NEW YORK INDEPENDENT SYSTEM OPERATOR
10 Krey Boulevard ♦ Rensselaer, NY 12144

October 11, 2012

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. RM10-23-000, ER13-_____-000**

Dear Ms. Bose:

In compliance with Order No. 1000, the Commission's Final Rule on *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*,[1] the New York Independent System Operator, Inc. ("NYISO") and the New York Transmission Owners ("NYTOs")[2] (together the "Filing Parties") respectfully submit this compliance filing. This compliance filing explains how the NYISO's current transmission planning process in Attachment Y of the NYISO's Open Access Transmission Tariff ("OATT")[3] already complies with, or surpasses, most of Order No. 1000's requirements with respect to local and regional

[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012).

[2] The NYTOs are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a LIPA, New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc. The NYTOs reserve the right to comment separately on this filing. LIPA and NYPA as transmission owners not subject to the FERC's rate jurisdiction under Section 205 of the Federal Power Act have voluntarily participated in the development of this comprehensive filing and thereby join the other New York Transmission Owners in this pleading. Though LIPA supports the majority of this compliance filing, as further noted in Section V.A.2.d below, it disagrees with the omission of tariff language addressing the role of the Long Island Power Authority in the identification, evaluation, and selection of needs and solutions to needs driven by Public Policy Requirements, and the allocation of costs related thereto, with respect to the Long Island Transmission District, and reserves its right to submit a filing with the Commission regarding that issue.

[3] Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in Attachment Y of the NYISO OATT, and if not defined therein, in the NYISO OATT and Services Tariff.

transmission planning and cost allocation.[4] This compliance filing also proposes certain revisions to Attachment Y to bring it into full compliance with all of the Order No. 1000 local and regional planning and cost allocation requirements, as further explained below. The Filing Parties submit that the proposed compliance tariff modifications fully comply with the Order No. 1000 regional transmission planning process requirements in a manner that allows the flexibility necessary to encourage the further development of transmission in the New York Control Area ("NYCA").

As further explained below, Section III of this compliance filing letter provides the background of the NYISO's existing processes and how they have evolved in compliance with prior Commission orders on transmission planning. Section IV explains that many of the existing tariff provisions substantially comply with the Order Nos. 1000 and 1000-A requirements, including, among other things, the existence of a regional transmission planning process that produces a regional transmission plan, fully complies with all Order No. 890 principles, and does not contain a right of first refusal ("ROFR"). Section V addresses areas in which the Filing Parties have identified and proposed compliance tariff revisions that fully address requirements not presently covered by the Tariff, including, among other things: (1) the addition of a Public Policy Requirements planning process (see Section V.A); (2) tariff changes to fully comply with the Order No. 1000 directives on the regional transmission planning process, including directives on criteria for qualification (see Section V.B.3) and monitoring of projects (see Section V.B.4), as well as modifications to consider more efficient or cost effective transmission solutions (see Section V.B.1); (3) additional compliance modifications (see Section V.C); and (4) ministerial and clarifying revisions (see Section V.D). The Filing Parties also address the unresolved issues raised during the NYISO stakeholder meetings in Sections IV.A.1.C.i, V.A.1.a, V.A.2.c, V.A.2.d, and V.B.1.a.

The Filing Parties request that these proposed tariff modifications be made effective upon the completion of the next reliability planning cycle following the Commission's issuance of a final order approving these tariff changes. The Filing Parties believe that the analysis of transmission needs driven by Public Policy Requirements should be based on a current Comprehensive Reliability Plan. This approach will provide the foundation of a reliable bulk power system upon which to build consideration of public policy needs.

I. COMMUNICATIONS

Communications and correspondence regarding this filing should be directed to:

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[4] Order No. 1000 at n.71.

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[5] Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2011)) is requested to the extent necessary to permit service on counsel for the NYISO in both Richmond, VA and Washington, DC.

[6] Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3)) is also requested to the extent necessary to permit service on counsel for the NYTOs in both Albany, NY and Washington, DC, as well as the inclusion on the service list of all of the parties listed in Attachment I.

II. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents:

1. This filing letter;

2. A list of the company representatives for the New York Transmission Owners ("Attachment I");

3. The Letter of New York State Public Service Commission Chairman Garry A. Brown to Steven G. Whitley dated September 27, 2012 ("Attachment II");

4. A blacklined version of the NYISO OATT sections containing the proposed compliance modifications ("Attachment III");

5. A clean version of the NYISO OATT sections containing the proposed compliance modifications ("Attachment IV");

6. A blacklined version of the NYISO Market Administration and Control Area Services Tariff ("Services Tariff") sections containing the proposed compliance modifications ("Attachment V"); and

7. A clean version of the NYISO Services Tariff sections containing the proposed compliance modifications ("Attachment VI").

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III. BACKGROUND

A. Overview of the NYISO's Transmission Planning Process

The NYISO's transmission planning process is contained in Attachment Y of the NYISO's OATT, and is known as the Comprehensive System Planning Process ("CSPP"). The NYISO's CSPP covers the New York Bulk Power Transmission Facilities ("BPTFs") [7] and presently contains three components: (i) a Local Transmission Planning Process ("LTPP") by which each NYTO with a Transmission District posts and accepts comments on its local area plans; (ii) a Reliability Planning Process consisting of a Reliability Needs Assessment ("RNA") and a Comprehensive Reliability Plan ("CRP") that identifies reliability needs over a ten-year planning horizon and evaluates market-based solutions as well as regulated solutions—the latter for purposes of cost allocation and recovery, if needed; and (iii) a two-phase Congestion Analysis and Resource Integration Study ("CARIS") process that conducts an overall analysis of the economic benefits of relieving congestion and includes a process for developers to propose projects to resolve congestion and to request evaluation of their eligibility for cost allocation under the NYISO's Tariff.

Through the CSPP, the NYISO evaluates solutions to meet both reliability and congestion relief needs, coordinates the NYISO's assessments with neighboring Control Areas, and provides cost allocation methodologies and recovery mechanisms for regulated reliability and economic projects that meet tariff criteria.

As explained below in Section IV, the NYISO's CSPP currently meets or exceeds most of the Order No. 1000 local and regional requirements. As currently effective, the CSPP (1) is market-based and strives to achieve market-based solutions to reliability and economic needs on the BPTFs when possible; (2) is open and transparent, engaging regulators, Market Participants and other stakeholders in accordance with NYISO's shared governance process; (3) considers all resources as potential solutions to identified needs, including transmission, generation and demand response; (4) provides for the allocation of costs of proposed solutions to identified reliability and economic needs to project beneficiaries; (5) does not include a right of first refusal for incumbent transmission owners for transmission projects to address regional needs; (6) results in a regional transmission plan that evaluates solutions for identified reliability and economic needs in the region; (7) complies with the Order No. 890 transmission planning principles; and (8) complies with the Order No. 1000 regional cost allocation principles.

Further, as explained below in Section V, the CSPP with the additional compliance tariff revisions proposed herein will fully comply with the Commission's Order No. 1000 directives including: (1) the addition of a new planning process to consider transmission needs driven by

[7] The New York State Bulk Power Transmission Facilities are the transmission facilities for which the NYISO conducts its Annual Transmission Review ("ATR") submitted to the Northeast Power Coordinating Council ("NPCC") pursuant to NPCC requirements. *See* OATT Attachment Y § 31.1.1 Definitions.

Public Policy Requirements; (2) the inclusion of entity qualification and project information criteria in the tariff; (3) the consideration of consequences of identified transmission solutions on other regions; (4) the evaluation of regional transmission projects that may meet the regional bulk power system needs more efficiently or cost-effectively than projects identified in local transmission plans; and (5) the inclusion of the six Order No. 1000 cost allocation principles.

1. Origin of Attachment Y

The NYISO and the NYTOs initially submitted the Attachment Y transmission planning process on a voluntary basis on August 20, 2004.[8] As originally proposed, Attachment Y implemented the NYISO's Comprehensive Reliability Planning Process ("CRPP").[9] The CRPP provided the mechanism through which the NYISO, its Market Participants, and the New York State Public Service Commission ("NYPSC") would cooperate in planning for the long-term Reliability Needs[10] of the BPTFs. Attachment Y established an all-resource planning process, an open, transparent, and dedicated stakeholder working group (the Electric System Planning Working Group or "ESPWG") and a NYISO governance process to identify transmission upgrades and other types of resources needed to meet Reliability Needs on the BPTFs. The process was created to encourage development and deployment of market-based solutions that recover their costs by selling their output through the NYISO markets while providing for the construction of regulated solutions with tariff rate recovery to serve as a "backstop" if market-based proposals did not solve the identified Reliability Need in a timely manner.

The Commission found that the original Attachment Y provided balanced consideration of market-based and regulated solutions, and was "a substantial improvement over planning processes that traditionally have depended largely or even solely on transmission owner developed regulated solutions."[11] The Commission also stated in the order approving Attachment Y that it "applaud[ed] NYISO and interested parties for devising a workable, efficient process to facilitate transmission planning and expansion."[12]

[8] *See New York Independent System Operator, Inc.*, Filing of Comprehensive Reliability Planning Process and Related Agreement, Docket No. ER04-1444-000 (August 20, 2004).

[9] With the addition of the local transmission system planning and economic planning processes, the CRPP was renamed the Comprehensive System Planning Process ("CSPP").

[10] A Reliability Need is a "condition identified by the ISO as a violation or potential violation of one or more Reliability Criteria." *See* Attachment Y § 31.1.1 Definitions. Reliability Criteria are defined as the standards, criteria and rules of the North American Electric Reliability Corporation ("NERC"), the Northeast Power Coordinating Council ("NPCC"), and the New York State Reliability Council ("NYSRC"). *See* OATT Attachment Y § 31.1.1 Definitions.

[11] *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,372 at P 33 (2004).

[12] *Id*. at P 19.

2. Evolution of Attachment Y in Compliance with Order No. 890

On February 16, 2007, the Commission issued Order No. 890, which reformed the Commission's *pro forma* OATT to provide for, among other things, an open, transparent, and coordinated planning process at both a regional and a local level.[13] Order No. 890 required public utility transmission providers to:

> submit, as part of a compliance filing in this proceeding, a proposal for a coordinated and regional planning process that complies with the planning principles and other requirements in this Final Rule. In the alternative, a transmission provider (including an RTO or an ISO…), may make a compliance filing in this proceeding describing its existing coordinated and regional planning process, including the appropriate language in its tariff, and show that this existing process is consistent with or superior to the requirements in this Final Rule.[14]

To that end, Order No. 890 set forth nine planning principles that each transmission provider had to address in its planning process, *i.e.*, (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission stated that "each of the Commission-approved RTOs in the Northeast, Midwest, Southwest, as well as CAISO, provide for a coordinated and regional planning process with stakeholder input from each industry segment"[15] and that it "fully supports these existing efforts…."[16] The Commission further recognized that in regions where significant processes were already in existence, such processes may not need to be drastically changed to comply with Order No. 890.[17] The Commission acknowledged that Regional Transmission Operators ("RTOs") and Independent System Operators ("ISOs") had transmission planning processes in their tariffs, and that it had found these processes to be consistent with or superior to the then existing *pro forma* OATT. However, because Order No. 890 reformed the *pro forma* OATT, the Commission held that each RTO and ISO would have to either reform its existing planning process or show that such process is superior to or consistent with the *pro forma* OATT as modified by Order No. 890.

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[13] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,214 at P 435, *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

[14] Order No. 890 at P 437 (footnotes omitted).

[15] *Id*. at P 525.

[16] *Id*. at P 526.

[17] *Id*.

The NYISO submitted compliance filings to address the Order Nos. 890 and 890-A directives.[18] These compliance filings showed that its existing Attachment Y planning process was in many respects already consistent with, or superior to the *pro forma* OATT. These compliance filings also proposed certain modifications to bring the Attachment Y transmission planning process into full compliance with Order No. 890.

Most significantly, in compliance with the Order No. 890 transmission planning principles, the NYISO created the CSPP. The CSPP was built on the core reliability planning processes of the CRPP as modified to: (1) add an economic planning process to provide for the evaluation of congestion on the bulk power system and for cost allocation of transmission projects to alleviate that congestion; (2) add a local transmission planning process by which individual Transmission Owners ("TOs") post and receive comments on their Local Transmission Plans, which provide input to the NYISO for reliability and subsequently for economic planning; and (3) expand upon the methodologies for reliability and economic project cost allocation and provide a mechanism for recovery of regulated reliability project costs.[19] The CSPP is more specifically described in Section IV.A below.

Separately, the NYISO filed on August 24, 2004 and February 25, 2005 unsigned agreements with the NYTOs providing for development of reliability backstop solutions. The Commission accepted this agreement for filing, with revisions, on December 28, 2004[20] and May 6, 2005.[21] The NYTOs consented by executing the agreement dated June 10, 2010, to, at the request of the NYISO, propose and build reliability backstop solutions in the event that market based solutions fail to materialize on a timely basis to meet reliability needs, so long as the NYTOs receive full recovery of their costs.

Ultimately, the Commission accepted[22] all of the NYISO's compliance tariff revisions, finding that "the NYISO's transmission planning process … complies with each of the nine planning principles and other planning requirements adopted in Order No. 890."[23]

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[18] *See* Docket Nos. OA08-52, ER10-2241, and ER10-2459 on December 7, 2007, June 18, 2008, January 14, 2009, May 19, 2009, December 11, 2009, April 13, 2010, and August 30, 2010. The August 30, 2010 Compliance filing was initially submitted on August 16, 2011 in Docket No. ER10-2241-000. However, the NYISO had to withdraw it due to e-Tariff filing issues and resubmit on August 30, 2010 in Docket No. ER10-2459-000.

[19] Note that the NYISO has not yet adopted a cost recovery mechanism for projects selected through the economic planning process, but intends to do so in 2013 following discussions in the stakeholder process.

[20] *New York Independent System Operator, Inc.*, 111 FERC ¶ 61,182 at PP 38-39 (2006).

[21] *New York Independent System Operator, Inc.*, 111 FERC ¶ 61,182 at P 19 (2005).

[22] *See, New York Independent System Operator, Inc.*, 125 FERC ¶ 61,068 (2008), *reh'g*, 126 FERC ¶ 61,320 (2009), *reh'g denied*, 129 FERC ¶ 61,045 (2009) ("October 2008 Order"); *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,044 (2009) ("October 2009 Order"); *New York Independent System Operator, Inc.*, 132 FERC ¶ 61,028 (2010) ("July 2010 Order"); *New York*

B. Order No. 1000

The Commission has stated that Order No. 1000 is intended to build on Order No. 890's planning requirements.[24] Order No. 1000 is aimed at achieving two "primary objectives."[25] Specifically, to:

> (1) [e]nsure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet transmission needs more efficiently and cost-effectively; and (2) ensure that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to those who receive benefits from them.[26]

Order No. 1000 requires participation by public utility transmission providers in regional transmission planning processes.[27] These regional processes must comply with certain Order No. 890 principles, but must also "evaluate transmission alternatives at the regional level that may resolve the transmission planning region's needs more efficiently and cost-effectively than alternatives identified by individual public utility transmission providers in their local transmission planning processes," including the consideration of transmission needs driven by Public Policy Requirements.[28] The Commission also directs the improvement of coordination across regional planning processes and the establishment of cost allocation methods for facilities identified through regional transmission plans.[29] Order No. 1000 also requires the development of interregional cost allocation mechanisms—at least with respect to each pair of neighboring regions. Additionally, Order No. 1000 mandates that costs of new transmission facilities be allocated "in a manner that is at least roughly commensurate with the benefits received by those who will pay those costs" and directs that costs "not be involuntarily allocated to entities that do not receive benefits."[30] Regional and inter-regional transmission plans must consider transmission facilities proposed by all entities.[31] Order No. 1000 also requires that "generation,

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Independent System Operator, Inc., 132 FERC ¶ 61,188 (2010) ("August 2010 Order"); *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER10-2459-000 (issued October 26, 2010) ("October 2010 Order").

[23] October 2008 Order at P 16.

[24] Order No. 1000 at P 1.

[25] *Id*. at P 4.

[26] *Id*.

[27] *Id*. at P 6.

[28] *Id*.

[29] *Id*. at PP 8-9.

[30] *Id*. at P 10.

[31] *Id*. at P 11.

demand resources, and transmission be treated comparably in the regional transmission planning process."[32]

Order No. 1000 acknowledges that some regions already have such processes in place and that the directed reforms "are not intended to undermine progress being made in those regions."[33] Consequently, Order No. 1000 provides that "to the extent existing transmission planning processes satisfy the requirements of this Final Rule, public utility transmission providers need not revise their OATTs and, instead, should describe in their compliance filing how the relevant requirements are satisfied by reference to tariff sheets already on file with the Commission."[34]

C. Discussions among the NYISO, Market Participants, Other Stakeholders and Outstanding Issues

The NYISO and other stakeholders have worked diligently to enhance the NYISO's existing process consistent with the Order No. 1000 directives. During the fall of 2011 and through February 2012, the NYISO and the NYTOs held multiple meetings with the New York State Department of Public Service to develop their response to Order No. 1000, including formulation of a "strawman" proposal for Public Policy Requirements that drive the need for transmission. Beginning in February 2012, the NYISO worked with its stakeholders to review the requirements of Order No. 1000 and to develop the proposed compliance tariff revisions submitted in this filing.

The NYISO and the NYTOs reviewed the Public Policy Requirements planning process proposal with the stakeholders and received their feedback on this new process and the full host of Order No. 1000 compliance issues. The NYISO held additional stakeholder meetings to discuss the same on April 23, June 6, June 18, June 26, July 10, July 24, August 6, August 9, and August 28, 2012. Additionally, the NYISO requested, received, and considered comments from stakeholders throughout the process, including written comments received on September 7, 2012, which were submitted to the NYISO Board of Directors for its review. Numerous revisions were made to the proposed Tariff changes in response to these stakeholder comments.

The NYISO also discussed the stakeholders' remaining concerns at Management Committee meetings held on August 29th and September 28th. The Board of Directors, after considering the sum of the comments, decided that the proposed compliance filing represented a balanced outcome that fairly reflects the interests of all stakeholders.

The open and transparent stakeholder process succeeded in narrowing the differences on many of the issues and in achieving broad consensus on others. Full consensus on all issues was

[32] *Id*. at P 779.

[33] *Id*. at P 13.

[34] *Id*. at n. 71.

not achievable, however, as stakeholders did not come to agreement on all aspects of the NYISO's Public Policy Requirements planning process proposal and certain other issues. Specifically, outstanding issues, which the Filing Parties expect will be raised in responsive pleadings, include matters concerning the: (1) cost allocation process for Public Policy Requirements;[35] (2) definition of Public Policy Requirement;[36] (3) role of the NYPSC/NYDPS and the NYISO in the Public Policy Requirements planning process;[37] (4) authority of the Long Island Power Authority to propose and identify transmission needs driven by Public Policy Requirements and to implement elements of the Public Policy Requirements planning process otherwise exercised by the NYDPS/NYPSC relating to transmission needs relating to the Long Island Transmission District;[38] (5) existing and proposed tariff provisions governing the process for selecting regulated reliability projects for permitting and construction, including the NYPSC's role in that process;[39] and (6) existing tariff provisions governing the process for choosing economic projects, most significantly the use of an 80 percent beneficiary vote to select projects.[40] The Filing Parties believe that this filing fully complies with all Order No. 1000 and Order No. 1000-A requirements, and address each of the remaining stakeholder concerns in the sections below.

