

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

New York Independent System Operator, Inc.                     )  
   )             Docket No. ER13-102-011  
   )

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”)<sup>2</sup> respectfully submits this request for leave to answer and answer (“Answer”). The Answer responds to the limited protests of the “New York Transmission Owners” (“NYTOs”)<sup>3</sup> and New York Transco, LLC (“Transco”)<sup>4</sup> concerning the NYISO’s September 13, 2016 compliance filing in this proceeding (“September Compliance Filing”).<sup>5</sup> For the reasons described below, the Commission should reject the limited protests in their entirety. The Commission should accept the Compliance Filing without modification, and find that the NYISO has complied with the requirements of Order No. 1000<sup>6</sup> and the

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<sup>1</sup> 18 C.F.R. § 385.213 (2014).

<sup>2</sup> Capitalized terms not defined in this Answer shall have the meaning set forth in the NYISO Open Access Transmission Tariff (“OATT”) and Market Administration and Control Area Services Tariffs (“Services Tariff”).

<sup>3</sup> Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corporation (collectively the “New York Transmission Owners” or “NYTOs”) individually and collectively submitted the limited protest. *New York Indep. Sys. Operator, Inc.*, Limited Protest of the New York Transmission Owners, Docket No. ER13-102-011 (October 4, 2016) (“NYTOs Protest”).

<sup>4</sup> *New York Indep. Sys. Operator, Inc.*, Limited Protest of New York Transco, LLC, Docket No. ER13-102-011 (October 4, 2016) (“Transco Protest”). Transco is an affiliated entity of the NYTOs.

<sup>5</sup> *New York Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER13-102-011 (September 13, 2016) (“September Compliance Filing”).

<sup>6</sup> *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.

Commission's December 23, 2015 order in this proceeding ("December Order").<sup>7</sup>

## **I. REQUEST FOR LEAVE TO ANSWER**

The NYISO may answer pleadings that are styled as comments as a matter of right.<sup>8</sup> The Commission also has discretion to accept, and routinely accepts, answers to protests where, they help to clarify complex issues, provide additional information, are helpful in the development of the record in a proceeding, or otherwise assist in the decision-making process.<sup>9</sup> The NYISO's Answer to the limited protests of Transco and the NYTOs satisfies those standards and should be accepted because it addresses inaccurate and misleading statements, and provides additional information that will help the Commission fully evaluate the arguments in this proceeding. The NYISO, therefore, respectfully requests that the Commission accept this Answer.

## **II. BACKGROUND**

In response to the Order No. 1000 regional transmission planning and cost allocation directives, the NYISO has submitted compliance filings to revise its tariff requirements for its Comprehensive System Planning Process ("CSPP") under Attachment Y of its Open Access Transmission Tariff ("OATT"), which is composed of the NYISO's reliability, economic, and public policy planning processes.<sup>10</sup> Although final acceptance of all NYISO compliance filings

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<sup>7</sup> *New York Indep. Sys. Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 153 FERC ¶ 61,341 (2015) ("December Order").

<sup>8</sup> See 18 C.F.R. § 385.213(a)(3).

<sup>9</sup> See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093, at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,058, at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,160, at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217, at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

<sup>10</sup> See *New York Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER13-102-009 (March 22, 2016) ("March 22, 2016 Compliance Filing"); *New York Indep. Sys. Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-007 (May 18, 2015); *New York Indep. Sys. Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-006 (September 15, 2014); *New York Indep. Sys. Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-002 (October 15,

remains outstanding, the Commission has largely accepted the revised CSPP as compliant with the Order No. 1000 requirements.<sup>11</sup>

In its September Compliance Filing, the NYISO filed revisions to the ISO Tariffs and the *pro forma* Operating Agreement, as proposed in the March 22, 2016 Compliance Filing,<sup>12</sup> that are necessary to implement the December Order's directives and to clarify the NYISO's Order No. 1000-related tariff provisions and ensure consistency with Commission precedent.<sup>13</sup> Generally, the NYISO's proposed revisions provide comparable treatment for all Transmission Owners unless required otherwise by the differences stemming from either a Transmission Owner's operational capabilities and provider responsibilities or the rights and requirements of certain Transmission Owners unique to the formation of the NYISO.<sup>14</sup> The two proposed revisions relevant to this Answer are the following: (i) including the right and obligation for new Transmission Owners that execute an Operating Agreement to provide a regulated backstop solution in the NYISO's reliability planning process if designated by the NYISO as a Responsible Transmission Owner; and (ii) including new Transmission Owners in Attachment N of the OATT and Section 17.5 of Attachment B of the NYISO Market Administration and Control Area Services Tariffs ("Services Tariff") unless provided for elsewhere in the ISO Tariffs. In addition, Transco challenges the NYISO's existing definition of Transmission

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2013); *New York Indep. Sys. Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket No. ER13-102-000 (October 11, 2012).

