

October 15, 2013

**By Electronic Delivery**

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

**Re: *New York Independent System Operator, Inc. and New York Transmission Owners,  
Compliance Filing, Docket No. ER13-102-000***

Dear Ms. Bose:

In compliance with the Commission's April 18, 2013, *Order on Compliance Filing* ("April 18 Order")<sup>1</sup> and July 24, 2013 *Notice of Extension of Time* in the above-captioned proceeding, the New York Independent System Operator, Inc. ("NYISO") and the New York Transmission Owners ("NYTOs")<sup>2</sup> jointly submit this compliance filing. The NYISO and NYTOs are referred to in this filing as the "Filing Parties."<sup>3</sup>

On October 11, 2012, the Filing Parties submitted proposed revisions to the NYISO's Open Access Transmission Tariff ("OATT") and Market Administration and Control Area Services Tariff ("Services Tariff") to comply with the Order No. 1000<sup>4</sup> intra-regional

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<sup>1</sup> *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,059 (2013) ("April 18 Order").

<sup>2</sup> The NYTOs are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a LIPA ("LIPA"), New York Power Authority ("NYPA"), New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc. The Filing Parties note that LIPA and NYPA, as transmission owners not subject to the Commission's jurisdiction under section 205 of the Federal Power Act, have voluntarily participated in the development of this filing. The Filing Parties each reserve the right to comment separately on this filing.

<sup>3</sup> Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachment Y of the NYISO OATT, and if not defined therein, in the NYISO OATT and NYISO Services Tariff.

<sup>4</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) ("Order No. 1000"), *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) ("Order No. 1000-A"), *order on reh'g and clarification*, 141 FERC ¶ 61,044 (2012) ("Order No. 1000-B"). For convenience, unless otherwise specified, references in this filing to "Order No. 1000" should be understood to encompass Order Nos. 1000, 1000-A, and 1000-B.

transmission planning requirements (“October 2012 Filing”).<sup>5</sup> The October 2012 Filing added to the NYISO’s local, reliability and economic planning processes a new regional transmission planning process to meet needs on the Bulk Power Transmission Facilities (“BPTFs”) that are driven by Public Policy Requirements, and added a cost allocation process and methodology for transmission projects that satisfy a Public Policy Transmission Need.<sup>6</sup> The October 2012 Filing made numerous additional tariff changes and additions to comply with the Order No. 1000 regional planning and regional cost allocation principles, and made conforming changes to the local, reliability and economic planning processes. In the April 18 Order, the Commission accepted the Filing Parties’ proposed revisions in part and directed them to submit a further compliance filing to make certain tariff revisions and provide additional support for certain compliance proposals.

As set forth below, the Filing Parties propose in this further compliance filing additional tariff revisions and additions to achieve full compliance with Order No. 1000. The proposed additional compliance revisions are addressed herein as follows:

- Part IV describes the proposed revisions to the requirements for submitting a project in the NYISO’s Comprehensive System Planning Process (“CSPP”) set forth in Attachment Y of the NYISO OATT, including proposed revisions to the enrollment requirements for a Developer,<sup>7</sup> qualification requirements for a Developer of a regulated<sup>8</sup> transmission project, and project information submission requirements;
- Part V describes the proposed revisions to the NYISO’s reliability planning process, including the requirements for the NYISO’s comparable evaluation of proposed solutions to Reliability Needs and its evaluation and selection of proposed transmission solutions to Reliability Needs;

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<sup>5</sup> *New York Independent System Operator, Inc. and New York Transmission Owners*, Compliance Filing, Docket Nos. RM10-23-000, ER13-102-000 (October 11, 2012) (“October 2012 Filing”). The NYISO’s and the NYTOs’ compliance with the Order No. 1000 interregional transmission planning requirements is addressed by their pending July 10, 2013 compliance filing in Docket No. ER13-1942-000. The changes to Attachment Y proposed herein are filed via eTariff as incremental changes to updated base tariff sheets that incorporate the proposed revisions from the July 10, 2013 filing that are pending Commission acceptance.

<sup>6</sup> As described in Part VI.D, the Filing Parties propose to define a “Public Policy Transmission Need” as a transmission need identified by the NYPSC/NYDPS that is driven by a Public Policy Requirement.

<sup>7</sup> A “Developer” is defined in Section 31.1.1 of Attachment Y of the NYISO OATT as: “A person or entity, including a Transmission Owner, sponsoring or proposing a project pursuant to this Attachment Y.” Accordingly, the term “Developer” includes a Responsible Transmission Owner, an Other Developer, and a Transmission Owner, as those terms are used in Attachment Y.

<sup>8</sup> A “regulated” solution – as opposed to a market-based solution – refers to a transmission solution for which the Developer is seeking to obtain regional cost allocation through the NYISO tariffs or a non-transmission solution for which the Developer is seeking to obtain regional cost allocation through the appropriate state agency.

- Part VI describes the proposed revisions to the NYISO's Public Policy Transmission Planning Process,<sup>9</sup> including the requirements for the NYISO's comparable evaluation of proposed solutions to needs driven by Public Policy Requirements and its evaluation and selection of proposed transmission solutions to needs driven by Public Policy Requirements;
- Part VII addresses the consideration of transmission needs in the NYTOs' local transmission planning process;
- Part VIII addresses cost allocation and cost recovery matters;
- Part IX addresses miscellaneous changes and ministerial modifications; and
- Part X addresses the transition period and effective date for the Filing Parties' proposed tariff revisions.

All of the proposed revisions included in this compliance filing are either expressly required by the April 18 Order's directives, necessary to implement or clarify the existing tariff language to accommodate those directives, or are non-substantive organizational or clarifying adjustments. Including these revisions in this compliance filing will make the NYISO's Order No. 1000-related tariff provisions clearer and more accurate and are therefore consistent with Commission precedent.<sup>10</sup>

The Filing Parties request that these proposed tariff revisions become effective on January 1, 2014, which is the start date for the NYISO's next transmission planning cycle under its CSPP.

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<sup>9</sup> As described in Part VI.D, the Filing Parties propose to define the "Public Policy Transmission Planning Process" as the process by which the NYISO solicits needs for transmission driven by Public Policy Requirements, evaluates all solutions on a comparable basis, and selects the more efficient or cost effective transmission solution, if any, for eligibility for cost allocation under the NYISO's tariffs.

<sup>10</sup> The Commission has previously authorized the NYISO to include these kinds of limited, but necessary, clarifications in compliance filings and should follow that precedent here. *See New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 (2008), *reh'g*, 127 FERC ¶ 61,042 (2009) (accepting proposed additional tariff revisions that were necessary to implement the modifications directed by the Commission and to correct drafting errors or ambiguities in a compliance filing).

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## **II. LIST OF DOCUMENTS SUBMITTED**

The NYISO respectfully submits the following documents:

1. This filing letter;
2. A list of the company representatives for the NYTOs (“Attachment I”);
3. An Affidavit of Howard A. Tarler (“Attachment II”);
4. A blacklined version of the NYISO OATT sections containing the proposed compliance modifications (“Attachment III”);
5. A clean version of the NYISO OATT sections containing the proposed compliance modifications (“Attachment IV”);
6. A blacklined version of the NYISO Services Tariff section containing the proposed compliance modifications (“Attachment V”); and
7. A clean version of the NYISO Services Tariff section containing the proposed compliance modifications (“Attachment VI”).

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<sup>11</sup> Waiver of the Commission’s regulations (18 C.F.R. § 385.203(b)(3) (2012)) is requested to the extent necessary to permit service on counsel for the NYISO in Rensselaer, NY, Richmond, VA and Washington, DC.<sup>12</sup> October 2012 Filing at 8.