IV. THE NYISO'S EXISTING TRANSMISSION PLANNING PROCESS MEETS OR EXCEEDS MOST OF ORDER NO. 1000'S REQUIREMENTS

The Commission determined in Order No. 1000 that the requirements of Order No. 890 alone may not result in the development of a more efficient and cost effective set of transmission facilities on a regional basis[41] concluded that additional regional transmission planning reforms were needed in order to

> ensure that public utility transmission providers in each transmission planning region, in consultation with stakeholders, identify and evaluate transmission alternatives at the regional level that may resolve the region's needs more efficiently or cost-effectively than solutions identified in the local transmission plans of individual public utility transmission providers.[42]

[35] The Filing Parties fully address these concerns in Section V.A.3.c, below.

[36] The Filing Parties fully address these concerns in Section V.A.1.a, below.

[37] The Filing Parties fully address these concerns in Section V.A.2.c, below.

[38] The Filing Parties fully address these concerns in Section V.A.2.d, below.

[39] The Filing Parties fully address these concerns in Section V.B.1.a, below.

[40] The Filing Parties fully address these concerns in Section IV.A.1.c.i, below.

[41] Order No. 1000 at P 78.

[42] *Id*.

Order No. 1000 also recognized that each of the existing ISO and RTO regions already have tariff provisions implementing a regional transmission planning process.[43] While the Commission declined to find that existing approved ISO and RTO regional transmission planning processes were already in compliance with Order No. 1000,[44] it stated that "public utility transmission providers in some regions already meet or exceed this requirement."[45] The Commission also acknowledged that in some regions Order No. 1000 compliance may require only "modest changes" to those existing regional transmission planning processes.[46]

The Filing Parties show, in this Section IV, that the currently effective CSPP already fully complies with most of the Order No. 1000 local and regional planning requirements. Thus, this compliance filing describes "how the relevant requirements are satisfied by reference to tariff sheets already on file with the Commission."[47] Where the NYISO's CSPP does not yet fully address certain Order No. 1000 directives, the Filing Parties propose compliance tariff modifications to address them, as explained in Section V below.

A. The NYISO's CSPP Includes a Fully Compliant Regional Transmission Planning Process that Produces a Regional Plan

Order No. 1000 identifies and addresses deficiencies in the Order No. 890 requirements. Specifically, Order No. 1000 finds that while Order No. 890 required regional level coordination by public utility transmission providers for the identification of system enhancements, it did not require that such transmission providers:

- Take affirmative steps to identify potential solutions at the regional level that could better meet the needs of the region;
- Undertake analyses to evaluate potential upgrades or other investments that could reduce congestion or integrate new resources or loads on an aggregated or regional basis; and
- Develop a single regional transmission plan that reflects the transmission provider's determination of the set of transmission facilities that more efficiently or cost-effectively meet the needs of the region.[48]

Thus, Order No. 1000 "builds" on the Order No. 890 transmission planning principles and expands them "by directing public utility transmission providers to adopt these requirements

[43] *Id*. at P 80.

[44] *Id*. at PP 795-796.

[45] *Id*. at P 149.

[46] *Id*. at n.142.

[47] *Id*. at n.71.

[48] *Id*. at P 147.

with respect to the process used to produce a regional transmission plan."[49] Order No. 1000 directs that each transmission provider "participate in a regional transmission planning process that produces a regional transmission plan and complies with existing Order No. 890 transmission planning principles."[50]

1. The CSPP Produces a Regional Transmission Plan

Order No. 1000 acknowledges that although the requirement that a transmission provider participate in an Order No. 890 compliant regional transmission planning process is new, "only modest changes" may be required to bring existing regional transmission planning processes in compliance with this directive.[51] As explained in further detail herein, the NYISO's CSPP, with certain modifications,[52] substantially complies with the directive that its tariff contain a regional transmission plan that complies with the Order No. 890 principles, with respect to its existing reliability and economic planning processes.

The NYISO's CSPP is a regional transmission planning process that produces a regional transmission plan with respect to the BPTFs. Specifically, OATT Attachment Y,[53] Sections 31.2 (establishing the reliability planning process) and 31.3 (establishing the economic planning process) establish the process used to identify Reliability Needs and congestion and evaluate solutions, culminating in the preparation of a regional transmission plan for the NYCA planning region. As indicated in Section 31.1.2, the objectives of the reliability planning process are to:

> (1) evaluate the reliability needs of the BPTFs pursuant to Reliability Criteria; (2) identify, through the development of appropriate scenarios, factors and issues that might adversely impact the reliability of the BPTFs; (3) provide a process whereby solutions to identified needs are proposed, evaluated on a comparable basis, and implemented in a timely manner to ensure the reliability of the system; (4) provide an opportunity first for the implementation of market-based solutions while ensuring the reliability of the BPTFs; and (5) coordinate the ISO's reliability assessments with neighboring Control Areas.

Pursuant to Section 31.1.4, the NYISO's economic planning process:

> (1) projects congestion on the BPTFs over the ten-year planning period of this CSPP; (2) identifies, through the development of appropriate scenarios, factors that might produce or increase congestion; (3) provides a process whereby

[49] *Id*. at P 151.

[50] *Id*. at P 68.

[51] *Id*. at n.142.

[52] *See* Section V, below.

[53] Unless otherwise stated, further section references in this compliance filing letter will be to OATT Attachment Y.

> projects to reduce congestion identified in the economic planning process are proposed and evaluated on a comparable basis in a timely manner; (4) provides an opportunity for the development of market-based solutions to reduce the congestion identified; and (5) coordinates the ISO's congestion assessments and economic planning with neighboring Control Areas.

The CSPP evaluates the resource adequacy and transmission system security of New York State's bulk power system over a 10-year period. Currently, solutions to meet reliability needs and relieve congestion are evaluated. The CSPP currently consists of three components: (1) a LTPP; (2) a reliability planning process; and (3) an economic planning process. The CSPP three-part planning process is conducted over a two-year period. The LTPP component begins with each NYTO Local Transmission Plan ("LTP"), the assumptions underlying and the results of which are reviewed with all interested parties, and posted on each NYTO website with a link on the NYISO's website. The LTPs provide necessary inputs into the RNA/CRP process component. The third component of the CSPP is an economic planning process, known as the CARIS.[54]

The CSPP has two cost allocation methodologies, which are set forth in Section 31.5.[55] The cost allocation and recovery provisions are applicable to: (1) regulated reliability projects constructed in response to a Reliability Need; and (2) transmission projects constructed in response to congestion identified in the CARIS, *i.e.* regulated economic transmission projects ("RETP"). Cost allocation for both types of projects is based on the principle that beneficiaries of the project should pay their share of the costs at least roughly proportionate to their benefits.

Further, Section 31.2.1 establishes the LTPP which provides substantial information to Market Participants and an opportunity for them to provide input on the LTPs of the NYTOs with Transmission Districts. Each NYTO's LTP is used as input into the NYISO's CSPP. The NYISO's CSPP considers proposed non-transmission alternatives on a basis comparable to transmission solutions and allows for the selection of identified alternative transmission solutions in the regional transmission plan for cost allocation purposes. As described in Section V.B.1 below, the NYISO is also proposing compliance tariff revisions to address the directive that a transmission provider's regional transmission plan evaluate alternative transmission solutions that may be more efficient or cost-effective than transmission facilities proposed in one or more local transmission plans.[56]

[54] Note that pursuant to the proposed revisions in this compliance filing, the Public Policy Requirements planning process will be added as a fourth component of the CSPP.

[55] Note that this, and other, references to Attachment Y sections reflect revised section numbering as reflected in the modifications proposed in this compliance filing.

[56] Order No. 1000 at P 148.

As required by Order No. 1000, the NYISO's CSPP provides a process that allows for the selection[57] of proposed solutions for cost allocation purposes in a transparent and not unduly discriminatory manner.[58] That process culminates in determinations, through the issuance of the NYISO's CRP and CARIS (and as modified herein, the Public Policy Requirements planning process[59]) reports, that contain details sufficient for stakeholders, and any interested parties, to understand the reason for the selection of particular projects.[60]

a. Local Transmission Planning Processes

Section 31.2.1 of Attachment Y sets forth the process through which the NYTOs that have a Transmission District will provide information and seek Market Participant input on their plans for their transmission systems, including BPTFs and other facilities. Each NYTO with a Transmission District must administer an individual LTPP. The LTPs describe the needs addressed, assumptions used, and criteria and methodology for each NYTO's BPTFs. Section 31.2.1.1.1 requires the posting of the planning criteria and assumptions used in each NYTO LTPP, as well as review and comment by Market Participants and other parties on those criteria and assumptions, as well as the data and models to be used. This review and comment process is facilitated by the NYISO as described below. NYTOs must consider any comments received and such planning criteria and methodology must meet or exceed any applicable Reliability Criteria.[61] LTPPs must describe the needs addressed, as well as the assumptions, planning criteria and methodology.

The LTPP provides for transparency and input by customers, Market Participants and all interested parties. Section 31.2.1.2 provides that during the NYISO CSPP planning cycle, in accordance with the schedule in the NYISO's CSPP Manual, each NYTO must post its current LTP on its website sufficiently in advance of the time for submission to the NYISO for input into

[57] As further clarified below, the NYISO does not select among solutions; in the NYISO's CSPP selection of solutions when more than one is identified to meet a Reliability Need (or a need driven by Public Policy) will be made by the appropriate governmental agencies or authorities. These are the New York State Public Service Commission for the investor-owned NYTOs, NYPA and LIPA for projects within the state statutory authority for those entities and the Commission. With respect to the economic planning process, those projects are selected via the super-majority beneficiary voting mechanism set forth in Section 31.5.4.6.

[58] Order No. 1000 at P 328.

[59] *See* Section V.A for a discussion and description of the proposed modifications to add a Public Policy Requirements planning process to the NYISO's CSPP.

[60] *Id*. at P 328

[61] Reliability Criteria are "[t]he electric power system planning and operating policies, standards, criteria, guidelines, procedures, and rules promulgated by the North American Electric Reliability Corporation ("NERC"), Northeast Power Coordinating Council ("NPCC"), and the New York State Reliability Council ("NYSRC"), as they may be amended from time to time. *See* Attachment Y § 31.1.1 Definitions.

the Reliability Needs Assessment ("RNA"), so as to allow adequate time for stakeholder review and comment.

Section 31.2.1.2.3 provides that during each planning cycle, the NYISO holds stakeholder meetings of the Electric System Planning Working Group ("ESPWG") and Transmission Planning Advisory Subcommittee ("TPAS") to discuss each current LTP. Section 31.2.1.2.4 allows all interested parties to review and comment on the planning criteria and assumptions, as well as data and models, used by the NYTOs. Each NYTO is required to take such input into consideration and explain any modifications it makes to its LTP in response to such comments. Pursuant to Section 31.2.1.2.5, after review and discussion in the NYISO's stakeholder processes, the NYTO LTPs are included in the base case of the RNA. The LTPP also has provisions to raise and address issues related to the process, in Section 31.2.1.3.[62]

b. Reliability Planning Process

Section 31.2 describes the NYISO's reliability planning process, which is a formal, transparent, long-term two step process, built around two primary documents, the RNA and the CRP.

i. Reliability Needs Assessment

Section 31.2.2 sets forth the process through which the NYISO conducts the RNA with its stakeholders. The RNA evaluates the future reliability of the New York bulk power system using a 10-year planning horizon. Pursuant to Section 31.2.2.3, the RNA analyzes resource adequacy, as well as transmission security and transfer capability, on the New York BPTFs. The RNA identifies the location and nature of any potential factors and issues that could adversely affect reliability throughout the 10-year planning horizon. The RNA identifies conditions that are violations or potential violations of established Reliability Criteria and provides an analysis of historic congestion costs.

The NYISO's evaluation, in conjunction with its Market Participants, determines the adequacy (based upon a Loss of Load Expectation criterion) and security (unanticipated loss of system elements or contingencies) through the entire bulk power system against mandatory national standards, regional reliability standards, and New York State specific standards. Under Section 31.2.2.4, Market Participants, Developers, and other parties provide the data necessary for the development of the RNA, including providing input regarding: (1) existing and planning transmission additions; (2) proposals for merchant transmission facilities; (3) generation additions and retirements; (4) demand response programs; and (5) any long-term firm transmission requests made to the NYISO.

[62] If disputes arise with respect to any NYTO LTP, Section 31.2.1.3 provides a Dispute Resolution Process to be used to assist the resolution of such disputes as expeditiously as possible. These processes include both informal discussions as well as formal alternative dispute resolution procedures.

In compliance with the Order No. 1000 directive that the transmission provider identify regional solutions that may be more efficient or cost effective than solutions proposed in a local plan, Section 31.2.2.4.2 provides that:

> [t]he ISO will review the Transmission Owners' LTPs, as they relate to BPTFs, to determine whether they will meet Reliability Needs, recommend an alternate means to resolve the needs from a regional perspective, where appropriate, or indicate that it is not in agreement with a Transmission Owner's proposed additions.[63]

Pursuant to Section 31.2.2.6, the NYISO considers alternate reliability scenarios, which test the robustness of the needs assessment studies and identify conditions where Reliability Criteria may not be met. The NYISO also performs sensitivity studies to determine whether Reliability Needs that have been previously identified can be mitigated through alternate system configurations or operational models. The RNA, including the determination of scenarios and sensitivities, is developed in consultation with all interested parties and is reviewed by NYISO's stakeholder committees, as provided in Section 31.2.3. The NYISO publishes a report that is reviewed by the Market Monitoring Unit ("MMU") which must be approved by the NYISO Board of Directors.

ii. Comprehensive Reliability Plan

Rules governing the CRP are set forth in Section 31.2.4. The CRP consists of proposed solutions to address the needs identified in the RNA. Pursuant to the CRP, the NYISO requests solutions to the identified needs, with the expectation that market-based solutions will be proposed to fulfill the needs. The NYISO analyzes market-based solutions to determine whether they are viable and fulfill identified Reliability Needs. Concurrently, the NYISO evaluates the viability and sufficiency of regulated backstop solutions and alternative regulated solutions that the NYISO can call upon where market-based solutions prove to be insufficient. Those analyses include the consideration of information regarding the project that must be submitted by the Transmission Owner, pursuant to Sections 31.2.4.3 (for regulated back-stop solutions), 31.2.4.4 (for market-based responses) and by any Other Developer pursuant to Section 31.2.4.7 (for alternative regulated solutions). As established in Section 31.2.5.1, the NYISO considers all types of solutions on a comparable basis, including generation, transmission and demand side programs. In the event that market-based solutions are inadequate to meet the identified Reliability Need(s) in a timely manner, the NYISO calls for the identification of regulated backstop solutions or alternative regulated solutions that can be built by the NYTOs or Other Developers, as needed.

[63] Note that the Filing Parties are proposing further compliance modifications to the Attachment Y LTPP provisions, as explained in section V.B.1 below, to ensure full compliance with this Order No. 1000 directive.

The NYISO evaluates all proposed solutions relative to their ability to meet the identified needs and sets forth the results of its evaluation in the CRP. However, if more than one regulated solution will meet an identified Reliability Need, the selection of the solution that will be implemented will be made by the appropriate governmental agency or authority, not the NYISO.[64] The NYPSC selects the reliability backstop solution or alternative regulated solution that would seek the necessary local, state, and federal authorizations, as appropriate, in the event that market-based solutions do not timely fulfill identified Reliability Needs.[65] The New York Power Authority and the Long Island Power Authority select solutions to needs of their customers under the New York Public Authorities Law.[66] All Confidential Information submitted pursuant to the reliability planning process is protected under Section 31.2.5.11.1, as appropriate.

As provided in Section 31.2.6, the evaluations of proposed solutions are incorporated into the CRP, which is subject to stakeholder and MMU review and comment and approval by the NYISO Board of Directors. The CRP's goal is to ensure the timely evaluation and planning of all proposed solutions to identified Reliability Needs. Pursuant to Section 31.2.5.7, the CRP sets forth the NYISO's determination whether the market based solutions proposed will timely meet the identified reliability needs by the need date, or whether the Responsible Transmission Owner[67] should proceed to obtain regulatory approval of a reliability backstop solution. The Responsible Transmission Owners and Other Developers will present their regulated reliability solutions in the stakeholder process at the same time.[68] The NYISO will provide analysis of alternative regulated solutions in parallel with NYTO regulated backstop solutions, and may determine that a regulated solution should proceed in parallel with a market based solution.[69] In the CRP or at any time, if the NYISO determines that there is an imminent threat to reliability on the BPTFs in between planning cycles, the NYISO may call for the Responsible Transmission

[64] The NYISO is including language to further clarify this point, as explained in Section V.C.2, below. The NYISO's process calls for Responsible Transmission Owners to select the regulated backstop solution to meet an identified Reliability Need, which may be a transmission, generation, or demand reduction project. The selection is filed with the NYPSC. Other developers may propose alternative regulated solutions to the NYPSC. It is the NYPSC which makes the ultimate determination of what project should be implemented in the public interest.

[65] Policy Statement on Backstop Project Approval Process, *Proceeding to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process*, Case No. 07-E-1507, (February 18, 2009).

[66] *See* N.Y. Pub. Auth. L. §§ 1005 (for NYPA) and 1020-G (for LIPA).

[67] A Responsible Transmission Owner is defined as "[t]he Transmission Owner or Transmission Owners designated by the ISO, pursuant to Section 31.2.4.2, to prepare a proposal for a regulated backstop solution to a Reliability Need or to proceed with a regulated solution to a Reliability Need. The Responsible Transmission Owner will normally be the Transmission Owner in whose Transmission District the ISO identifies a Reliability Need." *See* OATT Attachment Y § 31.1.1 Definitions.

[68] Attachment Y § 31.2.5.8.

[69] *Id*. at § 31.2.5.9.

Owner to submit and seek approval to implement a Gap Solution.[70] Any party may submit an alternative gap solution to the NYISO and the NYDPS for consideration at the same time and on the same basis as NYTO gap solutions.[71] Regulated NYTO backstop and alternative backstop solutions that are selected by the NYPSC and that are transmission projects are equally eligible for cost recovery under the NYISO's Tariff.[72] Such solutions that are not transmission (*i.e.*, generation or demand reduction), must obtain cost recovery under state law.[73] Where a dispute arises regarding the inclusion or exclusion of a solution, such disputes are referred to the NYPSC for resolution, as established in Section 31.2.6.3.

Order No. 1000 requires that transmission providers describe the process for reevaluating the transmission plan to determine if delays in development of a transmission facility would require reevaluation of alternative solutions "to ensure the incumbent transmission provider can meet its reliability needs or service obligations."[74] The purpose of the requirement is to ensure that adequate processes exist to determine whether delays of a selected transmission facility could potentially adversely affect a transmission provider's ability to meet its reliability needs or service obligations.[75]

In compliance with Order No. 1000, projects selected pursuant to the reliability planning process are monitored by the NYISO to ensure that they will be constructed in time to meet the identified Reliability Need. Section 31.2.7 provides for monitoring of projects and the actions the NYISO will take (including evaluation of alternative solution) to ensure that Reliability Needs will be met on a timely basis.[76] This includes provisions for:

- The halting of market-based or regulated backstop solutions, in Section 31.2.7.3.1;
- The monitoring of Responsible Transmission Owner solutions, even after submittal of applications for state regulatory approval or other necessary approvals, as required in Section 31.2.7.3.2;
- Enabling requests for supplemental reliability review, in the event of material modifications proposed by regulators to the regulated backstop solutions in Section 31.2.7.3.3;

[70] *Id*. at § 31.2.5.10. A Gap Solution is "[a] solution to a Reliability Need that is designed to be temporary and to strive to be compatible with permanent market-based proposals." *See* Attachment Y § 31.1.2.

