

March 19, 2018

By Electronic Delivery

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

**Re: *New York Independent System Operator, Inc., Compliance Filing,*
Docket Nos. ER13-102-008, -009, -010, -011, - _____**

Dear Secretary Bose:

The New York Independent System Operator, Inc. (“NYISO”)¹ hereby submits revisions to its Open Access Transmission Tariff (“OATT”)² and its Market Administration and Control Area Services Tariff (“Services Tariff”) concerning its compliance with the Order No. 1000 regional transmission planning requirements.³ The proposed revisions in this compliance filing fulfill the directives of the Federal Energy Regulatory Commission (“Commission”) in its February 15, 2018, *Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance* (“February 2018 Order”)⁴ and *Order Granting, in Part, and Denying, in Part,*

¹ Due to the nature of the matters addressed in this compliance filing that relate to the treatment of Developers of transmission and Transmission Owners that will apply to both the existing New York Transmission Owners and non-incumbent Developers, the NYISO submits this compliance filing on its own, with the understanding that the New York Transmission Owners and other interested parties may file separate comments.

² Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y or Attachment P of the NYISO OATT, and if not defined therein, in the NYISO OATT and the NYISO Services Tariff.

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., Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance*, 162 FERC ¶ 61,107 (2018) (“February 2018 Order”).

Rehearing and Clarification, and Requiring Further Compliance (“Rehearing Order”) in the above-captioned proceeding.⁵

The NYISO respectfully submits that its proposed compliance revisions described in Parts II through V below fully comply with the directives of the February 2018 Order and Rehearing Order, are fully supported, are just and reasonable, and should be accepted without modification or condition.⁶ As described in Part VI below, the NYISO respectfully requests that the Commission accept these tariff revisions with an effective date of April 1, 2016 with the exception of those revisions detailed in Parts III.A through III.D, for which the NYISO requests an effective date of March 20, 2018.

I. BACKGROUND

In response to the Order No. 1000 regional transmission planning and cost allocation directives, the NYISO and the New York Transmission Owners have submitted compliance filings to revise the NYISO’s tariff requirements for its Comprehensive System Planning Process (“CSPP”), which is composed of the NYISO’s local transmission planning, reliability, economic, and public policy transmission planning processes. In previous Orders, the Commission has largely accepted the NYISO’s revised CSPP as compliant with the Order No. 1000 requirements.⁷

⁵ *New York Independent System Operator, Inc.*, Order Granting, in Part, and Denying, in Part, Rehearing and Clarification, and Requiring Further Compliance, 162 FERC ¶ 61,124 (2018) (“Rehearing Order”).

⁶ The proposed tariff revisions included in this filing are those expressly required by the directives in the February 2018 Order and Rehearing Order. In addition, the proposed tariff revisions in this filing include additional limited tariff revisions that are necessary to either implement or clarify the existing tariff language to accommodate those directives; or are non-substantive organizational or clarifying adjustments necessary to make the NYISO’s Order No. 1000-related tariff provisions clearer and to conform related tariff provisions to those expressly required by the directives of the February 2018 Order and Rehearing Order. It is consistent with Commission precedent to include such tariff revisions in this compliance filing. The Commission has previously authorized the NYISO to include these kinds of limited, but necessary, clarifications in compliance filings and should follow that precedent here. *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh’g*, 127 FERC ¶ 61,042 (2009) (accepting proposed 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).

⁷ *See New York Independent System Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 153 FERC ¶ 61,341 (2015); *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 151 FERC ¶ 61,040 (2015); *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014); *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013).

In response to the Commission's December 23, 2015, order in this proceeding ("December 2015 Order"),⁸ the NYISO submitted on March 22, 2016 and September 13, 2016 its fifth and six compliance filings.⁹ These filings included: (i) new Transmission Interconnection Procedures, along with related revisions to the NYISO's existing interconnection and transmission expansion requirements in the OATT; (ii) a new *pro forma* development agreement for the NYISO's Public Policy Transmission Planning Process ("Public Policy Development Agreement") and related tariff revisions; (iii) revisions to the *pro forma* development agreement for the NYISO's reliability planning process ("Reliability Development Agreement") and related tariff revisions; (iv) a new *pro forma* operating agreement for Non-Incumbent Transmission Owners ("Operating Agreement"); and (v) tariff revisions to clearly outline the rights and responsibilities of existing and new Transmission Owners under the NYISO's tariffs. The NYISO separately requested rehearing on January 27, 2016, of the Commission's determinations in the December 2015 Order concerning: (i) the indemnification requirements in the Reliability Development Agreement and (ii) which parties must execute that agreement.¹⁰

On February 15, 2018, the Commission issued two orders addressing the NYISO's compliance filings and its request for rehearing. In the February 2018 Order, the Commission accepted in large part the NYISO's tariff revisions. The February 2018 Order directed the NYISO to submit a further compliance filing within 30 days to make a limited number of additional revisions concerning the Transmission Interconnection Procedures, the Operating Agreement, the Reliability Development Agreement, and related provisions in the NYISO OATT. In addition, in the Rehearing Order, the Commission granted the NYISO's rehearing request concerning the indemnification requirements in the Reliability Development Agreement and directed the NYISO to submit within 30 days a compliance filing to implement the required changes.

