project selection."¹⁴² Rather, in the First Compliance Order, the Commission directed the Filing Parties to propose a "*process* by which NYISO will select in the regional transmission plan for purposes of cost allocation more efficient or cost-effective solutions from among transmission projects proposed to meet transmission needs driven by public policy requirements."¹⁴³ Similarly, as explained above, the Commission did not stipulate that the selection process must include only provisions for selecting a transmission solution in the regional transmission plan for purposes of cost allocation. Instead, the Commission explained that "this process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project *was selected or not selected* in the regional transmission plan for purposes of cost allocation."¹⁴⁴ Thus, as the Commission concluded in the Second Compliance Order, the Filing Parties' proposal "falls within the context of revisions to allow NYISO to select relevant transmission solutions" and is not beyond the scope of the Commission's directives in the First Compliance Order.¹⁴⁵

70. We also disagree with the New York Commission that the provision allowing the NYISO Board to decide, subject to certain transparency requirements, not to select a transmission solution proposed to address a transmission need driven by public policy requirements effectively allows NYISO to override duly-promulgated public policies. In Order No. 1000, the Commission made clear that it was not "placing public utility transmission providers in the position of being policymakers or allowing them to substitute their public policy judgments in the place of legislators and regulators."¹⁴⁶ The

¹⁴² See New York Transmission Owners Request for Rehearing at 12.

¹⁴³ First Compliance Order, 143 FERC ¶ 61,059 at P 145 (emphasis added).

¹⁴⁴ *Id.* (emphasis added).

¹⁴⁵ Second Compliance Order, 148 FERC ¶ 61,044 at P 124.

Commission explained that “in requiring the consideration of transmission needs driven by Public Policy Requirements the Commission is not mandating fulfillment of those requirements or that public utility transmission providers consider the Public Policy Requirements themselves.”¹⁴⁷ Rather, the reforms “complement state efforts by helping to ensure that potential solutions to identified transmission needs driven by Public Policy Requirements of the states can be evaluated in local and regional transmission planning processes.”¹⁴⁸

¹⁴⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 318.

¹⁴⁷ *Id.* P 204; *see also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 213.

¹⁴⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 213.

iii. Compliance

(a) Summary of Filing Parties' Compliance Filing

71. The Filing Parties propose to revise section 31.4.10.2 to state:

The Board shall not make a final determination on a revised report until it has reviewed the Management Committee comments, including comments regarding the Market Monitoring Unit's evaluation. Upon approval by the Board, the ISO shall issue the report to the marketplace by posting it on its website. If the ISO Board determines not to select a transmission project under this [s]ection 31.4.10.2, the Board shall state the reasons for its determination.

(b) Commission Determination

72. We find that the Filing Parties' proposed revisions comply with the directives in the Second Compliance Order. As noted in the previous section, in the Second Compliance Order, the Commission directed the Filing Parties to revise NYISO's OATT to "require the NYISO Board, in making a decision regarding the more efficient or cost-effective transmission solution," to provide "an explanation of why any proposed solutions, determined to be sufficient and viable were not selected in the regional transmission plan for purposes of cost allocation."¹⁴⁹ The Commission stated that it expected the NYISO Board to consider any relevant stakeholder comments related to the findings in the public policy transmission planning report in its final decision.¹⁵⁰ On compliance, Filing Parties propose to require the NYISO Board to "state the reasons for its determination" to not select a public policy project that is otherwise determined sufficient and viable after it has reviewed the Management Committee comments, including comments regarding the Market Monitoring Unit's evaluation. We find that these revisions comply with the Commission's directive in the Second Compliance Order because it requires the NYISO Board to publicly explain why a proposed solution is not selected in the regional transmission plan for purposes of cost allocation.

¹⁴⁹ Second Compliance Order, 148 FERC ¶ 61,044 at P 125.

¹⁵⁰ *Id.*

c. LIPA's Proposed Tariff Revisions

i. Second Compliance Order

73. In the Second Compliance Order, the Commission declined to require the Filing Parties to adopt the OATT revisions LIPA proposed to account for its role in the transmission planning process. The Commission recognized that the Filing Parties did not object to LIPA's proposal, with one exception, but explained that the Filing Parties had not proposed to amend their compliance filing to reflect the provisions. Nevertheless, the Commission stated, if the Filing Parties and LIPA agree to further OATT modifications, the Filing Parties may include those OATT revisions in a section 205 filing or in their next compliance filing and the Commission will consider the proposed OATT revisions at that time.¹⁵¹

ii. Request for Rehearing

74. LIPA states that it conditionally requests rehearing of the Commission's decision not to require NYISO to incorporate LIPA's proposed amendments into Attachment Y.¹⁵² LIPA explains that it filed this request to preserve its legal rights, but intends to continue working with NYISO and the New York Transmission Owners to ensure NYISO makes a subsequent compliance filing to include LIPA's proposed amendments in the NYISO OATT.¹⁵³ Nevertheless, LIPA asserts that the Commission erred by declining to act on its proposed amendments. LIPA claims that the Commission based its decision on incorrect premises, specifically that LIPA may not file new provisions to the NYISO OATT and that acting on LIPA's proposed amendments would be premature.¹⁵⁴ In doing so, LIPA adds, the Commission failed to address a legitimate issue raised in the proceeding; that "the second compliance filing did not include language accommodating [LIPA's] voluntary participation" in the public policy transmission planning process.¹⁵⁵

iii. Filing Parties' Compliance Filing

75. The Filing Parties state that they have agreed with LIPA to include a package of proposed tariff revisions as part of this compliance filing that allow LIPA to participate in the identification of transmission needs driven by public policy requirements that require

¹⁵¹ *Id.* P 127.

¹⁵² LIPA Request for Rehearing at 1.

¹⁵³ *Id.* at 1-2.

¹⁵⁴ *Id.* at 6.