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### III. BACKGROUND

The October 2012 Filing demonstrated how the NYISO's pre-Order No. 1000 CSPP – the transmission planning process set forth in Attachment Y of the NYISO OATT – met or exceeded most of the local and intra-regional transmission planning requirements established in Order No. 1000,<sup>12</sup> which built upon and expanded the transmission planning reforms implemented in Order No. 890.<sup>13</sup> Where the CSPP did not fully address certain Order No. 1000 directives, the Filing Parties proposed tariff modifications.<sup>14</sup> These modifications included the addition of a new planning process to consider transmission needs driven by Public Policy Requirements. These modifications to the NYISO's planning process were developed in consultation with the NYISO's stakeholders and with the New York State Department of Public Service ("NYDPS").<sup>15</sup>

The Filing Parties also proposed to amend Attachment Y to add entity qualification criteria as well as provisions regarding, among other things: (i) the evaluation of regional transmission projects that may meet the regional bulk power system needs more efficiently or cost-effectively than projects identified in the NYTOs' local transmission plans ("LTPs"); and (ii) the compliance of the NYISO's cost allocation methodologies with the six Order No. 1000 regional cost allocation principles.<sup>16</sup>

In the April 18 Order, the Commission accepted the October 2012 Filing subject to a number of compliance directives.<sup>17</sup> The Filing Parties and other New York stakeholders have worked diligently to respond to the Commission's concerns in the April 18 Order. During the six months following the issuance of the April 18 Order, the Filing Parties have held multiple meetings with the NYDPS and stakeholders to review the concerns raised by the Commission and to develop the proposed compliance tariff revisions that are submitted in this further compliance filing.

Following issuance of the April 18 Order, the NYISO held 12 joint stakeholder meetings of the Interregional Planning Task Force and the Electric System Planning Working Group between May 2, 2013 and October 4, 2014, open to all interested entities to discuss the requirements of the April 18 Order and to review tariff modifications needed to meet its requirements. The NYISO requested, received, and considered comments from all interested

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<sup>12</sup> October 2012 Filing at 8.

<sup>13</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,214 at P 435, *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

<sup>14</sup> October 2012 Filing at 8 and Section 5.

<sup>15</sup> *Id.* at 45-53.

<sup>16</sup> *Id.* at 61-67.

<sup>17</sup> April 18 Order at P 13.

parties throughout the process. Numerous revisions were made to the proposed tariff changes in response to these comments. The open and transparent stakeholder process narrowed differences on many of the issues and obtained agreement on others. Full consensus on all issues was not achievable, however, as stakeholders did not come to agreement on all aspects of the filing. The primary areas of discussion concerned: (1) the NYISO's responsibility to evaluate and select the more efficient or cost-effective transmission solution to meet identified needs for purposes of cost allocation under the NYISO's tariff, rather than selecting from transmission and non-transmission solutions, which cannot be cost-allocated under the NYISO's tariff; (2) the cost allocation process and methodology for transmission projects driven by Public Policy Requirements; (3) the use of an *ex ante* load ratio share cost allocation methodology to allocate the costs of transmission upgrades to the high-voltage NYISO transmission system built to meet Public Policy Requirements; and (4) issues regarding the treatment of incumbent versus non-incumbent transmission Developers.

#### **IV. ENROLLMENT, DEVELOPER ELIGIBILITY, AND PROJECT INFORMATION REQUIREMENTS**

##### **A. Enrollment Requirements**

Order No. 1000 requires public utility transmission providers to have a "clear enrollment process" for entities, including non-public utility transmission providers, that seek to become part of the transmission planning region.<sup>18</sup> In the April 18 Order, the Commission found that the NYISO's enrollment process complied in part with the requirements of Order No. 1000 and directed the Filing Parties to specify the enrollment process by which all entities can become part of the NYISO transmission planning region.<sup>19</sup>

Any interested entity, regardless of whether such entity enrolls with the NYISO as a NYISO stakeholder or Market Participant, may currently participate in the NYISO's Electric System Planning Work Group, Interregional Planning Task Force, and Transmission Planning Advisory Subcommittee, which are the NYISO stakeholder committees that address regional and interregional planning matters. The Filing Parties propose to revise Section 31.1.7 to clarify how an interested entity can further participate and enroll in the NYISO's transmission planning region. In particular, the revised Section 31.1.7 provides that an interested entity may enroll in the NYISO's transmission region to fully participate in the NYISO's governance process by becoming a "Party" to the NYISO's Independent System Operator Agreement ("ISO Agreement") as set forth in Section 2.02 of the ISO Agreement. In addition, the revised Section 31.1.7 provides that the interested entity may become a "Transmission Owner" by satisfying the definition of a "Transmission Owner" in Article 1 of the ISO Agreement, executing either the Agreement Between the New York Independent System Operator and Transmission Owners ("NYISO/TO Agreement") or a separate agreement with the NYISO under terms comparable to the NYISO/TO Agreement, and turning over operational control of its transmission facilities to the NYISO. Pursuant to these revisions, any interested entity, including non-public transmission

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<sup>18</sup> Order No. 1000-A at P 275.

<sup>19</sup> April 18 Order at PP 23, 28.

providers, can enroll in the NYISO's transmission planning region to participate in the NYISO's regional transmission planning processes.

In the April 18 Order, the Commission also directed the Filing Parties to include a list of all of the public utility and non-public utility transmission providers that have enrolled as transmission providers in NYISO's transmission planning region.<sup>20</sup> In response, the Filing Parties set forth in Section 31.1.7 a list of all of the current Transmission Owners in New York as of October 15, 2013. The NYISO will update this list as new entities enroll as Transmission Owners in New York.

## **B. Developer Qualification Requirements**

### **1. Process/Timeframe for Developer to Become Qualified to Propose Transmission Solution**

In the October 2012 Filing, the Filing Parties proposed a two-stage pre-qualification and qualification process for an entity to qualify to submit a transmission project for selection in the regional transmission plan for purposes of cost allocation.<sup>21</sup> The Filing Parties proposed identical qualification requirements for the NYISO's reliability planning process, economic transmission planning process, and Public Policy Transmission Planning Process. In the April 18 Order, the Commission found this two-part process to be reasonable.<sup>22</sup> However, following additional discussions with NYISO stakeholders, the Filing Parties have concluded that a single-stage qualification process will be a faster, less confusing and more efficient process for both the NYISO and interested Developers. This single-stage process does not make substantive or material changes to entity qualification requirements. The Filing Parties, therefore, propose to consolidate the pre-qualification and qualification requirements in all three planning processes.<sup>23</sup> The revised, consolidated processes will be located in Sections 31.2.5 (reliability), 31.3.2.4.1 (economic), and 31.4.4 (public policy).<sup>24</sup> In the April 18 Order, the Commission directed the Filing Parties to explain when the NYISO will inform an entity whether or not it has met the prequalification criteria.<sup>25</sup>

The Filing Parties propose revisions to Sections 31.2.4.1.1 and 31.2.5.1 (reliability), 31.3.2.4.1.1 and 31.3.2.4.1.3 (economic), and 31.4.4.1 and 31.4.4.3 (public policy) to establish time frames for the Developer qualification requirements. A Developer may either seek to be

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<sup>20</sup> April 18 Order at P 27.

<sup>21</sup> October 2012 Filing at 57-58.

<sup>22</sup> April 28 Order at P 193.

<sup>23</sup> The Filing Parties propose to remove Sections 31.4.5.3, 31.3.2.4.1.3, and 31.2.4.1.3, in consolidating the pre-qualification and qualification requirements.

<sup>24</sup> The Filing Parties propose to replace the term "entity" with "Developer" in the Attachment Y provisions. The term Developer is an existing defined term in Section 31.1.1 that include all persons and entities that could develop solutions to transmission needs in New York.

<sup>25</sup> April 18 Order at P 200.

qualified ahead of any NYISO request for a transmission solution to an identified need<sup>26</sup> or to become qualified at the point at which the NYISO solicits transmission solutions.

A Developer seeking to be qualified ahead of any NYISO solicitations for transmission needs may submit under Sections 31.2.4.1.1, 31.3.2.4.1.1, or 31.4.4.1 the required qualification information, described below, or update previously submitted information, at any time. Within 15 days of the submission of such information, the NYISO will notify the Developer if the information is incomplete. If the submittal is incomplete, the Developer will have 30 days from the NYISO's notice to submit the additional information. After receiving all necessary information, the NYISO would have 30 days to notify the Developer of its qualification status. Once qualified, the Developer retains its status for three years, although the NYISO can revoke the qualification status at any time if it determines that, due to a material change, the Developer no longer meets the qualification requirements. In addition, based on the actual need that the NYISO identifies, the NYISO may request that a qualified Developer provide additional information.<sup>27</sup> A qualified Developer is required to inform the NYISO within 30 days of any material change to the information it provided regarding its qualifications. At the conclusion of the three-year period or following the revocation of a Developer's qualification status, the Developer can re-apply for a qualification status under this section.

