



HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

TED J. MURPHY
DIRECT DIAL: 202-955-1588
EMAIL: tmurphy@hunton.com

December 18, 2012

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

Re: **New York Independent System Operator, Inc., Errata to December 11, 2012
Answer in Docket No. ER13-102**

Dear Secretary Bose:

On December 11, 2012, the New York Independent System Operator, Inc. and the New York Transmission Owners¹ (collectively, "Filing Parties") submitted an answer to comments and protests in this proceeding. An error in that answer has subsequently come to the Filing Parties' attention. Specifically, the last sentence beginning on page 23 of the answer should be corrected to read as follows "If a PPR does not expressly provides that it is intended to benefit a certain region or segment of the population, the tariff provides that the default cost allocation methodology will be used."

In order to correct this error, the Filing Parties are resubmitting and serving a clean revised version of the answer, which includes the correction described above.

Respectfully submitted,

/s/Ted J. Murphy

Ted J. Murphy
Counsel to the
New York Independent System Operator, Inc.

Enclosure

cc: Service List

¹ The NYTOs are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a LIPA, New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc.

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

New York Independent System Operator, Inc.)

ER13-102-000

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

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”) the New York Independent System Operator, Inc. (“NYISO”) and the New York Transmission Owners (“NYTOs”)² (together the “Filing Parties”) respectfully submit this request for leave to answer and answer (“Answer”). The Answer responds to comments and protests regarding the Filing Parties’ Order No. 1000³ compliance filing submitted on October 11, 2012 in the above-captioned proceeding (“Compliance Filing”) by: (1) E.ON Climate & Renewables North America, LLC (“E.ON”); (2) Entergy Nuclear Power Marketing, LLC; (3) Exelon Corporation (“Exelon”); (4) the Independent Transmission Developers (“LS Power”)⁴; (5) the Independent Power Producers of New York State, Inc. (“IPPNY”); (6) the Long Island Power Authority and its operating subsidiary, Long Island Lighting Company d/b/a/ LIPA (“LIPA”);⁵ (7) the Multiple Intervenors (“MI”); (8) New York

² The NYTOs are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a LIPA, New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc. LIPA and NYPA as transmission owners not subject to the FERC’s rate jurisdiction under Section 205 of the Federal Power Act have voluntarily participated in the development of the Compliance Filing and thereby join the other NYTOs in this pleading.

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

⁴ LS Power consists of LS Power Transmission, LLC, LSP Transmission Holdings, LLC, and Pattern Transmission LP.

⁵ The NYISO does not take a position on the limited additional tariff revisions proposed by LIPA because they pertain to unique questions regarding LIPA’s legal authority and jurisdictional status that do

State Public Service Commission (“NYPSC”); (9) NextEra Energy Resources, LLC (“NextEra”); (10) the PSEG Companies (“PSEG”)⁶; (11) the Public Interest Organizations (“PIOs”).⁷

The Filing Parties agree with Exelon and the NYPSC that the Compliance Filing should be accepted as filed. The Filing Parties also ask that the Commission reject the protests contending that the Compliance Filing does not comply with Order No. 1000.⁸ The proposed compliance tariff revisions enhance the NYISO’s established comprehensive regional transmission planning process to bring it into full compliance with all Order No. 1000 requirements. They are carefully crafted to fully comply with the Commission’s requirements while providing the flexibility necessary to foster transmission development, including independent transmission development, in the New York Control Area (“NYCA”).⁹ Further, they are the product of an extensive stakeholder process. Finally, the proposed tariff changes that have been unilaterally proposed by MI, the PIOs, and LS Power, should be rejected.¹⁰ Those changes would not bring the NYISO into full compliance with Order No. 1000, and, in many cases, would undermine existing NYISO planning processes.

not directly concern the NYISO. The NYTOs (including LIPA) would like to clarify that LIPA and the other NYTOs have discussed the discrete set of tariff revisions proposed by LIPA and that the NYTOs do not object to LIPA’s filing and the inclusion of these tariff provisions in the NYISO’s tariff.

⁶ The PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

⁷ The PIOs consist of the Sustainable FERC Project, Pace Energy and Climate Center, and the Natural Resources Defense Council.

⁸ All subsequent references in the body of this Answer to Order No. 1000, refer to the Commission’s directives in both Order No. 1000 and Order No. 1000-A, where appropriate.

⁹ Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in Attachment Y of the NYISO’s Open Access Transmission Tariff (“OATT”), and if not defined therein, in the NYISO OATT and Market Administration and Control Area Services Tariff (“Services Tariff”).

¹⁰ The Filing Parties have limited their response to those issues for which they believe that providing additional information will best assist the Commission to reach its decision. The Filing Parties’ silence with respect to any particular argument or assertion should not be construed as acceptance or agreement.

TABLE OF CONTENTS

I.	BACKGROUND	5
II.	REQUEST FOR LEAVE TO ANSWER	5
III.	ANSWER.....	6
	A. The Compliance Filing Does Not Reflect Bias for or Against Any Class of Stakeholders and Properly Responds to Order No. 1000	6
	B. The Proposed PPR Planning Process Fully Complies with Order No. 1000.....	11
	1. The Definition of the Term “Public Policy Requirements” Appropriately Includes Orders Issued by the NYPSC	11
	2. The Roles of the NYPSC and NYISO in the PPR Planning Process Are Appropriately Defined	15
	3. The PPR Planning Process Provides for the Consideration of Non-Transmission Alternatives	22
	4. The Proposed Cost Allocation Methodology for the PPR Planning Process Is Fully Compliant with Order No. 1000	23
	a. The Proposed Cost Allocation Methodology Complies with the Order No. 1000 Cost Allocation Principles	23
	b. The Existing CARIS Cost Allocation Methodology Should Not Be Applied to Transmission Solutions Driven by PPRs	27
	c. The PPR Planning Process Appropriately Addresses Concerns Regarding “Forum Shopping”	28
	C. The NYISO’s Existing Economic Planning Process Complies with Order No. 1000.....	31
	D. The Compliance Filing Fully Complies with the Order No. 1000 Non-Discrimination Directives	32
	1. The Reliability Planning Process as Revised in the Compliance Filing, Fully Complies with the Order No. 1000 Non-Discrimination Directives	34
	2. The Proposed Tariff Revisions Allow for the Identification and Evaluation of the More Efficient or Cost-Effective Projects for Selection in a Regional Transmission Plan.....	39
	E. The NYISO’s Proposed Entity and Project Qualification and Project Monitoring Criteria Do Not Discriminate Against Non-Incumbents	40
	F. The Proposed Effective Date is Reasonable and Necessary to Ensure the Proper Implementation of the PPR Planning Process	43
IV.	CONCLUSION.....	45

I. BACKGROUND

The Compliance Filing was developed through an extensive stakeholder process that included numerous meetings held between the fall of 2011 and August 28, 2012. The Compliance Filing: (1) explains how most of the NYISO's current reliability and economic transmission planning processes in OATT Attachment Y already comply with, or surpass, many of Order No. 1000's directives; (2) proposes limited tariff revisions to the reliability and economic planning processes to bring them into full compliance; and (3) proposes tariff revisions to add a new Public Policy Requirements ("PPR") transmission planning process, as required by Order No. 1000.

In response to comments provided during the stakeholder process, numerous revisions were made to the proposed compliance revisions, contrary to the allegations made in some of the protests. Through the stakeholder process, the Filing Parties were able to narrow the differences on many issues, and achieve broad consensus on others. Most of the issues raised in the protests were discussed at length during the stakeholder process. The fact that certain protesting parties remain opposed to certain elements of the Compliance Filing is a reflection of the controversial nature of the PPR planning issues, and not the fairness of the stakeholder process. Nor is the existence of disagreement evidence of a failed process. The Filing Parties fully and fairly engaged with other stakeholders regarding the Compliance Filing and found common ground wherever possible. It was simply not possible to achieve consensus on issues where some stakeholders had diametrically opposed views.

II. REQUEST FOR LEAVE TO ANSWER

The Filing Parties may answer pleadings that are styled as comments as a matter of right.¹¹ The Commission has discretion to accept answers to protests when they help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding.¹² This Answer satisfies those standards as it addresses inaccuracies, and provides clarification and additional information that should be considered, along with the initial Compliance Filing letter. The Answer will help the Commission to fairly evaluate the arguments raised in the protests. The Filing Parties, therefore, respectfully request that the Commission accept this Answer.

III. ANSWER

A. **The Compliance Filing Does Not Reflect Bias for or Against Any Class of Stakeholders and Properly Responds to Order No. 1000**

Given the rhetorical excesses of certain protests that accuse the NYISO of bias, that accuse the NYTOs of a conflict of interest, or criticize the stakeholder process which produced the Compliance Filing, several points are worth re-emphasizing. The NYISO is a not-for-profit, impartial and independent entity. The NYISO has no incentive to favor any class of stakeholder, including the NYTOs. The NYISO's only stake in the outcome of this proceeding is the desire to have a regional transmission planning process that: (1) is fully compliant with all Order No. 1000 directives; (2) will foster the efficient development of transmission in New York State;

¹¹ See 18 C.F.R. 385.213(a)(3) (2012).

¹² See, e.g., *S. Cal. 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"); *N.Y. 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); *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207 at P 44 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

and (3) can be implemented in a manner consistent with the framework of the NYISO's existing, and successful, Commission-approved planning processes.¹³

It is worth pointing out that even before the issuance of Order No. 1000, the Filing Parties jointly proposed and the Commission adopted tariff provisions that contained no right of first refusal or preference of any kind for the NYTOs. Indeed, the pre-existing tariff requires transmission, generation and demand side proposals to be considered on an equal basis¹⁴ and, even to the extent the NYISO determines that a regulated solution is needed, any party is eligible to propose regulated solutions.¹⁵ It is also worth noting that in the seven years since the NYISO has been conducting its existing planning processes there have been no substantiated claims by project sponsors of discriminatory action on the part of the Filing Parties.

Additionally, contrary to MI's assertions, the NYTOs' role in the development of the PPR planning process was not inappropriate. The NYTOs neither "dictated their desired outcomes"¹⁶ to the NYISO, nor imposed them on other stakeholders. To the contrary, the Compliance Filing was primarily drafted by the NYISO, in consultation with all interested parties, over the course of eleven stakeholder meetings that reviewed Order No. 1000 and developed compliance tariff language. As a practical matter, the Commission-jurisdictional NYTOs were required by Order No. 1000 to develop and join with the NYISO on this Compliance Filing, as the public utility Transmission Providers for their Transmission Districts.

