

May 18, 2015

**By Electronic Delivery**

Ms. Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First St, NE  
Washington, DC 20426

**Re: *New York Independent System Operator, Inc. and New York Transmission Owners,  
Compliance Filing, Docket Nos. ER13-102-005, -006***

Dear Ms. Bose:

The New York Independent System Operator, Inc. (“NYISO”) and the New York Transmission Owners (“NYTOs”)<sup>1</sup> hereby jointly submit this compliance filing to fulfill the directives of the Federal Energy Regulatory Commission (“Commission”) in its April 16, 2015, *Order on Rehearing and Compliance* in the above-captioned proceedings (“April 2015 Order”).<sup>2</sup> The NYISO and NYTOs are referred to jointly in this filing as the “Filing Parties.”<sup>3</sup>

The Filing Parties submit the proposed revisions described in Parts IV through VI of this filing letter to the NYISO’s Open Access Transmission Tariff (“OATT”). The proposed tariff revisions comply with the Order No. 1000 regional transmission planning requirements<sup>4</sup> and the

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<sup>1</sup> The NYTOs are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a LIPA (“LIPA”), New York Power Authority (“NYPA”), 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 NYPA, as transmission owners not subject to the Commission’s jurisdiction under section 205 of the Federal Power Act, have voluntarily participated in the development of this filing. The Filing Parties each reserve the right to comment separately on this filing.

<sup>2</sup> *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 151 FERC ¶ 61,040 (2015) (“April 2015 Order”).

<sup>3</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y of the NYISO OATT, and if not defined therein, in the NYISO OATT and the NYISO Market Administration and Control Area Services Tariff.

<sup>4</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (“Order No. 1000”), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) (“Order No. 1000-A”), *order on reh’g and clarification*, 141 FERC ¶ 61,044 (2012) (“Order No. 1000-B”). For convenience, unless otherwise

Commission's directives in its April 2015 Order. The proposed tariff revisions are expressly required by the directives in the April 2015 Order, are necessary to implement or clarify the existing tariff language to accommodate those directives, or are non-substantive organizational or clarifying adjustments. Including all of these revisions in this compliance filing will make the NYISO's Order No. 1000-related tariff provisions clearer and more accurate, and are therefore consistent with Commission precedent.<sup>5</sup> As described in Part VII below, the Filing Parties request that the Commission accept the proposed tariff revisions with an effective date of January 1, 2014, which was the date on which the NYISO's current 2014-2015 transmission planning cycle commenced, and is the effective date for which the Commission has accepted all of the Filing Parties' prior Order No. 1000 regional transmission planning related revisions to the NYISO's tariffs.

The Filing Parties respectfully submit that – with the proposed tariff revisions set forth in this supplemental compliance filing – they fully comply with the requirements set forth in Order No. 1000 and the April 2015 Order.

## I. COMMUNICATIONS

Communications and correspondence regarding this filing should be directed to:

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specified, references in this filing to "Order No. 1000" should be understood to encompass Order Nos. 1000, 1000-A, and 1000-B. The NYISO's and the NYTOs' compliance with the Order No. 1000 interregional transmission planning requirements is addressed in Docket No. ER13-1942-000. On May 14, 2015, the Commission largely accepted, subject to further compliance filings due in 60 days, the July 10, 2013, joint interregional planning compliance filings by the NYISO, PJM Interconnection, L.L.C., ISO New England Inc., and the NYTOs in their respective regions, to expand the Northeastern ISO/RTO Planning Coordination Protocol and provide for consideration and cost allocation for potential interregional transmission projects.

<sup>5</sup> The Commission has previously authorized the NYISO to include these kinds of limited, but necessary, clarifications in compliance filings and should follow that precedent here. *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh'g*, 127 FERC ¶ 61,042 (2009) (accepting proposed additional tariff revisions that were necessary to implement the modifications directed by the Commission and to correct drafting errors or ambiguities in a compliance filing).

<sup>6</sup> Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2014)) is requested to the extent necessary to permit service on counsel for the NYISO in Rensselaer, NY, Richmond, VA and Washington, DC.

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## II. LIST OF DOCUMENTS SUBMITTED

The Filing Parties respectfully submit the following documents:

1. This filing letter;
2. A list of the company representatives for the NYTOs (“Attachment I”);
3. A blacklined version of the NYISO OATT sections 31.1, 31.2, 31.4, and 31.7 containing the proposed compliance modifications (“Attachment II”);<sup>7</sup>
4. A clean version of the NYISO OATT sections 31.1, 31.2, 31.4, and 31.7 containing the proposed compliance modifications (“Attachment III”); and
5. A clean version of the NYISO OATT section 31.2 incorporating the revisions to Section 31.2 that became effective May 1, 2015 (“Attachment IV”).

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<sup>7</sup> Section 31.2 of the NYISO OATT included in Attachments II and III does not reflect language that is presently effective as accepted in *New York Independent Operator, Inc.*, Order Conditionally Accepting In Part and Rejecting In Part Proposed Tariff Changes and Directing Compliance Filing, 151 FERC ¶ 61,075 (2015) (accepting revisions to Section 31.2.10 of the NYISO OATT, effective May 1, 2015). The revisions to Section 31.2.10 effective May 1, 2015, have been omitted from Section 31.2 in Attachments II and III solely for purposes of the etariff filing because the Filing Parties have requested that the tariff language proposed in this filing have an earlier effective date, *i.e.*, January 1, 2014, as described in Part VII below.

### III. BACKGROUND

In response to the Order No. 1000 regional transmission planning and cost allocation directives, the Filing Parties have submitted compliance filings to revise the NYISO's tariff requirements for its Comprehensive System Planning Process ("CSPP"), which is composed of the NYISO's reliability, economic, and public policy planning processes.<sup>8</sup> The Commission has largely accepted the NYISO's revised CSPP as compliant with the Order No. 1000 requirements.<sup>9</sup> The April 2015 Order directed the Filing Parties to submit a further compliance filing to make a small number of additional tariff revisions and to include within the NYISO's tariffs a *pro forma* development agreement between the NYISO and the developer of an alternative regulated transmission solution selected in the NYISO's reliability planning process as the more efficient or cost-effective solution to a Reliability Need ("Development Agreement"). The NYISO discussed the tariff revisions developed in response to the directives of the April 2015 Order with stakeholders in its Electric System Planning Working Group ("ESPWG") on May 4, 2015 and May 12, 2015, and made additional revisions based on stakeholder input. As described below, these stakeholder discussions were in addition to previous stakeholder discussions and comments regarding the Development Agreement.

In response to the April 2015 Order's directives, the Filing Parties propose the additional revisions to the NYISO's tariffs, including the submission of a *pro forma* Development Agreement, as described in Parts IV through VI of this filing letter.