[71] *Id*. at §31.2.5.10.4.

[72] *Id*. at § 31.5.1.1; OATT Rate Schedule 10.

[73] Attachment Y § 31.5.1.6.

[74] Order No. 1000 at P 329.

[75] *Id*.

[76] The NYISO is proposing compliance modifications in Section 31.2.7 to explicitly provide the monitoring criteria for selected projects, as explained in Section V.B.4.

- Enabling recovery of necessary and reasonable costs of a regulated backstop solution, or an alternative regulated reliability solution selected by the NYPSC to proceed, in the event regulatory approval is not obtained or is withdrawn, in Sections 31.2.7.3.4 and 31.2.7.3.6;
- Determining whether a market-based solution will be available to meet a Reliability Need on a timely basis in Section 31.2.7.4 and its subsections; and
- Allowing the NYISO to request a Gap Solution, in the event a market-based solution is viable but will be delayed beyond the Target Year, in Section 31.2.7.4.7.

The CRPP Manual[77] includes additional criteria to assess viability in Sections 2.2, 2.3, 2.4 and 2.5.[78] These criteria require the provision of updated information on an annual basis regarding the implementation schedule, including the status of site control, contract negotiations, interconnection milestones, permits, equipment procurement and financing information. The CRPP Manual also provides for periodic review of feasibility and a requirement that the NYISO make final determinations regarding viability and requires entities to inform the NYISO of material changes in the status of projects selected as solutions in the NYISO's transmission planning process. As further explained in Section V.B.4 below, the Filing Parties are adding the above information from the CRPP Manual to the Tariff to demonstrate full compliance with Order No. 1000.

c. Economic Planning Process

The NYISO's economic planning process is found in Section 31.3 of Attachment Y. As explained in Section 31.3.1.1, it is a two phase process that aligns with the reliability planning process, projecting congestion on the BPTFs over the CSPP's 10-year planning period. The economic planning process identifies, through the development of appropriate scenarios, factors that may produce or increase congestion, and identifies and evaluates projects to reduce such congestion. Phase I consists of the CARIS. Phase II is the specific project evaluation phase, which includes the evaluation of proposed transmission projects to relieve congestion and provide economic benefits.

Section 31.3.1.2 establishes that the CARIS is based on the most recently conducted CRP. It is composed of three congestion and resource integration studies representing the most congested pathways on the bulk power system, as identified by the NYISO in conjunction with its stakeholder committees. Individual interested parties may also request additional congestion studies at their expense.

[77] The Comprehensive Reliability Planning Process Manual explains and sets forth the procedures that the NYISO will use when performing its reliability planning process. *See* Comprehensive Reliability Planning Process Manual (December 17, 2007) *available at* <http://www.nyiso.com/public/webdocs/documents/manuals/planning/CRPPManual120707.pdf>.

[78] CRPP Manual at 2-3 to 2-10.

Section 31.3.1.3 explains how the CARIS is prepared. The CARIS identifies factors that may affect congestion, provides information on generic solutions that could reduce congestion, and compares the costs of generic solutions to net production cost savings over the 10-year planning period to determine if there is a favorable benefit/cost ratio to relieving congestion. The CARIS also evaluates additional metrics for informational purposes, including changes in load payments, installed capacity payments, transmission congestion contract ("TCC") payments and generator payments. As with the RNA, Market Participants, Developers and other parties provide the data necessary for developing the CARIS, pursuant to Section 31.3.1.4. The data provided includes: (i) existing and planned additions and modifications to the New York State Transmission System (to be provided by Transmission Owners and municipal electric utilities); (ii) proposals for merchant transmission facilities (to be provided by merchant Developers); (iii) generation additions and retirements (to be provided by generator owners and Developers); (iv) demand response programs (to be provided by demand response providers); and (v) any long-term firm transmission requests made to the ISO.[79] As explained in Section 31.3.1.7, the Phase I process culminates in the NYISO's preparation of a draft report that discusses its assumptions, inputs, and the results of the analysis. The CARIS Phase I report is reviewed in the NYISO stakeholder process, is evaluated by the NYISO's independent MMU, and must be approved by the NYISO Board of Directors.[80]

In Phase II, as provided in Section 31.3.2, the CARIS provides opportunities for developers to propose solutions for congestion. Under Section 31.3.2.1, the NYISO is required to actively solicit the input of its stakeholders through its stakeholder committees. In order to provide transparency, the NYISO completes a benefit/cost analysis for all types of solutions. The benefit/cost analysis of each potential solution is produced in coordination with stakeholders and uses an eligibility metric that evaluates the cost of the project compared to the total NYCA-wide production cost reduction that would result from any potential solution. If a developer proposes a transmission project the benefits of which exceed its costs over ten years from the date it is expected to enter service, costs at least $25 million, and the project receives a positive vote from at least 80 percent of the designated beneficiaries (determined on the basis of savings in zonal load payments) or LBMP, the costs of the project are eligible for recovery from beneficiaries through the NYISO's Tariff.[81] These analyses, the identification of project beneficiaries, and the calculation of the project cost allocation, are all reviewed in the stakeholder process and incorporated in a report that is approved by the Business Issues Committee, the Management Committee and that must be approved by the Board of Directors.[82]

[79] Attachment Y § 31.3.1.4.

[80] *See* Attachment Y § 31.3.2.2, Services Tariff Attachment O § 30.4.6.8.5.

[81] *See* Attachment Y §§ 31.5.4.3 and 31.5.4.6.

[82] *Id*. at § 31.3.2.

i. Stakeholder Concerns with Economic Planning Process

In the stakeholder process, LS Power expressed concerns regarding the NYISO's retention of the requirement that a project receive 80 percent approval by project beneficiaries in order to be selected as a solution to congestion identified in the CARIS.[83] LS Power believes that the Order No. 1000 requirement that all solutions be treated comparably requires the elimination of the 80 percent voting requirement. The existing process and voting requirement was accepted by the Commission under Order No. 890, the principles of which were incorporated into Order No. 1000. The Commission found the voting process to be "a useful check to ensure that a project has net benefits, by requiring that most of those whom the NYISO expects to benefit from a project agree that they actually will benefit."[84] The Commission also rejected arguments on rehearing that the voting process should be eliminated as discriminatory, holding that "voting mechanisms, such as NYISO's meet the Commission's expressed desire in Order No. 890-A that beneficiaries who must pay for projects should have the right to determine if other solutions are superior to economic projects."[85] Additionally, the NYISO's process, in compliance with the Commission's orders, provides for the submittal of informational reports regarding the results of each vote, the identified beneficiaries, the results of the benefit/cost analysis, and if vetoed, any information provided by the developer regarding the future development of the project.

Further, nothing in Order No. 1000 precludes the use of such voting mechanisms. In fact, Order No. 1000 clearly allows them, finding that:

> We leave it to each transmission planning region … to propose on compliance whether, and how to distinguish between types of transmission facilities…The Final Rule allows a public utility transmission provider through its participation in a transmission planning region to distinguish or not distinguish among these three types of transmission facilities, as long as each of the three types is considered in the regional transmission planning process and there is a means for allocating the costs of each type of transmission facility to beneficiaries….[W]e clarify that ***a regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities***.[86]

[83] LS Power also raised concerns with the current reliability planning process, as further explained in Section V.B.1.a.

[84] October 2008 Order at P 130.

[85] *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,320 at P 36 (2009); *see also New York Independent System Operator, Inc.*, 127 FERC ¶ 61,136 (2009).

[86] Order No. 1000 at P 689 (emphasis added).

2. The CSPP Complies with the Order No. 1000 Requirement that the Regional Planning Process Fully Comply with the Order No. 890 Transmission Planning Principles

Order No. 1000 holds that each regional transmission planning process must comply with the following Order No. 890 transmission planning principles: "Coordination," "Openness," "Transparency," "Information Exchange," "Comparability," "Dispute Resolution," and "Economic Planning."[87] The Commission has previously found that the NYISO's existing CSPP for local, reliability and economic planning complies with all of these principles, as further detailed below.[88] There is no reason to reconsider these findings now. Accordingly, the Commission should find that the CSPP fully complies with the Order No. 1000 directive that transmission providers have a regional transmission planning process that satisfies the Order No. 890 principles.

a. Coordination

The Order No. 890 coordination principle requires that the transmission planning process be developed on a nondiscriminatory basis, providing all interested parties an opportunity for full participation and meaningful input into the process.[89] The purpose of requiring coordination is to ensure that transmission providers, customers, affected systems, state authorities and other stakeholders engage in open communication with respect transmission to planning.[90] The NYISO's CSPP has been found fully compliant with the coordination principle.[91]

The NYISO CSPP provides multiple opportunities for interested parties to fully participate in the transmission planning process. As explained above, under the CSPP, the NYISO develops the RNA, CRP and CARIS in consultation with Market Participants. These processes require the NYISO to actively solicit and consider stakeholders' input on data and assumptions used. Specifically, Sections 31.2.2.2 (providing for interested party participation in the development of the RNA); 31.2.6.1 (providing for interested party participation in the development of the CRP); and 31.3.1.2.1 (providing for interested party participation in the development of the CARIS) achieve coordination of interested parties through meetings of the stakeholder TPAS and ESPWG. Interested parties at ESPWG and TPAS are able to review materials and provide input during key steps in the processes. Meeting notices and agendas are

[87] *Id*. at PP 146, 151.

[88] Compliance with these principles in the new Public Policy Requirements Planning Process is addressed in Section V.A, below.

[89] Order No. 890 at P 445.

[90] *Id*. at P 452.

[91] The Commission's October 2008 Order at P 35, October 2009 Order at P 22 and July 2010 Order at P 10 found that the NYISO's CSPP processes, as described above, fully complied with the Order No. 890 Coordination principle.

issued in advance of meetings, and stakeholders comment on the draft reports and on any issues raised.

The TPAS and ESPWG assist and provide input to the NYISO staff as it puts together all aspects of the RNA, CRP and CARIS, including: (1) development of reliability scenarios for the RNA, as provided in Section 31.2.2.5; (2) consideration of regulated backstop solutions and Alternative Regulated Solutions, as provided in Section 31.2.5.7; (3) the development and grouping of the studies contained in each CARIS, as provided in Section 31.3.2.2; (4) the development of a process by which individual parties may request additional congestion studies, as provided in Section 31.3.1.2.4; (5) the development of the baseline studies used in the CARIS, as provided in Section 31.3.1.3.2.; (6) the development of the specific production costing model used in the CARIS, as provided in Section 31.3.1.3.3; (7) the development of benefit/cost metrics to be used in the CARIS, as provided in Section 31.3.1.3.4; (8) the development of congestion and resource integration scenarios addressing the CARIS Study Period, as provided in Section 31.3.1.5 and (9) the development of additional metrics to be used by beneficiaries of economic upgrades in determining how to vote on such projects, as provided in Section 31.3.1.3.5.

The TPAS and ESPWG are also responsible for advising the NYISO Operating Committee ("OC") and the NYISO Business Issues Committee ("BIC"), which are stakeholder governance committees. The NYISO summarizes the input of TPAS and ESPWG participants and provides it to the OC or BIC for discussion and action. Specifically, Sections 31.2.3.1, 31.2.6.1, and 31.3.2.1 require that the draft RNA, CRP, and CARIS Phase I and CARIS project specific reports, respectively, will be submitted to TPAS and ESPWG for review and comment and such comments will be reflected in the drafts forwarded to the BIC and OC for action. The OC and the BIC discuss and vote on the reports, which are then provided to the NYISO Management Committee ("MC"), which is the highest stakeholder governance committee. The MC votes to approve the report to be presented to the independent NYISO Board of Directors, which is the ultimate decision maker. The NYISO Board of Directors can amend the RNA, CRP or CARIS Phase I or project specific reports, but its changes cannot be finally approved until after the NYISO Board of Directors considers MC comments on such amendments, pursuant to Sections 31.2.3.2, 31.2.6.2, and 31.3.2.2. The Board also reviews and approves the identification of beneficiaries, the benefit/cost analysis, and the calculation of cost allocation for specific economic transmission projects in CARIS Phase II.[92] Where there is disagreement with an MC action regarding plan development, members may appeal to the NYISO Board of Directors. Thus, interested parties are provided the opportunity to fully participate in the NYISO's regional transmission planning process, in compliance with the coordination principle.

As explained in Section V.A, below, the Filing Parties propose revisions to include a Public Policy Requirements planning process that contains the same provisions regarding participation and input by all interested parties in the governance process, and by the Board of Directors, and thus also fully complies with the coordination principle.

[92] Attachment Y § 31.5.4.5.1.

b. Openness

The openness principle requires that transmission planning meetings be open to all affected parties, including all transmission and interconnection customers and state authorities.[93] The Order No. 890 openness principle also required transmission providers to develop tariff provisions to manage concerns regarding disclosure of confidential information and Critical Energy Infrastructure Information ("CEII"). The Commission has found the NYISO's transmission planning process to be compliant with the openness principle.[94]

The CSPP includes a balanced stakeholder process providing all industry sectors, state regulators, and public interest and consumer groups the ability to fully participate in the regional transmission planning process. Interested parties are able to provide input on proposals advanced by the NYISO and its stakeholders. Further, Attachment Y Section 31.1.6 ensures that all interested parties have the ability to participate in the planning process through the ESPWG and the TPAS, providing that it is "open to any interested party, irrespective of whether that entity has become a party to the ISO Agreement" for purposes of the Attachment Y processes. The NYISO's Tariff also includes provisions to maintain the confidentiality of information as appropriate, including Section 31.2.5.11 and the NYISO's Code of Conduct in OATT Attachment F. Further, as explained in Section V.A, below, the Filing Parties propose revisions in its new Public Policy Requirements planning process, that contain the same provisions requiring openness and enabling participation by all interested parties throughout the process, which fully complies with the openness principle.

Additionally, since the NYISO's inception, Market Participants and other interested parties, as well as state agencies have actively participated in the NYISO's stakeholder process. The NYISO remains independent of all Market Participants and reports to its Board of Directors, so it does not have an incentive to exclude any group or stakeholder from the planning process.[95] The NYISO conducts public information sessions that provide exposure to the market place and all interested members of the public regarding the identified reliability and economic needs and the planning studies that are developed pursuant to the CSPP.[96]

[93] Order No. 890 at P 460.

[94] The Commission's October 2008 Order at P 41, October 2009 Order at P 1 found that the NYISO's CSPP processes, as described above, fully complied with the Order No. 890 Openness principle.

[95] *See, e.g., New York Independent System Operator, Inc.*, 133 FERC ¶ 61,072 at PP 26, 40 (2010) (finding that the NYISO's governance process complied with the Order No. 719 ongoing responsiveness requirement).

[96] Attachment Y §§ 31.2.3.4 and 31.3.2.3.

c. Comparability[97]

The comparability principle requires that "the interests of public utility transmission providers and similarly situated customers be treated comparably in regional transmission planning."[98] The Commission has found the NYISO's CSPP to be compliant with the comparability principle.[99]

Attachment Y contains multiple provisions and processes that mandate comparable treatment of all resource types in the CSPP. For example, Section 31.2.2.4 Market Participants provide data to the NYISO for the RNA, and such data is to encompass all resource types:

> [Market Participant] input will include but not be limited to … existing and planned additions to the New York State Transmission System (to be provided by Transmission Owners and municipal electric utilities); proposals for merchant transmission facilities (to be provided by merchant Developers); generation additions and retirements (to be provided by generator owners and Developers); demand response programs (to be provided by demand response providers); and any long-term firm transmission requests made to the NYISO.

Section 31.3.1.4 echoes this language in the context of proposals regarding resources to be considered in response to congestion identified in the CARIS. Additionally, Section 31.2.4.4 provides that "[a]t the same time that a proposal for a regulated backstop solution is requested from the Responsible Transmission Owner … the NYISO shall also request market-based responses from the market place. …Such responses will be open on a comparable basis to all resources including generation, demand response providers, and merchant transmission Developers."

Section 31.2.4.6.2 provides that, with respect to Alternative Regulated Responses, "Other Developers may develop alternative regulated proposals for generation, demand side alternatives, and/or other solutions to address a Reliability Need and submit such proposals to the NYISO." Section 31.2.5.1 states that "[w]hen evaluating proposed solutions to Reliability Needs, all resource types shall be considered on a comparable basis as potential solutions to the Reliability Needs identified: generation, transmission and demand response."[100] Sections 31.2.4.2.1 and

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[97] The Filing Parties provide a complete explanation regarding the NYISO's compliance with the Order No. 1000 requirement that all alternatives be considered on a comparable basis in Section IV.A.3, below.

[98] Order No. 1000 at P 153.

[99] The Commission's October 2008 Order at P 60, October 2009 Order at P 27 found that the NYISO's CSPP processes, as described above, fully complied with the Order No. 890 Comparability principle.

[100] As set forth below in Section V.B.3, the Filing Parties are also addressing stakeholders' concerns about the timing of consideration of all types of solutions – market based, regulated backstop,

31.2.5.10.1 provide that all types of resources will be considered as solutions to Reliability Needs.

Similarly, the NYISO's Comprehensive Reliability Planning Process Manual provides that proposed solutions, both for reliability and congestion, may include "[n]ew generation additions (large or small)," "[d]istributed generation," "[n]ew transmission projects," "[t]ransmission upgrades," "[d]emand-side response programs," "[o]perating procedure changes," and "[m]arket rule changes."[101] The manual states that the evaluation of all resources will be analyzed using the same models and procedures and the calculation and analyses will be consistent with the timing, type, and magnitude of the solution being evaluated.[102]

Also, any interested party is able to request that an additional reliability study be conducted to explore potential problems in the system based on its particular concerns.[103] Section 31.3.1.2.3 also allows customers to request and obtain individual congestion and resource integration studies. Additionally, in its economic and reliability planning processes, the NYISO treats all potential solutions to an identified need on a comparable basis. Sections 31.1.2, 31.1.4, 31.2.5.1, 31.3.1.3.3 all provided for comparable evaluation of all resource types submitted as solutions to both reliability and congestion needs. In the CARIS Phase I process, the NYISO analyzes the impact of generic transmission, demand response and generation projects on congestion.[104] However, the NYISO's Tariff provides cost allocation only for transmission solutions that are proposed as specific projects evaluated under the CARIS Phase II process to relieve congestion on the transmission system identified in the CARIS Phase I process.[105]

As explained in Section V.A below, the proposed Public Policy Requirement planning process also considers solutions proposed by any interested party on a comparable basis.

Further, the NYISO's independence ensures that it meets the comparability principle, because as an independent entity the NYISO does not have any affiliates or ownership of any assets within, or that do business with, New York's wholesale electric markets. The NYISO

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and alternative regulated solutions – by amending Section 31.2.5.1 to add the provision that "All solutions will be evaluated in the same general time frame."

[101] NYISO Comprehensive Reliability Planning Process Manual Section 7, at 7-1m 7-2 (December 07, 2007) *available at* < http://www.nyiso.com/public/webdocs/documents/manuals/planning/CRPPManual120707.pdf> (CRPP Manual").

[102] *Id*.