A Developer may also become qualified under Sections 31.2.5.1, 31.3.2.4.1.3, or 31.4.4.3 once the NYISO solicits transmission solutions to an identified need. The Developer must submit the required qualification information, described below, within 30 days of the NYISO's solicitation of transmission solutions for an identified need.<sup>28</sup> Within 30 days of this submission, the NYISO will notify the Developer if the information is incomplete. If the submittal is incomplete, the Developer will have 15 days from the NYISO's request to provide any additional information.

A Developer determined by the NYISO to be qualified will be eligible to propose a transmission solution to an identified need, to use the cost allocation mechanisms set forth in the NYISO's tariffs, and to use and/or file appropriate rate schedules for cost recovery for an approved project through the NYISO's tariffs.

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<sup>26</sup> As any Developer can propose an economic transmission project at any time based on the most recent CARIS congestion study, the NYISO does not solicit solutions to identified transmission needs. In its April 28 Order, the Commission did not direct the Filing Parties to make any changes to the economic planning process in this regard.

<sup>27</sup> Sections 31.2.5.1, 31.3.2.4.1.3, and 31.4.4.3.

<sup>28</sup> As the NYISO does not solicit solutions to identified transmission needs in the economic transmission process, the time frames for a Developer to provide Developer qualification information and project qualification information in the economic process under Section 31.3.2.4.1.3 functions slightly differently than in the economic or public policy processes. A Developer that wants to propose to develop a project must simply submit its data to the NYISO when it wants to proceed. Once a Developer submits its data, the same time frames for the NYISO's review and the Developer to provide additional information will apply.

## **2. Developer Qualification Information to Be Provided**

In the April 18 Order, the Commission directed the Filing Parties to “revise the proposed financial prequalification and entity qualification criteria to describe the information that a potential transmission developer must provide to demonstrate that it meets these criteria.”<sup>29</sup> In addition, the Commission directed the Filing Parties to make the following specific revisions to the qualification requirements: (i) remove provisions that require that entities be qualified to “offer” projects for consideration in the regional, economic, and public policy requirements transmission planning processes; (ii) remove the proposed criteria to consider an entity’s existing rights-of-way and experience in acquiring rights-of-way; (iii) remove the reference to the current and expected capabilities of the entity to “license” a proposed solution; and (iv) specify which requirements associated with submitting an interconnection request or transmission expansion study request will apply in evaluating a transmission Developer’s qualifications.<sup>30</sup>

The Filing Parties propose to revise the Developer qualification criteria set forth in Sections 31.2.4.1.1 (reliability), 31.3.2.4.1.1 (economic), 31.4.4.1 (public policy) to provide the additional detail required by the Commission. As part of providing the more detailed criteria, the Filing Parties have made the specific edits required by the Commission. The NYISO will make a determination regarding a Developer’s qualification to propose a transmission solution based on the criteria described below.

First, the Developer must demonstrate its technical and engineering qualifications and experience relevant to the development, construction, operation and maintenance of a transmission facility. This includes providing evidence related to the Developer’s ability to adhere to standardized construction, maintenance, and operating practices and to contract with third parties to develop, construct, maintain, and operate transmission facilities.

Second, the Developer must demonstrate its current and expected capabilities to finance, develop and construct a transmission facility and to operate and maintain it for the life of the facility. To demonstrate that it meets this criterion, the Developer must provide a description of transmission facilities that it has previously developed, constructed, maintained or operated and the status of those facilities.<sup>31</sup>

Third, the Developer must demonstrate its current and expected capability to finance, or its experience in arranging financing for, transmission facilities. To demonstrate that it meets this criterion, the Developer must provide: (i) evidence of demonstrated experience financing or arranging financing for transmission facilities;<sup>32</sup> (ii) its audited annual financial statements from

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<sup>29</sup> April 18 Order at P 200.

<sup>30</sup> *Id.*

<sup>31</sup> This includes whether the construction was completed, whether the facility entered into commercial operations, whether the facility has been suspended or terminated for any reason, and evidence demonstrating the ability of the Developer to address and timely remedy any operational failure of the facilities.

<sup>32</sup> This includes the capital costs and financial structure of such projects, a description of any financing obtained for these projects through rates approved by the Commission or a state regulatory agency, the financial closing date of such projects, and whether any of the projects are in default.

the most recent three years and its most recent quarterly financial statement or equivalent information;<sup>33</sup> (iii) its credit rating or equivalent information, if available; (iv) any prior bankruptcy declarations, material defaults, dissolution, merger or acquisition by it, its predecessors and subsidiaries within the previous five years; and (v) such other information that demonstrates its current and expected capability to finance a project.<sup>34</sup>

### **3. Affiliate Participation in Developer's Proposed Solution**

In the April 18 Order, the Commission directed the Filing Parties to “clarify that the term ‘entity’ includes affiliates.”<sup>35</sup> The Filing Parties propose revisions to Sections 31.2.4.1, 31.3.2.4.1, and 31.4.4 to provide that for purposes of fulfilling the requirements of the Developer qualification criteria, the term “Developer” includes “Affiliates” as that term is defined in the NYISO’s tariffs.<sup>36</sup> The revisions further propose that if a Developer relies on its Affiliate to satisfy its Developer qualification criteria, the Affiliate must provide the NYISO with the information required to demonstrate its capability to satisfy the applicable qualification criteria. The Affiliate must also provide the NYISO with a notarized officer’s certificate, signed by an authorized officer of the Affiliate with signatory authority, certifying that the Affiliate will participate in the Developer’s project in the manner described by the Developer and will abide by the requirements set forth in Attachment Y, the NYISO Tariffs, and the NYISO Procedures related and applicable to the Affiliate’s participation.

### **C. Developer Project Information Submission Requirements**

#### **1. Project Information Requirements Applicable to All Proposed Projects**

Order No. 1000 requires the NYISO to identify the information that a Developer must submit in support of a transmission project the Developer proposes in the regional transmission planning process and the date by which it must be submitted.<sup>37</sup> In the October 2012 Filing, the Filing Parties explained that Attachment Y already includes project information submission requirements for the NYISO’s reliability planning process, including for proposed regulated backstop solutions, market-based solutions, and alternative regulated solutions. The Filing Parties proposed to provide a similar list of project information requirements for the economic

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<sup>33</sup> A qualified Developer is also required to submit to the NYISO its most recent audited annual financial statement when available each year.

<sup>34</sup> The NYISO will treat as “Confidential Information” in accordance with Attachment F of the NYISO OATT any non-public financial qualification information submitted by a Developer and designated as confidential.

<sup>35</sup> April 18 Order at P 200.

<sup>36</sup> The term “Affiliate” is defined in Article 1 of the NYISO OATT as follows: “With respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.”

<sup>37</sup> Order No. 1000 at P 325.

transmission planning process and the Public Policy Transmission Planning Process. In the April 18 Order the Commission directed a number of changes to the proposed project information requirements and required clarification of the timing requirements for the submittal of this information.

In response to the April 18 Order, including the requirement that the NYISO develop new evaluation and selection processes for the reliability and public policy processes, the Filing Parties propose a small number of revisions to the existing project information requirements to obtain the information required by the NYISO to perform its new obligation to select the more efficient or cost-effective transmission solution to identified needs. In addition, the Filing Parties also propose to align the project information required from each type of proposed solution offered under all three planning processes, with limited exceptions for proposed market-based solutions because they are not selected by the NYISO for purposes of cost allocation. The Filing Parties, therefore, propose to revise the project information requirements in Sections 31.2.4.4 (reliability – regulated backstop solution), 31.2.4.6 (reliability – market-based solution), 31.2.4.8 (reliability – alternative regulated solution), 31.3.2.4.2 (economic), and 31.4.5.1 (public policy) to require Developers to provide the following information for their proposed solution:

- contact information;
- the lead time necessary to complete the project, including, if available, the construction windows in which the Developer can perform construction and what, if any, outages may be required during these periods;
- a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering specifications as appropriate;
- evidence of a commercially viable technology;
- a major milestone schedule;
- a schedule for obtaining any required permits and other certifications;
- a demonstration of Site Control or a schedule for obtaining such control;
- status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place;
- status of NYISO interconnection studies and interconnection agreement;
- status of equipment availability and procurement;
- evidence of financing or ability to finance the project;
- capital cost estimates for each segment of the project;
- a description of permitting or other risks facing the project at the stage of project development, including evidence of the reasonableness of project cost estimates, all based on the information available at the time of the submission; and
- any other information requested by the NYISO.