### IV. JURISDICTION OVER DISPUTES RELATED TO PUBLIC POLICY TRANSMISSION PLANNING PROCESS

Under the NYISO's Public Policy Transmission Planning Process, the New York Public Service Commission ("NYPSC") is responsible for identifying the Public Policy Transmission Needs for which the NYISO must solicit and evaluate transmission solutions. Similarly, the Long Island Power Authority ("LIPA") is responsible for identifying transmission needs driven by Public Policy Requirements within the Long Island Transmission District. Sections 31.4.2.2 and 31.4.2.3(vi) of Attachment Y of the NYISO OATT indicate that a dispute regarding a NYPSC or LIPA determination to accept or deny a proposed transmission need "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." As directed by the April 2015 Order,<sup>10</sup> the Filing Parties propose to revise these provisions to clarify that these dispute processes apply only to disputes "solely within the NYPSC's jurisdiction" or "solely within the Long Island Power Authority's jurisdiction."

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<sup>8</sup> See *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-001, -002, -004 (September 15, 2014); *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-002 (October 15, 2013); *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 11, 2012).

<sup>9</sup> See April 2015 Order; *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014) ("July 2014 Order"); *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013).

<sup>10</sup> April 2015 Order at PP 58-59, 91.

## V. RELIABILITY PLANNING PROCESS

To ensure that Reliability Needs will be timely satisfied, the NYISO may under certain circumstances direct a Responsible Transmission Owner to proceed with the development of a regulated backstop solution in parallel with an alternative regulated transmission solution that has been selected by the NYISO as the more efficient or cost-effective solution to the Reliability Need. Section 31.2.8.1.3 addresses one such scenario in which the Trigger Date for a selected alternative regulated transmission solution precedes the Trigger Date for a regulated backstop solution.<sup>11</sup> In such case, assuming there are not sufficient market-based solutions to satisfy a Reliability Need, the NYISO will trigger the selected alternative regulated transmission solution to proceed at its Trigger Date.

Prior to the later Trigger Date of the regulated backstop solution, the NYISO will review the status of the development of the selected alternative regulated transmission solution to determine whether it is necessary to trigger the regulated backstop solution as well to ensure that the identified Reliability Need is satisfied. In making its triggering decision, the NYISO will consider a number of factors in reviewing the status of the selected alternative regulated transmission solution, including whether the developer has “received its Article VII certification or other applicable siting permits or authorizations under New York State law.” The April 2015 Order found that, as currently described in Section 31.2.8.1.3, the permits or authorizations factor could be read as “a de facto condition, rather than one of numerous factors, that NYISO considers in determining whether to trigger a regulated backstop solution.”<sup>12</sup> The April 2015 Order directed the Filing Parties to clarify that the permits or authorizations factor “be treated as just one factor in NYISO’s determination whether to trigger the regulated backstop solution.”<sup>13</sup>

The Filing Parties propose to revise Section 31.2.8.1.3 to make clear that the NYISO will consider a non-exhaustive list of factors in reviewing the status of the selected alternative regulated transmission solution, which will include, but not be limited to: (i) whether the Developer has executed a Development Agreement or requested that it be filed unexecuted with the Commission; (ii) whether the Developer is timely progressing against the milestones set forth in the Development Agreement, and (iii) the status of the Developer’s obtaining required permits or authorizations, including whether the Developer has received its Article VII certification or other applicable siting permits or authorizations under New York State law.

The April 2015 Order also noted the existence of similar requirements in Section 31.2.8.2.2 (now Section 31.2.8.2.1) describing the factors the NYISO will consider in reviewing the status of the selected alternative regulated transmission solution when determining whether to halt a previously-triggered regulated backstop solution. For purposes of maintaining internally consistent requirements, the Filing Parties propose to revise Section 31.2.8.2.1 to provide that the

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<sup>11</sup> As defined in Section 31.1.1 of Attachment Y of the OATT, “Trigger Date” means “[t]he date by which the ISO 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.”

<sup>12</sup> April 2015 Order at P 50.

<sup>13</sup> *Id.* at P 51.

NYISO will consider the same factors regarding the status of the selected alternative regulated transmission solution in determining whether to halt a regulated backstop solution as it does when it considers whether to trigger the regulated backstop solution.

## **VI. DEVELOPMENT AGREEMENT**

### **A. Background of Development Agreement**

The Filing Parties' Order No. 1000-related tariff revisions to the NYISO's reliability planning process established a requirement that the Developer<sup>14</sup> of an alternative regulated transmission solution that is selected by the NYISO as the more efficient or cost-effective solution to a Reliability Need must execute an agreement with the NYISO concerning the development and construction of its project, including providing construction milestones necessary for the project to achieve its required in-service date.<sup>15</sup> This requirement applies equally to a Transmission Owner or an Other Developer that proposed the selected alternative regulated transmission solution.<sup>16</sup>

The purpose of the agreement is to provide the NYISO with a mechanism for ensuring that the selected project will be constructed and placed in-service in time to satisfy an identified Reliability Need. Without the agreement, the Developer of the selected alternative regulated transmission solution would not be contractually obligated to timely develop and construct its project, which was selected by the NYISO and is needed to preserve transmission system reliability.<sup>17</sup> The agreement bridges the gap between the NYISO's tariff requirements for the selection of the project and the Developer turning over operational control of the completed transmission facilities to the NYISO in accordance with an operating agreement entered into with the NYISO.

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<sup>14</sup> The Developer of an alternative regulated transmission solution may be either a Transmission Owner or an Other Developer. *See* OATT, Att. Y, Section 31.1.1.

<sup>15</sup> OATT, Att. Y, Section 31.2.8.1.6.

<sup>16</sup> The Responsible Transmission Owner of a regulated backstop solution is not required under Attachment Y to enter into a development agreement, as it is already obligated to develop and construct a regulated backstop solution to address Reliability Needs pursuant to its legal obligations under New York State law and the *Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs* entered into in June 2010.

<sup>17</sup> This is particularly true of a non-incumbent Developer that has not entered into operation and that may not have any legal obligation under the New York Public Service Law to prevent it from abandoning its project, and that is not bound to provide safe and adequate electric service, build power lines and other improvements, and provide electric service as an electric corporation as defined under New York law. *See, e.g.*, N.Y. Pub. Serv. L. § 2(13) (defining "electric corporation"); N.Y. Pub. Serv. L. § 65 (requiring "electric corporations" to "furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable"); N.Y. Pub. Serv. L. § 66(2) (requiring "electric corporations" to make "reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other such reasonable devices, apparatus and property of . . . electric corporations").