In response to the directives in the February 2018 Order and the Rehearing Order, the NYISO proposes the revisions to its tariffs described in Parts II through V below. The NYISO discussed these tariff revisions with stakeholders at the joint meeting of the Transmission Planning Advisory Subcommittee and the Electric System Planning Working Group meeting on March 8, 2018.

⁸ See *New York Independent System Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 153 FERC ¶ 61,341 (2015) ("December 2015 Order").

⁹ See *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-009 (Mar. 22, 2016); *New York Independent System Operator, Inc.*, Errata Correcting Compliance Filing, Docket No. ER13-102-010 (May 24, 2016); *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-011 (Sept. 13, 2016).

¹⁰ See *New York Independent System Operator, Inc.*, Request for Rehearing and Clarification of New York Independent System Operator, Inc., Docket No. ER13-102-008 (Jan. 27, 2016).

II. TRANSMISSION INTERCONNECTION PROCEDURES

In the December 2015 Order, the Commission determined that the NYISO's existing process for evaluating the interconnection of transmission projects that are proposed to satisfy needs identified in the CSPP to be unjust and unreasonable.¹¹ In complying with the Commission's directive, the NYISO developed with stakeholder input a new interconnection process—the Transmission Interconnection Procedures in Attachment P to the OATT—that uniformly studies proposed transmission projects regardless of whether the project was proposed by an incumbent or non-incumbent transmission developer.

In the February 2018 Order, the Commission accepted the Transmission Interconnection Procedures in large part and directed the NYISO to make the following specific revisions: (i) clarify that the NYISO will not forward Transmission Interconnection Applications to the Connecting Transmission Owner before the close of a competitive solicitation window under the CSPP; (ii) explain whether the Transmission Interconnection Procedures apply to incumbent Transmission Owners' market-based project proposals; (iii) revise the definition of "Merchant Transmission Facility" to be consistent with the Commission's definition in Order No. 1000; (iv) revise Section 3.7 of the OATT to refer to both System Impact Studies and Transmission System Studies, as appropriate; and (v) correct or explain a reference to "Section 31.3.1.3" in Section 22.3.1.2 of Attachment P to the OATT.¹² In response to the Commission's directives, the NYISO proposes the following revisions.

A. Revisions to Await the Close of a Solicitation Window Before Forwarding a CSPP-Related Transmission Interconnection Application to the Connecting Transmission Owner(s)

In accordance with the Commission's directive,¹³ the NYISO revised Section 22.4.2.2 of Attachment P to provide that it shall not forward a Transmission Interconnection Application that is submitted in connection with a proposed solution to a need identified in the CSPP to the Connecting Transmission Owner(s) until after the close of the applicable solicitation window.¹⁴ As a result of retaining the Transmission Interconnection Application until after the close of the solicitation window and being unable to receive input from the Connecting Transmission Owner(s) on the application, the NYISO would be limited in the actions that it can take in processing the application under Section 22.4.2.3 of Attachment P. To account for these limitations, the NYISO also clarified that an application cannot be considered to be valid until after the close of the solicitation window, and the NYISO has up to five (5) Business Days following the close of a solicitation window to notify a Transmission Developer of deficiencies

¹¹ December 2015 Order at PP 67-68.

¹² February 2018 Order at P 39.

¹³ *See id.* at PP 39-40.

¹⁴ *See* OATT Sections 22.4.2.2 and 22.4.2.3.

in its application.¹⁵ The revisions further state that any information received from a Transmission Developer related to its application cannot be forwarded until the close of the applicable window.¹⁶

In addition, the NYISO added corresponding revisions in the Large Facility Interconnection Procedures under Attachment X, which are applicable to transmission projects that are proposed by incumbent or non-incumbent transmission developers and eligible for and request Capacity Resource Interconnection Service (“CRIS”) subject to the eligibility requirements set forth in the ISO Procedures. Consistent with the revisions proposed in Attachment P, the revisions to Attachment X make clear that the NYISO shall not forward an Interconnection Request that is for a proposed solution under the CSPP to the Connecting Transmission Owner(s) until after the close of the applicable solicitation window.¹⁷ This revision is consistent with the Commission’s directive in the February 2018 Order to prevent the potential that receipt of an Interconnection Request by a Connecting Transmission Owner prior to the close of a solicitation could result in a competitive advantage.