¹⁵⁵ *Id.* at 7.

physical modification to transmission facilities in the Long Island Transmission District. The Filing Parties explain that LIPA will make a filing further explaining and providing support for the LIPA-related revisions to NYISO's OATT.¹⁵⁶

76. The Filing Parties propose to revise section 31.4.2 to state that NYISO will provide proposed transmission needs driven by public policy requirements that require a physical modification to transmission facilities in the Long Island Transmission District to both LIPA and the New York Commission. The Filing Parties propose to add a new provision that gives LIPA the authority to identify and determine, in consultation with the NYDPS, whether a public policy requirement drives the need for a physical modification to transmission facilities in the Long Island Transmission District.¹⁵⁷ The proposed provision also states that LIPA shall have no authority to identify a transmission need outside of the Long Island Transmission District.¹⁵⁸

77. After LIPA makes its decision, the Filing Parties' proposed provision requires LIPA to issue a written statement explaining whether a public policy requirement drives the need for a physical modification to transmission facilities solely with the Long Island Transmission District.¹⁵⁹ Under the proposed provision, LIPA must provide the statement to the New York Commission and request that the New York Commission determine whether a transmission need solely within the Long Island Transmission District should be considered a Public Policy Transmission Need (regional need) and eligible for selection and regional cost allocation under the NYISO OATT.¹⁶⁰ If the New York Commission determines that the transmission need driven by public policy requirements is not a Public Policy Transmission Need (a regional need), then the transmission need will be addressed under LIPA's local transmission plan.¹⁶¹

78. In any event, LIPA and the NYDPS will coordinate to ensure that the New York Commission's review and confirmation as to the occurrence of a Public Policy Transmission Need within the Long Island Transmission District is completed and submitted to NYISO in parallel to the New York Commission's determinations as to transmission needs driven by public policy requirements.¹⁶² To the extent that there are

¹⁵⁶ October 15, 2013 Compliance Filing at 13.

¹⁵⁷ Proposed NYISO OATT, Attachment Y, § 31.4.2.3.

¹⁵⁸ *Id.* § 31.4.2.3.

¹⁵⁹ *Id.* § 31.4.2.3(ii).

¹⁶⁰ *Id.* § 31.4.2.3(iii).

¹⁶¹ *Id.* § 31.4.2.3(iii)-(iv).

disputes regarding whether a public policy requirement drives a transmission need located solely within the Long Island Transmission District, a new provision states that the dispute will be addressed in New York state courts pursuant to Article 78 of the New York Civil Laws and Rules.¹⁶³

79. In addition, similar to an existing provision for the New York Commission, LIPA may request that a transmission owner or other developer propose a transmission or non-transmission solution for a transmission need identified by LIPA and for which the New York Commission determined that the need is a Public Policy Transmission Need.¹⁶⁴

iv. Comments

80. In its comments, LIPA explains that it participated in the development of the Filing Parties' compliance filing and agreed with the Filing Parties to file these comments to provide additional support for the proposed tariff revisions. LIPA states that the specific tariff provisions recognize LIPA's jurisdictional responsibilities with respect to the Long Island Transmission District.¹⁶⁵ LIPA requests that the Commission accept the proposed LIPA-related amendments to the NYISO OATT.

81. LIPA states that the Filing Parties propose tariff modifications to the procedures set forth in section 31.4 of NYISO's OATT with respect to the identification of transmission needs that may be driven by a proposed public policy requirement, and the purpose of these tariff changes is to recognize that LIPA has jurisdiction over the identification of transmission needs requiring physical modifications of transmission facilities within the Long Island Transmission District.¹⁶⁶ While asserting that it has responsibility for the transmission needs determination, LIPA states that the NYDPS and New York Commission will have a significant role in the transmission needs determination for the Long Island Transmission District under the proposed tariff revisions.¹⁶⁷

82. Specifically, LIPA states that it and the NYDPS will consult on the identification of transmission needs within the Long Island Transmission District and the New York

¹⁶² *Id.* § 31.4.2.3(v).

¹⁶³ *Id.* § 31.4.2.3(vi)

¹⁶⁴ *Id.* § 31.4.3.2

¹⁶⁵ LIPA's Comments at 6.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

Commission will determine whether a transmission need that has been identified by LIPA is a Public Policy Transmission Need (regional need) for purposes of evaluation by NYISO.¹⁶⁸ LIPA notes that NYISO remains responsible for evaluating and selecting a solution to address an identified Public Policy Transmission Need.¹⁶⁹ LIPA states that these proposed tariff revisions allow for a parallel process, and coordination with the NYDPS, on the identification and selection of transmission needs for the Long Island Transmission District.¹⁷⁰

83. LIPA states that the substantive LIPA-related changes to the transmission needs determination process set forth in section 31.4 provides that, where a submittal to NYISO for identification of a proposed transmission need may require a physical modification to the Long Island Transmission District, both LIPA and the New York Commission will receive such submittals for purposes of carrying out their respective responsibilities with respect to the transmission needs identification process for the Long Island Transmission District¹⁷¹ and establishes the process for LIPA's determination of whether a Public Policy Requirement drives the need for a physical modification to transmission facilities in the Long Island Transmission District.¹⁷²

84. LIPA states that section 31.4.2.3 includes various provisions that incorporate a role for the NYDPS to coordinate and consult with LIPA in identifying transmission needs driven by public policy requirements within the Long Island Transmission District. LIPA states that the procedures include requirements that LIPA consult with the NYDPS on transmission needs located solely within the Long Island Transmission District and issue a written statement that describes this consultation and identifies whether LIPA has determined that a public policy requirement drives the need for a physical modification to transmission facilities solely within the Long Island Transmission District.¹⁷³

85. In addition, LIPA explains, the procedures clarify that the New York Commission will determine whether a transmission need located solely within the Long Island Transmission District, which is identified by LIPA as being driven by a public policy requirement, is a Public Policy Transmission Need for which NYISO will solicit proposed solutions in its public policy planning process.¹⁷⁴ LIPA adds that the new

¹⁶⁸ *Id.* at 6-7.

¹⁶⁹ *Id.* at 7.

