

162 FERC ¶ 61,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

New York Independent System Operator, Inc.

Docket Nos. ER15-2059-002
ER13-102-008
(Not Consolidated)

ORDER GRANTING, IN PART, AND DENYING, IN PART, REHEARING AND
CLARIFICATION, AND REQUIRING FURTHER COMPLIANCE

(Issued February 15, 2018)

1. In this order, we grant, in part, and deny, in part, requests for rehearing and clarification by the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (NYTOs, and together with NYISO, the Filing Parties)¹ of two Commission orders issued on December 23, 2015 concerning NYISO's Order No. 1000² Comprehensive System Planning Process.³ We also require a further compliance filing.

¹ NYTOs consist of: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corporation.

² *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).

³ *N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,340 (2015) (Public Policy Process Order); *N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,341 (2015) (Fourth Compliance Order).

I. Background

A. Fourth Compliance Order

2. In the Fourth Compliance Order, the Commission accepted, subject to further compliance, the Filing Parties' proposed revisions to NYISO's Open Access Transmission Tariff (OATT), including a proposed *pro forma* development agreement (Development Agreement), to comply with Order No. 1000 and the Commission's Third Compliance Order.⁴ Two aspects of the Fourth Compliance Order are relevant here on rehearing. First, the Commission found that Responsible Transmission Owners⁵ developing regulated⁶ backstop solutions are similarly situated to incumbent transmission owners and nonincumbent transmission developers developing alternative regulated transmission solutions.⁷ As a result, the Commission found that Responsible Transmission Owners developing regulated backstop solutions must sign the

⁴ *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040, at P 3 (2015) (Third Compliance Order).

⁵ "Responsible Transmission Owner" is defined as "[t]he Transmission Owner or Transmission Owners designated by the ISO, pursuant to Section 31.2.4.3, 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 the ISO identifies a Reliability Need." NYISO, OATT, Attachment Y, § 31.1.1 (15.0.0).

⁶ The term "regulated" refers to a transmission solution for which the proponent seeks to obtain regional cost allocation. *See N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059, at P 32 & n.45 (2013) (First Compliance Order), *order on reh'g & compliance*, 148 FERC ¶ 61,044, at P 3 (2014) (Second Compliance Order), *order on reh'g & compliance*, 151 FERC ¶ 61,040, at P 3 (2015) (Third Compliance Order), *order on reh'g & compliance*, 153 FERC ¶ 61,341.

⁷ Fourth Compliance Order, 153 FERC ¶ 61,341 at P 46. Through the reliability transmission planning process, NYISO identifies reliability needs and solicits, from both incumbent transmission owners and nonincumbent transmission developers, regulated solutions and market-based solutions (i.e., solutions an incumbent transmission owner or nonincumbent transmission developer proposes but not for selection in the regional transmission plan for purposes of cost allocation). For each identified reliability need, the Responsible Transmission Owner is required to provide a "regulated backstop solution." In addition to the regulated backstop solution, other transmission developers may propose "alternative regulated transmission solutions." Thus, for each reliability need, there will always be a regulated backstop transmission solution, and there may be proposed alternative regulated transmission solutions. *Id.* P 22.

Development Agreement if the regulated backstop solution is selected as the more efficient or cost-effective solution to a Reliability Need or is triggered to proceed in parallel with the alternative regulated transmission solution.⁸ The Commission also required, among other things, that the Filing Parties revise the Development Agreement to clarify that all alternative regulated transmission solutions, regardless of whether the developer is an incumbent transmission owner or nonincumbent transmission developer, and all regulated backstop solutions will be evaluated for interconnection under Attachments X and S of the NYISO OATT.⁹

3. Second, the Fourth Compliance Order required the Filing Parties to revise the liability and indemnity provisions of the Development Agreement applicable to NYISO.¹⁰ The Commission, required, among other things, that NYISO make the terms in both provisions mutual, and that it remove the word “gross” before “negligence” in the indemnity provision. NYISO’s proposed Development Agreement exempted from indemnification only those losses that occur as a result of NYISO’s gross negligence or

⁸ *Id.* PP 45-46.

