

156 FERC ¶ 61,162
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket Nos. ER16-966-001
ER16-966-002

ORDER ON CLARIFICATION AND COMPLIANCE

(Issued September 7, 2016)

1. In this order, we accept the New York Independent System Operator, Inc.'s (NYISO) compliance filing submitted pursuant to the Commission's April 18, 2016 order in this proceeding,¹ and grant NYISO's request for clarification.

I. Background

2. On February 18, 2016, pursuant to section 205 of the Federal Power Act (FPA),² NYISO filed proposed revisions to Attachment Y of its Open Access Transmission Tariff (OATT), to modify its Public Policy Transmission Planning Process (Public Policy Process), which it adopted to comply with Order No. 1000.³ The April 18 Order accepted in part, subject to condition, and rejected in part NYISO's OATT revisions.

3. In the April 18 Order, the Commission accepted: (1) NYISO's inclusion of the term "Other Public Policy Project" in its OATT, subject to explaining the cost allocation

¹ *N.Y. Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,037 (2016) (April 18 Order).

² 16 U.S.C. § 824d (2012).

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).

method for the transmission portion of an Other Public Policy Project that is selected during the regional transmission planning process,⁴ (2) NYISO's proposal to extend project deadlines under certain conditions, subject to NYISO specifying in its OATT that the extension may be granted only for deadlines that apply to all developers,⁵ (3) NYISO's proposal to require the developer of a Public Policy Transmission Project to enter into a Study Agreement with NYISO, subject to the incorporation of the Study Agreement into NYISO's OATT,⁶ (4) NYISO's proposal to require certain information for Other Public Policy Projects, subject to NYISO clarifying that certain information may not be applicable to all projects,⁷ and (5) NYISO's proposed OATT language specifying that the developer of a Public Policy Transmission Project may recover its costs if the relevant governmental authority rejects or withdraws necessary authorizations, subject to the clarification that the cost recovery must be in accordance with Commission regulations on abandoned plant recovery.⁸

4. Relevant here, the Commission also found that NYISO's proposed definition for an Other Public Policy Project was inconsistent with Order No. 1000's regional cost allocation requirements. The Commission noted that under NYISO's proposal, an Other Public Policy Project could include "a portfolio of transmission and non-transmission projects," but that NYISO proposed to treat the entire portfolio as a non-transmission alternative that would thus be ineligible for regional cost allocation.⁹ The Commission stated that Order No. 1000 requires that every public utility transmission provider develop a method, or set of methods, for allocating the costs of new transmission facilities that are selected in the transmission plan produced by the transmission planning process in which it participates.¹⁰ The Commission concluded that "if an Other Public Policy Project contains a transmission component and is selected during the regional transmission planning process, NYISO must allocate the costs of the transmission component consistent with its regional cost allocation method."¹¹ Accordingly, the

⁴ April 18 Order, 155 FERC ¶ 61,037 at P 28.

⁵ *Id.* P 27.

⁶ *Id.* P 23.

⁷ *Id.* P 13.

⁸ *Id.* P 22.

⁹ *Id.* P 28.

¹⁰ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558).

¹¹ April 18 Order, 155 FERC ¶ 61,037 at P 28.

Commission directed NYISO to submit a compliance filing explaining in its OATT the cost allocation method for the transmission portion of an Other Public Policy Project.

5. On May 18, 2016, NYISO submitted its compliance filing and a request for clarification, or in the alternative for rehearing, on the Commission's findings related to the cost allocation method for the transmission portion of an Other Public Policy Project.

II. Notice of Filings and Responsive Pleadings

6. Notice of NYISO's compliance filing was published in the *Federal Register*, 81 Fed. Reg. 32,748 (2016), with protests and interventions due on or before June 8, 2016. No protests or comments were filed.

