

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

Transmission Planning and Cost Allocation)	
By Transmission Owning and Operating)	Docket No. RM10-23-000
Public Utilities)	

**COMMENTS OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. (“NYISO”) respectfully submits these comments on the Commission’s *Notice of Proposed Rulemaking* (“NOPR”) concerning *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*.¹ The NYISO supports the Commission’s goals of facilitating transmission planning and, where appropriate, promoting transmission infrastructure investment. The NOPR outlines a number of reasonable reforms that should help to achieve the Commission’s objectives. It appropriately continues the Commission’s traditional policy of allowing different regions the flexibility to develop their own solutions to transmission planning process and implementation requirements. It also rightly focuses on the need to avoid taking actions that “might disrupt the progress that is already being made”² in transmission planning, a principle that is especially important in Independent System Operator and Regional Transmission Organization (“ISO/RTO”) regions. Finally, the NOPR would reasonably require that interregional planning and cost allocation arrangements be established only for facilities that are

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 131 FERC ¶ 61,253 (2010) (“NOPR”).

² *Id.* at P 33.

physically located within neighboring regions and would prohibit the involuntary allocation of costs to those who would not receive any benefit.

The Commission should reject any proposals that would entail more radical and disruptive changes to ISO/RTO planning rules or overly prescriptive mandates that would override regional flexibility. At the same time, the Commission should recognize that the transmission planning and cost allocation “deficiencies” which the NOPR is intended to address do not exist in all parts of the country. It should therefore narrow the scope of the compliance filings under a final rule so that ISOs/RTOs are not effectively compelled to once again demonstrate compliance with requirements that they have already satisfied in their individual Order No. 890³ planning proceedings. Any final rule should clarify that public utility transmission providers will not be required to have a separate cost allocation process exclusive to “public policy” transmission projects so long as such projects fall within the scope of some other cost allocation procedure (or if the procedure for consideration of such public policies does not require a separate cost allocation methodology). Finally, the Commission should be cautious in exercising any authority that it may have to impose pre-determined interregional cost allocation methodologies and cost recovery mechanisms. Experience suggests that doing so is likely to be extremely difficult and may well do more harm than good.

In addition to these comments, the NYISO is a signatory to, and supports, the *Comments of the ISO/RTO Council*, which were also submitted today.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009) (“Order No. 890”).

I. BACKGROUND

A. The NYISO's Compliance with Order No. 890's Planning Requirements

Order No. 890 required all public utility transmission providers to submit compliance filings adopting an open, transparent, and coordinated planning process at both a regional and a local level, and to propose “a coordinated and regional planning process” that satisfied various planning principles and requirements.⁴ Recognizing that some transmission providers, particularly ISOs/RTOs, already had substantial planning processes in place, the Commission held that “a transmission provider (including an RTO or an ISO . . .) may make a compliance filing in this proceeding describing its existing coordinated and regional planning process, including the appropriate language in its tariff, and show that this existing process is consistent with or superior to the requirements in this Final Rule.”⁵

The NYISO held numerous stakeholder meetings regarding Order No. 890's requirements and worked collaboratively with stakeholders to develop a compliance proposal that enjoyed broad support. The overall compliance effort spanned several years and is now very nearly complete.

Well before Order No. 890, the NYISO held a collaborative stakeholder process to create a Comprehensive Reliability Planning Process (“CRPP”) under Attachment Y to its Open Access Transmission Tariff (“OATT”) that was filed in August 2004.⁶ The

⁴ Order No. 890 at P 437.

⁵ *Id.*

⁶ *New York Independent System Operator, Inc.*, Filing of Comprehensive Reliability Planning Process and Related Agreement, Docket No. ER04-1144-000 (filed August 20, 2004).

Commission approved the CRPP in December 2004⁷ and the NYISO issued its first reliability planning assessment and comprehensive plan in 2005.⁸

Following Order No. 890, the NYISO, together with the New York Transmission Owners (“NYTOs”),⁹ submitted a joint initial compliance filing (“December 2007 Filing”) proposing a new Comprehensive System Planning Process (“CSPP”) that built upon the CRPP. The NYISO and the NYTOs proposed to add a Local Transmission Planning Process (“LTPP”) for open and transparent planning by individual NYTOs for their local systems.¹⁰ Moreover, the NYISO proposed a new economic planning process - the Congestion Analysis and Resource Integration Study (“CARIS”) under which the NYISO analyzes congestion on the bulk power transmission system over a ten-year period, conducts additional congestion studies for all requestors at their expense, and conducts studies on specific projects to relieve congestion.¹¹ The NYISO proposed to extend the planning cycle from one year to two years to accommodate these additional functions.

The December 2007 Filing also explained that the NYISO would satisfy Order No. 890’s interregional coordination principle through its continued participation in the Northeast Coordinated System Planning Protocol (“NCSPP”), which is now on file with

⁷ *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,372 at P 1 (2004).

⁸ See *New York Independent System Operator, Inc., Comprehensive Reliability Planning Process (CRPP) Reliability Needs Assessment* (December 21, 2005), available at < http://www.nyiso.com/public/webdocs/newsroom/press_releases/2005/rna_final12212005.pdf>.

⁹ The NYTOs supporting the joint compliance filing were Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation. References to the NYISO in this section should be read to include the NYTOs, which have joined the NYISO in each of the compliance filings.