⁹ *Id.* P 67. Attachment X sets forth NYISO’s generation and “Merchant Transmission Facilities” interconnection process. Attachment S contains the related cost requirements for that interconnection process, including the facilities cost allocation procedures.

¹⁰ As proposed, the liability provision provided: “Notwithstanding any other provision in the NYISO’s tariffs and agreements to the contrary, the NYISO shall not be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability, or otherwise, to the Developer or any Transmission owner, NYISO Market Participant, third party or any other person for any damages whatsoever . . . arising or resulting from any act or omission in any way associated with this Agreement, except in the event the NYISO is found liable for gross negligence or intentional misconduct in the performance of its obligations under this Agreement. . . .” Proposed NYISO OATT, Attachment Y, Appendix C, Article 9.1.

As proposed, the indemnification provision provided: “Notwithstanding any other provision in the NYISO’s tariffs and agreements to the contrary, the Developer shall at all times indemnify and save harmless, as applicable, the NYISO . . . from any and all damages . . . , losses, claims, . . . , liabilities, judgments, demands, suits, recoveries, costs and expenses, court costs, attorney and expert fees, and all other obligations by or to third parties, arising out of, or in any way resulting from, or associated with, this Agreement, *provided, however*, that the Developer shall not have any indemnification obligation under this Article 9.2 with respect to any loss to the extent the loss results from the gross negligence or intentional misconduct of the NYISO” Proposed NYISO OATT, Attachment Y, Appendix C, Article 9.2.

intentional misconduct. The required revision would also exempt from indemnification losses resulting from acts of ordinary negligence.¹¹

B. Public Policy Process Order

4. In the Public Policy Process Order, the Commission rejected proposed revisions to NYISO's public policy transmission planning process.¹² That process consists of procedures and mechanisms for considering transmission needs driven by public policy requirements consistent with Order No. 1000.¹³ The Commission rejected NYISO's proposed OATT revisions "as unjust, unreasonable, unduly discriminatory, and preferential because NYISO proposes to subject nonincumbent transmission developers to an interconnection process with different requirements than the interconnection process that applies to incumbent Transmission Owners."¹⁴ The Commission also stated that "[b]ecause we reject this fundamental aspect of NYISO's filing, we also find it appropriate to reject NYISO's filing in its entirety."¹⁵

II. Rehearing Requests

A. Fourth Compliance Order

5. NYTOs argue that the Commission erred in the Fourth Compliance Order by finding that Responsible Transmission Owners developing regulated backstop solutions are similarly situated to incumbent transmission owners and nonincumbent transmission developers developing alternative regulated transmission solutions.¹⁶ NYTOs assert that

¹¹ Fourth Compliance Order, 153 FERC ¶ 61,341 at PP 103, 105.

¹² NYISO proposed that these revisions be reflected in Attachment Y of its Open Access Transmission Tariff (OATT).

¹³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2. NYISO's OATT defines a public policy requirement as "[a] federal or New York State statute or regulation, including a [New York Public Service Commission] order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act, any successor statute, or any duly enacted law or regulation passed by a local governmental entity in New York State, that may relate to transmission planning on the [Bulk Power Transmission Facilities]." NYISO, OATT, Attachment Y, § 31.1.1 (15.0.0).

¹⁴ Public Policy Process Order, 153 FERC ¶ 61,340 at P 12.

¹⁵ *Id.* P 12 n.19.

¹⁶ NYTOs January 22, 2016 Request for Rehearing, Docket Nos. ER15-2059-000, ER15-2059-001, ER13-102-007 at 7, 11 (NYTOs Rehearing Request).

as a result, the Commission erred when it required the Filing Parties to revise NYISO's interconnection process in Attachments X and S of the OATT to apply to regulated backstop solutions and required Responsible Transmission Owners to sign the Development Agreement.¹⁷