<sup>11</sup> See *New York Indep. Sys. Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 153 FERC ¶ 61,341 (2015) ("December Order"); *New York Indep. Sys. Operator, Inc.*, Order on Rehearing and Compliance, 151 FERC ¶ 61,040 (2015); *New York Indep. Sys. Operator, Inc.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,044 (2014); *New York Indep. Sys. Operator, Inc.*, Order on Compliance Filing, 143 FERC ¶ 61,059 (2013).

<sup>12</sup> See Section 31.11 of Attachment Y of the OATT, as proposed in the March 22, 2016 Compliance Filing.

<sup>13</sup> See generally, September Compliance Filing. On March 23, 2016, the Commission granted the NYISO a partial extension of 180 days to address certain tariff implementation issues associated with the *pro forma* Operating Agreement proposed in the March 22, 2016 Compliance Filing. See *New York Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER13-102-007 (March 23, 2016).

<sup>14</sup> See September Compliance Filing, at pp 6–7.

Service to which the NYISO proposed no changes in the September Compliance Filing, arguing that it does not currently provide such service and, therefore, does not meet the definition of “Transmission Owner.”<sup>15</sup>

### **III. ANSWER**

#### **A. The Proposed Revisions Requiring New Transmission Owners to Serve as Responsible Transmission Owners in the NYISO’s Reliability Planning Process is Just and Reasonable and Complies with Order No. 1000 and the December Order**

The NYTOs’ and Transco’s protests contend that the NYISO should be required to designate only Transmission Owners with Transmission Districts to serve as a Responsible Transmission Owner and propose a regulated backstop solution to an identified Reliability Need. The protests argue that only existing Transmission Owners that serve load should be so designated because (i) only they have the statutory obligation under state law to maintain reliability throughout New York State and the duty to provide service to retail electric customers in their respective transmission districts, and (ii) only they are properly situated to ensure that Reliability Needs are addressed.<sup>16</sup> As discussed below, the arguments are without merit and the Commission should approve the NYISO’s proposed revisions.

##### **1. The Obligation to Serve as a Responsible Transmission Owner and to Provide Safe and Reliable Service Applies Equally to all Transmission Owners**

The obligation of a Responsible Transmission Owner to provide a regulated backstop solution in the NYISO’s reliability planning process ensures that the NYISO, as the regional transmission planner, has the resources to adequately and timely resolve an identified Reliability Need on the Bulk Power Transmission Facilities (“BPTF”) should the markets fail to respond

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<sup>15</sup> Transco Protest, at p 4.

<sup>16</sup> See NYTOs Protest, at pp 3–4.

with an adequate solution or a Developer fail to complete a selected project.<sup>17</sup> This responsibility arises from owning transmission facilities in New York and the resulting obligation to provide safe and adequate service over its facilities. It applies equally to all Transmission Owners regardless of having a retail distribution service territory (*i.e.*, Transmission District) or an obligation to serve load to retail customers.

The NYTOs and Transco correctly state that the obligation to serve as a Responsible Transmission Owner and provide a regulated backstop solution is based on the obligation of Transmission Owners to ensure safe and reliability service over their transmission facilities.<sup>18</sup> However, all Transmission Owners that provide service over their transmission facilities in the New York Control Area (“NYCA”) are required to provide safe and reliable service in accordance with, but not limited to, the ISO Tariffs and federal and state law and attendant regulations, among other governing standards.

Section 2.02 of the *pro forma* Operating Agreement requires a new Transmission Owner to ensure that:

all actions related to the operation, maintenance, and modification of its facilities that are designated as NTO Transmission Facilities Under ISO Operational Control and NTO Transmission Facilities Requiring ISO Notification are performed in accordance with the terms of this Agreement, *all Reliability Rules and all other applicable reliability rules, standards and criteria, all operating instructions, ISO Tariffs, ISO Procedures, and any transmission interconnection agreement(s) for its facilities.*<sup>19</sup>

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<sup>17</sup> See *New York Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER04-1144-000, at pp 1, 6 (August 20, 2004) (proposing “the implementation of regulated solutions by the New York Transmission Owners [‘NYTOs’] as a backstop when market-based projects do not resolve anticipated reliability deficiencies”); *New York Indep. Sys. Operator, Inc.*, Answer, Docket No. ER04-1144-000 at pp 5–6 (September 27, 2004) (stating that “recognizing that market forces may not achieve the desired ends, the Planning Process provides for a regulated backstop, to be undertaken by the responsible Transmission Owner, when market-based projects do not resolve anticipated reliability deficiencies”).

