

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

New York Independent System Operator, Inc.,)	
)	Docket No. ER13-1942-000
)	
New York Transmission Owners)	
)	
PJM Interconnection, L.L.C.)	Docket No. ER13-1947-000
)	
Duquesne Light Company)	Docket No. ER13-1926-000
PJM Interconnection, L.L.C.)	
)	
ISO New England Inc.,)	Docket No. ER13-1960-000
New England Power Pool Participants Committee)	
)	(Not Consolidated)

**REQUEST FOR LEAVE TO ANSWER, AND ANSWER,
AND MOTION TO INTERVENE OUT-OF-TIME OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully seeks leave to answer, and submits this answer, to the September 9, 2013 protests² of: (i) the Public Interest Organizations (“PIOs”);³ and (ii) the Indicated New

¹ 18 C.F.R. § 385.213 (2013).

² See *Motion to Intervene and Protest of Public Interest Organizations Conservation Law Foundation, Environment Northeast, Natural Resources Defense Council, Pace Energy and Climate Center and Sustainable FERC Project*, Docket Nos. ER13-1933-000, ER13-1960-000, ER13-1947, and ER13-1926 (September 9, 2013) (“PIOs’ Protest”); *Protest of Indicated Transmission Owners*, Docket No. ER13-1942-000 (Sept. 9, 2013) (“Indicated NYTOs’ Protest”).

³ The PIOs are the Conservation Law Foundation, Environment Northeast, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sustainable FERC Project.

York Transmission Owners (“Indicated NYTOs”)⁴ in the above-captioned proceedings. Both protests relate to⁵ the July 10, 2013 joint compliance filing by the NYISO and its transmission-owning members (including the Indicated NYTOs) in response to Order No. 1000’s⁶ interregional planning and cost allocation requirements (the “Interregional Compliance Filing”).⁷ The protests also concern the conforming interregional compliance filings by the NYISO’s Commission-jurisdictional neighbors, *i.e.*, the PJM Interconnection, LLC (“PJM”), and ISO New England, Inc. (“ISO-NE”), and their respective transmission-owning public utility members.

The PIOs are the only stakeholders in the NYISO, PJM, or ISO-NE (collectively, the “ISOs/RTOs”) to raise any issues regarding the coordination of interregional transmission planning in any of the three regions’ Order No. 1000 compliance proceedings. For the reasons set forth below, they have not shown that the enhanced arrangements proposed by the ISOs/RTOs fail to satisfy the requirements of Order No. 1000. To the contrary, the proposed interregional planning arrangements far surpass what is required under Order No. 1000. The additional changes requested by the PIOs are beyond the scope of Order No. 1000, unnecessary, and redundant.

⁴ The Indicated NYTOs are the Long Island Power Authority, its operating subsidiary, Long Island Lighting Company, Consolidated Edison Company of New York, Inc., Orange & Rockland Utilities, Inc., the New York Power Authority, and Central Hudson Gas & Electric Corporation. The Indicated NYTOs were joint filing parties in Docket No. ER13-1942-000 but reserved their right to file a protest regarding the single issue addressed in their filing.

⁵ As is discussed below in Section II, neither the PIOs nor the Indicated NYTOs filed in all of the dockets related to interregional planning coordination and cost allocation among the three ISOs/RTOs.

⁶ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (“Order No. 1000”), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) (“Order No. 1000-A”), *order on reh’g and clarification*, 141 FERC ¶ 61,044 (2012) (“Order No. 1000-B”). For convenience, unless otherwise specified, references in this filing to “Order No. 1000” should be understood to encompass Order Nos. 1000, 1000-A, and 1000-B.

⁷ *New York System Independent System Operator and New York Transmission Owners*, Interregional Compliance Filing, Docket No. ER13-1942-000 (July 10, 2013) (“Interregional Compliance Filing”).

The PIOs are also the only stakeholders in the three ISO/RTO regions to call for rejection of the proposed avoided cost methodology for interregional transmission cost allocation. They have failed to show that this methodology does not comply with Order No. 1000 or is otherwise unjust or unreasonable. The PIOs' arguments reflect a fundamental misunderstanding of the relationship, and differences, between Order No. 1000's intraregional and interregional planning compliance directives. Similarly, the Indicated NYTOs, who support the use of the avoided cost methodology except in a single hypothetical scenario, have failed to justify compelling the ISOs/RTOs to create a new cost allocation approach for that sole scenario.