In addition to aligning the existing project information categories in the reliability, economic, and public policy processes to provide for consistent project information requirements across the NYISO's planning processes, the Filing Parties propose to make the following revisions to the existing categories of information to obtain the information needed for the NYISO's evaluation and selection process: (i) require a description of the "geographic and electrical location;" (ii) require a schedule for obtaining "any" permits and remove the express requirements for "siting" permits, (iii) require "evidence of financing or ability to finance the

project,” (iv) require the “status of equipment availability and procurement”; (v) require information, if available, regarding “the construction windows in which the Other Developer or Transmission Owner can perform construction and what, if any, outages may be required during these periods,” and (v) make the following revisions: “to the extent available a description of permitting or other risks facing the project at profile addressing the stage of project development, including evidence of the reasonableness of project cost estimates required cost overruns sharing, required project cost increase sharing, identification of conditions for cancelling the project including terms and conditions for allocating sunk costs all based on the information available at the time of the submission.”

These project information requirements are applicable to all Developers proposing solutions to any type of transmission need, with the following exception. As set out in revised Section 31.2.4.6, a Developer that proposes a market-based solution to a Reliability Need is not required to provide the detailed capital cost estimates or the risk profile information. Because the NYISO will not evaluate the cost-effectiveness or efficiency of proposed market-based solutions for purposes of selecting a project for purposes of cost allocation, the submission of data related to costs is not necessary.

In addition, the Filing Parties note that, for purposes of the reliability planning process, the Developer of a regulated transmission project will submit this information in two phases. First, information required by the NYISO to determine the viability, sufficiency and Trigger Date<sup>38</sup> for all proposed projects must be submitted for the NYISO’s analysis. Second, if the NYISO determines that it may need to trigger a regulated solution to proceed, additional detailed project information must be submitted to the NYISO for its evaluation and selection of the more efficient or cost-effective transmission solution eligible to obtain cost allocation and recovery under the NYISO’s tariff.

## **2. Description of the Type of Evidence to Be Submitted for Contracts, Permits, and Financing**

In the April 18 Order, the Commission directed the Filing Parties to describe the kind of evidence that must be provided to indicate the “the status of any contracts (other than an Interconnection Agreement),” “the status of any required permits,” and “evidence of financing.”<sup>39</sup> In addition, the Commission directed the Filing Parties to clarify why Transmission Owners or Other Developers proposing alternative regulated solutions are required to provide this information, while the Responsible Transmission Owner proposing a regulated backstop solution does not have to provide it.<sup>40</sup>

In response to these directives, the Filing Parties have inserted a description of the material that a Developer must provide to indicate “the status of any contracts (other than an Interconnection Agreement),” “the status of any required permits,” and “evidence of financing.”

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<sup>38</sup> “Trigger Date” is defined as follows, including revisions proposed in this filing: “The date by which the ISO must request implementation of a regulated backstop solution or an alternative regulated solution pursuant to Section 31.2.8 in order to meet a Reliability Need.”

<sup>39</sup> April 18 Order at P 213.

<sup>40</sup> *Id.*



Specifically, the Filing Parties have inserted these information requirements in Sections 31.2.4.4 (reliability – regulated backstop solution), 31.2.4.6 (reliability – market-based solution), 31.2.4.8 (reliability – alternative regulated solution), 31.3.2.4.2 (economic), and 31.4.5.1 (public policy). All Developers, including Responsible Transmission Owners proposing a regulated backstop solution and an Other Developer or Transmission Owner proposing an alternative regulated solution, must provide the required information.

To demonstrate the status of contracts, a Developer must submit either copies of all final contracts that the NYISO determines are relevant for its consideration, or a report on the status of relevant contracts that are not final, including the timeline on the status of discussions and negotiations and when the negotiations are expected to be completed. Developers must submit copies of such final contracts to the NYISO when available. If the Developer designates such contracts as confidential information, the NYISO will treat them as Confidential Information in accordance with Attachment F of the NYISO OATT.

To demonstrate the status of required permits, a Developer must submit copies of all final permits that the NYISO determines are relevant for its consideration, or a report on the status of relevant permits that are not final, including the completed permit applications with information on what additional actions must be taken to meet the permit requirements, and a timeline providing the expected timing for finalization and receipt of the final permits. The Developer must submit copies of relevant final permits to the NYISO when available.

To demonstrate evidence of financing, a Developer must submit the following information, as appropriate, to indicate evidence of financing by the Developer or by any Affiliate upon which it is relying for financing: (i) evidence of self-financing or project financing through approved rates or the ability to do so, (ii) copies of all loan commitment letters and signed financing contracts, or (iii) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of relevant documents and when the negotiations are expected to be completed. The Developer must submit copies of final contracts or approved rates to the NYISO when available. A Developer that proposes a market-based solution to a Reliability Need is not required to submit evidence of self-financing through rates because it is not seeking, and will not be evaluated for, cost allocation through the NYISO's tariffs.

### **3. Timeline for Submission of Required Project Information**

The Commission directed the Filing Parties to include the dates by which the required project information must be submitted so that the project is considered in a given transmission planning cycle.<sup>41</sup> The Filing Parties propose time frames for the Developer's submission of required project information. For purposes of the reliability planning process, the time frames are set forth in Sections 31.2.5.1 and 31.2.6.1 as described in Parts V.B.1.i and V.B.2.i below. For purposes of the Public Policy Transmission Planning Process, the time frames are set forth in Section 31.4.4.3 as described in Part VI.C.1 below. The time frames for the economic planning process are similar to the time frames for the Public Policy Transmission Planning Process, except that the required information may be submitted at any time (rather than upon the

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<sup>41</sup> *Id.*

NYISO's request).<sup>42</sup> If a Developer fails to provide the project information within these time frames, the Developer's project will not be considered during that planning cycle.<sup>43</sup>

## **V. RELIABILITY PLANNING PROCESS**

### **A. Commission's Directives Regarding NYISO's Reliability Planning Process**

The NYISO's reliability planning process as established in Section 31.2 of Attachment Y of the NYISO OATT begins with the identification of Reliability Needs. The NYISO first conducts the Reliability Needs Assessment ("RNA") that evaluates the future reliability of the New York bulk power system over a ten-year planning horizon and identifies any Reliability Needs that must be addressed. The RNA analyzes resource adequacy, transmission security, and transfer capability on the New York BPTFs and identifies the location and nature of any potential factors and issues that could adversely affect reliability throughout the ten-year planning horizon. The RNA is subject to review and comment by the NYISO's stakeholders, interested parties, and its independent Market Monitoring Unit ("MMU") and must be approved by the NYISO Board of Directors.

For any Reliability Need identified in the RNA, the NYISO solicits: (i) market-based solutions (*i.e.*, solutions proposed by Transmission Owners or Other Developers that do not seek to be selected in the regional transmission plan for purposes of cost allocation); (ii) a regulated backstop solution (*i.e.*, a solution that is required to be proposed by the Responsible Transmission Owner for selection in the regional transmission plan for purposes of cost allocation), and (iii) alternative regulated solutions (*i.e.*, solutions proposed by Transmission Owners or Other Developers for selection in the regional transmission plan for purposes of cost allocation). The NYISO conducts an all-resource planning process in which all types of resources – transmission, generation and demand response – are eligible to be considered to meet a need, although only transmission projects can obtain cost recovery under the NYISO's OATT.

In the October 2012 Filing, the Filing Parties described the proposed process for formulating a Comprehensive Reliability Plan ("CRP") to meet Reliability Needs. Under the process proposed at that time, the NYISO would consider all types of proposed solutions on a comparable basis, including solutions composed of all resource types – transmission, generation, and demand response. The results of the NYISO's evaluation would be set forth in its CRP, which is subject to the review and comment of the NYISO's stakeholders and its MMU, and must be approved by the NYISO Board. If more than one regulated solution would meet an identified Reliability Need, the appropriate governmental agency or authority would select the solution that will be implemented. The NYISO's tariffs provided cost allocation and recovery

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<sup>42</sup> As the NYISO does not solicit transmission solutions for identified needs in the economic planning process, Section 31.3.2.4.1.3 does not provide a time frame by which a Developer must submit its project information. Under Section 31.3.2.4.1.3, "the required information for project qualification may be submitted at any time, but the proposed regulated economic transmission project will be evaluated against the most recently available CARIS Phase II database." Once a Developer begins this process, it will have 15 days to submit additional project information required by the NYISO. Section 31.3.2.4.1.3.