Subsequent to the Commission's acceptance in its July 2014 order of the tariff requirement that a developer enter into a Development Agreement (OATT § 31.2.8.1.6), the NYISO began to develop a *pro forma* Development Agreement for inclusion as Appendix C in Section 31.7 of Attachment Y of the OATT, as well as related revisions to Section 31.2 of Attachment Y of the NYISO OATT to accommodate the terms of the agreement.<sup>18</sup> In developing the agreement, the NYISO drew in part on the terms and conditions included in related agreements and tariff provisions already reviewed and accepted by the Commission, including the Designated Entity Agreement developed by PJM Interconnection, L.L.C. ("PJM"),<sup>19</sup> the Approved Project Sponsor Agreement developed by the California Independent System Operator Corporation ("CAISO"),<sup>20</sup> the NYISO's *pro forma* Large Generating Interconnection Agreement ("LGIA") contained in Attachment X of the NYISO OATT, and the NYISO's existing tariffs. Beginning in January 2015, the NYISO reviewed the draft agreement and related tariff revisions with stakeholders on several occasions in its ESPWG.<sup>21</sup> Stakeholders provided written comments and suggested amendments to the draft agreement and the related tariff revisions. The NYISO reviewed and made certain revisions based on stakeholder input.

The April 2015 Order directed the Filing Parties to file the *pro forma* Development Agreement in a supplemental compliance filing.<sup>22</sup> Following the order, the NYISO held additional stakeholder discussions regarding the Development Agreement and related tariff revisions at the May 4 and May 12 ESPWG meetings. Notwithstanding the numerous

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<sup>18</sup> Before the Commission issued the April 2015 Order, the NYISO was already developing tariff changes that would require a Developer to enter into a Development Agreement for a Public Policy Transmission Project, as well as other tariff changes to clarify the Public Policy Transmission Planning Process for its implementation for the first time later this year. Those tariff changes have been approved by the appropriate NYISO stakeholder committees and will be reviewed by the NYISO's Board of Directors at its June 2015 meeting. The NYISO intends to file the tariff changes by the end of June 2015, and will begin developing a separate *pro forma* Development Agreement for Public Policy Transmission Projects in anticipation of a Commission determination approving the tariff clarifications. With respect to the economic planning process, the NYISO does not believe that a *pro forma* Development Agreement is required at this time because economic planning projects may only proceed based upon a voluntary 80 percent weighted super-majority vote of the NYISO's stakeholders. Because it is purely voluntary, and is not driven by reliability imperatives or governmental policy priorities, an economic congestion project could enter into service based on the schedule determined by the Developer and stakeholders supporting the project.

<sup>19</sup> See *PJM Interconnection, L.L.C.*, Ltr. Order, Docket Nos. ER13-198-005, ER14-2426-001 (November 18, 2014); *PJM Interconnection, L.L.C.*, Order Conditionally Accepting Proposed Agreements Subject to Further Compliance Filing, 148 FERC ¶ 61,187 (2014) ("PJM September 2014 Order").

<sup>20</sup> See *California Independent System Operator Corporation*, Ltr. Order, Docket No. ER14-2824-001 (February 12, 2015); *California Independent System Operator Corporation*, Order Conditionally Accepting Tariff Revisions, 149 FERC ¶ 61,107 (2014) ("CAISO November 2014 Order").

<sup>21</sup> Prior to the April 2015 Order, the NYISO discussed the draft Development Agreement and related tariff revisions with stakeholders at the January 6, 2015, February 3, 2015, and March 3, 2015 ESPWG meetings and solicited and received additional written comments from stakeholders.

<sup>22</sup> April 2015 Order at P 23.

stakeholder discussions, full stakeholder consensus was not achievable on certain aspects of the Development Agreement. Responses to significant, substantive stakeholder comments are included in the description of the agreement below.

## **B. Description of the Development Agreement**

The Development Agreement sets forth the rights and obligations of: (i) the Developer of an alternative regulated transmission solution that was selected by the NYISO as the more efficient or cost-effective transmission solution to an identified Reliability Need (“Transmission Project”) and (ii) the NYISO, with regard to the Developer’s development, construction, and placing in-service of the Transmission Project in time to satisfy an identified Reliability Need by the need date (“Required Project In-Service Date”). The NYISO has no responsibility under the agreement to develop or construct the Transmission Project. Rather, the NYISO is responsible for monitoring the Developer’s development of the Transmission Project and evaluating proposed changes to the timing and parameters of the Transmission Project to provide that it is developed and constructed consistent with the proposal selected in the NYISO’s competitive selection process and is placed in-service by the Required Project In-Service Date.

A summary and explanation of the sections of the Development Agreement follows.

### *1. Recitals*

The recitals describe the background of, and the parties’ reasons for entering into, the Development Agreement. In short: The NYISO has selected Developer’s Transmission Project in its reliability planning process as the more efficient or cost-effective solution to a Reliability Need and directed the Developer to proceed with the construction of its project. The Developer has agreed to obtain the required authorizations and approvals needed for its project, to develop and construct the Transmission Project, and to abide by the related requirements in the NYISO’s tariffs and procedures. The parties have entered into the Development Agreement to ensure that the Transmission Project will be constructed and in-service by the Required Project In-Service Date.

### *2. Article 1 – Definitions*

Article 1 provides the definitions for the capitalized terms used throughout the Development Agreement. Capitalized terms that are not defined in Article 1 have the meaning specified in the definition provisions in Section 31.1.1 of Attachment Y of the OATT, or, if not therein, in the general definition provisions in Article 1 of the OATT.

### *3. Article 2 – Effective Date and Term*

Article 2.1 provides that the Development Agreement will become effective: (i) upon the date it is executed by all parties, or (ii) if filed with the Commission as an unexecuted or non-conforming agreement, upon the effective date accepted by the Commission. Article 2.2 requires the NYISO to file a non-conforming or unexecuted agreement with the Commission, and directs the Developer to cooperate with the NYISO with regard to such filing.



Article 2.3 specifies that the agreement shall remain in effect until: (i) the Developer executes an operating agreement with the NYISO, and (ii) the Transmission Project has been completed in accordance with the terms and conditions of the agreement and is in-service.

4. *Article 3 – Transmission Project Development and Construction*

a. *Milestones*

Article 3.3 establishes milestone requirements, which constitute the key mechanism in the agreement by which the NYISO can monitor the development of the Transmission Project and provide that it will be in-service in time to satisfy the Reliability Need. The NYISO will provide the Required Project In-Service Date to the Developer, and the NYISO and Developer will agree to both Critical Path Milestones and Advisory Milestones that provide for the development, construction, and operation of the project by the Required Project In-Service Date.<sup>23</sup> The Critical Path Milestones are those milestones that must be met for the Transmission Project to be constructed and in-service by the Required Project In-Service Date. Given their importance, there are more stringent requirements for meeting and updating Critical Path Milestones than for Advisory Milestones.