The Commission should therefore reject both protests and accept the Interregional Compliance Filing, as well as the corresponding filings for the PJM and ISO-NE regions, without requiring any modifications.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion to accept answers to protests when they help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding.⁸ This answer should be accepted because it addresses and clarifies complex issues and provides additional information that will help the Commission to fairly evaluate the arguments in this proceeding.

⁸ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

II. MOTION TO INTERVENE OUT-OF-TIME IN DOCKET NOS. ER13-1926-000 AND ER13-1960-000

The NYISO is one of the three ISOs/RTOs that made interregional planning coordination and cost allocation compliance proposals under Order No. 1000 that have been challenged by the PIOs and the Indicated NYTOs. The PIOs and the Indicated NYTOs did not, however, submit their protests in all of the proceedings that they implicate. The Indicated NYTOs filed only in the NYISO's compliance docket, *i.e.*, Docket No. ER13-1942-000. The PIOs filed in several dockets but not the NYISO's. Although the PIOs filed in one PJM docket in which the NYISO is a party, *i.e.*, Docket No. ER13-1947-000, that docket does not directly address cost allocation issues.

Accordingly, the NYISO respectfully moves under Rule 214 of the Commission's Rules of Practice and Procedure⁹ for leave to intervene out-of-time in: (i) Docket No. ER13-1926-000, which concerns the PJM version of the NYISO-PJM interregional cost allocation proposal; and (ii) Docket No. ER13-1960-000, which concerns both interregional planning coordination and cost allocation for the ISO-NE region. The NYISO is not seeking leave to intervene in the other proceeding referenced in the caption of the PIOs' Protest, *i.e.*, Docket No. ER13-1933-000, because ISO-NE withdrew its compliance filing in that docket as the result of an eTariff issue nearly a month before the PIOs filed their protest.

The NYISO has a substantial interest in Docket Nos. ER13-1926-000 and ER13-1960-000 because it is a co-sponsor of the interregional planning and cost allocation proposals pending in those proceedings. No other party can adequately represent the NYISO's interests. The NYISO's request for leave to intervene out-of-time is necessitated by the PIOs' decision to protest those proposals in some, but not all, of the relevant Commission proceedings. Good

⁹ 18 C.F.R. § 385.214 (2013).

cause therefore exists for the Commission to grant the NYISO's request to intervene out of time in Docket Nos. ER13-1926-000 and ER13-1960-000.

III. ANSWER

A. The PIOs' Request that the Joint Interregional Planning Committee Post and Share More Information Is Unnecessary, Goes Beyond What Order No. 1000 Requires, and Would Impose Redundant Requirements on ISOs/RTOs

The Northeastern ISO/RTO Planning Coordination Protocol ("Protocol"), which was adopted by the ISOs/RTOs in 2004, established an interregional stakeholder process to coordinate interregional planning of the transmission systems operated by the three ISOs/RTOs. It also set forth procedures for exchanging planning-related data and information between and among the ISOs/RTOs and all interested stakeholders. The Protocol established a stakeholder process comprised of: (i) the Joint Interregional Planning Committee ("JIPC") - which is staffed by ISO/RTO representatives and coordinates the planning process among the three regions, and (ii) the Inter-area (now Interregional) Planning Stakeholder Advisory Committee ("IPSAC") - which is open to any stakeholder with an interest in planning coordination and has direct input into and review of JIPC analyses. In addition to the IPSAC, each of the ISO/RTOs provides other opportunities for stakeholder input as part of their regional planning processes. For example, the NYISO has an Interregional Planning Task Force which is a committee established at the request of its stakeholders for the express purpose of engaging NYISO stakeholders directly on interregional planning topics—including Order No. 1000 interregional planning processes.

