

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

New York Independent System Operator, Inc.

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Docket No. ER13-102-000

**REQUEST FOR LEAVE TO ANSWER AND ANSWER TO COMMENTS AND
PROTESTS OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
AND THE NEW YORK TRANSMISSION OWNERS**

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”) and the New York Transmission Owners (“NYTOs”)² (collectively, the “Filing Parties”) respectfully submit this request for leave to answer and answer (“Answer”). The Answer responds to comments and protests regarding the Filing Parties’ October 15, 2013 supplemental compliance filing addressing the intraregional transmission planning and cost allocation requirements of Order No. 1000³ (“October Compliance Filing”).⁴ That filing

¹ 18 C.F.R. § 385.213 (2013).

² The NYTOs are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a LIPA (“LIPA”), New York Power Authority (“NYPA”), New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc. The Filing Parties note that LIPA and NYPA, as transmission owners not subject to the Commission’s jurisdiction under section 205 of the Federal Power Act, have voluntarily participated in the development of this filing.

³ *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.

⁴ *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 15, 2013) (“October Compliance Filing”). On November 18, 2013, the Filing Parties requested an extension of time to respond to the comments and protests in this proceeding. *New York Independent System Operator, Inc. and New York Transmission Owners*, Motion

included proposed compliance revisions to the NYISO's Open Access Transmission Tariff ("OATT") and its Market Administration and Control Area Services Tariff ("Services Tariff").

The comments and protests were submitted by: Multiple Intervenors and the Independent Power Producers of New York, Inc. (collectively "MI/IPPNY"); Entergy Nuclear Power Marketing, LLC ("Entergy"); NextEra Energy Resources, LLC ("NextEra"); LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively, "LS Power"); the New York State Public Service Commission ("NYPSC"); the Long Island Power Authority and LIPA (collectively, "LIPA"); and the NYTOs.⁵ In Part II of this Answer, the Filing Parties jointly respond to the comments and protests, except as follows: (i) LIPA does not join in the response to its own comments and proposed tariff revisions in Part II(F), except to the extent that it agrees with the additional tariff language change proposed in these comments, and (ii) the NYTOs do not join in the response in Part III of this Answer to their own comments, along with the protests of the

for Extension of Time to Answer of the New York Independent System Operator, Inc. and the New York Transmission Owners, Docket No. ER13-102-000 (November 18, 2013).

⁵ *New York Independent System Operator, Inc. and New York Transmission Owners*, Protest of Multiple Intervenors and Independent Power Producers of New York, Inc., Docket No. ER13-102-000 (November 14, 2013) ("MI/IPPNY Protest"); *New York Independent System Operator, Inc. and New York Transmission Owners*, Protest of Entergy Nuclear Power Marketing LLC to the Joint Second Compliance Filing of the New York Independent System Operator, Inc. and the New York Transmission Owners, Docket No. ER13-102-000 (November 14, 2013) ("Entergy Protest"); *New York Independent System Operator, Inc. and New York Transmission Owners*, Protest of NextEra Energy Resources, LLC, Docket No. ER13-102-000 (November 14, 2013) ("NextEra Protest"); *New York Independent System Operator, Inc. and New York Transmission Owners*, Protest of LS Power Transmission, LLC and LSP Transmission Holdings, LLC, Docket No. ER13-102-000 (November 14, 2013) ("LS Power Protest"); *New York Independent System Operator, Inc. and New York Transmission Owners*, Protest of the New York State Public Service Commission, Docket No. ER13-102-000 (November 14, 2013) ("NYPSC Protest"); *New York Independent System Operator, Inc. and New York Transmission Owners*, Comments of the Long Island Power Authority and LIPA, Docket No. ER13-102-000 (November 14, 2013) ("LIPA Comments"); *New York Independent System Operator, Inc. and New York Transmission Owners*, Comments of the New York Transmission Owners, Docket No. ER13-102-000 (November 14, 2013) ("NYTOs Comments").

NYPSC, and NextEra, regarding the authority of the NYISO Board of Directors (“Board”) to decline to select a transmission solution to a Public Policy Transmission Need.⁶

The Commission should accept the October Compliance Filing without requiring any modifications.⁷ The Commission should reject the protests contending that the October Compliance Filing does not comply with Order No. 1000 or the Commission’s April 18, 2013 order (“April 18 Order”).⁸ The proposed compliance tariff revisions were required to bring the NYISO’s transmission planning process into full compliance with the Commission’s directives, including revisions necessary to implement or clarify the existing tariff language to accommodate those directives.⁹

Except as noted below with respect to LIPA, the Commission should also reject all of the tariff revisions proposed by other parties. Those proposed revisions are not required to bring the NYISO into compliance with Order No. 1000, and may undermine aspects of the NYISO’s transmission planning process. As discussed below, with respect to the tariff provisions proposed by LIPA, the Filing Parties do not object to the Commission directing them to insert these changes, with one clarification described in Section II(F) into the NYISO’s tariff in a

⁶ Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in the October Compliance Filing, and if not defined therein, in the NYISO OATT and NYISO Services Tariff.

⁷ The Filing Parties have limited their response to those issues for which they believe that providing additional information will best assist the Commission to reach its decision. The Filing Parties’ silence with respect to any particular argument or assertion should not be construed as acceptance or agreement.

⁸ *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,059 (2013) (“April 18 Order”).

⁹ The Commission has previously authorized the NYISO to include limited, but necessary, implementation details and clarifications in compliance filings to make the NYISO’s tariff provisions clearer and more accurate and should follow that precedent here. *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh’g*, 127 FERC ¶ 61,042 (2009) (accepting proposed additional tariff revisions that were necessary to implement the modifications directed by the Commission and to correct drafting errors or ambiguities in a compliance filing).

further compliance filing to account for LIPA's role with respect to transmission planning in the Long Island Transmission District.

I. REQUEST FOR LEAVE TO ANSWER

The Filing Parties are authorized to answer comments as a matter of right. Moreover, the Commission has discretion to, and routinely accepts, answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.¹⁰ The Filing Parties' Answer to the protests satisfies those standards and should be accepted because it addresses inaccurate or misleading statements, and provides additional information that will help the Commission to fully evaluate the arguments in this proceeding.¹¹

II. FILING PARTIES' ANSWER

A. The NYISO's Process for the Comparable Evaluation of Non-Transmission Solutions Fully Complies with Order No. 1000

1. The NYISO's Reliability Planning Process and Public Policy Transmission Planning Process Provide for a Comparable Evaluation of Transmission and Non-Transmission Solutions to Identified Needs

The Commission should reject the protests and the requested directives of MI/IPPNY and Entergy in which they contend that the October Compliance Filing does not provide for the

¹⁰ 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); *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,160 at P 13 (2012) and *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).

¹¹ If the Commission were to conclude that LIPA's or the NYTOs' comments were tantamount to a protest, the NYISO respectfully requests leave to answer them on the same grounds -- that its answer is helpful to the Commission's deliberations because it points out inaccuracies or provides further information for consideration.

NYISO to perform a comparable evaluation of transmission and non-transmission alternatives to satisfy an identified Reliability Need or Public Policy Transmission Need because the NYISO will only select the more efficient or cost-effective transmission project.¹² These protests are based on a misinterpretation of the Commission's orders. As described below, the October Compliance Filing provides for the NYISO to consider on a comparable basis all proposed transmission and non-transmission solutions to an identified Reliability Need or Public Policy Transmission Need consistent with the requirements of Order No. 1000 and the directives in the April 18 Order. These orders do not, however, disturb the separation between transmission planning performed by the NYISO and resource portfolio planning performed by the NYPSC. That is, the Commission does not require the NYISO to select a non-transmission project for purposes of cost allocation and recovery under the NYISO's tariffs. Indeed, as discussed below, the Commission has expressly confirmed this distinction.

a. Order No. 1000 and the April 18 Order Do Not Require the NYISO to Select Among Transmission and Non-Transmission Solutions for Cost Allocation and Recovery

The April 18 Order only required the Filing Parties to establish a mechanism for the NYISO to select for purposes of allocating costs under the NYISO's tariffs the more efficient or cost-effective *transmission* solution to an identified Reliability Need or Public Policy Transmission Need.¹³ Consistent with this directive, the Filing Parties proposed in the October Compliance Filing a mechanism for the selection of the more efficient or cost-effective transmission solution for purposes of cost allocation under the NYISO's transmission tariff.

¹² MI/IPPNY Protest at pp 36-48; Entergy Protest at pp 5-9.

¹³ April 18 Order at PP 81, 147.

The April 18 Order did not direct, nor does Order No. 1000 require, the NYISO to select the more efficient or cost-effective solution from among all resource types. The April 18 Order accepted as consistent with the comparability principle the NYISO's reliability and economic planning processes that were established in response to Order No. 890.¹⁴ Those processes provided for the NYISO's evaluation of all resource types - including transmission, generation, and demand response - on a comparable basis, to determine their ability to meet the identified need. The compliance tariff revisions that empower the NYISO to select the more efficient or cost-effective transmission solution to a Reliability Need do not alter the NYISO's Commission-accepted approach to evaluate all resource types, including transmission, generation, and demand response, on a comparable basis, to determine their ability to meet the identified need.

In response to the April 18 Order's directive that the NYISO provide for the "comparable treatment of non-transmission alternatives in the consideration of transmission needs driven by public policy requirements,"¹⁵ the Filing Parties proposed for the public policy transmission planning process the same comparable evaluation of transmission and non-transmission solutions that the Commission approved for the NYISO's reliability planning process. In addition, in response to the April 18 Order's specific concern regarding an entity's ability to propose a non-transmission solution to a Public Policy Transmission Need, the Filing Parties have clarified in Sections 31.4.3 and 31.4.3.1 of Attachment Y of the NYISO OATT¹⁶ that the NYISO will solicit and accept proposals for purposes of its evaluation of all resources, on a comparable basis, to determine their ability to meet the Public Policy Transmission Need.

¹⁴ April 18 Order at P 50.

¹⁵ *Id.* at P 148.

