

September 13, 2016

By Electronic Delivery

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

Re: New York Independent System Operator, Inc., Compliance Filing, Docket Nos. ER13-102-007, ER13-102-00_

Dear Secretary Bose:

The New York Independent System Operator, Inc. (“NYISO”)¹ hereby submits this compliance filing to fulfill the directives of the Federal Energy Regulatory Commission (“Commission”) in its December 23, 2015, *Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance* in the above-captioned proceeding (“December Order”) and in accordance with the Commission’s January 14, 2016 *Notice of Extension of Time* and its March 23, 2016 *Notice of Extension of Time*.² The NYISO submits the proposed revisions described in Part IV of this filing letter to the NYISO’s Open Access Transmission Tariff (“OATT”) and Market Administration and Control Area Services Tariffs (“Services Tariff”).³

In connection with the NYISO’s March 22, 2016 compliance filing proposing revisions to comply with the Commission’s December Order, the NYISO filed, on March 17, 2016, and the Commission thereafter granted, a *Motion for Partial Extension of Time of the New York Independent System Operator, Inc.*, requesting additional time to review the ISO Tariffs and clearly outline the rights and responsibilities of new Transmission Owners that execute an

¹ Due to the nature of the matters addressed in this compliance filing relating to the treatment of nonincumbent Developers of transmission facilities and incumbent Transmission Owners under its Tariffs, the NYISO is making this compliance filing to amend its tariffs independently, with the understanding that the existing Transmission Owners, including New York Transco, LLC, other transmission Developers, and interested parties may file separate comments. As discussed below, the NYISO presented the proposed tariff changes in this compliance at two stakeholder meetings on August 9 and August 16, 2016.

² *New York Independent System Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 153 FERC ¶ 61,341 (2015) (“December Order”); *New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket No. ER13-102-007 (January 14, 2016); *New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket No. ER13-102-007 (March 23, 2016).

³ Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in the NYISO OATT and Services Tariff.

Operating Agreement with the NYISO.⁴ The proposed tariff revisions, included in this filing, are necessary to implement the December Order's directives and clarify existing tariff language or are non-substantive organizational adjustments. As these tariff revisions are necessary to make the NYISO's Order No. 1000-related tariff provisions clearer and more accurate, it is consistent with Commission precedent to include them in this compliance filing.⁵

As more fully described in Part V below, the NYISO requests that the revisions proposed herein be accepted by the Commission with an effective date of April 1, 2016, which coincides with the effective date for the previously filed changes in the March 22, 2016 compliance filing addressing the Commissions' directives in the December Order ("March 22, 2016 Compliance Filing").⁶

The NYISO further respectfully requests that the Commission issue a final order accepting the NYISO's remaining Order No. 1000 compliance filings and related tariff changes.⁷ The NYISO has endeavored to fulfill every aspect and principle of the Commission's Order No. 1000 planning requirements in multiple compliance filings beginning in 2012.⁸ Given that the NYISO's regional planning processes under Order No. 1000 commenced on January 1, 2014, that the NYISO is completing the first round of these processes and commenced the next rounds of reliability and public policy planning beginning in January 2016, and that the Commission is considering potential further revisions to Order No. 1000's planning requirements, it is important that the NYISO's current regional transmission planning process be settled with final approval from the Commission.

⁴ *New York Independent System Operator, Inc.*, Motion for Partial Extension of Time of the New York Independent System Operator, Inc., Docket No. ER13-102-007 (March 17, 2016).

⁵ 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).

⁶ *See New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-009 (March 22, 2016) ("March 22, 2016 Compliance Filing").

⁷ *See id.*; *New York Independent System Operator, Inc.*, Errata Correcting Compliance Filing, Docket No. ER13-102-010 (May 24, 2016). *See generally*, *New York Independent System Operator, Inc.*, Order on Clarification and Compliance, 156 FERC ¶ 61,162 (2016) (approving the NYISO's compliance filing in Docket No. ER16-966-001 concerning proposed changes to the public policy transmission planning process); *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 Filing, 151 FERC ¶ 61,040 (2015); *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance Filing, 148 FERC ¶ 61,044 (2014); *New York Independent System Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013).

⁸ *New York Independent System Operator, Inc.*, Errata Correcting Compliance Filing, Docket No. ER13-102-010 (May 24, 2016); March 22, 2016 Compliance Filing; *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-007 (May 18, 2015) ("Fourth Compliance Filing"); *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-006 (September 15, 2014) ("Third Compliance Filing"); *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-002 (October 15, 2013) ("Second Compliance Filing"); *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER13-102-000 (October 12, 2012) ("First Compliance Filing").

I. COMMUNICATIONS

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II. LIST OF DOCUMENTS SUBMITTED

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

1. A clean version of the proposed revisions to the OATT (Attachment I);
2. A blacklined version of the proposed revisions to the OATT (Attachment II);
3. A clean version of the proposed revisions to the Services Tariff (Attachment III);
4. A blacklined version of the proposed revisions to the Services Tariff (Attachment IV);
5. A clean version of certain sections of the OATT incorporating tariff revisions that have, or have been proposed to, become effective subsequent to the April 1, 2016 effective date requested for the tariff revisions proposed herein (Attachment V);⁹ and
6. A clean version of certain sections of the Services Tariff incorporating tariff revisions that have, or have been proposed to, become effective subsequent to the

⁹ OATT Sections 6.10 and 31.5 were filed June 20, 2016 in Docket No. ER16-1968-000; and Sections 14.2, 20.1, 20.2, and 20.3 were filed August 19, 2016 in Docket No. ER16-2044-000.

April 1, 2016 effective date requested for the tariff revisions proposed herein (Attachment VI).¹⁰

III. BACKGROUND

In response to the Order No. 1000 regional transmission planning and cost allocation directives, the NYISO and the then-existing “New York Transmission Owners”¹¹ 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, reliability, economic, and public policy transmission planning processes.¹² The Commission has largely accepted the NYISO’s revised CSPP as compliant with the Order No. 1000 requirements.¹³

In its May 18, 2015 compliance filing, the NYISO submitted additional tariff revisions and a *pro forma* development agreement for its reliability planning process in response to the Commission’s directives in an April 16, 2015 order in this proceeding.¹⁴ In response to the May 18, 2015 compliance filing, the Commission in its December Order determined that the NYISO had partially complied with the Commission’s previous directives in this proceeding and directed the NYISO to submit a further compliance filing.¹⁵ Specifically, the Commission directed the NYISO to, among other things, submit two new standard agreements—a *pro forma* development agreement for the NYISO’s Public Policy Transmission Planning Process and an operating

¹⁰ Services Tariff Section 23.4.5 was filed March 17, 2016 in Docket No. ER16-120-000; Sections 2.9 and 23.4.5 were filed May 20, 2016 in Docket No. ER16-1751-000; and Section 17.5 was filed August 19, 2016 in Docket No. ER16-2044-000.

¹¹ At the time of those compliance filings, the “New York Transmission Owners” consisted of (1) Central Hudson Gas & Electric Corporation, (2) Consolidated Edison Company of New York, Inc., (3) New York State Electric & Gas Corporation, (4) Niagara Mohawk Power Corporation d/b/a National Grid, (5) Orange and Rockland Utilities, Inc., (6) Rochester Gas and Electric Corporation, (7) the Power Authority of the State of New York, and (8) Long Island Lighting Company d/b/a Long Island Power Authority.

¹² See *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-007 (May 18, 2015); *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-006 (September 15, 2014); *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-002 (October 15, 2013); *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 11, 2012).

¹³ See *New York Independent System Operator, Inc.*, Order on Clarification and Compliance, 156 FERC ¶ 61,162 (2016); December Order; *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).

¹⁴ See *New York Independent System Operator, Inc.*, Order on Rehearing and Compliance, 151 FERC ¶ 61,040 (2015).