After conducting extensive stakeholder processes for nearly two years to gather input on the development of their respective interregional compliance filings, the ISOs/RTOs proposed further enhancements to the Protocol. The proposals incorporated input from the regions'

stakeholders and included several revisions that the ISOs/RTOs made in response to the PIOs' comments. Among other things, the "Amended Protocol" would establish additional opportunities for IPSAC members to provide input to the JIPC and to review studies. The improvements ensure that the ISOs/RTOs will more than satisfy Order No. 1000's interregional transmission planning coordination requirements.

Alone among all stakeholders in the three ISO/RTO regions, the PIOs now question the transparency of, and the level of stakeholder involvement in, the IPSAC and the JIPC. They ask that the Commission direct the ISOs/RTOs to revise the Amended Protocol to require the JIPC to post or present to IPSAC not just the results of its studies and analysis, but literally every study and document related to the evaluation of interregional projects.¹⁰ They offer nothing to support this request except for conclusory allegations that there is a "risk" that the ISOs/RTOs would block "comprehensive engagement"¹¹ by stakeholders absent Commission action.

The Commission should reject the PIOs' unsupported and unnecessary request. As an initial matter, the PIOs' depiction of the JIPC as an opaque "body composed of three individuals representing each TP [*i.e.*, Transmission Provider]" is not accurate. It is misleading for the PIOs to equate the ISOs/RTOs with transmission developers that have an interest in advancing their own projects and thus have incentives to disfavor competitors. Their comments ignore the fact that the three ISOs/RTOs are independent, neutral system planners that have administered the existing Protocol for nine years in a transparent and inclusive manner in keeping with their administration of transparent markets and open access transmission services. The PIOs provide no basis for their allegation that the ISOs/RTOs would somehow use the JIPC to deprive IPSAC's stakeholder members of information needed to enable them to review and provide input

¹⁰ PIOs' Protest at 10.

¹¹ PIOs' Protest at 9.

regarding the evaluation of needs and potential interregional solutions. In fact, the opposite is true. The ISOs/RTOs have provided study inputs, analyses and draft reports to all interested parties through the IPSAC since the original protocol was implemented. No complaints have been submitted to the Commission or to the ISOs/RTOs regarding the transparency of the existing Protocol's stakeholder processes over the last nine years.

The reality is that the Amended Protocol provides for even greater transparency and stakeholder participation in the interregional transmission planning process than the Commission requires. Order No. 1000 determined that interregional transmission coordination does not require stakeholder procedures comparable to what is required under regional transmission plans. This is because stakeholders have the opportunity to participate fully in the consideration of an interregional transmission facility during the regional transmission planning process.¹² Order No. 1000 thus does not require regions to establish formal interregional planning stakeholder committees. Nevertheless, the currently effective Protocol already provides for extensive stakeholder participation via the IPSAC. Under the Amended Protocol, the IPSAC will continue to be a standing, publicly-noticed committee that meets regularly and frequently. Membership will continue to be open to all interested parties and will convey expanded opportunities for active, fully-informed participation in interregional transmission planning matters.

In response to Order No. 1000, Section 2.2 of the Amended Protocol was modified to describe the IPSAC's expanded role in the evaluation of system needs and the evaluation and selection of Interregional Transmission Projects,¹³ including the requirements for the IPSAC to

¹² Order No. 1000 at P 465.

¹³ An "Interregional Transmission Project" is defined in the Interregional Compliance Filing as a new transmission project that will be physically located within two or more neighboring transmission planning regions. *See* Interregional Compliance Filing at n 8.

review and provide input on: (i) JIPC’s review of regional needs and solutions to identify potential Interregional Transmission Projects, (ii) the scope of analysis and assumptions for the Northeastern Coordinated System Plan (“NCSP”), (iii) the draft results of JIPC’s evaluation of Interregional Transmission Projects, and (iv) the preliminary results of the coordinated system planning analysis for the NCSP and on sensitivity analysis that may be required. The JIPC actively solicits IPSAC input on all of these items. It should be noted that providing for the creation of a NCSP with review in the IPSAC process is another feature of the ISOs/RTOs’ proposal that exceeds the requirements of Order No. 1000, which does not require the development of interregional transmission plans.¹⁴

