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March 27, 2017

**SUBMITTED VIA E-TARIFF FILING**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: New York Independent System Operator, Inc.  
Docket No. ER17-\_\_\_\_-000

Dear Secretary Bose:

For filing, attached please find proposed revisions to the Open Access Transmission Tariff (OATT) of the New York Independent System Operator, Inc. (NYISO). Pursuant to Section 31.5.5.4.1 of the NYISO's OATT, any methodology for allocating the costs of transmission facilities, which is prescribed in connection with a Public Policy Requirement (also referred to as a Public Policy Transmission Need), shall be filed pursuant to Section 205 of the Federal Power Act for approval by the Federal Energy Regulatory Commission (Commission).<sup>1</sup> Consistent with the NYISO's Public Policy Transmission Planning Process, the New York Public Service Commission (NYPSC) identified a Public Policy Requirement and cost allocation approach with respect to relieving the persistent transmission congestion across certain electrical interfaces, referred to as Central East and Upstate New York/Southeast New York (UPNY/SENY). The OATT revisions proposed herein provide the NYPSC's cost allocation methodology associated with addressing this AC Transmission Public Policy Transmission Need.<sup>2</sup> In addition, the NYPSC identifies its preferred approach for cost containment that was adopted in connection with the cost allocation methodology.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> The NYISO advises that, upon acceptance by the Commission, the tariff revisions proposed herein will become part of the NYISO OATT under Section 31.8 of Attachment Y. Accordingly, the NYISO is submitting this filing in FERC's e-Tariff system on behalf of the NYPSC solely in its role as the Tariff Administrator. The burden of demonstrating that the proposed tariff amendments are just and reasonable resides with the NYPSC—the sponsoring party. The NYISO takes no position on any substantive aspect of the filing at this time.

The NYPSC respectfully submits that the proposed amendments for allocating costs under the NYISO OATT, as demonstrated by this transmittal letter and the attached affidavits and appendices, are just and reasonable, and should be accepted without suspension or hearing.<sup>3</sup> The NYPSC requests an effective date of May 26, 2017 for the cost allocation methodology and related tariff changes. Alternatively, the NYPSC requests that the Commission limit the issues set for hearing and impose a nominal suspension period. In addition, the Commission should direct that any developer selected to construct the transmission facilities shall apply the cost containment provisions identified herein.

## **I. BACKGROUND**

### **A. Description of the NYPSC**

The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction, in part, to regulate rates and charges for the sale of electric energy to consumers within the State, as well as the siting of major electric transmission facilities. Accordingly, the NYPSC is a State Commission as defined in section 3(15) of the Federal Power Act.

### **B. NYISO's Public Policy Transmission Planning and Cost Allocation Process**

The NYISO's Public Policy Transmission Planning Process was developed to comply with the Commission's Order No. 1000, which required, in part, the development of a planning process for the consideration of public policy-driven transmission needs.<sup>4</sup> The NYISO's process consists of four main steps, which include: (1) the NYPSC's identification of any Public Policy Requirements/Public Policy Transmission Needs; (2) the NYISO's solicitation of proposed solutions to any identified Public Policy Transmission Needs; (3) the NYISO's evaluation of the viability and sufficiency of proposed transmission and non-transmission solutions to the Public Policy Transmission Needs; and, (4) upon the NYPSC's confirmation of a transmission need based on the viability and sufficiency evaluation, the NYISO's full evaluation and selection of the more efficient or cost-effective transmission project to satisfy the Public Policy Transmission Need.<sup>5</sup>

Consistent with the Commission's directives in Order No. 1000, the NYISO's Public Policy Transmission Planning Process contains a multi-step process to prescribe a cost allocation methodology for regulated transmission solutions that are selected to satisfy needs driven by

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<sup>3</sup> The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

<sup>4</sup> See, Docket No. RM10-23-000, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000 (issued July 21, 2011), reh'g denied, Order No. 1000-A (issued May 17, 2012) reh'g denied, Order No. 1000-B (issued October 18, 2012).

<sup>5</sup> NYISO Public Policy Transmission Planning Process Manual; Section 1.2 (July 2015).