¹⁵ The December Order directed the NYISO to file its compliance filing within 30 days. December Order at P 8. The Commission subsequently granted an extension for the compliance filing until March 22, 2016. *New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket No. ER13-102-007 (January 14, 2016).

agreement for nonincumbent transmission developers that is comparable to the agreement executed by the New York Transmission Owners in 1999.¹⁶

In response to the December Order, the NYISO filed, on March 17, 2016, a *Motion for Partial Extension of Time of the New York Independent System Operator, Inc.*, requesting additional time to allow the submission of necessary implementation-related conforming changes in further compliance of the December Order, beyond those explicitly directed by the Commission in connection with the new proposed *pro forma* Operating Agreement.¹⁷ The NYISO indicated that the conforming changes required a comprehensive review of the ISO Tariffs, including a review of the thousands of references to “Transmission Owner” and an understanding of the interrelationships of potentially affected provisions, to evaluate how the tariffs apply to the rights and obligations of existing and new Transmission Owners.¹⁸

On March 22, 2016, the NYISO submitted a compliance filing to fulfill the directives of the December Order, including, among other things, a *pro forma* Operating Agreement.¹⁹ On March 23, 2016, the Commission approved the NYISO’s Motion for Partial Extension of Time to submit proposed revisions, outlining the rights and responsibilities of new Transmission Owners that execute an Operating Agreement with the NYISO, no later than September 13, 2016.²⁰

Thereafter, the NYISO discussed the proposed tariff revisions with its stakeholders on various occasions. In addition to the discussions of the December Order’s directives leading up to the March 22, 2016 Compliance Filing, the NYISO presented and took comments on specific proposed revisions to implement the December Order’s directives from stakeholders at the August 9, 2016 and August 31, 2016 joint stakeholder working group meetings on planning, market issues, and installed capacity. The NYISO also conducted several discussions with the nine Transmission Owners and nonincumbent Developers prior to the formulation of any proposed tariff changes and after the NYISO presented proposed changes at the aforementioned meetings.

A number of revisions were made to the proposed tariff changes in response to stakeholders’ comments. The open and transparent stakeholder process narrowed differences on many of the issues, but a full consensus was not reached on all issues.

¹⁶ See December Order at PP 19–20, 79.

¹⁷ See *New York Independent System Operator, Inc.*, Motion for Partial Extension of Time of the New York Independent System Operator, Inc., Docket No. ER13-102-007 (March 17, 2016).

¹⁸ See *id.* at p 3.

¹⁹ See *New York Independent System Operator, Inc.*, Compliance Filing, Docket Nos. ER13-102-007, -009, at pp 44–53 (March 22, 2016).

²⁰ See *New York Independent System Operator, Inc.*, Notice of Extension of Time, Docket No. ER13-102-007 (March 23, 2016).

With this filing letter, the NYISO submits proposed revisions to the NYISO OATT and Services Tariff, which includes additional revisions to the previously filed *pro forma* Operating Agreement under Attachment Y of the OATT, described in Part IV, herein.

IV. DESCRIPTION OF PROPOSED TARIFF REVISIONS

Order No. 1000 required public utility transmission providers to provide in their regional transmission planning process a transparent and not unduly discriminatory process for selecting a proposed transmission facility in a regional transmission plan for purposes of cost allocation.²¹ The Commission also required that nonincumbent transmission developers be afforded an opportunity comparable to that of an incumbent transmission developer to have their projects selected in a regional transmission plan for purposes of cost allocation.²² The Commission determined that the entry of new transmission developers will enhance the regional transmission planning process by identifying transmission solutions that are more efficient or cost-effective than what may be identified in the local transmission plans of incumbent transmission owners, which in turn can ensure rates that are just and reasonable.²³ To further implement the Commission's directives in Order No. 1000, public utility transmission providers in each transmission planning region were required to have a "clear enrollment process" that defines how new owners of transmission facilities become part of the transmission planning region.²⁴

In reviewing the OATT and Services Tariff for this filing, the NYISO found that once a new entity meets the definition of a Transmission Owner under the current ISO Tariffs, it will have the same rights as existing Transmission Owners with the exception of a few key areas.²⁵ Instances where there are differences in the treatment of a new Transmission Owner compared to an existing Transmission Owner generally occur in two ways. First, there are differences between the operational capabilities of a Transmission Owner depending on whether they have or do not have local service provider responsibilities. Second, differences originated from the rights and obligations of then-existing Transmission Owners at the time of the transition from the New York Power Pool to the NYISO.

To provide for the comparable treatment of all owners of transmission, the NYISO proposes to maintain a single definition of "Transmission Owner" that applies to all owners of transmission, whether incumbent or nonincumbent. As explained, however, the NYISO proposes to clarify those instances where the treatment of new and existing Transmission

²¹ Order No. 1000, 136 FERC ¶ 61,051 at P 253.

²² *Id.* at P 332.

²³ *Id.* at PP 253–58.

²⁴ *See* Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

²⁵ Presently, the ISO Tariffs define a Transmission Owner as "[t]he public utility or authority (or its designated agent) that owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff." OATT Section 2.20; Services Tariff Section 1.20. By its definition, "Transmission Owner" applies to both the Member Systems that originally transferred operational control of their transmission facilities to the NYISO in 1999 and any new Transmission Owner that executes an Operating Agreement in accordance with Attachment Y of the OATT.

Owners requires the tariffs to reflect differences that derive from either: (i) the operational capabilities and local service provider responsibilities of a Transmission Owner, or (ii) the rights and requirements unique to certain Transmission Owners at the formation of the NYISO. Further, the NYISO proposes revisions to the treatment of new Transmission Owners under its reliability planning process contained in Attachment Y of the OATT to provide comparable treatment with existing Transmission Owners. Finally, the NYISO proposes changes to capture the existence of Operating Agreements that govern the rights and responsibilities of new Transmission Owners contained in the tariffs and further implement the December Order's directives. Accordingly, the NYISO proposes the following revisions as consistent with Order No. 1000, the December Order, and the rights and obligations of Transmission Owners in New York.

A. Proposed Changes Related to the Use of "Transmission Owner"

The ISO Tariffs do not generally account for the differences between the rights and obligations of new and existing Transmission Owners. The NYISO was created by the original eight Transmission Owners that comprised the membership of the New York Power Pool²⁶ and originally transferred operational control of their existing transmission facilities to the NYISO in 1999 (hereinafter the "Member Systems").²⁷ For the last sixteen years, they were the only Transmission Owners in the NYCA, and they all had certain characteristics that differ from new Transmission Owners.

As stated above, the NYISO proposes to use the term "Transmission Owner" for those provisions that apply equally to all Transmission Owners regardless of whether they are a new Transmission Owner or a Member System. However, in the limited circumstances where the rights and obligations of Transmission Owners differ, the NYISO proposes two categories of revisions to clarify a provision's applicability. First, where the obligations under the tariffs would not apply to new Transmission Owners that, for example, do not have Transmission Districts or service obligations, the NYISO proposes tariff revisions to clarify how they will apply or do not apply to that type of Transmission Owner. Second, the NYISO proposes to use the term "Member System" for the limited instances in the tariffs that only apply to the original eight Transmission Owners due to the rights and obligations resulting from the creation of the NYISO. This proposed approach protects both rights of new Transmission Owners and the existing rights of the Member Systems, while accommodating the potential that new Transmission Owners could have operational capabilities or local service provider responsibilities in the future.

²⁶ The members that comprised the New York Power Pool were: (1) Central Hudson Gas & Electric Corporation, (2) Consolidated Edison Company of New York, Inc., (3) New York State Electric & Gas Corporation, (4) Niagara Mohawk Power Corporation d/b/a National Grid, (5) Orange and Rockland Utilities, Inc., (6) Rochester Gas and Electric Corporation, (7) the Power Authority of the State of New York, and (8) Long Island Lighting Company d/b/a Long Island Power Authority.

²⁷ The NYISO and the Member Systems executed, among other agreements, the *Agreement Between New York Independent System Operator and Transmission Owners* ("ISO/TO Agreement") in 1999 that, in part, formed the basis for the NYISO by transferring operational control of the Member Systems' transmission facilities to the NYISO. See *Cent. Hudson Gas & Elec. Corp., et al.*, 88 FERC ¶ 61,138 at p 5 (1999).

Below is a detailed description of the specific proposed tariff revisions.

1. Proposed Revisions Related to Transmission Owners with Local Service Provider Responsibilities

The Member Systems have local service provider responsibilities associated with geographic areas in which they serve Load. As demonstrated in the NYISO's March 22, 2016 Compliance Filing, the *pro forma* Operating Agreement was drafted to reflect the fact that new Transmission Owners may or may not become responsible for obligations as a local service provider, or associated with a Transmission District.²⁸ While there has not been a new Transmission Owner with a Transmission District in New York since the NYISO's formation, the conforming changes are consistent with the *pro forma* Operating Agreement and provide for the possibility that a Transmission Owner, other than a Member System, could have a Transmission District or obligation to serve Load.

To further implement this possibility, the NYISO proposes to expand the definition for "Transmission District" to include any Transmission Owner that is obligated to serve Load in a geographic area within the NYCA—not just the Member Systems—and clarify various provisions that would apply to any Transmission Owner with a Transmission District. Importantly, this proposal would afford greater flexibility in the ISO Tariffs by accommodating the potential of a new Transmission Owner entering the NYCA with local service provider responsibilities without affecting the rights and obligations of the existing Transmission Owners that have a Transmission District (*i.e.*, the Member Systems) or requiring future revisions to account for such a situation.