¹⁶ Unless otherwise specified, all references in this Answer are to sections in Attachment Y of the NYISO OATT.

b. The NYISO's Tariff Appropriately Reserves Transmission Planning to the NYISO and Resource Planning to the NYPSC

The Filing Parties' proposed tariff revisions reflect the existing separation between transmission planning, which is the role of a public utility transmission provider - *i.e.*, the NYISO - under a Commission-approved transmission tariff, and resource portfolio planning, which remains within the purview of state public service commissions under state law. This separation is consistent with the Federal Power Act,¹⁷ and none of the cases cited by MI/IPPNY or Entergy question it. Consistent with its existing process already accepted by the Commission, the NYISO will evaluate all solution types - transmission and non-transmission - to determine if they are viable projects, and whether the characteristics of the project are sufficient in type, scope and timing to meet the identified transmission system need. The NYISO will conduct a further evaluation of any proposed viable and sufficient transmission projects to select the more efficient or cost-effective transmission solution for purposes of cost allocation under the NYISO's transmission tariff.¹⁸ Consistent with its role in ensuring resource adequacy, the NYPSC may determine that non-transmission resources - including, generation resources, demand response, or energy efficiency projects - can resolve an identified need, the costs of which may be recovered through utilities' bundled retail rates approved by the NYPSC under state law.¹⁹ If the NYPSC decides that non-transmission resources should be selected over transmission to meet an identified need,²⁰ or that the transmission is not needed and should not

¹⁷ See 16 U.S.C. §§ 824(b)(1); 824o(a)(3).

¹⁸ OATT, Attachment Y §§ 31.2.6, 31.4.8.

¹⁹ *Id.* at §§ 31.5.1.6, 31.5.6.3; OATT, Rate Schedule 10 §§ 6.10.2.3, 6.10.5.3.

²⁰ New York Public Service Law §§ 65, 66, 72.

be sited,²¹ that state determination can obviate the need for transmission cost allocation and recovery under the NYISO's transmission tariffs.²² Neither Order No. 1000 nor the April 18 Order disturbs this existing distinction between transmission planning and resource planning. In Order No. 1000, the Commission states:

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.²³

Similarly, in Order No. 1000-A, the Commission provides:

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.**²⁴

The Commission further states that:

In further response to those petitioners who claim that Order No. 1000 will disrupt state integrated resource planning, we note that the identification of more efficient or cost-effective **transmission** facilities through a regional transmission planning process should not disrupt state integrated resource planning.²⁵

In effect, MI/IPPNY and Entergy are challenging this long-standing division of jurisdiction between the Commission and the NYPSC by seeking cost recovery for non-

²¹ N.Y. Public Service Law, Art. VII.

²² Non-transmission projects proceeding to construction are included by the NYISO in the assumptions for the base case of the NYISO's Reliability Needs Assessment.

²³ Order No. 1000 at P 154 (emphasis supplied).

²⁴ Order No. 1000-A at P 193 (emphasis supplied).

²⁵ *Id.* at P 194 (emphasis supplied).

transmission projects under the NYISO's transmission tariff. However, Order No. 1000 did not require, and the April 18 Order did not direct, the Filing Parties to modify the existing cost recovery requirements to provide for cost recovery for non-transmission projects under the NYISO's tariffs.²⁶

c. The Cases Relied on by Entergy Do Not Support Revisions to the NYISO Tariff Provisions Reflecting the Commission's and NYPSC's Jurisdiction

Entergy argues that the recent federal district court orders in the *PPL Energyplus v. Nazarian*²⁷ and *PPL Energyplus v. Hanna*²⁸ proceedings change this separation of responsibility between the NYISO and the NYPSC.²⁹ This is not a credible interpretation of those decisions. Both decisions held simply that state commissions cannot set the rate for wholesale power sales.³⁰ These proceedings, however, do not disturb the states' role in planning for adequate generation and other resources, nor their authority to provide for utilities to recover the costs of

²⁶ As the Commission has stated: "while the consideration of non-transmission alternatives to transmission facilities may affect whether certain transmission facilities are in a regional transmission plan, we conclude that the issue of cost recovery for non-transmission alternatives is beyond the scope of the transmission cost allocation reforms we are adopting here, which are limited to allocating the costs of new transmission facilities." Order No. 1000 at P 779. *See also PJM Interconnection, L.L.C., et al.*, 142 FERC ¶ 61,214 (2013) at P 53 ("To the extent that Public Interest Organizations contend that non-transmission alternatives should be selected in the regional transmission plan for purposes of cost allocation, Order No. 1000 concluded that the issue of cost recovery associated with non-transmission alternatives is beyond the scope of Order No. 1000, which addresses the allocation of the costs of transmission facilities.")

²⁷ *PPL Energyplus v. Nazarian*, Civil Action No. MJG-12-1286, 2013 U.S. Dist. LEXIS 140210 (D. Md. Sept. 30, 2013) ("Nazarian Decision").

²⁸ *PPL Energyplus v. Hanna*, Civil Action No. 11-745, 2013 U.S. Dist. LEXIS 147273 (D.N.J. Oct. 11, 2013) ("Hanna Decision").

²⁹ Entergy Protest at pp 18-20.

³⁰ *See* Nazarian Decision at *132-133; Hanna Decision at *99-100.

non-transmission projects through bundled retail rates under applicable state law.³¹ Indeed, they recognize that states play a lawful and legitimate role in resource planning.³² The NYISO's existing tariff provisions recognize this state role with regard to non-transmission projects.³³ Moreover, as Entergy concedes, the NYISO's tariff provisions already expressly specify that nothing in them "shall affect the Commission's jurisdiction over the sale and transmission of electric energy subject to the jurisdiction of the Commission."³⁴ Neither the April 18 Order nor the recent federal district court proceedings require any revisions regarding the state's role in NYISO's tariffs.

³¹ See, e.g., Order No. 1000 at P287 ("Nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities").

³² See, e.g., Hanna Decision at *38 ("[T]he Commission and PJM do not have substantial authority to require construction of power plants, prevent retirement of generation, select the generation technologies that will be constructed, or require demand resource or energy efficiency programs as a means of addressing resource adequacy"); Nazarian Decision at *92 ("Though it creates a federal role, the FPA explicitly 'preserve[d] state jurisdiction' over certain areas of the electric energy regulation field, including, but not limited to, regulation concerning the siting and construction of physical facilities used for the generation of electric energy. See *New York v. F.E.R.C.*, 535 U.S. 1, 22-24, 122 S. Ct. 1012, 152 L. Ed. 2d 47 (2002). Where Congress has explicitly recognized a role for the states, there can be no serious assertion that the structure and framework of the FPA expresses a clear and manifest intent on the part of Congress to displace completely state authority vis-à-vis physical generation facilities (distinct from those facilities' wholesale energy sales and transmissions) and the construction thereof."); Nazarian Decision at *100 ("The Court also can accept the position that the State of Maryland has a legitimate interest and federally permissible role in securing an adequate supply of electric energy for Maryland residents in the present and in the future.") (citations removed); Nazarian Decision at *130 ("By themselves, those actions and objectives of securing the construction and operation of a generation facility may not invade a federally occupied field and most likely do fall within the permissible realm of regulation reserved to the states under the FPA").

³³ OATT, Attachment Y §§ 31.5.1.6, 31.5.6.3; OATT, Schedule 10, §§ 6.10.2.3, 6.10.5.3.

³⁴ OATT, Attachment Y §§ 31.5.1.6, 31.5.6.3.

d. The NYISO's Economic Planning Process and PJM's Planning Process Do Not Support Selection Among Transmission and Non-Transmission Facilities for Cost Allocation and Recovery Purposes

MI/IPPNY and Entergy also argue that the NYISO is able to evaluate the more efficient or cost-effective solution among transmission and non-transmission alternatives and that such evaluations are being performed under the NYISO's economic planning process and in other regions.³⁵ However, the examples cited by the protestors do not support their argument. Moreover, as stated above, such evaluation by the NYISO is simply not necessary, because it is the NYPSC that carries out planning for the state's resource mix, not the NYISO.³⁶

Under the NYISO's economic planning process, the NYISO prepares a Congestion Analysis and Resource Integration Study ("CARIS"), which includes a ten-year projection of congestion and the potential impacts of generic solutions to mitigate the identified congestion.³⁷ Under the first part of the CARIS process, the NYISO performs this informational study with a narrow scope that evaluates production cost savings relative to capital investment in evaluating the potential benefits of generic transmission, generation and demand response solutions. If, as a result of this informational study, a Developer proposes a project, the NYISO will assess the specific study proposals in the second phase of the economic planning process. The NYISO's evaluation of the specific project does not address the efficiency or cost-effectiveness of the proposed project or compare the proposed project with other types of resources. Rather, the decision as to whether to proceed with a project is left to a supermajority vote of identified

³⁵ MI/IPPNY Protest at 39-42; Entergy Protest at 7-9.

³⁶ See NYPSC Case No. 06-M-1017, *Proceeding on Motion of the Commission As to the Policies, Practices and Procedures for Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers*, Order Establishing Electric Supply Portfolio Standards, Goals, and Reporting Requirements (February 26, 2008).

³⁷ OATT, Attachment Y § 31.3.1.1.

beneficiaries.³⁸ Accordingly, the CARIS process does not support MI/IPPNY and Entergy's arguments regarding the technical feasibility of evaluating the more efficient or cost-effective solution from among all resource types.

In addition, MI/IPPNY erroneously relies on the Commission's order in response to a PJM Interconnection L.L.C. ("PJM") Order No. 1000 compliance filing to argue that it is necessary for the transmission provider to evaluate the relative costs and benefits of both a transmission and a non-transmission solution to satisfy the comparability principle.³⁹ In that proceeding, the Commission stated that it had relied on language in Sections 1.5.6 (m), (n), (o), and (p) of Schedule 6 of PJM's Operating Agreement in determining that PJM satisfied the comparability principle, and as PJM was proposing to remove such language, PJM had to explain how it still satisfied the comparability principle.⁴⁰ MI/IPPNY argue that the removed language required PJM to evaluate the relative costs and benefits of both a transmission project and any proposed alternative, *i.e.*, non-transmission projects. However, a careful reading of the removed provisions makes clear that they provide for PJM's evaluation of alternative *transmission* projects, rather than non-transmission projects. As set forth in Section 1.5.6(m), "Any Transmission Owner and other participants on the Transmission Expansion Advisory Committee may offer an alternative *transmission* solution."⁴¹ In addition, the factors to be evaluated by PJM's Office of Interconnection in Sections 1.5.6(o) and (p) provide, along with the relative costs and benefits of the alternative transmission solution, "the ability of the alternative to supply

³⁸ *Id.* at §§ 31.5.4.2.4., 31.5.4.3.5, 31.5.4.6.

³⁹ MI/IPPNY Protest at pp 39-40.

⁴⁰ *PJM Interconnection, L.L.C., et al.*, 127 FERC¶ 61,166 (2013) at P 53.