<sup>43</sup> See Sections 31.2.4.6, 31.2.4.8.3, 31.3.2.4.2, 31.4.5.1.

only for transmission solutions, stating further that cost allocation and recovery for non-transmission solutions must occur under state law.

In the April 18 Order, the Commission found that these proposed revisions complied in part with the Order No. 1000 requirements and directed the Filing Parties to make further revisions to the reliability planning process. In particular, the Commission directed the Filing Parties to include an evaluation and selection process through which the NYISO, and not a governmental agency or authority, would select in the NYISO's regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions from among competing projects, as well as the Developers eligible to use the regional cost allocation method for such facilities.<sup>44</sup> In addition, the Commission directed the Filing Parties to ensure that alternative regulated solutions are evaluated in the same level of detail as the regulated backstop solution, under all circumstances.<sup>45</sup> The Commission also directed the Filing Parties to explain how the NYISO will consider, as part of its evaluation of transmission solutions "the relative efficiency and cost-effectiveness" of proposed transmission solutions.<sup>46</sup> Finally, the Commission directed the Filing Parties to explain how the NYISO will ensure its evaluation will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective solution.<sup>47</sup>

**B. NYISO's Evaluation of Proposed Solutions and Selection of the More Efficient or Cost-Effective Transmission Solution to a Reliability Need**

The new process necessary to address the Commission's directives constitutes a significant change to the NYISO's existing reliability planning process by making the NYISO responsible for selecting the transmission solution to an identified Reliability Need. The development of this new process required significant development efforts on the part of the Filing Parties, as well as numerous discussions with other stakeholders, in preparation for this compliance filing, and resulted in extensive revisions to the existing reliability planning process.

The Filing Parties understand the Commission's directives in the April 18 Order to require the NYISO to both: (i) evaluate on a comparable basis all proposed solutions, based on all resource types, to determine whether each proposed solution could satisfy the identified Reliability Need, and (ii) to evaluate all proposed transmission solutions and select in its regional transmission plan for cost allocation purposes the more efficient or cost-effective transmission solution to satisfy a Reliability Need.

During the stakeholder process leading to this compliance filing, some interested parties commented to the NYISO that it should be evaluating and selecting the more efficient and cost-effective solution to Reliability Needs from among all projects submitted to the NYISO as Alternative Regulated Solutions. Those parties argue that comparable treatment of all resources

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<sup>44</sup> April 18 Order at P 81.

<sup>45</sup> April 18 Order at P 242.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

means that the NYISO does not have to select transmission solutions to reliability needs, but should instead select the most efficient and cost-effective solution from all resource types; *i.e.*, generation, demand response and transmission. The NYISO previously addressed these arguments in its June 4, 2013 answer to the motions for clarification and in the alternative rehearing of the Independent Power Producers of New York (“IPPNY”), Multiple Intervenors (“MI”), and the Pace Energy and Climate Center (“Pace”).<sup>48</sup> In their motion, IPPNY, MI, and Pace requested that the Commission clarify its requirements to provide that if, after evaluating all solutions on a comparable basis, the NYISO identifies a non-transmission solution to a Reliability Need or Public Policy Transmission Need as the most cost-effective or efficient solution, the NYISO should not be required to select a transmission solution for purposes of cost-allocation. In their Answer,<sup>49</sup> the Filing Parties urged the Commission to reject these arguments on the ground that the NYISO will conduct a comparable evaluation of all proposed solutions to determine their ability to meet a need, but that the NYISO understands the Commission’s directive is for it to select a transmission solution to a need that would be eligible for cost allocation under the NYISO’s tariff. In their answer, the Filing Parties stated the evaluation requirement:

does not impact the NYISO’s obligation, described above, to evaluate all resource types – including transmission, generation, and demand response on a comparable basis. Nor does this requirement impede the developer of a generation or demand response project from proceeding with its project. Such non-transmission resources could proceed to meet the identified need and obtain cost allocation and cost recovery under state law, rendering construction of transmission facilities unnecessary.<sup>50</sup> However, the NYISO does not have any assurance that such generation or demand response project will be completed or will obtain the required state approvals to proceed and to recover its costs. Given this uncertainty, it is necessary that the NYISO’s regional transmission plan provide for a backstop transmission project – eligible to recover its costs under the NYISO tariffs – that can: (i) meet a Reliability Need required to maintain system reliability and satisfy mandatory NERC criteria or (ii) to address a public policy need if such need must be met to satisfy federal, state or local law. Although Order No. 1000 does not require that transmission projects be built, it does require that transmission projects be identified in regional transmission plans that could be called upon to meet identified needs. Accordingly, the Commission should

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<sup>48</sup> New York Independent System Operator, Inc., Request for Clarification or Rehearing of Independent Power Producers of New York, Inc., Multiple Intervenors and Pace Energy and Climate Center, Docket No. ER13-102-000 (May 17, 2013) (“IPPNY Filing”).

<sup>49</sup> New York Independent System Operator, Inc., Answer of the New York Independent System Operator, Inc. and the New York Transmission Owners, Docket No. ER13-102-000 (June 4, 2013) (“Answer”).

<sup>50</sup> See OATT § 31.5.1.6 (“Regulated Non-Transmission Solutions to Reliability Needs”) and § 31.5.5.1 (cost allocation and recovery for regulated transmission solutions driven by Public Policy Requirements apply “only to regulated transmission projects proposed as solutions to transmission needs driven by Public Policy Requirements” and “does not apply to generation or demand side management projects”).

reject the position of IPPNY, MI, and Pace that the NYISO need not identify the more efficient or cost-effective transmission solution that would be eligible for cost allocation and recovery in the NYISO's regional transmission plan.

The Filing Parties further stated that they would address the concern of IPPNY, MI and Pace that there be comparable evaluation of non-transmission and transmission resources in its further stakeholder process in this proceeding. In stakeholder discussions between May and October, and as a result of research into what comparative evaluations of non-transmission and transmission projects are feasible, the NYISO determined that it could comply with the Commission's determination by conducting a two-step evaluation process of proposed transmission and non-transmission solutions. The NYISO will evaluate projects of all resource types – generation, transmission and demand response – to determine whether they are viable and sufficient solutions to meet the identified Reliability Need by the need date.<sup>51</sup> This comparable evaluation of all resources will inform the NYISO and its stakeholders on the ability of all potential solutions to meet a need. It will further inform the NYPSC, NYPA, and LIPA should any of them decide to proceed with a non-transmission solution to satisfy the Reliability Need with cost allocation and cost recovery under state law, as currently provided by the tariff.<sup>52</sup> Notwithstanding the fact that the NYISO will undertake this broader analysis, Order No. 1000 and the April 18 Order require that transmission providers select from among the transmission projects that are offered to meet the Reliability Need that are eligible for cost allocation and cost recovery under the Commission-jurisdictional tariffs, should a regulated solution to a Reliability Need be required.<sup>53</sup>

Moreover, it is not technically feasible to compare the relative cost effectiveness and efficiency of transmission and non-transmission projects because they address power system needs in different ways. The primary role of generation and demand response is to bring resources to an existing transmission system, which then has to transmit or reflect those resources in system operations to maintain reliability. Deciding whether to add a resource can be compared to deciding what car to purchase, or whether it is better to avoid buying a new car by driving less. It is feasible to compare generation and demand response resources to determine which is the most efficient and cost-effective. Adding transmission, by comparison, is analogous to making a civil engineering decision of where to add a new lane to the highway system. Such a decision looks at increases in transfer capability and resource flows on the system, and analyzes which potential upgrade or addition more efficiently or cost effectively allows resources to flow from points of injection to points of withdrawal on the network. The decision to add

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<sup>51</sup> Section 31.2.5.2 (Comparable Evaluation of All Proposed Solutions); Section 31.2.5.3 (Evaluation of Viability of Proposed Solutions); 31.2.5.4 (Evaluation of Sufficiency of Proposed Solutions).

<sup>52</sup> Section 31.5.1.6 (Regulated Non-Transmission Solutions to Reliability Needs – cost recovery under state law).

