

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket No. ER16-966-____

**REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR REHEARING
OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Section 313(a) of the Federal Power Act¹ and Rules 212 and 713 of the Commission’s Rules of Practice and Procedure,² the New York Independent System Operator, Inc. (“NYISO”) requests clarification or, in the alternative, rehearing of a limited aspect of the Commission’s April 18, 2016, *Order on Proposed Tariff Revisions* in the above-captioned proceeding (“April Order”).³

The April Order accepted in large part tariff revisions the NYISO proposed to its Public Policy Transmission Planning Process (“Public Policy Process”) in its February 18, 2016, filing (“February Filing”).⁴ The order, however, directed the NYISO to provide that if an Other Public Policy Project⁵ contains a transmission component and is selected during the regional transmission planning process, the NYISO must allocate the cost of the transmission component consistent with its regional cost allocation methodology.⁶

¹ 16 U.S.C. § 8251(a).

² 18 C.F.R. §§ 385.212 and 385.713.

³ *New York Independent System Operator, Inc.*, Order on Proposed Tariff Revisions, 155 FERC ¶ 61,037 (2016) (“April Order”).

⁴ *New York Independent System Operator, Inc.*, Proposed Tariff Revisions Regarding Public Policy Transmission Planning Process, Docket No. ER16-966-000 (February 18, 2016) (“February Filing”).

⁵ In the February Filing, the NYISO proposed to define an “Other Public Policy Project” in its Open Access Transmission Tariff (“OATT”) as “A non-transmission project or a portfolio of transmission and non-transmission projects proposed by a Developer to satisfy an identified Public Policy Transmission Need.”

⁶ April Order at P 28.

As described below, the NYISO's selection requirements in its Public Policy Process, as accepted by the Commission as compliant with Order No. 1000, provide for the NYISO to select the more efficient or cost-effective transmission solution to a Public Policy Transmission Need for purposes of cost allocation under the NYISO OATT. The NYISO, therefore, requests clarification that it has fulfilled the April Order's directive by establishing a process whereby the transmission and non-transmission components of a proposed Other Public Policy Project will be handled separately through modification of the Public Policy Transmission Need. The NYISO will evaluate the transmission component as a stand-alone project in comparison to competing transmission projects for purposes of selecting the more efficient or cost-effective transmission solution for cost allocation through its tariffs. The NYISO does not interpret the April Order to require it to alter its role in selecting only from among fully-transmission projects for purposes of cost allocation under the OATT.

I. COMMUNICATIONS

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⁷ Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2014)) is requested to the extent necessary to permit service on counsel for the NYISO in both Richmond, VA and Washington, DC.

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II. REQUEST FOR CLARIFICATION

In response to the NYISO's proposed definition of "Other Public Policy Project" in its February Filing, the Commission directed the NYISO to amend its OATT to provide that, if an Other Public Policy Project contains a transmission component and is selected during the regional transmission planning process, the NYISO must allocate the cost of the transmission component consistent with its regional cost allocation methodology.⁸ The NYISO seeks clarification that the April Order did not require it to alter its role in only selecting among fully-transmission projects for purposes of cost allocation under the OATT and, therefore that its proposed process to modify the Public Policy Transmission Need and select from among only competing transmission projects to fulfill that need complied with the Commission's directive.

Order No. 1000 required public utility transmission providers, including the NYISO, to establish a process by which transmission needs driven by Public Policy Requirements are identified in a regional transmission planning process and potential solutions to the identified transmission needs are evaluated.⁹ Order No. 1000 further required that the regional transmission planning process include a transparent and not unduly discriminatory process for evaluating whether to select a transmission facility in the regional transmission plan for purposes

⁸ April Order at P 28.

⁹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 at P 205 (2011) ("Order No. 1000"), *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) ("Order No. 1000-A"), *order on reh'g and clarification*, 141 FERC ¶ 61,044 (2012).

of cost allocation.¹⁰ Although the public utility transmission provider must also consider proposed non-transmission solutions on a comparable basis,¹¹ Order No. 1000 does not require the selection of non-transmission solutions for purposes of cost allocation and recovery.¹²

The Commission has accepted the NYISO's two-stage comparable evaluation and selection process in its Public Policy Process as satisfying its Order No. 1000 requirements.¹³ In the first stage, the NYISO performs a comparable assessment of all proposed solutions, regardless of resource type (*i.e.*, transmission, generation, demand response, or a combination of these resources), to determine whether each proposed solution is viable and sufficient to address the Public Policy Transmission Need.¹⁴ After the viability and sufficiency assessment is complete, the New York Public Service Commission ("NYPSC") reviews the viable and sufficient solutions and issues an order indicating whether the NYISO should continue to evaluate transmission solutions to address the Public Policy Transmission Need or whether non-transmission solutions should be pursued.¹⁵

¹⁰ See Order No. 1000 at P 328; Order No. 1000-A at P 452.