¹⁰ NYISO OATT, Attachment Y at Section 31.2.1.

¹¹ NYISO OATT, Attachment Y at Section 31.3.1.

the Commission. The NCSPP provides the procedures for the exchange of planning-related data and information and establishes the system planning analysis procedures to be utilized by the parties. The NCSPP also provides for the development of a Northeastern Coordinated System Plan among PJM, the NYISO, and ISO-NE (including the technical participation of the Ontario Independent Electric System Operator, Ontario Power Authority, Hydro Quebec, and New Brunswick) which incorporates the individual system plans. The entire process is conducted in an open and transparent manner in collaboration with an inter-regional stakeholder advisory committee (“IPSAC”).

On June 18, 2008, the NYISO supplemented the December 2007 Filing with a tariff proposal governing cost allocation and cost recovery for regulated transmission reliability projects under the CRPP (“June 2008 Filing”).

In an order issued on October 16, 2008,¹² the Commission found that the tariff proposals in the December 2007 and June 2008 Filings were substantially consistent with the planning directives set forth in Order Nos. 890 and 890-A, and conditionally accepted those proposals for filing subject to the submission of a compliance filing addressing certain identified issues.

On January 14, 2009 and May 19, 2009, the NYISO submitted joint compliance filings in response to the October 2008 Order (respectively, the “January 14 Filing” and the “May 19 Filing”). In an order issued on October 15, 2009 (“October 2009 Order”),¹³ the Commission conditionally accepted for filing the tariff amendments submitted by the

¹² *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,068 (2008) (“October 2008 Order”). Notably, at P 70 of the October 2008 Order, the Commission cited the NCSPP and found that the NYISO’s compliance filing satisfied Order No. 890’s inter-regional planning principle. Similarly, the NYISO understands that the Commission found PJM and ISO-NE to be compliant with the interregional coordination requirements of Order No. 890 based on the existence of the NCSPP.

¹³ *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,044 (2009).

NYISO in the January 14 and May 19 Compliance Filings, and directed the submission of an additional compliance filing to address “certain discrete issues.”

On December 11, 2009, the NYISO submitted a compliance filing addressing most of the compliance issues identified in the October 2009 Order. On April 13, 2010, the NYISO submitted another compliance filing addressing the remaining issues that were not addressed in the December 11, 2009 filing. On August 30, 2010, the Commission issued an order unconditionally accepting that filing.¹⁴

Finally, on July 15, 2010, the Commission issued an order accepting for filing the changes submitted in the December 11, 2009 compliance filing, and directing further minor changes to Attachment Y of the NYISO OATT. The NYISO filed those directed changes with the Commission on August 16, 2010. Those compliance revisions are the last component of the NYISO’s and NYTOs’ compliance with Order No. 890’s transmission planning requirements that remains pending before the Commission.

B. The NYISO’s Comprehensive System Planning Processes

The two-year planning cycle under the CSPP commences with the LTPP of each NYTO, which develops a Local Transmission Plan (“LTP”), with input from interested parties participating in the NYISO’s planning processes. The NYISO uses the LTPs as input to its base case for its reliability planning process for the New York Bulk Power Transmission Facilities. The CRPP includes the development of a Reliability Needs Assessment (“RNA”) and a Comprehensive Reliability Plan (“CRP”). For each “Reliability Need” identified in the reliability planning process, the NYISO seeks market-based solutions -- which may include generation, transmission, or demand response

¹⁴ *New York Independent System Operator, Inc., et al.*, 132 FERC ¶ 61,188 (2010).

resources -- while at the same time designating a Responsible Transmission Owner to plan and, if necessary, implement a regulated backstop solution if no viable market-based solutions are forthcoming in time to satisfy the Reliability Needs. Other Developers may also submit proposals for alternative regulated solutions. All proposed solutions are analyzed by the NYISO to determine whether they will meet the identified Reliability Needs.

Once the reliability planning phase of the CSPP is complete, an economic planning process is conducted through the CARIS, a group of three congestion and resource integration studies developed with stakeholder input through an open and transparent process. Under Phase II of CARIS, the NYTOs or developers may submit proposals for regulated economic transmission projects for evaluation by the NYISO for cost recovery under the NYISO's Tariff. As the NYISO explained in the December 7 Filing, the costs of economic upgrades will be allocated based on a "beneficiaries pay" approach under which those entities that economically benefit from a project will bear its costs, and the cost allocation among them will be based upon their relative economic benefit from such upgrades. The proposed economic cost allocation and cost recovery mechanism under the NYISO OATT will apply only if at least a super-majority of a project's beneficiaries -- 80 percent of the weighted vote of the beneficiaries -- agree that an economic project should proceed.

Attachment Y also uses a "beneficiaries pay" cost allocation methodology for regulated transmission projects, when they are needed to meet reliability needs because private investment in projects is insufficient. The methodology is based on a three-step approach that focuses on whether a need is a locational need, a statewide need, or a

bounded regional need.¹⁵ For upgrades needed to satisfy locational reliability requirements in those areas that have Locational Capacity Requirements (“LCRs”) for Installed Capacity -- currently, New York City and Long Island -- costs are allocated solely to LSEs in those LCR zones. For upgrades needed to satisfy statewide reliability requirements, costs are allocated to all New York Control Area (“NYCA”) load zones based on their contribution to the NYCA coincident peak load, although the LCR zones receive a credit against this allocation for costs incurred to meet their locational capacity requirements. For upgrades needed to satisfy reliability requirements within a bounded area, costs are allocated to zones within the bounded area based on their NYCA coincident peaks.