6. NYISO asserts that the Commission erred in determining that the transmission developer should not indemnify NYISO under the Development Agreement for NYISO's acts of ordinary negligence and requiring that the terms be mutual. NYISO maintains that the Commission departed, without explanation, from its consistent practice of limiting regional transmission organizations' (RTOs) and independent system operators' (ISOs) exposure to liability to acts of gross negligence.¹⁸ NYISO argues that the Commission's determination is inconsistent with its OATT and Commission precedent, including the Commission's recent decision in *Midcontinent Indep. Sys. Operator, Inc.*¹⁹ NYISO states that in *MISO*, the Commission determined that Midcontinent Independent Transmission System Operator, Inc.'s (MISO) obligation to indemnify transmission developers under its *pro forma* development agreement should be "reciprocal to the extent allowed under the Tariff."²⁰ Accordingly, consistent with its OATT, MISO is only required to indemnify a transmission developer in a case of its own gross negligence or intentional misconduct. NYISO argues that the same limitation on liability exists in its OATT.²¹

7. Finally, NYISO requests clarification of the Commission's statement in the Fourth Compliance Order that NYISO need not necessarily use its existing Attachments X and S processes for evaluating alternative regulated transmission solutions and regulated backstop solutions for interconnection.²²

B. Public Policy Process Order

8. NYISO contends that the Commission erred in the Public Policy Process Order in rejecting all of NYISO's proposed revisions to its public policy transmission planning

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 6-7.

¹⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,168 (2015) (*MISO*), *order on reh'g*, 154 FERC ¶ 61,229 (2016).

²⁰ NYISO Request for Rehearing of Fourth Compliance Order at 12 (citing *MISO*, 153 FERC ¶ 61,168 at P 215).

²¹ *Id.*

²² *Id.* at 16-18.

process because the Commission found that “a small portion of them,” which NYISO refers to as the “Interconnection Provisions,” unduly discriminated between incumbent transmission owners and nonincumbent transmission developers.²³ NYISO maintains that this finding of undue discrimination does not apply to numerous other proposed OATT revisions, which NYISO refers to as “Non-Interconnection Provisions,” that NYISO argues “are entirely unrelated to the Interconnection Provisions.”²⁴ NYISO asks that the Commission grant rehearing and accept the Non-Interconnection Provisions.²⁵

III. Discussion

A. Fourth Compliance Order

1. Regulated Backstop Solutions

9. NYTOs argue that Responsible Transmission Owners developing regulated backstop solutions are obligated to propose and construct them, and thus they are not similarly situated with respect to the Development Agreement to developers of alternative regulated transmission solutions, who propose those projects voluntarily.²⁶ Similarly, NYISO maintains that these two groups are not similarly situated where the regulated backstop solution has been triggered as an emergency backup, but not selected as the more efficient or cost-effective solution. According to NYISO, this is because such regulated backstop solutions exist simply to be available in the event the selected solution “falls through.”²⁷ NYISO states that it will halt such a regulated backstop solution as soon as the selected solution has demonstrated through its own progress that there is no need for an emergency backup.

10. We disagree with NYTOs and NYISO that Responsible Transmission Owners developing regulated backstop solutions are not similarly situated with respect to the Development Agreement to sponsors of alternative regulated transmission solutions. To say that entities are similarly situated does not mean that there are no differences between them; rather, it means that there are no differences that are material to the inquiry at hand.²⁸

²³ NYISO January 27, 2016 Request for Rehearing, Docket Nos. ER15-2059-000, ER15-2059-001 at 1 (NYISO Request for Rehearing of Public Policy Process Order).

²⁴ *Id.*

²⁵ *Id.* at 6.

²⁶ NYTOs Rehearing Request at 2.

²⁷ NYISO Request for Rehearing of Fourth Compliance Order at 15.

²⁸ See, e.g., *Blue Shield of Va. v. McCready*, 457 U.S. 465, 484 n.21 (1982)

Thus, the courts have explained that entities are similarly situated if they are in the same position with respect to the ends that the law seeks to promote or the abuses that it seeks to prevent, even if they are different in many other respects.²⁹ Consistent with those precedents, the Commission has, for example, determined that new and existing generators were similarly situated for “reactive power compensation purposes” because they were equally capable of providing that service, notwithstanding other significant differences.³⁰

11. Applying those principles here, we find that Responsible Transmission Owners developing regulated backstop solutions are similarly situated to incumbent transmission owners and nonincumbent transmission developers developing alternative regulated transmission solutions with respect to the Development Agreement. The relevant inquiry in this respect is whether NYISO will evaluate the proposed transmission projects of these entities using the same criteria for the purpose of identifying the more efficient or cost-effective solution and thus for selection in the regional transmission plan for purposes of cost allocation. Because NYISO will evaluate both regulated backstop solutions and alternative regulated transmission solutions using the same criteria, we conclude that they are similarly situated for the purposes of signing the Development Agreement.³¹