Below is a detailed description of the specific tariff revisions necessary to implement this proposal.

a. Definition for "Transmission District"

The present definition of "Transmission District" in the ISO Tariffs is limited to the original eight Transmission Owners.²⁹ However, nothing in federal or state law or the pre-existing conditions at the formation of the NYISO would prevent a new Transmission Owner from entering the NYCA and having local service provider responsibilities if, for example, they were to obtain a municipal franchise. To more accurately reflect the present and potential future state of Transmission Owners in New York, the NYISO proposes to modify the definition of "Transmission District" to apply to all Transmission Owners, including the Long Island Power

²⁸ See March 22, 2016 Compliance Filing at p 48.

²⁹ The currently effective definition for "Transmission District" refers to Investor-Owned Transmission Owners, LIPA, and NYPA. See OATT Section 1.20; Services Tariff Section 2.20. Investor-Owned Transmission Owners is defined by referring to the six investor-owned Member Systems. See OATT Section 1.9; Services Tariff Section 2.9.

Authority (“LIPA”) and the Power Authority of New York (“NYPA”), that have a geographic area in which they are obligated to serve Load.³⁰

b. Black Start and System Restoration Services

The NYISO is responsible for maintaining a plan for restoring electric service to the State of New York in a safe, orderly, and prompt manner following a major system disturbance.³¹ The system restoration plan is required to have two integrated levels—one of which obligates an individual Transmission Owner to develop a plan to restore electric service to their local areas.³² The proposed revisions to Section 15.5 of the Services Tariff (“Rate Schedule 5”) would clarify that the requirement for an individual Transmission Owner’s system restoration plan would only apply to those Transmission Owners with an obligation to serve Load and, thus, with a Transmission District.³³ Consistent with the revisions discussed above, by revising Rate Schedule 5 to apply to all Transmission Owners with a Transmission District, the Services Tariff would accommodate future entry of new Transmission Owners without the need for additional revisions. The proposed conforming revisions do not affect the obligations of the existing Transmission Owners with a Transmission District.

The NYISO proposes the following specific implementation-related, conforming revisions:

Tariff Section	Reason for Revision
Services Tariff	
OATT § 15.5	Additions to include “for its Transmission District” following references to a Transmission Owner’s restoration plan to clarify that the restoration plans only apply to those Transmission Owners with a Transmission District.
OATT § 15.5.1	Addition to include “with a Transmission District” following a reference to Transmission Owner to clarify that the restoration plans only apply to those Transmission Owners with a Transmission District, together with a non-substantive clarifying revision.
OATT § 15.5.2	Addition to include “with a Transmission District” following a reference to Transmission Owner to clarify that the restoration plans only apply to those Transmission Owners with a Transmission District.

c. Competitive Entry Exemption

The NYISO’s buyer-side capacity market power mitigation rules contain a “Competitive Entry Exemption.” Under this exemption, a proposed new generator or Unforced Delivery Rights (“UDR”) project can receive an exemption if it does not have any “non-qualifying

³⁰ See Proposed OATT Section 1.20; Proposed Services Tariff Section 2.20.

³¹ See NYSRC Reliability Rules G-R1, Measurement G-M.

³² See *id.* (requiring that the NYISO maintain a system restoration plan at two integrated levels).

³³ See Proposed Services Tariff Sections 15.5, 15.5.1, and 15.5.2.

contractual relationship” with a Non-Qualifying Entry Sponsor and is not itself a Non-Qualifying Entry Sponsor.³⁴ Non-Qualifying Entry Sponsors include rate regulated Transmission and distribution companies. The NYISO proposes a non-substantive conforming revision to Section 23.4.5.7.9 of the Services Tariff in order to clarify that the provisions relating to a non-qualifying contractual relationship between a proposed new Generator or UDR project, which becomes a member of a Class Year after Class Year 2012, and a Transmission Owner only apply to those Transmission Owners with a Transmission District.³⁵ Notably, the non-qualifying contractual relationship is not dependent on the fact that a Transmission Owner is a Member System but rather that the Transmission Owner, or any entity, has a Transmission District in the NYCA.³⁶ Thus, the proposed tariff revisions clarify which Transmission Owner that the tariffs apply to in order to keep the same meaning as the existing tariff provision.

2. Proposed Revisions Related to Transmission Owners Under Attachment Y of the OATT

The NYISO proposes the following revisions to clarify certain references to Transmission Owners and a Transmission Owner’s rights related to its existing local transmission facilities under Attachment Y of the OATT for the NYISO’s Order No. 1000 regional planning processes. The Commission clarified in Order No. 1000-A that a nonincumbent developer of transmission that energizes its transmission facility has a footprint and “then become[s] an incumbent transmission developer . . . for that energized transmission facility [with] all the rights and obligations that accrue to such entities under Order No. 1000.”³⁷ Accordingly, all Transmission Owners, as defined under the ISO Tariffs, are incumbent transmission developers for purposes of the NYISO’s regional planning process.

Specifically, the NYISO proposes to make clarifying revisions to Section 31.6.4 in Attachment Y of the OATT concerning the rights of Transmission Owners that were reserved under Order No. 1000. First, the NYISO proposes to remove the term “incumbent” since, as stated above, all entities that meet the definition would each be a “Transmission Owner” for purposes of the NYISO’s regional planning process. Second, the NYISO proposes to further amend this section to provide that the right under Order No. 1000 to make upgrades to a local transmission facility and the right to retain, modify, or transfer rights-of-way, subject to relevant law or regulation, applies to all Transmission Owners.³⁸ The proposed revision also clarifies that the cost recovery for upgrades to local transmission facilities, which are not subject to regional planning or competitive selection, would be outside of the ISO Tariffs.³⁹ In other words, the NYISO proposes to amend the tariff to provide all Transmission Owners the right to build and

³⁴ See Services Tariff Section 23.4.5.7.9.1.2.

³⁵ Proposed OATT Section 23.4.5.7.9.1.1.

³⁶ See OATT Section 23.4.5.7.9.1.1.

³⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 421.

³⁸ See *id.* at PP 425, 427; Proposed OATT Section 31.6.4.

³⁹ Proposed OATT Section 31.6.4.

own upgrades to its facilities but, unless selected as a part of the CSPP, cost recovery for such upgrades occurs outside of the NYISO's tariffs. The revised language states, in relevant part:

Nothing in this Attachment Y affects the right of an ~~an incumbent~~ Transmission Owner to: (1) build, own, and recover outside of the ISO's Tariffs the costs for upgrades to the facilities it owns, regardless of whether the upgrade has been selected in the regional transmission plan for purposes of cost allocation; (2) retain, modify, or transfer rights-of-way subject to relevant law or regulation granting such rights-of-way; or (3) develop a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its ~~own service territory~~ Transmission District or footprint, as applicable. For purposes of Section 31.6.4, the term "upgrade" shall refer to an improvement to, addition to, or replacement of a part of an existing transmission facility and shall not refer to an entirely new transmission facility.⁴⁰

Moreover, as shown in the proposed conforming changes above, the NYISO clarifies that the right of a Transmission Owner to develop a local transmission solution to meet its reliability needs or service obligations to its customers may not necessarily apply to all Transmission Owners in the NYCA.

Finally, the NYISO proposes a non-substantive revision to replace the term "service territory" with the defined term "Transmission District" to promote consistency among the terms used in the ISO Tariffs. As proposed in Section IV.A.1.a above, a Transmission District is the geographic area in which a Transmission Owner, including LIPA, is obligated to serve Load. For the NYCA, the use of the term "Transmission District" is the same as the term "service territory" to designate the geographic area in which customers are served by a utility.

The NYISO also proposes to update the list in Attachment Y of the OATT of enrolled transmission providers, which are the entities that currently meet the definition of Transmission Owner under the ISO Tariffs. Under Order No. 1000-A, the Commission required that each public utility transmission provider include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.⁴¹ Currently, Section 31.1.7.6 of Attachment Y of the OATT only lists the original eight Transmission Owners. With the energizing of transmission facilities owned by New York Transco, LLC ("NY Transco") on or about June 1, 2016, New York Transco became an enrolled transmission provider under the NYISO's regional planning processes for purposes of Order No. 1000 and Attachment Y of the OATT. Accordingly, the proposed conforming revisions add NY Transco to the list of Transmission Owners contained in Section 31.1.7.6 of Attachment Y of the OATT.⁴²

⁴⁰ *Id.*

⁴¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

⁴² Proposed OATT Section 31.1.7.6.