Article 3.3.2 specifies that the Developer must meet a Critical Path Milestone. Because the timely completion of the project is essential to preserving reliability in New York, a Developer's inability or failure to meet a Critical Path Milestone will constitute a breach of the agreement. The Developer may, however, under Article 3.3.4 request in writing that the NYISO consent to extend a Critical Path Milestone. In such instance, the Developer must: (i) inform the NYISO of the proposed change to the Critical Path Milestone and the reasons for the change, (ii) provide a list of revised milestones that demonstrates that the project will still be in-service by the Required Project In-Service Date, and (iii) submit a notarized officer's certificate certifying the Developer's capability to complete the Transmission Project on the modified schedule.<sup>24</sup> If the Developer demonstrates to the NYISO's satisfaction that the delay in meeting the Critical Path Milestone will not delay the in-service date of the Transmission Project beyond the Required Project In-Service Date, the NYISO's consent to the extension will not be unreasonably withheld, conditioned, or delayed.<sup>25</sup>

Given the importance of a Developer satisfying the Critical Path Milestones, it is essential that a Developer notify the NYISO as soon as possible after identifying a potential delay in its ability to satisfy an upcoming milestone, so that the parties can determine whether the milestones can be revised to provide for project completion by the Required Project In-

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<sup>23</sup> Development Agreement Article 3.3.1. As described below, the NYISO is proposing related revisions to Section 31.2.8.1.6 as the milestones will be identified and agreed-upon by the parties as part of the process for finalizing the Development Agreement.

<sup>24</sup> Article 3.3.4 establishes that the Developer will be responsible for the NYISO's costs for any study work regarding its evaluation.

<sup>25</sup> Article 3.3.5 provides that the Developer may extend an Advisory Milestone simply upon notifying the NYISO, except if the delayed Advisory Milestone will delay a Critical Path Milestone.

Service Date. Article 3.3.3 establishes notification requirements to enable the NYISO to monitor the status of the development of the project and to identify as soon as possible whether any issues are arising that may endanger the project's ability to be in-service by the Required Project In-Service Date.

*b. Project Modifications*

The NYISO expects that the Developer will construct the Transmission Project consistent with the parameters of its project proposal, which formed the basis for the NYISO's selection of the project as the more efficient or cost-effective transmission solution in the NYISO's competitive selection process. Variations from the project proposal have the potential to affect both the NYISO's transmission planning process and the reliable operation of the transmission grid in New York. For this reason, Article 3.4 establishes that the Developer cannot make a Significant Modification to the Transmission Project without the NYISO's prior written consent.<sup>26</sup> A Significant Modification includes a modification that: (i) could impair the Transmission Project's ability to meet the Reliability Need, (ii) could delay the project's in-service date beyond the Required Project In-Service Date, or (iii) would constitute a material change to the project information submitted for use by the NYISO in its selection of the project. The NYISO's consent to a Significant Modification will not be unreasonably withheld, conditioned, or delayed if the proposed modification: (i) does not impair the Transmission Project's ability to satisfy the identified Reliability Need, (ii) does not delay the project's in-service date beyond the Required Project In-Service Date, and (iii) does not change the grounds upon which the NYISO selected the project as the more efficient or cost-effective solution to the identified Reliability Need. The Commission has accepted in PJM's and CAISO's related agreements the requirement that they must consent to project modifications.<sup>27</sup>

*c. Other*

Article 3.1 requires the Developer to timely seek and obtain all necessary governmental authorizations and approvals required for the Transmission Project and to notify the NYISO if: (i) it has reason to believe that it may be unable to timely obtain or is denied an approval or authorization, or (ii) if such approval or authorization is withdrawn or modified.

Article 3.2 provides that the Developer will design, engineer, procure, construct, test, and commission the Transmission Project in accordance with: (i) the terms of the Development Agreement, (ii) Applicable Reliability Requirements, (iii) Applicable Laws and Regulations, (iv) Good Utility Practice, (v) the Transmission Owner Technical Standards, and (vi) applicable interconnection agreements.

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<sup>26</sup> Article 3.4 establishes that the Developer will be responsible for the NYISO's costs for any study work regarding its evaluation.

<sup>27</sup> See, e.g., PJM September 2014 Order at P 58 ("We agree with PJM that it must be able to approve all proposed modifications to projects that are selected in the RTEP in order to ensure efficient and effective transmission planning as well as to protect the reliable operation of the transmission system.").

Article 3.5 establishes the requirements for the NYISO to charge, and Developer to pay, the costs of the study or project inspection work performed by the NYISO or its subcontractors under the agreement. Articles 3.6 and 3.7 establish requirements by which the NYISO may monitor and inspect the development of the Transmission Project. Article 3.8 makes clear that the Developer is solely responsible for all of the work associated with the Transmission Project and that the NYISO “shall have no responsibility and shall have no liability regarding the management or supervision of the Developer’s development of the Transmission Project or compliance with” applicable laws, regulations, reliability requirements, and technical standards. This provision makes clear that the NYISO is not responsible in any way for the activities associated with the development or construction of the Transmission Project. Article 3.8 also indicates that the NYISO will cooperate with the Developer in good faith in providing information to assist the Developer in obtaining required governmental approvals and authorizations. The remaining provisions in Articles 3.9 through 3.11 provide that: (i) the parties may use subcontractors, but remain fully responsible for their obligations under the agreement; (ii) the NYISO is not providing transmission, interconnection, or any of its market services or products under the agreement; and (iii) the parties will cooperate to maintain the other party’s tax status to the extent impacted by the agreement.

#### 5. *Article 4 – Coordination with Third Parties*

Articles 4.1 and 4.2 align the requirements in the Development Agreement with the Developer’s requirements under the NYISO’s interconnection and transmission expansion processes. Specifically, Article 4.1 describes the requirements in the NYISO’s interconnection and transmission expansion processes that the Developer must satisfy to interconnect the Transmission Project. In addition, Article 4.1 describes how the Developer will participate in the interconnection or transmission expansion process if the developer of another facility proposes to interconnect to the Transmission Project. Article 4.2 provides further that if the Transmission Project will affect the facilities of another system, the Developer is responsible for satisfying the interconnection requirements of that other system. Finally, Article 4.3 provides that if the Transmission Project is or seeks to be an Interregional Transmission Project, the Developer will be responsible for coordinating its responsibilities and satisfying applicable requirements in both New York and the relevant neighboring region(s).

#### 6. *Article 5 – Operation Requirements for the Transmission Project*

Article 5 establishes the requirements that a Developer must satisfy to ensure the safe and reliable operation of the Transmission Project if the Developer is not already subject to the operating requirements in the *Agreement Between the New York Independent System Operator and Transmission Owners* (“ISO/TO Agreement”). The requirements include: (i) entering into an interconnection agreement for the Transmission Project, (ii) satisfying the applicable requirements in the interconnection agreement and NYISO procedures for the safe and reliable operation of the Transmission Project, (iii) entering into the operating protocols required by the NYISO, (iv) registering with NERC as a Transmission Owner, being certified as a Transmission Operator, and complying with applicable reliability requirements, and (iv) executing an operating agreement with the NYISO.