¹⁷⁰ *Id.*

¹⁷¹ Proposed NYISO OATT, Attachment Y, § 31.4.2.

¹⁷² *Id.* § 31.4.2.3.

¹⁷³ *Id.* §§ 31.4.2.3(i)-(ii).

language provides that only LIPA can determine whether there is a transmission need located solely within the Long Island Transmission District and that LIPA and the NYDPS will coordinate on procedures for the identification and review of transmission needs relating to the Long Island Transmission District.¹⁷⁵ The revisions also provide that LIPA, as well as the New York Commission, may request that a Transmission Owner or Other Developer propose a transmission or non-transmission solution for an identified Public Policy Transmission Need within the Long Island Transmission District.¹⁷⁶ In addition, LIPA explains, the revisions include a new section providing that disputes regarding a LIPA decision on whether a public policy requirement drives a transmission need located solely within the Long Island Transmission District will be addressed in New York state courts pursuant to Article 78 of the New York Civil Laws and Rules.¹⁷⁷

86. LIPA states that to properly recognize LIPA's rate approval authority under the LIPA Act, and to address the incorporation of any cost allocation method or LIPA rate into NYISO's Tariff, the Filing Parties' filing includes changes to section 31.5. These tariff changes provide specific terms governing the development of cost allocation methods and rates for a project undertaken by LIPA meeting a Public Policy Transmission Need. LIPA states that these proposed tariff revisions are limited to: (1) projects undertaken by LIPA, which solve a Public Policy Transmission Need, as identified by the New York Commission, for evaluation by NYISO and potential selection in NYISO's regional transmission plan for purposes of cost allocation under NYISO's Tariff; and (2) LIPA transmission projects that have been evaluated and selected by NYISO as the more cost-effective or efficient solution.

87. LIPA states the Filing Parties have included revisions to NYISO's OATT to address cost allocation and rate development for LIPA projects. In particular, the revisions provide that costs and rates for a LIPA project meeting a Public Policy Transmission Need that are to be allocated solely to LIPA customers will be established pursuant to relevant provisions of the LIPA Act, which include a requirement that NYDPS provide LIPA's Board of Trustees with a recommendation as to any LIPA-proposed cost allocation method or rate before adoption by the Board of Trustees.¹⁷⁸ In

¹⁷⁴ *Id.* § 31.4.2.3(iii). LIPA explains that, if the New York Commission does not determine that such a need is a Public Policy Transmission Need, the transmission need will be solely addressed under LIPA's local transmission plan, and will not be subject to regional cost allocation. *Id.* §§ 31.4.2.3(iv)-(v).

¹⁷⁵ *Id.* §§ 31.4.2.3(iii).

¹⁷⁶ *Id.* § 31.4.3.2.

¹⁷⁷ *Id.* § 31.4.2.3(vi).

¹⁷⁸ *Id.* § 31.5.5.4.5.1.

addition, LIPA explains, for the costs of a LIPA project meeting a Public Policy Transmission Need that may be allocated to other Transmission Districts, the LIPA's Board of Trustees must approve the cost allocation method or rate for a LIPA project. Upon approval, LIPA must submit the approved method or rate to NYISO for filing with the Commission. If LIPA's Board of Trustees does not adopt the recommendation of the NYDPS, NYISO's filing will include the NYDPS's recommendation for the Commission's consideration. LIPA adds that any cost allocation method allocating costs to market participants outside of the Long Island Transmission District will be filed with the Commission for approval, along with a demonstration that: (i) the method complies with Order No. 1000's cost allocation principles, (ii) the project benefits market participants outside of the Long Island Transmission District, and (iii) the proposed allocation is roughly commensurate to the identified benefits.

88. Regarding the billing mechanism for LIPA charges outside of the Long Island Transmission District, LIPA explains that the revisions provide that NYISO will act on LIPA's behalf and bill such entities a separate charge for the costs incurred by LIPA for a solution to a Public Policy Transmission Need and will remit the revenues to LIPA each billing period. In addition, LIPA states, the proposed revisions to section 31.5.5.4.6 provide that the inclusion within NYISO's OATT or filing with the Commission of a cost allocation and or charges for recovery of costs incurred by NYPA or LIPA related to a solution to a transmission need driven by a Public Policy Requirement or Interregional Transmission Project as provided for in sections will not be deemed to modify the treatment of such rates as non-jurisdictional pursuant to section 201(f) of the FPA.

89. The New York Commission states that the proposed OATT provisions that reflect LIPA's responsibilities for transmission planning on Long Island provide a workable framework for coordinating LIPA's responsibilities with the New York Commission's role under the public policy transmission planning process. The New York Commission supports these provisions to ensure that the transmission planning needs for public policy purposes across the entire state are adequately considered.¹⁷⁹

v. Commission Determination

90. In the Second Compliance Order, the Commission stated that "[i]f the Filing Parties and [LIPA] agree to further OATT modifications, ... the Filing Parties may include those OATT revisions in a section 205 filing or in their next compliance filing, and we will consider the proposed OATT revisions at that time."¹⁸⁰ The Filing Parties and LIPA have agreed to revisions to NYISO's OATT and the Filing Parties have proposed the revisions in this compliance filing. With one exception, we find that these tariff revisions are consistent with NYISO's public policy transmission planning process,

¹⁷⁹ New York Commission Comments at 4.

¹⁸⁰ Second Compliance Order, 148 FERC ¶ 61,044 at P 127.

which the Commission previously approved. We note that the proposed revisions allow LIPA to determine whether a proposed transmission need driven by public policy requirements requires a physical modification to transmission facilities located solely within the Long Island Transmission District, while also allowing the New York Commission to determine that a transmission need driven by public policy requirements identified by LIPA is a regional transmission need driven by public policy requirements. We further note that LIPA has no authority to identify a transmission need outside of the Long Island Transmission District. Thus, we accept the Filing Parties' proposed LIPA-related OATT provisions. Because LIPA indicated its request for rehearing is conditional and the Filing Parties submitted the LIPA-related amendments, which we now accept, we find that LIPA's rehearing request is moot.