3. Conforming Revisions Related to the Use of “Member Systems”

The NYISO also proposes limited tariff revisions to those sections that apply only to the Member Systems due to the particular rights and obligations that derived from the creation of the NYISO. The ISO Tariffs define “Member Systems” as “[t]he eight Transmission Owners that comprise the membership of the New York Power Pool.”⁴³ At the NYISO’s inception, the Member Systems had certain rights and obligations characteristic of traditional utilities in New York that shaped the negotiations and drafting of the NYISO’s formative agreements and tariff provisions. The ISO/TO Agreement and the other formative agreements were approved by the Commission in 1999. Additionally, certain tariff provisions were drafted to reflect and/or accommodate specifically negotiated arrangements between the Member Systems—for example, allocation of revenues and payments among the Member Systems, the relationships among the Transmission Owners, NYPA, and LIPA, protection of the Member System’s tax exempt status, and their retail rate structures and service obligations, among other things.

The tariffs presently use the term “Member System” when referencing the conditions existing at the time of the formation of the NYISO, or the Transmission Owners’ ongoing rights and obligations resulting from the formation of the NYISO.⁴⁴ Given that it refers solely to the Transmission Owners that formed the NYISO, as a matter of historical fact, no new Transmission Owner can become a “Member System.” As a result, the NYISO currently uses the term “Member Systems” in its tariffs only in those instances when a provision applies to the original eight Transmission Owners due to the conditions at the time of the NYISO’s formation and/or pre-existing or ongoing rights or obligations of the Member Systems.⁴⁵ The limited instances in which the NYISO proposes to also use the term “Member System” are explained in detail below.

a. Definition of “Member Systems”

The proposed tariff revisions add to the definition of “Member Systems” by naming each of the eight Transmission Owners that were members of the New York Power Pool at the time the NYISO was formed.⁴⁶ This will result in a clear, self-contained definition of the Member Systems that will be used in those limited instances that apply to conditions at the NYISO’s formation or when a right or obligation pertains only to the original Transmission Owners that formed the NYISO.

⁴³ OATT Section 1.13; Services Tariff Section 2.13.

⁴⁴ See, e.g., OATT Section 1.14 (using the definition of Member Systems to refer to the agreement that created the New York State Reliability Council); OATT Section 17.7 (referencing that Member Systems did not have sufficient data to calculate the LBMP Transition Period and Payment at the inception of the NYISO); OATT Section 18, Table 3 (referring to a Member Systems’ Transmission District in defining Transmission Capacity under Table 3 for Existing Transmission Capacity for Native Load [“ETCNL”]).

⁴⁵ See Footnote No. 44, *supra*.

⁴⁶ See Proposed OATT Section 1.13; Proposed Services Tariff Section 2.13.

b. Proposed Revisions to Sections Related to the Transmission Service Charge (“TSC”) and NYPA Transmission Adjustment Charge (“NTAC”)

The NYISO proposes to amend the definition of “Transmission Service Charge,” or “TSC,” under the OATT and Services Tariff by referring to the transmission facilities owned by “Member Systems,” instead of “Transmission Owners.”⁴⁷ This revision clarifies that TSCs are only applicable to the Member Systems and, as envisioned, will continue to only apply to those entities.

Any new Transmission Owner that constructs and places into service a regulated transmission facility within the NYCA will either charge for Transmission Service through an applicable rate schedule (*e.g.*, Rate Schedule 10) or file with the Commission through the NYISO a new rate schedule that is separate from the TSC to provide cost recovery for its costs of providing Transmission Service. This is consistent with the NYISO’s past practice for certain new regulated transmission facilities placed into service in the NYCA by a Transmission Owner other than the Member Systems.⁴⁸ For example, NY Transco recently constructed the Transmission Owner Transmission Solution (“TOTS”) projects and, as a result, filed and received acceptance of its own “Transco Facilities Charge” under Rate Schedule 13 of the OATT.⁴⁹

Similarly, the NYPA Transmission Adjustment Charge (“NTAC”) is the primary transmission service charge for the recovery of revenue requirements across NYPA’s transmission facilities, which was originally established through an agreement between the Member Systems, and is limited solely to use by NYPA. Unique to the NTAC is that the agreement among the eight Member Systems provides for certain limitations on NYPA’s ability to recover costs through the NTAC absent the unanimous consent of the other Member Systems.⁵⁰ The NTAC, and the agreement between the original eight Member Systems, did not contemplate the expansion of the approval process to include additional Transmission Owners. The TSC and NTAC rate mechanisms and formulas are memorialized in Attachment H of the OATT.

⁴⁷ See Proposed OATT Section 1.20; Proposed Services Tariff Section 2.20.

⁴⁸ See Rate Schedule 10 of the OATT (providing that the Reliability Facility Charge is separate from the TSC and NTAC); Rate Schedule 13 of the OATT (providing that the Transco Facility Charge is separate from the TSC and NTAC); Rate Schedule 15 of the OATT (providing that NYPA’s Marcy South Series Compensation Facility Charge is separate from the TSC and NTAC and any Reliability Facilities Charge).

⁴⁹ See generally, Rate Schedule 13 of the OATT; *New York Independent System Operator, Inc., et al.*, 151 FERC ¶ 61,004 (2015); *New York Independent System Operator, Inc., et al.*, 154 FERC ¶ 61,196 (2016); Docket No. ER15-572-005, *New York Independent System Operator, Inc., et al.*, Letter Order (May 18, 2016). A separate rate schedule was also developed to provide for recovery of costs related to NYPA’s portion of the TOTS projects. See Rate Schedule 15 of the OATT; *New York Independent System Operator, Inc.*, 154 FERC ¶ 61,268 (2016).

⁵⁰ See OATT Section 14.2.2.2.3.

In addition to the proposed revisions to the definition of “Transmission Service Charge” described above, the NYISO proposes the following revisions with respect to other tariff revisions relating to TSCs and NTAC:

Tariff Section	Reason for Revision
Common Service Provisions of the OATT	
OATT § 2.7.3.7	Revision to replace the reference to “Transmission Owner” with “Member System” in defining the obligation of the NYISO to provide information to facilitate TSC billing, as TSCs only apply to Member Systems.
Attachment H of the OATT	
OATT § 14.2.2.2.3	Revision to replace the references to “Transmission Owners” to “Member Systems” to reflect that the inclusion of certain upgrades or expansion costs in the computation of NTAC is subject to the unanimous approval of only the Member Systems.
OATT § 14.2.2.3	Revision to replace the reference to “Transmission Owners” with “Member Systems” to clearly reflect that NYPA’s submission of its Annual Transmission Revenue Requirement (“ATRR _{NTAC} ”) for review and approval by the Commission is based upon an agreement among only the Member Systems.
Attachment N of the OATT	
OATT § 20.2.5	Revision to expressly refer to rate mechanisms under the ISO Tariffs, other than a TSC or NTAC, used to account for any share of Net Congestion Rent allocated by the NYISO to a Transmission Owner other than a Member System pursuant to Attachment N.
OATT § 20.3.7	Revision to expressly refer to rate mechanisms under the ISO Tariffs, other than a TSC or NTAC, used to account for any share of Net Auction Revenues allocated by the NYISO to a Transmission Owner other than a Member System pursuant to Attachment N.

c. Other Proposed Changes to Historical Provisions of the Tariffs

The proposed tariff revisions also include a conforming amendment to the definition of “ISO/TO Agreement” by referring to “Member Systems” instead of “Transmission Owner.”⁵¹ This change reflects the fact that the parties to the original ISO/TO Agreement executed in 1999 were the original Member Systems.⁵² Any new Transmission Owner that constructs, operates, and maintains a transmission facility will execute an Operating Agreement with the NYISO in the form of the *pro forma* Operating Agreement contained in Attachment Y of the OATT.⁵³

In addition, two proposed implementation-related conforming revisions would amend the effectiveness provisions of the OATT and Services Tariff to clarify that the present reference to “Transmission Owners” is being changed to “Member Systems.” Specifically, the date on which

⁵¹ See Proposed OATT Section 1.9; Proposed Services Tariff Section 2.9.

⁵² See ISO/TO Agreement.

⁵³ See OATT Sections 31.1.7.2 and 31.1.7.3.

one of the events triggering the effectiveness of the OATT and Services Tariff would be revised to read as follows: “the date on which both the Commission and the PSC have granted all necessary approvals to the Member Systems to transfer Operational Control of any facilities to the ISO or otherwise dispose of any of their property, including, without limitation, those approvals required under Section 70 of the New York Public Service Law (“PSL”) and Section 203 of the Federal Power Act (“FPA”).”⁵⁴ While the OATT and Services Tariff are already effective, the revisions would eliminate the potential for any ambiguity as to their effective date resulting from the execution of a new Operating Agreement with a new Transmission Owner.