Certain stakeholders have requested that the NYISO specify in the agreement that a non-incumbent Developer must execute the ISO/TO Agreement as the operating agreement, whereas other stakeholders have requested that the non-incumbent Developer be required to execute a comparable operating agreement. The NYISO does not believe it is necessary to make the requested specifications in the Development Agreement. The Commission has accepted in the enrollment requirements in Section 31.1.7 of Attachment Y of the OATT that “[a]n owner of transmission in New York State may become a Transmission Owner by: (i) satisfying the definition of a Transmission Owner in Article 1 of the ISO Agreement and (ii) *executing the ISO/TO Agreement or an agreement with the ISO under terms comparable to the ISO/TO Agreement* and turning over operational control of its transmission facilities to the ISO.”<sup>28</sup> The language proposed in Article 5 is consistent with the requirement in Section 31.1.7 of Attachment Y.

The determination regarding which operating agreement would be executed by a non-incumbent Developer will depend on a number of factors. The NYISO believes that the appropriate time to address this matter is as part of the development of a comparable operating agreement. Given the length of time that it will take for the selection of transmission under one of the NYISO’s planning processes, for permitting/certification of that project, and for construction and commissioning of new transmission facilities, the NYISO does not anticipate that there will be a non-incumbent Developer in position to execute an operating agreement with the NYISO for several years. In the near-term, the NYISO has informed stakeholders that it plans to bring a draft comparable operating agreement for their review later this year, and to file it with the Commission when it is approved.

#### 7. *Article 6 – Insurance*

Article 6 sets forth the insurance requirements. The NYISO adopted these requirements from Article 18.3 of the NYISO’s *pro forma* LGIA, as amended based on the NYISO’s review of current insurance practices and conditions in New York for the development of a large infrastructure project.<sup>29</sup> As part of its modifications, the NYISO: (i) required that it be named as an additional insured on the policies, (ii) updated certain minimum insurance limits to reflect current practices in New York, (iii) required the Developer to carry Builder’s Risk Insurance in a reasonably prudent amount consistent with Good Utility Practice, (iv) required that the insurance coverages be with insurers authorized to do business in New York and rated “A- (minus) VII” or better by A.M. Best & Co., (v) required that the insurance be provided under the relevant coverage form or an equivalent form acceptable to the NYISO, and (vii) required that the Developer maintain any additional insurance coverage types and amounts that are required under Applicable Laws and Regulations, including New York State law, and Good Utility Practice, for the work performed by the Developer and its subcontractors under the agreement.

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<sup>28</sup> *Emphasis added.* The Commission accepted the NYISO’s enrollment requirements in its January 2014 order in this proceeding. July 2014 Order at P 38.

<sup>29</sup> Consistent with the insurance requirements in the NYISO’s *pro forma* LGIA, the *pro forma* Development Agreement also provides the option of self-insurance by entities that can meet minimum criteria.

8. *Article 7 – Breach and Default*

Article 7.1 establishes that a breach of the agreement will occur when: (i) the Developer notifies the NYISO that it will not proceed to develop the Transmission Project, (ii) the Developer fails to meet a Critical Path Milestone, (iii) the Developer makes a Significant Modification to the Transmission Project without the NYISO’s consent, (iv) the Developer fails to pay a monthly invoice under the agreement, (v) the Developer misrepresents a material fact of its representations and warranties, (vi) the agreement is assigned in a manner inconsistent with the assignment provisions, (vii) the Developer fails to comply with any other material term or condition of the agreement, or (viii) the developer enters into or is placed into a bankruptcy or related proceeding.

Article 7.2 provides that in the event of a breach, the breaching party will have a thirty day period to cure the breach or such other period that may be agreed upon the party. If the breach is the result of a Developer’s inability or failure to meet a Critical Path Milestone, the Developer may only cure the breach if either: (i) it meets the Critical Path Milestone within the cure period and demonstrates to the NYISO’s satisfaction that, notwithstanding its failure to timely meet the Critical Path Milestone, the Transmission Project will be in-service no later than the Required Project In-Service Date, or (ii) the Developer requests in writing within the cure period, and the NYISO consents to, a change to the missed Critical Path Milestone. If the breaching party does not or cannot cure any breach in a manner that provides for the Transmission Project to be completed by the Required Project In-Service Date, the non-breaching party may declare a default and terminate the agreement.

Article 7.3 sets forth that in the event a party is in default, the non-defaulting party may: (i) commence an action to require the defaulting party to remedy such default and specifically perform its duties and obligations under the agreement, and (ii) exercise such other rights and remedies as it may have in equity or at law. These remedies are not intended to be exclusive, and any remedy is to be cumulative and in addition to other remedies.

9. *Article 8 – Termination*

*a. Termination*

Article 8.1 establishes that the NYISO may terminate the agreement if: (i) the Transmission Project is halted pursuant to the halting requirements in the NYISO tariffs, (ii) the Developer is unable to or has not received it required governmental approvals or authorizations, (iii) such authorizations have been withdrawn, (iv) the Developer cannot complete the Transmission Project by the Required Project In-Service Date for any reasons, including the occurrence of a Force Majeure event, or (v) the NYISO declares a default pursuant to the default provisions.<sup>30</sup>

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<sup>30</sup> Article 8.1 provides that the NYISO will provide written notice of termination that specifies the date of termination within fifteen business days of determining or being notified of the grounds for termination. If the agreement had been filed with the Commission, the NYISO would also file a notice of termination with the Commission for its acceptance.

Certain stakeholders have argued that the NYISO should not have the right to terminate the agreement under Article 8.1(iv) if a Developer cannot complete the agreement by the Required Project In-Service Date for reasons beyond their control, including the occurrence of Force Majeure events and delays caused by third parties. The Commission should accept the requirements of Article 8.1 without modification. The NYISO has selected, and is relying on, the Transmission Project for purposes of satisfying an identified Reliability Need. Given the importance of preserving reliability, the NYISO must have the opportunity to take action as soon as possible to find another means of satisfying the Reliability Need by the need date if the Developer's Transmission Project is unable to achieve the purpose for which it was selected. The Commission has found just and reasonable similar termination requirements in PJM's Designated Entity Agreement.<sup>31</sup>

If a Force Majeure event or a delay caused by another party were to occur, the NYISO would certainly take these factors into account in reviewing any Developer request to extend individual Critical Path Milestones. As described above, assuming that the Developer demonstrates to the NYISO's satisfaction that it is still capable of completing the Transmission Project with the modified milestones by the Required Project In-Service Date, the NYISO's consent to modify the Critical Path Milestones will not be unreasonably withheld. However, given the importance of timely completing the transmission project to satisfy a system reliability need, the agreement provides that Force Majeure is not an excuse for non-performance. In response to concerns raised by certain stakeholders about the potential for third party delays, the Filing Parties have included language in Section 31.2.8.1.7 of Attachment Y of the OATT that provides that the New York Transmission Owners that are identified in the NYISO's interconnection process as the Connecting Transmission Owner or Affected Transmission Owner in connection with the selected project and therefore, as having a key role in the timely completion of the Developer's project, must act in good faith in timely performing their obligations that are required for the Developer to satisfy its obligations under the Development Agreement.