The ISOs/RTOs also fully comply with Order No. 1000’s directive that public utility transmission providers must “make transparent the analyses undertaken and determinations reached by neighboring transmission planning regions in the identification and evaluation of interregional transmission facilities.”¹⁵ Proposed new Section 7.1 of the Amended Protocol provides that JIPC will post on each region’s interregional planning webpages the results of its review, with IPSAC input, of whether there are Interregional Transmission Project concepts that could meet multiple regional needs more efficiently or cost effectively than separate regional projects. New Section 7.3 provides that JIPC shall post information on the interregional planning webpages addressing whether a proposed Interregional Transmission Project may be more efficient or cost effective than intraregional alternatives. It also provides that JIPC will present to IPSAC for its input the results of its studies and analysis regarding a proposed Interregional Transmission Project as soon as practicable upon their completion.

¹⁴ Order No. 1000 at P 399.

¹⁵ Order No. 1000 at P 465.

Even the PIOs support the “continued use of the [IPSAC] as a forum for stakeholder review and input into coordinated system planning.”¹⁶ They concede that “the IPSAC forum will provide an Order No. 1000-compliant opportunity for stakeholder engagement.”¹⁷ It is unreasonable for the PIOs to demand that the ISOs/RTOs provide a stakeholder process that exceeds these parameters in an undefined way based on unfounded allegations against ISOs/RTOs that have conducted open and transparent planning for nearly a decade.

Consequently, the Commission should reject the PIOs’ Protest and not require additional compliance revisions. Imposing such an obligation is unjustified because the Amended Protocol already provides stakeholders with everything needed for “comprehensive engagement” in interregional planning and for greater transparency and participation than Order No. 1000 requires. Granting the PIOs’ request would only subject the ISOs/RTOs to unnecessary and potentially redundant compliance obligations.

B. The PIOs and the Indicated NYTOs Have Not Shown that the Proposed Avoided Cost Methodology Is Not Compliant with Order No. 1000 for Any Type of Interregional Transmission Project

Order No. 1000 established requirements to govern the allocation of the costs of Interregional Transmission Projects that are voluntarily approved by neighboring transmission regions. Specifically, it promulgated six Interregional Cost Allocation Principles,¹⁸ of which only one, Principle No. 1, is contested by the PIOs or the Indicated NYTOs. Under Interregional Cost Allocation Principle No. 1, the costs of a new Interregional Transmission Project must be

¹⁶ PIOs’ Protest at 9.

¹⁷ *Id.*

¹⁸ Order No. 1000 at PP 622-685.

allocated “in a manner that is at least roughly commensurate with the estimated benefits” of the project in each region.¹⁹

The Interregional Compliance Filing, and the corresponding compliance filings for PJM and ISO-NE, proposed to allocate the costs of Interregional Transmission Projects using an avoided cost methodology. Under that methodology, each region’s share of the costs of an Interregional Transmission Project is determined by the ratio of the present value of the estimated cost of the projects in the region that are displaced by the Interregional Transmission Project to the sum of the estimated cost of all projects in all affected regions that are displaced by the Interregional Transmission Project. The Interregional Compliance Filing explained that the avoided cost methodology complies with all of the Interregional Cost Allocation Principles, including Principle No. 1, because it allocates costs in proportion with the quantifiable benefits of the displaced regional transmission projects.²⁰ Displaced regional project costs represent a reasonable and relatively easily quantified measure of the benefits a region will realize from the Interregional Transmission Project, because each displaced project will necessarily have been found to be beneficial, efficient and cost-effective by the region.²¹

As the following subsections explain, there is no basis for either the PIOs’ claim that the proposed cost allocation methodology is generally non-compliant with Order No. 1000 or the Indicated NYTOs’ concerns about applying the methodology to the unlikely scenario in which an Interregional Transmission Project is selected despite being more costly than displaced regional options.

¹⁹ *Id.* at P 622.

²⁰ Interregional Compliance Filing at 24.

²¹ Interregional Compliance Filing at 26.

