

Transmission Tariff (“OATT”) and the Market Administration and Control Area Services Tariff (“Services Tariff”) as the existing, incumbent Transmission Owners concerning the provision of transmission service. However, the NYISO tariffs also include particular requirements applicable to “Transmission Owners” (or “TOs”) that are inapplicable to new Transmission Owners that do not share all of the same characteristics as existing Transmission Owners, such as their role as Load Serving Entities (“LSEs”). The NYISO must address these differences to fully implement the new *pro forma* operating agreement for new Transmission Owners in the New York Control Area (“NYCA”).³ Although these tariff changes were not directly contemplated by the December Order, they fall within the scope of the Commission’s directive to file a *pro forma* operating agreement because the NYISO must be capable of implementing under its tariffs the requirements of this new agreement.

The NYISO is therefore seeking a partial extension of time so that it may submit a further compliance filing no later than September 13, 2016. The NYISO respectfully requests that the Commission adopt the standard five day notice period for extension requests⁴ and issue an order granting the requested partial extension as soon as practicable after the end of the notice period. There is good cause to grant the requested partial extension to make a further compliance filing. The extension would enable the NYISO to complete a comprehensive review of tariff references to “Transmission Owners” and ensure that they are correctly aligned with the operating agreement and tariff provisions that will be proposed in the March 22 filing. Granting the requested extension will also provide the NYISO and its stakeholders with certainty regarding

³ Capitalized terms that are not otherwise defined herein shall have the meaning specified in Attachment Y of the NYISO Open Access Transmission Tariff (“OATT”), and if not defined therein, in the NYISO OATT or the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

⁴ 18 C.F.R. § 385.213(d)(1)(i).

the timetable for completing work on conforming revisions to be included in the further compliance filing.

The NYISO briefed stakeholders and interested parties on this extension request in bilateral discussions and at the March 17, 2016 meeting of the NYISO's stakeholder Operating Committee. Stakeholders indicated that they either support or do not object to the timeframe and proposed approach to making further tariff revisions to address the treatment of new Transmission Owners in New York.

I. Background

The December Order directed the NYISO to make a compliance filing addressing significant tariff revisions and proposing several new standard agreements within 30 days.⁵ The NYISO requested an additional 60 day to respond to those directives. That request was granted by the January Notice. The NYISO has been working diligently with stakeholders to comply with the express directives of the December Order and is on track to make a compliance filing on March 22. That filing will include *pro forma* development agreements for the NYISO's reliability planning process and Public Policy Transmission Planning Process, and a *pro forma* operating agreement for non-incumbent transmission Developers. It will also revise the NYISO OATT to establish a new interconnection process for transmission projects in line with the directives of the December Order.

In the course of developing the new operating agreement for the March 22 compliance filing and reviewing it with stakeholders, it became clear to the NYISO that a thorough review of how its tariffs apply to the rights and obligations of new Transmission Owners is required and that additional conforming tariff revisions will be necessary to implement the December Order's

⁵ December Order at P 8.

directives. Although not explicitly contemplated by the Commission's directive to file a *pro forma* operating agreement, these tariff revisions fall within the scope of this compliance proceeding because the agreement will address the NYISO's operation of new transmission facilities for new Transmission Owners under its tariffs. While the NYISO has already commenced a comprehensive review of its tariffs, it is clear that the NYISO will not be able to include additional changes resulting from this review in the March 22 compliance filing for the reasons that follow.

In brief, the NYISO OATT is replete with thousands of references to "Transmission Owners" and "TOs." There are also numerous references in the Services Tariff. The existing tariff requirements applicable to the TOs were written based on the fact that the then-existing TOs had Transmission Districts, retail service territories and the load-serving entity and metering obligations characteristic of traditional utilities in New York State. The NYISO OATT and Services Tariff also contain provisions that reflect negotiated arrangements among the existing TOs that originally formed the NYISO in the 1990s. These arrangements reflected the conditions at that time, *e.g.*, with respect to the allocation of revenues and payments among themselves, their agreement to provide full funding for TCCs, their relationship with the New York Power Authority and the Long Island Power Authority, protection of their tax exempt status, their retail rate structures and service obligations and other matters.⁶

⁶ Tariff requirements currently applicable to "Transmission Owners" that require review concerning their application to new types of transmission owning entities include, but are not limited to : the Transmission Service Charge requirements in OATT Attachment H, the Transmission Congestion Contract and congestion revenue allocation requirements in OATT Attachments M and N, the requirements for Local Transmission Owner Planning in OATT Attachment Y, the role of existing Transmission Owners as Responsible Transmission Owners in Attachment Y, the Connecting Transmission Owner related requirements in OATT Attachments S, X, and Z, system restoration and black start requirements in Services Tariff Rate Schedule 5, retail access requirements in OATT Section 5, the transmission expansion requirements in OATT Sections 3 and 4, the back-up operation

By contrast, new TOs may solely own transmission facilities without also sharing key characteristics associated with existing TOs, such as serving as LSEs. Thus, at present it is not clear whether many currently effective tariff provisions that reference “Transmission Owners” should apply as written to new TOs or should appropriately be revised because they pertain to matters where new TOs truly are situated differently. The existing tariffs, therefore, may not appropriately define the scope of rights and responsibilities for these new TOs in New York and, if applied to them, may establish requirements that the new TO either could not perform or reasonably would not elect to perform.