⁴¹ Emphasis supplied.

the required level of *transmission service*.”⁴² These provisions clearly contemplate that the alternative is a transmission project. In addition, as clarified by PJM in its July 22, 2013 compliance filing, PJM did not rely on the removed provisions for its comparable evaluation of non-transmission solutions.⁴³ Rather, PJM considers non-transmission alternatives at the assumption stage of its process.⁴⁴

2. The NYISO’s Requirements for the Evaluation of the Viability and Sufficiency of Proposed Solutions Are Clear and Do Not Require Modification

NextEra requests that the Filing Parties clarify whether the NYISO will perform the viability analysis of proposed solutions set forth in Sections 31.2.5.3 and 31.4.6.3 on a pass/fail basis or as input into the NYISO’s analysis of the more efficient or cost-effective solution to an identified need.⁴⁵ The Filing Parties clarify that the viability analysis is part of the NYISO’s initial threshold determination that a proposed solution can satisfy an identified Reliability Need or Public Policy Transmission Need, which the NYISO will perform on a pass/fail basis. As set forth clearly in Sections 31.2.5.3 and 31.4.6.3, the NYISO will reject from further consideration in a planning cycle a proposed solution that is not viable. In addition, Sections 31.2.6.1 and 31.4.8 provide that the NYISO will only perform its further analysis concerning the selection for cost allocation purposes for those proposed transmission solutions that have been found to be viable and sufficient to meet the identified need.

⁴² Emphasis supplied.

⁴³ *PJM Interconnection, L.L.C.*, Docket No. ER13-198-002 (July 22, 2013) (“PJM Compliance Filing”) at pp 4-11.

⁴⁴ *Id.*

⁴⁵ NextEra Protest at pp. 15-16.

LS Power asserts that the current language describing the NYISO's evaluation of the sufficiency of a proposed solution to a Reliability Need could be used to justify over-building and should be revised.⁴⁶ Specifically, LS Power requests that the Commission direct the Filing Parties to replace the language in Section 31.2.5.4 of "eliminating the Reliability Need(s)" with "resolves the Reliability Need(s) cost effectively."⁴⁷

The Commission should reject LS Power's proposed tariff revision because it confuses the viability and sufficiency of a solution with its cost effectiveness. As stated above, the sufficiency determination in Section 31.2.5.4 is part of the NYISO's initial threshold review of a proposed solution to confirm simply that it can at a minimum meet the identified Reliability Need. After the NYISO makes its threshold determination, the Developers of proposed transmission solutions that have been found to be viable and sufficient will provide the NYISO with more detailed project information, including capital cost estimates, for purposes of the NYISO's evaluation and selection of the more efficient or cost-effective transmission solution to the identified Reliability Need for purposes of cost allocation.⁴⁸ It is at this later stage that the NYISO will evaluate, among other factors, which proposed transmission solution will resolve the Reliability Need more efficiently or cost effectively.⁴⁹

⁴⁶ LS Power Protest at p 18.

⁴⁷ *Id.*

⁴⁸ OATT, Attachment Y §§ 31.2.6.1 and 31.4.8

⁴⁹ The Filing Parties proposed to revise the cost allocation and recovery requirements in Section 31.5.3.2.1 to address the potential for unnecessary overbuilding by limiting cost recovery for solutions to Reliability Needs to only that portion of the project needed to provide the more efficient or cost-effective solution appropriate to the Reliability Need identified in the Reliability Needs Assessment. OATT, Attachment Y § 31.5.3.2.1.

B. The NYISO’s Process for Evaluating and Selecting a Transmission Solution to an Identified Reliability Need or Public Policy Transmission Need Fully Complies with Order No. 1000

1. The October Compliance Filing Establishes a Clear and Transparent Process for the Selection of the More Efficient or Cost-Effective Transmission Solution that Appropriately Accounts for Cost-Related Factors

The Commission should reject MI/IPPNY, LS Power, and NextEra’s challenges and proposed revisions to the NYISO’s process for selecting the more efficient or cost-effective transmission solution under the reliability and public policy planning processes and their arguments that cost should be the primary determining factor in project selection.⁵⁰ Order No. 1000 provides each public utility transmission provider with flexibility in establishing its approach for selecting the more efficient or cost-effective transmissions solution and does not require the use of specific criteria or a particular ranking or weighting system. In Order No. 1000, the Commission stated that:

Finally, we considered the many comments on whether it is more appropriate to use flexible criteria in lieu of “bright line” metrics when determining which transmission projects are in the regional transmission plan. While we have in the past required adoption of a formulaic approach to applying such metrics, we sought comment on this issue in the Proposed Rule to gain insight as to whether such a formulaic approach was appropriate or if providing additional flexibility was a more effective approach. Our review of the comments suggests that most commenters prefer flexible planning criteria for identifying transmission needs not only driven by Public Policy Requirements and evaluation of solutions to those identified needs, but also for the identification and evaluation of transmission needs related to reliability issues and economic considerations as well. These commenters have convinced us that, although there are benefits to each kind of planning criteria, there is merit in allowing for flexible planning criteria to mitigate the possibility that bright line metrics may exclude certain transmission projects from long-term transmission planning.⁵¹

⁵⁰ MI/IPPNY Protest at pp 48-52; LS Power Protest at pp 18-20; NextEra Protest at pp 3-12.

⁵¹ Order No. 1000 at P 223.

In Order No. 1000-A, the Commission further indicated in response to LS Power's request that it establish minimum standards for the selection criteria:⁵²

We decline to set certain minimum standards for the criteria used to select a transmission facility in a regional transmission plan for purposes of cost allocation other than to require that these selection criteria be transparent and not unduly discriminatory. We also find that this purpose is met adequately by the transmission planning principles of Order No. 890. We also anticipate that selection criteria will vary from transmission planning region to transmission planning region in accordance with each transmission planning region's needs, just as other aspects of regional transmission planning processes will vary, and LS Power has not persuaded us that such flexibility is inappropriate.⁵³

In the October Compliance Filing, the Filing Parties proposed a transparent and non-discriminatory selection process pursuant to which the NYISO will evaluate and select the more efficient or cost-effective transmission solution to an identified Reliability Need or Public Policy Transmission Need.⁵⁴

Contrary to protestors' assertions, the NYISO's evaluation and selection process will be an open and transparent process that will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular project was selected or not selected for cost allocation purposes in the regional transmission plan.⁵⁵ Moreover, the NYISO will evaluate all transmission solutions using the same selection metrics in a non-discriminatory manner, regardless of whether the project is proposed by an incumbent or non-incumbent transmission developer. In addition, the NYISO's use of the selection metrics for purposes of selecting the more efficient or cost-effective solution will not take place in a vacuum, but rather will include

⁵² Order No. 1000-A at P 451.

⁵³ *Id.* at P 455.

⁵⁴ OATT, Attachment Y §§ 31.2.6.5.1, 31.4.8.1.

⁵⁵ The NYISO's determination will be detailed in a written report that is reviewed with and subject to input by stakeholders and approved by the NYISO Board. OATT, Attachment Y §§ 31.2.7.1, 31.2.7.2, 31.4.10.1, and 31.4.10.2.

extensive communications and feedback with all interested parties. The NYISO will detail in a draft report - the draft Comprehensive Reliability Plan or Public Policy Transmission Planning Report - its analysis of the proposed transmission solutions based on the selection metrics and its reasons for recommending the selection of a particular project based on this analysis. The NYISO's draft report will be reviewed and subject to comment by any interested party through the NYISO stakeholder Electric System Planning Working Group and Transmission Planning Advisory Subcommittee.⁵⁶ The NYISO will provide any interested party with sufficient information to replicate the results of the draft report.⁵⁷ Once the NYISO has incorporated any revisions resulting from this review, the draft report will be reviewed and subject to an advisory vote by the NYISO stakeholder Operating Committee and Management Committee prior to submitting the report and recommendation to the NYISO Board for approval.⁵⁸ If the NYISO Board proposes to modify the recommendation regarding the selection of a transmission project, the revised report will be returned to the NYISO stakeholder Management Committee for its input regarding the change.⁵⁹ The NYISO Board cannot make a final determination until it has reviewed this stakeholder input.⁶⁰ This extensive process provides all interested parties with the opportunity to understand the manner in which the proposed solutions are evaluated and a written determination explaining the reasons why a particular project is selected or not selected to meet an identified need.

⁵⁶ OATT, Attachment Y §§ 31.2.7.1, 31.4.10.1. Any interregional planning overlay with the regional planning process will also be addressed with stakeholders at the NYISO's Interregional Planning Task Force.

⁵⁷ OATT, Attachment Y §§ 31.2.7.1, 31.4.10.1.

⁵⁸ *Id.*

⁵⁹ *Id.* at §§ 31.2.7.2, 31.4.10.2.

⁶⁰ *Id.*

The Commission should also reject protestors' assertion that cost must be the primary factor in the NYISO's selection of the more efficient or cost-effective transmission solution. As described above, the Commission did not direct public utility transmission providers to establish specific selection criteria or processes and has not indicated that cost must be the primary factor in the selection determination. With regard to costs as a selection metric, Order No. 1000-A simply stated "that *when* cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or nonincumbent transmission developer."⁶¹ As described above, the NYISO will apply all of the selection metrics, including several related to costs, in the same manner for transmission projects proposed by incumbent and non-incumbent transmission developers alike.

Protestors assert that the Commission has determined in its orders in response to the Order No. 1000 compliance filings of the Midcontinent Independent System Operator, Inc. ("MISO") and the Southwest Power Pool, Inc. ("SPP") that cost selection factors must outweigh non-cost selection factors.⁶² However, the Commission's orders do not reflect protestors' interpretation. The Commission found that MISO and SPP had not provided adequate justification for why they assigned a significantly higher percentage to non-cost-based criteria relative to cost-based criterion - 30% and 22.5%, respectively. It required that MISO and SPP either provide justification for their current values for cost-based criteria or propose revisions.⁶³

⁶¹ Order No. 1000-A at P 455 (emphasis supplied).

⁶² LS Power Protest at p 19; NextEra Protest at pp 8-10; MI/IPPNY Protest at pp. 49-50.

⁶³ *Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners, et al.*, 142 FERC ¶ 61,215 (2013) at PP 339, 340; *Southwest Power Pool, Inc., et al.*, 144 FERC 61,059 (2013) at PP 284,289.

While recognizing that costs are an important factor in properly measuring the relative efficiency and cost-effectiveness of a proposed solution, the Commission has not indicated in Order No. 1000 or its orders in response to filings in compliance with Order No. 1000 that cost must constitute the primary selection factor or must outweigh other factors.