1. The PIOs Incorrectly Claim that Order No. 1000 Requires Interregional Cost Allocation Processes to Consider the Same Factors as Intraregional Processes and Ignore Relevant Commission and Judicial Precedents

The PIOs ask the Commission to reject the proposed avoided cost interregional cost allocation methodology.²² They allege that it violates Interregional Cost Allocation Principle No. 1 because it purportedly “does not ensure that the cost of an interregional project will be allocated among the project’s beneficiaries in a manner roughly commensurate with benefits . . .” In an attempt to support this position they point to several orders in other Order No. 1000 compliance proceedings concerning intraregional cost allocation methodologies proposed by entities that are not ISOs/RTOs.²³ They go on to argue that these intraregional holdings should automatically apply in the context of interregional cost allocation.²⁴ The PIOs argue that the ISOs/RTOs’ proposal “oversimplifies” the benefits analysis because it allegedly does not properly account for economic and public policy benefits.²⁵

The PIOs have not refuted the Interregional Compliance Filing’s demonstration that the use of an avoided cost interregional cost allocation methodology by the three ISOs/RTOs is fully compliant with Order No. 1000, including Interregional Cost Allocation Principle No. 1. That filing explained that intraregional cost allocation rulings rejecting the exclusive use of an avoided cost methodology were not “determinative or relevant with respect to interregional cost allocation.”²⁶ Nothing in the PIOs’ Protest, or in any Commission order issued subsequent to the submission of the Interregional Compliance Filing, undermines the Interregional Compliance

²² PIOs’ Protest at 10.

²³ *See id.* at 13-14.

²⁴ *Id.* at 14-16.

²⁵ *Id.* at 12.

²⁶ Interregional Compliance Filing at 25.

Filing. The fundamental flaw in the PIOs' argument is its failure to account for the relationship, and the differences, between the intraregional and interregional cost allocation processes.

Order No. 1000 specifies that “the method . . . for interregional cost allocation used by two transmission planning regions may be different from the method or methods used by either of them for regional cost allocation.”²⁷ It did not require that public policy or economic benefits be considered in the interregional planning process.²⁸ These considerations are already addressed in the three ISOs/RTOs' intraregional planning processes, each of which has already been found to be in substantial compliance with Order No. 1000.²⁹ The purpose of the interregional coordination process is to “consider whether the local and regional transmission planning processes result in transmission plans that meet local and regional transmission needs more efficiently and cost-effectively, after considering opportunities for collaborating with public utility transmission providers in neighboring transmission planning regions.”³⁰

Under the framework clearly established by the Commission in Order No. 1000, for an Interregional Transmission Project to receive consideration, it must first be proposed within the regional planning processes of the neighboring regions.³¹ If an interregional analysis shows that an Interregional Transmission project may be more efficient or cost effective than two or more regional projects, the results of that analysis is provided to the respective regions for consideration and approval. A proposed Interregional Transmission Project is not eligible for

²⁷ Order No. 1000 at P 733.

²⁸ Order No. 1000 at P 401 (“Order No. 1000 does not require [] . . . consideration of transmission needs driven by Public Policy Requirements, or the evaluation of economic considerations” in interregional coordination.) (Footnotes omitted).

²⁹ *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013); *PJM Interconnection, L.L.C., et al.*, Order on Compliance Filings, 142 FERC ¶ 61,214 (2013); *ISO New England, Inc.*, Order on Compliance Filings, 143 FERC 61,150 (2013).

³⁰ Interregional Compliance Filing at 25 (citing Order No. 1000-A at P 511).

³¹ Order No. 1000 at P 436.

inclusion in regional plans for purposes of cost allocation unless it is first approved within the respective regional planning processes. Interregional planning processes therefore inform, and are inherently complementary to, intraregional processes because decision making authority unquestionably resides at the regional level. It is the regions that will consider the costs and benefits of their share of interregional project costs under their regional cost allocation methodologies in deciding whether to adopt an Interregional Transmission Project in their regional plans.