¹³ See, e.g., Order No. 1000 at P 31 (stating that the Commission's intent "was not to disrupt the progress being made with respect to transmission planning and investment in transmission infrastructure") and P 204 (stating that the Order No. 1000 requirements are "intended to enhance, rather than replace, existing transmission planning obligations under Order No. 890").

¹⁴ See OATT Attachment Y §§ 31.1.2, 31.1.4, 31.2.5.1, 31.2.4.4, 31.2.4.6.2, 31.2.1.3.3, 31.2.4.2.1. All subsequent references in this Answer to the NYISO's tariff will be to OATT Attachment Y, as proposed to be revised in the Compliance Filing, unless otherwise noted.

¹⁵ See § 31.2.4.6.

¹⁶ MI at 9.

It is simply wrong to claim that the NYISO stakeholder process favored the NYTOs—or any other entity. MI merely raises the allegation, as opposed to explaining and supporting how, under the proposed procedures, that the NYTOs directed any particular outcome, much less how any project a NYTO may propose in the future will receive favorable treatment to the detriment of another entity. All projects—regardless of the proponent—are and will be treated equally in the identification, selection and ultimate determinations of which will proceed. All such determinations will be made after full consideration of input from interested parties on all market-based and regulated solutions. Similarly, allegations that the NYTOs’ submittal of a proposal for Governor Cuomo’s “New York Energy Highway Initiative” represents a conflict of interest with respect to their participation in the drafting of the Compliance Filing are unfounded.¹⁷

The Compliance Filing balances competing stakeholder interests and fully complies with all Order No. 1000 directives while allowing the flexibility necessary to encourage the additional development of transmission in the NYCA. Over the course of approximately nine months of stakeholder meetings, the proposed tariff modifications were discussed, reviewed, and revised. Contrary to the assertions of protestors, multiple changes to the proposal were made when the NYISO determined that they were warranted in order to account for stakeholder concerns.¹⁸ The

¹⁷ Regarding MI’s specific assertions that the NYTOs’ submittal of a proposal for the Energy Highway Initiative represents a conflict of interest (*see* MI at 8-9), it should be noted that it was entirely appropriate for the NYTOs to submit a proposal in response to the request for proposals for one of the Governor’s highest priority policy initiatives. That process was open to all interested parties and the NYTOs’ proposals were among one hundred and thirty submitted in response to that request. The proposals were posted on the Energy Highway website and the Energy Highway process provided parties with an opportunity to comment on the proposals. The Energy Highway Initiative is relevant to this proceeding in that it demonstrates the value of establishing a NYISO process that can provide policymakers with guidance and expert analysis concerning the relative efficiency and cost effectiveness of proposals such as those that may emerge from the Governor’s initiative.

¹⁸ For example: (1) the definition of PPR was the subject to extensive discussion and multiple revisions including the proposed “Executive Orders” qualification criteria that was substantially

fact that the different protests advocate for various incompatible, or mutually exclusive, changes demonstrates the balance achieved by the Filing Parties' proposal.¹⁹

Assertions that, because the Compliance Filing does not enjoy total consensus support, it must somehow require greater scrutiny or is not a "proper" compliance filing²⁰ are devoid of merit. As acknowledged by protesters,²¹ the Commission has recognized that while achieving consensus is encouraged, under the NYISO's governance process compliance filings do not require consensus support.²² The NYISO and other ISOs/RTOs have routinely made compliance filings that did not enjoy such support, which are accepted by the Commission.²³

eliminated and limiting NYPSC orders included in the definition to those orders issued pursuant to notice and comment under the State Administrative Procedures Act; (2) the PPR planning process was revised to provide for the NYPSC to request consideration of non-transmission solutions, when appropriate; (3) language was added in the PPR planning process to add a market impact evaluation; (4) language was added to the PPR planning process to specify the type of metrics that could be used in the NYISO's evaluation of PPR projects; (5) revisions were made to the PPR planning process to clarify the NYPSC's role, including adding language to require the NYDPS to issue a written statement, to be posted on the NYISO website, that explains why a particular transmission need was selected for further evaluation and others were not; (6) modifications were made to the entity qualification requirements to address the concerns of LS Power; (7) provisions were added to the PPR process to address MI and IPPNY's concerns regarding "forum shopping"; and (8) LIPA's concerns regarding the role of the Long Island Power Authority in the PPR planning process were discussed in multiple stakeholder meetings.

¹⁹ For example, the protests: (1) advocate for both a more expansive (PIO, LS Power) and a narrower definition of Public Policy Requirement ("PPR") (MI, IPPNY); (2) argue that the PPR process will allow for both the over-development of transmission solutions (IPPNY, MI) and constraints that will create barriers to entry from non-incumbent transmission developers (LS Power); (3) argue that the default cost allocation methodology for PPR-driven projects is inconsistent with the "beneficiary pays" principle of Order No. 1000 (IPPNY, MI) and appropriately considers the beneficiaries of such projects (PIO); and (4) Exelon concludes that the filing is fully compliant with Order 1000 and should be approved by the Commission while LS Power urges complete rejection.

²⁰ MI at 11.

²¹ IPPNY at 31-32.

²² *KeySpan-Ravenswood, Inc.*, 101 FERC ¶61,230 at P 29 (2002).

²³ See, e.g., *PJM Interconnection*, 122 FERC ¶61,264 at PP 25-26 (2008) (providing that the compliance filing process cannot be negated by the lack of stakeholder consensus); *KeySpan-Ravenswood, Inc.*, 101 FERC ¶61,230 at P 29 (2002) (accepting a compliance filing that did not receive stakeholder approval, noting in response to protests asserting that such approval was necessary that the "NYISO's governance rules do not require the Management Committee's approval of a Commission-directed compliance filing").

Moreover, there is no basis to assume or require a heightened level of scrutiny beyond the standard applied to any other Order 1000 Compliance Filing.

Similarly, while it is true that compliance filings must respond to Commission “directives,”²⁴ nothing in the Compliance Filing goes beyond the scope of Order No. 1000’s directives. There can be no serious claim that the proposed changes are not in direct compliance with the Commission’s order. Order No. 1000 unquestionably required the submittal of a compliance filing. Instead of adopting specific *pro forma* language, the Final Rule articulated “principles” and general guidance and left it up to individual public utility transmission providers to fashion a compliant proposal while providing for consideration of stakeholder input during that process.²⁵ Other major Commission orders have taken the same approach.²⁶ That is precisely the process that the Filing Parties have employed in the development of the Compliance Filing.

Order No. 1000 gave planning regions the flexibility to craft their own processes consistent with the requirements it established.²⁷ The NYISO did so in a manner that allowed stakeholders to provide input into the development of the Compliance Filing. The lack of

²⁴ See IPPNY at 31, *citing Sea Robin Pipeline Co.*, 138 FERC ¶61,131 at P 32 (2012).

²⁵ Order No. 1000’s broad goals include: (1) ensuring that the transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a regional transmission plan that can meet transmission needs more efficiently and cost-effectively; (2) ensuring that the costs of transmission solutions chosen to meet transmission needs are allocated fairly to those who receive benefits from them; (3) providing for the identification and evaluation of transmission alternatives at the regional level that may resolve the needs more efficiently or cost-effectively than solutions identified in the local transmission plans of individual public utility transmission providers; and (4) inclusion of a process to identify and consider transmission needs driven by PPRs in the regional transmission plan, including cost allocation provisions.

²⁶ See, e.g., *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh’g*, Order No. 719-A, 74 Fed. Reg. 37,776 (July 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

²⁷ See, e.g., Order No. 1000 at PP 61, 108, 157, 158; Order No. 1000-A at PP 10, 99, 223.

specific *pro forma* language in Order No. 1000 does not alter the fact that the Compliance Filing is a compliance filing. To the extent the protestors allege that certain aspects of the Compliance Filing are beyond the scope of Order No. 1000, they are incorrect because, as discussed below,²⁸ they are proposed to satisfy Order No. 1000's requirements.

B. The Proposed PPR Planning Process Fully Complies with Order No. 1000

1. The Definition of the Term “Public Policy Requirements” Appropriately Includes Orders Issued by the NYPSC

The Commission should reject the protests challenging the Compliance Filing's proposed definition of PPR. MI and IPPNY argue that the definition goes beyond the scope of Order No. 1000,²⁹ while the PIOs claim that it is too narrow.³⁰ The Compliance Filing proposes to define “Public Policy Requirements” as

a federal or New York State statute or regulation, including a NYPSC order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act, or any successor statute, that drives the need for expansion or upgrades to the New York State Bulk Power Transmission Facilities.³¹

Some argue that this definition is overbroad and that the inclusion of NYPSC Orders is an expansion of FERC's “minimum requirements”³² because it is not limited to “federal and state laws and regulations that drive transmission needs.”³³ Others contend that the proposed definition is too narrow and object to its application only to transmission needs³⁴ and its

²⁸ IPPNY specifically points to the definition of PPR, the role of the NYPSC process, the consideration of non-transmission solutions, and the cost allocation methodology proposed for PPR projects. Those specific issues are discussed in Sections III.B.1, III.B.2, III.B.3, and III.B.4, respectively.

²⁹ See MI at 38-42; IPPNY at 16, n.57, 33.

³⁰ See PIO at 5-9.

³¹ See §31.1.1.

³² See MI at 4; IPPNY at 16, n.57, 33.

³³ IPPNY at 32.

³⁴ PIO at 6-8.

exclusion of municipal and county laws and regulations.³⁵ This range of diametrically opposing views demonstrates that it was impossible for the NYISO to win the affirmative support of all stakeholders on this issue.