[103] *See Procedure for Study Replication* (draft dated 7/14/2010) *available at* <http://www.nyiso.com/public/webdocs/committees/bic/meeting_materials/2010-07-14/Agenda_09_Procedures_for_Study_Replication_BIC_71410.pdf>.

[104] Attachment Y, § 31.3.1.3.3.

[105] Attachment Y, §31.5.4.1.

reports to an independent Board of Directors and has a balanced stakeholder governance process. The NYISO has no incentive to give preferential treatment to any of its Market Participants. Any interested party is able to remain apprised of and provide input into the NYISO's regional transmission plan.[106]

d. Transparency

The transparency principle requires disclosure to all customers and stakeholders, of the basic methodology, criteria, assumptions, and data used to develop transmission plans.[107] Such methodology, criteria and processes, including how native retail loads are treated, must be reduced to writing and made available to stakeholders. In order for a transmission process to meet this principle, sufficient information must be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies. The purpose is to reduce the incidence of after the fact disputes regarding studies allegedly being conducted in a non-discriminatory fashion. The Commission found the NYISO's CSPP to be compliant with the transparency principle.[108]

The NYISO's Attachment Y provides that all information be made available to Market Participants and other interested parties through the ESPWG and TPAS committees. The NYISO also provides data, with appropriate confidentiality measures in place, to stakeholders as requested. NYISO's planning manuals also provide the objectives and outline the procedures and criteria for development of market based, regulated backstop and alternative regulated solutions. The CRPP manual provides the process for submission of data inputs to the NYISO and the drafting review and approval process for the studies.[109]

Attachment Y Section 31.2.3.1 further provides that "[t]he NYISO shall make available to any interested party sufficient information to replicate the results of the draft RNA." Sections 31.2.6.1 and 31.3.2.1 contain parallel provisions providing that that data needed to replicate the CRP and CARIS results will be made publicly available. Also, as explained in Section V.A below, the proposed Public Policy Requirements planning process requests provides stakeholders sufficient information to replicate the studies conducted in that process consistent with the NYISO's policy to protect confidential information and CEII, and thus meets these principles.

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[106] *See, e.g.*, *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,072 at PP 26, 40 (2010) (finding that the NYISO's governance process complied with the Order No. 719 ongoing responsiveness requirement).

[107] Order No. 890 at P 471.

[108] The Commission's October 2008 Order at P 48, October 2009 Order at P 1 found that the NYISO's CSPP processes, as described above, fully complied with the Order No. 890 Transparency principle.

[109] CRPP Manual at Section 5.

e. Information Exchange

The information exchange principle requires that a transmission provider obtain data on projected loads and resources from network customers[110] on a comparable basis, as used by transmission providers in planning for their native load.[111] To comply with the information exchange principle, transmission providers must develop guidelines and schedules for information submittal. The information should include data on existing and planned demand resources and their impacts on demand and peak demand, as well as information regarding the use of demand resources. Customers can only be required to provide cost information for transmission and generation facilities regarding economic planning studies requested by the customer and the information must be kept confidential. The Commission has found that the NYISO's CSPP complies with the information exchange principle.[112]

Attachment Y requires that the NYISO gather and share data and assumptions to be used in the development of RNA, CRP and CARIS. For example, Section 31.2.2.3.5 provides that the NYISO will develop the system representation for the RNA using public data inputs. The RNA is developed in consultation with Market Participants and requires that Market Participants, developers and other parties provide necessary data.[113] Further, Section 31.2.2.4.2 requires that the NYTOs submit LTPs and include the LTPs as part of the inputs into the RNA. Market Participants also provide input that is used to develop alternate reliability scenarios.[114] Section 31.2.4.4 requires the NYISO and the appropriate transmission owner(s) to assist any party in developing a market-based solution or an alternative regulated solution to a reliability need by providing "any party who wishes to develop such a response access to the data that is necessary to develop its response."[115]

Section 31.3 contains similar provisions requiring the same level of information exchange for the analysis conducted to produce the CARIS.[116] Market Participants are also able to request

[110] Note that the NYISO's system is not limited to network customers. Under the NYISO's financial reservation model, locational marginal pricing is used to manage congestion and to operate bid-based spot markets. This allows customers more flexibility, and allows for greater use of the transmission system, than is possible under the *pro forma* Network Integration Transmission Service. While the NYISO tariff contains the *pro forma* Network Integration Transmission Service provisions, the NYISO does not have network customers because no Market Participant has ever requested such service under the NYISO OATT.

[111] Order No. 890 at P 486.

[112] October 2008 Order at P 55.

[113] *See* Attachment Y Section 31.2.2.4.1.

[114] *See id*. at § 31.2.2.5.

[115] *See also id*. at § 31.2.4.6.2

[116] *See id*. at §§ 31.3.1.2.1 and 31.3.1.2.2 (regarding Interested party Participation in the Development of the CARIS), 31.3.1.4 (Planning Participant Data Input), and 31.3.1.5 (Congestion and Resource Integration Scenario Development).

and fund individual congestion and resource integration studies pursuant to Sections 31.3.1.2.1 and 31.3.1.2.2 (regarding Interested party Participation in the Development of the CARIS), 31.3.1.4 (Planning Participant Data Input), and 31.3.1.5 (Congestion and Resource Integration Scenario Development). Additionally, as explained in V.A below, the proposed Public Policy Requirements planning process provides for Market Participant and other party input and is developed in consultation with stakeholders.

f. Dispute Resolution

The dispute resolution principle requires transmission providers to identify a process to manage disputes arising from the transmission planning process that addresses both procedural and substantive planning issues.[117] The Commission has found the NYISO's CSPP to be compliant with the dispute resolution principle.[118]

Section 31.1.7.4 of Attachment Y provides that:

> [t]he ISO Procedures shall facilitate the timely identification and resolution of all substantive and procedural disputes that arise out of the CSPP. Any party participating in the CSPP and having a dispute arising out of the CSPP may seek to have its dispute resolved in accordance with ISO governance procedures during the course of the CSPP. If the party's dispute is not resolved in this manner as a part of the plan development process, the party may invoke formal dispute resolution procedures administered by the ISO that are the same as those available to Transmission Customers under Section 11 of the ISO Market Administration and Control Area Services Tariff. Disputes arising out of the LTPP shall be addressed by the LTP DRP set forth in Section 31.2.1.3 of this Attachment Y.

Further, actions taken by the MC in the NYISO's RNA, CRP and CARIS processes (and Public Policy Requirements planning process, as described in Section V.A below) are appealable to the NYISO Board of Directors. Minority opinions on LTP projects at the OC are reported to the MC and the Board of Directors. Any disputes not resolved through the planning development processes will be governed by the dispute resolution procedures contained in the Services Tariff.

g. Economic Planning

Order No. 890 required transmission providers to account for economic, as well as reliability, considerations in the transmission planning process.[119] Transmission providers are

[117] Order No. 890 at P 501.

[118] The Commission's October 2008 Order at P 64, March 2009 Order at P 43, and October 2009 Order at P 1 found that the NYISO's CSPP processes, as described above, fully complied with the Order No. 890 Dispute Resolution principle.

[119] Order No. 890 at P 479.

required to provide customers the opportunity to obtain studies that evaluate potential upgrades or other investments that could reduce congestion or integrate new resources and loads on an aggregated or regional basis. The Commission has found the CSPP economic planning process to be fully compliant with the economic planning principle.[120]

The CARIS Phase I process consists of a series of three congestion and resource integration studies of the most congested transmission corridors in the New York system, and measures the cost of congestion as the change in bid production costs resulting from transmission congestion as the principal metric. The Phase I process considers all resource types on an equal footing and the economic planning activities are performed under the CARIS. The CARIS Phase I report provides the results of congestion integration scenarios, examining variables such as load forecast uncertainty, fuel price uncertainty, new resources, retirements, emissions data and the cost of allowances, and potential requirements imposed by proposed environmental and energy efficiency mandates. This report is posted on the NYISO website and provides information to assist developers in the preparation of proposals for consideration as economic transmission projects for cost allocation under the NYISO Tariff.

The NYISO's economic planning process encourages Market Participants to develop, on a voluntary basis, projects to reduce transmission congestion. Specifically, Section 31.3.1.2.3 provides the process by which customers can request and fund congestion and resource integration studies, in addition to those included in the CARIS Phase I Report.

As described above, CARIS Phase II provides opportunities for developers to propose transmission solutions to congestion on the NYISO system for purposes of cost allocation. If a developer proposes a transmission project that has a favorable benefit-cost ratio, costs at least $25 million, and the project receives a positive vote from at least 80 percent of the designated beneficiaries, the costs of the project are eligible for recovery from beneficiaries through the NYISO's tariff.

3. The NYISO's CSPP Complies with the Requirement that All Alternatives Be Considered on a Comparable Basis

Order No. 1000 requires "the comparable consideration of transmission and non-transmission alternatives in the regional transmission planning process" but does not prescribe minimum requirements regarding metrics or which alternatives should be considered.[121] Order No. 1000 explains that the comparability principle requires comparable treatment of non-transmission alternatives.

As explained in Section IV.A.2.c above, the NYISO's CSPP has been found to be compliant with the Order No. 890 comparability principle. Specifically, Sections 31.1.2, 31.1.4,

[120] The October 2008 Order at P 77 found that the NYISO's CSPP processes, as described above, fully complies with the Order No. 890 Economic Planning requirements.

[121] Order No. 1000 at P 155.

31.2.5.1 and 31.3.1.3.3 require that the NYISO evaluate all resource types submitted as solutions to reliability needs on a comparable basis.[122] Section 31.2.4.4 provides that "the NYISO shall also request market-based responses from the market place. … Such responses will be open on a comparable basis to all resources, including generation, demand response providers, and merchant transmission Developers." Section 31.2.4.6.2 provides that the NYISO will consider "alternative regulated proposals for generation, demand side alternatives, and/or other solutions to address a Reliability Need." Therefore, the NYISO's CSPP complies with this requirement.[123]

4. The NYCA Is an Established Planning Region for Purposes of Order No. 1000

Order No. 1000 declined to revisit the size and scope of planning regions established for purposes of Order No. 890.[124] The Commission defines a planning region as "one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate in for purposes of regional transmission planning and development of a single regional transmission plan."[125] The Commission further explained that existing regional processes should provide guidance regarding the formulation of transmission planning regions and that "the scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions."[126]

The CSPP produces a regional transmission plan for the NYCA "planning region." The NYCA is a planning region where the NYISO, as the transmission provider, as well as affected state entities and stakeholders, participate in the CSPP for purposes of regional transmission planning and development of a regional transmission plan. The NYCA is an integrated region with its own unique reliability and resource issues, and coordinates its planning with neighboring regions in New England, PJM and Canadian provinces, and thus meets the Order No. 1000 definition of a "planning region". Further, as acknowledged by Order No. 1000,[127] ISOs and RTOs already engage in transmission planning for their planning regions. Thus the NYISO's Tariff complies with this requirement.

[122] Again, cost allocation is provided only for transmission projects offered to address transmission congestion. Attachment Y, §31.5.4.1.

[123] As further explained in Section V.A below, the proposed Public Policy Requirement process also fully complies with this requirement.

[124] Order No. 1000 at P 160.

[125] *Id.*

[126] *Id.*

[127] *Id.* at P 420.

5. The NYISO's CSPP complies with Order No. 1000's Directives Regarding Merchant Developer Participation in the Regional Transmission Planning Process

Order No. 1000 states that developers of merchant transmission projects (*i.e.*, projects "for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates") should not be prohibited from participating in the regional transmission planning process.[128] However, where such a developer does not seek to use the regional cost allocation process, it does not have to participate in the regional transmission planning process.[129] The Commission also directed that transmission providers require merchant developers to "provide adequate information and data to allow public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region."[130] The Commission left the actual requirements up to the discretion of the individual transmission providers in consultation with their stakeholders.[131]

The NYISO's CSPP requires merchant transmission developers to provide such data. Attachment Y Section 31.2.2.4.1 provides that

> [a]t the NYISO's request, Market Participants, Developers, and other parties shall provide … the data necessary for the development of the RNA. This input will include but not be limited to …proposals for merchant transmission facilities (to be provided by merchant Developers).

In addition, under Sections 31.2.4.5 and 31.2.4.7, any submission of a solution must include:

> (1) evidence of a commercially viable technology, (2) a major milestone schedule, (3) evidence of site control, or a plan for obtaining site control, (4) the status of any contracts … that are under negotiation or in place, (5) the status of any interconnection studies and an Interconnection Agreement, (6) the status of any required permits, (7) the status of equipment procurement, (8) evidence of financing, and (9) any other information requested by the NYISO.

Further, any merchant transmission project that seeks to interconnect to the NYISO region must comply with the interconnection and other procedures in Attachments S, X or Z of

[128] *Id*. at P 119.

[129] *Id*.

[130] *Id*. at P 164.

[131] *Id*.

the OATT. Those procedures require the submittal of information and the completion of studies that assess potential reliability and operational impacts of interconnecting facilities.[132]

B. The NYISO's Existing CSPP Already Complies with Many Order No. 1000 Directives on Non-Incumbent Transmission Developers

1. Rights of First Refusal

Order No. 1000 directs the removal of any provisions granting a federal "right of first refusal" ("ROFR") to construct facilities selected in regional transmission planning processes from Commission-jurisdictional tariffs and agreements.[133] Order No. 1000 found that unless existing ROFR provisions are eliminated, a regional transmission planning process cannot be in compliance with the principle of openness.[134] The Commission requires that nonincumbent developers of a facility selected in a regional transmission plan be provided the ability to allocate the costs of such facilities through a regional cost allocation method.[135] Order No. 1000 defines a "nonincumbent transmission developer" as: "(1) [a] transmission developer that does not have a retail distribution service territory or footprint; and (2) a public utility transmission provider that proposes a transmission project outside of its existing retail distribution service territory or footprint, where it is not the incumbent for purposes of that project."[136]

Order No. 1000 emphasizes that it "does not … require removal from Commission-jurisdictional tariffs and agreements a federal right of first refusal as applicable to a local transmission facility."[137] The Commission defines a local transmission facility as "a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation."[138] The Commission further clarified that the elimination of ROFR provisions does not "remove or limit any right an incumbent may have to build, own and recover costs for upgrades to the facilities owned by an incumbent, nor does this Final Rule grant or deny transmission developers the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are selected in the regional transmission plan for purposes of cost allocation."[139]

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[132] *See* OATT Attachment S at Section 25.1.1 (stating that the intent of the interconnection rules is "that each Developer be held responsible for the net impact of the interconnection of its project on the reliability of the New York State Transmission System.").

[133] Order No. 1000 at PP 225, 313.

[134] *Id*. at P 229.

[135] *Id*.

[136] *Id*. at P 225.

[137] *Id*. at P 318.

[138] *Id*. at P 63.

[139] *Id*. at P 319.

The NYISO's Tariffs do not contain any ROFR provisions. They specifically allow for any developer to submit proposals for transmission reliability solutions, as well as economic transmission projects. Sections: (1) 31.2.4.4 - provides for the submission of market-based responses for reliability needs submitted by all interested participants; (2) 31.2.4.6 and 31.2.5 – provide for the submission of alternative regulated responses to identified Reliability Needs, which are evaluated by the NYISO on the basis and in the same general time frame as NYTO regulated backstop solutions; (3) 31.3.2.4 and 31.5.4 - any Developer may make an actual project proposal for an economic transmission project to alleviate congestion; and (4) 31.3.1.3.3 - provides that for identified economic considerations "[a]ll resource types shall be considered on a comparable basis as potential solutions to the congestion identified: generation, transmission, demand response", although only transmission projects may recover their costs through the NYISO Tariff; other project types may obtain recovery under state law.[140] The NYISO Tariffs are thus already in compliance with this Order No. 1000 directive.

C. The NYISO's CSPP Already Satisfies Most of Order No. 1000's Directives on Cost Allocation for Regional Transmission Planning, including the Regional Cost Allocation Principles

Order No. 1000 also requires public utility transmission providers to include a method or methods for cost allocation of new transmission facilities that were selected pursuant to the regional transmission plan.[141] To achieve those goals, Order No. 1000 states that the cost allocation methods were designed to "work in tandem with the transmission planning requirements … to identify more appropriately the benefits and the beneficiaries of new transmission facilities so that transmission developers, planners and stakeholders can take into account in planning who would bear the costs of transmission facilities, if constructed."[142] Cost allocation principles are necessary, because "existing cost allocation methods may not appropriately account for benefits associated with new transmission facilities and, thus, may result in rates that are not just and reasonable or are unduly discriminatory or preferential."[143] Order No. 1000 allows transmission providers to develop different cost allocation methodologies for different types of transmission facilities. Order No. 1000 does not address cost recovery.

The CSPP already includes provisions providing for cost allocation of regulated reliability and economic solutions[144] that comply with the Order No. 1000 cost allocation

[140] Attachment Y, § 31.5.4.1. As explained in section V.A.3 below, the proposed Public Policy Requirements planning process also complies with this requirement.

[141] Order No. 1000 at PP 482, 550, 558-559.

[142] *Id*. at P 483.

[143] *Id*. at P 487.

[144] As further explained in section V.B below, the proposed Public Policy Requirements planning process also complies with these principles.

principles. With respect to regulated reliability solutions, Section 31.5.3 of Attachment Y provides a cost allocation methodology that contains a three-step approach that focuses on whether there is a locational, statewide, or a bounded region need. Step one focuses on those areas within the NYCA that have Locational Capacity Requirements for Installed Capacity (*i.e.*, New York City and Long Island) ("LCR Zones"). The costs of upgrades in LCR Zones are allocated to Load Serving Entities ("LSEs") in those zones. In step two, the NYISO runs its reliability simulation model with all internal transmission constraints relaxed to determine whether an unconstrained NYCA would have a Loss of Load Expectation of less than 0.1 days per year. If not, the reliability upgrades necessary to meet the threshold are allocated to all Load Zones based on their coincident peak load contribution. LCR Zones receive credit for meeting their location capacity requirements under this calculation. If the reliability simulation shows that there are no Reliability Needs, step three requires the application of a binding interface test. This test identifies binding transmission constraints that are preventing the deliverability of capacity throughout the NYCA and allocates costs accordingly. Cost recovery occurs upon completion of the project, with the filing by the NYISO, the relevant NYTO or Other Developer providing final project cost information and the resulting revenue requirement using the formula established in OATT Rate Schedule 10.

The cost allocation methodology for regulated economic transmission projects in Section 31.5.4.3.5 provides that projects will be eligible for cost recovery where they meet the following thresholds: (1) the benefits must exceed the costs; (2) the total capital cost of the project must exceed $25 million; (3) a supermajority of the project's beneficiaries support the project; and (4) the Commission approves the project's costs as just and reasonable. Cost allocation among beneficiaries is based on relative economic benefit apportioned according to zonal load savings.

Order No. 1000 requires the cost allocation method or methods to satisfy the following six regional cost allocation principles.[145] As explained in the following subsections, the NYISO's Tariff is already compliant with many of these principles for its existing reliability and economic planning processes. Where enhancements to the NYISO's process were necessary, the Filing Parties propose additional tariff modifications to come into full compliance with the cost allocation principles, in Section V.C.4 below. The cost allocation provisions for transmission needs driven by Public Policy Requirements will be addressed below in Section V.A.3.

1. Regional Principle #1

Regional Principle #1 provides that

> The cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities,

[145] Order No. 1000 at PP 550, 586.

> individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting public policy requirements established by state or federal laws or regulations that may drive transmission needs.[146]

Attachment Y provides definite, clear, and fair cost allocation rules that utilize a "beneficiaries pay" methodology. Specifically, Sections 31.5.3.2 and 31.5.4.4 provide for costs to be allocated only to entities that benefit from the implementation of a project. Beneficiaries are determined using the specific methodologies that are explained further in the section addressing Principle #6 below.

The Commission's October 2008 Order[147] and October 2009 Order[148] found that the NYISO's cost allocation processes properly allocated the costs of projects using a beneficiaries pay methodology. Therefore, the NYISO's existing OATT is compliant with Regional Principle #1.

2. Regional Principle #2

Regional Principle # 2 requires that: "those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated the costs of those facilities." [149] The Commission accepted tariff provisions[150] in Attachment Y Section 31.5.4.4.3 providing that "Load zones not benefiting from a proposed RETP will not be allocated any of the costs of the project under this Attachment Y. There will be no 'make whole' payments to non-beneficiaries." Further, pursuant to the cost allocation process for economic projects, only where a project provides a benefit to entities and where those entities by a super majority vote to approve the project (see Section 31.5.4.6), are such project's costs allocated. Therefore, the NYISO's existing OATT is compliant with Regional Principle #2.

3. Regional Principle #3

Regional Principle # 3 requires that:

> If a benefit to cost threshold is used to determine which facilities have sufficient net benefits to be included in a regional transmission plan for the purpose of cost allocation, it must not be so high that facilities with significant positive net benefits are excluded from cost allocation. A transmission planning region or public utility transmission provider may want to choose such a threshold to account for uncertainty

[146] *Id*. at PP 550, 586.

[147] *See* October 2008 Order at PP 91, 110.

[148] *See* October 2009 Order at P 67.

[149] Order No. 1000 at PP 550, 586.

[150] *See* October 2008 Order at P 105, October 2009 Order at P 49.

> in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies and the Commission approves a greater ratio. [151]

The Filing Parties submit that they meet this principle because economic projects are eligible for cost allocation through the NYISO Tariff simply if the benefits of a project exceed its costs. There is no threshold requirement in the NYISO Tariff. The NYISO evaluates proposed economic projects to determine if their benefits over a ten-year period exceed their costs over the same ten-year period.[152] The benefit metric is "expressed as the present value of the annual NYCA-wide production cost savings that would result from the implementation of the proposed project, measured for the first ten years from the proposed commercial operation date for the project."[153] To be eligible for cost allocation and recovery under the Tariff, "the benefit of the proposed project must exceed its cost measured over the first ten years from the proposed commercial operation date for the project."[154] To the extent that the NYISO's Tariff is interpreted as providing for a ratio, it would be expressed as a ratio of benefits to costs of 1.0, which is below the Commission's maximum ratio of 1.25 and, therefore, complies with Regional Principle #3.

4. Regional Principle #4

Regional principle #4 requires that:

> The allocation method for the cost of a regional facility must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if there is an agreement for the original region to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the entities in the original region.[155]

Attachment Y allocates costs of reliability and economic transmission solutions solely to entities within the NYISO's transmission planning region. The NYISO's CSPP currently does not contain provisions allowing for the allocation of costs of projects to entities outside of the NYCA.

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[151] Order No. 1000 at PP 550, 586.

[152] Attachment Y § 31.5.4.3.1.

[153] *Id*. at § 31.5.4.3. 2.

[154] *Id*. at § 31.5.4.3.5.

[155] Order No. 1000 at PP 550, 586.

With respect to the requirement to identify consequences in neighboring regions and the potential allocation of costs for upgrades in such region, the Filing Parties will coordinate these issues with the neighboring regions and will address these issues in the interregional transmission planning compliance filing due in April 2013.

5. Regional Principle #5

Regional principle # 5 requires that:

> The cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.[156]

Attachment Y, and the various studies conducted under it, provide transparent information on the methodology and data requirements for determining benefits and identifying beneficiaries. The NYISO provides sufficient information for stakeholders to determine how such methodologies and requirements were applied to any proposed projects. Specifically, the following Attachment Y Sections provide for the methodology used to determine benefits and identify beneficiaries:

- 31.5.3.1 - provides the cost allocation principles that will apply to the methodology and criteria for regulated transmission projects proposed in response to identified Reliability Needs;

- 31.5.3.2 - provides the cost allocation methodology for regulated transmission reliability projects, including the formula to be used;

- 31.5.4.2 - provides the cost allocation principles that will apply to the methodology and criteria for regulated economic transmission projects proposed in response to identified congestion issues;

- 31.5.4.4 - provides the specific methodology to be used for cost allocation of regulated economic projects, including the criteria for beneficiary selection and the formula to be used for cost allocation.

Further, Attachment Y provides that all of the studies produced pursuant to the CSPP are published and available to all interested parties.[157] The Commission has found the NYISO's Attachment Y provisions provide stakeholders with adequate information regarding data and

[156] *Id.*

[157] As explained in Section V.A, below, the proposed Public Policy Requirements planning process also complies with this principle.

methodology.[158] Therefore, the NYISO's existing OATT is compliant with Regional Principle #5.

6. Regional Principle #6

Regional principle # 6 requires that:

> A transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional plan, such as transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements established by state or federal laws or regulations. Each cost allocation method must be set out clearly and explained in detail in the compliance filing for this Final Rule.[159]

Attachment Y currently establishes separate Commission-approved cost allocation methods for reliability and economic project cost allocation. The Filing Parties submit that the relevant tariff Sections in Attachment Y Sections 31.5.3 (providing a detailed cost allocation methodology for regulated reliability solutions) and 31.5.4 (providing a detailed cost allocation methodology for regulated economic projects) comply with the requirement that the cost allocation methods "be set out clearly and explained in detail."

For regulated transmission projects, the NYISO's Attachment Y allocates costs using a "beneficiaries pay" approach. Sections 31.5.3.1 and 31.5.3.2 contain the cost allocation principles and methodology for regulated transmission solutions to reliability needs. These Sections use methodologies that are consistent with a compensatory MW approach and with cost allocation mechanisms in the NYISO markets. The methodology is based on a three-step approach that focuses on whether there is a locational need, a statewide need, or a bounded region need. The needs are determined through a reliability standard requiring sufficient resources to ensure that the NYCA has a Loss-of-Load-Expectation of less than 0.1 days per year. The methodology has three steps. Step one focuses on areas that have Locational Capacity Requirements for installed capacity. Any upgrades needed to satisfy Locational Capacity Requirements are allocated solely to LSEs in those zones. Step two runs the NYISO's reliability model with all transmission constraints relaxed. If a need is identified, costs will be allocated to all load zones based on their contribution to the need. If no needs are identified in step two, step three applies a binding interface test. Compensatory MWs are allocated to any applicable bounded regions based on NYCA coincident peak loads.

As described above, for regulated economic projects, cost allocation and recovery are available where "the benefit of the proposed project must exceed its cost measured over the first ten years from the proposed commercial operation date for the project.[160] The total capital cost

[158] *See* October 2008 Order at PP 48, 55 and October 2009 Order at P 1.

[159] Order No. 1000 at PP 550, 586.

[160] *See* Attachment Y at Section 31.5.4.3.

of the project must exceed $25 million.[161] Additionally, cost allocation is available when a super majority of the project beneficiaries vote to support the project.[162] Costs are allocated among beneficiaries based on the relative economic benefit received by each beneficiary.[163] Commission approval of a project's cost is required in order for such project to recover its costs under Attachment Y. Section 31.5.4.2 provides the process for identification of project beneficiaries. Beneficiaries are identified using the present value and annual LBMP load savings for all load zones which have such savings, net of reductions in transmission congestion credit payments and bilateral contracts as a result of the implementation of the project.[164] Beneficiaries are those load zones that experience net benefits over the first ten years from the project's proposed commercial operation date.[165] Each load zone that experiences a benefit is allocated costs to its zone based on share of total savings.[166] Within zones, costs are allocated based on each load's MWh of consumption.[167]

D. Participation by Non-Public Utilities Subject to FERC's Reciprocity Provisions

In Order No. 1000, the Commission held that non-public utility providers subject to a reciprocity tariff "must ensure that the provisions of that tariff substantially conform, or are superior, to the *pro forma* OATT as it has been revised by this Final Rule."[168] The Commission, however, declined to invoke its authority under Section 211A of the FPA to require such transmission providers to modify such tariffs, finding that it "remains up to each non-public utility transmission provider whether it wants to maintain its safe harbor status by meeting the transmission planning and cost allocation requirements" of Order No. 1000.[169]

While the relevant non-public utility providers within the NYISO's planning region are not subject to a reciprocity tariff, they fully participate in the NYISO's planning processes.

V. PROPOSED COMPLIANCE TARIFF MODIFICATIONS

As explained above, the NYISO's CSPP already complies with many of Order No. 1000's regional transmission planning directives. However, the Filing Parties have identified

[161] *Id*.

[162] *See id*. at § 31.5.4.3.5.

[163] *See id*.

[164] *See id*. at § 31.5.4.4.2.1.

[165] *See id*. at § 31.5.4.4.2.2.

[166] *See id*. at § 31.5.4.4.4.

[167] *See id*.

[168] Order No. 1000 at P 815.

[169] *Id*. at P 816.

certain tariff modifications that are required to ensure full compliance, as further described below. The most significant revisions concern the NYISO's proposed addition of a Public Policy Requirements planning process in Section 31.4 of OATT Attachment Y.[170] The Filing Parties submit these compliance modifications and request that the Commission accept them without additional modification, as further explained below.

A. Public Policy Requirements

Order No. 1000 directed that local and regional transmission plans consider transmission needs driven by Public Policy Requirements.[171] Specifically, Order No. 1000 directed "public utility transmission providers to amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes."[172] In compliance with Order No. 1000, the Filing Parties are proposing tariff revisions to introduce a new Public Policy Requirements planning process. The Public Policy Requirements planning process was developed in consultation with the NYISO's stakeholders, including the New York Public Service Commission ("NYPSC") and the New York State Department of Public Service ("NYDPS").[173]

The new Public Policy Requirements planning process is set forth at Section 31.4[174] and the associated cost allocation methodology is set forth in Section 31.5.5. Section 31.4 provides the processes that the NYISO will use to comply with the requirement that it "identif[y] … transmission needs driven by Public Policy Requirements" and "evaluat[e] … potential solutions to meet those needs."[175] The Public Policy Requirements planning process is a comprehensive planning process that fully complies with the Order No. 1000 directives. Each Public Policy Requirements planning cycle will begin following completion of the reliability planning process in each two-year reliability and economic planning cycle. Should the process not identify any Public Policy Requirements driving transmission needs, it will be considered complete until the next two-year planning cycle, unless the NYPSC requests the NYISO conduct an analysis of transmission needs driven by such requirements in the interim.[176] The Filing Parties believe that the changes described herein comply with the Order No. 1000 directives regarding the Public

[170] Note that 31.4 previously contained the tariff provisions regarding cost allocation. The cost allocation, and subsequent, sections have been moved and renumbered as appropriate.

[171] Order No. 1000 at P 68.

[172] *Id*. at P 203.

[173] The New York Public Service Commission is the decision-making body that resides in the New York State Department of Public Service, which is a state agency. The staff of the NYDPS also serves as the staff of the NYPSC. N.Y. Pub. Serv. L. §§ 3-4.

[174] The Public Policy Requirements planning process replaces the current Section 31.4, which has been moved to Section 31.5. All subsequent sections have been renumbered accordingly.

[175] Order No. 1000 at P 205.

[176] Attachment Y, §§ 31.4.2.1, 31.4.1.

Policy Requirements planning process. As with the NYISO's existing reliability and economic planning processes, the Public Policy Requirements planning process comports with the core principles identified by the Commission in Order No. 1000, including the Order No. 890 principles.

The NYISO's Public Policy Requirements process will provide for the identification, evaluation of, and the cost allocation methodology for, selection of transmission solutions to address transmission needs driven by Public Policy Requirements. The Public Policy Requirements planning process fully complements the existing Commission-approved reliability and economic planning processes and will encourage both incumbent and non-incumbent transmission developers to advance transmission construction proposals in response to identified needs driven by Public Policy Requirements.

As explained in further detail below, the proposed Public Policy Requirements planning process establishes that, consistent with New York State law, the NYPSC has the primary responsibility for the identification of transmission needs driven by Public Policy Requirements. The NYPSC is also the entity that determines which proposed transmission solutions should seek the necessary local, state, and federal authorizations for construction and operation. The NYISO's role is to provide the NYPSC with the data and analyses necessary to fulfill those tasks, as well as to solicit and receive the input of its stakeholders on proposed transmission needs driven by Public Policy Requirements and potential solutions to those needs.

1. Definition of Public Policy Requirement

The Filing Parties propose a new term to be added to Attachment Y of the NYISO OATT: "Public Policy Requirements" which is defined as:

> A federal or New York State statute or regulation, including a NYPSC order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act, or any successor statute, that drives the need for expansion or upgrades to the New York State Bulk Power Transmission Facilities.

The Public Policy Requirement definition includes the term "NYPSC Orders adopting rules or regulations" because they constitute state rules and regulations with the force of law in New York State.[177] Pursuant to this definition, only NYPSC Orders adopting a rule or regulation in accordance with the New York State Administrative Procedure Act can define a Public Policy Requirement. This definition does not allow a Public Policy Requirement to be defined in a NYPSC order issued in an adjudicatory or licensing permitting proceeding. This limitation provides that the Public Policy Requirements are identified pursuant to a rule of general application intended to establish statewide policy. The State Administrative Procedure Act provides notice and an opportunity to be heard to interested parties and affected entities regarding consideration of potential Public Policy Requirements in New York.

[177] N.Y.A.P.A. § 102(2)(a)(i) and (ii).

a. Stakeholder Concerns with the Proposed Definition of the Term "Public Policy Requirements"

In the stakeholder process, some stakeholders expressed concern with the proposed definition of "Public Policy Requirement." Specifically, Multiple Intervenors and IPPNY argued that the definition goes beyond the parameters established by the Commission in Order No. 1000. They assert that the inclusion of NYPSC orders is an expansion of the Order No. 1000 definition and is thus beyond the scope of the compliance filing. Other stakeholders supported the inclusion of NYPSC orders, noting that such orders are regulations and that the NYPSC has jurisdiction to define and administer energy policy in New York.

The Filing Parties submit that the proposed definition fully complies with Order No. 1000. Order No. 1000 held that a Public Policy Requirement would be "driven by state or federal laws or regulations"[178] and would "arise from state or federal laws or regulations that drive transmission needs."[179] Further, Order No. 1000 recognizes the need to tailor such a process to each region[180] and encourages the involvement of states in the Public Policy Requirements planning process.[181] The proposed definition allows the NYISO to address and evaluate transmission solutions for any Public Policy Requirement identified in New York State by a law or regulation, and thus fully complies with Order No. 1000. The NYPSC is the agency in New York State that develops energy policies[182] and co-leads the New York State Energy Planning Board with other state agencies.[183] The NYPSC approves the siting of all transmission lines over a certain size threshold in New York State. The decisions of the NYPSC include determinations that such facilities are needed, are in the public interest, and will be compatible with the environment.[184] Accordingly, the NYPSC will be the primary source of Public Policy

[178] *Id*. at P 214. Order No. 1000 further explained that "state or federal laws and regulations" includes "enacted statutes (*i.e.*, passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level." *Id*. at P 2.

[179] *Id*.

[180] *Id*. at P 208 (stating that "[w]e allow for local and regional flexibility in designing the procedures for identifying the transmission needs driven by Public Policy Requirements for which potential solutions will be evaluated in the local or regional transmission planning processes").

[181] *Id*. at P 212 (stating that "nothing in this Final Rule is intended to alter the role of states" with respect to "transmission planning, especially as it relates to compliance with Public Policy Requirements" and that "[w]e strongly encourage states to participate actively in both the identification of transmission needs driven by Public Policy Requirements and the evaluation of potential solutions to the identified needs"); *see also id*. at P 337 (stating that state regulators "may be in the best position of determining how state-level public policy requirements are satisfied").

[182] *See* Section V.2.d for a discussion of stakeholder concerns regarding the role of the Long Island Power Authority.

[183] *See* N.Y. Pub. Serv. L. §§ 5, 65, 66 and 72; N.Y. Energy Law Art. 6.

[184] N.Y. Pub. Serv. L. Art. VII.

Requirements that drive the need for transmission in New York State. Further, as stated above, NYPSC orders established under the State Administrative Procedure Act[185] are state regulations under New York law. Therefore, the Filing Parties request that the Commission accept the proposed definition without modification.

2. Public Policy Requirements Planning Process

As provided in Section 31.4.1, the Public Policy Requirements planning process would be conducted in a two year cycle, in parallel with the NYISO's reliability and economic planning processes, beginning after the CRP Report is posted. The Public Policy Requirements planning process, as proposed, will have two steps:

> (1) identification of transmission needs driven by Public Policy Requirements that should be evaluated by the ISO; and (2) requests for specific proposed transmission solutions to address those needs driven by Public Policy Requirements identified for evaluation, and the evaluation of those specific solutions.

This process complies with the Order No. 1000 requirement that the Public Policy Requirements planning process identify transmission needs driven by Public Policy Requirements and evaluate potential solutions to meet the identified needs.[186]

a. Step One - Identification of Needs

Order No. 1000 requires the process to identify needs to "allow stakeholders an opportunity to provide input, and offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements" and that all stakeholders "have an opportunity to provide input and offer proposals regarding the transmission needs they believe should be so identified."[187] Under the proposed Public Policy Requirements planning process, stakeholders will be given that opportunity.

Under Section 31.4.2, the NYISO will actively solicit stakeholder or other interested party input, and will provide a 60-day period to allow the submittal of proposed transmission needs that are being driven by a Public Policy Requirement. The NYISO may also identify a proposed transmission need on its own initiative. Those proposals must identify the Public Policy Requirement driving the transmission need and describe how a transmission solution will fulfill the need. The NYISO will post all submittals on its website at the conclusion of the 60-day period, and submit the proposals it receives to the NYDPS/NYPSC.

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[185] N.Y.S.A.P.A § 102(2)(a)(i) and (ii).

[186] Order No. 1000 at P 205.

[187] *Id*. at PP 207, 209. *See also,* Order No. 1000-A at P 321.

Pursuant to Section 31.4.2.1, the NYDPS will review the proposed needs, and with input from the NYISO and interested parties, identify the transmission needs for which transmission solutions should be requested and evaluated. Additionally, the Filing Parties propose to include in the Public Policy Requirements planning process the ability to consider non-transmission alternatives, on the request of the NYDPS. The Filing Parties believe that these are enhancements to the process required by the Commission under Order No. 1000. Specifically, Section 31.4.2.1 provides that "The NYDPS may also request that the ISO, pursuant to Section 3.8.1 of the ISO OATT, conduct an evaluation of alternative options to address the transmission needs." Section 3.8.1 of the OATT has also been modified to ensure that the NYISO has the ability to conduct an analysis of non-transmission alternatives necessary to comply with such a request by the NYDPS.