In any event, the Filing Parties agree with protestors that cost is an important factor in selecting the more efficient or cost-effective transmission solution. If all other factors among proposed transmission solutions are equal from an engineering and operational standpoint, it is clear that costs would be the primary metric in the NYISO's selection of the more efficient or cost-effective solution. However, the Filing Parties anticipate that the NYISO will receive a wide variety of proposed transmission projects to resolve identified Reliability Needs and Public Policy Transmission Needs. These projects can vary greatly with regard to their impacts on the New York State Transmission System, the NYISO's flexibility in operating the system, their operating characteristics, their transfer capability, their expandability, and numerous other factors. Therefore, the NYISO should not be bound to select a project that may as a stand-alone project be the cheapest transmission solution, but may not benefit the New York State Transmission System or provide the same flexibility or long-term benefits of an alternative transmission solution. In fact, the Commission has expressly allowed for consideration of factors other than costs.⁶⁴

If, notwithstanding these precedents, the Commission were to require the Filing Parties to adopt a particular weighting or ranking system, the Commission should reject the system proposed by NextEra. In its protest, NextEra recommends specific weighted values for each of the NYISO's proposed selection criteria and a methodology for the NYISO's ranking of the

⁶⁴ Order No. 1000-A at P 454.

selection criteria.⁶⁵ NextEra has not provided any justification or support for its proposed methodology or weighted values.

2. The Commission Should Reject NextEra’s Proposed Cost Risk Metric as the NYISO’s Evaluation and Selection Process Will Not Limit Developers’ Ability to Recover Prudent Costs

The Commission should reject NextEra’s proposed revision to include an additional cost metric based on a Developer’s willingness to accept cost risks.⁶⁶ The NYISO’s evaluation and selection process is not a rate making proceeding, and the NYISO’s selection of a particular project will not limit a Developer’s ability to recover its prudent costs in a proceeding before the Commission, including prudent costs that exceed its initial estimates. The Commission has recognized the challenges in determining the appropriate cost estimate for a project, particularly at an early stage in the project development process.⁶⁷ The Commission rejected any rigid approach to dealing with the difficult issue of cost estimates and, rather, has required parties seeking rate incentives to propose a risk sharing mechanism.⁶⁸ Thus, it is the Commission, not the NYISO, that will appropriately deal with ratemaking issues.

3. NYISO Considers the More “Efficient” or “Cost-Effective” Transmission Solution Based on the Totality of its Evaluation of the Selection Metrics

NextEra also requests that the Filing Parties clarify: (i) whether the terms “efficient” and “cost effective” are intended to have different meanings, and (ii) how the NYISO will select

⁶⁵ NextEra Protest at pp 10-12. NextEra proposes the following values: 25% for each of the cost related factors, 7% for both property access and potential delay factors, and 12% for each of the expandability, operability, and performance factors. NextEra also argues that each proposed solution should be given a score within each metric rather than just ranked sequentially so as to ensure more accurate scoring. *Id.*

⁶⁶ *Id.* at pp 13-15.

⁶⁷ *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) at P 29.

⁶⁸ *Id.*

among competing projects, if one is found to be more efficient, while the other is more cost effective. The Filing Parties clarify that for purposes of the NYISO's regional transmission planning process, the terms "efficient" and "cost effective" have different meanings. A project's "efficiency" pertains to its ability to transfer power or avoid needs in terms of megawatts of capability or total megawatt-hours of energy for a given technology or project, compared with competing projects. By comparison, a project's "cost effectiveness" pertains to the cost of the project on a per MW basis or on a per MWh basis. Because they have different meanings, Order No. 1000 uses these terms in almost all instances in the disjunctive, requiring a public utility transmission provider to select the more "efficient **or** cost-effective" solution to an identified need. As described in the October Compliance Filing, Sections 31.2.6.5 and 31.4.8 establish the mechanism under the reliability and public policy planning processes by which the NYISO will evaluate proposed transmission solutions using a variety of selection metrics, which collectively provide for the NYISO's selection of the more efficient or cost-effective transmission solution. The metrics defined in the Filing Parties' filing were developed to collectively address these two separate concepts. The NYISO's selection of the more efficient or cost-effective transmission solution will be based on the totality of its evaluation of the proposed transmission solutions using these selection metrics. That is, the NYISO will not automatically select a highly-efficient solution that is not cost-effective or a very cost-effective solution that is not efficient. Rather, the NYISO will consider the transmission solution's total performance under all of the selection metrics in making its determination.

4. The October Compliance Filing Already Addressed the Use of NYDPS/NYPSC Criteria in the Public Policy Transmission Planning Process

The Commission should reject LS Power's proposal to revise or delete Section 31.4.8.1.8 regarding the NYISO's use of criteria specified by the New York State Department of Public

Service (“NYDPS”)/NYPSC to evaluate public policy transmission solutions.⁶⁹ The Filing Parties have already addressed LS Power’s concern that the NYDPS/NYPSC criteria be specifically identified in the public policy prior to the NYISO’s solicitation of solutions. Pursuant to Section 31.4.2.1, the NYDPS may, when it provides a written statement to the NYISO identifying a Public Policy Transmission Need, provide additional criteria for the NYISO’s evaluation of solutions to that need.⁷⁰ Following its receipt of the NYDPS’ written statement, the NYISO will request proposed solutions from Developers to meet the identified Public Policy Transmission Need in accordance with any criteria identified by the NYDPS.⁷¹ An overly rigid process that does not afford the NYISO the flexibility to evaluate and select projects that may actually proceed to construction does not serve the objectives of Order No. 1000.⁷²

5. The Thirty-Six Month Selection Period Reasonably Provides for Advanced Planning While Limiting the Need for Developers to Incur Significant Costs and Expend Significant Resources Developing a Detailed Project Until Such Investment Is Required to Timely Meet a Reliability Need

As described in the October Compliance Filing, the NYISO will select a more efficient or cost-effective transmission project to go forward during a planning cycle, unless none of the viable and sufficient regulated solutions have a Trigger Date within thirty-six months of the

⁶⁹ LS Power Protest at p 20.

⁷⁰ Section 31.4.2 provides that in response to the NYISO’s solicitation of potential transmission needs driven by Public Policy Requirements, a party that provides a Public Policy Requirement that it believes is driving a transmission need may propose criteria for the evaluation of transmission solutions to that need.

⁷¹ OATT, Attachment Y §§ 31.4.2.1, 31.4.3. The NYDPS’s written determination will be posted on the NYISO’s website. *Id.* at § 31.4.2.1.

⁷² For example, following Superstorm Sandy, New York State quickly moved to place an emphasis on hardening infrastructure in New York that did not exist immediately prior to the storm. *See* Moreland Commission on Utility Storm Preparation and Response, *Final Report* (June 22, 2013), at pp 9, 13, 47-48. The NYISO’s planning process should have sufficient flexibility to incorporate and consider such new factors raised by state regulators, or the NYISO’s selected project may be less likely to receive its required state authorizations and actually proceed to construction.

NYISO's reporting on the viability and sufficiency of the proposed solutions.⁷³ The NYISO will request that the Developers of proposed transmission solutions provide detailed project information sufficiently in advance of the earliest Trigger Date to enable the NYISO to perform its evaluation and selection in time for a regulated solution to be implemented to satisfy the Reliability Need.⁷⁴ LS Power contends that the NYISO's approach provides too long of a delay for the selection of a transmission solution, which it asserts benefits an incumbent transmission developer, and proposes certain revisions.⁷⁵

The Commission should reject LS Power's requested revisions to the NYISO's evaluation and selection procedures in its reliability planning process. The NYISO's process was developed at stakeholders' behest to avoid parties' prematurely incurring significant costs and expending significant resources in the development of transmission projects that may not be required. Order No. 1000 was crafted to create processes for the consideration of transmission projects to be built to meet actual needs, not to launch endless analyses of merely hypothetical projects. This approach is a conservative approach that reasonably balances the benefits of advanced planning with the costs of making a selection close in time to when a transmission solution would actually have to be implemented to meet a Reliability Need.

LS Power argues that the delay will provide a discriminatory advantage to an incumbent Transmission Owner.⁷⁶ As an initial matter, the Filing Parties correct LS Power's use of the

⁷³ If the NYISO determines that none of the Developers' proposed regulated solutions will occur with the thirty-six month period, the NYISO will not perform the evaluation or make a selection of the more efficient or cost-effective regulated solution for that planning cycle.

⁷⁴ OATT, Attachment Y § 31.2.6.1.

⁷⁵ LS Power Protest at pp 13-16.

⁷⁶ *Id.* at p 14.

term "incumbent Transmission Owner" in this context. The NYISO designates as a "Responsible Transmission Owner" the Transmission Owner in whose Transmission District the Reliability Need is identified in order to develop a regulated backstop solution to satisfy the Reliability Need.⁷⁷ The Responsible Transmission Owner is obligated to develop this project to ensure the Reliability Need can be met, and the Commission has accepted that the Responsible Transmission Owner may recover its costs as part of this development, even if its proposed regulated solution is not ultimately selected.⁷⁸ Any other incumbent Transmission Owner may propose a project to satisfy the Reliability Need. However, as with any other Developer, this incumbent Transmission Owner will not be eligible for cost recovery unless its proposed transmission project is selected and triggered by the NYISO.

The NYISO's reliability planning process looks out ten years in its identification of potential Reliability Needs. The process evaluates proposed solutions to any Reliability Needs over this ten-year planning horizon. It was important to stakeholders that the NYISO, Developers, and other interested parties not be required to incur significant costs and expend significant resources to develop a detailed transmission project proposal for a project that would not need to be implemented for many years to satisfy the Reliability Need. This approach is particularly important because the Reliability Need may never materialize or may be otherwise addressed prior to the implementation of a transmission project. The NYISO's markets are designed to stimulate market-based solutions to needs on the New York State Transmission System, and the NYISO's reliability planning process favors the use of such market-based solutions. To impose regulated transmission solutions too soon would not only undermine

⁷⁷ OATT, Attachment Y § 31.2.4.3.1.

⁷⁸ April 18 Order at P 326.

projects in the pipeline from private investors, but place the full risk of cost recovery of those solutions on the shoulders of ratepayers.

To address stakeholder concerns, the Filing Parties adopted a two-stage process. Each planning cycle, the NYISO will first evaluate the viability and sufficiency of any proposed solution to an identified Reliability Need. If any of the proposed regulated solutions must be implemented within thirty-six months in order to be constructed and satisfy a Reliability Need in a timely manner, the NYISO will inform Developers of this fact and, sufficiently in advance of the *earliest* Trigger Date within this thirty-six month period, will request that Developers of proposed transmission solutions provide more detailed project information for purposes of the NYISO's selection. The NYISO will, therefore, only make a selection when it needs to be made, and Developers will avoid having to invest significant time and expend significant resources in developing a detailed project proposal until it is on notice that the NYISO will actually be making a selection during a planning cycle. Moreover, as the NYISO will be making its selection closer in time to the actual implementation of the proposed transmission solution, the Developer will have the opportunity to firm up its initial project proposal and cost estimates, which will enable the NYISO to make its determination based on more precise information.