The PIOs' Protest ignores this relationship between the interregional and intraregional processes established by Order No. 1000.³² The PIOs further ignore recent Commission and judicial precedents interpreting the "roughly commensurate benefits" standard that is at the heart of Interregional Cost Allocation Principle No. 1.³³ Those precedents emphasize that "roughly commensurate" is to be interpreted broadly and that certain kinds of benefits cannot readily "be quantified in absolute terms....." or calculated with "exacting precision."³⁴ It is sufficient that there be "an articulable and plausible reason" to believe that benefits are at least roughly

³² In fact, it is the PIOs, not the NYISO or the other sponsors of the avoided cost allocation methodology, that are making arguments based on "*post hoc* disagreements with the final rule's requirements for interregional cost allocation." PIOs' Protest at 14. The PIOs are effectively making an untimely and impermissible collateral attack on Order No. 1000's interregional planning and cost allocation requirements by attempting to revise them long after they were finalized by the Commission. *See, e.g., San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 134 FERC ¶ 61,229 at P 15 (2011) ("[collateral attacks on final orders and relitigation of applicable precedent by parties that were active in the earlier cases thwart the finality and repose that are essential to administrative efficiency and are strongly discouraged.") (citing *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co.*, 112 FERC ¶ 61,117, at P 12 (2005)); *see also EPIC Merchant Energy NJ/PA, LP v. PJM Interconnection, LLC*, 131 FERC ¶ 61,130 (2010) (dismissing as an impermissible collateral attack a complaint that merely sought to re-litigate the same issues that were raised in the prior case citing no new evidence or changed circumstances).

³³ *See e.g., PJM Interconnection, LLC*, 138 FERC ¶ 61,230 (2012), *order on rehearing*, 142 FERC ¶ 61,216 (2013); *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009). The types of public policy benefits that the PIOs focus on have similar hard-to-quantify characteristics as the reliability and other benefits addressed in the cited proceedings.

³⁴ *See* 138 FERC ¶ 61,230 (2012) at P 57; 142 FERC ¶ 61,216 (2013) at P 38.

commensurate with costs. Even if the Commission were to conclude that the proposed avoided cost allocation methodology was not the perfect means of allocating costs, the United States Court of Appeals for the Seventh Circuit has found that even “crude” allocation methods may be upheld because “if crude is all that is possible, it will have to suffice.”³⁵ The PIOs’ theory with regard to the use of an avoided cost methodology for interregional cost allocation must be considered in light of these precedents. The NYISO respectfully submits that there is clearly an articulable and plausible reason to believe that the avoided cost rate methodology will ensure a roughly commensurate allocation of costs to beneficiaries. The proposed methodology will divide the costs of an Interregional Transmission Project based on the avoided costs of regional projects, and those costs are then further allocated within regions based upon each region’s approved allocation methodology(ies).

Similarly, the proposed avoided cost allocation methodology is consistent with the requirements of the “just and reasonable” standard. The Commission is not required to find that the proposed methodology is the perfect means of allocating costs associated with Interregional Transmission Projects. The methodology does not have to be “theoretically perfect”³⁶ or “the only reasonable methodology, or even the most accurate.”³⁷ Nor does the Commission have to consider if alternatives offered by others might be superior better.³⁸ Rather, the Commission need only find that the avoided cost methodology falls within a zone of reasonableness and is not

³⁵ *Ill. Commerce Comm’n v. FERC*, 721 F.3d 764 (7th Cir. 2013) (“It’s not enough for Illinois to point out that MISO’s and FERC’s attempt to match the costs and the benefits of the MVP program is crude; if crude is all that is possible, it will have to suffice.”).

³⁶ *City of Batavia, et al. v. Federal Energy Regulatory Comm’n*, 672 F.2d 64, 84 (1982).

³⁷ *OXY USA, Inc. v. Federal Energy Regulatory Comm’n*, 64 F.3d 679, 692 (D.C. Cir. 1995).

³⁸ *American Electric Power Service Corporation*, 116 FERC ¶ 61,179 (2006) at P 25.

unduly discriminatory or preferential.³⁹ The Interregional Compliance Filing offered substantial support for the reasonableness of the proposed cost allocation methodology. The mere fact that the PIOs would prefer a different methodology that accounts for additional factors (that are not required by Order No. 1000) does not make the proposal unjust or unreasonable.