The Tariff setting forth the Public Policy Requirements planning process includes specific language regarding the NYPSC procedures that fully comply with Order No. 1000. The NYPSC procedures will:

> ensure that such process is open and transparent, provides the ISO and interested parties a meaningful opportunity to participate in such process and provide input regarding the NYDPS' considerations, and results in the development of a written determination as required by law, inclusive of the input provided by the ISO and interested parties.[188]

Further, under Section 31.4.2.1, the NYDPS may identify a transmission need on its own, but such need must be described in accordance with the stakeholder submittal requirements in Section 31.4.2 and posted on the ISO's website prior to the issuance of the NYDPS written statement identifying needs. The posting must provide the NYISO and interested parties an opportunity to provide input to the NYDPS regarding its proposed needs. The NYISO shall assist the NYDPS through the provision of analyses or evaluation of alternative options, as requested by the NYDPS. Section 31.4.2.1 further provides that the NYDPS must issue a written statement that:

> explains why it has identified the transmission needs driven by Public Policy Requirements for which transmission solutions will be evaluated by the ISO. The statement shall also explain why transmission solutions to other suggested transmission needs should not be evaluated. The NYDPS statement identifying the transmission needs for which transmission solutions will be evaluated by the ISO may also provide additional criteria for the evaluation of transmission solutions and the type of analysis that it will request from the ISO. If the NYDPS does not identify any transmission needs, it will provide confirmation of that conclusion to the ISO. The ISO shall post the NYDPS statement on its website.

[188] Attachment Y, § 31.4.2.1.

This complies with the Order No. 1000 requirement that transmission providers "post on their websites an explanation of which transmission needs driven by Public Policy Requirements will be evaluated for potential solutions in the local or regional transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated."[189] It also complies with the Order No. 1000-A requirement that the posting explain the needs that have been identified for evaluation and how other transmission needs that were identified were not selected for further evaluation.[190] In addition, where there is a dispute of an NYDPS determination on the identification of transmission needs, Section 31.4.2.2 provides that a dispute can be raised through a petition to the NYPSC.[191] The NYPSC may also, on its own motion, initiate a proceeding concerning any NYDPS determination regarding a transmission need. Where a transmission need determination is under dispute, it will be held in abeyance pending a final NYPSC determination. The information regarding disputes will also be posted on the NYISO's website, pursuant to Section 31.4.2.2.

The Filing Parties note that as of the date of this compliance filing the NYDPS has not developed procedures establishing additional details of the process that will be used to fulfill its responsibilities regarding transmission needs driven by Public Policy Requirements. However, the Chairman of the New York Public Service Commission has provided a letter indicating that it intends to initiate a proceeding to establish those procedures.[192] Notwithstanding, the procedures set forth in the Public Policy Requirements planning process in the Tariff regarding the role of the NYDPS and the NYPSC comply with all of the requirements of Order No. 1000 for a process to consider transmission needs and transmission solutions to needs driven by Public Policy Requirements.

b. Step Two - Evaluation of Proposed Transmission Solutions

Order No. 1000 requires that the Public Policy Requirements planning process also "include the evaluation of proposals by stakeholders for transmission facilities proposed to satisfy an identified transmission need driven by Public Policy Requirements."[193] In compliance with this directive, the NYISO will request and evaluate transmission solutions to an NYDPS identified transmission need driven by a Public Policy Requirement. Pursuant to Section 31.4.3.1, the NYISO will provide 60 days after posting of the state agency determination to allow for the submittal of specific transmission solutions (or where a need is under appeal, following the resolution of that appeal). Solution proponents will pay study costs using the process established in the economic planning process Section 31.3.1.2.3, as provided in Section

[189] Order No. 1000 at P 209.

[190] Order No. 1000-A at P 325.

[191] The New York Public Service Commission is the decision-making body that resides in the New York State Department of Public Service, which is a state agency. N.Y. Pub. Serv. L. §§ 3-4.

[192] *See* Attachment II - Letter of Chairman Garry A. Brown to Steven G. Whitley (September 27, 2012).

[193] Order No. 1000 at P 211.

31.4.3.2. In order to ensure that at least one response will be available for a NYDPS identified need, Section 31.4.3.3 provides that NYDPS/NYPSC may request the appropriate Transmission Owner(s) to propose a solution. Costs incurred to prepare a proposed solution in response to such a request will be recoverable. The NYISO will evaluate the solutions and prepare a report, with stakeholder input and utilizing its available resources and modeling capabilities. Where the NYDPS/NYPSC provides criteria for the analysis, the NYISO will use such criteria where feasible. Section 31.4.4 requires that the NYISO's evaluation and analysis of identified transmission needs be performed using its:

> existing reliability, economic and interconnection planning process tools, databases and models, as applicable. Tools used in the planning process that may be used in the evaluation include power flow, stability and short circuit models for system planning analysis, probabilistic models of generator availability for resource adequacy and production cost simulation models for economic and environmental analysis.

The NYISO will identify both benefits and costs of proposed solutions, as well as market-impacts. The NYISO will use metrics such as "change in production costs; LBMP; losses; emissions; ICAP; TCC; congestion; impact on transfer limits; and deliverability." Metrics will be determined in consultation with stakeholders, and where the NYDPS/NYPSC identifies an analytical methodology, the NYISO will use that methodology. The NYISO will prepare a report that will identify its assumptions, inputs, methodologies and the results of its analyses. Such report will be reviewed by the appropriate stakeholder working groups, and forwarded to the BIC and MC for an advisory vote, before going to the NYISO Board for review and action. The report will also be forwarded to the independent Market Monitoring Unit for review and consideration of the potential impact of the proposed projects on the NYISO's competitive wholesale markets.[194]

c. Stakeholder Concerns with the Role of the NYPSC and NYISO

During the stakeholder process, some stakeholders questioned the role of the NYPSC, as well as the NYISO in the proposed process. The Filing Parties submit that the proposed process fully complies with Order No. 1000, as it carefully balances the expertise, ability, and authority of both the NYISO and NYPSC. The NYISO's planning region is New York State. The NYPSC, as the agency responsible for the development of energy policies under New York State law[195] is appropriately given the role of identifying needs and selecting among proposed solutions. The Commission indicated that it would not prescribe a role for state regulators, and would "leave it to state regulators and public utility transmission providers, in consultation with stakeholders, in each transmission planning region to determine the appropriate role of state

[194] *See* Attachment Y, § 31.4.7 and Services Tariff Attachment O, § 30.4.6.8.5.

[195] N.Y. Pub. Serv. L. §§ 5, 65, 66 and 72.

regulators in the transmission planning process generally and in the consideration of transmission needs driven by Public Policy Requirements in particular."[196]

The role of the NYPSC in the proposed Public Policy Requirements planning process is also appropriate because the Order No. 1000 requirements are not intended to interfere with states' efforts.[197] Further the proposal is consistent with the "important and unique role" that the Commission found state regulators play in the transmission planning process "given their oversight over transmission siting, permitting and construction, as well as integrated resource planning and similar processes…[and] they may be in the best position of determining how state-level public policy requirements are satisfied."[198] The NYISO's role is also appropriately defined, as it is in the best position to analyze needs and coordinate with stakeholders, in order to fulfill the requirement that stakeholders be able to identify proposed needs and offer solutions to those needs. The identification of transmission needs driven by Public Policy Requirements by the NYPSC/NYDPS will result in the evaluation of proposed solutions that will have a reasonable chance of being implemented. It will also save the NYISO the expenditure of both time and resources on evaluations of proposed solutions to transmission needs that are inconsistent with state objectives. Therefore, the Filing Parties submit that the Commission should accept the proposed process, as further described below.

d. Stakeholder Concerns with the Role of Long Island Power Authority

During the stakeholder process, LIPA raised an issue regarding the role of the Long Island Power Authority in the identification, evaluation of needs driven, and selection of solutions to needs driven, by Public Policy Requirements as it relates to the Long Island Transmission District. LIPA has asserted that the Long Island Power Authority has responsibility for the implementation of public policy and transmission planning for its Transmission District (*i.e.*, the Long Island Transmission District). Thus, LIPA presented to the stakeholders a proposal that would have provided the Long Island Power Authority's Board of Trustees the responsibilities under the Public Policy Requirements planning process, otherwise exercised by the NYDPS/NYPSC, relating to transmission needs of the Long Island Transmission District.

The other NYTOs (exclusive of NYPA) disagreed with LIPA's proposed changes to the process. They argued against inclusion of the proposed revisions for various reasons, including the following: (1) LIPA's role for its Transmission District is preserved through its ability to implement such plans through its own Local Transmission Plan; (2) the NYPSC is the appropriate entity to determine statewide Public Policy Requirements and LIPA should not share that responsibility; (3) LIPA's proposal would allow it to essentially opt out of cost allocation for

[196] Order No. 1000-A at P 338.

[197] Order No. 1000-A at P 330.

[198] *Id*. at P 337.

projects that may benefit its Transmission District, either derailing the project or assigning costs to others in the state; (4) affording LIPA the treatment it requests would be discriminatory; and (5) LIPA agreed to be subject to the Commission's jurisdiction when it joined the NYISO and participated in the existing planning process.

Given the parties' positions, the Filing Parties are not including provisions in the Public Policy Requirements planning process requested by LIPA. LIPA reserves its rights on this issue to submit its own filing or pleading addressing this issue. The NYISO does not take a position on this issue. Attempts were made during the stakeholder process to resolve the issue, but to date they have not been successful. The NYISO has encouraged the NYTOs to continue to discuss the issue and propose a resolution, after the submittal of this compliance filing, if one is reached.

3. Cost Allocation and Recovery for Transmission Solutions to Identified Transmission Needs Driven by Public Policy Requirements

Consistent with the Commission's directives in Order No. 1000, the Filing Parties also propose tariff modifications to allow for cost allocation and cost recovery for transmission solutions selected to address transmission needs driven by identified Public Policy Requirements. Section 31.5.1.1 has been modified to provide that the cost allocation principles and methodologies cover "regulated transmission solutions to needs driven by Public Policy Requirements" and that the specific cost allocation principles and methodologies applicable to transmission solutions in response to needs driven by Public Policy Requirements are identified in Sections 31.5.5 and 31.5.6.

The cost allocation process is designed to comply with the Order No. 1000 requirement that the costs of projects selected in the regional transmission plan as solutions to transmission needs driven by Public Policy Requirements be allowed cost allocation and recovery through the transmission provider's tariff. As further explained below, the process provides necessary flexibility to address cost allocation for transmission projects driven by Public Policy Requirements.

a. Cost Allocation Provisions

The Filing Parties propose a new Section 31.5.5.1 to provide the cost allocation principles and methodology applicable to transmission solutions driven by Public Policy Requirements. Section 31.5.5.1 clarifies that only transmission solutions driven by Public Policy Requirements are eligible for cost recovery pursuant to these new provisions. Such cost allocation will be consistent with the Order No. 1000 Regional Planning Cost Allocation Principles, as established in new Section 31.5.5.2. Section 31.5.5.2 also provides that:

> The specific cost allocation methodology in Section 31.5.5.4 incorporates the following elements:
>
> 31.5.5.2.1 The focus of the cost allocation methodology shall be on proposed regulated transmission solutions to transmission needs driven by Public Policy Requirements identified by the NYDPS/NYPSC.

31.5.5.2.2 Projects analyzed hereunder as proposed solutions to transmission needs driven by Public Policy Requirements may proceed on a market basis with willing buyers and sellers any time.

31.5.5.2.3 Cost allocation shall be based on a beneficiaries pay approach.

31.5.5.2.4 Project benefits will be identified in accordance with Section 31.5.4.4.

31.5.5.2.5 Identification of beneficiaries for cost allocation and cost allocation among those beneficiaries shall be according to the methodology specified in Section 31.5.5.4.

Under new Section 31.5.5.3, projects eligible for cost allocation under these provisions will be available for a transmission solution "when the NYPSC determines that the project should proceed to request the necessary local, state and federal authorizations for construction and operation of the project." Section 31.5.5.3 also provides that the NYISO will post a list of projects that the NYPSC has so identified. Further, where the NYPSC requests that a Transmission Owner or Other Developer provide more detailed studies or cost estimates, the costs of the study or estimates will be eligible for cost recovery.

The Filing Parties propose a cost allocation methodology for transmission solutions to needs driven by identified Public Policy Requirements under new Section 31.5.5.4. The proposed cost allocation methodology complies with the Order No. 1000 requirement that all entities whose transmission project has been selected in the regional transmission plan be eligible to seek cost recovery.[199] Specifically, Section 31.5.5.4.1 provides that where the identified Public Policy Requirement provides for a particular cost allocation and cost recovery methodology, that is the methodology that will be used by the NYISO. Under Section 31.5.5.4.2, where there has been no identified methodology, the project developer may propose a methodology that uses a cost allocation based on load ratio share and adjusted to reflect the characteristics and benefits of the specific project and the Public Policy Requirement that is being implemented. Such proposed methodology will be subject to any guidance provided by the NYPSC and approval by the Commission. Section 31.5.5.4.3 states that where neither the Public Policy Requirement, nor the developer, proposes a methodology, or the developer's methodology is not endorsed by the NYPSC, the NYDPS/NYPSC may identify an alternative cost allocation methodology. Such methodology must be consistent with the Order No. 1000 Regional Cost Allocation Principles. Pursuant to Section 31.5.5.4.4, if the cost allocation methodology is other than the default methodology, the NYISO will make a filing on behalf of the Transmission Owner or Other Developer, for approval by FERC. Section 31.4.5.5.4.4 also provides that "The filing will demonstrate that the proposed cost allocation is compliant with the Order No. 1000 Regional Transmission Planning Cost Allocation Principles."

Where no cost allocation methodology is proposed under the above procedures, Section 31.5.5.4.5 provides that the NYISO will allocate costs "using a default cost allocation formula,

[199] Order No. 1000 at P 332.

based upon a load ratio share methodology." The Filing Parties propose to allocate costs to all loads across the NYCA as the default methodology because public policies established by government are generally established to benefit everyone. In the event no other cost allocation methodology is prescribed, the Transmission Owner or Other Developer will be eligible to use this default load ratio share cost allocation methodology as set forth in Section 31.5.5.4.5.

Under these provisions, the NYPSC acts as a gatekeeper regarding the selection of the cost allocation methodology to be used for solutions to needs driven by Public Policy Requirements. The NYPSC, as the primary organization in the state of New York for the development of energy policies, is charged with acting in the public interest with respect to such matters.

b. Cost Recovery Provisions

The Filing Parties propose to modify Section 31.5.6 to provide for cost recovery for transmission solutions driven by identified Public Policy Requirements. Specifically, the Filing Parties propose to add the following:

> Transmission Owners and Other Developers will be entitled to recovery of costs associated with the implementation of regulated transmission projects undertaken to meet a transmission need driven by a Public Policy Requirement in accordance with the provisions of Section 31.5.5.4 of this Attachment Y.

The Filing Parties also propose a new Section 31.5.6.5 to provide that a transmission developer will have the right, under FPA Section 205 to file for the approval of its costs associated with the implementation of a project. The Commission will determine the period for cost recovery, and the costs recovered will include the reasonable costs of providing more detailed studies or cost estimates at the NYPSC's request, as well as the costs of preparing the application to comply with New York State law requirements and authorizations. Further, Section 31.5.6.5 allows recovery of necessary and reasonably incurred costs for termination of projects that are not approved by the appropriate governmental authorities, or that are approved but for which such approval is later withdrawn. These provisions are consistent with the existing cost recovery provisions for regulated reliability and regulated economic transmission projects.[200]

c. Stakeholder Concerns with Cost Allocation and Recovery Methodology

In the stakeholder process, some stakeholders expressed concern with the Filing Parties' proposal. Some stakeholders argued that the cost allocation methodology applicable to public policy projects should be one of the existing cost allocation methodologies in the Tariff, for projects to meet reliability needs or the CARIS cost allocation methodology for economic projects, or some other alternative. Those stakeholders disagreed with the flexibility that the

[200] *See* Attachment Y, §§ 31.5.6.1, 31.5.6.4.

current proposal affords. The Filing Parties submit that the methodology should be accepted because it complies with the Order No. 1000 requirement that projects selected as transmission solutions to transmission needs driven by Public Policy Requirements be eligible for cost allocation. Cost allocation flexibility is essential because the nature of the need driven by the specific Public Policy Requirement and the related benefits will not be known until that requirement is identified and the proposed solutions are evaluated. The proposed methodology is compliant with the Order No. 1000 objective to encourage the development of transmission projects to meet transmission needs driven by Public Policy Requirements and to apply a cost allocation that reflects the benefits of these projects.

Adoption of the CARIS methodology, as suggested by some stakeholders would be inappropriate, as that methodology was developed through extensive negotiation, and precisely defined for application to congestion projects. The CARIS methodology is also not an appropriate default cost allocation methodology because a public policy transmission project may have no economic benefits whatsoever. If some economic benefits do arise from the project those benefits may not relate in any way to the public policy objective and may be incidental or inconsequential. So imposing an economic cost allocation methodology on all public policy projects would not be just and reasonable.

Moreover, the stakeholders who object to the proposed cost allocation methodology have proposed no viable alternatives. For example, the reliability cost allocation methodology in the Tariff could not be used for public policy transmission projects. Using that methodology suffers from the same flaws as the CARIS methodology, of not knowing if a public policy transmission project would address any identified reliability need or indeed necessarily improve reliability in some quantifiable manner. The current reliability cost allocation methodology is based upon the identification of violations of reliability criteria and the cost of necessary solutions to avoid those violations are imposed on the entities that are responsible for creating the need. There is no methodology for the quantification of reliability benefits not needed to meet applicable reliability criteria or any methodology for allocating such costs.

In sum, adopting the cost allocation methodology used for regulated economic or reliability projects for public policy projects would be inappropriate, and may result in unjust and unreasonable rates, since they are not designed to measure the benefits related to a transmission solution to a need driven by a Public Policy Requirement.

Some stakeholders concerns are driven by a belief that the Public Policy Requirements planning process could allow developers to circumvent the current reliability and economic planning processes, creating an “end run around the markets.” The NYISO is also concerned with potential market impacts, as the NYISO’s markets were established to send the appropriate price signals for investment in new transmission and other resources, and because the reliability planning process explicitly prefers market based solutions over regulatory rate recovery, and because economic transmission projects must be voluntarily agreed to by beneficiary loads. In order to address this concern, the proposed tariff language explicitly provides that projects selected through the reliability or economic processes must proceed to cost allocation and recovery through the process established for those types of projects. Additionally, the Public

Policy Requirements planning process requires that the NYISO analyze the impacts of public policy projects on the NYISO's markets and issue a report on its findings. That report will be provided to the MMU for review, which will identify any such impacts on the market to the stakeholders. That MMU report will be provided to the NYISO Board of Directors and the NYPSC which would, to the extent appropriate, address such issues.

It is important to bear in mind that the Public Policy Requirements planning process being established will provide information and guidance to government agencies, the NYISO and stakeholders so that the development of solutions to transmission needs driven by Public Policy Requirements can be more efficient. It is not reasonable to assume that the NYPSC or any other agency, after obtaining the input of all interested parties and the NYISO's market impact analysis, would not give serious consideration to that input and analysis. It should be noted that the state already has jurisdiction over the construction of transmission in New York State and there is no rational basis for the assumption that transmission projects will be built to meet Public Policy Requirements without due consideration of the potential impacts on the competitive markets. The NYISO will monitor the Public Policy Requirements planning process for market impacts and will report its findings.

In any event, to the extent stakeholders' concerns are that adding a Public Policy Requirements planning process provides another avenue for developers to propose transmission projects for cost recovery that are outside of existing processes, that concern should have been raised during the Order No. 1000 proceeding. The Filing Parties' proposal complies with Order No. 1000. As such, the proposed methodology should be accepted without modification.