Contrary to LS Power's assertions, the Filing Parties' proposed approach should save Developers and consumers money by minimizing Developers' time and expense in developing detailed proposals and the NYISO's time and expense in administering an evaluation and selection process for a transmission project that may not be required. In addition, because the NYISO's selection is close in time to the actual implementation of the proposed transmission solution, there is not a significant gap between the NYISO's selection of a proposed solution and its implementation that might otherwise require the NYISO to re-evaluate its selection at a later

date or require a review of updated cost estimates and project information. Moreover, contrary to LS Power's concerns, the Responsible Transmission Owner is unlikely to dedicate extensive costs and resources to develop a transmission proposal until such time as the NYISO makes clear that it will be making a selection in a planning cycle.

6. The Commission Should Not Disturb the NYPSC's Jurisdiction Over Certain Disputes Concerning NYISO's Final Determination

The Commission should reject LS Power's arguments that Section 31.2.7.4 should be deleted.⁷⁹ Section 31.2.7.4 (previously Section 31.2.6.3) provides that if a party raises a dispute *solely within the NYPSC's jurisdiction* concerning the NYISO's final determination in its Comprehensive Reliability Plan ("CRP") that a proposed solution will or will not meet a Reliability Need, the dispute will be referred to the NYPSC for resolution.

LS Power's challenge is outside the scope of the Commission's directives in the April 18 Order. The tariff language in Section 31.2.7.4 predates the NYISO's initial Order No. 1000 regional compliance filing.⁸⁰ The April 18 Order did not direct the Filing Parties to revise this existing tariff language. In the October Compliance Filing, the Filing Parties have not proposed any substantive changes to this provision; rather, as part of the reordering of the provisions in Attachment Y, the Filing Parties propose to relocate the language previously located in Section 31.2.6.3 to Section 31.2.7.4 without making any modifications to the language.

Section 31.2.7.4 simply serves to direct disputes that fall "solely within the NYPSC's jurisdiction" to the NYPSC. The language in this provision does not create or alter the scope of

⁷⁹ LS Power Protest at pp 20-21.

⁸⁰ The Commission previously accepted this language for directing disputes arising solely under state jurisdiction. *New York Independent System Operator, Inc.*, Order Accepting in Part and Rejecting in Part Tariff Amendments, 109 FERC ¶ 61,372 (2004) at P 19; *reh'g denied*, 111 FERC ¶ 61,182 (2005) at PP 21-23.

the Commission's or the NYPSC's existing jurisdiction, nor does it specify that disputes arising out of the NYISO's final determination that a proposed solution meet or not meet a Reliability Need will fall within the NYPSC's jurisdiction. It simply provides that to the extent a dispute arises that does fall solely within the NYPSC's jurisdiction, the dispute will be referred to the NYPSC.

C. The NYISO's Triggering of a Regulated Backstop Solution Is Necessary to Ensure that a Solution is Available to Meet a Reliability Need on the New York Bulk Transmission Facilities in a Timely Manner

The Commission should deny LS Power's and NextEra's challenges to the NYISO's authority to trigger, and provide cost recovery for, a regulated backstop solution after the NYISO has selected an alternative regulated transmission solution as the more efficient or cost-effective transmission solution to an identified Reliability Need.⁸¹ The NYISO is responsible for ensuring that Reliability Needs on the New York Bulk Power Transmission Facilities are addressed. It is essential that the NYISO have the ability to ensure that a solution is available to satisfy a Reliability Need by the need date.

The NYTOs have a legal obligation to prepare a regulated backstop solution to an identified Reliability Need if designated by the NYISO as the Responsible Transmission Owner.⁸² This obligation was memorialized by the NYTOs in a contract with the NYISO, which was approved by the Commission.⁸³ Non-incumbent developers have no obligation to provide service and are free to discontinue their proposed projects at any time.

⁸¹ NextEra Protest at pp 16-18; LS Power Protest at pp 5-13.

⁸² *See, e.g.*, N.Y. Pub. Serv. L. §§ 65, 66 and 72.

⁸³ *See* Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs (June 10, 2010), *available*

Given the absence of an obligation by non-incumbent developers to construct transmission and provide transmission service, the NYISO requires the ability to call upon the current Responsible Transmission Owner designated by the NYISO to continue to develop its regulated backstop solution and be compensated for this additional development until such time that the NYISO has sufficient confidence that a selected alternative regulated transmission solution will proceed to construction and satisfy the Reliability Need. Otherwise, the NYISO could be left in a situation in which a non-incumbent developer is unable to or determines not to complete the project, leaving little to no time for the NYISO to address the Reliability Need. Therefore, to maintain reliability, the NYISO may require the Responsible Transmission Owner to continue to develop its regulated backstop solution until the NYISO determines that it is reasonably certain the non-incumbent Developer's project will enter service to meet a Reliability Need.

LS Power argues that such concerns should be addressed through a reevaluation process.⁸⁴ However, given the length of time required to develop and construct a transmission project, it is unlikely that the NYISO would be able to solicit, evaluate, and select an alternative project that could be implemented prior to the need date if the non-incumbent Developer ceases to move forward with its project. Given that the Commission has indicated that the incumbent utility is not responsible for stepping in and completing a non-incumbent's abandoned project, the NYISO would have to turn to short-term Gap Solutions to attempt to address the Reliability Need. Such a Gap Solution would likely be less efficient than a properly planned long-term

at: http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/Comprehensive_Planning_Process_for_Reliability_Needs_Agreement.pdf

⁸⁴ LS Power Protest at pp 9-10.

transmission solution and could be more costly to ratepayers, as they could be required to pay for both the Gap Solution and then a permanent solution.

The Commission has previously approved the recovery of costs reasonably incurred by the Responsible Transmission Owner in developing regulated backstop solutions. In the April 18 Order, the Commission found that: “it is appropriate for the Responsible Transmission Owner to be permitted to recover costs that it prudently incurred to meet its obligation, even when the project is not selected, since only the Responsible Transmission Owner is required to provide the regulated backstop solution for a reliability transmission need.”⁸⁵

The NYISO does not intend to provide for the parallel development of both a selected alternative regulated transmission solution and a regulated backstop solution any longer than is required to ensure that the alternative regulated transmission solution will proceed to construct its project and satisfy the identified Reliability Need. As an initial matter, the focus of the NYISO’s reliability planning process favors market-based solutions, and the NYISO will halt any regulated solution(s) - whether a regulated backstop solution, a selected alternative regulated transmission solution, or both - if the NYISO determines that there are sufficient market-based solutions to ensure the identified Reliability Need is met.⁸⁶ In the absence of sufficient market-based solutions, the NYISO will halt a regulated backstop solution as soon as the non-incumbent Developer of a selected alternative regulated solution satisfies certain requirements developed to provide the NYISO with sufficient confidence that the non-incumbent Developer will proceed to construct its project and satisfy the Reliability Need.⁸⁷ Specifically, the non-incumbent

⁸⁵ April 18 Order at P 326.

⁸⁶ OATT, Attachment Y §§ 31.2.8.2.3, 31.2.8.2.4.

⁸⁷ *Id.* at § 31.2.8.2.3.

Developer of a selected and triggered alternative regulated transmission solution must: (i) execute an agreement with the NYISO committing the Developer to seek all necessary approvals required for its proposed project, to develop and construct its proposed projects if proposals are received, and to abide by the related requirements set forth in Attachment Y of the NYISO OATT; (ii) provide construction milestones necessary to develop and construct its proposed project to achieve the required in-service date, and (iii) receive its New York Public Service Law Article VII certification for the project.⁸⁸

The Commission should reject NextEra's request that the NYISO be required to halt a regulated backstop solution at the point at which the selected alternative regulated solution's Article VII application is complete.⁸⁹ The completion of the Article VII application provides no assurance that the NYPSC will issue a certificate for the project and that such project will proceed to construction. In addition, LS Power is incorrect in asserting that the NYISO's triggering of both the regulated backstop solution and the alternative regulated solution shifts the decision making as to which project should receive cost recovery from the NYISO to the NYPSC.⁹⁰ The NYISO is the entity responsible for selecting for purposes of allocating costs under its tariffs the more efficient or cost-effective solution as required by the Commission. Neither the NYISO nor the Commission, however, has the authority to provide the required siting certification for a project to move forward to construction in New York State. That authority rests with the NYPSC. In any event, the NYISO's Board will make an independent decision as to the more efficient or cost-effective transmission solution.

⁸⁸ *Id.* at §§ 31.2.8.1.5, 31.2.8.2.3.

⁸⁹ NextEra Protest at p 18.

⁹⁰ LS Power Protest at pp 7-8.

D. The Filing Parties' Proposal for Selection of Cost Allocation Methodologies for Public Policy Transmission Projects Complies with Order No. 1000 and Should Be Accepted

1. The Filing Parties Have Demonstrated that the Default Cost Allocation Methodology Is Reasonable, Appropriate, and Compliant with Order No. 1000

The Commission should reject the arguments made by MI/IPPNY and Entergy regarding the public policy *ex ante* default cost allocation methodology. In their protest, MI/IPPNY argue that the Filing Parties have provided insufficient justification for the proposed *ex ante* cost allocation methodology as one alternative cost allocation methodology that is always available to Transmission Owners or Developers for public policy transmission projects.⁹¹ They request that the Commission require in its place a single, *ex ante* cost allocation methodology based on the existing formula for allocating the costs of economic projects in New York.⁹² Alternatively, they propose a “hybrid” cost allocation pursuant to which the “vast majority of project costs (*i.e.*, 80 percent or more) would be allocated pursuant to the existing formula for allocating the costs associated with economic projects and the remaining portion (*i.e.*, 20 percent) would be allocated pursuant to a load ratio share formula, as proposed by the Filing Parties.”⁹³ Similarly, Entergy also objects to the Filing Parties’ proposed load share approach, and requests that the Commission reject the Filing Parties’ proposed revisions and establish a default cost allocation methodology based on the cost allocation methodology of the economic planning process.⁹⁴

In the April 18 Order, the Commission expressed its concern over the potential for delay associated with the hierarchical cost allocation method. As a result, it directed the Filing Parties

⁹¹ MI/IPPNY Protest at pp 17-22.