Because the NYISO will not be able to validate an application or request until after the close of a solicitation window, the NYISO made conforming revisions to Attachment Y of the OATT to remove the requirement that a Developer submit a “valid” transmission interconnection application or interconnection request, as applicable, along with its proposed solution to a Reliability Need or a Public Policy Transmission Need.¹⁸ As revised, a Developer need only submit a transmission interconnection application or interconnection request, as applicable.

B. Clarification Related to the Study of Transmission Owners’ Market-Based Proposals

In its February 2018 Order, the Commission requested clarification regarding the applicable interconnection process for market-based transmission projects proposed by incumbent Transmission Owners.¹⁹ As explained below, such projects may be subject to either the Transmission Interconnection Procedures or the Large Facility Interconnection Procedures, depending upon whether the transmission project is eligible for CRIS and whether the Transmission Owner requests CRIS in its interconnection application.

In response to the Commission’s directives in the December 2015 Order, the NYISO proposed the Transmission Interconnection Procedures under Attachment P to apply broadly to transmission projects proposed by any entity—whether an incumbent Transmission Owner or a non-incumbent Transmission Developer—that is proposing a new transmission facility or upgrade to

¹⁵ See revised OATT Section 22.4.2.2.

¹⁶ See *id.*

¹⁷ See revised OATT Sections 30.3.3.2 and 30.3.3.3.

¹⁸ See revised OATT Sections 31.2.5.1 and 31.4.4.3.1.

¹⁹ February 2018 Order at PP 39, 41.

the New York State Transmission System.²⁰ The Transmission Interconnection Procedures apply to the interconnection of all proposed transmission facilities with two exceptions. The first exception includes proposed transmission facilities identified in a Transmission Owner's local transmission plan or NYPA's transmission plan, which would be evaluated in Section 3.7 of the OATT. The second exception includes proposed controllable transmission lines for which the proposing entity is seeking CRIS to receive Unforced Capacity Deliverability Rights.²¹ Based on the expansive definition of "Transmission Project" subject to the Transmission Interconnection Procedures, market-based transmission projects proposed by incumbent Transmission Owners are subject to Attachment P, unless the project is eligible for and seeks CRIS, in which case the proposed facility would be studied in the Large Facility Interconnection Procedures pursuant to Attachment X to the OATT.

To further clarify that an incumbent Transmission Owner that proposes a market-based solution would have to go through the Transmission Interconnection Procedures, unless requesting CRIS, the NYISO revised Section 3.7 of the OATT to provide additional mapping in the tariff of the interconnection procedures applicable to the various types of transmission projects. The revised language makes clear that Transmission Owners that propose any new transmission facility or upgrade, other than an upgrade or expansion identified in its local transmission plan, "regardless of whether the Transmission Owner seeks cost allocation under the ISO OATT or proposes a market-based project," shall be required to go through the Transmission Interconnection Procedure under Attachment P or, if requesting CRIS, the Large Facility Interconnection Procedures under Attachment X.²²

C. Revisions to the Definition of Merchant Transmission Facility

In response to the Commission's directive in the February 2018 Order,²³ the NYISO revised the definition of "Merchant Transmission Facility" to be consistent with the definition in Order No. 1000, which defines a "Merchant Transmission Facility" as a facility for which the costs of construction are recovered through negotiated rates as opposed to cost-based rates.²⁴ Specifically, the NYISO revised the definition of "Merchant Transmission Facility" in Section 30.1 of Attachment X and added an identical definition to Section 31.1.1 of Attachment Y, as follows:

Merchant Transmission Facility shall mean a Developer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission

²⁰ See OATT Section 22.3.1.3; *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-009 at p 11 (March 22, 2016).

²¹ See OATT Section 22.3.1.3.

²² See February 2018 Order at P 41.

²³ See *id.* at PP 39, 42.

²⁴ See *id.* at P 42 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 119).

System, for which the costs of construction will be recovered through negotiated rates instead of cost-based rates and not subject to the competitive evaluation and selection process for purposes of cost allocation under Attachment Y to the ISO OATT. Merchant Transmission Facilities shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

To incorporate the revised definition of “Merchant Transmission Facility” into the NYISO’s tariffs, the NYISO added the term “Class Year Transmission Project” to capture transmission projects that fell under the former definition of “Merchant Transmission Facility”²⁵ and, if not seeking cost-based rate recovery for its construction costs, are a subset of the new definition of “Merchant Transmission Facility.” Consistent with the NYISO’s current practice, transmission facilities seeking CRIS must participate in the Class Year Interconnection Facilities Study process, including the deliverability study set forth in Attachments X and S to the OATT.²⁶ As a result, the Transmission Interconnection Procedures, as initially proposed, and the former definition of “Merchant Transmission Facility” provided, that transmission projects eligible for and requesting CRIS, subject to the eligibility requirements set forth in the ISO Procedures, are required to proceed through the Large Facility Interconnection Procedures in Attachment X as opposed to the Transmission Interconnection Procedures in Attachment P. To account for these transmission projects, the NYISO created the new term “Class Year Transmission Project” that includes those transmission facilities that are eligible to request and do request CRIS subject to the eligibility requirements set forth in the NYISO procedures, and are specifically excluded from being evaluated in the Transmission Interconnection Procedures.²⁷ The NYISO conducted a comprehensive review of the NYISO’s tariffs to adjust, align, and/or add references to “Merchant Transmission Facilities” and “Class Year Transmission Project,” accordingly.²⁸