The proposed definition fully complies with Order No. 1000's directive that regional transmission plans consider "transmission needs driven by public policy requirements established by state or federal laws or regulations."³⁶ As the Commission explained "[b]y 'state or federal laws or regulations,' we mean enacted statutes (*i.e.*, passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level."³⁷ The Commission further clarified that PPRs include any "enacted statutes ... and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level" clarifying that the "intent of the word within" is to include "duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government."³⁸

NYPSC orders established after notice and comment under the State Administrative Procedure Act³⁹ are in fact state regulations under New York law and, therefore, within the definition of PPR in Order No. 1000. Thus, the proposed definition does not represent an unwarranted grant of authority to the NYPSC. Furthermore, the definition properly acknowledges the role played by the NYPSC in the oversight of transmission planning as well as implementation of energy policy for New York State. The NYPSC is the agency in New York

³⁵ *Id.* at 8.

³⁶ Order No. 1000 at P 2.

³⁷ *Id.*

³⁸ Order No. 1000-A at P 319.

³⁹ N.Y.A.P.A § 102(2)(a)(i) and (ii). It should further be noted that NYPSC Orders, pursuant to the State Administrative Procedure Act are issued subject to requirements that there be notice and hearing, the development of a record, and a right to appeal.

State that develops energy policy⁴⁰ and approves the siting of all transmission lines over a certain size threshold. Accordingly, it is likely to be the primary source of PPRs that drive the need for transmission in New York State. For example the NYPSC has adopted: (1) Renewable Portfolio Standards requiring the state utilities subject to its jurisdiction to integrate wind, solar and other renewable generation resources;⁴¹ (2) an Energy Efficiency Portfolio Standard that directly affects loads served by the New York bulk power system; (3) Smart Grid projects to upgrade the New York transmission system; (4) proceedings on electric system planning; (5) procedures for notification and evaluation of proposed generator retirements; and (6) recent orders to examine the need for additional alternating current transmission upgrades and contingency plans to address the possibility of generator retirements.⁴² Ignoring NYPSC orders that establish rules of

⁴⁰ See N.Y. Pub. Serv. L. §§ 5, 65, 66 and 72; N.Y. Energy Law Art. 6.

⁴¹ As related in the Comments of the Long Island Power Authority and LIPA, the Long Island Power Authority is not subject to the NYPSC's jurisdiction. However, the Long Island Power Authority has independently adopted its own RPS and energy efficiency standards that are equal to, and in some cases more ambitious than, the NYPSC standards.

⁴² NYPSC Case No. 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, *Order Instituting Proceeding* (Issued and Effective February 19, 2003); NYPSC Case No. 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, *Order Establishing New RPS Goal and Resolving Main Tier Issues* (Issued and Effective January 8, 2010); NYPSC Case No. 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, *Order Establishing Energy Efficiency Portfolio Standard and Approving Programs* (Issued and Effective June 23, 2008); NYPSC Cases 09-E-0310, et al., In the Matter of the American Recovery and Reinvestment Act of 2009, *Order Authorizing Recovery of Costs Associated with Stimulus Projects* (July 27, 2009) (Order Authorizing Recovery of Stimulus Project Costs); NYPSC Cases 09-E-0310, et al., In the Matter of the American Recovery and Reinvestment Act of 2009, *Order Establishing Recovery Mechanism for Smart Grid Projects* (October 19, 2010); NYPSC Case No. 07-E-1507 - Proceeding on Motion of the Commission to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process; NYPSC Case No. 06-M-1017 - Proceeding on Motion of the Commission as to Policies, Practices and Procedures for Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers –Phase II, *Order Initiating Electricity Reliability and Infrastructure Planning* (Issued and Effective December 24, 2007); NYPSC Case No. 0-M-0457 – In the Matter of the System Benefits Charge IV, *Order Continuing the System Benefits Charge and Approving an Operating Plan for a Technology and Market Development Portfolio of System Benefits Charge Funded Programs* ((Issued and Effective October 24, 2011); NYPSC Case No. 12-T-0502, Proceeding on Motion to Examine Alternating Current Transmission Upgrades, *Order Instituting Proceeding* (Issued and Effective November 30, 2012); NYPSC Case No. 12-E-0503 -

general application for energy policy in New York would result in an ineffective and illogical PPR planning process and undermine the Commission’s goals of ensuring that transmission needs driven by state PPRs be addressed. It would artificially prevent the NYISO from addressing and evaluating transmission solutions for any PPR identified in New York State by a law or regulation. Thus, the protests requesting a narrowing of the definition must be rejected.

The Commission should also reject protests calling for a broadening of the definition to encompass non-transmission related needs. Defining PPRs as transmission-related is fully consistent with Order No. 1000 which clearly restricts its directives regarding the PPR planning process, to **transmission needs** driven by PPRs.⁴³ Also, the proposed PPR planning process does allow for the identification and evaluation of non-transmission solutions to those needs, as appropriate.⁴⁴

Additionally, the assertion that the definition is too narrow because it does not include municipal and county actions is factually incorrect.⁴⁵ The definition’s reference to “New York State statutes and regulations” already accounts for all New York State laws, which include local laws under “Home Rule” in New York. Moreover, Order No. 1000-A already recognized the incorporation of such local or municipal measures which rise to the level of New York State regulation when it noted that “[w]e grant APPA’s clarification that Public Policy Requirements established by state or federal laws or regulations includes duly enacted laws or regulations

Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans. Order Instituting Proceeding and Soliciting Indian Point Contingency Plan.

⁴³ See, e.g. Order No. 1000 at P 203 and Order No. 1000-A at P 318 (“Order No. 1000 requires that public utility transmission providers amend their OATTs to provide for the consideration of **transmission needs driven by Public Policy Requirements.**”) (emphasis added).

⁴⁴ See §31.4.2.2; see also *infra* Section III.B.3.

⁴⁵ PIO at 8.

passed by a local governmental entity, such as a municipal or county government.”⁴⁶ This clarification applies specifically to the phrase “state or federal laws or regulations” which is included in the language proposed by the Filing Parties in the PPR definition. Accordingly, no further modification is required to appropriately capture such duly enacted local laws or regulations. The Commission should therefore accept the proposed definition as fully compliant with Order No. 1000.

2. The Roles of the NYPSC and NYISO in the PPR Planning Process Are Appropriately Defined

Some protestors allege that the compliance tariff revisions expand the authority of the NYPSC⁴⁷ beyond what Order No. 1000 contemplated for state agencies.⁴⁸ They assert that the proposed tariff revisions would provide the NYPSC with too much authority “over rates, terms and conditions of service under a FERC-jurisdictional tariff.”⁴⁹ They also contend that the NYPSC’s ability to determine whether a PPR project should proceed to request the necessary local, state and federal authorizations for construction and operation goes beyond what Order No. 1000 permitted for state agencies⁵⁰ and that the NYISO must assume that authority.⁵¹ They argue that the NYPSC’s role in the PPR planning process should be modified to more closely

⁴⁶ Order No. 1000-A at P 319.

⁴⁷ The NYPSC is a bi-partisan legislative commission that resides within and serves as the decision making body of the Department of Public Service. N.Y. Pub. Serv. L. § 4. The Department of Public Service (“NYDPS”) is a separate agency of the State of New York that is governed by the Chairman of the New York Public Service Commission. N.Y. Pub. Serv. L. § 3. All references to NYPSC in this Filing also include the NYDPS, unless otherwise noted.

⁴⁸ *See, e.g.*, PIO at 15-16; IPPNY at 8-15; *see also* E.ON at 2-3.

⁴⁹ *See* IPPNY at 16.

⁵⁰ IPPNY at 10, n.15, 16-20.

⁵¹ IPPNY at 14, 17.

resemble the role it plays in the reliability planning process.⁵² These assertions are without merit and should be rejected.

Order No. 1000 required public utility transmission providers to establish a process that would consider transmission needs driven by PPRs, through: “(1) the identification of transmission needs driven by Public Policy Requirements; and (2) the evaluation of potential solutions to meet those needs.”⁵³ The proposed PPR planning process clearly complies with this directive, proposing a two-step process that: “(1) requires the identification of transmission needs driven by Public Policy Requirements that should be evaluated by the ISO [“(Step One”)]; and (2) solicits requests for specific proposed transmission solutions to address those identified public policy needs, and the evaluation of those specific solutions [“(Step Two”)].”⁵⁴ The NYISO will request stakeholder input regarding the identification of PPR driven transmission needs and evaluate identified needs, as well as specific PPR solutions.⁵⁵ The NYPSC determines which needs require the solicitation of PPR solutions. The NYISO then conducts an extensive evaluation of each of the proposed solutions to the identified need. Based on the NYISO’s analysis, the NYPSC then selects which projects should move forward to seek the necessary local, state, and federal approvals, including construction.⁵⁶ That project will be included in the NYISO’s regional transmission plan and posted on the NYISO public website.⁵⁷

⁵² *See id.* at 9, n.30.

⁵³ Order No. 1000 at P 205.

⁵⁴ *See* §31.4.1.

⁵⁵ *See* §31.4.2, 31.4.3, 31.4.3.1.

⁵⁶ *See* N.Y. Pub. Serv. L. §§ 120, *et seq.* (“Article VII”).

⁵⁷ *See* §31.4.2.1, 31.4.4.

Contrary to protestors' allegations, this allocation of responsibilities does not inappropriately shift the NYISO's obligations to the NYPSC⁵⁸ nor does it contravene Order No. 1000.⁵⁹ The NYPSC has always and appropriately played a significant part in the NYCA planning process.⁶⁰ In recognition of the NYPSC's role as the primary regulator of energy policy in New York State, the proposed regional planning process for PPRs appropriately provides a central role to the NYPSC. The Commission has clearly acknowledged the powers of state commissions, holding that "nothing [in Order No. 1000] ... is intended to preempt or otherwise conflict with state authority over the siting, permitting, and construction of transmission facilities or over integrated resource planning and similar processes."⁶¹ The Commission expressly stated that:

state regulators play an important and unique role in the transmission planning process given their oversight over transmission siting, permitting, and construction, as well as integrated resource planning and similar processes.⁶²

Thus, the Commission contemplated a significant role for state regulators in the PPR planning process although it did not prescribe a specific responsibilities or limitations for them.⁶³

⁵⁸ See PIO at 15-17.

⁵⁹ IPPNY at 17.

⁶⁰ The Filing Parties recognize that the Long Island Power Authority and LIPA have filed comments in support of language recognizing the Long Island Power Authority's responsibility for planning responsibilities on Long Island and the adoption of a parallel role by the Long Island Power Authority in the PPR planning process with respect to actions relating to the physical modification of transmission facilities in the Long Island Transmission District. The arguments herein regarding the role and responsibility of the NYPSC do not preclude the adoption of the language proposed by LIPA.