<sup>18</sup> See NYTOs Protest, at pp 4–5 & n 12; Transco Protest, at p 7 & n 19.

<sup>19</sup> See, *e.g.*, Sections 2.02 and 2.04 of the *pro forma* Operating Agreement, as proposed in the March 22, 2016 Compliance Filing and September Compliance Filing (emphasis added); *see also* Section 2.02 of Service

This obligation is identical to the obligation of NYTOs.<sup>20</sup> The ISO Tariffs also impose obligations on Transmission Owners to operate their facilities in accordance with Good Utility Practice, which includes maintaining safe and adequate service.<sup>21</sup> Based on these obligations, all Transmission Owners should participate equally in the NYISO’s reliability planning process, including providing a regulated backstop solution when designated by the NYISO as a Responsible Transmission Owner.

The NYTOs and Transco rely on the New York Public Service Law (“PSL”) to assert that, unlike Transmission Owners with a Transmission District, a wires-only Transmission Owner does not have any legal obligation to provide safe and adequate service under Section 65 of the PSL and that the New York State Public Service Commission (“PSC”) has no authority to prevent the Transmission Owner from abandoning a project.<sup>22</sup> Their analysis, however, does not account for the fact that a wires-only Transmission Owner owns, operates, and/or maintains an “electric plant” as defined by Section 2(12) of the PSL and, therefore, is obligated to ensure it provides safe and adequate service under, among other provisions, Section 65 of the PSL.<sup>23</sup>

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Agreement No. 2271, Operating Agreement Between the New York Independent System Operator, Inc. and New York Transco LLC (May 23, 2016) (“Transco Operating Agreement”).

<sup>20</sup> See Section 2.02 of the Agreement Between New York Independent System Operator and Transmission Owners (1999) (“ISO/TO Agreement”).

<sup>21</sup> The ISO Tariffs define Good Utility Practice as “practices, methods or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act Section 215(a)(4).” Section 1.7 of the OATT; Section 2.7 of the Services Tariff. A Transmission Owner is required to act in accordance with Good Utility Practice in providing Transmission Service, among other things. See, e.g., Section 4.1.2 of the OATT (Network Integration Transmission Service Responsibilities); Section 20.2.4.4 of the OATT (Assigning Responsibility Outages, Returns-to-Service, Derating, and Up ratings).

<sup>22</sup> See NYTOs Protest, at pp 4–5 n 12; Transco Protest, at p 7 n 19.

<sup>23</sup> See PSL § 65(1) (“[E]very electric corporation . . . shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”); see also *Carr St. Generating Station, L.P.*, Order Providing for Lightened Regulation, PSC Case No. 98-E-1670, at p 11 (April 23, 1999) (holding that the provisions of Article 4 remain relevant in the emerging competitive market, as they “ensure that electric

Indeed, all Transmission Owners in the NYCA, including a wires-only company, that provide services over their facilities have the same responsibilities as “electric corporations” under the PSL to provide safe and adequate service and make reasonable improvements and extensions of its facilities as ordered by the PSC.<sup>24</sup> Contrary to the NYTOs’ and Transco’s protests, Transmission Owners’ obligations under the PSL in fact support the NYISO’s revisions to obligate new Transmission Owners that execute the *pro forma* Operating Agreement to serve as Responsible Transmission Owners.

Furthermore, notably absent from the joint filings of the NYISO and NYTOs that established the obligations of a Responsible Transmission Owner is any support for the assertion that the responsibility to provide a regulated backstop solution is rooted in the Transmission Owner’s obligations to a Transmission District or retail customers.<sup>25</sup> Indeed, the NYISO and NYTOs in those filings jointly proposed, and the Commission approved, language that “the Responsible Transmission Owner will *normally* be the Transmission Owner in whose Transmission District the ISO identifies a Reliability Need.”<sup>26</sup> While all of the NYTOs at the

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corporations—including those that limit their activities to generator electricity and then selling it at wholesale—provide safe and adequate service, facilities and instrumentalities, and otherwise act in the public interest.”); *Wallkill Generator Co. L.P.*, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments, PSC Case No. 91-E-0350, at 11 (August 21, 1991) (a wholesale generator that “intends to operate electric plant, as that term is defined in PSL § 2(12), . . . meets the definition of a electric corporation under PSL § 2(13).”); *AES Eastern Energy, L.P. and AES Creative Resources, L.P.*, Order Providing for Lightened Regulation, PSC Case No. 99-E-0148 (April 23, 1999) (“In Carr Street Order, it was decided that a realistic appraisal was needed to ascertain the [PSL] requirements that should be imposed on new forms of electric service providers that differ from traditional electric utility monopoly providers.”).