<sup>53</sup> Order No. 1000 at PP 148-49; April 18 Order, PP 81, 145. The Commission has stated that its proposed reforms to transmission planning requirements “do not address or dictate which transmission facilities should be either in the regional transmission plan or actually constructed” (Order No. 1000 at P 153) and “are not intended to dictate substantive outcomes, such as what transmission facilities will be built and where” (Order No. 1000-A at P 188).

transmission hinges on what additions to the “highway” best increase flow, while addressing: (i) reliability characteristics including system voltage, stability, thermal and short-circuit parameters, and (ii) economic impacts such as net system production cost savings and capacity price savings resulting from changes in system flows. Just as vehicle selection and road upgrades/expansions are distinct questions, selection of electric power system resources and transmission infrastructure upgrades address distinct power system needs. The question here is not whether the NYISO can or should compare a market-based solution versus a regulated transmission solution, but rather whether to compare a regulated transmission solution versus a non-transmission solution (*e.g.*, generation, energy efficiency, demand response), which would require cost allocation determinations through state law.

Finally, all of the transmission planning processes approved by the Commission under Order No. 1000 to date call for the evaluation and selection of transmission projects, and the Commission has not required the selection of non-transmission projects in regional transmission plans for purposes of cost allocation.<sup>54</sup> In fact, the Commission specifically held that the issue of cost recovery for non-transmission alternatives is beyond the scope of the transmission cost allocation reforms set out in Order No. 1000.<sup>55</sup> Accordingly, the Filing Parties have amended the tariff to provide that the NYISO will select from among the transmission solutions provided by the Transmission Owners and non-incumbent Developers the more efficient or cost effective transmission solution that is eligible for cost allocation and cost recovery under the NYISO’s tariff as a regulated solution to a Reliability Need, should one be required.<sup>56</sup>

In response to the Commission’s directives, the Filing Parties, therefore, propose to revise the reliability planning process set forth in Attachment Y of the NYISO OATT in the following manner. Following the NYISO’s solicitation of proposed solutions to an identified Reliability Need, the NYISO will perform an initial evaluation of the viability and sufficiency of all proposed solutions on a comparable basis, whether transmission or non-transmission, to determine whether each solution will satisfy an identified Reliability Need and will present the results of its evaluation to stakeholders and report the results in the CRP. As part of this evaluation, the NYISO will determine the Trigger Date for each of the proposed regulated solutions.

If the Trigger Date of any of the proposed regulated solutions will occur within thirty-six months of the NYISO’s presenting the results of its initial evaluation to stakeholders, the NYISO will request that the Developers of all of the proposed regulated transmission solutions that have been found to be viable and sufficient submit additional project qualification information. Such information will enable the NYISO to evaluate in greater detail and select in its CRP for cost allocation purposes the more efficient or cost-effective transmission solution to an identified

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<sup>54</sup> See, *e.g.*, *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at PP 52-55 (2013); *Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,215 at PP 47-48 (2013); *Southwest Power Pool, Inc.*, 144 FERC ¶ 059 at PP 46-48 (2013); *California Independent System Operator Corp.*, 143 FERC ¶ 61,057 at PP 35-37 (2013); *ISO New England Inc.*, 143 FERC ¶ 61,150 at PP 45-50 (2013)

<sup>55</sup> Order No. 1000 at P 779.

<sup>56</sup> Section 31.2.6.5.2 (ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need).

Reliability Need. If the Trigger Date of any of the proposed regulated solutions will not occur within the thirty-six month window, the NYISO will not make a selection for that planning cycle.

The details of the Filing Parties' proposed process are described below.

# **1. Evaluation of Viability, Sufficiency, and Trigger Date of All Proposed Solutions to a Reliability Need**

The Filing Parties propose to insert a new Section 31.2.5 pursuant to which the NYISO will evaluate all proposed solutions, whether transmission or non-transmission, to determine whether each is a viable and sufficient solution to satisfy an identified Reliability Need and to determine the Trigger Date for any proposed regulated solution. The NYISO will report the results of this evaluation in its CRP. Specifically, the NYISO will evaluate in the same general time frame and on a comparable basis all proposed market-based, regulated backstop, and alternative regulated solutions composed of all resource types – including transmission, generation, demand response, or a combination of them – to determine the viability and sufficiency of each proposed solution to satisfy the identified Reliability Need.<sup>57</sup>

## *i. Submission of Project Qualification Information*<sup>58</sup>

In the April 18 Order, the Commission directed the Filing Parties to include the date(s) by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle.<sup>59</sup> The Filing Parties propose to insert a new Section 31.2.5.1<sup>60</sup> to provide that a Developer proposing a solution to an identified Reliability Need must submit to the NYISO its project qualification information within 60 days<sup>61</sup> after the NYISO's request for solutions.<sup>62</sup> The Developer of a market-based solution must submit the project information required under Section 31.2.4.6, which is described above in Part IV.C.1. The Responsible Transmission Owner proposing a regulated backstop solution and the Other

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<sup>57</sup> Section 31.2.5.2. For purposes of Section 31.2.5.2, the Filing Parties have consolidated the evaluation requirements set forth in the existing Sections 31.2.5.2, 31.2.5.3, and 31.2.5.4, with the exception of the requirements regarding the NYISO's reporting in the CRP, which are now addressed in Section 31.2.5.7.

<sup>58</sup> The Filing Parties propose to remove the description of the existing project information requirements in Section 31.2.4.1.2 as the project information requirements are being revised.

<sup>59</sup> April 18 Order at P 213.

<sup>60</sup> The submission requirements were previously addressed in the existing Section 31.2.4.1.4, which the Filing Parties propose to remove as part of their proposed revisions to the submission requirements.

<sup>61</sup> The Filing Parties propose to remove Sections 31.2.4.1.4 regarding the time frames for submitting Developer qualification and project qualification information as the Filing Parties are providing more detailed timing requirements as part of this filing.

<sup>62</sup> The qualification requirements for a Developer proposing a transmission solution are described in Part IV.B above.

Developer or Transmission Owner proposing an alternative regulated solution must submit under Sections 31.2.4.4.1 and 31.2.4.8.1 the following project information:

- contact information
- the lead time necessary to complete the project, including, if available, the construction windows in which the Developer can perform construction and what, if any, outages may be required during these periods
- a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering specifications and drawings as appropriate
- evidence of a commercially viable technology
- a major milestone schedule
- the schedule for obtaining any permits and other certifications, if available
- status of NYISO interconnection studies and interconnection agreement, if available, and
- status of equipment availability and procurement, if available.<sup>63</sup>

If the Developer is proposing a regulated transmission solution, the Developer must satisfy the Developer eligibility requirements described in Part IV.B above and must submit a \$10,000 application fee with its submission of its project proposal.<sup>64</sup> The NYISO charges a similar fee to cover its costs of reviewing parties' requests for interconnection to the NYISO's system under Attachment X.<sup>65</sup> Given the NYISO's additional responsibilities to evaluate and select transmission projects as directed in the April 18 Order, the NYISO will collect this fee to cover its costs. The NYISO will use the fee from Developers to cover the costs of performing an initial evaluation of each transmission project and determining the scope of the studies to be conducted for the NYISO's selection. In addition, all Developers must submit any additional project qualification information required by the NYISO within 15 days of the NYISO's request. If a Developer fails to submit the required project qualification information or any additional information requested by the NYISO within these time frames, the Developer's project will not be considered during that planning cycle.

*ii. Evaluation of Viability and Sufficiency of Proposed Solutions to a Reliability Need*

Pursuant to new Section 31.2.5.3, the NYISO will evaluate the viability of a proposed solution to satisfy a Reliability Need by considering whether: (i) the Developer has provided the required Developer qualification and project qualification information, (ii) the proposed solution is technically practicable, (iii) the Developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal

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<sup>63</sup> If after determining the Trigger Dates for the proposed regulated solutions, the NYISO determines that it must make a selection during that planning cycle, the Responsible Transmission Owner, Other Developer, or Transmission Owner proposing a regulated transmission solution must submit the remainder of the project information requirements described in Part V.B.2.i above.

<sup>64</sup> Section 31.2.5.1.