C. Transmission Planning in New York Works Well

The NYISO recognizes the Commission’s view that reforms are needed to address “deficiencies” in certain existing regional transmission planning and cost allocation procedures. The NYISO respectfully submits, however, that its Commission-approved processes and procedures do not have significant deficiencies and are not in need of major reform. That does not mean that the NYISO opposes the NOPR or believes that all of its existing procedures are perfect. As is discussed in more detail below, in Section II, the NYISO supports nearly all of the NOPR’s proposals and is prepared to make the incremental improvements that would be applicable to it if the NOPR’s proposals were to be adopted. It does mean, however, that the Commission should reject any suggestions that may be offered in comments that would require unnecessary radical changes in regions such as New York.

¹⁵ Needs are determined in accordance with a standard that requires sufficient resources to ensure that the New York Control Area has a loss-of-load expectation of less than 0.1 days per year.

Needed transmission has been, and is being, constructed to serve New York. Among other developments, between 2000 and 2009 nearly 1,300 MW of transmission capability was added to bring more power to Long Island and New York City from the PJM and New England control areas.¹⁶ Additional transmission projects are at varying stages of development, including: (i) the Hudson Transmission Project, a planned 660 MW 4.5 mile underwater DC cable between New Jersey and New York City that plans to enter service in 2012;¹⁷ (ii) the Cross Hudson-Cable Project, a 700 MW, 8 mile AC line between New Jersey and New York City projected to enter service by mid-2013; and (iii) the Champlain-Hudson Power Express, a 370 mile underwater and underwater DC cable that would deliver up to 1,000 MW of wind and hydropower to New York City, and which is expected to enter service in 2015.¹⁸

The prevalence of new and proposed underwater transmission facilities terminating in the downstate region is not unexpected given environmental and other siting restrictions in New York, the distribution of the State's load, and the insular geography of the downstate region. Transmission investment decisions reflect in part the recommendations and other information produced by the NYISO's planning processes, with respect to both transmission and non-transmission resources, as well as the

¹⁶ New York Independent System Operator, Inc., *Power Trends 2010* at 3, 5 (April 5, 2010) available at < http://www.nyiso.com/public/webdocs/newsroom/power_trends/power_trends2010_FINAL_04012010.pdf>.

¹⁷ The New York State Public Service Commission approved issuance of a certificate of public convenience and necessity for the Hudson Transmission Project at its Session held September 8, 2010. See PSC Case No. 08-T-0034, *HUDSON TRANSMISSION PARTNERS, LLC – Appn. for a Certificate of Environmental Compatibility and Public Need for a 345 Kilovolt Submarine/Underground Electric Transmission Line Between Manhattan and New Jersey*.

¹⁸ Champlain Hudson Power Express, *Project Details - Background* (2010) available at < <http://www.chpexpress.com/background.php>>.

locational price signals emanating from the NYISO-administered energy, capacity, and ancillary services markets.

D. Recent Interregional Planning Developments in the Eastern Interconnection

The NYISO has played a leading role in the formation and implementation of the Eastern Interconnection Planning Collaborative (“EIPC”), which has been awarded \$16 million by the Department of Energy to conduct interconnection-level planning and analysis under the American Recovery and Reinvestment Act of 2009 (“ARRA”). The EIPC will build upon the regional expansion plans developed each year by regional stakeholders in collaboration with their respective North American Electric Reliability Corporation Planning Authorities. The Stakeholder Steering Committee (“SSC”) was formed in June, interconnection-wide technical analysis is already underway, and the SSC has formed working groups to recommend future resource scenarios that will be the subject of detailed transmission reliability and economic analysis during Phase II. This approach will provide coordinated interregional analysis for the entire Eastern Interconnection guided by the consensus input of an open and transparent stakeholder process.

The NYISO, and other EIPC participants, believe that the results of this unique initiative will provide a sound basis for policy makers, and regulators, as they consider future transmission system from a public policy perspective. The NYISO appreciates the NOPR’s support for the EIPC and the Commission’s statement that it does not intend for its new proposals to interfere with this important initiative.

II. COMMENTS

A. Proposed Transmission Planning Reforms

1. *Participation in a Regional Transmission Planning Process*

The NOPR proposes to require public utility transmission providers to participate in a regional transmission planning process that produces a regional plan that meets seven of the nine Order No. 890 transmission planning principles.¹⁹ Regional processes would have to “consider and evaluate transmission facilities and other non-transmission solutions” and to “develop a regional transmission plan that identifies transmission facilities that cost-effectively meet the needs of transmission providers, their transmission customers, and other stakeholders.”²⁰ The NOPR also noted that “the existing regional transmission processes that many utilities relied upon to comply with the requirements of Order No. 890 may require only modest changes to fully comply with these requirements.”²¹

The NYISO supports the NOPR’s proposed regional planning requirements but respectfully submits that ISOs/RTOs should not be required to make a new compliance filing to address them. As was explained above, the NYISO and the NYTOs already conduct a comprehensive regional transmission planning processes that accounts for reliability and economic needs for the bulk power system in the New York Control Area. The CSPP already provides comparable treatment to both transmission and non-transmission solutions (generation and demand response), and culminates in the development of a regional plan. Furthermore, as noted above, the Commission has

¹⁹ NOPR at Appendix B.