⁹² *Id.* at pp 29-30.

⁹³ *Id.* at p 31.

⁹⁴ Entergy Protest at pp 9, 14.

to “(1) explain how the proposed process will not cause unnecessary delays for entities to obtain the right to use the regional cost allocation method for their proposed public policy transmission project; and (2) provide a timeline for the proposed process so that a transmission developer will know how the costs of its project will be allocated in a timely manner.”⁹⁵

In order to comply with this directive, the October Compliance Filing proposed changes clarifying that Developers’ cost allocation proposals cannot be delayed beyond the 60-day period provided for consultation with the NYPSC/NYDPS.⁹⁶ The changes also clarify that the proposed *ex ante* load ratio share cost allocation method is always available to the Transmission Owner/Developer, unless an alternative methodology is proposed and approved by the Commission.⁹⁷

MI/IPPNY and Entergy propose that the Commission mandate that the cost allocation methodology used by the NYISO for transmission projects built solely for economic benefits be the *ex-ante* cost allocation methodology for all transmission projects needed to implement Public Policy Requirements to the exclusion of any other alternative methodologies. This proposal is not required by the April 18 Order.⁹⁸ The Filing Parties’ proposal already incorporates an *ex ante* methodology that provides Developers with certainty on this point, ensuring that cost allocation will not cause uncertainty or delay because there is always a definite methodology available to the Developer.

⁹⁵ April 18 Order at P 324.

⁹⁶ October Compliance Filing at pp 48-49.

⁹⁷ *Id.*

⁹⁸ The protestors do not explain how the load ratio share mechanism they attack is somehow appropriate as part of a “hybrid” methodology.

In addition, the *ex ante* methodology proposed by MI/IPPNY and Entergy is not appropriate for public policy projects because the economic test is based on a production cost simulation model that focuses only on energy savings benefits. While use of the economic test is entirely suitable in planning “economic” projects, that test does not consider all the objectives and benefits of public policy transmission projects. It would eliminate the consideration of other non-economic Public Policy Requirements that may be driving the need for transmission. Further, it would permit transmission customers, including MI’s large commercial and industrial members, to avoid any contribution to the building of a transmission project unless they receive a net economic benefit. Such a cost allocation methodology would clearly be inconsistent with the Commission’s objective of encouraging the construction of transmission facilities to meet a broad spectrum of federal and state Public Policy Requirements.

Contrary to the contentions of these protestors, the Filing Parties have provided more than a sufficient basis for the Commission to determine that the load ratio share methodology is a reasonable and appropriate *ex ante* cost allocation methodology for transmission projects built in response to Public Policy Requirements.⁹⁹ First, under the Filing Parties’ proposal, the load ratio share methodology is always available to the extent the Commission does not approve a different methodology in the context of a specific Public Policy Requirement, and therefore a Developer always has a method readily available. The Filing Parties have explained that Developers can therefore “avoid uncertainty that could present a barrier to new transmission projects needed to meet public policy needs.”¹⁰⁰ Thus, the Filing Parties have addressed the Commission’s concern that the Developer of a public policy transmission project will know that there is a defined cost

⁹⁹ October Compliance Filing at pp 48-49.

¹⁰⁰ *Id.* at p 50.

allocation methodology readily available for its project. In addition, the October Compliance Filing clarifies the right of a Transmission Owner or other Developer to submit a Section 205 filing to propose an Adjusted Load Ratio Share cost allocation, if necessary to address the specific nature of the Public Policy Requirement and the specific transmission project, subject to Commission approval and a demonstration that the proposed methodology is consistent with the Order No. 1000 cost allocation principles. The Commission will also be made aware of any specific methodology embodied in a Public Policy Requirement and of any cost allocation methodology preferred by the NYPSC/NYDPS. Thus, there are procedures available for the Commission to order a different cost allocation methodology to the extent it may be appropriate in a particular case.

Based on the support provided in the October Compliance Filing, it is reasonable for the Commission to conclude that load ratio share is the appropriate *ex ante* allocation method.¹⁰¹ This is particularly true in the context of the NYISO, which is a tightly integrated, centrally-administered grid that had been shaped in large part by coordinated statewide policy initiatives.¹⁰² The Filing Parties have explained that it is reasonable to expect that public policy transmission projects will provide some level of benefits to all consumers in New York, and that the load ratio share methodology therefore satisfies the Commission’s “roughly commensurate” requirement.¹⁰³ In improving high-voltage transmission in New York to satisfy a transmission need driven by Public Policy Requirements, load ratio share is a just and reasonable *ex ante* methodology available to all Developers because such transmission has the capability to broadly

¹⁰¹ *Id.* at pp 50-51.

¹⁰² *Id.*

¹⁰³ *Id.* at p 51.

benefit consumers. Commission precedent and relevant case law also establish that a load ratio share cost allocation method is just and reasonable where public policy considerations and a variety of factors drive the need for transmission development.¹⁰⁴ In light of the NYISO's circumstances and precedent on this point, any assumption that a different *ex ante* cost allocation method is appropriate is unsupported. The NYISO, NYTOs, and the NYPSC/NYDPS all find load ratio share to be a reasonable default *ex ante* methodology.

Entergy's protest on a related point is similarly unwarranted. Entergy argues that the October Compliance Filing goes beyond the directives of the April 18 Order by adding a "new step" into the cost allocation process.¹⁰⁵ More specifically, Entergy argues that allowing Transmission Owners and other Developers to file with the Commission an alternative cost allocation when necessary to more accurately align the benefits of the project with cost allocation will engender litigation, delay, and uncertainty.¹⁰⁶ Entergy's protest neglects to mention, however, that the process proposed in the Filing Parties' initial filing (the subject of the April 18 Order) provided that the NYISO would file a proposed cost allocation on behalf of the Transmission Owner or Developer in the event that the NYPSC and Transmission Owner disagreed on a cost allocation methodology.¹⁰⁷ The Filing Parties' proposal to allow Transmission Owners or Developers to file proposed cost allocation methodologies is therefore not a "new step."

¹⁰⁴ *Id.* (citing *Illinois Commerce Comm'n v. FERC*, Case No.11-3421 (7th Cir. 2013); *see also W. Mass Electric Co. v. FERC*, 165 F.3d 922, 927 (D.C. Cir. 1999) (when a system is integrated, any system enhancements are presumed to benefit the entire system)).

¹⁰⁵ Entergy Protest at p 3.

¹⁰⁶ *Id.* at pp 15-16.

¹⁰⁷ *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 11, 2012) at p 47.

More fundamentally, a Transmission Owner or Developer has the right under Section 205 of the Federal Power Act to file a cost allocation methodology for its own project. As the D.C. Circuit has held, “Section 205 of the Federal Power Act gives a utility the right to file rates and terms for services rendered with its assets.”¹⁰⁸ The Commission has authority to review rate changes and reject unjust or unreasonable proposals, but Section 205 guarantees the right of the Transmission Owner or Developer to file a proposed cost allocation in the first place.¹⁰⁹ In any event, a contention that a Transmission Owner or Developer does not have the right to file a proposed cost allocation can hardly be said to be within the scope of the October Compliance Filing.

2. LS Power’s Protest Concerning the Timing of Cost Recovery for the Public Policy Transmission Planning Process Is Unwarranted and Should Be Rejected

LS Power argues that language in Sections 31.4.8.2 and 31.5.6.4 indicating that costs will be recovered “when the project is completed” should be deleted.¹¹⁰ It argues that the language describing the cost recovery timing requirement should be limited to recovery “pursuant to a Rate Schedule filed with and accepted by the Commission” and on terms stated by the Commission.¹¹¹

The Filing Parties’ proposed language already addresses the concerns underlying LS Power’s request. As they explained in the October Compliance Filing:

In connection with the revised evaluation and selection requirements under which the NYISO will select for cost allocation purposes the more efficient or cost-effective transmission solution to a Public Policy Transmission Need, the Filing Parties propose to

¹⁰⁸ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002).

¹⁰⁹ *Id.*

¹¹⁰ LS Power Protest at p 21. ¹¹¹

Id. at pp 21-22.

clarify at what point in the revised process a Developer will become eligible to allocate and recover under the NYISO's tariffs the costs of its proposed regulated transmission solution. Specifically, the Filing Parties propose to clarify in Sections 31.4.8.2 and 31.5.5.3 that the Developer of a regulated transmission project will be eligible for cost recovery for its transmission project when its project is selected by the NYISO as the more efficient or cost effective transmission solution to satisfy the Public Policy Transmission Need, **provided that the Developer may recover costs as determined by the Commission.**¹¹²

In accordance with this explanation, the Filing Parties' proposed language in Sections 31.4.8.2 and 31.5.6.4 already expressly provides that a Developer can begin to recover its costs either when the project is completed pursuant to a rate schedule filed with and accepted by the Commission "or as otherwise determined by the Commission." In short, the proposal does not preclude recovery of the project development payments of concern to LS Power.

3. The NYISO's Tariff Requirement that an Other Developer Be Authorized Under State Law Complies with Order No. 1000

The Commission should reject LS Power's arguments disputing the requirement in Section 6.10.5.1 of Rate Schedule 10 of the NYISO OATT that a Developer be authorized under state law for cost recovery purposes. LS Power argues that the language in Section 6.10.5.1 limiting cost recovery for an alternative regulated reliability transmission project "that is proposed, developed or constructed by an Other Developer who is otherwise authorized to propose, develop, or construct a regulated transmission project under applicable law" should be deleted.¹¹³ LS Power argues that the Commission has previously prohibited the planning process from making judgments regarding the ability of a prospective developer to develop under state law.¹¹⁴

¹¹² October Compliance Filing at p 54 (emphasis supplied). ¹¹³

LS Power Protest at p 22.

¹¹⁴ *Id.*

LS Power's concern is misplaced. While the Commission has prohibited state siting approval as a pre-requisite to selection of an entity as project sponsor, it allows state siting approval to be considered as a factor in the planning process. "[I]t is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process. Indeed, the Commission has identified points at which such consideration might be appropriate."¹¹⁵ In addition, it is appropriate to require Developers to demonstrate that they have and will comply with all applicable state laws. The Commission has explained at length that Order Nos. 1000 and 1000-A do not preclude consideration of such approvals at appropriate points in the planning process.¹¹⁶ In accordance with the Commission's prior holding on this point, Section 6.10.5.1 simply limits cost recovery to projects that have received the necessary approval to construct. It does not serve to automatically exclude any proposed project from consideration for reasons of state law, but merely reflects the practical reality of state law impacts on project development.