4. Proposed Revisions to Sections Related to Transmission Congestion Contracts (“TCCs”) and Related Settlements

Attachment M of the OATT provides a description of the NYISO’s TCC market, including various TCC-related instruments and the NYISO-administered TCC auctions. Attachment N of the OATT describes congestion settlements related to the Day-Ahead Market, as well as settlements related to TCCs and the TCC auctions administered by the NYISO.⁵⁵

As further described herein, the NYISO proposes revisions, to the extent necessary, to clarify that certain provisions of Attachment M apply only to Member Systems. The proposed revisions also seek to clarify the application of Attachment N to Member Systems and new Transmission Owners.

a. Attachment N of the OATT and Part 17.5 of Attachment B of the Services Tariff

Attachment N of the OATT provides, in part, for the “full funding” of TCCs (*i.e.*, the NYISO, pursuant to Formula N-4 of Attachment N, pays Primary Holders of TCCs the congestion payments attributable to their TCCs regardless of the amount of Congestion Rents collected by the NYISO in the Day-Ahead Market).⁵⁶ Attachment N also provides for the allocation, among the applicable Transmission Owners, of Net Auction Revenues derived by the NYISO-administered TCC auctions.⁵⁷ Net Congestion Rent and Net Auction Revenue

⁵⁴ Proposed OATT Section 2.1.1; Proposed Services Tariff Section 3.1.

⁵⁵ Notably, Section 17.5 of Attachment B of the Services Tariff currently contains duplicative provisions to those contained in Attachment N of the OATT. All descriptions herein of the proposed changes to Attachment N of the OATT also apply to the changes made to Section 17.5 of Attachment B of the Services Tariff.

⁵⁶ The NYISO collects Congestion Rents for both energy and bilateral transactions scheduled in the Day-Ahead Market. These Congestion Rents are intended to fund congestion payments to Primary Holders of TCCs. In some hours of the Day-Ahead Market, however, the amount of Congestion Rents collected may be insufficient to cover the NYISO’s payment obligations to Primary Holders of TCCs. Alternatively, there may be hours in which the Congestion Rents collected in the Day-Ahead Market exceed the NYISO’s payment obligations to Primary Holders of TCCs. In these circumstances, Section 20.2.5 of Attachment N provides for the allocation of Congestion Rent shortfalls or excess Congestion Rents among the Transmission Owners that have taken on the obligation to support the full funding of TCCs. Currently, the Member Systems are the only Transmission Owners that are subject to this obligation.

⁵⁷ See OATT Section 20.3.7; *New York Independent System Operator, Inc.*, Tariff Revisions Regarding the Allocation Among Transmission Owners of Revenue Shortfalls and Surpluses in Day-Ahead Market Related

allocations to these Transmissions Owners are accounted for as part of their respective charges for Transmission Service.⁵⁸

The NYISO proposes to clarify the application of Attachment N to the Member Systems, as well as new Transmission Owners. Specifically, the NYISO proposes to clarify that Attachment N applies to the Member Systems and the transmission facilities that they own. The proposed revisions to Section 20.1.1 of Attachment N provide, in part, that “[u]nless expressly provided for otherwise in the ISO Tariffs, such as in a rate schedule, this Attachment N shall apply to the Member Systems.”

With respect to new Transmission Owners, the NYISO proposes to clarify that Attachment N shall only apply to such entities (and their respective transmission facilities) to the extent that the ISO Tariffs do not otherwise provide for an alternative treatment of the transmission capacity related to their transmission facilities in connection with the NYISO’s TCC market. With respect to certain new transmission facilities placed into service in New York, separate rate schedules have been added to the ISO Tariffs to address such new facilities. These rate schedules have expressly provided for an alternative, comparable treatment of the transmission capacity associated with such facilities as it relates to the TCC market.⁵⁹

The ISO Tariffs do not, however, currently have a comprehensive set of rate schedules to cover all situations and, as demonstrated by the rate schedules developed for NY Transco and NYPA’s portion of the Marcy South Series Compensation project, certain situations may result in the development of individual rate schedules under the ISO Tariffs for a new Transmission

Congestion Settlements and in TCC Auctions, and the Allocation Among Transmission Owners of Net Congestion Rents and Net TCC Auction Revenues, Docket No. ER04-54-000 (October 16, 2003); *New York Independent System Operator, Inc.*, Compliance Filing, Docket No. ER04-54-001 (December 30, 2003); *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER04-54-000 (December 15, 2003); and *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER04-54-001 (February 26, 2004).

⁵⁸ See OATT Sections 20.2.5 and 20.3.7. As noted above, the Member Systems are currently the only Transmission Owners that are subject to these procedures. Therefore, such settlements are accounted for as part of the TSCs and NTAC. As described in Part IV.A.3.b above, the proposed revisions to Sections 20.2.5 and 20.3.7 are intended to provide that to the extent that a new Transmission Owner were to become subject to these procedures, the settlements it receives from the NYISO related to Net Congestion Rents and Net Auction Revenues would be accounted for in such Transmission Owner’s applicable rate mechanism under the ISO Tariffs, thereby providing comparable treatment among all Transmission Owners.

⁵⁹ Under Rate Schedules 13 and 15, both NY Transco, as it relates to the TOTS projects, and NYPA, as it relates to the portion of the TOTS projects it owns (*i.e.*, certain components of the Marcy South Series Compensation project), are entitled to the potential award of Incremental TCCs for any incremental transmission capacity associated with their respective transmission facilities, including the obligation to pay outage charges during Day-Ahead Market hours in which their facilities that support any Incremental TCCs awarded by the NYISO are out of service. Settlements related to any Incremental TCCs awarded by the NYISO (including outage charges) are accounted for as part of calculating the applicable charges for Transmission Service provided pursuant to such rate schedules. This provides for comparable treatment with the Member Systems as it relates to the accounting of TCC market related settlements for their transmission facilities in TSCs and NTAC. As a result of this alternative treatment, the respective rate schedules for NY Transco and NYPA’s portion of the Marcy South Series Compensation project expressly provide that, with respect to the transmission facilities subject to such rate schedules, neither entity will be subject to Section 20.2.5 or Section 20.3.7 of Attachment N. See Rate Schedules 13 and 15 of the OATT.

Owner or new transmission facilities.⁶⁰ Therefore, to avoid the potential for a gap involving the treatment of the incremental transmission capacity associated with new transmission facilities as it relates to the TCC market, the NYISO proposes to specify that Attachment N would apply to a new Transmission Owner, other than a Member System, when the ISO Tariffs do not otherwise provide for alternative treatment. Accordingly, in relevant part, the NYISO's proposed revisions to Section 20.1.1 of Attachment N provide that "[t]his Attachment N shall only apply to Transmission Owners other than the Member Systems to the extent that the ISO Tariffs, such as in a rate schedule, do not provide otherwise." The application of Attachment N to new Transmission Owners, other than a Member System, to the extent that alternative treatment of the incremental transmission capacity of such entity's transmission facilities is not otherwise addressed by the tariffs, provides a stopgap measure that is intended to avoid a situation in which no tariff provision provides for treatment of such incremental transmission capacity, and to maintain comparable treatment among all Transmission Owners.

In connection with the obligation to support the full funding of TCCs pursuant to Attachment N, the Transmission Owners subject to such obligation (currently the Member Systems) are afforded certain rights with respect to determining the number of Sub-Auction rounds conducted by the NYISO with respect to TCCs of a given duration as part of the Centralized TCC Auctions. Specifically, the Transmission Owners that are subject to Net Congestion Rent and Net Auction Revenue settlements under Attachment N must unanimously consent to a proposal by the NYISO to conduct less than four rounds for any given Sub-Auction. The NYISO proposes to amend the description of this right in Section 19.8.4 of Attachment M of the OATT to clarify that this right is limited to the Transmission Owners that are subject to Net Congestion Rent and Net Auction Revenue settlements pursuant to Attachment N.

b. Residual Capacity Reservation Right ("RCRR") TCCs

Attachment M of the OATT, in part, describes various TCC-related products and the rules relating thereto, including Residual Capacity Reservation Right ("RCRR") TCCs.⁶¹ The RCRR construct was implemented in 2004 as a measure to assist with reducing the magnitude of Congestion Rent Shortfalls on a going forward basis, compared to the level of Congestion Rent Shortfalls that occurred following the initial Centralized TCC Auctions conducted by the NYISO during 2000 through 2003.⁶² This construct provided the ability for the Member Systems to reserve a limited amount of residual transmission capacity from being offered for sale in the TCC auctions conducted by the NYISO. This right allowed Member Systems that had been granted rights for Existing Transmission Capacity for Native Load ("ETCNL") to convert a

⁶⁰ To date the NYISO has adopted a *pro forma* Rate Schedule 10 for cost recovery for transmission projects in its Reliability Planning Process, and rate schedules specifically for NY Transco and NYPA's portion of the Marcy South Series Compensation project. See Rate Schedules 10, 13, and 15 of the OATT. Although not required by Order No. 1000, the NYISO is working to develop *pro forma* rate schedules for cost recovery of transmission solutions for its economic and public policy transmission planning processes.