²⁵ Revised OATT Section 30.1 provides the following definition:

“**Class Year Transmission Project** shall mean a Developer’s proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which the Developer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures. Class Year Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.”

²⁶ See OATT Section 30.1.

²⁷ See revised OATT Section 22.3.1.3. As set forth in Section 22.3.1.2 of Attachment P, Merchant Transmission Facilities that do not also satisfy the definition of “Class Year Transmission Project” will proceed through the Transmission Interconnection Procedures.

²⁸ See generally, revised OATT Section 1.4; Section 6.12.4; Section 22.3.1.3 of Attachment P; OATT Sections 25.1, 25.3.1.2, 25.5.5, 25.6.2.3.1.1.4, and 25.7 of Attachment S; OATT Sections 30.1, 30.2.1, 30.2.2, 30.2.4, 30.3.1, 30.3.2.2, 30.6.2, 30.7.2.2, 30.7.3, 30.14 of Attachment X, OATT Sections

D. Conforming Revisions to the References to Studies under Section 3.7 of the OATT

Section 3.7.1 of the OATT distinguishes System Impact Studies from Transmission Service Studies—both of which fall under Section 3.7 of the OATT. System Impact Studies evaluate proposed transmission upgrades and expansions identified in a Local Transmission Owner Plan or NYPA transmission plan. Transmission Service Studies, on the other hand, are performed for an Eligible Customer that requests the NYISO study facilities that could be constructed (*e.g.*, where an Eligible Customer requests the NYISO to identify possible transmission options to increase transfer capability). As the Commission identified in paragraph 43 of the February 2018 Order, there are instances where Section 3.7 of the OATT only refers to System Impact Studies, but should reference both System Impact Studies and Transmission Service Studies.

Therefore, as directed by the Commission, the NYISO added references to “Transmission System Study” where the NYISO mentions System Impact Studies throughout Section 3.7 of the OATT, with the exception of the provisions in Section 3.7 of the OATT describing the Facilities Study.²⁹ Unlike upgrades or expansions identified in a Transmission Owner’s local transmission plans or NYPA transmission plan that would be evaluated in a Facilities Study under Section 3.7.4 of the OATT, an Eligible Customer that requests a conceptual evaluation of a transmission project can have such request studied in a Transmission Service Study under Section 3.7 of the OATT, but then must proceed to the Transmission Interconnection Procedures to proceed with further evaluation, as opposed to conducting a Facilities Study under Section 3.7.³⁰ To account for this difference, the NYISO did not include corresponding references to “Transmission Service Studies” in Section 3.7.4 of the OATT.

E. Ministerial Revision

In compliance with paragraph 44 of the February 2018 Order, the NYISO also made the ministerial correction to the reference of “Section 31.3.1.3 of the OATT” for exceptions to the definition of Transmission Project, which has been amended to refer to Section 22.3.1.3 of the OATT.³¹

31.1.1, 31.2.2.4.1, 31.3.1.4, 31.5.1.3, and 31.5.3.2 of Attachment Y; OATT Section 32.5 of Attachment X; OATT Section 38.22 of Attachment FF; and Services Tariff Section 5.16.1.1.

²⁹ See February 2018 Order at P 43.

³⁰ See revised OATT Section 3.7.3. An Eligible Customer is not required to obtain a conceptual study of a transmission project prior to submitting a transmission interconnection application, and may proceed directly to the Transmission Interconnection Procedures under Attachment P to the OATT. *See id.*

³¹ See February 2018 Order at P 44.

III. OPERATING AGREEMENT

As directed by the December 2015 Order, the NYISO submitted with its March 22, 2016, compliance filing a *pro forma* Operating Agreement for Non-Incumbent Transmission Owners (“NTOs”), which agreement is located in Section 31.11 of Attachment Y of the OATT. The Operating Agreement is largely consistent with and comparable to the *Agreement Between New York Independent System Operator and Transmission Owners* (“ISO/TO Agreement”) that was entered into among the NYISO and incumbent Transmission Owners in 1999.³²

In the February 2018 Order, the Commission accepted the Operating Agreement in large part and directed the NYISO to make a limited number of revisions to the agreement.³³ In response to the directives in the February 2018 Order, the NYISO has made the following changes to the Operating Agreement and to its Services Tariff.