II. Request for Partial Extension of Compliance Filing Deadline

The NYISO must have clear tariff provisions governing the rights and obligations of new TOs that are subject to the new operating agreement. To achieve this objective the NYISO must conduct a comprehensive review of its tariffs to identify, and revise, potentially inapplicable and ambiguous references to “Transmission Owners” when viewed in accordance with the December Order’s compliance directive. Making the necessary adjustments will allow the NYISO’s tariffs, including the planning process related revisions addressed in the March 22 filing, to be implemented in an orderly fashion. Revising the NYISO’s tariffs to clearly and unambiguously outline the rights and responsibilities of new TOs is thus essential to compliance with the December Order. It is also essential to fulfilling the Commission’s mandate under Order No. 1000 to fully integrate new transmission projects and Transmission Owners selected in a regional planning process on a comparable basis.

Given the voluminous nature of the NYISO’s tariffs, the thousands of references to “Transmission Owners,” and the complexity and interrelationships of many of the provisions

requirements in OATT Section 2.12, and the indemnification and limitation of liability requirements in OATT Section 2.1.1.

involved, the NYISO requires significant time to complete its comprehensive tariff review and develop the required compliance revisions. Although the NYISO has already started this work, it believes that 180 days will be needed to complete a careful and systematic tariff review, allow for meaningful review with stakeholders, and prepare a further compliance filing.

The NYISO recognizes the importance that the Commission places on timely and complete compliance with its orders but believes that the requested partial extension is both necessary and reasonable. The Commission has previously allowed the NYISO to file compliance tariff revisions that were not expressly directed when they were necessary to implement or to accommodate express Commission directives.⁷ The Commission has also allowed the NYISO to make a further compliance filing months after an initial compliance filing when the further filing was necessary to support the orderly implementation of the Commission's compliance directives.⁸ Making a further compliance filing to clarify existing references to "Transmission Owners," while not explicitly directed by the December Order, is necessary to implement and accommodate the directives of the December Order. It would therefore be consistent with Commission precedent.

Finally, allowing the submission of necessary implementation-related conforming changes in a further compliance filing will not prejudice any Developers that are involved with

⁷ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,206 at P 41 (2008) (accepting various revisions proposed in a compliance filing "as needed to implement the modifications directed" in an order, even though the order did not specifically direct the filing of such revisions). See also *New York Independent System Operator, Inc.*, 127 FERC ¶ 61,042 at 12 (2009) (accepting additional revisions that were not expressly directed by the Commission but that "make ministerial changes that permit the effective implementation" of the proposal that is the subject of the compliance filing).

⁸ See *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 (2013) (accepting a further compliance filing by the NYISO that implemented capacity market power mitigation measures for New Capacity Zones. The further compliance revisions were necessary to implement an earlier NYISO compliance filing establishing rules governing the establishment of New Capacity Zones but were not expressly directed by the Commission's underlying order. The NYISO submitted the further compliance filing months after its initial compliance filing).

proposing transmission projects in the NYISO's Public Policy Transmission Planning Process.⁹ The NYISO's current Public Policy Transmission Planning Process is in its early stages of project solicitation and review and project evaluation and selection is not expected to be completed before early 2017. Allowing 180 days to make conforming tariff changes and allowing for time for Commission review will allow the conforming tariff changes to become effective for Developers whose projects are selected for cost allocation and recovery under the NYISO's tariffs.

As described above, the NYISO has discussed this request for partial extension of time with its stakeholders and interested parties, which have either indicated support for, or do not object to, the NYISO's proposed approach to making further tariff revisions to address the treatment of new Transmission Owners in New York.

Rule 2008 authorizes the Commission to extend any deadline, including one imposed by a compliance directive, before it expires if a requesting party demonstrates that there is "good cause" to do so. For the reasons set forth above, the NYISO respectfully submits that there is good cause to grant the 180 day partial extension of time that it seeks here.

III. Conclusion

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission grant the 180 day partial extension to the compliance filing deadline in the above-

⁹ The NYISO is currently administering its Public Policy Transmission Planning Process in connection with two separate Public Policy Transmission Needs identified by the New York State Public Service Commission. *See* NYPSC Case 12-T-0502, *et al.*, Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades, *et al.*, Order Finding Transmission Needs Driven by Public Policy Requirements (December 17, 2015) (adopting the need for new 345 kV transmission facilities to provide additional transmission capacity to move power from upstate to downstate New York as a Public Policy Transmission Need); *see also* NYPSC Case No. 14-E-0454, In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration, *Order Addressing Public Policy Requirements for Transmission Planning Process* (July 20, 2015) (adopting the relief of transmission congestion in Western New York as a Public Policy Transmission Need).

captioned proceeding to allow it to make further compliance revisions to its OATT and Services Tariff that are necessary to implement the *pro forma* operating agreement that will be filed on March 22, 2016, in compliance with the December Order, as discussed in the body of this filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 17th day of March 2016.

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