<sup>24</sup> The term “electric corporation . . . includes every corporation, company, association, joint-stock association, partnership and person . . . owning, operating, or managing any electric plant.” PSL § 2(13). The term “electric plant” includes “all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate generation, transmission, distribution, sale of furnishing of electricity.” *Id.* at § 2(12). Therefore, if an entity is operating an electric transmission facility, which is an “electric plant,” and providing service over it, it qualifies as an “electric corporation.” Accordingly, new Transmission Owners are “electric corporations” and subject to the requirements contained in Article 4 of the PSL.

<sup>25</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER04-1144-000, at pp 1, 6 (August 20, 2004); *New York Indep. Sys. Operator, Inc.*, Answer, Docket No. ER04-1144-000, at pp 5-6 (September 27, 2004).

<sup>26</sup> See Section 31.1.1 of the OATT (emphasis added).

time of the filings had Transmission Districts, this language recognizes that the designation as a Responsible Transmission Owner was not always tied to having a duty to the Transmission District where the need arises. The NYISO has the authority to designate a Responsible Transmission Owner based on its ownership of the transmission facility on which an overload occurs.<sup>27</sup>

Moreover, contrary to the argument that allowing new Transmission Owners to propose a regulated backstop solution will interfere with the NYTOs' ability to fulfill their duties,<sup>28</sup> the obligation of Transmission Owners to plan for the reliability of their Transmission Districts and retail customers is covered by the NYISO's Local Transmission Planning Process ("LTPP").<sup>29</sup> The NYTOs' rights and obligations to submit Local Transmission Owner Plans ("LTPs") to the NYISO will not be affected by the NYISO designating a new Transmission Owner as a Responsible Transmission Owner for a Reliability Needs that arises on BPTF facilities.<sup>30</sup> Transmission Owners with a Transmission District have the opportunity to identify local reliability needs and offer solutions in their LTPs to meet their reliability obligations to their

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<sup>27</sup> *See id.* Logically applying the NYTOs' argument to existing Transmission Owners, the NYISO would rarely be able to designate the New York Power Authority ("NYPA") as a Responsible Transmission Owner despite the amount of transmission facilities it owns throughout the NYCA. While NYPA is obligated to serve as a Responsible Transmission Owner based upon it being a signatory to the Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs (2010) ("NYISO/TO Reliability Agreement"), NYPA differs in several respects from the other existing Transmission Owners, in that the majority of its transmission facilities fall outside of its limited Transmission District. Should the Commission accept the position of the NYTOs, which includes NYPA, the NYISO's ability to designate NYPA as a Responsible Transmission Owner could be limited to situations in which an identified Reliability Need arises in NYPA's Transmission District. Taken to its logical conclusion, the NYTO's argument could mean that any upgrade to NYPA's transmission facilities outside of its Transmission District in response to a transmission security violation would have to be proposed by the Transmission Owners of the Transmission Districts where NYPA's facility is located, as opposed to NYPA having the right and obligation to propose a regulated backstop solution to the security violation on its own facilities.<sup>27</sup> The NYISO does not intend this result and believes that NYPA, as with wires-only Transmission Owners, should not be limited in its participation as a Responsible Transmission Owner when a Reliability Need arises on one of its facilities.

<sup>28</sup> NYTOs Protest, at p 5.

<sup>29</sup> *See* Section 31.2.1 of the OATT.

<sup>30</sup> *See id.*



service territory and retail customers. New Transmission Owners without a Transmission District are not included in the LTPP, and the NYISO is not proposing any changes to that process.<sup>31</sup>

Based on the foregoing, the NYTOs' and Transco's contention that new Transmission Owners that execute an Operating Agreement should not be eligible for the NYISO to designate as a Responsible Transmission Owner is without merit and the Commission should approve the NYISO's proposed revisions.