91. However, as explained above, we find that the provision providing that "[d]isputes regarding a decision by [LIPA] to either accept or deny a proposed transmission need solely within the Long Island Transmission District shall be addressed through judicial review in the courts of the state of New York pursuant to Article 78 of the New York Civil Practice Law and Rules," could be read to make matters beyond those solely within LIPA's jurisdiction subject to judicial review in the courts of the State of New York.¹⁸¹ Therefore, we direct the Filing Parties' to propose, on compliance, revisions to state that only disputes within LIPA's sole jurisdiction may be subject to judicial review in the courts of the State of New York.

6. Nonincumbent Transmission Developer Reforms

a. Definition of Upgrade

i. Second Compliance Order

92. In the Second Compliance Order, the Commission found that the Filing Parties' proposed definition of the term "upgrade" in Attachment Y partially complied with the requirements of Order No. 1000. The Commission determined that the definition proposed was inconsistent with Order No. 1000-A "because it would include as an upgrade the replacement of an entire transmission facility rather than the replacement *of a part* of an existing transmission facility."¹⁸² Therefore, the Commission directed the Filing Parties to revise NYISO's OATT to modify the definition of upgrades so that only the replacement of part of an existing transmission facility can be considered an upgrade.¹⁸³

¹⁸¹ See proposed NYISO OATT, Attachment Y, § 31.4.2.2.

¹⁸² Second Compliance Order, 148 FERC ¶ 61,044 at P 151 (explaining that "Order No. 1000-A defines an upgrade as 'an improvement to, addition to, or replacement of a part of, an existing transmission facility,' and provides that the term 'does not refer to an entirely new transmission facility'" (emphasis in original); Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

93. The Commission rejected as beyond the scope of compliance with the First Compliance Order and Order No. 1000 the Filing Parties' proposal to revise the language related to rights-of-way in section 31.6.4: (1) to replace the statement that "[n]othing in this Attachment Y affects the right of an incumbent Transmission Owner to... retain, modify, or transfer rights-of-way," with the statement that "[a]n incumbent Transmission Owner shall have the right to... retain, modify, or transfer rights-of way subject to relevant law or regulation granting such rights-of-way"; and (2) to replace language recognizing the right of an incumbent transmission owner to "develop a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its own service territory or footprint," with language providing that an incumbent transmission owner may "develop, build, own, and operate a transmission solution that is not eligible for regional cost allocation to meet its reliability or other needs or service obligations in its own service territory or footprint."¹⁸⁴

ii. Requests for Rehearing or Clarification

(a) Summary of Requests for Rehearing

94. The New York Transmission Owners ask the Commission to clarify the meaning of the term upgrade as defined in Attachment Y. They assert that any facility that would qualify as an upgrade under any definition of that term that has been approved by the Commission in an Order No. 1000 compliance proceeding should also qualify as an upgrade under the NYISO OATT, pointing, in particular, to the Commission's findings in Midwest Independent Transmission System Operator's (MISO) compliance proceeding.¹⁸⁵ They argue that all existing transmission facilities are integrated parts of a transmission owner's existing integrated transmission system and, therefore, the replacement of an existing transmission facility cannot reasonably be considered an entirely new facility. As such, they claim, the replacement of any existing transmission facility is properly characterized as an upgrade, so long as the facilities are not entirely new. If the Commission declines to make the requested clarification, the New York Transmission Owners seek rehearing of the Second Compliance Order, on the grounds that the Commission's rejection of the definition constitutes an unexplained departure from prior Commission determinations.¹⁸⁶

¹⁸³ Second Compliance Order, 148 FERC ¶ 61,044 at P 151.

¹⁸⁴ *Id.* P 152.

¹⁸⁵ New York Transmission Owners Request for Rehearing at 18 (citing *Midwest Indep. Transmission Sys. Operator*, 147 FERC ¶ 61,127, at PP 198-203, 222-226 (2014) (*MISO*)).

¹⁸⁶ *Id.* at 17-18.

(b) Commission Determination

95. We reject, as a collateral attack on Order No. 1000, the New York Transmission Owners' assertion that the replacement of any existing transmission facility is properly characterized as an upgrade, so long as the facilities are not entirely new. In Order No. 1000-A, the Commission clarified that an upgrade cannot include "the replacement of an entire transmission facility rather than the replacement of a part of an existing

transmission facility."¹⁸⁷ If the Commission were to accept the New York Transmission Owners' argument that the replacement of any existing transmission facility is properly considered an upgrade, this exception to the requirement to eliminate federal rights of first refusal from Commission jurisdictional tariffs and agreements would swallow the rule. Thus, the New York Transmission Owners' assertion is a collateral attack on Order No. 1000.

96. We disagree with the New York Transmission Owners that the Commission must clarify its determination in the Second Compliance Order to maintain consistency with its findings in *MISO*.¹⁸⁸ Contrary to the New York Transmission Owners' assertion, in *MISO*, the Commission made clear that MISO's definition of upgrade is properly limited to the "expansion, replacement or modification, for any purpose, made to existing transmission line facilities" and "[a]s such, a new transmission facility cannot be read to be classified as an upgrade [under MISO's OATT] even if it did result in improved performance of an existing transmission facility."¹⁸⁹ The Commission specifically limited what new transmission facilities replacing existing transmission facilities may qualify as upgrades, and, in doing so, required that an upgrade cannot include the replacement of an entire transmission facility rather than the replacement of a part of an existing transmission facility.¹⁹⁰

97. Specifically, the Commission rejected part of MISO's proposal because it provided that, "the functionally equivalent capital replacement of an entire existing transmission line facility with an entirely new transmission line would be treated as an

¹⁸⁷ Second Compliance Order, 148 FERC ¶ 61,044 at P 151 (explaining that "Order No. 1000-A defines an upgrade as 'an improvement to, addition to, or replacement of a part of, an existing transmission facility,' and provides that the term 'does not refer to an entirely new transmission facility'" (emphasis in original); Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

¹⁸⁸ See *MISO*, 147 FERC ¶61,127, at PP 198-203, 222-226, 238.