(concluding that a group health plan subscriber who was not reimbursed for costs of treatment by a psychologist, but who would have been reimbursed for comparable treatment by a psychiatrist, was “in many respects similarly situated” to hypothetical parties that would be considered eligible to seek the type of damages she sought in other contexts); *Scholtisek v. Eldre Corp.*, 229 F.R.D. 381, 390 (W.D.N.Y. 2005) (stating that since the policy at issue “applies to salaried employees generally, the class members’ individual job duties are not relevant to whether they are similarly situated with respect to the application of this policy”).

²⁹ See, e.g., *Florida v. Long*, 487 U.S. 223, 227 (1988) (finding that “[t]he normal retirement benefit is therefore equal for similarly situated male and female employees”); *City of Los Angeles v. Lyons*, 461 U.S. 95, 98 (1983) (citing allegations “that Lyons and others similarly situated are threatened with irreparable injury in the form of bodily injury and loss of life”).

³⁰ *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282, at P 36 (2006), *reh’g denied* 119 FERC ¶ 61,177 (2007); see also *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 137 FERC ¶ 61,185, at P 62 (2011), *reh’g denied* 141 FERC ¶ 61,233 (2012) (explaining that that “non-[f]ederal renewable resources are similarly-situated to [f]ederal hydroelectric and thermal resources for purposes of transmission curtailments because they all take firm transmission service”).

³¹ As the Commission stated in the Fourth Compliance Order, “[a]lthough the

12. As noted, NYISO selects a project in the regional transmission plan for purposes of cost allocation, its developer must then execute a Development Agreement with NYISO in order to proceed. If Responsible Transmission Owners developing regulated backstop solutions are not required to execute a Development Agreement, they will have an advantage over nonincumbent transmission developers both in seeking selection in the regional transmission plan for purposes of cost allocation and remaining selected.³² This is because “some of the requirements contained in” the NYISO Transmission Owners Agreement and the Agreement between NYISO and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs (Reliability Agreement) “are less stringent than those contained in the Development Agreement.”³³ These less stringent requirements represent an advantage for Responsible Transmission Owners developing regulated backstop solutions that would result in undue discrimination against similarly situated developers of alternative regulated transmission solutions.

13. We reject NYISO’s argument that Responsible Transmission Owners developing regulated backstop solutions are distinct because regulated backstop solutions are not selected as the more efficient or cost-effective solution and exist simply to be available in the event the selected alternative regulated transmission solution “falls through.”³⁴ A regulated backstop solution is not triggered through a finding that the selected alternative regulated transmission solution has “fallen through.” Whether the regulated backstop solution should be triggered is based on a non-exhaustive list of factors regarding the selected solution’s progress,³⁵ and triggering the regulated backstop solution will require considering both solutions in light of the same factors if the triggering is to be deemed just and reasonable. The applicability of a common set of criteria means that the process of the regulated backstop solution was developed prior to and outside of the Order No. 1000 process, NYISO will be evaluating proposed regulated backstop solutions against proposed alternative regulated transmission solutions to select the more efficient or cost-effective transmission solution in the regional transmission plan for purposes of cost allocation.” Fourth Compliance Order, 153 FERC ¶ 61,341 at P 46.

³² Third Compliance Order, 151 FERC ¶ 61,040 at P 23.

³³ Fourth Compliance Order, 153 FERC ¶ 61,341 at P 47. For example, the Commission pointed to the fact that the NYISO Transmission Owners Agreement and the Reliability Agreement excuse non-performance due to *force majeure* events, while the Development Agreement does not. In addition, the Commission noted that the Development Agreement contains milestone requirements that trigger breach and termination provisions, whereas the NYISO Transmission Owners Agreement and the Reliability Agreement do not. *See id.*

³⁴ NYISO Request for Rehearing of Fourth Compliance Order at 15.