**2. All Transmission Owners Are Subject to the Same Qualification and Enforcement Mechanisms When Proposing Regulated Backstop Solutions and Are Equally Able to Upgrade their Own Transmission Facilities**

Under Order No. 1000 and Attachment Y of the OATT, once a non-incumbent developer energizes a transmission facility, it becomes a Transmission Owner in an equal position with existing Transmission Owners under the CSPP.<sup>32</sup> For purposes of proposing a regulated backstop solution, there is no justification to treat Transmission Owners differently since all Transmission Owners are required to demonstrate that they are qualified under the OATT to propose a transmission project.<sup>33</sup> Moreover, all Transmission Owners are subject to the same mechanisms to enforce their obligations, including, but not limited to, the provisions contained in the *pro forma* Development Agreement and the ISO Tariffs.<sup>34</sup> Accordingly, all Transmission Owners should have the same right and obligation to propose a regulated backstop solution to a Reliability Need that arises on a transmission facility that it owns.

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<sup>31</sup> Since LTPs are solely applicable to a Transmission Owner with a Transmission District, the NYISO did not propose revisions to its LTPP in the September Compliance Filing.

<sup>32</sup> See Order No. 1000-A, at P 421.

<sup>33</sup> See Section 31.2.4 of the OATT.

<sup>34</sup> See Section 31.2.8.1.6 of the OATT, as proposed in the March 22, 2016 Compliance Filing.

a. *All Transmission Owners Are Equally Qualified Through the NYISO's Process under Attachment Y of the OATT*

The NYTOs argue that they are in a more appropriate position to provide a regulated backstop solution than new Transmission Owners.<sup>35</sup> However, their argument fails to acknowledge the Commission-approved process contained in Attachment Y of the OATT that vets and qualifies all Developers of transmission solutions, including them.<sup>36</sup> By the time that a Transmission Owner places its transmission facility into service and executes an Operating Agreement, the NYISO will have approved it as a Qualified Developer.<sup>37</sup> The OATT prohibits treating a Qualified Developer that becomes a Transmission Owner after energizing its newly constructed facility differently than an existing Transmission Owner for purposes of being able to propose, develop, construct, operate, and maintain a regulated backstop solution.<sup>38</sup> Moreover, all Transmission Owners, including the NYTOs, must re-qualify every three years in order to propose transmission solutions in the CSPP.<sup>39</sup> Should a concern about the financial wherewithal of a Transmission Owner arise, the NYISO, after reviewing their financial information, has the ability to revoke any Transmission Owner's ability to develop a transmission solution under Attachment Y of the OATT.<sup>40</sup>

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<sup>35</sup> NYTOs Protest, at pp 4–5.

<sup>36</sup> See Section 31.2.4 of the OATT. Under the Attachment Y of the OATT, a Developer includes not only non-incumbent developers but also Transmission Owners already providing service in the NYCA. See Section 31.1.1 of the OATT.

<sup>37</sup> See generally, Section 31.2.4 of the OATT.

<sup>38</sup> See Section 31.2.4.1.1 of the OATT (“The ISO shall consider the qualifications of each Developer in an evenhanded and non-discriminatory manner, treating Transmission Owners and Other Developers alike.”).

<sup>39</sup> As of September 19, 2016, all Transmission Owners, both new and existing, are Qualified Developers. See NYISO Qualified Developers List (last updated September 19, 2016), available at [http://www.nyiso.com/public/webdocs/markets\\_operations/services/planning/Planning\\_Studies/Qualified\\_Developers/List\\_of\\_Qualified\\_Developers.pdf](http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Planning_Studies/Qualified_Developers/List_of_Qualified_Developers.pdf).

<sup>40</sup> Section 31.2.4.1.1.2 of the OATT.

b. *Responsible Transmission Owners Must Execute a Reliability Development Agreement if the Regulated Backstop Solution is Triggered*

In its December Order, the Commission required the NYISO to treat a Responsible Transmission Owner comparably with other Developers under the NYISO's reliability planning process.<sup>41</sup> Specifically, the NYISO was required to file a further compliance filing requiring Responsible Transmission Owners to execute the *pro forma* Reliability Development Agreement should their regulated backstop solution be triggered in the reliability planning process.<sup>42</sup> The Commission noted that "although Responsible Transmission Owners sponsoring regulated backstop solutions have already entered into the NYISO Transmission Owners Agreement and NYISO/TO Reliability Agreement, some of the requirements contained in those agreements are less stringent than those contained in the Development Agreement."<sup>43</sup> The NYISO filed revisions requiring all Responsible Transmission Owners to also execute a Development Agreement if the NYISO triggers their regulated backstop solution.<sup>44</sup> In sum, the Commission should reject the NYTOs' argument because all Transmission Owners are subject to the same qualification and enforcement mechanisms under the Federal Power Act, OATT, PSL, and the Development Agreement.

c. *Transmission Owners Should be Responsible to the NYISO Rather than Other Transmission Owners in Providing a Regulated Backstop Solution*