²⁰ *Id.* at P 51.

²¹ *Id.* at P 53.

already found the CSPP to be in compliance with Order No. 890's planning principles with respect to reliability and economic projects. The NYISO understands that the same is true of other jurisdictional ISOs/RTOs.

Accordingly, none of the "deficiencies" that the NOPR identified with respect to regional planning appear to be applicable to the NYISO or to other ISOs/RTOs. It likewise does not appear that ISOs/RTOs will need to make even "modest changes" that the NOPR anticipated might be required in some regions. The NYISO respectfully submits that it is in full compliance with Order No. 890 and the principles established in the NOPR for regional transmission planning. Compelling the NYISO (and the NYTOs) to make another compliance filing to re-establish that they are meeting the Commission's expectations in this area would not serve any useful purpose, but would divert limited resources from the implementation of the approved planning procedures.

The final rule in this proceeding should also clarify that it is not calling for any changes to the configuration of the ISO/RTO planning regions that were accepted in various Order No. 890 compliance proceedings. There would be no benefit to revisiting the boundaries of ISO/RTO planning regions. Engaging in such an exercise would only expend resources that would be more productively committed to actual planning work.

2. Public Policy Driven Projects

a. "Considering" vs. "Identifying" Public Policy Priorities

The NOPR would require all public utility transmission providers to amend their tariffs to explicitly provide for consideration of public policy requirements established by state or federal laws or regulations in local and regional transmission planning.²²

²² *Id.* at P 64.

Planning studies may also choose to consider such proposals even when they are not explicitly required. The NOPR did not propose to identify the public policy requirements that must be considered in each local or regional process. Instead, it would “require each public utility transmission provider to coordinate with its customers and other stakeholders to identify public policy requirements established by state or federal laws or regulations that are appropriate to include in its local and regional planning processes.”²³

While the NYISO supports the NOPR’s proposal, the Commission should understand, that existing transmission planning rules already provide for consideration of public policy requirements in many regions. For example, both the NYISO’s reliability and economic planning processes already include robust scenario analyses of the impacts of environmental regulations, energy efficiency, renewable resource and other public policies contained in federal and New York State laws, rules and goals on the bulk power transmission system and future system needs.

In addition, the NYISO has provided technical analyses that were instrumental in the development of the long-range New York State Energy Plan (“SEP”),²⁴ which was adopted in 2009 at the direction of the New York State Energy Planning Board (“SEPB”) (and which encompasses electricity as well as other energy issues). The SEPB brings New York State’s various energy, environmental, and public welfare agencies together to formulate an SEP that reflects the state’s principal energy policy objectives. These policies include promoting renewable energy resources (wind, solar, sustainable hydroelectric), and energy efficiency so that 45 percent of the State’s electricity needs in

²³ *Id.* at P 65.

²⁴ *See* State Energy and Planning Board, *2009 State Energy Plan* (December 2009), *available at* <<http://www.nysenergyplan.com/stateenergyplan.html>>.

2015 will be met by renewables (30 percent) and energy efficiency (15 percent), one of the most aggressive goals of its kind in the nation.

The NYISO conducted bulk power system reliability analyses and various scenario analyses for the 2009 New York State Energy Plan, and provided numerous white papers and technical input to the State Energy Plan Technical Working Group. A new State law in 2009 has designated the NYISO a non-voting member of the SEPB.²⁵ The NYISO expects to devote significant resources to the next SEP development in 2011.

Furthermore, the NYISO is already required to perform certain transmission studies upon request by the New York State Public Service Commission. Recently, the NYISO completed an extensive study on the transmission system impacts of integration of up to 8,000 MW of future wind-powered generation in New York.²⁶ The NYISO also conducts other “special studies” that inform state policymaking, such as a study of the bulk power system resource impacts of proposed nitrogen oxides rules requiring “Reasonably Available Control Technology” for fossil fueled power plants. The NYISO stands ready to study the impacts of federal energy and environmental policies, such as a possible future federal renewable portfolio standard or carbon cap and trade program, on the New York bulk power transmission system.

New York and other regions have their own energy planning priorities. There is thus ample reason for the Commission to afford different regions the flexibility to respond to the NOPR’s proposed “public policy” requirements in the manner that best

²⁵ *McKinney’s Session Laws of New York, 2009 N.Y. Laws Chapter 433.*

²⁶ The NYISO has not finally published the report, however, a final draft was provided at the June 18, 2010 Market Issues Working Group Committee Meeting Group meeting. *See*, New York Independent System Operator Inc., *NYISO Wind Generation Study Final Draft* (June 2010), available at <http://www.nyiso.com/public/webdocs/committees/bic_miwg/meeting_materials/2010-06-18/Wind_Generation_Study_Report_Final_Draft_6_22_10_CLEAN.doc>.

suits their circumstances. Accordingly, the NYISO supports the NOPR's call for planning processes to "consider" and "account for" state and federal public policy programs without being more prescriptive.

The final rule in this proceeding should be clear that public utility transmission providers will not be charged with identifying which public policies should be considered in the planning process, or with somehow coming up with those policies themselves. Such a requirement would necessarily compel public utility transmission providers, and stakeholders, to "identify" which public policies would be excluded from consideration. Although the NYISO has a voice in the public policy-making process and lends its data and expertise to that process, it is not itself engaged in making public policy and it looks to New York and federal policy makers for the direction to follow in its analyses. Public utility transmission providers should simply consider public policy priorities that have been identified by such policy makers in their planning processes.