In response to paragraph 134 of the February 2018 Order, the NYISO revised Article 3.08a of the Operating Agreement to conform it with the same provision of the ISO/TO Agreement (*i.e.*, Article 3.10a).³⁴ With this revision, Article 3.08 of the Operating Agreement is comparable to Article 3.10 of the ISO/TO Agreement with only the following limited differences between the provisions, which differences were included in the March 22, 2016 compliance filing: (i) the term “Transmission Owner” was replaced with “NTO”; (ii) the term “FPA” was replaced with “Federal Power Act”; (iii) the reference to “any other agreement or amendment made in connection with the restructuring of the NYPP and establishment of the New York ISO” was not carried over from the ISO/TO Agreement to the first sentence of Article 3.08 of the Operating Agreement as it concerns the start-up of the NYISO; and (iv) minor revisions were made in Article 3.08 to address the fact that there is only one Transmission Owner subject to this agreement (*e.g.*, the language “individually or collectively” was not carried over from the ISO/TO Agreement into Article 3.08c).

In response to paragraphs 130 and 131 of the February 2018 Order, the NYISO inserted a new Section 3.5.3 of the Services Tariff to require all Transmission Owners: (i) to provide maintenance schedules to other Transmission Owners where those maintenance schedules would directly impact other Transmission Owners’ facilities, and (ii) to provide to other Transmission Owners information regarding the results of investigations of equipment malfunctions and failures and forced transmission outages.³⁵ Section 3.5.3 of the Services Tariff also provides for the Transmission Owner receiving this potentially non-public information concerning another Transmission Owner’s transmission facilities to maintain the information in a manner consistent with the Commission’s Standards of Conduct requirements in 18 C.F.R. § 358 or any more restrictive requirement of the receiving Transmission Owner governing the sharing of

³² See *Cent. Hudson Gas & Elec. Corp., et al.*, 88 FERC ¶ 61,138 at p 5 (1999).

³³ See February 2018 Order at PP 122-123.

³⁴ See *id* at PP 123, 134.

³⁵ See *id* at PP 123, 130-131.

Transmission System Information (as that term is defined in Attachment F of the OATT). The NYISO also revised Articles 2.08 and 2.10 of the Operating Agreement to reference this new tariff provision.³⁶

The Commission also directed revisions to the limitation of liability provisions in Articles 5.01 and 5.02 of the Operating Agreement, finding the difference between these provisions and the related provisions in the ISO/TO Agreement to be unduly discriminatory and preferential because the NYISO's "liability to incumbent and Nonincumbent Transmission Owners should be limited to the same extent, which is to the extent it is limited under the OATT."³⁷ Specifically, the Commission directed the NYISO to revise Articles 5.01 and 5.02 "to state that NYISO's liability to the Nonincumbent Transmission Owner is limited 'as provided under the ISO OATT.'"³⁸ Accordingly, the NYISO has revised Articles 5.01 and 5.02 of the Operating Agreement (i) to remove the previously-proposed variations from the related provisions in the ISO/TO Agreement,³⁹ and (ii) to insert, consistent with the Commission's directive, a new sentence at the end of each Article that provides that: "The ISO shall not be liable to the NTO or any other party for any damages resulting from any act or omission in any way associated with this Agreement, except to the extent provided for under the ISO OATT." The Operating Agreement is comparable to the ISO/TO Agreement because the new language required by the Commission simply refers to the NYISO's existing limitation of liability requirements set forth in the OATT.⁴⁰

The NYISO made the following additional changes to the Operating Agreement in response to the directives in the February 2018 Order:

- Revised Article 2.02 to remove the language that an NTO's actions shall be performed in accordance with "the transmission interconnection agreement(s) for its facilities";⁴¹
- Revised Article 2.07 to remove the requirement that an NTO comply with the local reliability rules and planning criteria of its Interconnecting Transmission Owner;⁴²

³⁶ *See id.*

³⁷ *See id.* at P 136.

³⁸ *See id.*

³⁹ This revision included backing out the replacement of the word "under" with "in any way associated with" in the first sentence of Article 5.01.

⁴⁰ *See* OATT Section 2.11.3(b). The Commission noted that the ISO/TO Agreement is silent on the NYISO's liability to incumbent Transmission Owners. *See* February 2018 Order at P 136 n. 193.

⁴¹ *See* February 2018 Order at PP 123, 126.

⁴² *See id.* at PP 123, 129.