¹⁸⁹ *Id.* P 188.

¹⁹⁰ *Id.* P 238; see also *id.* PP 188, 198-203, 222-226; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

upgrade.”¹⁹¹ The Commission explained that “[t]his is inconsistent with the Commission’s clarification that the term upgrade refers to the replacement of only a part of an existing transmission line and does not include an entirely new transmission facility.”¹⁹² Therefore, the Commission directed MISO to revise its OATT “so that an upgrade includes the functionally equivalent capital replacement of only a portion of an existing transmission line facility but not the functionally equivalent capital replacement of an entire existing transmission line facility.”¹⁹³

iii. Compliance

(a) Summary of Filing Parties’ Compliance Filing

98. The Filing Parties propose to revise NYISO’s OATT to state that the term “upgrade” shall refer to an improvement to, addition to, or replacement of a part of an existing transmission facility and shall not refer to an entirely new transmission facility.¹⁹⁴ In addition, the Filing Parties propose to replace the revised language related to rights of way in section 31.6.4, which the Commission rejected in the Second Compliance Order, with the language as it existed prior to the proposed revisions in the October 2013 Filing.¹⁹⁵

(b) Commission Determination

99. We find that the Filing Parties’ proposed revisions comply with the directives in the Second Compliance Order to revise NYISO’s OATT to modify the definition of upgrade and to remove the revised language in section 31.6.4.

b. Qualification Criteria

i. Second Compliance Order

100. In the Second Compliance Order, the Commission found that the Filing Parties’ proposed qualification criteria requiring a transmission developer to provide information regarding its technical, engineering, and financial qualifications and experience and transmission facilities that it has already developed are unreasonably stringent and may effectively prohibit a prospective transmission developer that does not have past

¹⁹¹ *MISO*, 147 FERC ¶61,127 at P 238.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Proposed NYISO OATT, Attachment Y, § 31.31.6.4.

¹⁹⁵ October 15, 2013 Compliance Filing at 17.

experience in financing, developing, constructing, operating, and maintaining transmission facilities from qualifying, even though it could provide other evidence, such as a plan to rely on third-party contractors with such experience.¹⁹⁶ The Commission required the Filing Parties to revise the qualification criteria to: (1) allow a prospective transmission developer to submit a detailed plan for financing, developing, constructing, operating, and maintaining a transmission facility, such as the financial, technical, and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes, in the absence of previous experience financing, developing, constructing, operating, or maintaining transmission facilities; and (2) require a prospective transmission developer to provide information about transmission facilities that it has already developed to the extent that it has developed transmission facilities.¹⁹⁷

101. In addition, the Commission found that the Filing Parties' explanation that the provision directing entities developing an approved transmission project to register with the North American Electric Reliability Corporation (NERC) and the Northeast Power Coordinating Council is meant to notify new transmission developers that they will need to register with NERC is consistent with the Commission's statements in Order No. 1000. However, the Commission stated, the provision can still be read as requiring new transmission developers to register with NERC while developing a transmission project, because it states that "all entities *developing* an approved project ... must register with NERC and [Northeast Power Coordinating Council]... and must comply with all applicable Reliability Criteria."¹⁹⁸ The Commission stated that this would be inconsistent with Order No. 1000 and required the Filing Parties to revise NYISO's OATT consistent with their explanation that the section only puts new transmission developers on notice that they must register with NERC and does not require new transmission developers to register with NERC.¹⁹⁹

ii. Summary of Filing Parties' Compliance Filing

102. The Filing Parties propose to revise the qualification criteria in NYISO's OATT to state that a transmission developer shall provide NYISO with a description of the transmission facilities that it has financed, developed, constructed, maintained, or operated and the status of those facilities if it has previously financed, developed, constructed, maintained, or operated transmission facilities.²⁰⁰ In addition, the Filing

¹⁹⁶ Second Compliance Order, 148 FERC ¶ 61,044 at P 176 (citing *PacifiCorp*, 143 FERC ¶ 61,151, at P 158 (2013)).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* P 179 (citing NYISO OATT, Attachment Y, § 31.6.5 (emphasis added)).

¹⁹⁹ *Id.*

Parties propose to add a new provision to NYISO's OATT stating that to meet the qualification criteria, a prospective transmission developer may submit a detailed plan describing how, in the absence of previous experience financing, developing, constructing, operating, and maintaining a transmission facility, the transmission developer will finance, develop, construct, operate, and maintain a transmission facility, including the financial, technical, and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes.²⁰¹ The Filing Parties propose to further revise NYISO's OATT to provide that, after NYISO has found that a transmission developer is qualified, the transmission developer must provide NYISO with the status of any contracts with third-party contractors as part of its submission of transmission project information for purposes of NYISO's evaluation and selection processes.²⁰²

103. The Filing Parties propose to revise NYISO's OATT to state that the transmission developer of a transmission project selected in the regional transmission plan for purposes of cost allocation is hereby notified that it must comply with all applicable reliability criteria, policies, standards, rules, regulations, and other requirements of NERC, the Northeast Power Coordinating Council, the New York State Reliability Council, the New York Transmission Owners, and any other applicable reliability entities or their successors, to the extent required by, and in accordance with, their procedures.²⁰³

iii. Commission Determination

104. We find that the Filing Parties' proposed revisions comply with the directives in the Second Compliance Order to (1) allow a prospective transmission developer to submit a detailed plan for financing, developing, constructing, operating, and maintaining a transmission facility, such as the financial, technical, and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes, in the absence of previous experience financing, developing, constructing, operating, or maintaining transmission facilities; and (2) require a prospective transmission developer to provide information about transmission facilities that it has already developed to the extent that it has developed transmission facilities.

²⁰⁰ NYISO OATT, Attachment Y, §§ 31.2.4.1.1.1.2, 31.2.4.1.1.1.3, 31.3.2.4.1.1.1.2, 31.3.2.4.1.1.1.3, 31.4.4.1.1.2, 31.4.4.1.1.3.