Making private entities responsible for assessing the relative importance, or even the validity, of energy or environmental public policies would not be appropriate. Consequently, the final rule should instead expressly accommodate arrangements, such as New York's, where "identifying" public policy priorities is rightly the province of state and federal authorities.

b. Use of Flexible Criteria for Determining which Projects Should Be Included in a Regional Transmission Plan

The NOPR invites comments on "how planning criteria based on public policy requirements should be formulated, including whether it is more appropriate to use flexible criteria instead of 'bright line' metrics when determining which projects are to be

included in the regional transmission plan”²⁷ The NOPR expressed some concern that the use of flexible criteria might “provide undue discretion as to whether a project is included in a regional transmission plan” while also noting that the use of “bright line metrics” could “inappropriately result in alternating inclusion and exclusion of a single project over successive planning cycles” and thus be disruptive.²⁸

The Commission should not adopt uniform national requirements in this area, but should allow different regions to adopt metrics that best suit their circumstances. In general, the NYISO is not concerned that the exercise of “undue discretion” is a danger that the Commission needs to guard against in ISO/RTO regions, since ISOs/RTOs are independent neutrals with no commercial interests in planning outcomes. Moreover, allowing for the use of more flexible criteria appears to be more consistent with the NYISO’s position that policymakers, whose policy decisions will not be constrained by Commission-approved tariffs in any event, should identify which public policy considerations are relevant to transmission planning. Although regions that prefer “bright line metrics” should be free to propose them, the Commission should not mandate that they be used.

3. *Treatment of Non-Incumbent Transmission Providers*

a. *Eliminating the “Federal Right of First Refusal”*

The NOPR expresses concern that existing regional transmission planning arrangements might allow for undue discrimination and preferential treatment against non-incumbent transmission providers. It therefore proposes to require public utility transmission providers to make a variety of tariff revisions to accommodate participation

²⁷ NOPR at P 70.

²⁸ *Id.*

by non-incumbents in regional transmission planning efforts. Among these reforms is a proposal to eliminate any “federal right of first refusal” that might exist under the public utility transmission provider’s Commission-approved tariffs or agreements.²⁹

The NYISO generally supports the NOPR’s proposal, but notes again that the potential problem it is aimed at addressing does not exist in all regions. There has never been a “federal right of first refusal” in any of the NYISO’s tariffs or agreements. To the contrary, the NYISO invites and considers all proposed solutions and solution types at the same time and on a comparable basis. The CRPP invites “Other Developers” to submit both merchant and alternative regulated reliability project proposals for analysis by the NYISO. CARIS, similarly, has no restrictions on who may propose a regulated economic transmission project for evaluation. The NYISO therefore is already in compliance with the NOPR’s proposed requirement in this regard. Any final rule in this proceeding should be clear that entities such as the NYISO are not required to change existing planning arrangements in connection with the elimination of the federal right to first refusal.

b. Qualification Criteria for Transmission Project Sponsors

The NOPR proposes to require each public utility transmission provider to demonstrate that its regional transmission planning process includes appropriate qualification criteria for determining an entity’s eligibility to propose a project that do not discriminate between incumbents and non-incumbents. All such criteria would be included in the public utility transmission provider’s OATT. The NOPR states that it is not “intended to change existing RTO and ISO operational procedures and practices . . .

²⁹ *Id.* at PP 87-95.

.”³⁰ but also seeks comment on whether there should be “a single set of qualification criteria that would apply in all regional transmission planning processes”³¹

The NYISO supports the NOPR’s proposal but urges the Commission not to attempt to create a single set of “one size fits all” qualification criteria. Well-developed criteria already exist in the NYISO region. The NYISO developed them criteria with its stakeholders and, in response to a recent FERC compliance order, has incorporated those criteria into the reliability and economic transmission planning processed contained in Attachment Y of its OATT. These criteria are applicable to both incumbent and non-incumbent proposals on a comparable basis. Attempting to create standardized national criteria would unnecessarily re-open questions that have been successfully resolved within the respective regions and distract from more important planning work. Allowing regional flexibility is the better approach.

c. Eligibility for Regional Cost Recovery

The NOPR would clarify that non-incumbents must enjoy the same right as incumbents to recover the cost of a transmission project through a regional cost allocation method -- provided that they participate in the regional planning process. Conversely, “costs associated with a project that is not included in the regional transmission plan, whether proposed by an incumbent or by a non-incumbent transmission provider, may not be recovered through a transmission planning region’s cost allocation process.”³² At the same time, the NOPR would not require a developer that does not seek to take

³⁰ *Id* at n. 97.

³¹ *Id.* at P 90.