III. Discussion

A. Request for Clarification, or in the Alternative, Rehearing

1. Summary of the Request

7. NYISO requests clarification that "the April 18 Order did not require [NYISO] to alter its role in only selecting among fully-transmission projects for purposes of cost allocation under the OATT."¹² NYISO asserts that Order No. 1000 required public utility transmission providers to establish a process by which transmission needs driven by public policy requirements are identified in a regional transmission planning process and potential solutions to those needs are evaluated.¹³ NYISO asserts that Order No. 1000 required that the regional transmission planning process include a transparent, non-discriminatory process for evaluating and potentially selecting a transmission facility in the regional transmission plan for purposes of cost allocation,¹⁴ and consider non-transmission solutions on a comparable basis.¹⁵ Lastly, NYISO asserts, Order No. 1000 does not require the selection of non-transmission solutions for purposes of cost allocation and recovery.¹⁶

¹² NYISO May 18, 2016 Clarification Request at 3 (Clarification Request).

¹³ *Id.* at 3 (citing, *e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205).

¹⁴ *Id.* at 3-4 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452).

¹⁵ *Id.* at 4 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

¹⁶ *Id.* (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 193).

8. NYISO states that, consistent with those requirements, its current Public Policy Process contains a two-stage evaluation and selection process to fulfill a public policy transmission need, as first identified by the New York Public Service Commission (New York Commission). First, NYISO performs a comparable assessment of all proposed solutions regardless of resource type (e.g., transmission, demand response, etc.) to determine whether each is viable and sufficient to address the public policy transmission need.¹⁷ Then, the New York Commission reviews NYISO's assessment of the viable and sufficient solutions and issues an order determining whether NYISO should continue to evaluate transmission solutions, or whether a non-transmission solution should be pursued to meet the public policy transmission need.¹⁸

9. NYISO states that if the New York Commission elects to pursue a transmission solution, the public policy transmission need remains, and NYISO will evaluate the viable and sufficient, transmission solutions and select the more efficient or cost-effective transmission solution for purposes of cost allocation. On the other hand, if the New York Commission decides to pursue a non-transmission solution, that solution will be developed outside of the regional transmission planning process. NYISO asserts that the Commission confirmed that Order No. 1000 does not require NYISO to select a non-transmission alternative; therefore, under its OATT, a transmission project with a non-transmission component "cannot be selected by the NYISO in its regional transmission planning process."¹⁹

10. Rather, NYISO states, its OATT facilitates a scenario in which the transmission component of an Other Public Policy Project may be eligible for regional cost allocation without requiring NYISO to select the non-transmission component of the project.²⁰ Thus, NYISO states that it does not interpret the April 18 Order to mean that it must rework its evaluation and selection process to require it to select from among transmission and non-transmission projects for purposes of cost allocation under its OATT. NYISO requests clarification accordingly. If the Commission denies NYISO's request for clarification, then it requests rehearing of the April 18 Order and argues that requiring it to select a non-transmission project in its regional transmission plan is inconsistent with the Commission's previous determination that Order No. 1000 neither requires the selection of non-transmission solutions, nor does it concern integrated resource planning.²¹

¹⁷ NYISO OATT, Attachment Y, § 31.4.6.

¹⁸ *Id.* § 31.4.6.7.

¹⁹ NYISO Clarification Request at 5.

²⁰ *See infra* PP 12-14.

2. Commission Determination

11. We grant NYISO's request for clarification. As the Commission noted in the April 18 Order, based on NYISO's proposed definition of an Other Public Policy Project, "it appears that NYISO proposes to treat this solution as a non-transmission alternative and therefore disqualify the developer from seeking regional cost allocation for any portion of the project, despite the fact that the solution includes a transmission portion."²² In that case, NYISO's proposal would not comply with the Order No. 1000 requirement for each public utility transmission provider to develop a method, or set of methods, for allocating the costs of new transmission facilities selected in the transmission plan produced by the transmission planning process in which it participates.²³ Accordingly, the April 18 Order held that if an Other Public Policy Project contains a transmission component and is selected during the regional transmission planning process, NYISO must allocate the costs of the transmission component consistent with its regional cost allocation method.²⁴ Therefore, we clarify that the April 18 Order did not require NYISO to select a non-transmission component of an Other Public Policy Project; rather, to the extent that an Other Public Policy Project contains a transmission component, the April 18 Order directed NYISO to explain how the costs of that transmission component would be eligible for regional cost allocation.²⁵

B. Compliance

1. Summary of the Compliance Filing

12. NYISO proposes to modify its OATT to allow NYISO to select the transmission component of an Other Public Policy Project so that it is eligible for regional cost allocation.²⁶ Specifically, NYISO states that it performs identical viability and

²¹ *Id.* at 7 (citing, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044, at P 248 (2014) (Second Compliance Order); *see also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 154).