Article 8.1 also describes that if the agreement is terminated for the reasons described in Articles 8.1(i) through (iii), the Developer may be eligible for cost recovery under the NYISO OATT. This provision simply reflects the NYISO's existing tariff requirements that provide for cost recovery in the case that a project is halted by the NYISO under specific halting requirements, or if the project does not receive or a governmental authority withdraws its required authorizations.<sup>32</sup> The NYISO's tariff does not provide for cost recovery for a Developer whose project has been terminated for the reasons set forth in Articles 8.1(iv) or (v). Article 8.1 does not create any new tariff rights for a Developer to recover any of its costs under these circumstances. It merely indicates that the Developer would have to seek any such cost recovery from the Commission. Finally, Article 8.1 provides that in the event of termination for any reason, the Developer must use commercially reasonable efforts to mitigate the costs, damages, and charges arising as a consequence of termination and any transfer or winding up of the Transmission Project. This provision mirrors an existing requirement in the NYISO's *pro forma*

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<sup>31</sup> See PJM September 2014 Order at P 101.

<sup>32</sup> OATT, Att. Y, §§ 31.2.8.2.2, 31.2.8.2.5, and 31.2.8.2.6.

LGIA in Attachment X of the OATT<sup>33</sup> and is required in this instance to minimize the costs of a terminated project that could be passed onto consumers in the event the Commission allows cost recovery.

*b. Project Transfer*

Article 8.3 establishes that, in the event the NYISO terminates the Development Agreement, it may request that an entity other than the Developer complete the Transmission Project. The NYISO may exercise this right within sixty days after the termination date. If the NYISO exercises this right, the Developer is required to work cooperatively with the NYISO's designee to implement the transition, including entering into good faith negotiations with the NYISO's designee to transfer the Transmission Project. The requirements for the project transfer are located in Section 31.2.10.1.4 of Attachment Y of the NYISO OATT and are described below. All liabilities under the agreement existing prior to such transfer shall remain with the Developer, unless otherwise agreed to by the Developer and the NYISO's designee that agrees to assume and complete the project.

*c. Other*

Article 8.2 requires that each party notify the other party when it becomes aware of its inability to comply with the provisions of the agreement and provides for the parties to cooperate with each other and provide necessary information regarding such inability to comply.

*10. Article 9 – Liability and Indemnification*

Article 9 addresses the NYISO's limited liability under the Development Agreement and the Developer's indemnification obligations. Article 9.1 provides that the NYISO will not be liable for any damages resulting from its acts or omissions under the agreement, unless the NYISO is found liable for gross negligence or intentional misconduct in the performance of its obligations under the agreement, in which case the NYISO's liability will be limited only to direct actual damages. Article 9.2 provides that the Developer will indemnify and save harmless the NYISO and its directors, officers, employees, trustees, and agents from damages arising out of, resulting from, or associated with this agreement, except to the extent the loss results from the gross negligence or intentional misconduct of the NYISO. The limitations on the NYISO's liability and its right to indemnification are consistent with the general limitation of liability and indemnification requirements applicable to the NYISO under Sections 2.11.2 and 2.11.3(b) of the NYISO OATT.

*11. Article 10 – Assignment*

Article 10 establishes that the agreement may only be assigned by a party with the prior written consent of the other party with limited exception described below and that any attempt to assign the agreement that violates Article 10 will be void and constitutes a breach of the

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<sup>33</sup> OATT, Att. X, § 30.14, NYISO LGIA (Appx. 6) § 2.4.

agreement.<sup>34</sup> The NYISO's consent to a Developer's assignment of the agreement is contingent upon the Developer or its assignee demonstrating that the assignee: (i) satisfies the NYISO's developer qualification requirements, and (ii) has the capability to comply with the requirements in the agreement and to construct and place in-service the Transmission Project by the Required Project In-Service Date consistent with the assignor's cost estimates for the project. This requirement is necessary to ensure that the assignee has the capability to develop and construct the Transmission Project and will do so on time and in a manner consistent with the project as it was selected by the NYISO in its competitive selection process.

A Developer has a right to assign the agreement, without the NYISO's consent, for collateral security purposes to aid in the financing of the project. However, such assignment must provide that the secured party: (i) will provide the NYISO with notice prior to its exercise of assignment rights, and (ii) must demonstrate to the NYISO's satisfaction that any entity that it proposes to complete the Transmission Project satisfies the qualification requirements for the assignee described above to ensure it is capable of developing and constructing the Transmission Project and will do so on time and in a manner consistent with the project as it was selected by the NYISO.

## 12. *Article 11 – Information Exchange and Confidentiality*

Article 11.1 establishes that each party will make available to the other party the information necessary to carry out its obligations and responsibilities under the agreement. Article 11.2 provides that: (i) the NYISO will treat any Confidential Information<sup>35</sup> it receives in accordance with the requirements of the NYISO Code of Conduct in Attachment F of the NYISO OATT, and (ii) the Developer will hold any Confidential Information it receives in confidence, employing at least the same standard of care to protect the received information as it employs to protect its own Confidential Information. Article 11.2 sets forth that the parties will not disclose the other party's Confidential Information absent the prior written consent of the other party, except: (i) to the extent required for the parties to perform their obligations under the agreement or the NYISO's tariffs, agreements, and procedures, or (ii) to fulfill legal or regulatory requirements, provided in the latter case that the disclosing party must request that

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<sup>34</sup> Article 10 restricts a Developer's using a transfer of control of the Developer to a third party as an end run around the assignment provisions. The NYISO believes that it is reasonable that the Developer demonstrate that any new party taking over the construction of the Transmission Project, whether affiliated or unaffiliated with the original Developer, is qualified and capable of constructing the project in a timely manner consistent with the parameters of the project that was approved by the NYISO Board.

<sup>35</sup> As defined in Article 11.2.1, Confidential Information means: "(i) all detailed price information and vendor contracts; (ii) any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated 'Confidential Information'; and (iii) information designated as Confidential Information by the NYISO Code of Conduct contained in Attachment F of the OATT; *provided, however*, that Confidential Information does not include information: (i) in the public domain or that has been previously publicly disclosed; (ii) required by an order of a Governmental Authority to be publicly submitted or divulged (after notice to the other Party); or (iii) necessary to be divulged in an action to enforce this Agreement."



any information requested by a governmental authority on a confidential basis be treated as confidential and non-public by the requesting governmental authority.