¹¹ See Order No. 1000 at P 148.

¹² See Order 1000-A at P 193 ("We do not require anything more than considering non-transmission alternatives as compared to potential transmission solutions, similar to what was developed in Order No. 890, Order No. 890-A, and resulting compliance filings. The evaluation of non-transmission alternatives as part of the regional transmission planning process does not convert that process into integrated resource planning. Order No. 1000 requires that there be a regional transmission plan that includes transmission facilities selected in the regional transmission plan for purposes of cost allocation"); New York Independent System Operator, Inc., Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014) at P 248 ("In response to protestors, Order No. 1000 does not require that NYISO select a non-transmission solution.")

¹³ See *New York Independent System Operator, Inc.*, 148 FERC ¶ 61,044 at PP 245-257 (2014) (accepting the NYISO's comparable evaluation and selection process).

¹⁴ See OATT Section 31.4.6.

¹⁵ The NYPSC identifies the Public Policy Transmission Need for which the NYISO will evaluate proposed solutions in accordance with OATT Section 31.4.2.1. In its subsequent order described in OATT Section 31.4.6.7, the NYPSC may determine that its initially identified transmission need has been modified due to the existence of viable and sufficient non-transmission solutions.

If the Public Policy Transmission Need is continued, the NYISO will perform the second stage of the process pursuant to which it evaluates the viable and sufficient, fully-transmission solutions¹⁶ to select the more efficient or cost-effective transmission solution to address the Public Policy Transmission Need for purposes of cost allocation under the NYISO OATT.¹⁷ In response to protests early in the NYISO's Order No. 1000 regional compliance process which argued that the NYISO should have to select among both transmission and non-transmission projects,¹⁸ the Commission confirmed that Order No. 1000 does not require the NYISO to select a non-transmission solution.¹⁹ Accordingly, the NYISO OATT does not provide for the NYISO to select a project with a non-transmission component or to allocate the costs under its OATT of such project, as it cannot be selected by the NYISO in its regional transmission planning process.²⁰

Consistent with these Commission-accepted evaluation and selection requirements for the Public Policy Process, the NYISO understands the Commission's directive in the April Order to

¹⁶ Without the inclusion of the non-transmission component, the transmission component of a proposed Other Public Policy Project would not be viable and sufficient as a stand-alone project to address the Public Policy Transmission Need and would not be comparable to the other proposed fully transmission solutions that can address the complete Public Policy Transmission Need.

¹⁷ See OATT Section 31.4.8.2.

¹⁸ See New York Independent System Operator, Inc., Compliance Filing, Docket No. ER13-102-002 (October 15, 2013) at pp 11-15 (describing the NYISO's proposed evaluation and selection process that applies in both its reliability planning process and Public Policy Process and why the NYISO should not be required to select non-transmission solutions).

¹⁹ See New York Independent System Operator, Inc., Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014) at P 248 ("In response to protestors, Order No. 1000 does not require that NYISO select a non-transmission solution.")

²⁰ The NYISO has been clear with its stakeholders since early in its development of the Public Policy Process that the NYISO would not select projects with combined transmission and non-transmission components to satisfy a Public Policy Transmission Need. See NYISO "Process and Metrics for Evaluating Public Policy Solutions" presentation (dated August 6, 2013) at page 3, August 12, 2013 Electric System and Planning Working Group, *available at*: http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_espwg/meeting_materials/2013-08-12/Draft%20Study%20Process%20Order%201000%20compliance_PPR_130806_redline.pdf.

require the NYISO to clarify in its OATT the circumstances in which the transmission and non-transmission components of a proposed Other Public Policy Project would be addressed separately, so that the NYISO could evaluate the transmission component as a stand-alone project that is eligible for selection and cost allocation under the OATT.