The NYTOs and Transco argue that Transmission Owners that are operating in a Transmission District should be obligated to work with the Responsible Transmission Owner in

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<sup>41</sup> December Order, at PP 45–48.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> March 22, 2016 Compliance Filing, at pp 31–39 and proposed Appendix C of Section 31.7 of Attachment Y of the OATT.

that Transmission District, rather than providing their own regulated backstop solution.<sup>45</sup>

Requiring a wires-only Transmission Owner to work directly with the Responsible Transmission Owner to upgrade its facility would supplant the NYISO's authority as the planning coordinator and regional transmission planner for the NYCA. Their proposal also runs contrary to the Commissions' precedent under Order No. 890 and Order No. 1000 that the independent system operator is responsible for conducting its regional transmission planning process in a fair and non-discriminatory manner.<sup>46</sup> If the Reliability Need identified by the NYISO requires both the Transmission Owner of the transmission facility and the owner of the Transmission District (in the event that they are separate entities) to work collaboratively to develop a solution, the NYISO has the authority to, and will, designate both with the obligation to provide the NYISO with a regulated backstop solution.<sup>47</sup> This approach encourages collaboration among existing and new Transmission Owners without making any Transmission Owner subordinate to another or infringing upon the NYISO's ability to administer its process in an open and transparent manner.<sup>48</sup> Furthermore, the proposal that only existing Transmission Owners should be Responsible Transmission Owners could make them responsible for upgrades on facilities that

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<sup>45</sup> NYTOs Protest, at p 4. Transco specifically contends that "[t]o the extent an identified reliability need requires an upgrade of non-incumbent transmission owner's facilities, the non-incumbent transmission owner should have both the right and the obligation to upgrade its own transmission facilities." Transco Protest, at p 7.

<sup>46</sup> See generally *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at PP 438, 444–561 (2007) ("Order No. 890") (establishing principles for regional transmission planning processes "through which transmission providers must coordinate with customers, neighboring transmission providers, affected state authorities, and other stakeholders in order to ensure that transmission plans are not developed in an unduly discriminatory manner"); Order No. 1000, at PP 99, 146–65 (enacting regional transmission planning reforms by building on Order No. 890 planning principles to have a coordinated, open, and transparent regional transmission planning process that ensures just and reasonable rates and prevent undue discrimination by public utility transmission providers).

<sup>47</sup> See Section 31.1.1 of the OATT. In its Reliability Needs Assessments, the NYISO has designated multiple Transmission Owners as Responsible Transmission Owners depending upon the circumstances of the identified Reliability Need.

<sup>48</sup> As stated above Section A.1 regarding the LTPP, this will not interfere with a Transmission Owner's ability to satisfy its duty to its Transmission District and retail customers.

they do not own.<sup>49</sup> The protests cite no authority permitting a Transmission Owner of the Transmission District to unilaterally propose or make changes to another Transmission Owner's facility.

Based on the foregoing, the NYISO requests that the Commission approve the revisions to the *pro forma* Operating Agreement and implementing tariff provisions, obligating Transmission Owners that execute an Operating Agreement to provide a regulated backstop solution if designated by the NYISO as a Responsible Transmission Owner.

**B. The NYISO Appropriately Proposes to Clarify the Applicability of Attachment N of the OATT to a New Transmission Owner**

The NYTOs oppose the proposed clarifying revisions to Attachment N of the OATT and the parallel provisions of Section 17.5 of Attachment B of the Services Tariff. In doing so, the NYTOs contend that the NYISO should not be permitted to revise Attachment N absent their consent.<sup>50</sup>

The limited revisions proposed by the NYISO to Attachment N of the OATT are intended to clarify the applicability of Attachment N to both the Member Systems and Transmission Owners other than the Member Systems.<sup>51</sup> The proposed revisions provide that Attachment N applies to the Member Systems unless the ISO Tariffs expressly provide otherwise. The proposed revisions further state that Attachment N will only apply to Transmission Owners other than the Member Systems if the ISO Tariffs do not otherwise provide for an alternative treatment—such as in a separate rate schedule. The intent of the latter clarifying revision is to

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<sup>49</sup> See Transco Protest, at pp 6–7 (arguing that a “non-incumbent transmission owner should have the obligation to work with the incumbent transmission owner” if a regulated backstop solution involves a non-incumbent Transmission Owner's facility).

<sup>50</sup> NYTOs Protest, at pp 5–6.