*13. Article 12 – Representations, Warranties, and Covenants*

Article 12 sets forth representations, warranties, and covenants by the Developer regarding Good Standing (Article 12.2), Authority (Article 12.3), No Conflict (Article 12.4), and Consent and Approval (Article 12.4) that are consistent with the related provisions in Article 28 of the NYISO's *pro forma* LGIA. In addition, Article 12.5 provides that the Developer will comply with all Applicable Laws and Regulations, Applicable Reliability Requirements, and applicable Transmission Owner Technical Standards.

*14. Article 13 – Dispute Resolution*

Article 13 provides that in the event a dispute arises under the Development Agreement, the parties will use the dispute resolution process described in Article 11 of the NYISO Market Administration and Control Area Services Tariff ("Services Tariff"). Article 11 of the Services Tariff provides for the parties to first attempt to resolve a dispute through informal discussions. In the event the parties are unable to resolve the issue, they may enter into non-binding mediation, may submit all or a portion of the dispute to arbitration, or may commence legal proceedings at the Commission or in a court competent jurisdiction.

*15. Article 14 – Survival*

Article 14 establishes that the rights and obligations of the parties shall survive the termination, expiration, or cancellation of the agreement to the extent necessary to provide for the determination or enforcement of said obligations arising from acts or events that occurred while the agreement was in effect. Article 14 also specifically states that the provisions of Articles 7.3 and 8.3 concerning termination, Article 9 concerning liability and indemnity, and Article 3.5 concerning billing and payment will survive the agreement's termination, expiration, or cancellation.

*16. Article 15 – Miscellaneous*

Article 15 includes various standard contract-related miscellaneous provisions, including: Notices (15.1), Entire Agreement (15.2), Binding Effect (15.3), Disclaimer (15.5), Amendment (15.7), No Third Party Beneficiaries (15.8), Waiver (15.9), Rules of Interpretation (15.10), Severability (15.11), Multiple Counterparts (15.12), No Partnership (15.13), and Headings (15.14).

In addition, Article 15.4 states, as described above, that the occurrence of a Force Majeure event will not excuse non-performance of any obligations under the agreement. Article 15.6 provides that the NYISO's or its subcontractors' review or approval of materials proposed by the Developer or carrying out of an inspection does not relieve Developer from any liability in the preparation of such material or for its failure to comply with Applicable Laws and Regulations, Applicable Reliability Requirements, and Transmission Owner Technical

Standards. This provision makes clear that the Developer is solely liable for its own negligence in the preparation of materials associated with the Transmission Project. Finally, Articles 15.15 and 15.16 set forth the requirements regarding governing law and jurisdiction and venue. As set forth in Article 15.15, the agreement shall be governed, as applicable, by the Federal Power Act and New York State law. As set forth in Article 15.16, disputes arising under the agreement will be addressed at the Commission if they fall within its primary or exclusive jurisdiction. Otherwise, disputes will be addressed, as applicable, in either the courts of the State of New York situated in Albany County, New York or the United States District Court of the Northern District of New York situated in Albany, New York.

### *17. Appendices*

The appendices to the Development Agreement will specify the details regarding the development, construction, and operation of the Transmission Project. The Developer and the NYISO will develop the description in the appendices for each project.

Appendix A (Project Description) will include a detailed description of the Transmission Project that is consistent with the project selected by the NYISO Board. Appendix B (Scope of Work) will include the description of the work required to implement the Transmission Project, including a description of: the acquisition of required rights of way, all phases of the work associated with the development and construction of the project, the relevant technical requirements pursuant to which the work will be performed, the major equipment and facilities to be constructed or installed, and the cost estimates for the work. Finally, Appendix C (Development Schedule) will set forth the schedule of Critical Path Milestones and Advisory Milestones. The *pro forma* Appendix C includes as a placeholder a list of example milestones for the parties' consideration in developing the Development Schedule. The precise milestones and their designation as Critical Path Milestones or Advisory Milestones will be determined by the NYISO and the Developer in developing the agreement.<sup>36</sup>

### **C. Conforming Revisions to Attachment Y of the OATT**

In developing the Development Agreement, the NYISO identified certain revisions that are required in Section 31.2 of Attachment Y to accommodate the inclusion of the Development Agreement. The Filing Parties propose the following revisions to Section 31.2.

#### *1. Execution Requirements*

The Filing Parties propose to revise Section 31.2.8.1.6 to set forth the process by which the NYISO and the Developer of the Transmission Project will negotiate and enter into the Development Agreement.<sup>37</sup> The proposed process is consistent with the NYISO's process for

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<sup>36</sup> The replacement by the parties of the placeholder examples with the final agreed-upon milestones will constitute a conforming revision that does not necessitate the filing of the agreement with the Commission.

<sup>37</sup> As part of the revisions to Section 31.2.8.1.6, the Filing Parties are removing the existing language describing the requirements for the Development Agreement as those requirements are now

negotiating and entering into an LGIA with a Developer and Connecting Transmission Owner in Section 30.11 of Attachment X of the NYISO OATT.

As soon as practicable considering the project's Trigger Date following the NYISO's selection of the Transmission Project,<sup>38</sup> the NYISO will tender to the Developer a draft Development Agreement with draft appendices that have been completed by the NYISO to extent practicable. The draft agreement will be in the form of the *pro forma* Development Agreement included in Appendix C in Section 31.7 of Attachment Y of the NYISO OATT. The NYISO and the Developer will finalize the agreement and appendices and negotiate concerning any disputed provisions. As part of this process, the NYISO will provide the Developer with the Required Project In-Service Date, and the parties will develop the milestones necessary to develop and construct the project by the Required Project In-Service Date. Unless otherwise agreed upon by the parties, the Developer must execute the agreement within three months of the NYISO's tendering the draft agreement. If the executed agreement does not conform to the *pro forma* version in Appendix C, the NYISO will file it with the Commission for its acceptance within thirty business days of its execution.

If the negotiations are at an impasse, the Developer may request that the NYISO file the agreement in unexecuted form with the Commission. In such case, the NYISO will file the unexecuted agreement with the Commission within thirty business days. The NYISO will draft to the extent practicable those provisions that are in dispute and explain to the Commission the matters to which the parties disagree. The Developer will provide in a separate filing any comments that is has on the unexecuted agreement, including any alternative positions regarding the disputed provisions.

The Filing Parties propose to insert a new Section 31.2.8.1.7 that provides that, upon the execution or filing of unexecuted version of the Development Agreement, the NYISO and Developer shall perform their respective obligations under the agreement that are not in dispute. In addition, as described above, this provision requires that the New York Transmission Owners that are identified in the NYISO's interconnection process as the Connecting Transmission Owner or Affected Transmission Owner associated with the selected project act in good faith in timely performing their obligations that are required for the Developer to satisfy its obligations under the Development Agreement.

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incorporated into the terms of the *pro forma* Development Agreement included as Appendix C in Section 31.7 of Attachment Y of the NYISO OATT.