- Revised Article 4.01 to remove the NYISO’s right to assign the Operating Agreement;⁴³
- Revised Articles 6.01 and 6.02 and deleted Section 6.03(c) to remove the requirements that an NTO “obtain[] all regulatory approvals . . . and hav[e] on file with FERC its own open access transmission tariff” before terminating the Operating Agreement; withdrawing from the ISO Agreement, the OATT, and Services Tariff, and withdrawing its assets from NYISO’s control;⁴⁴ and
- Revised Article 6.10 to remove the NYISO’s right to seek an injunction or specific performance.⁴⁵

IV. DEVELOPMENT AGREEMENTS

The NYISO submitted in its March 22, 2016, compliance filing revisions to the *pro forma* Reliability Development Agreement for its reliability planning process, which is located in Appendix C of Section 31.7 of Attachment Y of the OATT. The NYISO also submitted a new *pro forma* Public Policy Development Agreement for its Public Policy Transmission Planning Process, which is located in Appendix D of Section 31.7 of Attachment Y of the OATT. The Public Policy Development Agreement is substantially similar to the Reliability Development Agreement with a small number of differences to reflect the different purposes and procedures of the reliability and public policy transmission planning processes.

In the February 2018 Order, the Commission accepted these agreements in large part and directed the NYISO to make certain limited revisions to the Reliability Development Agreement, and to the related tariff requirements that address a Developer’s inability to complete a regulated transmission solution in the NYISO’s reliability or public policy processes. In response to the directives in the February 2018 Order, the NYISO has made the following revisions:

- Revised Article 8.1 of the Reliability Development Agreement and Section 31.2.10.1.2 of Attachment Y of the OATT to remove from the provision concerning cost recovery in the event of termination the “provided, however” clause expressly providing for the Responsible Transmission Owner to recover costs to the extent permitted by the ISO/TO Reliability Agreement;⁴⁶
- Revised the definition of “ISO/TO Reliability Agreement” in the Reliability Development Agreement and in Section 31.1.1 of Attachment Y of the OATT, so that the definition is the same in both locations;⁴⁷ and

⁴³ See *id.* at PP 123, 135.

⁴⁴ See *id.* at PP 123, 139-141.

⁴⁵ See *id.* at PP 123, 142.

⁴⁶ See *id.* at PP 16-18.

⁴⁷ See *id.* at P 173.

- Removed the requirement in Section 31.2.10.1.3 of Attachment Y of the OATT that the NYISO may take any action it reasonably considers appropriate in the event a Developer is unable to complete its project.

The Commission also directed the NYISO to revise Section 31.4.12.3.1.3 of Attachment Y of the OATT to remove the requirements that the NYISO: (i) submit a report to the NYPSC and/or Commission in the event a Developer is unable to complete its project, and (ii) take any action it reasonably considers appropriate in the event a Developer is unable to complete its project.⁴⁸ The Commission had previously directed the NYISO to make this change in an April 18, 2016, order⁴⁹ in a separate proceeding in Docket No. ER16-966 that overlapped with the Order No. 1000 compliance proceeding. The NYISO made this change in its May 18, 2016, compliance filing in that proceeding,⁵⁰ and the change was accepted by the Commission on September 7, 2016.⁵¹

Additionally, in the Rehearing Order, the Commission granted the NYISO's request for rehearing concerning the indemnification requirements in Article 9.2 of the Reliability Development Agreement. The Commission directed the NYISO to file revisions to the agreement "to provide for the transmission developer to indemnify NYISO, except for acts of gross negligence or intentional misconduct, and to make the terms in the provisions mutual to the extent allowed under the NYISO OATT."⁵² Accordingly, the NYISO proposes to revise Article 9.2 of the Reliability Development Agreement as follows:

Notwithstanding any other provision in the NYISO's tariffs and agreements to the contrary, each Party shall at all times indemnify and save harmless, as applicable, the other Party, its directors, officers, employees, trustees, and agents or each of them from any and all damages (including, without limitation, any consequential, incidental, direct, special, indirect, exemplary or punitive damages and economic costs), losses, claims, including claims and actions relating to injury to or death of any person or damage to property, liabilities, judgments, demands, suits, recoveries, costs and expenses, court costs, attorney and expert fees, and all other obligations by or to third parties, arising out of, or in any way resulting from this

⁴⁸ *See id.* at P 174.

⁴⁹ *New York Independent System Operator, Inc.*, 155 FERC ¶ 61,037 at P 17 (2016).

⁵⁰ *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER16-966-001 (May 18, 2016). Attachment III of the NYISO's May 18, 2016 compliance filing in Docket No. ER16-966 included a revised Section 31.4 of the OATT with an April 1, 2016 effective date that included the NYISO's tariff revisions proposed on March 22, 2016 in Docket No. ER13-102 on top of the revised version of Section 31.4 from the May 18, 2016 filing in Docket No. ER16-966. The updated Section 31.4 included the removal of the requirements that the NYISO: (i) submit a report to the NYPSC and/or Commission in the event a Developer is unable to complete its project, and (ii) take any action it reasonably considers appropriate in the event a Developer is unable to complete its project.