<sup>51</sup> Section 17.5 of Attachment B of the Services Tariff includes provisions that are virtually identical to those contained in Attachment N of the OATT. All descriptions herein of Attachment N of the OATT apply equally to Section 17.5 of Attachment B of the Services Tariff.

ensure that the ISO Tariffs provide for comparable treatment among all Transmission Owners in all circumstances.

While the NYTOs correctly note that the framework of Attachment N arises out of an agreement at the time of the NYISO's formation, there are no provisions in the ISO Tariffs, ISO Agreement or the ISO/TO Agreement that expressly require consent of the NYTOs in order to pursue any revisions to Attachment N. Moreover, the proposed revisions to Attachment N do not alter any of the rights or obligations of the NYTOs thereunder, including the basis upon which Net Auction Revenues are allocated. Instead, the proposed clarifying revisions, as they relate to Transmission Owners other than the Member Systems, merely provide for the potential that the rights and obligations set forth in Attachment N could be extended to apply equally to additional Transmission Owners in the future. This would, among other matters, impose an obligation on any such Transmission Owner to share in the support of fully funding Transmission Congestion Contracts ("TCCs") in the same manner as is currently required by the Member Systems.

The NYTOs also contend that the inclusion of Transmission Owners other than the Member Systems could affect the allocation of Net Auction Revenues among the Member Systems.<sup>52</sup> Pursuant to Attachment N, each applicable Transmission Owner receives a portion of the Net Auction Revenue resulting from a particular TCC auction based on the contribution that their transmission facilities make toward supporting the set of TCCs awarded in the auction. The NYISO is not proposing to change this revenue allocation methodology. Accordingly, each Member System will continue to receive an allocation of Net Auction Revenue for a particular

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<sup>52</sup> NYTOs Protest, at p 6.

TCC auction based on the contribution of its facilities to supporting the TCCs awarded in that auction.

Furthermore, the extent to which Transmission Owners other than the Member Systems will become subject to Attachment N is likely to be limited.<sup>53</sup> To date, as part of developing individual rate schedules under the OATT for new Transmission Owners,<sup>54</sup> the NYISO has developed alternative, comparable means for addressing the TCC market-related treatment of the transmission capacity associated with the transmission facilities of such new Transmission Owners. It is likely that additional rate schedules developed in the future for other new Transmission Owners will include such alternative, comparable treatment. The proposed clarifying revisions to Attachment N, however, ensure that, in the absence of such alternative treatment, the ISO Tariffs expressly provide for comparability among all Transmission Owners.

Based on the foregoing, the NYISO respectfully requests that the Commission approve the proposed clarifying revisions to Attachment N.

**C. No Amendment to the Definition of “Transmission Service” is Required for a New Owner of Transmission to Qualify as a “Transmission Owner” under the ISO Tariffs.**

Transco protests that it is not a “Transmission Owner” because it does not provide “Transmission Service” as those terms are defined in the ISO Tariffs and, therefore, that the Commission should direct the NYISO to amend the definition of Transmission Service in the OATT and Services Tariff.<sup>55</sup> Specifically, Transco argues that it does not provide Point-to-Point Service or Network Integration Transmission Service. Transco requests that the Commission direct the NYISO to add “or any other transmission service provided under the Tariff” to its

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<sup>53</sup> See September Compliance Filing, at pp 16–17.

<sup>54</sup> See, e.g., Section 6.13 of the OATT (providing for the recovery of Transco’s revenue requirements).

<sup>55</sup> Transco Protest, at pp 3–5.

definition to “ensure that NY Transco and all future non-incumbent developers . . . are recognized as providing ‘Transmission Service’ under the Tariffs and therefore would meet the definition of a ‘Transmission Owner’ under the Tariffs.”<sup>56</sup>

Transco is correct that the definition of “Transmission Owner” includes the provision of “Transmission Service” under the ISO Tariffs.<sup>57</sup> However, Transco is incorrect that it does not satisfy the definition of a “Transmission Owner” because the facilities that it owns are used to provide “Transmission Service” in the NYCA. When forming the NYISO, the NYTOs initially proposed to create a financial reservation system for Transmission Service that was different from the *pro forma* FERC Order No. 888 physical reservation Point-to-Point and Network Integration transmission services. The Commission required the NYISO instead to include the *pro forma* transmission services in its tariffs.<sup>58</sup> The NYTOs subsequently filed and the Commission accepted the existing NYISO OATT versions of Point-to-Point and Network Integration Transmission Service. Both of these NYISO services differed from their *pro forma* OATT equivalents because the NYISO OATT reflected the fact that the NYISO offers them in the context of a financial reservation system based upon location-based marginal cost pricing.<sup>59</sup>

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<sup>56</sup> *Id.* at p 5. Transco’s arguments addressing the definition of “Transmission Service” exceed the bounds of the September Compliance Filing made in response to the Commission’s December Order because the NYISO has not proposed any revisions to the scope of any services provided through the NYISO’s tariff and, therefore, such changes should be proposed and considered through the NYISO’s stakeholder process.