⁶¹ See OATT Section 19.5.

⁶² See, e.g., *New York Independent System Operator, Inc.*, Tariff Revisions to Reduce the Magnitude of Congestion Rent Shortfalls, Docket No. ER04-294-000 (December 12, 2003); *New York Independent System Operator, Inc.*, 106 FERC ¶ 61,095 (2004).

limited portion of this ETCNL into ETCNL TCCs and reserve such ETCNL TCCs from being sold in the NYISO-administered TCC auctions. Notably, however, only three of the Member Systems have ETCNL rights.⁶³ To provide a comparable right for the remaining Member Systems that did not have ETCNL rights, the NYISO developed the RCRR construct.⁶⁴ Because the RCRR construct is a mechanism that applied only to the Member Systems when it was created, the NYISO proposes to revise the tariff provisions related to the RCRR construct to clarify that this instrument applies only to the Member Systems.⁶⁵

Accordingly, the NYISO proposes to revise the definitions of “Residual Capacity Reservation Right (“RCRR”),” “RCRR TCC,” and “Capacity Reservation Cap” to replace all uses of the term “Transmission Owner” in such definitions with “Member System.”⁶⁶ The NYISO also proposes to replace all references to “Transmission Owner” with “Member System” throughout Section 19.5 of Attachment M and clarify the reference to RCRR TCCs in Section 19.9.8.5 of Attachment M to refer to “Member System” instead of “Transmission Owner.”

B. Proposed Revisions Related to the Responsibility of New Transmission Owners in the Reliability Planning Process under Attachment Y

In addition to the proposed revisions that address the ambiguity in tariff provisions concerning their applicability to new Transmission Owners that execute an Operating Agreement under Attachment Y of the OATT, the NYISO proposes revisions to the proposed *pro forma* Operating Agreement.⁶⁷ The revisions to the *pro forma* Operating Agreement are needed to fully implement the NYISO’s reliability planning process by affording comparable treatment to all Transmission Owners to participate in the planning process, including the development of regulated backstop solutions. In developing the NYISO’s comprehensive planning process for reliability needs, the NYISO and the Member Systems entered into the *Agreement Between the New York Independent System Operator, Inc. and The New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs* (“NYISO/TO Reliability Agreement”), which outlines certain rights and obligations of the Member Systems associated with the

⁶³ See Table 2 of Attachment M of the OATT.

⁶⁴ In part, due to its response to the results of the TCC auctions that had been conducted prior to implementing the RCRR construct, the formula for allocating RCRR among the Member Systems relies on TCC auction data from the Centralized TCC Auctions held for the 2000 Summer Capability Period through the 2003/2004 Winter Capability Period. See OATT Section 19.5.2. Like ETCNL, RCRR may be converted by a Member System to RCRR TCCs with a right to reserve a limited portion of these RCRR TCCs instead of selling them through the NYISO-conducted TCC auctions.

⁶⁵ Because the Commission-approved allocation methodology for RCRR relies on TCC auction data from 2000 through 2003, any new Transmission Owner would automatically receive an allocation of zero RCRR TCCs because they were not part of the allocation of TCC auction revenues during this historic period. Nor were new transmission facilities owned by such new Transmission Owners included in the auctions conducted between 2000 and 2003.

⁶⁶ See Proposed OATT Sections 1.3 and 1.18; Proposed Services Tariff Sections 2.3 and 2.18. In addition, the NYISO proposes to clarify the definition of “Primary Owner” in Section 2.16 of the Services Tariff to clearly state that RCRR TCCs are available only to the Member Systems.

⁶⁷ See Proposed *pro forma* Operating Agreement, OATT Section 31.11.

planning process.⁶⁸ This agreement revised the ISO/TO Agreement, in part, to permit the NYISO to direct a Transmission Owner to expand its system by proposing, developing, and constructing a regulated backstop solution at the NYISO's request, subject to the Transmission Owner's ability to receive full recovery of all reasonably incurred costs related to the project in wholesale and retail rates.⁶⁹ In light of the critical importance of maintaining system reliability, this created a parallel track to provide a regulated backstop solution to an identified Reliability Need in the event that neither market-based solutions nor alternative regulated solutions satisfy the need.

In its review of Attachment Y of the OATT, the NYISO identified that, in the absence of a legal obligation comparable to the one contained in the NYISO/TO Reliability Agreement, nothing clearly requires a new Transmission Owner that does not have a Transmission District to provide a regulated backstop solution to address a Reliability Need related to the transmission facilities owned by such a Transmission Owner under Section 31.2.4.3 of Attachment Y of the OATT.⁷⁰ Instead, the tariff would provide a new Transmission Owner only the ability to volunteer a market-based solution or an alternative regulated solution to a Reliability Need, even if that need arises on its own transmission facility.⁷¹ To fully incorporate new Transmission Owners into the reliability planning process, the NYISO needs to be able to designate a new Transmission Owner to provide a regulated backstop solution to a Reliability Need that arises on facilities owned by a new Transmission Owner, in the event that market-based or alternative regulated solutions are not available.⁷²

This approach is also appropriate because it accounts for a Transmission Owner's obligation under the North American Electric Reliability Corporation ("NERC") Transmission System Planning Performance Requirements to plan its system to operate reliably within NERC

⁶⁸ See NYISO/TO Reliability Agreement, *available at* http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/Comprehensive_Planning_Process_for_Reliability_Needs_Agreement.pdf.

⁶⁹ See OATT Section 31.2.4.3.1 ("When a Reliability Need is identified in any RNA issued under this tariff, the ISO shall request and the Responsible Transmission Owner shall provide to the ISO . . . a proposal for a regulated solution or combination of solutions that shall serve as a backstop to meet the Reliability Need if requested by the ISO due to the lack of sufficient viable market-based solutions to meet such Reliability Needs identified for the Study Period."); *see also New York Independent System Operator, Inc.*, No. 890 Transmission Planning Compliance Filing – Cost Allocation for Regulated Reliability Projects, Docket No. OA08-52-001 at p 11 (June 18, 2008).

⁷⁰ The NYISO recognizes that even in the case of a wires-only Transmission Owner, it must be able to designate such a Transmission Owner to serve as the Responsible Transmission Owner and propose a regulated backstop solution for a Reliability Need that arises on a transmission facility that it owns.

⁷¹ Compare OATT Section 31.2.4.3 (regulated backstop solutions), *with* OATT Section 31.2.4.5 (market-based responses) *and* OATT Section 31.2.4.7 (alternative regulated responses).

⁷² The proposed revision to Attachment Y of the OATT contemplates that in certain circumstances, the NYISO could designate both the Transmission Owner that owns the transmission facility and the Transmission Owner in whose Transmission District that the Reliability Need arises as the Responsible Transmission Owners. *See Proposed OATT Sections 31.1 and 31.2.4.3.1.*

standards.⁷³ Under the NERC Planning Standards, each Transmission Owner is required to prepare an annual Planning Assessment for its transmission facilities, along with any Corrective Action Plan for performance requirement deficiencies.⁷⁴ A Transmission Owner can satisfy, in part, its responsibility under the NERC Planning Standards to formulate a corrective action plan through the identification of a regulated backstop solution for the reliable operation of the Transmission Owner's facilities in response to a request by the NYISO.

As more fully set forth below, the NYISO proposes to require new Transmission Owners that execute an Operating Agreement to accept a comparable obligation to propose and develop a regulated backstop solution, at the request of the NYISO, to meet a Reliability Need, together with the comparable right to cost recovery under Section 6.10 of the OATT ("Rate Schedule 10") for all reasonable costs related to such a project.⁷⁵ The NYISO also proposes conforming changes to Attachment Y of the OATT and Rate Schedule 10 for the implementation of the rights and obligations set forth in the *pro forma* Operating Agreement related to the Transmission Owner's participation in the reliability planning process.

1. Proposed Revisions to the Pro Forma Operating Agreement

To implement the conforming changes set forth above, the NYISO first proposes additions to the *pro forma* Operating Agreement to include a comparable right and obligation for new Transmission Owners to provide a regulated backstop solution under its reliability planning process when identified by the NYISO as the Responsible Transmission Owner.⁷⁶ As proposed in new Section 2.13 of the *pro forma* Operating Agreement, a new Transmission Owner that executes the agreement would have the right and obligation to provide a regulated backstop solution to an identified Reliability Need, when identified as the Responsible Transmission Owner by the NYISO, together with the right to recovery of the costs for developing the solution.⁷⁷ Proposed Section 2.13 is comparable to the requirements in the NYISO/TO Reliability Agreement and likewise carves out an exception to Section 3.08(e) of the *pro forma* Operating Agreement to allow the NYISO to direct a new Transmission Owner to expand its transmission facility(ies).⁷⁸

⁷³ See North American Electric Reliability Corporation, Transmission System Planning Performance Requirements, No. TPL-001-4 ("NERC Planning Standards").