4. Compliance with Order No. 890 Principles

The Filing Parties' proposed Public Policy Requirements planning process also fully complies with each of the following Order No. 890 transmission planning principles: "Coordination," "Openness," "Transparency," "Information Exchange," "Comparability," and "Dispute Resolution."[201] The Filing Parties have modeled the proposed Public Policy Requirements planning process on the existing reliability and economic planning processes, including similar provisions regarding stakeholder input and review, as well as the provision and posting of information by the NYISO. The Filing Parties submit that the Public Policy Requirements planning process complies with the principles, as follows:

- **Coordination** - The transmission planning process is developed on a non-discriminatory basis and provides all interested parties an opportunity to fully participate and provide meaningful input. Specifically, Sections 31.4.2 (allowing for party identification of proposed transmission needs), 31.4.2.1 (requiring the development of an open and transparent process by the NYDPS regarding identification and review of needs), and 31.4.6 (allow for consideration and comment of the draft report in the NYISO's

[201] Order No. 1000 at P 151.

stakeholder committees and forwarding of comments and advisory votes at the BIC and MC) ensure open communication regarding the Public Policy Requirements planning process among all interested parties, the NYISO, and the NYPSC/NYDPS.

- **Openness** - All interested parties may participate in the transmission planning meetings, and the Public Policy Requirements planning process includes a balanced stakeholder process that allows all interested entities the ability to fully participate in the process. As explained above, existing Section 31.1.6 enables all interested parties to participate in the process, providing that the ESPWG and the TPAS, for purposes of the Attachment Y processes, is "open to any interested entity, irrespective of whether that entity has become a Party to the ISO Agreement." Additionally, new Section 31.4.2.1, requires that the NYDPS develops an open and transparent process to review proposed transmission needs and posting of identified needs on the NYISO's website. All reports related to Public Policy Requirements planning will be developed and reviewed in the stakeholder process. The process also requires NYISO Board of Directors review and action, including approval, or the proposal of modifications, as well as a final determination and posting of the report upon final Board approval, in Section 31.4.7. It also requires the NYISO to post approved solutions (Section 31.4.9).

- **Comparability** - Similarly situated customers are treated comparably in the Public Policy Requirements planning process. Any entity is allowed to submit a proposed need (Section 31.4.2) and the process provides transparent qualification criteria for entities (Section 31.4.5) and information submittal requirements for project proposals (Section 31.4.8).

- **Transparency** - The basic methodology, criteria, assumptions and data used to develop the plan is disclosed to customers and stakeholders. The Public Policy Requirements process requires that the NYISO make available, upon request, pursuant to Section 31.4.6. Specifically, the proposed tariff language provides that "[t]he ISO shall make available to any interested party sufficient information to replicate the results of the draft report" consistent with the protection of Confidential Information and CEII under the NYISO's Code of Conduct and policies. For their parts, the NYDPS and NYPSC operate under the State Administrative Procedure Act and the State Open Meetings Law, which require public notice of proposed decisions, an opportunity to be heard in writing or at a hearing, open meetings, a record of the proceeding, and a written decision.

- **Information Exchange** - The Public Policy Requirement planning process requires that the transmission needs driven by such requirements be identified in consultation and with input from interested parties. Specifically, Section 31.4.4 proposed language requirement "[t]he ISO [to] evaluate specific proposed transmission solutions with input from stakeholders…."

- **Dispute Resolution** - The proposed Public Policy Requirements planning process also identifies a process to manage disputes arising from the process. Disputes regarding the NYISO's responsibilities under the Public Policy Requirements Planning Process will be handled under the existing dispute resolution procedures for Attachment Y. That process

> provides for timely identification and resolution of substantive and procedural disputes arising out of the CSPP, through the NYISO governance procedures as part of the plan development process or by invoking formal dispute resolution procedures pursuant to OATT Section 2.16 and Services Tariff Section 11. Section 31.4.2.2 requires disputes regarding the NYDPS determination on proposed transmission needs to be raised through a petition to the NYPSC and resolved by a NYPSC order. The NYPSC must be the ultimate decision-maker with respect to any such disputes under its jurisdiction because it is the entity ultimately responsible for identifying proposed transmission needs driven by Public Policy Requirements. Disputes under FERC's jurisdiction will ultimately be decided by the Commission.[202]

5. Additional New Sections

The Filing Parties also include provisions, substantially similar to those included in the regional and economic planning process that:

- Provide for Market Monitoring Unit review (Section 31.4.7 - also related modifications to Services Tariff Attachment O Section 30.4.6.8.5);
- Require the NYISO to post approved solutions (31.4.9); and
- Provide for entity qualification criteria and project information requirements, as well as timing and submittal provisions; (Sections 31.4.5.2 and 31.4.8.1).

6. Modifications to Existing Provisions in Other Attachment Y Sections to Reflect the Addition of a Public Policy Requirements Planning Process

The Filing Parties also propose modifications in other sections of the Tariff to account for the Public Policy Requirements planning process provisions in other sections of Attachment Y. Most significantly, the Filing Parties propose a new Section 31.1.5, titled "Public Policy Requirements Planning Process" which describes the process as follows:

> Section 31.4 of this Attachment Y describes the planning process that the ISO, and all interested parties, shall follow to consider Public Policy Requirements that drive the need for expansions or upgrades to BPTFs. The objectives of the Public Policy Requirements planning process are to: (1) allow Market Participants and other interested parties to propose transmission needs that they believe are being driven by Public Policy Requirements and for which transmission solutions should be evaluated, (2) provide a process by which the NYDPS and NYPSC will, with input from the ISO, Market Participants, and other interested parties, identify the transmission needs, if any, for which transmission solutions should be evaluated, (3) provide a process by which the ISO will request and, with input from the NYDPS, Market Participants, and other interested parties, evaluate proposed transmission solutions to the transmission needs that have been

[202] Attachment Y, § 31.6.1.

> identified by the NYDPS and NYPSC, (4) provide a cost allocation methodology for regulated transmission projects driven by Public Policy Requirements and that have received an order from the NYPSC indicating that the project should proceed to request the necessary federal, state, and local authorizations for construction and operation, and (5) coordinate the ISO's Public Policy Requirements planning process with neighboring Control Areas.

Additionally, the Filing Parties propose to add a provision in Section 31.2.1.1.2 obligating NYTOs with Transmission Districts to consider transmission needs driven by Public Policy Requirements in the development of their LTPs. That new Section 31.2.1.1.2 states:

> In developing its LTP, each Transmission Owner shall consider whether there is a transmission need on its system that is being driven by a Public Policy Requirement. The LTP will identify any transmission project included in the LTP as a solution to a transmission need being driven by a Public Policy Requirement. In evaluating potential transmission solutions, the Transmission Owner will give consideration to the objectives of the Public Policy Requirement(s) driving the need for transmission. Market Participants and other interested parties may submit comments for the Transmission Owner's consideration regarding a transmission need that they believe is being driven by a Public Policy Requirement. The Transmission Owner will post on its website an explanation of any transmission need it has identified as being driven by a Public Policy Requirement either in the initial LTP or as a result of Market Participant comments for which potential transmission solutions will be evaluated, as well as an explanation of why solutions to any suggested transmission need will not be evaluated.

Further, the Filing Parties propose these additional conforming revisions:

- Modification of the definitions of "CSPP" and "Other Developer" to reflect the addition of the Public Policy Requirements planning process;
- The addition of the phrase "and the Public Policy Requirements planning process, concurrently" in Section 31.1.7.2, regarding the schedule for data collection and submission which will be included in the ISO Procedures;
- The addition of the phrase "and the Public Policy Requirements considered" in Section 31.2.1.1.1 of the LTPP regarding the criteria, assumptions and data to be used by NYTOs with Transmission Districts; and
- The addition of language in OATT Sections 3.8.1 and 3.10 to allow the NYISO to perform analyses requested by the NYPSC for the Public Policy Requirements planning process, including the evaluation of non-transmission alternatives to meet the needs driven by such requirements.

B. Additional Modifications to Ensure Full Compliance with the Regional Transmission Plan Directives

1. Modification to Ensure the Consideration of "Alternative Transmission Solutions that May Meet the Needs of the Region More Efficiently or Cost-Effectively than Local Transmission Plans"

As explained in Section IV.A, above, the NYISO's CSPP substantially complies with the Order No. 1000 Regional Transmission Plan requirements, including compliance with the Order No. 890 principles. However, Order No. 1000 identified and addressed certain deficiencies in the Order No. 890 requirements, including the lack of a directive that transmission providers "take affirmative steps to identify potential solutions at the regional level that could better meet the needs of the region" within the LTPP.[203] The NYISO's CSPP does produce a regional transmission plan that includes input from the NYTO LTPs. However, Attachment Y at present does not include explicit tariff provisions in the LTPP that require the NYTOs and the NYISO to consider alternative transmission solutions which could meet regional needs more efficiently or cost-effectively than solutions proposed in NYTO LTPs.

Thus, the Filing Parties propose to add language to the LTPP section of Attachment Y to explicitly require the NYISO to consider such regional alternatives. Specifically, the Filing Parties propose to amend Attachment Y to add a new Section 31.2.1.1.3 which states:

> The ISO will review the Transmission Owner LTPs as they relate to BPTFs and will also evaluate whether other solutions proposed to meet Reliability Needs, congestion identified in the CARIS, or Public Policy Requirements may meet such BPTF needs of the NYCA region more efficiently or cost-effectively than the Transmission Owners' proposed LTP solutions. The ISO will report the results of its evaluation in the relevant ISO planning report prepared under this Attachment Y.

The NYISO has placed the language in the Scope section of the LTPP section in the CSPP. Therefore, in compliance with Order No. 1000, this language provides the NYISO with the ability and responsibility to review a NYTO LTP and identify any alternative solutions that may more efficiently or cost effectively meet the needs of the NYCA region.

a. Stakeholder Concerns with the Current and Proposed Processes' Compliance with the Non-Discrimination Directive

In the stakeholder process, LS Power expressed concerns that the NYISO's Tariff and proposed compliance tariff revisions do not result in a process in which the more efficient or cost-effective solutions are selected. LS Power has indicated that it believes that Order No. 1000 requires that the Tariff be amended to require the selection of the more cost-effective or efficient

[203] *Id*. at P 147.

project, where such a project is identified. The Filing Parties believe that the Tariff, as modified above, fully complies with the Order No. 1000 requirement. Order No. 1000 requires that the planning process "evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified … in [the] local transmission planning process."[204] Order No. 1000 provides that the analysis should be done so that the "more efficient or cost-effective transmission solution can be selected in the regional transmission plan for purposes of cost allocation."[205] Order No. 1000 does not require that the NYISO select the most efficient project, rather it requires that the NYISO and NYTOs consider such solutions and allow for their selection in the regional transmission plan. In any event, it is the NYPSC, not the NYISO, that selects the reliability backstop solution or alternative regulated solution that will seek the necessary local, state, and federal authorizations, as appropriate, where market-based solutions will not timely fulfill identified Reliability Needs. Thus, LS Power's concerns are unfounded.

LS Power is also concerned with the NYISO Tariff's reliance on a NYPSC process, which they contend may not be compliant with Order No. 1000, to determine the solution and developer that will be selected to meet an identified Reliability Need. With respect to this concern, the Filing Parties also submit that the NYISO's reliability planning process, as modified herein, fully complies with the Order No. 1000 requirements. As explained in Section IV.B, the NYISO's reliability planning process evaluates, in conjunction with Market Participants, Reliability Needs and potential solutions to address those needs and ultimately, the appropriate governmental authority, usually the NYPSC, is the ultimate decision-maker regarding what solution gets implemented. Under the procedures adopted by the NYPSC, Responsible Transmission Owners must, in a timely fashion, consider alternative regulated solutions that have been found by the NYISO to be capable of meeting the identified Reliability Need.[206] That process also allows for a developer of a proposed alternative solution that is not selected by the Responsible Transmission Owner to make a filing with the NYPSC requesting that its solution be considered. Where the proposed regulated backstop solution is a non-transmission project, the NYPSC's process calls for the determination of whether implementation of the solution is in the public interest. Where the regulated backstop solution is a transmission project, the NYPSC must consider alternative regulated solutions in conjunction with its transmission siting authority under Article VII of the New York Public Service Law. Where a solution is a state jurisdictional regulated backstop solution to be implemented by LIPA or NYPA, the determination will be made by their respective boards of directors.

LS Power also objects to the NYISO Tariff provision that permits a Responsible Transmission Owner to recover its costs for the preparation of a regulated backstop solution,

[204] *Id*. at P 148, *see also id*. at P 81.

[205] *Id*. at P 148.

[206] Policy Statement on Backstop Project Approval Process, *Proceeding to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process*, Case No. 07-E-1507 (February 18, 2009).

even if the project is subsequently halted or cancelled. However, the TOs have assumed the obligation to prepare a regulated backstop solution to an identified Reliability Need, if designated by the NYISO as the Responsible Transmission Owners(s) when no market-based solution is available. This obligation was assumed by the TOs in a contract with the NYISO, approved by the Commission.[207] One of the conditions for assuming this obligation was the recovery of costs reasonably incurred in the preparation of a regulated backstop solution at the direction of the NYISO. No other party has assumed that obligation. No other party has an obligation to prepare a solution to a Reliability Need, and any other party may discontinue a project at any point. Consequently, the ability of a Responsible Transmission Owner to recover the costs it has incurred in the development of a regulated backstop solution at the direction of the NYISO is reasonable and not unduly discriminatory against Other Developers. It also should be noted that the NYISO Tariff provides full cost recovery, including development costs, for an Other Developer whose alternative regulated solution is selected by the NYPSC as the project that should go forward to seek the necessary authorizations. When the Commission approved this process, it found that "NYISO's role in both soliciting market-based and regulated solutions and in evaluating competing proposals for their ability to meet the designated Reliability Need in a timely manner affords comparable treatment to all types of competing solutions and resources."[208] Thus, there is no merit to LS Power's concern that the process is discriminatory to non-incumbent developers as they have the same opportunity to propose, seek approval, and receive the same consideration, for a solution as incumbent developers.

2. Modification to Comply With ROFR Directives Regarding the Rights of Incumbent Transmission Providers

As explained in Section IV.B.1, above, Order No. 1000 directs transmission providers to remove ROFRs from the Tariffs that would give preference to incumbent TOs with respect to regional transmission solutions. Also, as already discussed, the NYISO Tariffs provide no ROFR to the NYTOs to build transmission projects to meet needs on the Bulk Power Transmission Facilities. Order No. 1000, however, also clarifies that the requirement to eliminate ROFR provisions is not intended to interfere with upgrades made by incumbent TOs to meet their local needs. The Filing Parties, therefore, propose to modify Attachment Y to explicitly provide that incumbent TOs have the right to make upgrades to their own facilities or use existing ROWs to meet their local system needs. Specifically, new Section 31.6.4, titled "Rights of Incumbent Transmission Owners" states:

> Nothing in this Attachment Y affects the right of an incumbent Transmission Owner to: (1) build, own, and recover costs for upgrades to the facilities it owns,

[207] *See, New York Independent System Operator, Inc.*, 109 FERC ¶ 61,372 at PP 38-39 (2004) and *New York Independent System Operator, Inc.*, 111 FERC ¶ 61,182 at P 19 (2005) (accepting unsigned agreements between the NYISO and the NYTOs providing for the NYTO's participation in the NYISO's comprehensive reliability planning process, filed by the NYISO on August 24, 2004, and revised on February 25, 2005).

[208] July 2010 Order at P 10.

> regardless of whether the upgrade has been selected in the regional transmission plan for purposes of cost allocation; (2) retain, modify, or transfer rights-of-way subject to relevant law or regulation granting such rights-of-way; or (3) develop a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its own service territory or footprint.

This provision complies with Order No. 1000 and the Commission should approve it without modification.

3. Modification to Comply With Directives Regarding Entity Qualification and Project Information

Order No. 1000 requires that qualification criteria necessary for determining an entity's eligibility to propose a transmission project that will be eligible to be selected in the regional transmission plan for purposes of cost allocation, be included in a transmission provider's tariff.[209] The criteria must be transparent and not unduly discriminatory and allow stakeholder coordination, and the evaluation process must culminate in a decision that provides enough details for stakeholders to understand why a particular project was selected.[210] Such criteria must allow for the evaluation of "the relative economics and effectiveness of performance for alternative solutions offered during the transmission planning process."[211]

Potential transmission developers must be provided with an opportunity to show that they possess "the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities."[212] The qualification criteria must also take into account the fact that public utility transmission providers may already satisfy the criteria and must provide opportunities to remedy any deficiencies identified.[213] The criteria must apply to both incumbent and non-incumbents[214] and identify the information that must be submitted, as well as the deadline for submitting such information.[215]

In compliance with these directives, the Filing Parties propose to amend the Attachment Y reliability planning and economic planning processes to add entity pre-qualification and qualification criteria. The pre-qualification criteria allow entities wishing to qualify as transmission developers to provide information prior to submitting a project proposal. The more detailed entity qualification criteria would have to be met once a pre-qualified transmission

[209] Order No. 1000 at PP 323-324. *See also* Order No. 1000-A at PP 439-442.

[210] *Id*. at P 325.

[211] *Id*. at P 328.

[212] *Id*. at P 323.

[213] *Id*. at P 324.

[214] *Id*. at P 323.

[215] *Id*. at P 325.

developer submits a proposed transmission project for inclusion in either the CRP or CARIS or Public Policy Requirements planning process. Both the pre-qualification and qualification criteria ensure that potential transmission developers are provided the opportunity to show that they possess qualifications necessary to propose a project. The Tariff applies the criteria to both non-incumbents and incumbents on an equal basis.

The criteria clearly provide what information must be submitted. The pre-qualification criteria provide a potential transmission developer with the option of updating previously submitted information, and the entity qualification criteria provide that the listed criteria will be considered "as appropriate." This language provides that different types of projects and developers (including those that may already satisfy the criteria) can make a showing with only the detail necessary, as appropriate to that potential transmission developer's circumstances. Further, the criteria provide that information may be submitted at any time and that entities will be provided with an opportunity to cure any identified deficiencies within the period specified in the ISO Procedures. Finally, the criteria clearly establish that incumbents and non-incumbents both have the same ability to use regional cost allocation methods.[216]

Thus, in compliance with these requirements, the Filing Parties propose the following pre-qualification criteria, in Section 31.2.4.1.1 of the reliability planning process:

> The ISO shall provide each entity with an opportunity to demonstrate that it has or can draw upon the financial resources, technical expertise, and experience needed to develop, construct, operate and maintain a project to meet identified Reliability Needs. The ISO shall consider the qualifications of each entity in an evenhanded and non-discriminatory manner, treating Transmission Owners and Other Developers alike. Any entity that demonstrates that it has or can draw upon the necessary financial resources and technical expertise shall be eligible to propose a project as a solution to an identified Reliability Need.
>
> Any entity seeking to become eligible to propose to develop a project as a solution to an identified Reliability Need shall submit any information, or update any previously submitted information, it considers relevant to its qualifications, to the ISO. Such information may be submitted at any time. The ISO shall within 15 days of an entity's submittal, notify the entity if the information is incomplete. The entity shall submit the additional information within the time period specified in the ISO Procedures.

The Filing Parties also propose the same language, modified as necessary, to indicate its applicability to the economic planning process or Public Policy Requirements planning process, in Sections 31.3.2.4.1.1 (for specific transmission solutions to address congestion identified in the CARIS) and 31.4.5.1 (for transmission solutions to a transmission need driven by a Public

[216] *Id*. at PP 332, 336.