⁵¹ *New York Independent System Operator, Inc.*, 156 FERC ¶ 61,162 at PP 21-22 (2016).

⁵² Rehearing Order at PP 17-19.

Agreement, *provided, however*, that the Developer shall not have any indemnification obligation under this Article 9.2 with respect to any loss to the extent the loss results from the gross negligence or intentional misconduct of the NYISO; *provided, further*, that the NYISO shall only not have any indemnification obligation under this Article 9.2 with respect to any loss resulting from itsto the extent the loss results from thegross negligence or intentional misconductof the Developer to the same extent as provided in Section 2.11.3(b) of the ISO OATT. This Article 9.2 shall survive the termination, expiration, or cancellation of this Agreement.

As revised, Article 9.2 provides that the Developer indemnify the NYISO for losses resulting from this Agreement, except to the extent a loss results from the NYISO's acts of gross negligence or intentional misconduct. In addition, Article 9.2 makes the provision mutual to the extent allowed under the NYISO OATT. Specifically, the NYISO will indemnify the Developer to the same extent as the liability provided for in Section 2.11.3(b) of the OATT. Section 2.11.3(b) establishes that the NYISO shall not be liable, "except to the extent that the ISO is found liable for gross negligence or intentional misconduct, in which case the ISO will only be liable for direct damages."

The NYISO also made these same revisions to the indemnity requirements in Article 9.2 of the *pro forma* Public Policy Development Agreement. The Public Policy Development Agreement was based on the Reliability Development Agreement and only differs where necessary to accommodate differences between the NYISO's reliability and public policy transmission planning processes. There are no differences between the reliability and public policy planning processes that would necessitate different indemnity requirements.

V. ADDITIONAL TARIFF REVISIONS

In the February 2018 Order, the Commission directed the NYISO to revise Section 31.6.4 of Attachment Y of the OATT, which describes the Transmission Owner's rights concerning the construction of upgrades and local transmission facilities. Specifically, the Commission directed the NYISO to remove the language "outside of the ISO's Tariffs," from Section 31.6.4(1) and to provide that "nothing in Attachment Y affects a Transmission Owner's right to recover the cost of upgrades to its facilities *except* if the upgrade has been selected in the regional cost allocation method set forth in Attachment Y applies, unless the Transmission Owner has declined to pursue regional cost allocation."⁵³ Accordingly, the NYISO has revised Section 31.6.4(1) as follows:

Nothing in this Attachment Y affects the right of a Transmission Owner to: (1) build, own, and recover outside of the ISO's Tariffs the costs for upgrades to the facilities it owns, provided that nothing in Attachment Y affects a Transmission Owner's right to recover the costs of upgrades to its facilities except if the upgrade has been selected in the regional transmission plan for purposes of cost allocation, in which case the regional cost allocation method set forth in Attachment Y of the ISO OATT applies, unless the Transmission Owner has

⁵³ February 2018 Order at PP 159-161.

declined to pursue regional cost allocation regardless of whether the upgrade has been selected in the regional transmission plan for purposes of cost allocation; . . .

VI. EFFECTIVE DATE

Except as described below, the NYISO respectfully requests that the Commission accept the tariff revisions proposed in this compliance filing with an April 1, 2016, effective date. This is the effective date the Commission accepted in the February 2018 Order for the NYISO's tariff revisions proposed in its fifth and sixth compliance filings.⁵⁴

The NYISO further respectfully requests that the Commission accept the tariff revisions related to the Transmission Interconnection Procedures (and corresponding tariff revisions to Attachments S and X to the OATT) described in Parts II.A through II.D and included in Attachments III, IV, VII, and VIII with an effective date of March 20, 2018 so that they would only be applied prospectively (on and after that effective date) to new Transmission Interconnection Applications and Interconnection Requests submitted after that date.⁵⁵ The acceptance of a March 20, 2018 effective date would not prejudice any market participants currently in the NYISO's interconnection queue and, in fact, would mitigate against potential prejudice to certain market participants with projects currently pending in the NYISO's interconnection queue that, absent that effective date, could arguably be subject to new or different interconnection requirements if required to transition from Attachment P to Attachment X in order to comply with the changes if there was an effective date earlier than the date of this filing.⁵⁶

⁵⁴ *Id.* at P 7.

⁵⁵ Since the filing of the March 22, 2016 compliance filing and the September 13, 2016 compliance filing, the NYISO undertook a substantial and comprehensive interconnection process improvement initiative, which the Commission accepted for filing with an effective date of December 19, 2017. *See New York Independent System Operator, Inc.*, Letter Order, Docket No. ER18-80-000 (December 7, 2017) ("December 2017 Order"). As certain tariff provisions impacted by the February 2018 Order were deleted or significantly altered by the NYISO's revisions accepted by the December 2017 Order, the revisions herein would only be clear for market participants with a prospective effective date.