⁷⁴ See *id.* at R2.

⁷⁵ See Proposed Section 2.13 of the *pro forma* Operating Agreement.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See Proposed Section 3.08(e) of the *pro forma* Operating Agreement ("Except as provided in Section 2.13 above, [The responsibilities granted to the ISO under this Agreement shall not expand or diminish the responsibilities of the [non-incumbent transmission owner ("NTO")] to modify or expand its transmission system, nor confer upon the ISO the authority to direct the NTO to modify or expand its transmission system.]); Section 4.02 of the NYISO/TO Reliability Agreement ("Notwithstanding the obligations voluntarily assumed herein by the Transmission Owners, each Transmission Owner expressly reserves all of its existing rights under the ISO/TO Agreement . . .").

In proposed Section 2.13(a) of the *pro forma* Operating Agreement, a new Transmission Owner would be responsible to participate in the NYISO's reliability planning process by proposing a regulated backstop solution, when designated as the Responsible Transmission Owner, "to address a reliability need(s) related to the transmission facilities that the NTO owns and that are subject to this Agreement"⁷⁹ as described in the reliability planning process in Attachment Y of the OATT.⁸⁰ This is comparable to obligations contained in the Article 2.0 of the NYISO/TO Reliability Agreement with non-substantive differences to recognize that the obligations for a Responsible Transmission Owner are now articulated under Attachment Y of the OATT and that the *pro forma* Operating Agreement is not a multiparty agreement with other Transmission Owners.⁸¹

Consistent with the NYISO/TO Reliability Agreement, proposed Section 2.13(b) of the *pro forma* Operating Agreement provides for the recovery of "all reasonably incurred costs, including a reasonable return on investment and any applicable regulatory incentives, related to the preparation of a proposal for, and the development, construction, operation, and maintenance of, regulated transmission projects undertaken, or caused to be undertaken, by the NTO to meet a reliability need included in the ISO's Reliability Planning Process as a result of being designated as the Responsible Transmission Owner."⁸² This provision details the same cost recovery contained in Article 3.0 of the NYISO/TO Reliability Agreement, but additionally refers to the rate recovery mechanism under Rate Schedule 10, which was developed in response to the requirements established under Article 3.0 of the NYISO/TO Reliability Agreement.⁸³

The proposed additions also include Section 2.13(c) enumerating the conditions under which a new Transmission Owner accepts its obligations. The three enumerated conditions are identical to those set forth in the NYISO/TO Agreement, which are: (i) the right to recover transmission related costs in Rate Schedule 10 related to obtaining, or attempting to obtain, all government authorizations and real property rights, (ii) receipt of all necessary federal, state and local authorizations and property rights to complete the regulated backstop solution, and (iii) right to request incentives available under regulatory policies as a part of a filing to the Commission in accordance with Rate Schedule 10.⁸⁴ In addition, the conforming changes include a comparable right for a Transmission Owner to construct, invest in, and own any regulated transmission facilities that the NYISO triggers to meet a Reliability Need identified in

⁷⁹ The proposed revision also recognizes the likelihood that a new Transmission Owner may not be similarly situated as a Member System that has a broader responsibility to maintain reliable electric service and serve load in its Transmission District.

⁸⁰ Proposed Section 2.13(a) of the *pro forma* Operating Agreement.

⁸¹ Compare Proposed Section 2.13(a) of the *pro forma* Operating Agreement, with Article 2.0 of the NYISO/TO Reliability Agreement.

⁸² Proposed Section 2.13(b) of the *pro forma* Operating Agreement.

⁸³ Compare Proposed Section 2.13(b) of the *pro forma* Operating Agreement, with Article 3.0 of the NYISO/TO Reliability Agreement and OATT Section 6.10.1.

⁸⁴ Compare Proposed Section 2.13(c)(1)–(3) of the *pro forma* Operating Agreement, with Sections 3.04, 3.05, and 3.06 of the NYISO/TO Reliability Agreement.

its reliability planning process, provided that the appropriate regulatory agencies grant approval, and the rates will be covered as provided for in Rate Schedule 10 and the OATT.⁸⁵

In proposed Section 2.13(d) of the *pro forma* Operating Agreement, the NYISO includes a comparable provision to the NYISO/TO Reliability Agreement reserving the right of the Transmission Owner to protest, comment on, or engage in litigation related to any changes to the NYISO’s reliability planning process before the Commission, the New York Public Service Commission, and any court.⁸⁶

The NYISO additionally proposes the following conforming changes to the *pro forma* Operating Agreement to account for the additions set forth in Articles 2.13 and 3.0, all of which are comparable to those provisions contained in the NYISO/TO Reliability Agreement.

Operating Agreement Section	Reason for Change
Appendix H of Attachment Y of the OATT	
WHEREAS clause	Addition of a clause detailing the intent that a Transmission Owner that executes the <i>pro forma</i> Operating Agreement will participate in the NYISO’s reliability planning process.
Section 2.01(e)	Addition of the NYISO’s responsibility to conduct its reliability planning process in accordance with Attachment Y of the OATT.
Section 3.05	Addition of a reference to “this Agreement” for the related requirements to materially modify the NYS Power System.
Section 3.08	Addition of a reference to “any applicable regulatory incentives,” which are included in the costs that a Transmission Owner that executes the <i>pro forma</i> Operating Agreement may recover in exercising its right to make a filing with the Commission under Section 205 of the Federal Power Act.
Section 6.14	Addition of Section 2.13 of the <i>pro forma</i> Operating Agreement in the list of sections that may not be subject to change to the extent permitted by law.

2. Proposed Revisions in the NYISO’s Reliability Planning Process

Consistent with the proposed revisions to the *pro forma* Operating Agreement, the NYISO proposes to clarify that a new Transmission Owner that executes an Operating Agreement is eligible to be designated as a Responsible Transmission Owner for purposes of the NYISO’s reliability planning process. In doing so, Section 31.1 of the OATT (definitions) would be revised to clarify that “[t]he Responsible Transmission Owner will normally be the Transmission Owner in whose Transmission District the ISO identifies a Reliability Need and/or

⁸⁵ Compare Proposed Section 3.08(f) of the *pro forma* Operating Agreement, with Article 4.04 of the NYISO/TO Reliability Agreement.

⁸⁶ Proposed Section 2.13(d) of the *pro forma* Operating Agreement.

that owns a transmission facility on which a Reliability Need arises.”⁸⁷ This proposed revision affords comparable treatment to all Transmission Owners and, more importantly, gives the NYISO the ability to enlist the appropriate Transmission Owner to develop a regulated backstop solution.

The NYISO also proposes the following revisions to fully incorporate a Transmission Owner’s obligation to serve as a Responsible Transmission Owner, if designated, and the right to cost recovery for the regulated backstop solution to a Reliability Need identified in the NYISO’s reliability planning process.

Tariff Section	Reason for Revision
Schedule 10 of the OATT	
OATT § 6.10.1	Additions to include “or an Operating Agreement” following references to the NYISO/TO Reliability Agreement to reflect the comparable rights and obligations for new Transmission Owners to recover costs related to regulated reliability transmission projects to address Reliability Needs identified by the NYISO in its reliability planning process.
OATT § 6.10.2	Addition to include “or an Operating Agreement” following a reference to the NYISO/TO Reliability Agreement to reflect a new Transmission Owner’s right to recover its costs related to a regulated reliability transmission solution, including reasonable and necessary expenses incurred to implement the orderly termination of the project under Attachment Y of the OATT.
Attachment Y of the OATT	
OATT § 31.5.6.2	Addition to include “or an Operating Agreement” following a reference to the NYISO/TO Reliability Agreement that establishes the basis for the cost recovery of regulated transmission projects undertaken by a Transmission Owner pursuant to Attachment Y of the OATT.

C. Proposed Changes to Fully Incorporate Operating Agreements into Tariffs

As a result of the execution of an Operating Agreement with the NYISO, a new Transmission Owner will have certain rights and responsibilities and the NYISO will have certain obligations to the new Transmission Owner. The NYISO proposes the following revisions to various tariff provisions to clearly and unambiguously capture the existence of Operating Agreements that govern the rights and responsibilities of certain Transmission Owners contained in the tariffs and further implement the December Order’s directives.⁸⁸ These provisions are comparable to the rights and responsibilities of the Member Systems that are set forth under the ISO/TO Agreement.

⁸⁷ Proposed OATT Section 31.1.