⁶¹ Order No. 1000-A at P 186. The NYPSC is the state agency that has such authorities under NY State Law. See N.Y. Pub Serv. L. §§ 5, 65, 66 and 72.

⁶² Order No. 1000-A at P 337.

⁶³ Order No. 1000-A at PP 294 (stating that "the Commission believes that each state commission, or the state commissions collectively in a region, is in the best position, in the first instance and in consultation with the transmission providers subject to their jurisdiction, to define the appropriate role for the state commissions in a particular region. This role will take into account the authorities and restrictions conferred by their own states' statutes and their own policy preferences. Thus, the Commission believes it would be inappropriate for us to define the role of all state commissions in every

Our expectation is that state regulators should play a strong role and that public utility transmission providers will consult closely with state regulators. ... ***this will be particularly true in the case of state-level Public Policy Requirements, where state regulators are likely to have unique insights as to how transmission needs driven by those state-level Public Policy Requirements should be satisfied.***⁶⁴

The protestors ignore this explicit recognition of the role of the states and the opportunity for cooperative federalism presented in meeting transmission needs driven by PPRs. Indeed, the Commission in Order No. 1000 was very clear: “[w]e strongly encourage states to participate actively in both the identification of transmission needs driven by Public Policy Requirements and the evaluation of potential solutions to the identified needs.”⁶⁵ Obviously this is particularly true in the case of a single state ISO. Consistent with the Commission’s expectation, the PPR planning process set forth in the Compliance Filing appropriately recognizes a significant role for the NYPSC.

The Commission also should reject assertions that the proposed process does not allow the NYISO to properly manage the needs identification process⁶⁶ or that it does not provide the NYISO the ability to propose solutions.⁶⁷ The Compliance Filing assigns to the NYISO the roles required by Order No. 1000. In Step One, the NYISO solicits input from all interested parties

regional transmission planning process in a single generic proceeding, both because a state commission’s authority and responsibility is established by its own state’s laws—not by this Commission—and because a one-size-fits-all state role would not accommodate the wide range of views expressed by state commissions) and 337 (stating that “the Commission will not require ... a particular status for state regulators in the transmission planning process. To do so would ignore the wide range of roles that state regulators themselves tell us that they are permitted to take under their various state laws”).

⁶⁴ Order No. 1000-A at 338 (emphasis added).

⁶⁵ Order No. 1000 at P 212; *see also* n.189.

⁶⁶ PIO at 14.

⁶⁷ *Id.* at 24.

regarding transmission needs that are being driven by a PPR.⁶⁸ The NYISO may also submit its proposed needs. The NYISO must post all submittals on its public website and send them to the NYPSC for review.⁶⁹ This clearly complies with the requirement that transmission providers allow all interested parties to propose transmission needs driven by PPRs in a “process that is open and transparent ... and [creates] a record for the Commission and stakeholders to review to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.”⁷⁰

Concerns that the NYISO does not choose a solution, or make a determination regarding what PPRs require the solicitation of proposed solutions are also misguided.⁷¹ Order No. 1000-A clearly stated that the Commission “was not requiring public utility transmission providers to make any substantive determinations as to what PPRs may qualify under these reforms or to identify them in their OATTs.”⁷² The Commission also held that it was “not mandating” the building, or identification, of any particular transmission facility to address needs driven by PPRs.⁷³ Order No. 1000 does not require the transmission provider to make a selection – it simply requires that it establish a process for the identification and evaluation of needs driven by PPRs and have a regional plan that allows for the selection of such facilities.⁷⁴

⁶⁸ See §31.4.2 (establishing the process through which the NYISO will manage the needs identification process).

⁶⁹ See §31.4.2 (providing that the “ISO on its own initiative [may] identify a proposed transmission need that it believes is being driven by a [PPR]”).

⁷⁰ Order No. 1000-A at P 321.

⁷¹ PIO at 25.

⁷² Order No. 1000-A at P 327.

⁷³ *Id.* at P 329.

⁷⁴ Order No. 1000 at P 148 (requiring the transmission provider to “evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified ... in [the] local transmission planning

The NYPSC was appropriately assigned the role of reviewing the needs proposed by stakeholders, the NYISO, and other interested parties, and identifying the transmission needs for which solutions should be requested and evaluated for two primary reasons. First, the Filing Parties believe that because the NYISO is a single state ISO it must be recognized that the NYPSC already has a significant role in determining if the construction of a transmission facility is warranted. The simple fact that a transmission project bears some relationship to the implementation of a PPR does not mean that the project, and the assumption of related costs, reflects the state PPR. Second, the Filing Parties sought to avoid expending the NYISO's limited resources on the evaluation of a large number of transmission projects that may not be consistent with state policy goals and are unlikely, therefore, to receive State siting approval.⁷⁵

Moreover, assertions that the level of discretion provided to the NYPSC in the PPR planning process are too broad ignore the fact that the Commission has previously authorized a similar role for the NYPSC to play in the NYISO's reliability planning process.⁷⁶ Like the PPR planning process, the reliability planning process provides that, where the NYISO determines that a regulated reliability solution is needed because a market-based solution is not available,

process" and requiring that the analysis be performed so that the "more efficient or cost-effective solution can be selected in the regional transmission plan for purposes of cost allocation").

⁷⁵ See Order No. 1000 at PP 206-208 (stating that the use of screens to identify "out the larger set of needs, those needs for which transmission solutions will be evaluated" was appropriate, in response to concerns raised by commenters regarding the "open-ended obligation to undertake costly and time-consuming studies").

⁷⁶ See, *N.Y. Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,188 at P 9 (2010) (approving the NYISO's tariff provisions and stating that "[w]hile NYISO's tariff does not provide that it will actually choose among competing solutions (whether they be market-based, regulated, or gap solutions) or resources, it does provide that NYISO will evaluate the competing proposals for their ability to meet the designated Reliability Need in a timely manner" and that "ultimately the decision as to which regulated proposals will be implemented lies with the governmental authorities with jurisdiction over the implementation or siting").

the NYPSC or the appropriate governmental authority will ultimately select the regulated solution to be built to meet Reliability Needs.⁷⁷

NYISO's role in the existing reliability and economic planning processes is to provide for participation by all interested parties, and to perform the technical evaluations necessary to determining whether a proposed project will meet the identified needs in a cost effective and efficient manner. This is precisely the role proposed for the NYISO in the Compliance Filing with respect to PPRs. The NYISO's lead role in the reliability planning process is reasonable because one of the NYISO's primary duties under its agreements and tariffs is to administer a planning process to ensure the reliability of the Bulk Power Transmission Facilities ("BPTFs") in the NYCA, and because the NYISO is the NERC registered Transmission Planner and Planning Coordinator for the New York Control Area. In contrast, the PPR planning process is intended to allow for the identification and evaluation of PPRs, which, particularly because the NYISO is a single state ISO, must necessarily involve the NYPSC in a central way. As Order No. 1000 explained, the requirement that a PPR planning process be included in a public utility transmission provider's tariff is not intended usurp the role of the states. Rather it is intended to incorporate the state's views on PPR needs into the Commission-jurisdictional federal tariff.⁷⁸

Similarly, objections regarding the role of the NYPSC in dispute resolution⁷⁹ should be rejected. The proposed tariff revisions provide for dispute resolution through the NYPSC only with respect to the identification of transmission needs.⁸⁰ The process provides for resolution of such disputes through the NYPSC, because the NYDPS makes the determination and, as such,

⁷⁷ § 31.2.5.7.1.

⁷⁸ Order No. 1000-A at P 330.

⁷⁹ See IPPNY at 14, n.54.

⁸⁰ See § 31.4.2.2.

the dispute is most appropriately resolved through a NYPSC process. Nothing precludes any dispute that falls within the Commission's jurisdiction from being resolved by the Commission. This role is completely consistent with the NYISO's Commission-approved dispute resolution provisions for reliability planning disputes.⁸¹

3. The PPR Planning Process Provides for the Consideration of Non-Transmission Alternatives

The Commission should reject IPPNY's and the PIOs' assertions that the Commission should require the NYISO to evaluate non-transmission solutions to needs driven by PPRs in all cases.⁸² The proposed PPR planning process already provides for such consideration, requiring the NYISO to conduct an evaluation of non-transmission alternatives as responses to PPR driven needs, when requested by the NYPSC.⁸³ Nothing in the proposed tariff revisions limits an entity's right to propose a non-transmission alternative to address a PPR and to be considered by the NYPSC. Requiring the NYISO to conduct an extensive evaluation of proposed non-transmission solutions, where the State entity responsible for the implementation of non-transmission solutions has expressed no interest in them, would be inefficient and could be unduly burdensome. Further, Order No. 1000 is clearly directed at the identification of transmission needs driven by PPRs and the evaluation of transmission solutions to address those needs.⁸⁴

⁸¹ See §§ 31.2.3.3 (RNA disputes) and 31.2.6.3 (CRP disputes).

⁸² IPPNY at 7-8; PIO at 6-8.

⁸³ See §31.4.2.1.

⁸⁴ See, e.g., Order No. 1000 at PP 2, 82, 203.

4. The Proposed Cost Allocation Methodology for the PPR Planning Process Is Fully Compliant with Order No. 1000

a. The Proposed Cost Allocation Methodology Complies with the Order No. 1000 Cost Allocation Principles

Protestors' assertions that the PPR planning process cost allocation methodology does not satisfy Order No. 1000's cost allocation principles should be rejected.⁸⁵ Protestors argue that the proposed methodology would allocate costs of PPR projects to those who do not benefit, lacks transparency, and is not an *ex ante* methodology.⁸⁶ As explained in the Compliance Filing, the proposed cost allocation methodology is *ex ante*, transparent, and allocates costs on a "beneficiaries pay" basis.⁸⁷ The proposal also allows for the flexibility necessary to ensure that where the default methodology does not result in an appropriate cost allocation among beneficiaries, alternatives can be proposed to more closely allocate costs to them. However, it also ensures that project sponsors know that a cost allocation method exists in all cases that ensures costs will be allocated to those that benefit.