³² NOPR at P 96.

advantage of a regional cost allocation mechanism, *e.g.*, a merchant transmission developer, to participate in the regional transmission planning process.³³

The NYISO strongly supports all of these proposals. In particular, the question of whether developers that do not participate in a regional transmission process may nevertheless obtain regional cost recovery has been controversial in several ISO/RTO regions. By incorporating the NOPR's proposal in a final rule the Commission will provide needed certainty,³⁴ adopt a reasonable compromise that recognizes the importance of the regional planning processes, and discourage future attempts to make end-runs around them. Eliminating the federal right of first refusal should also ameliorate any legitimate concern a developer might have that its efforts to advance a proposed project through a regional process might go to waste.³⁵ As the NOPR proposes, however, project sponsors that do not intend to participate in a regional planning process should remain free to do so provided that they are willing to recover their costs through existing market structures or other means.

d. Special Priority Rights

Finally, the NOPR proposes to create a new priority for non-incumbent sponsors whose projects are not included in one year's regional transmission plan but that then re-submit the projects in later years. In that situation, the sponsor would have the "right" for

³³ *Id.* at P 99.

³⁴ *See, e.g., The Nevada Hydro Company, Inc. and California Independent System Operator Corp.*, 129 FERC ¶ 61,098 at P 25 (2009) (finding that a project must be evaluated "under CAISO's transmission planning process"), *reh'g denied*, 131 FERC 61,124 at P 24 (2010) (same); *Pioneer Transmission, LLC*, 130 FERC ¶ 61,044 at P 17 (2010) (finding that a project would "have to be evaluated through Commission-approved transmission planning processes").

³⁵ The NOPR notes this possible concern at PP 87-88.

a number of years to develop its project even if one or more substantially similar projects were proposed by others in later transmission planning cycles.³⁶

As drafted, this proposal appears to be highly problematic for the reasons that are set forth in the *Comments of the ISO/RTO Council*. Most notably, it would actually hinder transmission planning by creating an incentive for potential sponsors to flood transmission queues with speculative projects in order to capture the priority “right to build.” The NYISO’s planning process already includes procedures establishing the timelines and windows of opportunity for projects to be submitted to the NYISO for evaluation in each planning cycle. This process includes projects proposed by incumbent NYTOs as well as Other Developers of generation, transmission and/or demand response resources. There has been no suggestion that these procedures are not just and reasonable.

Moreover, creating such a preferential right would interfere with the market-driven nature of the NYISO’s reliability and economic planning processes. Under the CRPP and the CARIS, if a reliability need is identified or congestion quantified over certain facilities, private developers compete for investors and financing for their projects and the discipline of the market determines which projects are built. If the Commission creates a right to develop for certain developers, it will disrupt that discipline by favoring certain projects over others that would not necessarily merit development based on their economics. Accordingly, the Commission should not adopt generic requirements that would override the existing procedures in a final rule. The Commission should instead allow for regional flexibility and not mandate a new preferential right for any one class of market participants.

³⁶ NOPR at P 95.

4. *Interregional Planning*

The NOPR proposes to require each public utility transmission provider to coordinate with each of the neighboring regions within its interconnection to address transmission planning issues.³⁷ Coordination between planning regions would be governed by bilateral interregional planning agreements, which would be filed with the Commission, and which could be developed by ISOs/RTOs on behalf of their members.³⁸ The NOPR specifies a number of features that would have to be included in interregional agreements.³⁹ In particular, the NOPR would require that the agreements provide for the concurrent and coordinated evaluation of projects that would be located in two neighboring regions and clarify that inclusion of the regional project in both regional transmission plans would be a prerequisite to the recovery of project costs through regional cost allocation processes.⁴⁰ The NOPR states that it is not proposing to require interconnection wide planning or cost allocation, was not requiring multi-lateral planning agreements, and was not “intended to interfere with the efforts already underway in ARRA-funded transmission planning initiatives”⁴¹

The NOPR’s interregional planning proposals are reasonable and should be included in the final rule in this proceeding. Requiring coordinated evaluation for projects that are physically located in neighboring regions is a realistic reform that the NYISO believes can be implemented by building on the existing NCSPP. The focus on projects that physically span two regions would set an appropriate national baseline that

³⁷ *Id.* at P 114.

³⁸ *Id.* at P 115.

³⁹ *Id.* at P 117.

⁴⁰ *Id.* at P 118.

⁴¹ *Id.* at P 112.

would not preclude regions that wish to go further from including other kinds of projects in their planning and cost allocation arrangements. Setting a realistic requirement would, however, avoid disrupting planning efforts in regions that are not yet prepared to go further. For the same reasons that it supports making participation in a regional transmission planning process a prerequisite to regional cost recovery, the NYISO also strongly supports the NOPR's proposal that a project's inclusion in both regions' transmission plans be a prerequisite to the recovery of project costs under an interregional cost recovery system.⁴²

The NOPR correctly encourages, but does not propose to require, multi-lateral interregional planning agreements. This approach will give the nascent interregional planning initiatives established under the ARRA, such as the EIPC, an opportunity to develop. It would be premature for the Commission to establish additional interregional planning institutions, or to press for the creation of new interregional transmission plans, at a time when so much effort is already being devoted to EIPC implementation by all of the major Planning Authorities in the Eastern Interconnection. Any such effort would risk frustrating ongoing ARRA-sponsored efforts, contrary to the NOPR's stated intent.

To the extent that jurisdictional public utility transmission providers would be required to enter into bilateral agreements with neighboring Canadian systems, the Commission should clarify that they will not be deemed to be out of compliance with the final rule if they are unable to complete such agreements. It would be unjust to hold jurisdictional entities responsible if a Canadian neighbor, which ultimately cannot be compelled to enter into bilateral agreement, declines to do so.

⁴² See Section II.A.3.c, above.