Policy Requirement). With respect to entity qualification criteria, the Filing Parties propose the following, in Section 31.2.4.1.3 of the reliability planning process:

> After the submittal of a project proposal, the ISO shall consider, as appropriate, the following criteria when determining whether an entity is eligible to develop a project as a solution to an identified Reliability Need: (1) the current and expected capabilities of the entity to finance, license, and construct a proposed solution and operate and maintain it for the life of the project; (2) the entity's existing rights of way and substations that would contribute to the project in question; (3) the experience of the entity in acquiring rights of way, and the ability of the entity to acquire rights of way, if necessary, that would facilitate approval and construction; (4) the financial resources of the entity; (5) the technical and engineering qualifications and experience of the entity; and (6) whether the entity has the ability to meet the requirements for the submission of a valid Interconnection Request as provided in ISO OATT Attachments X or Z, or a valid transmission expansion Study Request under ISO OATT Section 3.7.[217]
>
> Any entity determined by the ISO to qualify under this section shall be eligible to use the cost allocation and cost recovery mechanism set forth in Section 31.5 of this Attachment Y and Rate Schedule 10 for any approved project.

The Filing Parties also propose the same language, modified to indicate its applicability to the economic planning process or Public Policy Requirements planning process, in Sections 31.3.2.4.1.3 (for solutions to address specific congestion identified in the CARIS) and 31.4.5.3 (for transmission solutions to a transmission need driven by a Public Policy Requirement). Modifications to the provisions in the economic and Public Policy Requirements planning processes include replacement of the reference to Rate Schedule 10 with "the appropriate rate schedule." These modifications are necessary because Rate Schedule 10 is applicable only to regulated reliability projects, so cost recovery for transmission solutions selected through economic and Public Policy Requirements planning processes will recover the costs through alternative rate schedules to be developed by the NYISO as needed.

With respect to transmission projects, Order No. 1000 also requires that transmission providers' tariffs identify both "the information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and … the date by which such information must be submitted to be considered in a given transmission planning cycle."[218] With respect to the reliability planning process, the NYISO OATT already includes project information submission requirements in Sections 31.2.4.3.1, 31.2.4.3.2 (for Regulated Backstop Solutions), 31.2.4.5 (for Market-Based

[217] In accordance with P 441 of Order No. 1000-A, these entity qualification criteria do not require entities to show that they are capable of obtaining rights of way through eminent domain or to show their ability to incorporate under specific state law requirements.

[218] *Id*. at P 325.

Responses), and 31.2.4.7 (for Alternative Regulated Responses).[219] Thus, the Filing Parties propose to add a similar list of project information requirements in the economic and Public Policy Requirements planning processes. Specifically, a new Section 31.3.2.4.2 is proposed to be added that provides:

> Any entity seeking to offer a regulated economic transmission project as a solution to address specific congestion identified in the CARIS must provide, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project; (3) a description of the project, including planning and engineering specifications as appropriate; (4) evidence of a commercially viable technology; (5) a major milestone schedule; (6) a schedule for obtaining required siting permits and other certifications; (7) a demonstration of Site Control or a schedule for obtaining such control; (8) status of ISO interconnection studies and interconnection agreement; (9) status of equipment procurement; (10) detailed capital cost estimates for each segment of the project; (11) a risk profile addressing the stage of project development, required cost overruns sharing, required project cost increase sharing, identification of conditions for cancelling the project including terms and conditions for allocating sunk costs; and (12) any other information requested by the ISO.[220]

The Filing Parties also propose the same language, modified to indicate its applicability to the Public Policy Requirements planning process. The modifications, which alter some of the criteria for the purpose of increased flexibility, are necessary to ensure that the criteria are applicable to any type of Public Policy Requirement. Specifically, Section 31.4.8.1 includes the following criteria for transmission solutions to a transmission need driven by a Public Policy Requirement:

> Any entity seeking to offer a transmission solution for transmission needs driven by Public Policy Requirements identified by the NYDPS/NYPSC, must provide, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project; (3) a description of the project, including type, size, and location, as well as planning and engineering specifications as appropriate; (4) evidence of a commercially viable technology; (5) a major milestone schedule; (6) a schedule for obtaining required siting permits and other certifications; (7) a demonstration of Site Control or a schedule for obtaining such control; (8) status of ISO interconnection studies and interconnection agreement; (9) status of equipment procurement; (10) capital cost estimates for the project; (11) to the extent available a risk profile addressing the stage of project

[219] The NYISO has added section 31.2.4.1.2 which indicates that the information requirements for projects are contained in the relevant sections.

[220] Similar to the entity qualification criteria, these project qualification criteria do not require entities to show that they are capable of obtaining rights of way through eminent domain or to show their ability to incorporate under specific state law requirements.

> development, required cost overruns sharing, required project cost increase sharing, identification of conditions for cancelling the project including terms and conditions for allocating sunk costs; and (12) any other information requested by the ISO.[221]

The NYISO has also added Section 31.4.5.2 as a "road map" paragraph that points to the provisions on the project information requirements.[222]

Regarding the requirement that the Tariff be modified to include information on the timing of the submittal of the information, the Filing Parties propose the following new Section 31.2.4.1.4, titled "Timing for Submittal of Project and Entity Qualification Information and Opportunity to Provide Additional Information" in the reliability planning process:

> Any entity seeking to develop a project as a solution to an identified Reliability Need shall submit any information, or update any previously submitted information, it considers relevant to its project and qualifications to the ISO. The required information for entity and project qualification must be submitted to the ISO in accordance with the time frame and other requirements specified in the ISO Procedures after a request for solutions is made by the ISO upon completion of the RNA. The ISO shall within 15 days of an entity's submittal, notify the entity if the information is incomplete. The entity shall submit the additional information within the time period specified in the ISO Procedures.

Rather than setting a strict deadline for information procedures, the Filing Parties added flexibility to the time frame for entities to submit qualification information to the NYISO. The Filing Parties also propose the same language, modified to indicate its applicability to the economic planning process or Public Policy Requirements planning process, in Sections 31.3.2.4.1.4 (for solutions to address specific congestion identified in the CARIS) and 31.4.5.4 (for transmission solutions to a transmission need driven by a Public Policy Requirement). Modifications to the provisions in the economic and Public Policy Requirements planning process include language removing the reference to a "request for solutions" and adding, in the economic planning process provision, language indicating that "required information … may be submitted at any time, but the proposed regulated economic transmission project will be evaluated against the most recently available CARIS Phase II database." These modifications were necessary to reflect differences between the economic and Public Policy Requirements planning processes.

[221] Similar to the entity qualification criteria, these project qualification criteria do not require entities to show that they are capable of obtaining rights of way through eminent domain or to show their ability to incorporate under specific state law requirements.

[222] A similar "road map" paragraph for the economic planning process section has been added in 31.3.2.4.1.2.

In addition to the provisions in the qualification criteria regarding the directive that any entity, whether incumbent or non-incumbent, be able to use the cost recovery and cost allocation provisions in the Tariff, the Filing Parties add the following Section 31.5.1.7, titled "Eligibility for Cost Allocation and Cost Recovery":

> Any entity, whether Transmission Owner or Other Developer, shall be eligible for cost allocation and cost recovery, as set forth in Section 31.5 of this Attachment Y and associated rate schedules, as applicable, for any approved reliability, economic, or Public Policy Requirement driven transmission project.

Further, with respect to the directive that all proposed solutions be evaluated comparably, the NYISO proposes the following revisions to clarify that evaluations will be comparably evaluated in its reliability planning process. Specifically, the Filing Parties propose to modify Section 31.2.5.1:

> When evaluating proposed solutions to Reliability Needs from any Developer, all resource types shall be considered on a comparable basis as potential solutions to the Reliability Needs identified: generation, transmission, and demand response. All solutions will be evaluated in the same general time frame.

Also, the Filing Parties are adding new sections that provide for the identification of qualifying entities and projects in the reliability planning process. The Filing Parties propose a new Section 31.2.6 in the reliability planning process that states: "The ISO will include in the CRP the list of entities and projects that qualify pursuant to Section 31.2.4.1." Additionally, the Filing Parties propose language to require the posting of selected solutions.[223] Thus, a new Section 31.2.6.4 in the reliability planning process is being added that states:

> The ISO shall post on its website a list of all entities that have undertaken a commitment to build a project (which may be a regulated backstop solution, market-based response, alternative regulated response or gap solution) that is necessary to ensure system reliability, as identified in the CRP and approved by the appropriate governmental agency(ies) and/or authority(ies).

New Section 31.3.2.5, in the economic planning section, states:

> The ISO shall post on its website a list of all entities who have undertaken a commitment to build a project that has been approved by project beneficiaries, in accordance with Section 31.5.4.6 of this Attachment Y.

Finally, new Section 31.4.9, in the Public Policy Requirements planning section, states:

[223] Order No. 1000 at P 159.

The ISO shall post on its website a list of all entities who have accepted the terms and conditions of an Article VII certificate under the New York Public Service Law, or any successor statute, to build a project.

4. Process for Reevaluation of Transmission Plan Due to Delays in Development

Order No. 1000 directs transmission providers to include the reevaluation criteria, for reliability projects, in their tariffs. As explained in Section IV.A.1.b.ii, the NYISO's Tariff already includes most of the criteria for reevaluation. However, in order to fully comply with Order No. 1000 the Filing Parties propose to add the further detail regarding reevaluation, which is currently included in the CRPP Manual, into the Tariff. Therefore, Section 31.2.7.1, regarding market-based solutions, has been amended as follows:

31.2.7.1 The ISO will monitor and report on the status of market-based solutions to ensure their continued viability to meet Reliability Needs on a timely basis in the CRP. The ISO shall~~'s criteria to~~ assess the continued viability of such projects using the following criteria:~~are included in the ISO Procedures.~~

31.2.7.1.1 Between three and five years before the Trigger Date for the project, the ISO will use a screening analysis to verify the feasibility of the project.

31.2.7.1.2 Between one and two years before the Trigger Date for the project, the ISO will review the status of the required interconnection studies, contract negotiations, permit applications, financing, and Site Control.

31.2.7.1.3 Less than one year before the Trigger Date, the ISO will perform a detailed review of the project's status, including the status of: (1) final permits; (2) required interconnection studies; and (3) an effective interconnection agreement; (4) financing; (5) equipment; and (6) the implementation of construction schedules.

The increasing levels of detail in NYISO monitoring are needed as the NYISO gets close to deciding whether to trigger a regulated solution and proceed to obtain regulatory approvals and start construction. The same revisions have also been made to Section 31.2.7.2, regarding regulated reliability solutions.

C. Additional Compliance Modifications

1. Applicability of Order No. 1000's Reforms to New Facilities

Order No. 1000 provides that the directed reforms shall apply to new transmission facilities. New transmission facilities are those subject to reevaluation after the effective date of

this compliance filing.[224] Because the Attachment Y process already complied with the Commission's directives with respect to the reliability and economic planning processes, projects selected pursuant to those processes have been, and continue to be eligible for cost allocation and cost recovery. However, in compliance with Order No. 1000, the NYISO has added a new Public Policy Requirements planning process in Section 31.4. The Commission's effective date directive, thus applies, making the new process effective upon the completion of the next reliability planning cycle following the Commission's acceptance of this compliance filing. Thus, in compliance with this directive, the Filing Parties propose to add a new Section 31.5.1.8, titled "Effective Date of Cost Allocation and Cost Recovery for Regulated Transmission Solutions Driven by Public Policy Requirements":

> The cost allocation methodology and cost recovery provided under this Section 31.5 for regulated transmission solutions driven by Public Policy Requirements shall only apply to solutions identified in the Tariff that are submitted to the ISO upon the completion of the next reliability planning cycle following the Commission's issuance of a final order approving these tariff changes.

2. Clarification that the NYISO Does Not Select Among Solutions in the Regional Transmission Plan for Purposes of Cost Allocation

The Filing Parties also propose an additional modification to emphasize that the appropriate governmental authorities, not the NYISO, select among proposed solutions, with respect to the reliability planning process. As explained in prior filings, and accepted by the Commission, the NYISO verifies that proposed projects will meet identified Reliability Needs. However, appropriate governmental authorities, not the NYISO, shall choose a solution, in the event that more than one project is identified to meet a Reliability Need. Section 31.2.5.7.1 provides that this is the process, but to clarify that the NYISO does not select solutions in that process, the Filing Parties propose the following modification:

> If the ISO determines in the CRP, or at any time, that implementation of a regulated backstop solution reviewed in a previous RNA/CRP cycle is necessary, the ISO will request the Responsible Transmission Owner to submit its proposal for a regulated backstop solution to the appropriate governmental agency(ies) and/or authority(ies) to begin the necessary approval process. The Responsible Transmission Owner in response to the ISO request shall make such a submission. Other Developers and Transmission Owners proposing alternative regulated solutions pursuant to Section 31.2.4.6.2 that have completed any changes required by the ISO under Section 31.2.5.4, which the ISO has determined will resolve the identified Reliability Need, may submit these proposals to the appropriate governmental agency(ies) and/or authority(ies) for review. If more than one regulated solution would meet the Reliability Need, the ISO does not determine

[224] *Id*. at PP 65, 162, 503.

which solution will be implemented. The appropriate governmental agency(ies) and/or authority(ies) with jurisdiction over the implementation or siting will determine whether the regulated backstop solution or an alternative regulated solution will be implemented to address the identified Reliability Need.

3. Obligation of Non-Incumbent Transmission Developers to Comply with Applicable Reliability Obligations

Order No. 1000 indicated that some commenters were concerned that existing transmission providers could violate reliability standards if a non-incumbent transmission developer abandons a facility needed to address a Reliability Need.[225] The Commission held that all entities that are users, owners, and operators of the electric bulk power system must register with NERC, including such non-incumbent transmission providers. Therefore, the Filing Parties propose the following new Section 31.6.5, titled "Compliance with Reliability Requirements" to reflect this obligation:

> All entities developing an approved project pursuant to the provisions in this Attachment Y must register with NERC and NPCC for appropriate reliability functions and must comply with all applicable Reliability Criteria.

4. Revisions to Comply with Regional Cost Allocation Principles

Though the NYISO's Tariff substantially complies with all of the Regional Cost Allocation Principles, the Filing Parties propose additional modifications to ensure that Attachment Y reflects all of the Order No. 1000 directives. Specifically, the Filing Parties propose revisions to: (1) add the Order No. 1000 Regional Cost Allocation Principles to Section 31.5 of the Tariff and modifications in response to that addition; and (2) to modify the Tariff to fully comply with Regional Cost Allocation Principle #4.

First, the Filing Parties propose to include the language adopting the Order No. 1000 and Order No. 1000-A Cost Allocation Principles in Section 31.5.2. Second, the Filing Parties propose to amend existing Sections 31.5.3.1 to state:

> The ISO shall implement the specific cost allocation methodology in Section 31.5.3.2 of this Attachment Y in accordance with the Order No. 1000 Regional Cost Allocation Principles as set forth in Section 31.5.2. ~~Cost allocation for regulated transmission solutions to Reliability Needs shall be determined by the ISO be based upon the principle that beneficiaries should bear the cost responsibility.~~ The specific cost allocation methodology in Section 31.5.3.2~~, to be developed by the ISO in consultation with the ESPWG, will~~ incorporates the following elements:

[225] *Id*. at PP 342-344.

Corresponding revisions have been made to Section 31.5.4.2 with respect to the cost allocation methodology for regulated economic projects.

Additionally, as explained above, Regional Cost Allocation Principle #4 requires that:

> The allocation method for the cost of a regional facility must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if there is an agreement for the original region to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the entities in the original region.[226]

While the NYISO's Tariff complies with the first requirement in this principle (*i.e.*, cost must be allocated solely within the transmission planning region), modifications are necessary to fully comply with the second requirement. Therefore, the Filing Parties are proposing tariff modifications to ensure that NYISO's Tariff identifies and address the consequences for other regions. Specifically, with respect to its reliability planning process, a new Section 31.2.2.7, titled "Consequences for Other Regions" states:

> The ISO will coordinate with neighboring regions to identify the consequences of reliability transmission projects on neighboring regions. The ISO shall report the results in the CRP.

This language is also included in new Sections 31.3.1.6 (modified as necessary to reflect its inclusion in the economic planning process) and 31.4.4.1 (modified as necessary to reflect its inclusion in the Public Policy Requirements planning process). Presently, the NYISO is holding meetings regularly with PJM and ISO-NE to discuss expansion of the existing Northeast Coordinated System Planning Protocol ("NCSPP") to meet the requirements of Order No. 1000. Accordingly, the Filing Parties expect to submit the revised protocol to comply with the interregional planning process requirements in their April 11, 2013 compliance filing. The NYISO is developing the metrics and process to be used in identifying consequences of regional plans on neighboring regions in conjunction with PJM and ISO-NE to provide for reciprocity and a uniform approach across the three regions. Accordingly, the Filing Parties will make tariff amendments to reflect these processes and metrics in their April 2013 compliance filing.

D. Additional Ministerial Modifications and Further Clarifications

The Filing Parties also propose several modifications to correct omissions, grammatical, and typographical errors. Additionally, the Filing Parties propose several clarifications to

[226] *Id*. at PP 550, 586.

provide additional detail and clarity necessary to ensure compliance with the Commission's Order No. 1000 directives. None of these clarifications or modifications alters the substance of the Attachment Y CSPP, as accepted by the Commission.[227]

Specifically, the Filing Parties propose the following ministerial and clarifying revisions:

- Replacing the word "Council" with "Corporation" in the definition of Reliability Criteria to correct the name of the "North American Reliability *Corporation*";
- Addition of the definition of "Site Control" which adopts, with necessary modifications, the currently effective definition of Site Control found in OATT Attachment X. This modification will provide clarification with respect to certain entity qualification criteria and project information requirements;
- Addition of the term CSPP and deletion of the term "Reliability Planning Process" in Section 31.1.3;
- Correction of the cross-reference to Attachment O of the Services Tariff (currently misidentified as Attachment O of the OATT) in Sections 31.2.3.2, 31.2.6.2, 31.3.2.2;
- Making the term "Transmission Owner" plural in Section 31.2.4.2.1;
- Capitalization of the newly defined term "Site Control" in Sections 31.2.4.3.1, 31.2.4.5.4, 31.2.4.7;
- Addition of the phrase "cost recovery" in Section 31.5.6.4, to conform it to the newly added 31.5.6.5;
- Deletion of a duplicate "the" in Section 31.6.2;
- Addition of the word "shall" in Section 31.2.4.3.1;
- Numerous updates to reflect changed section numbering, including revised numbering in OATT 6.10; and
- Several corrections to correct typographical errors such as additional spacing and periods.

VI. EFFECTIVE DATE

The Filing Parties request that the compliance tariff modifications proposed herein become effective upon the completion of the next reliability planning cycle following the Commission's issuance of a final order approving these tariff changes. The Filing Parties believe that the analysis of transmission needs driven by Public Policy Requirements should be

[227] 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 tariff revisions necessary to correct drafting errors or ambiguities).

based on a current Comprehensive Reliability Plan. This approach will provide the foundation of a reliable bulk power system upon which to build consideration of public policy needs.

VII. 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.

VIII. 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 make it effective upon the completion of the next reliability planning cycle following the Commission's issuance of a final order approving these tariff changes.

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 11th day of October, 2012.

/s/ Joy A. Zimberlin

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