In addition, LS Power's challenge is outside the scope of the Commission's directives in the April 18 Order. The April 18 Order did not direct the Filing Parties to revise the tariff language at issue in Section 6.10.5.1, nor have the Filing Parties proposed substantive revisions to the language at issue. Accordingly, the Commission should reject LS Power's proposed removal of this tariff language.

¹¹⁵ *PJM Interconnection, LLC, et al.*, 142 FERC ¶ 61,214 at P 232 (2013) ("PJM Order"). ¹¹⁶

Id. at PP 232-33.

E. The Filing Parties’ Proposal for Consideration of Transmission Needs in Transmission Owners’ Local Transmission Planning Processes Should Be Approved

1. Removal of “Local” and Other Revisions in NYTOs’ Reserved Rights Provision Further the Intent of Order No. 1000 and Should Be Accepted

MI/IPPNY, Entergy, and Next Era’s objections to removing “local” from Section 31.6.4 are unfounded and should be denied. In their protests, MI/IPPNY and Entergy object to the October Compliance Filing’s removal of the word “local” from the description of the NYTOs’ reserved rights in Section 31.6.4.¹¹⁷ NextEra likewise objects to the removal of the word “local” from Section 31.6.4, and asks the Commission to require revisions emphasizing the NYISO’s authority to select “more efficient regional transmission solutions.”¹¹⁸ It further requests that the Commission “consider invoking its authority to . . . exercise its jurisdiction over all interstate transmission” in response to the Filing Parties’ proposal.¹¹⁹ In a related vein, LS Power argues that the term “local system,” as used in Attachment Y of the NYISO OATT, should be defined to make clear that the local transmission plan is confined to projects within a Transmission Owner’s retail distribution service territory.¹²⁰

The protestors’ concerns are unwarranted, and the Filing Parties’ proposal should be accepted as written because the Filing Parties have removed the term “local” for reasons that further the intent of Order No. 1000. The Commission has explained that Order No. 1000 applies to facilities included in a regional transmission plan “for purposes of cost allocation,” and that such facilities may be only a “subset of the transmission facilities in the regional

¹¹⁷ MI/IPPNY Protest pp 31-36, Entergy Protest pp 17-18.

¹¹⁸ NextEra Protest at p 20.

¹¹⁹ *Id.* at p 20.

¹²⁰ LS Power Protest p 17.

transmission plan.”¹²¹ Examples of facilities that are not selected in the regional transmission plan for purposes of cost allocation include, but are not limited to, “local transmission facilit[ies] located solely within a public utility transmission provider’s retail distribution service territory or footprint.”¹²²

Far from constituting an attempt to bypass the NYISO’s regional planning process, the removal of the term “local” from Section 31.6.4 simply clarifies that an incumbent Transmission Owner may build and own transmission facilities in another Transmission Owner’s service territory in order to reliably serve its own customers where it is not seeking regional cost allocation. Order No. 1000 permits utilities to meet its customers’ needs, which could include the need for an individual Transmission Owner occasionally to build facilities that cross neighboring service areas solely for the benefit of that Transmission Owner’s customers when the costs are only paid by its own customers. Therefore, such projects are entirely within the scope of projects that the Commission has found can be built by incumbent Transmission Owners. As the October Compliance Filing explains, “[t]he NYTOs are often required to develop and construct transmission facilities that pass through or are located, in part, in the neighboring NYTO’s service territory or are jointly owned by neighboring NYTOs. The Filing Parties, therefore, propose to remove ‘local’ from transmission facilities to make clear that the NYTOs may continue to develop and construct such transmission facilities provided they are not seeking regional cost allocation under the NYISO tariffs.”¹²³

¹²¹ Order No. 1000 at P 63.

¹²² *Id.*

¹²³ October Compliance Filing at p 57.

In short, this change eliminates ambiguity and ensures that an incumbent Transmission Owner retains the right to develop and construct transmission to meet its customers' needs, even to the extent that the facilities may pass through or be located in a neighboring NYTO's service territory, provided the incumbent Transmission Owner is not seeking regional cost allocation.¹²⁴ Protests to the contrary are inconsistent with the Commission's clear Order No. 1000 policy determinations.

2. The Proposed Language in the NYTOs' Reserved Rights Provision Regarding Constructing Upgrades Should Be Accepted Because It Is Clear and Consistent with Commission Precedent

The Commission should reject LS Power's arguments that: (a) language in Section 31.6.4 stating that the "incumbent transmission owner shall have the right . . . to build, own and recover costs for upgrades to the transmission facilities it owns, regardless of whether the upgrade has been selected in the regional plan for cost allocation purposes" should be deleted;¹²⁵ and (b) the purpose of this language is unclear because the incumbent Transmission Owner already has the right to build any local projects and retains a right of first refusal to construct "upgrades."¹²⁶

As LS Power concedes, however, the Commission has expressly ruled that an incumbent Transmission Owner has the right to build, own, and recover costs for upgrades to the transmission facilities it owns, regardless of whether the upgrade has been selected in the regional plan for cost allocation purposes.¹²⁷ The Filing Parties' proposed Section 31.6.4 merely clarifies that point and tracks the language expressly approved by the Commission with regard to

¹²⁴ *Id.*

¹²⁵ LS Power Protest at p 24. ¹²⁶

Id. at pp 23-24.

¹²⁷ *Id.* at p 23 (referring to Order No. 1000).

what is intended by the term “upgrades.” The Filing Parties have therefore complied with the April 18 Order’s requirement that they define “upgrade” consistent with the Commission’s definition as set forth in Order No. 1000-A, which defines an upgrade as “an improvement to, or addition to, or replacement of a part of, an existing transmission facility.”¹²⁸ Indeed, the Commission has also required clarification on the definition of “upgrades” in other Order No. 1000 compliance filings.¹²⁹ The Filing Parties’ proposed Section 31.6.4 provides the necessary clarification as to what is intended by the term “upgrades” that are within the purview of existing Transmission Owners.

3. NextEra’s Protest of the Filing Parties’ Proposal Concerning the NYTOs’ Role in Local Transmission Planning Should Be Rejected Because It Constitutes an Improper Request for Rehearing and Ignores Commission Precedent

The Commission should reject as an untimely request for rehearing of Order No. 1000 and 1000-A NextEra’s arguments: (i) alleging that the NYTOs should not be able to use the local planning process to evade regional planning, (ii) requesting that the NYISO supplant an inefficient local transmission plan, and (iii) requesting that the Commission consider invoking its jurisdiction over all interstate transmission, including the transmission component of bundled retail rates.¹³⁰ The Commission has ruled that incumbent Transmission Owners can reserve the right to build any transmission facilities provided they are not seeking regional cost allocation.¹³¹

¹²⁸ October Compliance Filing at 57 (citing Order No. 1000-A at P 426).

¹²⁹ PJM Order at P 227 (requiring PJM to revise section 1.5.8(l)(i) of its Schedule 6 to clarify and define the term “upgrade” and make any necessary conforming revisions to Schedule 6, its OATT and Agreements. PJM had proposed that “Transmission Owner(s) in whose Zone(s) a proposed Short-term Project or Long-lead Project is to be located will be the Designated Entity for the project, when the Short-term Project or Long-lead Project is: (i) an upgrade to a Transmission Owner’s own transmission facilities ...”)

¹³⁰ NextEra Protest at pp 3, 20-21.

¹³¹ See Order No. 1000 at PP 63-64.

Moreover, NextEra's request for the Commission to extend its jurisdiction falls far outside the scope of the compliance filing. This proceeding is limited to consideration of whether the Filing Parties have implemented the Commission's directives,¹³² and is therefore not the proper forum for consideration of the scope of the Commission's jurisdiction.

F. The Filing Parties Do Not Object, with a Single Clarification, to the Commission Directing Them to Adopt LIPA's Proposed Tariff Revisions

In light of the need for language accommodating its participation in the Public Policy Requirements planning process, LIPA has proposed revisions to the NYISO's tariff to address its jurisdictional responsibilities on Long Island.¹³³ In particular, LIPA proposes tariff revisions concerning: (i) the identification of a Public Policy Transmission Need within the Long Island Transmission District, (ii) the requirement for authorization of the Authority's Board of Trustees for any physical modification to LIPA's transmission facilities, and (iii) the development of cost allocation methodologies and rates for any LIPA-developed projects meeting a Public Policy Transmission Need in the Long Island Transmission District. LIPA requests that the Commission direct the NYISO to submit a compliance filing to incorporate the revisions into the NYISO tariff.

With a single clarification described below, the Filing Parties do not object to the tariff revisions proposed by LIPA to account for its role with respect to transmission planning in the Long Island Transmission District. The Filing Parties, therefore, do not object to the Commission directing the Filing Parties to incorporate LIPA's proposed revisions with any required conforming edits in the NYISO's tariffs through a further compliance filing.

¹³² See, e.g., *Sea Robin Pipeline Co., LLC*, 138 FERC 61,131 (“[T]he purpose of a compliance filing is limited to implementing the specific directives of the Commission's order.”)

¹³³ See October Compliance Filing at p 47, n. 172 (explaining need for tariff language specific to LIPA).

Among its tariff language proposals, LIPA proposed revisions to Section 31.4.8.2 to clarify that upon selection of a project that physically modifies transmission facilities within the Long Island Transmission District, the project proponent remains responsible for receiving all other necessary permits or authorizations of the project to proceed.¹³⁴ LIPA further explained that one such authorization would be action by the Long Island Power Authority's Board of Trustees to formally authorize the physical modification of LIPA's transmission facilities pursuant to Section 1020-g of the Long Island Power Authority Act.¹³⁵ The Filing Parties do not object to the purpose of the reservation, but have concerns that LIPA's proposed language regarding the Board of Trustees' required formal authorization for physical modifications to LIPA's transmission facilities could be read to limit the NYISO's ability to include certain regional or interregional projects in its regional transmission plan, or to limit the effectiveness of the NYISO's interconnection requirements. Accordingly, the Filing Parties have discussed with LIPA a change to the proposed insert to Section 31.4.8.2 to read:

Any selection of a project by the ISO under this Section 31.4.8 that involves the physical modification of facilities within the Long Island Transmission District shall not affect the obligation and responsibility of the project proponent to apply for, and receive all necessary authorizations or permits required by federal or state law for such modifications.

As clarified, projects requiring physical modification of facilities within the Long Island Transmission District will be required, as with any other project proposed in New York, to receive all necessary federal or state authorizations. LIPA agrees that this formulation fulfills the purpose that LIPA had expressed (as described above).

¹³⁴ LIPA Comments at 11-12.