<sup>38</sup> The timing of the NYISO's tendering of the Development Agreement to a Developer will be tied to the Trigger Date of the project, which is the date upon which the Developer must proceed to develop its project to timely satisfy the Reliability Need. There may not be an immediate need for the NYISO to tender the agreement following the NYISO's selection of a Transmission Project as there may be a lengthy period of time between the NYISO's selection of the project and its Trigger Date. In addition, there may be sufficient market-based solutions developing that would obviate the need for the NYISO to trigger the selected project.

## *2. Inability to Complete Project*

The Filing Parties propose to insert a new Section 31.2.10.1 that addresses the consequences if: (i) the Developer of a selected alternative regulated transmission solution does not execute the Development Agreement or request that it be filed unexecuted, or (ii) an effective Development Agreement is terminated under the terms of the agreement prior to the completion of the term of the agreement.<sup>39</sup> In such case, the NYISO may revoke its selection of the alternative regulated transmission solution and the eligibility of the Developer to recover its costs for the project under the NYISO tariffs.<sup>40</sup> Notwithstanding this requirement, the Developer will remain eligible to recover certain project costs to the extent explicitly provided for in the halting provisions in Section 31.2.8.2.2 of Attachment Y or the provisions in Sections 31.2.8.2.5 and 31.2.8.2.6 concerning a project that has not received its required authorizations from governmental authorities or had them withdrawn. The OATT does not otherwise provide for cost recovery for a Developer whose project is terminated based on its inability to complete the project or the NYISO's declaration of a default of the Development Agreement. In such circumstances, the Developer will only be eligible for cost recovery if, and to the extent, allowed by the Commission.

In addition, if due to the failure of the project, the NYISO determines that it must identify a solution to satisfy the identified Reliability Need prior to its approval of the Comprehensive Reliability Plan for the next planning cycle, the NYISO may take one or more of the following actions to provide for the Reliability Need to be satisfied: (i) direct the Responsible Transmission Owner to proceed with its regulated backstop solution if it has not yet been halted, (ii) proceed with a Gap Solution, or (iii) request that the Responsible Transmission Owner complete the selected alternative regulated transmission solution.

Section 31.2.10.1.4 sets forth the requirements if a Responsible Transmission Owner agrees to complete the selected alternative regulated transmission solution. In such case, the Responsible Transmission Owner and the initial Developer of the project are required to work cooperatively with each other to implement the transition, including negotiating in good faith with each other to transfer the project. The Commission has previously approved a similar approach proposed by CAISO to provide for the transfer of a transmission solution to reliability needs that cannot timely be completed by the initial Developer.<sup>41</sup> The Responsible Transmission Owner and initial Developer will determine the terms of the transfer of the Transmission Project as part of their good faith negotiations. Section 31.2.10.1.4 provides that any transfer is subject to any required approvals by the appropriate governmental agencies and authorities. In addition, the Developer's capability to transfer its rights-of-way for the project is subject to any requirements and restrictions on such transfer under law, conveyance, or contract. Finally, in the event that the initial Developer was a New York public authority – NYPA or LIPA, any transfer

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<sup>39</sup> The Filing Parties propose to revise cross-references throughout Sections 31.1 and 31.2 to address changes to the section numbering in Section 31.2 resulting from the tariff changes proposed in this filing.

<sup>40</sup> Section 31.2.10.1.1 sets forth that the NYISO will, upon terminating the agreement, file a notice of termination with the Commission if the Development Agreement had been filed with and accepted by the Commission.

<sup>41</sup> CAISO Tariff § 24.6.4.

will be subject to the restrictions or limitations regarding such transfer under the New York Public Authorities Law. In the event of a dispute between the Responsible Transmission Owner and Developer regarding the transfer of the Transmission Project, the parties will address the dispute in accordance with the NYISO's standard dispute resolution procedures set forth in Article 11 of the NYISO's Services Tariff.

The Filing Parties also propose to relocate from Section 31.2.8.2.1 to Section 31.2.10.2 and to make certain revisions to the requirements setting forth how the NYISO will address a potential delay in the development of a transmission project. These provisions are more appropriately located in Section 31.2.10 than in the halting provisions in Section 31.2.8.2. As revised, the provision will only apply to potential delays in the development of a Responsible Transmission Owner's regulated backstop solution, as the related requirements for the Developers of an alternative regulated transmission solution are now addressed in Section 31.2.10.1, as described above. In addition, given the importance of the projects for preserving reliability, the revised provision adds that: (i) the NYISO may take action under the provision if the Responsible Transmission Owner "is otherwise not taking the actions necessary to construct the project to satisfy the Reliability Need by the need date," and (ii) the NYISO may "take such actions as it reasonably considers is appropriate to ensure that the Reliability Need is satisfied by the need date." Such actions could include proceeding with a Gap Solution to meet a Reliability Need by the need date. Consistent with the proposed requirements in Section 31.2.10.1 for the Developers of alternative regulated transmission solutions, these revisions are required to provide the NYISO with the ability to take necessary actions to preserve reliability in the event that a Responsible Transmission Owner's regulated backstop solution may not be completed by the need date of the Reliability Need.

## **VII. EFFECTIVE DATE**

The Commission has previously established a January 1, 2014, effective date for the Filing Parties' Order No. 1000 regional transmission planning related revisions to the NYISO's tariffs.<sup>42</sup> As directed by the Commission, the NYISO commenced its 2014-2015 planning cycle on January 1, 2014 to implement its revised CSPP. The actions taken by the NYISO to date in the current planning cycle, which include: (i) completing its reliability planning process for the planning cycle, (ii) beginning its economic planning process, and (iii) soliciting proposed Public Policy Transmission Needs as the first step of its Public Policy Transmission Planning Process, are unaffected by the tariff changes proposed in this filing. The tariff changes proposed in this compliance filing are not needed at this stage of the 2014-2015 planning cycle as there were no Reliability Needs to be fulfilled in this round of the reliability planning process (OATT § 31.2). Moreover, there are no changes that affect the NYISO's current implementation of the congestion planning process in its Congestion Assessment and Resource Integration Study (OATT § 31.3), and the tariff changes do not affect the implementation of the Public Policy Transmission Planning Process as the New York State Public Service Commission is not scheduled to determine if there are any Public Policy Transmission Needs for this planning cycle until this fall. The Filing Parties, therefore, submit the proposed tariff revisions for filing with a January 1, 2014 effective date.

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<sup>42</sup> July 2014 Order at P 37.

## VIII. SERVICE

The NYISO will send an electronic copy of this filing to the official representative of each party to this proceeding, to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission and the New Jersey Board of Public Utilities. In addition, the complete public version of this filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

## IX. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. and the New York Transmission Owners respectfully request that the Commission accept this compliance filing without requiring any modifications and determine that the NYISO and the NYTOs have fully complied with the regional planning requirements of Order No. 1000.

Respectfully submitted,

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