²⁰¹ Proposed NYISO OATT, Attachment Y, § § 31.2.4.1.1.1.4, 31.3.2.4.1.1.1.4, 31.4.4.1.1.4.

²⁰² *Id.* §§ 31.2.4.4.2, 31.2.4.8.2, 31.3.2.4.2, 31.4.5.1.

²⁰³ *Id.* § 31.6.5.

105. We find that the Filing Parties' proposed revisions comply with the directives in the Second Compliance Order to revise section 31.6.5 consistent with NYISO's explanation that the section only puts new transmission developers on notice that they must register with NERC and does not require new transmission developers to register with NERC.

c. Information Requirements

i. Second Compliance Order

106. In the Second Compliance Order, the Commission required the Filing Parties to revise NYISO's OATT to refund to the transmission developer the difference between the study deposit and the costs of performing the study, including interest calculated in accordance with section 35.19a(a)(2) of the Commission's Rules and Regulations. In addition, the Commission directed the Filing Parties to provide to each transmission developer a description of the costs to which the deposit will be applied, how those costs will be calculated, and an accounting of the actual costs.²⁰⁴

ii. Summary of Filing Parties' Compliance Filing

107. The Filing Parties propose to revise NYISO's OATT to state that if NYISO is required to refund any portion of the study deposit amount to a transmission developer, such refund will include interest on the refunded amount calculated in accordance with section 35.19a(a)(2) of the Commission's regulations.²⁰⁵

108. The Filing Parties also propose to revise NYISO's OATT to describe how NYISO will identify and invoice actual study costs and how NYISO will apply the study deposit. First, the Filing Parties propose to revise NYISO's OATT to state that NYISO will track its staff and administrative costs, including any costs associated with using subcontractors, that it incurs evaluating or reevaluating a transmission developer's proposed transmission solution. Second, the Filing Parties propose to revise NYISO's OATT to provide that the monthly invoice that NYISO will send to the transmission developer for the study costs it incurs shall include both a description and an accounting of the study costs, as well as estimated subcontractor costs.

109. The Filing Parties further propose to revise NYISO's OATT to provide that if a transmission developer does not timely pay its monthly invoice or, in the event of a transmission developer's dispute over invoiced amounts, does not pay disputed amounts into an independent escrow account, NYISO will recover the owed amount from that transmission developer's study deposit. NYISO's revised OATT states that if NYISO is

²⁰⁴ Second Compliance Order, 148 FERC ¶ 61,044 at P 197.

²⁰⁵ Proposed NYISO OATT, Attachment Y, §§ 31.2.6.2, 31.4.4.4.

required to draw on the study deposit, NYISO will notify the transmission developer, who will have 30 days to make payments to NYISO to restore the \$100,000 study deposit. NYISO's revised OATT further states that if the transmission developer fails to make such payments, NYISO may halt its evaluation of the transmission developer's proposed transmission solution and may disqualify the solution from further consideration. In this case, NYISO's revised OATT provides that NYISO will issue a final invoice and refund to the transmission developer any portion of the study deposit that exceeds outstanding costs that NYISO has incurred to evaluate its proposed transmission solution, including interest on the refunded amount calculated in accordance with the Commission's regulations.²⁰⁶

iii. Commission Determination

110. We find that the Filing Parties' proposed revisions comply with the directives in the Second Compliance Order. As required, the Filing Parties' revisions specify that a transmission developer will be refunded the difference between the study deposit and the costs of performing the study, including interest calculated. In addition, the revisions ensure that each transmission developer will be provided a description of the costs to which the deposit will be applied, how those costs will be calculated, and an accounting of the actual costs.

d. Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

i. Second Compliance Order

111. In the Second Compliance Order, the Commission found that NYISO's proposed process for evaluating transmission proposals for selection in the regional transmission plan for purposes of cost allocation is generally consistent with the evaluation requirements of Order No. 1000 and complies with the requirement to describe a transparent and not unduly discriminatory process for evaluating proposed transmission solutions for selection in the regional transmission plan for purposes of cost allocation. The Commission explained that Attachment Y defines a reasonable framework for NYISO's evaluation process that allows NYISO flexibility in conducting its evaluation and applying the evaluation metrics, while not giving NYISO unwarranted discretion.²⁰⁷ The Commission found that NYISO's evaluation criteria are sufficiently detailed to provide prospective transmission developers with an understanding of how their proposals will be evaluated.²⁰⁸

²⁰⁶ *Id.*

²⁰⁷ Second Compliance Order, 148 FERC ¶ 61,044 at P 249.

112. The Commission declined to require NYISO to provide additional detail in Attachment Y regarding the relative weight attributed to each factor considered in the evaluation process and rejected protests calling for specific weighted values for each of NYISO's proposed metrics and a method for NYISO's ranking of the selected criteria. The Commission explained that Order No. 1000 does not require a public utility transmission provider to specify in its OATT the relative weight of the factors considered in the evaluation process.²⁰⁹ The Commission added that the arguments that cost-effectiveness is not appropriately central to NYISO's evaluation process are unconvincing because not only does NYISO evaluate the cost of a proposed solution through the capital cost estimates and the cost per MW ratio criteria, the other factors that NYISO will consider in some way evaluate the cost of the proposed transmission project to the customer. For instance, the Commission explained, considering the potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule allows NYISO to consider the likelihood that a transmission project will be delayed and thereby expose customers to increased costs from a prolonged, unresolved transmission need.²¹⁰

ii. Requests for Rehearing

(a) Summary of Requests for Rehearing

113. LS Power asserts that the Commission erred by finding that NYISO's evaluation and selection criteria sufficiently weighed cost factors in relation to non-cost factors.²¹¹ LS Power asserts that the Commission's analysis of NYISO's proposed revisions must start with the Commission's jurisdictional mandate, which it argues is limited to rates and practices affecting rates. LS Power argues that, although non-cost factors could conceptually affect rates, the Commission, limited by its jurisdiction, must require NYISO to specify the actual cost impact of each evaluation factor.²¹² LS Power maintains that, if the Commission fails to require that the application of individual factors primarily focuses on cost either through a weighting formula or other clearly identified means, such factors statutorily cannot be jurisdictionally relevant to the determination of a more efficient or cost-effective transmission solution or bidder.²¹³ For example, LS

²⁰⁸ *Id.* P 250.