<sup>65</sup> OATT, Attachment X, Section 30.3.1.<sup>66</sup> Developers of proposed regulated solutions will have the opportunity under Section 31.2.5.6 to remedy within 30 days of notification by the NYISO any reliability deficiencies identified by the NYISO.



reasonably feasible in the required time frame, and (iv) the proposed solution can be completed in the required time frame. In addition, pursuant to new Section 31.2.5.4, the NYISO will independently evaluate each proposed solution to confirm that it will eliminate the Reliability Need. If the NYISO determines that the proposed solution is not viable and sufficient, the NYISO will reject the proposed solution from further consideration during the planning cycle.<sup>66</sup>

*iii. Determination of a Trigger Date for a Proposed Regulated Solution*

The Filing Parties propose new Section 31.2.5.5 pursuant to which the NYISO will evaluate the lead time that each Developer proposes for its proposed solution and will: (i) establish the Trigger Date for each proposed regulated solution, and (ii) benchmark lead times for each proposed market-based solution.<sup>67</sup> As described below, the NYISO will use the Trigger Date and lead time information to determine whether it must select and trigger in the CRP for that planning cycle a more efficient or cost-effective transmission solution to enable the selected project to satisfy an identified Reliability Need by the need date. If the NYISO determines that any Developer has proposed a lead time that could result in a Trigger Date for a regulated solution within thirty-six months of the NYISO's presentation to stakeholders of the results of its viability and sufficiency analysis, the NYISO will notify all Developers of this fact,<sup>68</sup> so that the Developers of proposed regulated transmission solutions can prepare their submission of additional information described in Part V.B.2.i below for purposes of the NYISO's selection of the more efficient or cost-effective solution.

*iv. Presentation of Evaluation Results*

The Filing Parties propose under new Section 31.2.5.7 that the NYISO will present the results of its viability and sufficiency analysis to NYISO stakeholders, interested parties, and the NYDPS for comment. The NYISO will indicate at that time whether any of the proposed regulated solutions that have been found to be viable and sufficient will have a Trigger Date within thirty-six months of the date of the NYISO's presentation. The NYISO will include the results of its viability and sufficient evaluation, along with the Trigger Dates for the proposed regulated solutions, in the CRP.

**2. Selection of the More Efficient or Cost-Effective Transmission Solution to a Reliability Need**

The Filing Parties propose to insert a new Section 31.2.6 establishing the circumstances and process under which the NYISO will perform additional analysis of proposed regulated

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<sup>66</sup> Developers of proposed regulated solutions will have the opportunity under Section 31.2.5.6 to remedy within 30 days of notification by the NYISO any reliability deficiencies identified by the NYISO.

<sup>67</sup> The Filing Parties are relocating this requirement from the existing Section 31.2.4.3.1, as revised to provide that the NYISO will establish a Trigger Date not only for the regulated backstop solution proposed by the Responsible Transmission Owner, but also for any other proposed regulated solution, including an alternative regulated solution proposed by an Other Developer or Transmission Owner.

<sup>68</sup> In providing such notice, the NYISO will not disclose information regarding the project that has an upcoming Trigger Date.

transmission solutions and select the more efficient or cost-effective transmission solution to an identified Reliability Need. Specifically, if the Trigger Date of any of the proposed regulated solutions that the NYISO determines is viable and sufficient will occur within thirty-six months of the NYISO's presentation of the results of its viability and sufficiency evaluation, the NYISO will perform additional analysis of the viable and sufficient transmission solutions and will select in its CRP for cost allocation purposes the more efficient or cost-effective transmission solution to satisfy an identified Reliability Need during that planning cycle. The reason why the Filing Parties propose to look forward for solutions with a Trigger Date within a thirty-six month window during their two-year planning process is to allow the NYISO to conduct a complete evaluation and selection of transmission solutions that the NYISO might otherwise be unable to analyze after the end of one reliability planning cycle, but before the beginning of the next 24 month planning cycle.<sup>69</sup>

If the Trigger Dates of all of the proposed regulated solutions fall outside of the thirty-six month window, the NYISO will not perform this additional analysis or make a selection for that planning cycle. In such instance, the NYISO would not yet be required to make a selection to have a project in place to satisfy a Reliability Need by the need date. Developers could proceed to further develop and improve their proposed transmission solutions and would be able to provide the NYISO with more precise technical and financial information in the following planning cycle.

*i. Submission of Additional Project Qualification Information*

If the NYISO determines that the Trigger Date for any Developer's proposed regulated solution that was found to be viable and sufficient will occur within thirty-six months of the NYISO's presenting the results of its viability and sufficiency evaluation, the Filing Parties propose under new Section 31.2.6.1 that the NYISO will request that all Developers of regulated transmission solutions that the NYISO has found to be viable and sufficient in that planning cycle submit the following additional project information set forth in Sections 31.2.4.4.2 and 31.2.4.8.2:

- updates to the information that the Developer previously provided to the NYISO for purposes of its evaluation of selection, viability, and Trigger Dates of the proposed transmission solutions

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<sup>69</sup> Specifically, the NYISO will conduct one viability and sufficiency analysis within a CRP cycle, and the next viability and sufficiency analysis will not occur for 24 months, in the next CRP cycle. The NYISO expects the process for requesting detailed project information from Developers plus a full evaluation and Board-approved selection based on those project details will take from 9 to 12 months. If the Trigger Date for a viable and sufficient transmission solution is 25 months from the NYISO's viability and sufficiency analysis, and it takes 9-12 months to completely analyze that project in comparison with competing projects, the NYISO would not be able to conduct a detailed evaluation of that solution before the next CRP cycle begins with a new RNA. Projects with Trigger Dates within a 25-36 month window from a complete viability and sufficiency analysis would not receive comparable consideration. Accordingly, the Filing Parties propose to evaluate all transmission for projects with Trigger Dates up to 36 months following the NYISO's calculation of Trigger Dates within a planning cycle.

- the schedule for obtaining required permits and other certifications
- a demonstration of Site Control or a schedule for obtaining such control
- the status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place
- status of equipment availability and procurement
- status of interconnection studies and interconnection agreement
- evidence of financing or ability to finance the project
- capital cost estimates for the project
- a description of permitting or other risks facing the project at the stage of project development, including evidence of the reasonableness of project cost estimates, all based on the information available at the time of the submission, and
- any other information requested by the NYISO.<sup>70</sup>

The NYISO will request that Developers submit this information sufficiently in advance of the earliest Trigger Date of regulated solution(s) that will occur within the thirty-six month window to enable the NYISO to perform its evaluation and make its selection. The flexibility in the date by which the Developer must submit its project information will allow the NYISO to request the information and perform its evaluation and selection closer in time to the Trigger Date for the proposed solutions, enabling Developers to provide more developed and precise project information for the NYISO's evaluation. Moreover, the use of the earliest Trigger Date of any regulated solution as the date driving this request for more information ensures that no transmission project will be deprived of consideration for selection by the NYISO because its Trigger Date is longer than its competitors' Trigger Date(s).

Upon the NYISO's request, the Developer will have 30 days, or such additional time as the NYISO determines is reasonable, to provide the information. Subsequently, the Developer will have 15 days to submit any additional project information required by the NYISO. If the Developer fails to submit its project information within these time frames, the Developer's project will not be eligible for consideration in that planning cycle.

*ii. Study Deposit for NYISO's Evaluation and Selection of Proposed Transmission Solution*

As was noted above, the April 18 Order directed the NYISO to undertake a new role in evaluating and selecting transmission projects that meet a Reliability Need or a Public Policy Transmission Need.<sup>71</sup> Prior to the April 18 Order, the NYISO Tariffs provided that project selection would either be done by investors in its market-based planning process or by the NYDPS/NYPSC. Now that the Commission has directed the NYISO to make the evaluation and selection of reliability and public policy transmission projects, the scope and expense of the work to be done by the NYISO has become apparent. For the NYISO to gather all of the information required to undertake its evaluation and selection using the extensive criteria it is filing in Sections 31.2 and 31.4 for reliability and public policy transmission projects, the NYISO will require additional resources. The NYISO submits that rather than allocating to all Market

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<sup>70</sup> See Part IV.C above regarding the project information requirements.

<sup>71</sup> April 18 Order at PP 81, 145.

Participants the costs of this evaluation and selection process through its general budget under Rate Schedule 1, the proponent of a transmission project, whether a Transmission Owner or non-incumbent Developer, should pay for the study costs. Accordingly, the Filing Parties propose to require that the Developer of the proposed transmission solution be responsible for these study costs, which is consistent with the treatment of the study costs under the NYISO's interconnection process.<sup>72</sup>

The Filing Parties propose to insert a new Section 31.2.6.2, pursuant to which the Developer of a proposed transmission solution that the NYISO is evaluating for purposes of selecting the more efficient or cost-effective solution to a Reliability Need must submit a study deposit of \$100,000 at the same time that it submits its project information.<sup>73</sup> The NYISO will then invoice on a monthly basis, and the Developer must pay within 30 days, the actual study costs associated with the evaluation of the Developer's proposed transmission solution for purposes of selecting the more efficient or cost-effective solution.<sup>74</sup> The NYISO will retain the full study deposit amount for the duration of its evaluation, drawing on the deposit if needed. After the conclusion of the NYISO's evaluation or if the Developer withdraws its proposed transmission solution, the NYISO will issue a final invoice and refund to the Developer any portion of its study deposit not required to satisfy any outstanding amounts. The NYISO will refund study deposits within 60 days of its receipt of final invoices from its consultants and involved Transmission Owners.<sup>75</sup> In the event of a settlement dispute, the Developer must timely pay any undisputed amount and place any disputed amount in escrow.<sup>76</sup> Any dispute will be addressed through the NYISO's dispute resolution provisions in Section 2.16 of the NYISO OATT and Section 11 of the NYISO Services Tariff.