2. The Proposed Interregional Cost Allocation Methodology Enjoys Widespread Stakeholder Support in the Three ISO/RTO Regions

The proposed avoided cost methodology was developed in consultation with stakeholders, pursuant to the directives of Order No. 1000.⁴⁰ Order No. 1000 does not require that stakeholders be unanimous in their support for a methodology before the Commission may accept it. As was noted above, the three ISOs/RTOs, their transmission owners, and other stakeholders vetted and contributed to the development of the avoided cost methodology through an extensive stakeholder process over the course of nearly two years.⁴¹

The Commission has emphasized the importance of broad regional support as a factor in its finding that a proposed rate design is just and reasonable. In *American Electric Power Service Corp. v. Midwest Independent Transmission System Operator*, the Commission stated that “[a]lthough stakeholder support alone cannot ultimately prove that a rate design is just and reasonable, the overwhelming support for [the proposed methodology for pricing transmission service between the RTOs] in this proceeding is a strong factor we consider in finding that [the proposed methodology] is just and reasonable.”⁴² In *PJM Interconnection, L.L.C.*, the

³⁹ *PJM Interconnection, LLC and Carolina Power & Light*, 134 FERC ¶ 61,048 (2011) at n 61.

⁴⁰ Order No. 1000 at P 588, Order No. 1000-B at P 66.

⁴¹ Interregional Compliance Filing at 2.

⁴² *American Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc. and PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,083 (2008) at P 172; see also *Midwest Indep. Transmission Sys. Operator, Inc. and Public Utilities with Grandfathered Agreements in the Midwest ISO Region*, 109 FERC ¶ 61,285 (2004) at P 51.

Commission emphasized the position of the majority of the transmission owning members of PJM, even though there was not complete stakeholder consensus: “regional or stakeholder consensus is an important factor to consider in reviewing the justness and reasonableness of a rate design.”⁴³ The PIOs have not presented a compelling argument that would justify overriding the significant, interregional consensus that supports the Interregional Compliance Filing.

The avoided cost methodology enjoys such broad interregional support due in large part to its transparency and relative ease of implementation. The Commission has found that transparency and ease of implementation are factors that contribute to a finding that a proposed provision is just and reasonable. In *Midwest Independent Transmission Operator, Inc. and Public Utilities with Grandfathered Agreements in the Midwest ISO Region*, for example, the Commission accepted a proposed methodology for the refund of marginal loss surpluses because, among other things, the methodology had the “advantage” of “ease of implementation.”⁴⁴ Similarly, the Commission found a registered cost option bid cap proposed by the California Independent System Operator, Inc. to be a reasonable mitigation measure due in part to “its transparency and ease of implementation.”⁴⁵

The transparency and ease of implementation of a cost allocation method is very important in this proceeding because the allocation of costs between regions is significantly more complex than the allocation of costs within a region. Each regional entity must meet different

⁴³ *PJM Interconnection, L.L.C.*, 119 FERC 61,063 at (2007) at P 56; *see also California Independent System Operator Corporation*, 123 FERC ¶ 61,288 (2008) at P 25 (noting that the mitigation measures the CAISO proposed “were thoroughly vetted through the stakeholder process” and that CAISO modified its proposal “based on market participant input.”)

⁴⁴ *Midwest Indep. Transmission Operator, Inc. and Public Utilities with Grandfathered Agreements in the Midwest ISO Region*, 109 FERC ¶ 61,285 (2004) at P 171.

⁴⁵ *California Independent System Operator Corporation*, 123 FERC ¶ 61,288 (2008) at P 26.

transmission needs, must answer to different stakeholders and must abide by different tariffs and governing agreements. All of the affected regions agreed that the avoided cost methodology provides a simple, roughly commensurate calculation of each region's cost responsibility because it uses as an input a factor - displaced regional project costs - that is transparent, readily quantifiable and easily comparable across regions. It seems all but certain that the kind of interregional cost allocation methodology that the PIOs favor would not have this important advantage.