Those arguing that the proposed PPR planning process does not include an *ex ante*, and transparent, cost allocation methodology gloss over the fact that the tariff explicitly includes a default *ex ante* methodology that is available to transmission developers. They also argue inconsistently against the default methodology as prescribing what they contend is the wrong kind of *ex ante* formula. The Compliance Filing contains a specific cost allocation methodology to be applied to any PPR project selected in the regional transmission plan, unless an alternate methodology is proposed by the transmission developer and approved by the Commission. The proposed cost allocation methodology is compliant with Order 1000, as it provides advance

⁸⁵ MI at 23-25; IPPNY at 16-17, 19-22; PIO at 26-30.

⁸⁶ MI at 2-3, 11; IPPNY at 25; PIO at 28-29; *see also* E.ON at 4.

⁸⁷ Compliance Filing Letter at 46-48.

assurance to transmission developers that there is a Commission approved cost allocation methodology. It also provides the flexibility and transparency necessary for the PPR planning process to properly allocate the costs of PPR projects.

Section 31.5.5.4⁸⁸ provides that the default methodology will allocate “costs of the transmission project to all Load Serving Entities in the NYCA using a default cost allocation formula, based upon a load ratio share methodology.” As explained in the Compliance Filing, this methodology complies with the Order No. 1000 cost allocation principles because “public policies established by government are generally established to benefit everyone”⁸⁹ making it reasonable to allocate costs to all loads across the NYCA to reflect the generalized benefit being realized by such loads. The default cost allocation methodology is applicable to any PPR project that does not propose an alternative methodology, making it *ex ante* and transparent.

Some protests argue that there is no basis for the NYISO determining that PPR driven projects benefit everyone.⁹⁰ However, protestors fail to offer an adequate basis for their contention that the default cost allocation methodology is unreasonable or that a different methodology should be adopted. In the absence of an express provision in the PPR with respect to benefits and the allocation of costs or the proposal of a more appropriate methodology by the developer, it is reasonable for the load ratio share cost allocation methodology to be in place as the default methodology. Moreover, these protests fail to recognize that Congress, state legislatures, and executive agencies are all charged, by their constitutions or enabling statutes, with serving the public interest of everyone. If a PPR does not expressly provide that it is

⁸⁸ Note that IPPNY points out an incorrect section reference in the Compliance Filing. Section 31.5.5.2.4 should refer to 31.5.5.4, not 31.5.4.4.

⁸⁹ Compliance Filing Letter at 48. Note also that PIO, though protesting the alternative methodologies, supports the default methodology, arguing that it is appropriate to allocate costs across all loads, because PPRs solutions are likely to benefit all consumers. PIO at 30.

⁹⁰ See MI at 19, IPPNY at 20.

intended to benefit a certain region or segment of the population, the tariff provides that the default cost allocation methodology will be used.

Further, the Commission has approved load ratio share cost allocation methodologies for transmission upgrades in other RTO planning processes.⁹¹ Indeed, just because MI envisions transmission projects that it believes that its members may not want to pay for does not mean that MI's members will not receive any benefits from such projects. This type of cost allocation has also been upheld by the D.C. Circuit in the context of a control center constructed by the Midwest Independent Transmission System Operator, Inc. ("MISO"). In the decision, the court affirmed the allocation of the costs of the MISO control center to all loads independent of whether they were a direct beneficiary. In that decision, then Judge John Roberts analogized the MISO to the federal court system⁹² stating that:

In this sense, MISO is somewhat like the federal court system. It costs a considerable amount to set up and maintain a court system, and these costs - the costs of *having* a court system - are borne by the taxpayers, even though the vast majority of them will have no contact with that system (will not *use* that system) in any given year.⁹³

MI's position is similar to "saying that if they are not a litigant, they should not be made to pay for any of the costs of *having* a court system."⁹⁴ Thus, in the context of a PPR project, it makes sense to have socialization as the default cost allocation because benefits are generally widespread and not specific. MI's position that costs cannot be socialized must be rejected.

⁹¹ See, e.g., *PJM Interconnection, LLC*, 138 FERC ¶ 61,230 (2012) (reaffirming the Commission's decision accepting, as just and reasonable, a proposal that would allocate the costs of certain facilities that benefit all entities in a region, across the region); *Southwest Power Pool, Inc.*, 131 FERC ¶61,252 (2010), *reh'g*, 137 FERC ¶61,075 (2011) (accepting a regional cost allocation for the cost of certain transmission facilities that benefit all entities in a region).

⁹² *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 at 1369 (D.C. Cir. 2004) (finding that costs of facilities that benefit entities in a region may be allocated across a region, even where entities in the region may disagree that they are receiving a benefit).

⁹³ *Id.*

⁹⁴ *Id.*

The Compliance Filing also recognizes that there may be circumstances in which the default cost allocation may not be appropriate. Thus, it includes tariff provisions that allow for alternative methodologies to be proposed where warranted, subject to Commission approval.⁹⁵ This flexibility is necessary to account for the fact that the nature of future PPRs cannot be known with certainty. There may be circumstances in which a cost allocation based on load ratio share would not be the best method for aligning the costs and benefits of a selected PPR project. Section 31.5.5.4 of the tariff provides that an alternative cost allocation methodology may be proposed in the PPR, by the project developer, or identified by the NYPSC. Any such alternate cost allocation methodology must be submitted to the Commission for approval as just and reasonable.⁹⁶ Therefore, assertions that a developer can “dictate” its preferred methodology⁹⁷ or that the methodology does not allow for a proper allocation of costs are unfounded. Ultimately, any such proposal will require a finding by the Commission that the cost allocation is just and reasonable and compliant with the Order No. 1000 cost allocation principles.⁹⁸

Finally, no clarification⁹⁹ is necessary regarding whether Commission review and approval of any cost allocation other than the default method is required. The proposed tariff revisions already clearly require Commission approval.

⁹⁵ See §31.5.5.4.

⁹⁶ See §31.5.5.4.4.

⁹⁷ MI at 27-28.

⁹⁸ Also, note that under §31.5.6.5, any proposal for ultimate cost recovery, whether based on the default cost allocation methodology or an alternative cost allocation methodology, for a PPR project must be reviewed by the Commission to determine whether the actual project costs are just and reasonable.

⁹⁹ IPPNY at 14, n.54.

b. The Existing CARIS Cost Allocation Methodology Should Not Be Applied to Transmission Solutions Driven by PPRs

Protestors contend that one of the existing cost allocation methodologies in the tariff (*i.e.*, the methodology applied to projects selected as solutions to congestion identified in the CARIS) must be applied to PPR projects. However, the Final Rule expressly allows different cost allocation methods for different types of transmission projects and does not require a single cost allocation methodology for all transmission projects.¹⁰⁰ And, contrary to protestors' assertions, adoption of the economic planning processes' cost allocation methodology would be inappropriate and may result in unjust and unreasonable rates.

The CARIS methodology is structured for a solution designed to address congestion only and thus determines cost allocation using economic measures.¹⁰¹ Since PPR projects may have no economic benefits, or may have economic benefits that are incidental, inconsequential, or practically unquantifiable, the blanket application of the CARIS methodology would not provide a proper measure for cost allocation. Protestors simply fail to draw a rational connection between a PPR that calls for the construction of transmission for one or more myriad policy reasons and having ratepayers pay for such upgrades based upon the economic effects in every instance.¹⁰²

Moreover, allocating the costs of PPR solutions based solely on the CARIS methodology runs the risk of nullifying the PPR planning process. This is because it would allow parties,

¹⁰⁰ Order No. 1000 at P 689.

¹⁰¹ See §31.5.4.4.

¹⁰² Further, MI's suggestion that where there are no known economic benefits, cost allocation should be determined by the NYPSC (MI at 31) is based on the flawed premise that the costs of meeting PPRs should be paid for based on relative economic benefits. MI's suggestion also contradicts both their objections to the uncertainty regarding the NYPSC's role in the PPR process and to the creation of cost allocation uncertainty. The proposed compliance tariff revisions allow the NYPSC to identify an alternate cost allocation methodology up front, and if no methodology is forthcoming, provides for certainty through the default load ratio share cost allocation methodology.

including MI's members, which constitute some of the largest industrial companies in New York State, to avoid paying for such costs, unless they gained a net economic benefit from the construction of the facility. This is unworkable, given that PPRs will not necessarily provide economic benefits and will more likely have some more generalized public interest benefit (*e.g.*, encouraging energy conservation, incenting the use of renewable energy resources, environmental benefits, *etc.*), which is what is anticipated by the Commission's requirement that planning processes include provisions for PPR projects. Requiring economic benefits for the allocation of the cost of a PPR project would actually undermine the Commission's fundamental objective in requiring a process to identify, evaluate and promote the construction of transmission projects that solve transmission needs driven by PPRs.

c. The PPR Planning Process Appropriately Addresses Concerns Regarding "Forum Shopping"

Protestors allege that the proposed PPR process may lead to "forum shopping" and request that the Commission direct modifications to prevent developers from circumventing the existing reliability and economic planning process, by proposing projects that could be submitted under those processes, as PPR projects.¹⁰³ These protestors believe developers have varying motives for "evading" the NYISO's existing planning process in favor of the proposed PPR process and that such "evasions" may harm competitive markets.¹⁰⁴ These claims should also be rejected for the reasons described below. Indeed, they are in direct conflict with Order No. 1000, which allows for different types of transmission with different cost allocation methods.

The Commission has required the identification and evaluation of transmission needs driven by PPRs in the NYISO's regional transmission plan. The proposed tariff provisions do

¹⁰³ MI at 3, 11; IPPNY at 35, n.63, 37-38.

¹⁰⁴ MI at 29; IPPNY at 36.

provide that where a project has been selected as part of the regional or economic process it must proceed to cost allocation under those provisions.¹⁰⁵ In contrast, however, adoption of the language proposed by MI would erect barriers to entry.

The “forum shopping” that protesters fear would only be a danger if the developer could be assured it satisfies a PPR and could be expected to simply ignore the reliability and economic planning processes, in favor of the PPR process. However, it is not up to a developer to determine that there is a transmission need driven by a PPR for which its project would qualify. Such determination is made by the NYPSC, with significant input by the NYISO and all interested parties.¹⁰⁶

Moreover, there is no reason to assume that a project that is suited primarily to address a reliability or economic need would also be the preferred project to address a transmission need driven by a PPR. A developer that engaged in such “forum shopping” would be taking great risk that its project would not be approved under any of the NYISO’s planning processes. Claims that the PPR planning process is more lenient in allowing transmission projects to be built with tariff cost recovery are unsubstantiated.¹⁰⁷ Simply because the PPR planning process does not follow the same steps used in economic planning does not diminish the multidimensional planning steps (*e.g.*, with respect to interested party participation, metrics evaluation, and regulatory oversight) provided by the PPR planning process.