Finally, the NYISO has no objection to the proposed elements that the NOPR would require all interregional agreements to include, provided that the final rule allows each “interregional transmission planning agreement to be tailored to best fit the needs of the regions entering into the agreement.”⁴³ The Commission should determine “what” elements it wishes to be included, and allow “how” those elements are implemented to be negotiated among parties to bilateral planning agreements.

B. Proposed Cost Allocation Reforms

1. The NOPR’s Proposals

In general, the NOPR concludes that changing industry circumstances have necessitated reforms to the Commission’s cost allocation policies. The NOPR takes the position that the Commission has the legal authority it needs to implement those reforms. In particular, it maintains that under the established “cost causation principle” the Commission may “allocate costs of a transmission facility to a beneficiary identified through an appropriate process, such as a Commission-approved transmission planning process” even if the beneficiary does not voluntarily consent to the allocation.⁴⁴ The NOPR also notes judicial precedent requiring that all costs allocated to an identified beneficiary must be at least roughly commensurate with the benefits that are expected to accrue to that entity.⁴⁵

Under the NOPR’s proposed reforms cost allocation and the transmission planning process would be more closely aligned.⁴⁶ All public utility transmission

⁴³ NOPR at P 117.

⁴⁴ *Id.* at P 147.

⁴⁵ *Id.*

⁴⁶ *Id.* at P 156.

providers would be required to “have in place a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plan produced by the transmission planning process in which it participates.”⁴⁷ There could be a single, universal, cost allocation method, or different methods for different types of facilities.⁴⁸ It appears that the NOPR does not require that there be a separate cost allocation methodology for transmission projects aimed at addressing “public policy” concerns so long as there is some allocation regime that would apply to such projects.⁴⁹

The NOPR would require each public utility transmission provider to develop methods for allocating the costs of new intraregional and interregional transmission facilities. Intraregional facility costs would be allocated wholly within the relevant region unless an external entity voluntarily agreed to share in them. Interregional cost allocation arrangements would apply only to transmission facilities physically located in both of the neighboring regions, and could take the form of a direct allocation between the regions or an allocation among beneficiaries located in both.⁵⁰ Broader interregional cost allocation arrangements are encouraged, but not required.⁵¹ The NOPR would also adopt intra- and interregional cost allocation principles that would be used to evaluate the justness and reasonableness of proposed cost allocation methodologies.⁵² The NOPR states that the principles are not intended to dictate a uniform approach to cost allocation and the NOPR expressly recognizes that “regional differences may warrant distinctions in

⁴⁷ *Id.* at P 159.

⁴⁸ *Id.* at P 160.

⁴⁹ *Id.*

⁵⁰ *Id.* at P 161.

⁵¹ *Id.* at P 173.

⁵² *Id.* at P 163.

cost allocation methods among the transmission planning regions.”⁵³ Finally, the NOPR proposes that if a public utility transmission provider were unable to develop satisfactory cost allocation methods in consultation with its stakeholders, the Commission would use the record in the relevant compliance proceeding to impose a compliant allocation methodology.⁵⁴

2. Comments

The NYISO generally supports the NOPR’s proposed reforms but takes no position at this time on its assertions regarding the Commission’s legal authority to impose cost allocation rules.

The NYISO supports the NOPR’s proposals with respect to intraregional cost allocation, including its emphasis on the “beneficiaries pay” principle (within each planning region) and on regional flexibility. For the reasons set forth in Section II.A.1 above, however, the Commission should narrow the scope of the required compliance filings so that ISOs/RTOs are not forced to re-justify intraregional cost allocation rules for reliability and economic projects that were recently approved in their individual Order No. 890 compliance proceedings. As noted above, the NYISO is already in compliance with the Commission’s cost allocation requirements for both reliability and economic projects.

The NYISO also generally supports the NOPR’s proposals with respect to interregional cost allocation, including the proposals to accommodate regional flexibility, to require allocations only between regions where a proposed facility is physically

⁵³ *Id.* at P 165. *See also Id.* at P 175 (“There may be legitimate reasons for the public utility transmission providers located in neighboring transmission planning regions to adopt different cost allocation methods”).

⁵⁴ *Id.* at PP 164-66.

located, and to prohibit allocations to regions that receive no benefit from an interregional project (even though the project is located within that region.) Consistent with other NOPR proposals, no region, and no beneficiary, should ever be subject to a mandatory interregional cost allocation for a project that was not first reviewed under the auspices of an interregional planning arrangement and included in both regional plans (although voluntary participant funding should continue to be permitted.) As with the corresponding interregional planning requirements, it would be appropriate to allow more expansive voluntary cost allocation arrangements, but would be premature and unrealistic to require all regions to adopt specific cost allocation methodologies on an *ex ante* basis that would be applicable to future situations as yet unknown.

The NYISO is concerned that the NOPR's proposal to prescribe detailed interregional cost allocation regimes when neighboring regions are unable to create them is unlikely to achieve the benefits that the Commission anticipates. Having an accepted cost allocation regime in place is important to facilitating transmission investment but an allocation regime that is imposed in the absence of broad interregional support is unlikely to materially advance that goal.

Even if the Commission has the authority to impose cost allocation rules, doing so without resolving the disputes that prevented a voluntary solution will simply shift those disputes to other venues. The potential difficulties are likely to be especially acute when multiple states are involved given the ability of states unhappy with the Commission's methodology to impede transmission projects through permitting decisions, regulatory mandates, or legislative action. Any Commission-imposed allocation regimes would also likely be challenged in federal court which would, at a minimum, result in years of

uncertainty, thereby defeating the purpose of imposing rules in the first place. In short, the Commission should encourage the development of interregional cost allocation rules between neighboring regions but should stop short of mandating such requirements where agreement cannot be reached.