While the Public Policy Process does not provide for the NYISO to select a project with a non-transmission component to address a Public Policy Transmission Need, the NYISO OATT does contemplate a scenario in which the transmission component of an Other Public Policy Project could be carved out of the project to address the Public Policy Transmission Need. Specifically, the NYPSC, as part of its review of the viable and sufficient solutions, may conclude that non-transmission solutions, including the non-transmission component of an Other Public Policy Project, should be pursued to meet a portion of a Public Policy Transmission Need and could modify that need.²¹

The NYISO has previously discussed with its stakeholders that if this scenario were to occur, it would re-start its Public Policy Process to enable Developers, including the Developer of an Other Public Policy Project with a transmission component, to propose solutions to address the modified Public Policy Transmission Need. That is, the Developer of the Other Public Policy Project could propose the transmission component of its initially proposed Other Public Policy Project as the viable and sufficient, fully-transmission solution to the remaining transmission need that is eligible for selection and cost allocation under the OATT. In its compliance filing filed contemporaneously with this request for clarification, the NYISO is proposing revisions to OATT Section 31.4.6.7 to make this process explicit.

²¹ OATT Section 31.4.6.7.

The NYISO does not interpret the April Order as directing the NYISO to instead rework its underlying comparable evaluation and selection process to require it to select from among transmission and non-transmission projects for purposes of cost allocation under the OATT. This would constitute a fundamental change to the requirements of the NYISO's Public Policy Process that the Commission has previously accepted as compliant with Order No. 1000 and on which the NYISO has relied in administering its Public Policy Process. The NYISO respectfully requests clarification that it has correctly interpreted the April Order.

III. ALTERNATIVE REQUEST FOR REHEARING

Should the Commission deny the NYISO's request for clarification detailed above, the NYISO respectfully requests rehearing on this issue. A determination that the NYISO must select from among transmission and non-transmission solutions, including an Other Public Policy Project with a non-transmission component, for purposes of cost allocation under the OATT would be inconsistent with the Commission's previous determinations on the requirements of Order No. 1000 in these proceedings. As the Commission determined in the NYISO's Order No. 1000 regional compliance proceeding, "Order No. 1000 does not require that NYISO select a non-transmission solution."²² Further, the Commission has indicated that Order No. 1000 concerns transmission planning and not integrated resource planning.²³ Requiring the NYISO to consider non-transmission solutions in its selection process would

²² See New York Independent System Operator, Inc., Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014) at P 248.

²³ See Order 1000 at P 154 ("Just as there may be opportunities for regional transmission solutions to better meet the needs of the region, the same could be true for regional non-transmission alternatives. However, the regional transmission planning process is not the vehicle by which integrated resource planning is conducted; that may be a separate obligation imposed on many public utility transmission providers and under the purview of the states; Order 1000-A at P 193 ("The evaluation of non-transmission alternatives as part of the regional transmission planning process does not convert that process into integrated resource planning."))

constitute a fundamental change to the two-stage comparable evaluation and selection process previously accepted by the Commission as compliant with Order No. 1000. Such a selection process would require significant changes to the Public Policy Process, including the selection metrics and cost allocation methodology that were developed with transmission solutions in mind.

IV. SPECIFICATION OF ERRORS AND STATEMENT OF ISSUES

In accordance with Rule 713(c),²⁴ the NYISO submits the following specifications of error and statement of the issues on which it seeks rehearing of the April Order:

- In the absence of the requested clarification, the Commission failed to engage in reasoned decision making, to provide a reasoned explanation for its decision, or to explain its departure from its own precedent when it directed that the NYISO consider Other Public Policy Projects that include transmission and non-transmission components for purposes of selecting the more efficient or cost-effective transmission solution to address a Public Policy Transmission Need and to allocate the transmission project costs under the OATT.²⁵

²⁴ 18 C.F.R. § 385.713(c).

²⁵ See, e.g., *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 at 43 (1983); *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 at 839 (D.C. Cir. 2006); *NorAM Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998); citing *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992); *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 12 (D.C. Cir. 2014).

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission grant the requested clarification or, in the alternative, rehearing of the limited issue in the April Order specified above.

Respectfully submitted,

/s/ Carl F. Patka

Carl F. Patka, Assistant General Council
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May 18, 2016

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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 18th day of May 2016.

/s/ Joy A. Zimmerlin

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