¹³⁵ *Id.*

G. LS Power's Proposed Informational Filing is Not Necessary and Would Impose an Unnecessary Burden on Both the NYISO and the Commission

The Commission should reject LS Power's requests that the NYISO be required to provide to the Commission in an informational filing the information it proposes to provide to stakeholders regarding the estimated completion date of the planning cycle and an explanation of the need for additional time.¹³⁶ LS Power's request for an informational filing appears driven by a concern that the NYISO would extend indefinitely its planning process unless a strict time frame is established by the tariff or unless it is required to report the delay to the Commission.

The NYISO has every incentive to timely complete its planning processes. Under its tariffs, North American Electric Reliability Corporation Transmission Planning Standards, and the resource adequacy planning requirements of the Northeast Power Coordinating Council and New York State Reliability Council, the NYISO is responsible for planning for the reliability of the bulk power system. Accordingly, the NYISO is already fully accountable to the Commission and reliability standards organizations for timely carrying out its planning processes. Moreover, the NYPSC, the New York State Siting Board, the State Energy Planning Board, the New York State Energy Research and Development Authority, the Energy Highway Task Force, and the New York State Legislature all rely heavily on the NYISO's planning processes to provide information in making determinations related to energy policy and needs in New York State. Given that the NYISO already has incentives to conduct its planning processes in a timely manner, LS Power's proposed informational filing is not necessary and would impose an unnecessary burden on both the NYISO and the Commission.

¹³⁶ LS Power Protest at p 23.

III. NYISO ANSWER

The Authority of the NYISO's Board Not to Select a Transmission Solution to a Public Policy Transmission Need Is a Necessary Part of the Board's Authority, and Fundamental Responsibility, to Make Independent and Final Determinations for the NYISO

In the October Compliance Filing, the NYISO proposed to revise Section 31.4.10.2 to provide that the NYISO's Board may, as part of its responsibility to select the more efficient or cost-effective transmission solution to satisfy a Public Policy Transmission Need, make a "determination not to select a transmission project to satisfy the Public Policy Transmission Need."¹³⁷ The NYTOs, NYPSC, and NextEra contend that the Board's authority not to select a transmission solution is inconsistent with Order No. 1000 and the directives in the April 18 Order, and that the Commission should reject this proposed revision.¹³⁸ The Commission should reject these protests for the reasons set forth below.

Order No. 1000 requires that public utility transmission providers establish a process to *consider* transmission needs driven by Public Policy Requirements. By this directive, Order No. 1000 requires a process for "(1) the identification of transmission needs driven by Public Policy Requirements; and (2) the evaluation of potential solutions to meet those needs."¹³⁹ Order No. 1000 does not mandate the selection of a solution to a transmission need driven by a Public Policy Requirement. Rather, it simply requires "a transparent and not unduly discriminatory process for evaluating *whether* to select a proposed transmission facility in the regional

¹³⁷ October Compliance Filing at p. 41. The NYTOs indicated in the October Compliance Filing that they disagreed with this proposed revision and would provide comments in response. *Id.* at p 41 fn 152.

¹³⁸ NYTOs Comments at pp 2-4, NYPSC Protest at pp 3-6; NextEra Protest at pp 21-22. ¹³⁹

Order No. 1000 at P 205; *see also* Order No. 1000-A at P 302.

transmission plan for purposes of cost allocation.”¹⁴⁰ Such “evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected *or not selected* in the regional transmission plan for purposes of cost allocation.”¹⁴¹ Order No. 1000 specifies that “by requiring the evaluation of proposed transmission solutions in the regional transmission planning process, the Commission is not dictating that any particular proposals be accepted or that selected transmission facilities be constructed.”¹⁴²

Consistent with these requirements, the October Compliance Filing establishes; (i) a process for the identification of transmission needs driven by Public Policy Requirements, and (ii) a transparent and not unduly discriminatory process by which the NYISO will evaluate potential solutions to meet those needs. The NYISO’s Public Policy Transmission Planning Process provides a mechanism for the NYISO to select for cost allocation purposes the more efficient or cost-effective transmission solution to satisfy a Public Policy Transmission Need. However, it preserves the Board’s duty and responsibility not to make a selection if it independently determines that it should not do so.

¹⁴⁰ Order No. 1000 at P 328 (emphasis supplied). ¹⁴¹

Id. (emphasis supplied).

¹⁴² *Id.* at P 331. Indeed, the Commission lacks authority to direct that specific transmission projects be built. *See, e.g., id.* Order No. 1000 at P 107 (“We acknowledge that there is longstanding state authority over certain matters that are relevant to transmission planning and expansion, such as matters relevant to siting, permitting, and construction. However, nothing in this Final Rule involves an exercise of siting, permitting, and construction authority. The transmission planning and cost allocation requirements of this Final Rule, like those of Order No. 890, are associated with the processes used to identify and evaluate transmission system needs and potential solutions to those needs. In establishing these reforms, the Commission is simply requiring that certain processes be instituted. This in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over such transmission facilities.”)

The NYTOs and NYPSC assert that giving the Board this authority would frustrate enacted federal or state laws and regulations that have identified transmission needs driven by Public Policy Requirements.¹⁴³ However, Order No. 100 does not make the public utility transmission provider responsible for the fulfillment of a Public Policy Requirement, but only that the public utility transmission provider *consider* transmission needs driven by Public Policy Requirements. Specifically, Order No. 1000 states that:

In requiring the consideration of transmission needs driven by Public Policy Requirements, **the Commission is not mandating fulfillment of those requirements.** Instead, the Commission is acknowledging that the requirements in question are facts that may affect the need for transmission service and these needs must be considered for that reason. Such requirements may modify the need for and configuration of prospective transmission facility development and construction. The transmission planning process and the resulting transmission plans would be deficient if they do not provide an opportunity to consider transmission needs driven by Public Policy Requirements.¹⁴⁴

Order No. 1000 further provides:

To be clear, however, while a public utility transmission provider is required under this Final Rule to evaluate in its local and regional transmission planning processes those identified transmission needs driven by Public Policy Requirements, that obligation **does not establish an independent requirement to satisfy such Public Policy Requirements.** In other words, the requirements established herein do not convert a failure of a public utility transmission provider to comply with a Public Policy Requirement established under state law into a violation of its OATT.¹⁴⁵

Order No. 1000-A reiterates the Commission's position:

At the outset, it is important to emphasize exactly what these reforms are intended to do and what they clearly are not intended to do. As explained in Order No. 1000, in requiring the consideration of transmission needs driven by Public Policy Requirements, **the Commission is not mandating fulfillment of those requirements or that public utility transmission providers consider the Public Policy Requirements themselves.** We address this issue in more detail

¹⁴³ NYTOs Comments at pp 2-3; NYPSC Protest at pp 3, 5.

¹⁴⁴ Order No. 1000 at P 109 (emphasis supplied). ¹⁴⁵

Id. at P 213 (emphasis supplied).

below, but we clarify here the basic components of Order No. 1000's requirements in this regard, as it appears there are misconceptions about precisely what Order No. 1000 requires.¹⁴⁶

As a practical matter, the NYISO does not expect that the Board would often have cause to decline to approve a transmission project that addresses a Public Policy Requirement. Nor does the NYISO wish to second guess, let alone undermine, federal, state, or local public policy determinations. Nevertheless, the Board's authority under proposed Section 31.4.10.2 to approve or propose modifications to the Public Policy Transmission Planning Report, which no party challenges, logically includes authority not to select a transmission project. Otherwise, the Board's authority to approve or modify would be circumscribed in a manner that is neither required by Order No. 1000, nor consistent with the Board's obligation to make final and independent decisions for the NYISO. The Board's authority under proposed Section 31.4.10.2 is also consistent with Commission-approved tariff language authorizing the Board to evaluate the impacts of proposed transmission projects on the NYISO-administered competitive markets.¹⁴⁷ That language was also not disputed by any party.

The NYTOs further argue against the proposed revision because it was not addressed during the initial stakeholder process and initial compliance filing.¹⁴⁸ This argument has no merit because at the time of the initial stakeholder discussions and compliance filing the Filing Parties proposed an evaluation and selection process in which the NYPSC was responsible for selecting transmission solutions. It was not until after the April 18 Order was issued that the

¹⁴⁶ Order No. 1000-A at P 204 (emphasis supplied).

¹⁴⁷ The Commission accepted the proposed Section 31.4.4 in the NYISO's initial compliance filing, which included an evaluation of the impacts of the proposed transmission solutions on NYISO-administered markets. April 18 Order at P 144. As part of its proposed revisions, the NYISO relocated its analysis of the impact of proposed transmission solutions to Section 31.4.9, which provides that the results of such analysis will be included in the Public Policy Transmission Planning Report.

¹⁴⁸ NYTOs Comments at p 2.

NYISO and its stakeholders began to consider the implications of the Board being responsible for this selection. Moreover, the NYISO made the Board's intentions regarding the scope of its authority under Section 31.4.10.2 known to stakeholders, and considered their input on this issue, in the stakeholder process that preceded the October Compliance Filing.

NextEra further argues that the Market Monitoring Unit ("MMU") should be included earlier in the process to provide input and that any concerns regarding adverse impacts should be clearly articulated and vetted with stakeholders before any action to terminate a project.¹⁴⁹

NextEra also argues that any rejection requirement should be constrained by defined criteria in the NYISO's tariffs.¹⁵⁰ NextEra's concerns are groundless because the October Compliance Filing already addresses them. Specifically, the Filing Parties proposed to revise Section 31.4.10.1 of the OATT and Section 30.4.6.8.5 of the Services Tariff to provide the MMU concurrently with stakeholders the draft Public Policy Transmission Planning Report, which will include the results of the NYISO's analysis regarding the impacts of a proposed transmission solution on the NYISO's wholesale electricity markets. The MMU will provide its evaluation of the draft report to stakeholders prior to the NYISO stakeholder Management Committee's advisory vote on the report. It is important to note that if the Board were to revise the report, it will be returned to the NYISO stakeholder Management Committee for their review and comment, and the Board cannot make a final determination on the revised report without reviewing such comments.¹⁵¹

¹⁴⁹ NextEra Protest at p 22.

¹⁵⁰ *Id.*

¹⁵¹ OATT, Attachment Y § 31.4.2.10.

IV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. and the New York Transmission Owners respectfully request that the Commission accept the October Compliance Filing in the above referenced docket without requiring any modifications, provided however, that the Filing Parties do not object to the further tariff revisions proposed by LIPA with the clarification set forth in Section II(F).

Respectfully submitted,

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December 16, 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 16th day of December, 2013.

By: /s/ John C. Cutting

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