<sup>57</sup> The term “Transmission Owner” is defined 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.*” Section 1.20 of the OATT (emphasis supplied).

<sup>58</sup> *Central Hudson Gas & Electric Corp., et al.*, Order Conditionally Accepting Tariff and Market Rules, Approving Market-Based Rates, and Establishing Hearing and Settlement Judge Procedures, 86 FERC ¶ 61,062, at pp 8–10 (January 27, 1999); *Central Hudson Gas & Electric Corp., et al.*, Order Denying in Part and Granting in Part Rehearing and Clarification and Conditionally Accepting Compliance Filing, Docket Nos. ER97-1523-003 and -004, OA 97-470-004 and -005, and ER97-4234-002 and -003, at p 8 (July 29, 1999) (“July 1999 Order”).

<sup>59</sup> July 1999 Order, at p 8.



The September Compliance Filing did not propose to modify these Commission-approved provisions.

Under the “financial reservation” model, Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) use locational marginal pricing to manage congestion and to operate bid-based spot markets. Pursuant to the NYISO’s Commission-approved Locational Based Marginal Pricing (“LBMP”) framework, the NYISO’s energy markets handle imbalances and set the price for energy and various ancillary services, on both a “day ahead” and “real-time” basis. Transmission Service is scheduled implicitly when customers submit energy schedules via the energy markets or arrange for bilateral transactions. There are no express reservations of physical transmission service and customers may schedule transactions between any two points so long as doing so is not inconsistent with a security-constrained economic dispatch. All desired uses of the transmission system are scheduled to the extent that customers are willing to pay congestion charges, which can be hedged using mechanisms such as TCCs. The NYISO continuously redispatches the grid on a security-constrained least-cost basis in order to maximize its efficient usage. As the Commission acknowledged in Order No. 890, both the Point-to-Point and Network Integration Transmission Service provisions of the *pro forma* OATT have been substantially revised in the NYISO’s Commission-approved tariffs to reflect the fact that the NYISO offers these services in an LBMP context. Because Transco is a signatory to the NYISO’s tariffs and agreements, this NYISO financial-reservation version of Point-to-Point and Network Integration service is provided over Transco’s transmission facilities.<sup>60</sup>

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<sup>60</sup> See Order No. 890, at P 158; *New York Indep. Sys. Operator, Inc.*, Compliance with Order No. 890, Docket No. OA08-13-000, at pp 5–7 (October 12, 2007).

Moreover, if a Transmission Customer were to ever request *pro forma* physical transmission service, such as Point-to-Point Service under Sections 3.7 of the NYISO OATT, the NYISO with the assistance of Transco and other Transmission Owners would have to perform the required studies and, if the Transmission Customer agrees to pay the cost, construct the necessary transmission facilities to provide that service.<sup>61</sup> Although no Transmission Customer has requested such service since the NYISO's formation, the Commission has rejected the NYISO's request to remove its *pro forma* version of Transmission Service from the ISO Tariffs.<sup>62</sup> The NYISO, however, has received requests for and performed studies in accordance with the provisions of its OATT. In sum, given that Transco's transmission facilities provide financial reservation based Point-to-Point and Network Integration transmission service under the ISO Tariffs, and that it would have to allow physical transmission service on its facilities if requested, no amendment to the definition of Transmission Service is required for Transco, or another owner of a transmission facility that executes an Operating Agreement, to qualify as a Transmission Owner.

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<sup>61</sup> See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 75 FERC ¶ 61,080 at pp 16–161 (1996) (adopting requirement that all public utilities must offer point-to-point and network transmission service whether or not the utility provides itself that service); *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888-A, 78 FERC ¶ 61,220, at p 11 (1997) (Order No. 888 “requires all public utilities that own, operate or control interstate transmission facilities to offer network and point-to-point transmission services . . . to all eligible buyers and sellers in wholesale bulk power markets”).

<sup>62</sup> *New York Indep. Sys. Operator, Inc.*, Order Rejecting Proposed Tariff Sheets, 131 FERC ¶ 61,074, at PP 16–19 (April 27, 2010).

#### **IV. CONCLUSION**

**WHEREFORE**, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this Answer and accept the Compliance Filing in the above-referenced docket without requiring any modifications.

Respectfully submitted,

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