Public Policy Requirements.<sup>6</sup> This process was designed to provide flexibility in prescribing a methodology that would allocate the costs of a selected Public Policy Transmission Project consistent with the Public Policy Requirement driving the identified transmission need and roughly commensurate with the derived benefits.<sup>7</sup> In allocating the costs of the selected Public Policy Transmission Project, the NYISO will use the methodology accepted by the Commission upon completion of this process.<sup>8</sup>

Section 31.5.5.4.1 of the NYISO OATT provides that where the identified Public Policy Requirement prescribes a particular cost allocation methodology, the NYISO will use that methodology, provided the Commission accepts it. Therefore, as the initial step in this process, the NYISO, on behalf of the NYPSC, will file with the Commission any cost allocation methodology prescribed by the NYPSC in a Public Policy Requirement driving the identified transmission need within 60 days of the NYPSC's order setting forth such methodology.<sup>9</sup>

If the Public Policy Requirement does not prescribe a cost allocation methodology or the Developer of the selected Public Policy Transmission Project wants to propose an alternative methodology, the Developer may submit to the NYPSC for its consideration a proposed cost allocation methodology within 30 days after the NYISO's selection of its transmission project as the more efficient or cost effective transmission solution to the identified Public Policy Transmission Need.<sup>10</sup> The NYPSC will have 150 days to review the Developer's proposed cost allocation methodology and to notify the Developer whether the NYPSC supports the methodology.<sup>11</sup> If the NYPSC supports the proposed methodology, the Developer will file it with the Commission under Section 205 of the Federal Power Act within 30 days of the NYPSC's indication of its support.<sup>12</sup>

However, if the NYPSC does not support the Developer's proposed cost allocation methodology, the Developer will have 60 days to work with the NYPSC to develop a mutually agreeable cost allocation methodology.<sup>13</sup> If they agree upon a cost allocation methodology, the Developer will file that methodology with the Commission within 30 days of the conclusion of the 60-day discussion period.<sup>14</sup> If they cannot agree, the Developer will file its preferred

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<sup>6</sup> See generally Section 31.5.5.4 of the NYISO OATT

<sup>7</sup> See *id.*; *New York Independent System Operator, Inc., et al.*, Compliance Filing, Docket No. ER13-102-000 (October 12, 2012), at p 46.

<sup>8</sup> Section 31.5.5.4 of the NYISO OATT.

<sup>9</sup> Section 31.5.5.4.1 of the NYISO OATT.

<sup>10</sup> Section 31.5.5.4.2 of the NYISO OATT; see also *New York Independent System Operator, Inc., et al.*, Compliance Filing, Docket No. ER13-102-006 (September 15, 2014), at p 15.

<sup>11</sup> Section 31.5.5.4.2.1 of the NYISO OATT.

<sup>12</sup> Section 31.5.5.4.2.2 of the NYISO OATT.

<sup>13</sup> Section 31.5.5.4.2.3 of the NYISO OATT.

<sup>14</sup> Section 31.5.5.4.2.4 of the NYISO OATT.

methodology with the Commission within 30 days of the conclusion of the discussion period, which filing will also include the methodology supported by the NYPSC.<sup>15</sup>

In the event that this process does not result in the Commission accepting a cost allocation methodology prescribed by the Public Policy Requirement or proposed by a Transmission Owner or Other Developer, the NYISO will use the default *ex ante* methodology based on load-ratio share to allocate the costs to all Load Zones in the New York Control Area.<sup>16</sup>

### **C. NYPSC Identification of the Public Policy Transmission Need and Cost Allocation/Containment Approaches**

The NYPSC initiated a proceeding in November 2012 to address the need for certain upgrades across the Central East and Upstate New York/Southeast New York portions of the AC transmission system (referred to as the AC Transmission Upgrades).<sup>17</sup> Following subsequent notice and comment procedures, the NYPSC issued a December 2014 Order,<sup>18</sup> attached as Appendix E, which adopted a cost allocation methodology related to the AC Transmission Upgrades, as recommended by its Advisory Staff. In particular, the NYPSC indicated that it:

supports a “beneficiaries pay” approach for allocating costs, whereby those that derive the benefits of a project should bear the costs. Although a precise calculation of the projected benefits has not been completed, the cost allocation proposed in the Advisory Staff Recommendations is roughly commensurate with the anticipated beneficiaries. The [NYPSC] therefore adopts an approach whereby 75% of project costs are allocated to the economic beneficiaries of reduced congestion, while the other 25% of the costs are allocated to all customers on a load-ratio share. This would result in approximately 90% of the project costs being allocated to customers in the downstate region, and about 10% to upstate customers. This allocation reflects that the primary benefit of the projects will be reduced congestion into downstate load areas, but also recognizes that some benefits accrue to upstate customers in the form of increased reliability and reduced operational costs.

On December 17, 2015, the NYPSC issued an order, which is attached as Appendix F, finding that the need for certain upgrades across the Central East and UPNY/SENY portions of the AC transmission system were being driven by a Public Policy Requirement, as defined under the NYISO OATT.<sup>19</sup> The NYPSC indicated that upgrades to those sections of the transmission

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<sup>15</sup> Section 31.5.5.4.2.4 of the NYISO OATT.

<sup>16</sup> Section 31.5.5.4.3 of the NYISO OATT.

<sup>17</sup> Case 12-T-0502, AC Transmission Proceeding, Order Instituting Proceeding (issued November 30, 2012).

<sup>18</sup> Case 12-T-0502, et al., AC Transmission Proceedings, Order Establishing Modified Procedures for Comparative Evaluation (issued December 16, 2014) pp. 41-42 (December 2014 Order).

<sup>19</sup> Case 12-T-0502, Order Finding Transmission Needs driven by Public Policy Requirements (issued December 17, 2015) (December 2015 Order).

system could produce various benefits for New York, including: 1) enhancing system reliability, flexibility, and efficiency; 2) reducing environmental and health impacts; 3) increasing diversity in supply; 4) promoting job growth and the development of new efficient generation resources upstate; and, 5) mitigating reliability problems that may arise with expected generator retirements. In identifying the AC Transmission Public Policy Transmission Need, the NYPSC affirmed its support of the cost allocation approach identified in its December 2014 Order, which would result in approximately 90% of the project costs being allocated to customers in the downstate region (NYISO Zones G-K), and about 10% to upstate customers (NYISO Zones A-F). However, the NYPSC sought the NYISO's expertise in designing a more granular cost allocation among downstate entities.<sup>20</sup>

As directed under the OATT, the NYISO issued a solicitation on February 29, 2016, seeking potential solutions to resolve the Public Policy Requirement identified by the NYPSC. Subsequently, the NYISO provided the results of its Viability and Sufficiency Assessment to the NYPSC on October 28, 2016, which included the results of the NYISO's analysis of cost allocation methodologies that comport with the NYPSC-identified Public Policy Requirement.

On January 24, 2017, the NYPSC issued an order, attached as Appendix G, which directed the NYISO to proceed to a full evaluation and selection, as appropriate, of the more efficient or cost-effective transmission solution to meet the AC Transmission Public Policy Transmission Need.<sup>21</sup> The NYPSC also adopted the cost allocation methodology outlined in the NYISO's analysis for allocating and recovering the costs of the transmission upgrades. Further, the NYPSC stated that certain incentives are appropriate to ensure accurate cost estimates, whereby:

[i]f actual costs come in above a bid, the developer should bear 20% of the cost overruns, while ratepayers should bear 80% of those costs. If actual costs come in below a bid, then the developer should retain 20% of the savings. Furthermore, if the developer seeks incentives from FERC above the base return-on-equity otherwise approved by FERC, then the developer should not receive any incentives above the base return-on-equity on any cost overruns over the bid price. The bid price would therefore cap the costs that may be proposed to FERC for incentives.<sup>22</sup>

## **II. SUMMARY OF REQUESTED ACTIONS**

### **A. Cost Allocation**

The NYPSC requests that the proposed amendments for allocating costs under the NYISO OATT, as identified in clean format in Appendix A and redlined format in Appendix B, should be accepted without suspension or hearing. The NYPSC requests an effective date of

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<sup>20</sup> December 2015 Order.