³⁵ Fourth Compliance Order, 153 FERC ¶ 61,341 at P 10.

two types of solutions cannot be viewed different in character for the purpose of determining which is the more efficient or cost-effective solution, and it likewise means that Responsible Transmission Owners must be viewed as similarly situated to the developers of alternative regulated transmission solutions for this purpose.

14. Similar considerations foreclose NYTOs argument that nonincumbent transmission developers are not similarly situated to Responsible Transmission Owners because the former can withdraw their proposal or refuse to complete the project, whereas Responsible Transmission Owners are required by the Reliability Agreement to develop regulated backstop solutions and cannot withdraw or refuse to complete their project.³⁶ These obligations of Responsible Transmission Owners are not material to the evaluation and selection of the more efficient or cost-effective solution, and they thus do not mean that Responsible Transmission Owners are not similarly situated to the developers of alternative regulated transmission solutions for this purpose. We find this to be the case notwithstanding the fact that regulated backstop solutions predate Order No. 1000's requirements, as the origin of regulated backstop solutions is not material to their significance for Order No. 1000 requirements.³⁷

15. NYTOs other arguments regarding the Fourth Compliance Order also do not provide a basis for granting rehearing. First, they argue that the Commission has impermissibly abrogated or modified the contract terms applicable to regulated backstop solutions in the Reliability Agreement and that the Commission has barred the use of the Reliability Agreement.³⁸ That is incorrect. The Commission has neither required a modification to the text of the Reliability Agreement nor has it abrogated the Reliability Agreement. Although the Development Agreement may, in certain respects be more stringent than the Reliability Agreement, it does not prevent, nor is it inconsistent with, compliance with the Reliability Agreement and, therefore, has not abrogated the less stringent Reliability Agreement.³⁹

16. NYTOs also argue that the Commission erred by requiring the Filing Parties to revise the Development Agreement to clarify that all alternative regulated transmission solutions and all regulated backstop solutions will be evaluated for interconnection under Attachments X and S of the NYISO OATT.⁴⁰ NYTOs argue that this directive is

³⁶ NYTOs Rehearing Request at 8-9.

³⁷ *Cf. id.* at 7.

³⁸ *Id.* at 10-11.

³⁹ *See supra* n.37.

⁴⁰ Fourth Compliance Order, 153 FERC ¶ 61,341 at P 67. Attachment X sets forth NYISO's generation and "Merchant Transmission Facilities" interconnection process.

contrary to the Commission's statement that "'Order No. 1000 does not require [a regional transmission organization] to amend its interconnection procedures.'"⁴¹ However, the quoted reference to interconnection procedures was to *generator* interconnection procedures, while the Fourth Compliance Order dealt with *transmission* interconnection procedures and, therefore, does not conflict with the Fourth Compliance Order's requirements with respect to interconnection procedures.⁴²

2. Indemnification and Mutuality

17. We grant rehearing of the Commission's determination regarding mutuality of the indemnification requirement and the determination that NYISO should not be indemnified under the Development Agreement for acts of ordinary negligence. We agree with NYISO that the Commission's holding in *MISO* should apply here. In *MISO*, the Commission determined that the indemnity provision in MISO's Selected Developer Agreement should apply to both parties "to the extent allowed" under MISO's tariff.⁴³ Since MISO's tariff limits MISO's indemnification obligation to direct damages arising from MISO's gross negligence or intentional misconduct, the Commission found that MISO's indemnification obligation under the Selected Developer Agreement is subject to the same limitation.⁴⁴ We note that MISO's Selected Developer Agreement is analogous to NYISO's Development Agreement.

Attachment S contains the related cost requirements for that interconnection process, including the facilities cost allocation procedures.

⁴¹ NYTOs Rehearing Request at 11 (quoting *ISO New England Inc.*, 151 FERC ¶ 61,133, at P 109 (2015)).