²⁰⁹ *Id.*

²¹⁰ *Id.* P 252.

²¹¹ LS Power Request for Rehearing and Clarification at 9.

²¹² *Id.* at 6 (citing *Cal. Indep. Sys. Operator Corp. v FERC*, 372 F.3d 395, 403 (D.C. Cir. 2004)).

Power asserts, the Commission's dismissal of NextEra's submission that NYISO must include a cost-containment commitment in the evaluation criteria ignores that a key purpose of NYISO's evaluation and selection process is to establish the costs or cost framework that will later be used to calculate rates.²¹⁴ Finally, LS Power contends that, without more rigorous evaluation criteria, the Commission authorized NYISO an excessive degree of discretion in how it applies its tariff.²¹⁵

(b) Commission Determination

114. We deny LS Power's request for rehearing and affirm the finding in the Second Compliance Order that cost-effectiveness is appropriately assessed in NYISO's proposed evaluation process.²¹⁶ We disagree with LS Power's argument that the "theoretical" possibility that NYISO's non-cost factors relate to cost considerations is insufficient to ensure NYISO can determine whether one transmission solution is more efficient or cost-effective than another.²¹⁷ As the Commission found in the Second Compliance Order, NYISO's evaluation process provides that it will consider the cost-effectiveness of a proposed transmission solution both through cost-specific factors, such as the capital cost estimates and the cost per MW ratio criteria, and through additional factors that intrinsically reflect the cost of the proposed transmission project to the customer, in both the short and near term.²¹⁸ The Commission found that these other categories are directly related to determining whether a transmission solution proposed by a transmission developer is more efficient or cost-effective.²¹⁹ On this basis, the Commission concluded that NYISO has shown that consideration of both cost-specific factors and factors other than those referring explicitly to transmission project costs will allow NYISO to consider "the relative efficiency and cost-effectiveness of [any proposed transmission] solution" and to select more efficient or cost-effective solutions to regional transmission needs.²²⁰

²¹³ *Id.* (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 77 (D.C. Cir. 2014)).

²¹⁴ *Id.*

²¹⁵ *Id.* at 8.

²¹⁶ *See* Second Compliance Order, 148 FERC ¶ 61,044 at P 249.

²¹⁷ *See id.* P 250.

²¹⁸ *See id.* P 252.

²¹⁹ Second Compliance Order, 147 FERC ¶ 61,127 at P 252.

²²⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

115. We also reject as a collateral attack on Order No. 1000, LS Power's argument that, unless NYISO can demonstrate on compliance that any non-cost factors it will use in the evaluation process directly affect rates, the Commission lacks jurisdiction over the evaluation factors used in the regional transmission planning process. In Order No. 1000, the Commission found that "transmission planning activities have a direct and discernable [e]ffect on rates," explaining that "[i]t is through the transmission planning process that public utility transmission providers determine which transmission facilities will more efficiently or cost-effectively meet the needs of the region, the development of which directly impacts the rates, terms and conditions of jurisdictional service."²²¹ The Commission also found that, based on its review of the record, existing transmission planning processes were unjust and unreasonable or unduly discriminatory or preferential,²²² and that part of the remedy is for public utility transmission providers to establish a transparent and not unduly discriminatory process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation.²²³ The United States Court of Appeals for the District of Columbia Circuit held that "the Commission reasonably interpreted [s]ection 206 to authorize [Order No. 1000's] planning mandate."²²⁴ Thus, LS Power's argument that the Commission and NYISO are now required to demonstrate how the evaluation criteria, which are part of the transmission planning reforms the Commission required in Order No. 1000, are within the Commission's jurisdiction is a collateral attack on Order No. 1000.

116. Furthermore, if the Commission were to accept LS Power's arguments, we would essentially be directing NYISO to consider cost as the primary factor in its evaluation of proposed transmission solutions for selection in the regional transmission plan for purposes of cost allocation;²²⁵ however, Order No. 1000 does not include such a requirement. Rather, Order No. 1000 requires NYISO to consider the relative efficiency and cost-effectiveness of proposed transmission solutions.²²⁶ LS Power's argument on rehearing that the Commission should change this requirement is a collateral attack on Order No. 1000. There, the Commission declined a similar request from LS Power to impose a requirement to select the bidder that is willing to guarantee the lowest net present value of its annual revenue requirement and held that, other than to require that

²²¹ *Id.* P 112.

²²² *Id.* P 116.

²²³ *Id.* P 328.

²²⁴ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 58-59 (D.C. Cir. 2014).

²²⁵ LS Power Request for Rehearing and Clarification at 9.

²²⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

these selection criteria be transparent and not unduly discriminatory, the Commission would allow the selection criteria to vary in different transmission planning regions.²²⁷

117. Finally, we disagree with LS Power that the Commission should have required NYISO to include specific cost-containment commitments among the evaluation metrics. As the Commission found in the Second Compliance Order, NYISO's proposed evaluation criteria are broad enough to allow NYISO to appropriately assess the cost-effectiveness of proposed transmission solutions,²²⁸ including whether a transmission developer is likely to avoid major cost overruns during project implementation. For example, NYISO will consider the accuracy of proposed cost estimates²²⁹ and potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule.

²²⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at PP 450, 455.

²²⁸ Second Compliance Order, 148 FERC ¶ 61,044 at P 252.

²²⁹ NYISO OATT, Attachment Y, § 31.2.6.5.1.1.