3. The Unlikely Hypothetical Presented by the Indicated NYTOs Does Not Justify the Creation of a Separate Cost Allocation Methodology

The Indicated NYTOs argue that it would be “unreasonable” to apply the proposed avoided cost allocation methodology to a hypothetical Interregional Transmission Project that is more expensive than the combined cost of the regional projects it displaces.⁴⁶ They urge the Commission to require additional compliance filings to develop methods for evaluating the benefits and costs of, and to establish an alternative cost allocation methodology for, such a project.⁴⁷ The Indicated NYTOs support the application of the proposed cost allocation methodology to all other Interregional Transmission Projects.⁴⁸

The Commission should reject this request. The proposed cost allocation methodology is a just and reasonable way to allocate costs for all Interregional Transmission Projects in a manner that is roughly commensurate with their benefits. It is appropriate regardless of whether the cost of the Interregional Transmission Project is greater than, equal to, or less than the costs of the displaced regional projects. The proposed methodology uses as its primary input the costs

⁴⁶ Indicated NYTOs' Protest at 2.

⁴⁷ Indicated NYTOs' Protest at 3.

⁴⁸ Indicated NYTOs' Protest at 6.

of regional projects that are displaced by Interregional Transmission Projects, based - contrary to the assertion of the Indicated NYTOs⁴⁹ - on the reasonable assumption that a regional project would not have been selected for any purpose had the region not found the project's costs to be aligned with its benefits.⁵⁰ The ratio of the costs of displaced regional transmission projects among regions agreeing to the project to the total cost of the Interregional Transmission Project that is selected provide a reasonably accurate signal of the benefits the region expects to gain from those displaced projects. This ratio demonstrates the value of the Interregional Transmission Project to each region and, therefore, allocates the costs of that project in a just and reasonable manner "that is at least roughly commensurate with estimated benefits"⁵¹ under the precedents described in Section III.B.1 above.

In addition, the fact that there is such broad stakeholder support for the proposed cost allocation methodology in the three ISO/RTO regions is just as valid a basis for rejecting the Indicated NYTOs' protest as it for rejecting the PIOs'. The proposed methodology's relative ease of administration is an equally strong rationale for upholding it against the Indicated NYTOs' argument.

An Interregional Transmission Project must be selected by the regional planning process in each region in which it is to be located, and each region can decline to select a project that is not cost-effective from its perspective.⁵² It therefore appears unlikely that an Interregional Transmission Project that was expected to cost more than the sum of the costs of displaced

⁴⁹ Indicated NYTOs' Protest at 7.

⁵⁰ Interregional Compliance Filing at 26.

⁵¹ See e.g. *Public Service Co. of Colorado*, 142 FERC ¶ 61,206 (2013) at P 314.

⁵² Interregional Compliance Filing at 25.

regional projects would ever be approved by all three ISO/RTO regions. It seems quite possible that a separate cost allocation methodology aimed at such projects would never be used. And if an interregional project that is more expensive than the regional projects it displaces were adopted, each region has agreed to pay for it in ratio to its avoided regional transmission project costs. By contrast, creating and implementing a new cost allocation methodology at the interregional level that somehow would account for or rebalance all of the factors already used in regional cost allocation methodologies surely would require a substantial commitment of time and resources by the ISOs/RTOs, their transmission-owning members, other stakeholders, and the Commission itself. The NYISO respectfully submits that making such an effort would not be an efficient use of time or resources. The Commission should therefore accept the application of the proposed avoided cost methodology to all Interregional Transmission Projects.

If, however, the Commission were to find that the proposed avoided cost methodology should not be applied in the scenario identified by the Indicated NYTOs, it should nevertheless confirm that the methodology would continue to apply to all Interregional Transmission Projects up to the point, if applicable, where the costs of such a project is equal to the costs of the regional projects that it displaces. If required, any additional cost allocation should address only that portion of project costs that exceed the sum of regional costs, and should not delay the implementation of the proposed avoided cost methodology.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission accept this answer, accept the NYISO's motion for leave to intervene out-of-time necessitated by the PIOs' decision not to file their protest in NYISO compliance dockets, reject

the PIOs' and Indicated NYTOs' protests and accept the NYISO's Interregional Compliance Filing and the corresponding filings of ISO-NE and PJM without ordering any modifications.

Respectfully submitted,

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September 24, 2013

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 24th day of September, 2013.

/s/ Joy A. Zimmerlin

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