⁴² Fourth Compliance Order, 153 FERC ¶ 61,341 at P 75 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 760). NYTOs also express concerns about the practical implications of applying Attachments X and S to regulated backstop solutions. NYTOs Rehearing Request at 11-12. We do not address those matters here. As NYTOs acknowledge, the Commission recognized such concerns in the Fourth Compliance Order and stated that "to the extent [NYISO and NYTOs] propose a not unduly discriminatory or preferential process other than the process in Attachments X and S for conducting the interconnection studies necessary for NYISO to select the more efficient or cost-effective transmission solution in the regional transmission plan for purposes of cost allocation, and for that selected transmission project to interconnect to NYISO's system, we will address that proposed process in the order addressing the compliance filing ordered herein." Fourth Compliance Order, 153 FERC ¶ 61,341 at P 73. NYTOs' concerns thus can be addressed in ruling on NYISO's compliance filing proposing the required revisions to its transmission interconnection procedures.

⁴³ *MISO*, 153 FERC ¶ 61,168 at P 215.

18. As NYISO states, it has the same limitations on liability under its OATT as those that apply under MISO's tariff and, therefore, consistent with our decision in *MISO*, we grant rehearing and allow NYISO to amend the Development Agreement to provide for the gross negligence exception to NYISO's indemnification obligation, and to make the indemnity and liability provisions mutual to the same extent allowed under the NYISO OATT.

19. We therefore require the Filing Parties to submit, within 30 days of the date of issuance of this order, a compliance filing, in Docket No. ER13-102, with revisions to the Development Agreement to provide for the transmission developer to indemnify NYISO, except for acts of gross negligence or intentional misconduct, and to make the terms in the provisions mutual to the extent allowed under the NYISO OATT, as discussed above.

3. Evaluation Processes

20. NYISO points out that while the Fourth Compliance Order required revisions to the Development Agreement to clarify that alternative regulated and regulated backstop transmission solutions will be evaluated under Attachments X and S of the NYISO OATT, the Commission also stated that it would consider the use of processes other than those specified in Attachments X and S for conducting interconnection studies necessary for NYISO to select the more efficient or cost-effective solution.⁴⁵ NYISO seeks clarification that the Commission will allow NYISO to propose a process other than that established in Attachments X and S for evaluating alternative regulated transmission solutions and regulated backstop solutions for interconnection.⁴⁶ We grant NYISO's requested clarification, and we will address any proposed process for evaluating alternative regulated transmission solutions and regulated backstop solutions for interconnection in the order addressing NYISO's compliance filing required by the Fourth Compliance Order.

B. Public Policy Process Order

21. Since NYISO filed its request for rehearing of the Commission's rejection of its proposed revisions to its public policy transmission planning process, NYISO has submitted new proposed revisions to that process.⁴⁷ These revisions concern both the Interconnection Provisions and the Non-Interconnection Provisions. On April 18, 2016,

⁴⁴ *Id.*

⁴⁵ NYISO Request for Rehearing of the Fourth Compliance Order at 17 (citing Fourth Compliance Order, 153 FERC ¶ 61,341 at PP 67, 73).

⁴⁶ *Id.* at 16-18.

⁴⁷ NYISO, Tariff Filing, Docket No. ER16-966-000 (filed Feb. 18, 2016).

the Commission issued an order accepting these revisions, in part, subject to condition, and rejecting them, in part,⁴⁸ and NYISO subsequently filed a compliance filing and request for clarification, or in the alternative, rehearing.⁴⁹ The Commission accepted the compliance filing and granted the request for clarification.⁵⁰ In light of these developments, we dismiss NYISO's request for rehearing of the rejection of the Non-Interconnection Provisions in the Public Policy Process Order as moot.

22. Finally, while NYTOs state that they seek rehearing of the Public Policy Process Order, in addition to certain directives in the Fourth Compliance Order,⁵¹ they do not identify any error that they maintain the Commission made in the Public Policy Process Order, as required by Rule 713(c)(1).⁵² We therefore dismiss NYTOs' request for rehearing of the Public Policy Process Order.

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 are hereby directed to submit, within 30 days of the date of issuance of this order, a compliance filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁸ *N.Y. Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,037 (2016).

⁴⁹ NYISO, Request for Clarification or, in the Alternative, for Rehearing, Docket No. ER16-966-002 (filed May 18, 2016).

⁵⁰ *N.Y. Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,162 (2016).

⁵¹ NYTOs Rehearing Request at 1 (stating that NYTOs seek rehearing of the "December 23 Orders," which they define as the Public Policy Process Order and the Fourth Compliance Order).

⁵² 18 C.F.R. § 385.713(c)(1) (2017).