¹⁰⁵ See §31.5.5.1.

¹⁰⁶ Further, the proposed tariff modifications will allow for due consideration of a PPR project’s potential impacts on competitive markets. The compliance tariff revisions include provisions which require the NYISO to analyze the effects of PPR projects and issue a result on its findings. That report is then revised by the independent Market Monitoring Unit which will identify any such impacts. That MMU report will be provided to the NYISO Board of Directors and the NYPSC which would, to the extent appropriate, address such issues. See §31.4.7 and Services Tariff Attachment O at §3.4.6.8.5.

¹⁰⁷ IPPNY at 28

Additionally, requiring the NYISO to determine whether a project proposed to address a need driven by a PPR would have met the criteria for reliability or economic projects is contrary to the notion of separate categories of transmission sanction by Order No. 1000. Moreover, it would be completely unworkable. This is an impossible task, since it cannot be known in advance whether there would ever be a Reliability Need that a given transmission project may resolve, nor can it be predicted whether a given project could potentially be a solution to an economic need which may appear sometime in the future under different system and economic conditions. It would also contravene existing and proposed tariff language¹⁰⁸ that allows a developer to select which process they wish to have their project evaluated under. Indeed, the whole point of the PPR process is to allow developers that have projects that fulfill transmission needs that are not fully accounted for by economic and reliability planning to propose their project for selection in the regional transmission plan for purposes of cost allocation.¹⁰⁹ Any attempt to override those provisions would likely be controversial and result in disputes that would be brought to the Commission for resolution.

The PPR planning process, as currently drafted, properly limits the NYISO's responsibility to the evaluation of all projects proposed to meet the identified need driven by a PPR. There is no basis in Order No. 1000 for a requirement that the NYISO determine whether a project is more appropriately included in one of the other processes. Nor is there any basis for the NYISO to preclude a developer from proposing its transmission project if, as MI proposes, it is eligible for selection in the reliability planning process and is not selected by the NYPSC, or is eligible for selection in the economic planning process but does not receive a supermajority vote.

¹⁰⁸ See §§ 3.2.4.4, 31.2.4.6, 31.2.4.8, 31.2.5, 10.4, 31.3.2.4, 31.4.3.

¹⁰⁹ Order No. 1000 at P 82 (noting that “existing transmission planning processes generally were not designed to account for, and do not explicitly consider, transmission needs driven by Public Policy Requirements”).

Even if a transmission project is not built for reliability or economic reasons, it may nevertheless be determined by the NYPSC to fulfill a PPR, such as promoting renewable energy, fuel diversity, energy independence and security. As stated above, the purpose of the Order 1000 planning process is to avoid overlooking transmission projects that address PPRs beyond just reliability and congestion relief.

C. The NYISO's Existing Economic Planning Process Complies with Order No. 1000

LS Power argues that the Compliance Filing's retention of the Commission-approved rule that a project receive 80 percent approval by project beneficiaries in order to be selected as a solution to congestion identified in the CARIS violates Order No. 1000.¹¹⁰ As the Filing Parties demonstrated in the Compliance Filing, Order No. 1000 expressly allows the use of this kind of voting mechanism.¹¹¹ Additionally, the Commission has found that the NYISO's CARIS voting mechanism is just and reasonable.¹¹²

LS Power asserts that the tariff is non-compliant based only on its observation that, to date, there has not been a single project submitted for vote under the economic planning process.¹¹³ It wrongly presumes that this fact is a problem and then speculates that it must be the result of the "mere existence of the rule [which] has been a deterrent to submission of economic

¹¹⁰ LS Power at 23-27.

¹¹¹ Order No. 1000 at P 689.

¹¹² *N.Y. Indep. Sys. Operator, Inc.*, 129 FERC ¶61,045 at P 130 (2008) (finding the voting mechanism to be "a useful check to ensure that a project has net benefits, by requiring that most of those whom the NYISO expects to benefit from a project agree that they actually will benefit"); *N.Y. Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,320 at P 36 (2009) (rejecting arguments on rehearing that the voting process should be eliminated as discriminatory, holding that "voting mechanisms, such as NYISO's meet the Commission's expressed desire in Order No. 890-A that beneficiaries who must pay for projects should have the right to determine if other solutions are superior to economic projects"); *see also N.Y. Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,136 (2009).

¹¹³ LS Power at 24.

projects to address New York’s substantial congestion.”¹¹⁴ LS Power proffers no evidence whatsoever that the supermajority voting requirement has prevented economic transmission projects from coming to fruition. In the first two CARIS planning cycles, transmission projects have been proposed to the NYISO, and they may proceed so long as they meet tariff eligibility requirements to produce net production cost savings and exceed \$25 million in cost. Of the two projects proposed, one project withdrew its request and the other is still under evaluation.

Additionally, LS Power’s assertion that incumbent transmission owners will bar any CARIS project must also be rejected. Such concerns were addressed by the Commission in prior orders accepting that proposal and addressed through the adoption of provisions that require all votes to reject a proposal to be explained by the beneficiaries and submitted to the Commission.¹¹⁵ Neither has LS Power submitted any evidence that the process results in such discriminatory behavior. Thus, assertions that the CARIS voting requirement does not comply with Order No. 1000 should be rejected as unsupported.

D. The Compliance Filing Fully Complies with the Order No. 1000 Non-Discrimination Directives

LS Power,¹¹⁶ and others,¹¹⁷ make numerous allegations concerning the NYISO’s existing reliability planning process, urging the Commission to find it non-complaint with Order No. 1000. As noted above, the Commission determined that planning entities did not have to re-justify existing planning processes that were previously found to be compliant with Order

¹¹⁴ *Id.*

¹¹⁵ See §31.4.5.6.5 (requiring beneficiaries voting against approval to submit to the ISO their rational for their vote, including a “detailed explanation of the substantive reasons underlying the decision”).

¹¹⁶ LS Power at 9-23.

¹¹⁷ See, NextEra at 5-7; PSEG at 6-8.

No. 890, as is the case with the NYISO's reliability and economic planning process.¹¹⁸

Nevertheless LS Power incorrectly raises arguments that Order No. 1000 called for precisely such a reexamination and alleges that the existing process run afoul of Order No. 1000 for the reasons specified below.

As an initial matter, LS Power's assertions that the Commission should direct the NYISO to revise the tariff to establish a single reliability and PPR planning process has absolutely no basis in Order No. 1000.¹¹⁹ To the contrary, as discussed above, Order No. 1000 clearly states that "nothing in this Final Rule prohibits the development of a separate class of transmission projects" and noting that "public utility transmission providers might comply with this Final Rule by implementing procedures to consider transmission needs driven by Public Policy Requirements separately from transmission addressing reliability needs or economic considerations."¹²⁰ The Commission further indicated that separate cost allocation methodologies may be adopted for regional reliability, economic and PPR projects.¹²¹ The fact that Order No. 1000 *might* allow transmission providers to develop a single planning process does not mean that LS Power can convert such permission into a mandate that the such a process *must* be established in New York.

This unsubstantiated, and contradictory, assertion should be rejected.

¹¹⁸ See, e.g., Order No. 1000 at P 31 (stating that the Commission's intent "was not to disrupt the progress being made with respect to transmission planning and investment in transmission infrastructure") and P 204 (stating that the Order No. 1000 requirements are "intended to enhance, rather than replace, existing transmission planning obligations under Order No. 890").

¹¹⁹ LS Power at 11-17. Other than this assertion, LS Power provides no explanation of this statement elsewhere in their comments.

¹²⁰ Order No. 1000 at P 220.

¹²¹ *Id.* at PP 686, 747.

1. The Reliability Planning Process as Revised in the Compliance Filing, Fully Complies with the Order No. 1000 Non-Discrimination Directives

LS Power,¹²² and to some extent, NextEra¹²³ and PSEG,¹²⁴ contend that the NYISO's reliability planning process discriminates against non-incumbent transmission providers. To the contrary, the NYISO's reliability planning process expressly requires that all solutions be considered on a non-discriminatory basis. Protestors' assertions either demonstrate a misunderstanding of the NYISO's reliability planning process or mischaracterize its provisions.

The NYISO's reliability planning process identifies any Reliability Needs over the NYISO's ten-year planning horizon. If a Reliability Need is identified, the NYISO solicits market-based solutions to address them, and asks the NYTO designated as a Responsible Transmission Owner to prepare a regulated backstop solution.¹²⁵ At the same time, the NYISO solicits alternative regulated solutions from both the NYTOs and non-incumbent transmission developers.¹²⁶ The tariff provides all entities with an opportunity to demonstrate that they are qualified to meet an identified Reliability Need and provides that the qualifications of each entity will be considered "in an evenhanded and non-discriminatory manner, treating Transmission Owners and Other Developers alike."¹²⁷

LS Power, in particular, focuses solely on the provision of regulated solutions to a Reliability Need and ignores the Commission-approved market-based planning framework that is the foundation of the NYISO's planning processes. Only in limited instances where an

¹²² LS Power at 11-17.

¹²³ NextEra at 5-7.

¹²⁴ PSEG at 6-7.

¹²⁵ See § 31.2.4.2.

¹²⁶ See §31.2.4.6.

¹²⁷ See §31.2.4.1.1.

acceptable market based solution is not available, does the NYISO determine the need for a regulated reliability solution.¹²⁸ These “last resort” provisions for regulated solutions are used only in the event that the market does not respond to a need and treat all project sponsors equally.¹²⁹ It provides that the NYISO will solicit alternative regulated solutions from the NYTOs and from non-incumbent transmission developers, at the same time.¹³⁰ Each proposed solution that is found by the NYISO to meet a reliability need is included in the NYISO’s Comprehensive Reliability Plan (“CRP”).¹³¹ LS Power’s focus on provisions that are meant to be used only in exceptional circumstances creates a distorted impression of the NYISO’s comprehensive planning process.