<sup>21</sup> Case 12-T-0502, et al., Order Addressing Public Policy Transmission Need for AC Transmission Upgrades (issued January 24, 2017) (January 2017 Order).

<sup>22</sup> December 2015 Order, p. 48.

May 26, 2017 for the cost allocation methodology and related tariff changes. Alternatively, the NYPSC requests that the Commission limit the issues set for hearing and impose a nominal suspension period.

### **B. Cost Containment**

The NYPSC requests that any developer selected by the NYISO to construct the transmission facilities for meeting the AC Transmission Public Policy Transmission Need shall be directed to apply the cost containment provisions adopted in the NYPSC's prior orders and discussed herein.

### **III. THE REQUESTED ACTIONS ARE JUST AND REASONABLE AND CONSISTENT WITH ORDER NO. 1000**

As demonstrated in the affidavit of Jerry J. Ancona, attached as Appendix C, the 25%/75% breakdown between overall statewide benefits and more targeted congestion savings, respectively - resulting in approximately 10% of benefits accruing upstate and 90% accruing downstate - provides a just and reasonable approximation to assign costs commensurate with all anticipated benefits. This approach appropriately recognizes that the primary benefits of the AC Transmission Upgrades will be due to congestion relief savings, while also acknowledging that other benefits will accrue to some portions or all of the State, such as: 1) enhanced system reliability, flexibility, and efficiency; 2) reduced environmental and health impacts; 3) increased diversity in supply; 4) promotion of job growth and the development of new efficient generation resources upstate; and, 5) mitigation of reliability problems that may arise with expected generator retirements.

As further discussed in the affidavit of Mr. Ancona, an 80%/20% (ratepayer/developer) risk sharing mechanism provides a balanced incentive among competing interests for meeting the dual objectives of (i) reliable initial cost estimates, and (ii) well managed and cost-controlled project completions. The affidavit of MaryAnn Sorrentino, attached as Appendix D, illustrates a regulatory approach for effectuating this risk sharing and cost containment approach, whereby cost overruns would be addressed by reducing the allowed return on equity on any capital cost overrun. This approach would ensure the return on equity remains within the zone of reasonableness and is just and reasonable.

### **IV. PROPOSED EFFECTIVE DATE**

The NYPSC requests that the Commission accept the tariff amendments to be effective 60 days after this filing, on May 26, 2017, without suspension or hearing. Alternatively, the NYPSC requests that the Commission limit the issues set for hearing and impose a nominal suspension period.

## **V. CONTENTS OF THE FILING**

In addition to this transmittal letter, which provides a detailed description of the approvals requested and the bases for those requests, this filing contains the following components:

Appendix A:	Clean Version of NYISO OATT
Appendix B:	Redlined Version of NYISO OATT
Appendix C:	Affidavit of Jerry J. Ancona, PE
Appendix D:	Affidavit of MaryAnn Sorrentino
Appendix E:	NYPSC Order issued December 16, 2014
Appendix F:	NYPSC Order issued December 17, 2015
Appendix G:	NYPSC Order issued January 24, 2017

## **VI. REQUESTED WAIVERS**

Based on its status as a non-jurisdictional utility, the NYPSC respectfully requests that it be exempt from FERC's filing fees and from compliance with any requirements of section 35.13 of the Commission's regulations not otherwise satisfied by this filing.<sup>23</sup> In the event any additional waivers are required in connection with this filing, the NYPSC respectfully requests that the Commission grant such waivers.

## **VII. CORRESPONDENCE AND COMMUNICATIONS**

The following persons are authorized to receive notices and communications with respect to this Application:

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<sup>23</sup> See, 18 C.F.R. § 381.108 (indicating that "States, municipalities and anyone who is engaged in the official business of the Federal Government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee").

## **VIII. CONCLUSION**

For the reasons set forth herein, the NYPSC requests that the Commission accept the OATT revisions providing for a cost allocation methodology, to be effective May 26, 2017, and direct that the cost containment provisions to be applied to the recovery of project costs.

Respectfully submitted,

/s/ **Paul Agresta**

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Attachments: Appendices A-G