²² April 18 Order, 155 FERC ¶ 61,037 at P 28.

²³ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558).

²⁴ *Id.*

²⁵ *Id.*

²⁶ NYISO May 18, 2016 Compliance Filing at 7; New York Independent System Operator, Inc., FERC FPA Electric Tariff, [NYISO OATT, 31.4 OATT Att Y Public Policy Requirements Planning Process, 15.0.0](#).

sufficiency evaluations for both Public Policy Transmission Projects and Other Public Policy Projects to ensure that each can adequately address the public policy transmission need. Thereafter, the New York Commission reviews the viable and sufficient solutions and may conclude that a non-transmission solution, including the non-transmission component of an Other Public Policy Project, should be pursued to meet a portion of a public policy transmission need and could modify the original need accordingly.²⁷ NYISO proposes to revise Section 31.4.6.7 to clarify that in that case, NYISO will re-start its Public Policy Process as an out-of-cycle process to address the modified transmission need.²⁸

13. To address the modified transmission need, NYISO will solicit Public Policy Transmission Projects, which can include proposals by the developer of the transmission component of a previously-submitted Other Public Policy Project and proposals from competing developers.²⁹ NYISO will then evaluate these Public Policy Transmission Projects for purposes of selecting the more efficient or cost-effective transmission solution to address the public policy transmission need. The project selected will be eligible for regional cost allocation under NYISO's OATT.

14. In support of its compliance filing, NYISO reiterates the arguments it made in its Clarification Request,³⁰ noting, among other things, that Order No. 1000 required public utility transmission providers to establish a process by which transmission needs driven by public policy requirements are identified in a regional transmission planning process, and that such process include a transparent, non-discriminatory method for evaluating and potentially selecting a transmission facility in the regional transmission plan for purposes of cost allocation.³¹ NYISO reiterates that Order No. 1000 requires that non-transmission solutions be considered on a comparable basis as transmission solutions,³²

²⁷ NYISO Compliance Filing at 9.

²⁸ NYISO OATT, Attachment Y § 31.4.6.7.3.

²⁹ NYISO Compliance Filing at 10.

³⁰ *See supra* PP 7-9.

³¹ NYISO Compliance Filing at 8 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452).

³² *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

and that its current Public Policy Process fulfills that obligation through a two-stage evaluation and selection process to fulfill a Public Policy Transmission Need. Further, NYISO maintains that it has discussed this process with its stakeholders.³³

2. Commission Determination

15. As discussed below, we accept NYISO's proposed OATT revisions and find that they are consistent with the April 18 Order and Order No. 1000. As noted above, the April 18 Order found that, as initially proposed, it appeared that NYISO would treat an Other Public Policy Project as a non-transmission alternative even if it had a transmission component, and thus disqualify the transmission portion from eligibility for regional cost allocation.³⁴ Such a process would violate the Order No. 1000 requirement for each public utility transmission provider to develop a method, or set of methods, for allocating the costs of new transmission facilities that are selected in the regional transmission plan, and for such method or methods to apply to all transmission facilities of the type in question.³⁵

16. Under NYISO's proposal, if the New York Commission decides to pursue an Other Public Policy Project that contains a transmission component, the transmission component will be eligible for regional cost allocation as a stand-alone transmission project. Thus, we find that NYISO's proposed OATT revisions comply with the Commission's condition in the April 18 Order that NYISO explain the cost allocation method for the transmission portion of an Other Public Policy Project. Specifically, NYISO has revised its OATT to specify that, should the New York Commission decide to pursue a non-transmission alternative to partially resolve a public policy transmission need, NYISO shall solicit Public Policy Transmission Projects to address the modified transmission need and select the more efficient or cost-effective solution, which will then be eligible for cost allocation pursuant to the regional cost allocation method in NYISO's OATT.