There is nothing unduly discriminatory about the NYISO’s ability to direct a Responsible Transmission Owner to submit a proposal for a regulated backstop solution to the appropriate governmental agencies so that necessary approval processes may begin.¹³² Nor is there undue discrimination in the provision of cost recovery for Responsible Transmission Owner solutions prior to their submittal for agency approval, as non-incumbent developers are not similarly situated to the NYTOs.¹³³ Those provisions are justified because the NYTOs have the legal obligation to prepare a regulated backstop solution to an identified Reliability Need, if

¹²⁸ See §§31.2.4.2 (regulated backstop solutions) and 31.2.4.6 (alternative regulated solutions).

¹²⁹ See §31.2.4.2.1 (noting that a regulated backstop solution will be requested if there is “a lack of sufficient viable market-based solutions to meet [identified] Reliability Needs”).

¹³⁰ See § 31.2.4.6.

¹³¹ See §31.2.6.

¹³² See §31.2.5.7.1.

¹³³ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061 (2007) at P 69 (stating that “[t]he Commission has determined that discrimination is undue when there is a difference in rates or services among similarly situated customers that is not justified by some legitimate factor,” citing, *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045 at P 115 (2003); Order No. 436, FERC Stats. & Regs. ¶ 30,655, at 31,541 (1985)); *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 547 (D.C. Cir. 2010) (“A rate is not ‘unduly’ preferential or ‘unreasonably discriminatory’ if the utility can justify the disparate effect”, citing, *Ark. Elec. Energy Consumers v. FERC*, 290 F.3d 362, 367 (D.C. Cir. 2002)).

designated by the NYISO as the Responsible Transmission Owners(s) when no market-based solution is available. This obligation was assumed by the NYTOs in a contract with the NYISO, approved by the Commission.¹³⁴ Accordingly, acknowledgment of this obligation in the NYISO's reliability planning process by minor differences in nomenclature for reliability backstop solutions and alternative regulated solutions does not mean that one type of solution is preferred over the other or that any undue discrimination is present.

One of the conditions for the NYTOs' assumption of this obligation was their recovery of costs reasonably incurred in the preparation of a regulated backstop solution at the direction of the NYISO. Non-incumbent developers like LS Power on the other hand, are not obligated to submit a proposed solution and can discontinue any of its proposed projects at any time. LS Power protests that it would be willing to obligate itself to a project it were allowed to assume that burden.¹³⁵ But LS Power is eligible to be selected as the backstop solution under the NYISO's tariff, and if its project is selected by the NYPSC, LS Power will enjoy such obligations as a matter of state law.

Proponents of alternative regulated solutions may submit their projects to the appropriate governmental agencies for review in the same timeframe as the Responsible Transmission Owner submits its proposal.¹³⁶ Pursuant to the tariff, a non-incumbent transmission developer that qualifies to develop a regulated reliability solution is eligible for cost allocation and cost recovery, if its project receives regulatory approval.¹³⁷ Where an alternative regulated solution

¹³⁴ See, *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 at PP 38-39 (2004) and *N.Y. Indep. Sys. Operator, Inc.*, 111 FERC ¶ 61,182 at P 19 (2005) (accepting unsigned agreements between the NYISO and the NYTOs providing for the NYTOs participation in the NYISO's comprehensive reliability planning process, filed by the NYISO on August 24, 2004, and revised on February 25, 2005).

¹³⁵ LS Power at n.23.

¹³⁶ See § 31.2.5.7.1.

¹³⁷ See §31.2.7.3.6.

receives the necessary governmental approval, a non-incumbent developer will be entitled to the same cost recovery as a Responsible Transmission Owner if the regulated backstop solution were implemented (*i.e.*, full recovery of all reasonably incurred costs, including costs related to the development of the project).¹³⁸ It is not reasonable for a project proposed by a non-incumbent to receive full cost recovery prior to its approval. Contrary to LS Power, the NYTOs are not entitled to recover all of their development costs for projects even if they are never built. Rather, NYTOs face the potential for denial of cost recovery if it were determined that their costs were not prudently incurred.¹³⁹

The Commission should also reject LS Power's contention that the Commission should mandate a mechanism for the blanket recovery of all development costs for all proposed solutions. Many projects are proposed that are never developed, and the costs of such projects should not always be recovered through rates. Fundamentally, LS Power's proposed unqualified right to recover planning and development costs would eliminate the financial risks for proposing a project, regardless of whether the project is likely to be viable or to receive the necessary regulatory approvals. Such a process would likely result in New York consumers paying for a non-incumbents' planning or development costs regardless of the viability or merits of the proposal. The Filing Parties note that a non-incumbent developer may always petition the Commission for transmission rate incentives under Section 219 of the Federal Power Act and Order No. 679 to mitigate the financial risks of proposing a project. Those incentives include,

¹³⁸ See § 31.5.6.

¹³⁹ See, *e.g.*, *New England Power Co.*, 31 FERC ¶ 61,047 at 61,085 (1985), *enforced*, *Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986).

among others, the recovery of pre-commercial costs and the recovery of prudently incurred costs in the event the project is abandoned for reasons beyond the developer's control.¹⁴⁰

Also, when the Commission approved the NYISO's existing Comprehensive System Planning Process, it found that "NYISO's role in both soliciting market-based and regulated solutions and in evaluating competing proposals for their ability to meet the designated Reliability Need in a timely manner affords comparable treatment to all types of competing solutions and resources."¹⁴¹ LS Power has presented no evidence to the contrary and its unsupported arguments¹⁴² must be rejected.

Further, contrary to protestors' arguments,¹⁴³ there is nothing in Order No. 1000 that requires the NYISO to determine which solution will be implemented. It is appropriate, particularly in New York State, for the governmental agencies with jurisdiction over implementation, permitting and siting of transmission to make the determinations regarding which regulated solution will be implemented.¹⁴⁴ This is because the selection of a regulated reliability project, the costs of which will be borne by New York consumers, is not based simply on the developer's projected cost. Other important factors are considered, including the

¹⁴⁰ Further, where an alternative regulated solution is selected as the best solution by the NYPSC and proceeds to attempt to obtain necessary approvals, but such approvals are either not granted or are granted and then withdrawn, an alternative regulated solution may recover all reasonably incurred costs to implement an orderly termination of the project. *See* §31.2.7.3.6.

¹⁴¹ *N.Y. Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,028 at P 10 (2010).

¹⁴² LS Power at 13. LS Power's objections to the cost recovery provisions for Responsible Transmission Owners in the PPR planning process must be rejected for the same reasons. *See* LS Power at 16.

¹⁴³ PSEG at 7.

¹⁴⁴ *See* § 31.2.5.7.1. The provisions also show that NextEra's concerns regarding what the process is for selecting projects to meet identified Reliability Needs are unfounded. The NYISO's tariff clearly has a process which provides sufficient details regarding how competing projects to address Reliability Needs will be evaluated, including what factors will be considered, and how they will be weighed. *See* NextEra at 5-7.

experience and capability of the developer, the estimated time of completion, the environmental impacts and benefits of the project, the likelihood of obtaining necessary property rights and other approvals, and the nature of the technology to be used. The consideration and weighing of these factors is appropriately left to the state regulatory bodies entrusted with those determinations.¹⁴⁵

There is no reason to assume that a regulated project proposed by a non-incumbent transmission developer will not be selected as the preferred project, over a project proposed by an incumbent transmission provider, if the non-incumbent's project would provide greater benefits to the public and be more cost-effective and efficient. On the other hand, even if the NYISO did include only a single project in its plan, there is no assurance that, after considering all relevant factors, that project would receive a determination that it is in the public interest under the state's transmission siting law.¹⁴⁶

2. The Proposed Tariff Revisions Allow for the Identification and Evaluation of the More Efficient or Cost-Effective Projects for Selection in a Regional Transmission Plan

LS Power's assertion that the tariff does not include a regional transmission plan is also baseless and must be rejected. The tariff clearly provides that the NYISO will produce a regional transmission plan. Specifically, OATT Attachment Y, Sections 31.2 (establishing the reliability planning process) and 31.3 (establishing the economic planning process) and 31.4 (establishing the PPR planning process) provide that these processes culminate in the preparation

¹⁴⁵ See N.Y. Public Serv. L. §§ 65 (safe and adequate service), 66(2), 72 (improvements to the provision of electric service), 120, *et seq.* (Article VII - transmission siting).

¹⁴⁶ See N.Y. Public Serv. L. § 126(1)(g).

of a regional transmission plan for the NYCA planning region which includes selected solutions.¹⁴⁷

LS Power,¹⁴⁸ and others,¹⁴⁹ also claim that the NYISO's reliability planning process does not select a "most" efficient or cost effective solution and that it does not result in a regional plan.¹⁵⁰ These assertions must be rejected, as the reliability planning process, as modified in the Compliance Filing, fully complies with the Order No. 1000 requirements.¹⁵¹ As a threshold matter, it must be noted that the LS Power proposal would have the NYISO evaluate and select the "**most** efficient and cost effective" project to include in the CRP and to proceed to permitting, if required.¹⁵² However, Order No. 1000 clearly provides that the NYISO

evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process. ... [and if it is] determine[d] that an alternative transmission solution is more efficient or cost-effective than transmission facilities in one more local transmission plans, then the transmission facilities associated with that more efficient or cost-effective transmission solution can be selected in the regional transmission plan for purposes of cost allocation.¹⁵³

¹⁴⁷ See, e.g., 2012 Reliability Needs Assessment Final Report (9/18/2012), *available at* ,http://www.nyiso.com/public/webdocs/services/planning/reliability_assessments/2012_RNA_Final_Report_9-18-12_PDF.pdf >; 2010 Comprehensive Reliability Plan Final Report (1/11/2011), *available at* ,http://www.nyiso.com/public/webdocs/services/planning/reliability_assessments/CRP_2010_FINAL_REPORT_January_11_2011.pdf .; and 2011 Congestion Assessment and Resource Integration Study, CARIS - Phase I Final Report (3/20/2012), *available at* <http://www.nyiso.com/public/webdocs/services/planning/Caris_Report_Final/2011_CARIS_Final_Report_3-20-12.pdf>.

¹⁴⁸ LS Power at 10.

¹⁴⁹ PSEG at 6-7.

¹⁵⁰ LS Power at 9-11.