7. Cost Allocation

a. Cost Allocation Process for Transmission Needs Driven By Public Policy

i. Second Compliance Order

118. The Commission found that NYISO had failed to explain how the proposed regional cost allocation method for public policy transmission projects will not cause unnecessary delays for transmission developers to obtain the right to use the regional cost allocation method for their proposed public policy transmission project. The Commission also found that NYISO did not provide a timeline for the proposed process so that a transmission developer will know how the costs of its transmission project will be allocated in a timely manner. The Commission therefore required NYISO to make a further compliance filing to address these issues on this question.²³⁰

ii. Summary of Filing Parties' Compliance Filing

119. The Filing Parties propose that the process for deciding the cost allocation method for a public policy transmission project will run in parallel with state siting proceedings under Article VII of the New York Public Service Law and other permitting proceedings for major electric transmission facilities, which take well more than a year to complete. Thus, they state that the time frame will run between 60 and 330 days, which they argue will not cause undue delay. The Filing Parties propose to revise section 31.5.5.4 to establish the following timeline for determining the applicable cost allocation method for a public policy transmission project²³¹:

- NYISO will file with the Commission within 60 days of the New York Commission's determination of a Public Policy Transmission Need any cost allocation method prescribed by the underlying public policy requirement.²³²
- If there is no cost allocation method prescribed in the public policy requirement or the transmission developer wants to propose a different method, the transmission developer may submit to the New York Commission for its consideration a proposed cost allocation method no later than 30 days after NYISO's selection of its transmission project as the more efficient or cost-effective transmission solution to a Public Policy Transmission Need.²³³

²³⁰ Second Compliance Order, 148 FERC ¶ 61,044 at P 330.

²³¹ Proposed NYISO OATT, Attachment Y, § 31.5.5.4.

²³² *Id.* § 31.5.5.4.1.

- The New York Commission will have 150 days to review the transmission developer's proposed cost allocation method and to inform the transmission developer whether it supports the method.²³⁴
- If the New York Commission supports the proposed cost allocation method, the transmission developer will file the method with the Commission within 30 days of the New York Commission's indication of its support.²³⁵
- If the New York Commission does not support the proposed cost allocation method, the transmission developer will work with the New York Commission over a 60 day period to attempt to develop a mutually agreeable cost allocation method.²³⁶
- If they agree upon a cost allocation method, the transmission developer will file the method with the Commission within 30 days of the conclusion of the discussion period.²³⁷
- If they cannot agree upon a cost allocation method, the transmission developer will file its preferred method with the Commission within 30 days of the conclusion of the discussion period and will also include the method supported by the New York Commission.²³⁸

²³³ *Id.* § 31.5.5.4.2.

²³⁴ *Id.* § 31.5.5.4.2.1.

²³⁵ *Id.* § 31.5.5.4.2.2.

²³⁶ *Id.* § 31.5.5.4.2.3.

²³⁷ *Id.* § 31.5.5.4.2.4.

²³⁸ *Id.* § 31.5.5.4.2.5.

120. The Filing Parties state that if the Commission does not accept a cost allocation method through the above process, NYISO will allocate the costs of the transmission project to all load serving entities in the New York Control Area using the default cost allocation method, based upon load ratio share.²³⁹

iii. Commission Determination

121. We find that the Filing Parties' proposed revisions comply with the directives in the Second Compliance Order to establish a timeline for determining the applicable cost allocation method for a public policy transmission project and the Filing Parties have explained that the timeline will not cause unnecessary delays for transmission developers.

b. Cost Allocation for Solutions to Transmission Security Violations

i. Second Compliance Order

122. In the Second Compliance Order, the Commission noted the Filing Parties' placeholder for a method for allocating the costs of transmission projects that resolve transmission security violations, other than those that also resolve resource adequacy issues, as well as NYISO's commitment to file this cost allocation method with the Commission by the end of the third quarter of 2014. The Commission stated that it would address the resulting cost allocation method at the time that NYISO makes its filing.²⁴⁰

ii. Summary of Filing Parties' Compliance Filing

123. The Filing Parties state that based on stakeholder input, NYISO is working on further refinements to the method and examples for further discussions. NYISO currently anticipates that its filing of proposed tariff revisions for the Commission's acceptance will not occur until the first quarter of 2015.²⁴¹

iii. Commission Determination

124. We note NYISO's commitment to file this cost allocation method with the Commission by the end of the first quarter of 2015. NYISO staff indicated at a subsequent stakeholder meeting, the Electric System Planning Working Group, held on

²³⁹ *Id.* § 31.5.5.4.3.

²⁴⁰ Second Compliance Order, 148 FERC ¶ 61,044 at P 298.

²⁴¹ October 15, 2013 Compliance Filing at 17.

February 3, 2015, that it anticipates making this filing by the end of the second quarter of 2015. We will address the resulting cost allocation method at the time that NYISO makes that filing.

8. Additional Ministerial Changes

a. Summary of Filing Parties' Compliance Filing

125. The Filing Parties also propose non-substantive clarifications and ministerial modifications that are related to the implementation of the tariff revisions proposed to comply with the July 2014 Order or that were identified in the course of drafting those changes, all of which the Filing Parties believe are needed for the tariff to read logically and consistently. For example, the Filing Parties have created the defined term Viability and Sufficiency Assessment which shall mean “[t]he results of the ISO’s assessment of the viability and sufficiency of proposed solutions to a Reliability Need under section 31.2.5 or a Public Policy Transmission Need under section 31.4.6, as applicable.” The Filing Parties state that the proposed defined term merely improves readability by replacing the lengthy description of this process step in multiple locations in Attachment Y with a defined term.²⁴²

b. Commission Determination

126. We accept these non-substantive clarifications and ministerial modifications for the tariff to read clearly.

The Commission orders:

(A) The requests for rehearing and clarification are hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) The Filing Parties’ compliance filing is hereby accepted, effective on January 1, 2014, subject to a further compliance filing, as discussed in the body of this order.

²⁴² *Id.* at 19.

(C) The Filing Parties are hereby directed to submit a further compliance filing, within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.