⁵⁶ Specifically, one project in the interconnection queue—Queue No. 430—is a proposed transmission upgrade that has been evaluated under Attachment P, is completing a Facilities Study under Attachment P, and will proceed to a Transmission Interconnection Agreement under Attachment P. The NYISO's proposed revisions to the definition of "Merchant Transmission Facility" and "Class Year Transmission Project," if applied to existing projects in the interconnection queue, could arguably require the Queue No. 430 project to initiate an Interconnection Request under Attachment X and proceed through all of the interconnection studies in Attachment X, simply because the project is requesting CRIS associated with its project. While not currently eligible for CRIS, and, therefore, not within the four corners of the definition of "Class Year Transmission Project," Queue No. 430 is being evaluated in the current Class Year Study for CRIS, as a result of a Commission waiver in Docket No. ER17-505-000. *See H.Q. Energy Services (U.S.) Inc.*, FERC Docket No. ER17-505-000; Order Granting Tariff Waiver, 58 FERC ¶ 61,098 (2017). As to not prejudice the Queue No. 430 project, the NYISO, therefore,

VII. COMMUNICATIONS

All communications and correspondence regarding this filing should be directed to:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director, Regulatory Affairs
Karen G. Gach, Deputy General Counsel *Carl
F. Patka, Assistant General Counsel *Sara B.
Keegan, Senior Attorney
*Brian R. Hodgdon, Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com
rstalter@nyiso.com
kgach@nyiso.com
cpatka@nyiso.com
skeegan@nyiso.com
bhodgdon@nyiso.com

*Ted J. Murphy
Hunton & Williams LLP 2200
Pennsylvania Ave, NW
Washington, DC 20037 Tel:
(202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com

*Michael Messonnier⁵⁷
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8712
Fax: (804) 343-4646
mmessonnier@hunton.com

*Persons designated to receive service

VIII. DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents with this filing letter:

1. A clean version of the proposed revisions to the NYISO OATT, effective April 1, 2016 (“Attachment I”);
2. A blacklined version of the proposed revisions to the NYISO OATT, effective April 1, 2016 (“Attachment II”);
3. A clean version of the proposed revisions to the NYISO OATT, effective March 20, 2018 (“Attachment III”);

proposes that the revisions related to the new “Class Year Transmission Project” definition apply only to interconnection projects submitting applications or requests for interconnection after the requested March 20, 2018 effective date.

⁵⁷ Waiver of the Commission’s regulations (18 C.F.R. § 385.203(b)(3) (2014)) is requested to the extent necessary to permit service on counsel for the NYISO in Rensselaer, NY, Richmond, VA, and Washington, DC.

4. A blacklined version of the proposed revisions to the NYISO OATT, effective March 20, 2018 (“Attachment IV”);
5. A clean version of the proposed revisions to the NYISO Services Tariff, effective April 1, 2016 (“Attachment V”);
6. A blacklined version of the proposed revisions to the NYISO Services Tariff, effective April 1, 2016 (“Attachment VI”);
7. A clean version of the proposed revisions to the NYISO Services Tariff, effective March 20, 2018 (“Attachment VII”);
8. A blacklined version of the proposed revisions to the NYISO Services Tariff, effective March 20, 2018 (“Attachment VIII”);
9. A clean version of the proposed revisions to the NYISO Services Tariff effective December 13, 2016 (“Attachment IX”);⁵⁸ and
10. A clean version of the proposed revisions to the NYISO OATT effective October 18, 2017 (“Attachment X”).⁵⁹

IX. SERVICE

The NYISO will send an electronic link to this filing to the official representative of each party to this proceeding, to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities. In addition, the complete filing will be posted on the NYISO’s website at www.nyiso.com.

⁵⁸ Services Tariff Section 3.5 was filed on March 17, 2016 and November 29, 2016 in Docket No. ER16-1213.

⁵⁹ OATT Sections 31.2.8-31.2.13 and 31.7 were filed on August 18, 2017 in Docket No. ER17-2327.

X. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. requests that the Commission accept this compliance filing without requiring any modifications, and determine that the NYISO has fully complied with the directives in the February 2018 Order and Rehearing Order.

Respectfully submitted,

/s/ Brian R. Hodgdon

Carl F. Patka, Assistant General Counsel
Sara B. Keegan, Senior Attorney
Brian R. Hodgdon, Attorney
New York Independent System Operator, Inc.

cc: Anna Cochrane
James Danly
Jette Gebhart
Kurt Longo
David Morenoff
Daniel Nowak
Larry Parkinson
J. Arnold Quinn
Douglas Roe
Kathleen Schnorf
Gary Will