¹⁵¹ §§ 31.2.2.4.2 and 31.2.1.1.3.

¹⁵² LS Power at 22-23.

¹⁵³ Order No. 1000 at P 148.

There is no requirement that the transmission provider must “select” a specific project as the “most” efficient or cost effective. Additionally, Order No. 1000 requires the identification and evaluation of such solutions, as well as the ability of the solutions to be identified in the regional transmission plan, it does not require that a project be built.¹⁵⁴ The proposed process clearly complies with these requirements.¹⁵⁵

E. The NYISO’s Proposed Entity and Project Qualification and Project Monitoring Criteria Do Not Discriminate Against Non-Incumbents

LS Power also alleges that the proposed entity qualification criteria discriminate against non-incumbent developers and act as barriers to entry.¹⁵⁶ They take issue with the criteria that would allow the NYISO to evaluate an entity’s ability to acquire rights of way,¹⁵⁷ the rule that a developer must have the ability to meet the requirements of a valid interconnection request, and that it must possess the capability to operate and maintain a facility for the life of the project.¹⁵⁸ LS Power, however, fails to acknowledge that the listed qualification criteria are not “gateway” minimum pre-requisites. The proposed language unambiguously provides that the criteria will be considered, as appropriate, as factors in determining the viability of a project.

As to the objections to specific criteria, the Filing Parties submit that all are reasonable considerations when making a determination that an entity is qualified to propose a solution. The ability to acquire rights of way is not a reference to eminent domain, as alleged by LS Power

¹⁵⁴ *Id.* at P 49.

¹⁵⁵ Additionally, PSEG’s suggestion that the proposed tariff revisions should be amended to add language specifying how the NYTOs would address a finding that a more efficient or cost effective solution exists is unwarranted and goes beyond the scope of this proceeding. *See* PSEG at 6-7. The NYISO process complies with the requirements of both Order No. 890 and Order No. 1000 with respect to regional planning. But, nothing in those Orders limit what a Transmission Owner may do as part of its local planning process.

¹⁵⁶ LS Power at 27-31.

¹⁵⁷ *Id.* at 27-28.

¹⁵⁸ *Id.* at 28.

since rights of way may be acquired through means other than eminent domain, such as by voluntary purchase or licensing of easements. Further, it is reasonable for one of the considerations to potentially be whether an entity can operate and maintain a facility for the life of the project. If an entity submits a project that is selected as a solution, they will reasonably be expected to be able to operate and maintain such facility for its useful life. There is nothing discriminatory or onerous about allowing the NYISO, when appropriate, to evaluate an entity's ability to do so.

With respect to the objection on the interconnection request criteria, LS Power's concern is that incumbent Transmission Owners could use the site control requirements to erect barriers to entry.¹⁵⁹ This concern is unsupported however, as the procedures that would be used in the interconnection process are the Commission-accepted interconnection procedures that require the provision of interconnection service on an open access non-discriminatory basis. It should not be presumed that the incumbent Transmission Owners would not comply with existing tariff interconnection requirements or that the Commission would permit them to do so.

LS Power also asserts that the Compliance Filing does not include a process to qualify entities prior to project submittal.¹⁶⁰ This argument is incorrect. The proposed qualification process is a two-step process that provides for pre-qualification prior to the submittal of any project.¹⁶¹

LS Power's objections to the use of a trigger date that is tied to a regulated reliability solution in its project monitoring criteria are unfounded.¹⁶² LS Power's characterization of the

¹⁵⁹ *Id.* at 29.

¹⁶⁰ *Id.* at 30-31.

¹⁶¹ See §§ 31.2.4.1.1, 31.3.4.1.1, 31.4.5.1 (entity pre-qualification criteria) and 31.2.4.1.3, 31.3.2.4.1.3, 31.4.5.3 (entity qualification criteria).

¹⁶² LS Power at 12.

trigger date as the “standard by which all other projects must live” is an incorrect representation of the process. After a reliability need is identified, the NYISO continues to solicit market-based solutions, which are favored. The trigger date is established to ensure that there will be sufficient time to implement a regulated solution to be available to provide service by the need date, if no viable market-based solution is available. However, if a developer has a project with a longer implementation time and an earlier trigger date, there is nothing in the NYISO planning process that prevents the developer from seeking siting approval for its project, provided that it has been found by the NYISO to meet the reliability need. The NYPSC has developed procedures for the consideration of alternative regulated reliability solutions that are expressly designed to ensure consideration of alternative regulated solutions with longer lead times than the regulated backstop solution, including the commencement of a NYPSC proceeding to consider such solutions.¹⁶³

Finally, the Filing Parties clarify that the term “entity” in its proposed tariff revisions includes affiliates.¹⁶⁴

F. The Proposed Effective Date is Reasonable and Necessary to Ensure the Proper Implementation of the PPR Planning Process

LS Power objects to the Compliance Filing’s proposed effective date, alleging that it is unreasonable.¹⁶⁵ They assert that it is the “longest effective date proposed to date” and claim

¹⁶³ Policy Statement on Backstop Project Approval Process, *Proceeding to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process*, Case No. 07-E-1507 (February 18, 2009).

¹⁶⁴ LS Power at 30. The Filing Parties have no objection to the Commission ordering an amendment to the definition of “Other Developer” in Section 31.1.1 to include “and their affiliates” to state “Parties or entities and their affiliates sponsoring or proposing to sponsor regulated economic projects, transmission solutions driven by Public Policy Requirements, or regulated solutions to Reliability Needs, who are not Transmission Owners.”

¹⁶⁵ *Id.* at 31-32.

that it will give the NYTOs an advantage, due to the Energy Highway Initiative.¹⁶⁶ These concerns are without merit and must be rejected.

The effective date requested ensures that the PPR planning process is implemented in a manner that does not disrupt the NYISO's existing reliability and economic planning processes.¹⁶⁷ As explained in the Compliance Filing, this effective date will allow the analysis of transmission needs driven by PPRs to be based on the most current CRP.¹⁶⁸ Accordingly, the assertion that it is the longest effective date proposed to date is meritless because the proposal simply seeks to conduct PPR planning using the first Comprehensive Reliability Plan that is approved following approval of the PPR planning process so that public policy planning is conducted on the foundation of a reliable power grid.

¹⁶⁶ *Id.* at 31.

¹⁶⁷ *See, e.g.*, Order No. 1000 at P 31 (stating that the Commission's intent "was not to disrupt the progress being made with respect to transmission planning and investment in transmission infrastructure") and P 204 (stating that the Order No. 1000 requirements are "intended to enhance, rather than replace, existing transmission planning obligations under Order No. 890").

¹⁶⁸ Compliance Filing Letter at 67-68.

IV. CONCLUSION

WHEREFORE, the New York Independent System Operator, Inc. and the New York Transmission Owners respectfully request that the Commission: (1) expeditiously issue an order accepting the Compliance Filing, including the proposed Public Policy Requirements planning process, in order to provide regulatory certainty to the NYISO and its stakeholders; and (2) take action on the protests and comments as specified herein.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
By: /s/ Carl F. Patka

Robert E. Fernandez, General Counsel
Ray Stalter, Director of Regulatory Affairs
Carl F. Patka, Assistant General Counsel
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Email: rfernandez@nyiso.com
Email: rstalter@nyiso.com
Email: cpatka@nyiso.com

Ted J. Murphy
Vanessa A. Colón
Hunton & Williams LLP
2200 Pennsylvania Ave, NW
Washington, DC 20037
Email: tmurphy@hunton.com
Email: vcolon@hunton.com

J. Kennerly Davis
Hunton & Williams LLP
951 East Byrd Street
Richmond, VA 23219
Email: kdavis@hunton.com

NEW YORK TRANSMISSION OWNERS
By: /s/ Elias G. Farrah

Elias G. Farrah
Winston & Strawn, LLP
1700 K Street, NW
Washington, DC 2006-3817
Email: efarrah@winston.com

*Paul L. Gioia
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, NY 12260
Email: pgioia@plg26.com

/s/ John Borchert

John Borchert
Manager of Electric Engineering Services
Central Hudson Gas & Electric Corporation
284 South Avenue
Poughkeepsie, NY 12601
Email: jborchert@cenhud.com

/s/ Jacqueline Hardy

Jacqueline Hardy
Assistant General Counsel
Long Island Power Authority
333 Earle Ovington Boulevard
Suite 403
Uniondale, NY 11553
Email: jhardy@lipower.org

David Clarke
Director of Power Markets Policy
LIPA
99 Washington Avenue
10th Floor
Albany, NY 12210-2822
Email: dclarke@lipower.org

/s/ R. Scott Mahoney

R. Scott Mahoney, Esq.
New York State Electric & Gas Corporation
Rochester Gas and Electric Corporation
Durham Hall, 52 Farm View Drive
New Gloucester, ME 04260
Email: scott.mahoney@iberdrolausa.com

/s/ Neil H. Butterklee

Consolidated Edison Company of New York, Inc.
Orange and Rockland Utilities, Inc.
Neil H. Butterklee
Assistant General Counsel
Consolidated Edison Co.
of New York, Inc.
4 Irving Place
Room 1815-s
New York, NY 10003
Email: butterkleen@coned.com

/s/ Andrew Neuman

New York Power Authority
Andrew Neuman, Esq.
New York Power Authority
123 Main Street
White Plains, NY 10601-3170
Email: andrew.neuman@nypa.gov

William Palazzo, Director Market Issues
New York Power Authority
123 Main Street
White Plains, NY 10601-3170
Email: william.palazzo@nypa.gov

/s/ Daniel Galaburda

Niagara Mohawk Power Corporation
d/b/a/ National Grid
National Grid USA Service Company, Inc.
Assistant General Counsel and Director
40 Sylvan Road
Waltham, MA 02451-1120
Email: daniel.galaburda@us.nrid.com

Bart Franey
Director of Federal Regulation
Niagara Mohawk Power Corporation d/b/a National
Grid
300 Erie Boulevard West
Syracuse, NY 13202

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2012).

Dated at Washington, D.C. this 11th day of December, 2012.

/s/ Catherine Karimi
Catherine Karimi
Sr. Professional Assistant
Hunton & Williams LLP
2200 Pennsylvania Ave., NW
Washington, DC 20037
Tel: (202) 955-1500
Fax: (202) 778-2201