3. Other Compliance Proposals

17. The April 18 Order accepted NYISO's proposal to permit it to extend certain deadlines governing the Public Policy Process, subject to NYISO revising the provision "to provide that the section applies only to deadlines that apply to all developers, but

³³ NYISO Compliance Filing at 10.

³⁴ April 18 Order, 155 FERC ¶ 61,037 at P 28.

³⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 558, 560.

excludes developer-specific instances.”³⁶ In its compliance filing, NYISO proposes to revise its OATT to clarify that it may extend certain deadlines that apply “to all parties participating in a given planning process.”³⁷

18. The April 18 Order also accepted NYISO’s proposal to require the developer of a Public Policy Transmission Project to enter into a study agreement with NYISO, subject to NYISO incorporating the study agreement into its OATT.³⁸ NYISO also proposes to add a new Section 31.12 to incorporate the Study Agreement into its OATT. Sections 1.0 through 7.0 provide that the parties agree to execute certain requirements as outlined in Attachment Y of NYISO’s OATT, such as that the (1) the developer will provide NYISO with required project information and a \$100,000 study deposit; (2) NYISO will invoice, and the developer will pay, NYISO’s actual costs in performing its evaluation; (3) NYISO will provide the developer a summary of its findings and meet with the developer to discuss its findings and address any questions, among other provisions. Section 8.0 (Miscellaneous) sets forth the provisions governing the parties’ rights and obligations concerning other contracting terms, such as the accuracy of information, disclaimer of warranties, termination, confidentiality, and limitation of liability. As for the accuracy of information, the agreement provides that the developer will represent and warrant that the information it has provided is accurate and complete “to the best of its knowledge and belief.”³⁹

19. The Commission accepted NYISO’s OATT language regarding cost recovery, subject to it being consistent with the Commission’s regulations on abandoned plant recovery.⁴⁰ NYISO proposes to revise Sections 31.4.12.1 and 31.5.6.5.2 to provide that a developer may recover its costs “to the extent permitted by the Commission in accordance with its regulations on abandoned plant recovery.”⁴¹

³⁶ April 18 Order, 155 FERC ¶ 61,037 at P 27.

³⁷ NYISO OATT, Attachment Y, § 31.1.8.7.

³⁸ April 18 Order, 155 FERC ¶ 61,037 at P 23. The Commission also noted that to the extent that the study agreement sets forth a requirement that a developer attest to the accuracy of the information in the agreement, such attestation should require the developer to provide information that is true to the best of the developer’s knowledge and belief because absolute accuracy may not be tenable when a developer relies on information provided by third parties. *Id.* n.46.

³⁹ NYISO Compliance Filing at 5-6; New York Independent System Operator, Inc., FERC FPA Electric Tariff, [NYISO OATT, 31.12 OATT Att Y Appendix I – Study Agreement for Evaluation, 0.0.0.](#)

⁴⁰ NYISO Compliance Filing at 22.

20. In addition, the Commission accepted NYISO's proposal to require developers of other Public Policy Projects to submit certain project information, subject to NYISO stating that certain information, such as interconnection studies, may not be applicable to all Other Public Policy Projects.⁴² NYISO proposes to revise its OATT accordingly.

21. Finally, the Commission rejected other proposed OATT language as overly broad and vague.⁴³ NYISO proposes to remove Section 31.4.12.3.1.2 in response.

22. We find that NYISO's proposed OATT revisions comply with the Commission's findings in the April 18 Order.

The Commission orders:

(A) Request for clarification of the April 18 Order is hereby granted, as discussed in the body of this order.

(B) NYISO's compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴¹ *Id.* at 7.

⁴² April 18 Order, 155 FERC ¶ 61,037, at P 13.

⁴³ *Id.* P 17 (citing NYISO Proposed OATT, Attachment Y § 31.4.12.3.1.2, Process for Addressing Inability of developer to Complete Selected Public Policy Transmission Project).