⁸⁸ In the March 22, 2016 Compliance Filing, the NYISO proposed to add the defined term, “Operating Agreement” to Attachment Y of the OATT to be defined as “[a]n agreement between the ISO and a nonincumbent owner of transmission facilities in the New York Control Area concerning the operation of the transmission facilities in the form of the agreement set forth in Appendix H (Section 31.11) of this Attachment Y.”

Tariff Section	Reason for Revision
OATT	
OATT § 1.9	Revision to the definition of “ISO Related Agreements” to include Operating Agreements in the list of agreements that are related to the NYISO and its operation of the New York Bulk Power System.
OATT § 1.15	Addition of a new definition of “Operating Agreement” to include those agreements between the NYISO and a nonincumbent owner of a transmission facility within the NYCA concerning the operation of a facility that is transferred to NYISO operational control. ⁸⁹
OATT § 1.20	Revisions to the definitions for “Transmission Facilities Under ISO Operational Control” and “Transmission Facilities Requiring ISO Notification” to include those facilities listed in appendices to executed Operating Agreements, which are comparable to those appendices in the ISO/TO Agreement.
OATT § 2.1.1	Clarification that the reference to “ISO Related Agreements” does not include Operating Agreements with regard to an event that would trigger the effectiveness of the OATT, to avoid any ambiguity with the effective date of the OATT if a new Operating Agreement is executed. In addition, the proposed revision removes the reference defining the terms “ISO Tariffs and ISO Related Agreements” within the section since these terms are already defined in the OATT.
OATT § 2.12.1	Revision to a reference to a Transmission Owner’s system to include “facilities that a Transmission Owner has agreed to operate in accordance with an operation and maintenance agreement” as it relates to back-up operations. This is consistent with the <i>pro forma</i> Operating Agreement that permits a new Transmission Owner to contract with another Transmission Owner to serve as the back-up operator if called upon by the NYISO. ⁹⁰
OATT § 4	Clarification in the Preamble that the NYISO will provide Network Integration Transmission Service under the OATT and Services Agreements over the transmission facilities of the parties that signed the ISO/TO Agreement or an Operating Agreement.
OATT § 12.1	Inclusion of Transmission Owners that executed an Operating Agreement with regard to the NYISO’s obligation to provide Transmission Service to Transmission Owners and operate the OASIS in accordance with Section 12.2 of the OATT. The <i>pro forma</i> Operating Agreement expressly provides that the NYISO will maintain the OASIS. ⁹¹

⁸⁹ The definition is consistent with the definition of “Operating Agreement” under Section 31.1 of Attachment Y of the OATT, as proposed in the March 22, 2016 Compliance Filing. *See* March 22, 2016 Compliance Filing.

⁹⁰ *See* Section 2.12 of the *pro forma* Operating Agreement, as proposed in the March 22, 2016 Compliance Filing (authorizing an arrangement for one or more third parties to perform a new Transmission Owner’s responsibilities under the Operating Agreement).

⁹¹ *See id.* at Section 3.06.

Services Tariff	
Services Tariff § 2.9	Revision to the definition of “ISO Related Agreements” to include executed Operating Agreements in the list of agreements that are related to the NYISO’s operation.
Services Tariff § 1.15	Addition of a new definition of “Operating Agreement” to includes those agreements between the NYISO and a nonincumbent owner of transmission facilities in the NYCA concerning the operation of a facility that is transferred to NYISO operational control.
Services Tariff § 2.20	Revisions to the definitions of “Transmission Facilities Under ISO Operational Control” and “Transmission Facilities Requiring ISO Notification” to include those facilities listed in appendices to executed Operating Agreements, which are comparable to those appendices in the ISO/TO Agreement.
Services Tariff § 3.1	Clarification that the reference to “ISO Related Agreements” does not include Operating Agreements with regard to an event that would trigger the effectiveness of the Services Tariff, to avoid any ambiguity with the effective date of the Services Tariff if a new Operating Agreement is executed. In addition, the proposed revision removes the reference defining the terms “ISO Tariffs and ISO Related Agreements” within the section since these terms are already defined in the Services Tariff.
Services Tariff § 5.3.1	Revision to a reference to a Transmission Owner’s system to include “facilities that a Transmission Owner has agreed to operate in accordance with an operation and maintenance agreement” with respect to back-up operations. This is consistent with the <i>pro forma</i> Operating Agreement that permits a new Transmission Owner to contract with another Transmission Owner to serve as the back-up operator if called upon by the NYISO. ⁹²
Services Tariff § 12.4	Insertion of a reference to Operating Agreements, together with the ISO/TO Agreement and the ISO Agreement, to identify the source of the NYISO’s obligation to indemnify Transmission Owners.
Service Tariff § 14.4	Insertion of a reference to “an Operating Agreement,” together with the ISO/TO Agreement, in referring to the rights of the NYISO or a Transmission Owner to make an application to the Commission.

V. EFFECTIVE DATE

The NYISO respectfully requests that the Commission accept the tariff revisions and standard agreements proposed in this compliance filing with an April 1, 2016 effective date. The above-referenced proposed revisions are necessary to fully incorporate the directives from the December Order. In its March 22, 2016 Compliance Filing, the NYISO requested an effective date of April 1, 2016, and requests that the effective date of the proposed revisions in this filing coincide with that date. The Commission’s acceptance of an April 1, 2016 effective date will provide Market Participants and other interested entities with clarity regarding which requirements are applicable and will be implemented by the NYISO. Furthermore, with the

⁹² See Proposed *pro forma* Operating Agreement in the March 22, 2016 Compliance Filing.

energizing of the NY Transco's transmission facilities on or about June 1, 2016, clarity in the tariff and Operating Agreement provisions that may be applicable to NY Transco, as a new Transmission Owner, is particularly important to avoid a potential of gap in the effectiveness of the provisions in the tariff and Operating Agreement. Market Participants and interested parties will not be prejudiced by the April 1, 2016 effective date; however, a gap in the effectiveness of the proposed revisions implementing the December Order directives could potentially harm certain Market Participants.

VI. REQUEST FOR FINAL ORDER APPROVING ORDER NO. 1000 REGIONAL PLANNING COMPLIANCE FILINGS

The NYISO also requests that the Commission issue a final order accepting the NYISO's outstanding Order No. 1000 compliance filings and related tariff changes.⁹³ The NYISO has endeavored to fulfill every aspect and principle of the Commission's Order No. 1000 planning requirements through multiple compliance filings beginning in 2012.⁹⁴ The NYISO most recently filed its March 22, 2016 Compliance Filing containing, among other things, a *pro forma* developer agreement and *pro forma* operating agreement, satisfying the Commission's directives in the December Order. With the March 22, 2016 Compliance Filing and the revisions proposed herein, the NYISO respectfully submits that it has met or exceeded all of the fundamental planning requirements under Order No. 1000 and the Commission's directives.

Additionally, the NYISO originally commenced its regional planning processes under Order No. 1000 on January 1, 2014, which operates on a 24-month cycle. On January 1, 2016, the NYISO commenced the second round of its reliability and public policy planning processes. The NYISO is preparing, with stakeholder and Market Participant involvement, the 2016 Reliability Needs Assessment to be approved in accordance with Attachment Y of the OATT, and recently requested new proposals for transmission needs driven by Public Policy Requirements.⁹⁵ Finally, the Commission is contemplating potential further changes to regional and interregional planning requirements.⁹⁶ Accordingly, it is important that the NYISO receive final approval from the Commission to provide certainty for the NYISO's stakeholders and interested parties participating in the CSPP.

⁹³ See Footnote No. 7, *supra*.

⁹⁴ See Footnote No. 8, *supra*.

⁹⁵ See Draft 2016 Reliability Needs Assessment Report posted for the Operating Committee, *available at* www.nyiso.com; 2016 Solicitation for Transmission Needs Driven by Public Policy Requirements (August 1, 2016), *available at* www.nyiso.com.

⁹⁶ See *Competitive Transmission Development Rates Technical Conference*, Notice of Technical Conference, Docket No. AD16-18-000 (March 17, 2016); *Competitive Transmission Development Technical Conference*, Notice Inviting Post-Technical Conference Comments, Docket No. AD16-18-000 (August 3, 2016); *Competitive Transmission Development Technical Conference*, Notice of Extension of Time for Filing Post-Technical Conference Comments, Docket No. AD16-18-000 (August 15, 2016) (August 15, 2016).

VII. SERVICE

The NYISO will send an electronic copy of 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 the New Jersey Board of Public Utilities. In addition, the complete public version of this filing will be posted on the NYISO's website at www.nyiso.com.

VIII. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this compliance filing without requiring any modifications, accept the remaining outstanding compliance filings, and determine that the NYISO has complied with the regional planning requirements of Order No. 1000.

Respectfully submitted,

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