Part of the problem in this area is the inherent difficulty of negotiating specific cost allocation rules in advance that would encompass all transmission projects that might be proposed in the future. Having to develop rules that would apply to all possible future projects will necessarily make parties more cautious about protecting their interests in every possible scenario, thereby complicating and extending the negotiations. Unfortunately, it appears that the NOPR envisions requiring neighboring regions to establish exactly these kinds of highly detailed, *ex ante* rules.

Experience suggests that each interregional transmission project encompasses a diverse range of unique reliability and economic interests. Moreover, the projects themselves tend to be unique in their configuration and in their interconnection of geographic and metropolitan areas that differ widely. Just as a tailor cannot anticipate every type of suit and fit for every possible customer or occasion, Transmission Planners cannot anticipate the multiplicity of interests and accommodations that need to be made for every possible transmission project. Accordingly, the imposition of such requirements will not resolve potential cost allocation disputes but will simply shift them to other venues, or give rise to new disputes.

In order to progress toward interregional cost allocation arrangements, the NYISO recommends that the Commission take a more measured approach. Neighboring regions should be directed to include language in their tariffs expressly affirming their obligation

to negotiate cost allocation rules for any interregional projects that are approved through their respective transmission planning processes. Moreover, the final rule should also state that all public utility transmission providers must adopt the rule's proposed interregional cost allocation principles in their tariffs, and that any allocation agreement for a specific transmission project that is agreed upon would have to comply with those principles. Finally, the rule should require that each public utility transmission provider's tariff include provisions for interregional cost recovery for projects that are agreed upon in accordance with these principles. If neighboring regions were unable to translate the general tariff language into a specific cost allocation arrangement for a specific transmission project that was approved through their planning processes, the Commission could then push for an alternative solution with respect to any agreed-upon project on a case-by-case basis with less difficulty. This approach would give transmission sponsors confidence that approved projects would not be indefinitely delayed due to cost allocation disputes. It would also spare public utility transmission providers from having to negotiate universally applicable cost allocation rules in advance, which would, at a minimum, avoid a significant distraction from actual planning activities. The NYISO respectfully requests that the Commission adopt this proposal in any final rule that may be issued in this proceeding.

The final rule should also make it clear that public utility transmission providers may adopt cost allocation methodologies for different types of transmission projects without creating a specific cost allocation mechanism applicable solely to "public policy" projects. The NOPR appears to contemplate that this would be permissible, stating that public utility transmission providers may use different cost allocation methodologies so

long as no class of transmission project is excluded from their scope.⁵⁵ Clarification to eliminate any possible ambiguity would nevertheless be helpful because it does not appear to be necessary, or efficient, to mandate that there be distinct cost allocation rules for public policy projects in all regions. This is especially true for regions such as New York that do not currently have a rule requiring that “public policy” projects be constructed. Such cost allocation methodologies can and should be determined on a project-specific basis depending on the policy driving the agreed-upon transmission project.

C. Compliance Timetable

The NOPR proposes that each public utility transmission provider must submit a compliance filing addressing each of the NOPR’s proposed requirements, except for those pertaining to interregional transmission planning agreements and interregional cost allocation methods, within six months of the effective date of a final rule in this proceeding. Compliance filings with respect to interregional planning agreements and interregional cost allocation methods would be due within one year of the effective date.⁵⁶

The NYISO is concerned that the one year compliance deadline would not provide sufficient time if the final rule, contrary to the recommendations above, requires highly detailed “*ex ante*” interregional cost allocation arrangements. It will likely be difficult for public utility transmission providers to reach such arrangements, especially

⁵⁵ *Id.* at P 160 (“[C]ost allocation methods may distinguish among facilities that are driven by needs associated with maintaining reliability, relieving congestion, and achieving public policy requirements established by state or federal laws or regulations The Proposed Rule would permit a public utility transmission provider or transmission planning region to distinguish or not distinguish among these three types of transmission facilities, as long as each of the three is considered in the transmission planning process and there is a means for allocating the costs of each type of facility to beneficiaries”).

⁵⁶ NOPR at P 179.

with multiple neighboring entities (including, potentially, non-jurisdictional transmission providers), on a relatively compressed timetable. In addition, if the final rule adopts the NOPR's proposal that involuntary cost allocation mechanisms be imposed on regions that cannot establish them voluntarily, then the deadline ought to be longer than a year.

Otherwise, the Commission risks triggering a large number of contested cost allocation proceedings that would take longer to resolve, consume more resources, and create more controversy, than simply allowing voluntary negotiations to reach their natural conclusion. The NYISO submits that no less than twenty four months after the effective date of a final rule for regions would be required to develop and conclude bilateral interregional cost allocation arrangements with neighboring control areas.

III. COMMUNICATIONS

Correspondence and communications with respect to this filing should be sent to:

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* Persons designated for service.

IV. CONCLUSION

For the reasons that were set forth above, the NYISO respectfully requests that any final rule issued in these proceedings adopt the recommendation made in these comments as well as those submitted by the ISO/RTO Council.

Respectfully submitted,

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