*iii. NYISO Evaluation of System Impacts of Proposed Regulated Transmission Solutions*

As part of the NYISO's evaluation of proposed regulated transmission solutions, the Filing Parties propose to insert new Section 31.2.6.3 pursuant to which the NYISO will study the system impact of any proposed regulated transmission solution. If the proposed regulated transmission solution will have a significant adverse impact on the reliability of the New York State Transmission System, the proposed solution will not be eligible for selection by the NYISO. Within 30 days of being notified by the NYISO, the Developer will have the opportunity to submit an adjusted proposal that addresses the system impact of its proposal. If

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<sup>72</sup> See, e.g. OATT, Attachment X, Section 30.13.3.1.

<sup>73</sup> In Order No. 1000, the Commission left the determination of whether to require additional procedural protections, such as the posting of a deposit, to the discretion of a transmission planning region's stakeholders. Order No. 1000 at P 327.

<sup>74</sup> If the NYISO conducts study work for multiple proposed transmission solutions on a combined basis, the NYISO will allocate the costs of combined study work equally among the applicable Developers. Section 31.2.6.2.

<sup>75</sup> Section 31.2.6.2.

<sup>76</sup> Within thirty calendar days after the resolution of a dispute, the Developer must pay the NYISO any amounts due with interest calculated in accordance with Section 35.19a(a)(2) of the Commission's regulations. Section 31.2.6.3.

the adjusted proposal still results in a significant adverse impact or does not satisfy the viability and sufficiency requirements, the NYISO will remove the proposed solution from further consideration during that planning cycle.

*iv. Selection of the More Efficient or Cost-Effective Transmission Solution to Satisfy a Reliability Need*

The Filing Parties propose in new Section 31.2.6.5.1 the metrics that the NYISO will use to evaluate proposed regulated transmission solutions for purposes of selecting the more efficient or cost-effective transmission solution to satisfy a Reliability Need. The NYISO will consider, and consult with the NYDPS, regarding the proposed transmission solution's satisfaction of these metrics and will rank each proposed solution based on the quality of its satisfaction of the metrics. In evaluating each proposed solution, the NYISO will determine whether the information submitted by the Developer is reasonable and how such information should be used for purposes of evaluating each metric.<sup>77</sup> The NYISO may engage an independent consultant to review the reasonableness and comprehensiveness of the information submitted by the Developer and may rely on the independent consultant's analysis in evaluating each metric.<sup>78</sup>

The NYISO will consider proposed transmission solutions using the following metrics:

- The capital cost estimates for the proposed regulated transmission solution, including the accuracy of the proposed estimates. To ensure credible estimates, the NYISO will require the Developer to provide itemized work sheets identifying all material and labor cost assumptions, providing related drawings, and including an estimated quantification of the cost variance with an estimated plus/minus range around the capital cost estimate.<sup>79</sup>
- The cost per MW ratio of the proposed regulated transmission solution.<sup>80</sup>

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<sup>77</sup> Section 31.2.6.5.

<sup>78</sup> *Id.*

<sup>79</sup> Section 31.2.6.5.1.1. The estimate shall include all components that are needed to meet the Reliability Need throughout the Study Period. To the extent information is available, the Developer should itemize: material and labor cost by equipment, engineering and design work, permitting, site acquisition, procurement and construction work, and commissioning needed for the proposed solution, all in accordance with Good Utility Practice. For each of these cost categories, the Developer should specify the nature and estimated cost of all major project components and estimate the cost of the work to be done at each substation and/or on each feeder to physically and electrically connect each facility to the existing system. The work sheets should itemize the extent applicable and available all equipment for: (i) the proposed project, (ii) interconnection facilities (including Attachment Facilities and Direct Assignment Facilities), and (iii) System Upgrade Facilities, System Deliverability Upgrades, Network Upgrades, and Distribution Upgrades. Section 31.2.6.5.1.1.

<sup>80</sup> Section 31.2.6.5.1.2. For this evaluation, the NYISO will first determine the present worth, in dollars, of the total capital cost of the proposed solution in current year dollars. The NYISO will then determine the MW value of the solution by summing the Reliability Need, in MW, with the additional improvement, in MW, that the proposed solution offers beyond serving the Reliability Need. The NYISO

- The expandability of the proposed transmission solution, including the impact on future construction and the extent to which any subsequent expansion will continue to use the proposed solution within the context of system expansion.<sup>81</sup>
- The operability of the proposed regulated transmission solution, including how the proposed solution may affect the additional flexibility in operating the system<sup>82</sup> and may affect the cost of operating the system.<sup>83</sup>
- The performance of the proposed regulated transmission solution, including how the proposed solution may affect the utilization of the system, such as interface flows and percent loading of facilities.<sup>84</sup>
- The extent to which the Developer of a proposed regulated transmission solution has the property rights, or ability to obtain the property rights, required to implement the solution.<sup>85</sup>
- The potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule and the schedule for obtaining any permits and other certifications as required to timely meet the need.<sup>86</sup>

Based on its evaluation of the proposed regulated transmission solutions using these metrics, the NYISO will select the more efficient or cost-effective transmission solution to an identified Reliability Need and report the selected solution in the CRP.<sup>87</sup> Several stakeholders have argued that the NYISO should assign weights to these criteria and derive a numerical

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will then determine the cost per MW ratio by dividing the present worth of the total capital cost by the MW value. Section 31.2.6.5.1.2.

<sup>81</sup> Section 31.2.6.5.1.3.

<sup>82</sup> In evaluating operational flexibility, the NYISO will analyze how the proposed solution may affect the dispatch of generation, access to operating reserves, access to ancillary services, or ability to remove transmission for maintenance. Section 31.2.6.5.1.4.

<sup>83</sup> In evaluating impact on the costs of operating the system, the NYISO will analyze how the proposed solution may result in operating generation out of merit for reliability reasons, reducing the need to cycle generation, and the need to provide more balance in the system to respond to system conditions that are more severe than design conditions. Section 31.2.6.5.1.4.

<sup>84</sup> Section 31.2.6.5.1.5.

<sup>85</sup> Section 31.2.6.5.1.6. The NYISO will consider whether the Developer: (i) already possesses the rights of way necessary to implement the solution; (ii) has completed a transmission routing study, which (a) identifies a specific routing plan with alternatives, (b) includes a schedule indicating the timing for obtaining siting and permitting, and (c) provides specific attention to sensitive areas (*e.g.*, wetlands, river crossings, protected areas, and schools); or (iii) has a specified a plan or approach for determining routing and acquiring property rights. Section 31.2.6.5.1.6.

<sup>86</sup> Section 31.2.6.5.1.7.

<sup>87</sup> Section 31.2.6.5.2.

scoring system for ranking projects. Some contended that the NYISO should assign the greatest weight to project cost criteria. Nothing in Order No. 1000 or in the planning or cost allocation principles requires an ISO/RTO to use a numerical weighting system. Rather, Order No. 1000 consistently emphasizes that it is not requiring a specific methodology, formula or process for regions to implement in establishing transmission planning processes, and that transmission planners have flexibility in how they will implement the Commission's directives.<sup>88</sup>

After completing stakeholder discussions, the Filing Parties concluded that adopting a numerical scoring system would arbitrarily assign weights to factors without any clear basis for particular assignments. Because the Commission has determined that cost factors are important, the NYISO has listed cost criteria first among the selection criteria to be applied to reliability projects. The Filing Parties understand that the Commission intends that transmission planners: (1) provide clarity and transparency in defining the criteria to be applied in making project selections, (2) use their independent judgment in applying those criteria, and (3) make a written determination that explains to all interested parties why a particular project was selected or was not selected in applying the criteria.<sup>89</sup> The proposed evaluation and selection process satisfies all of those elements by providing the criteria the NYISO will apply, requiring analyses of how projects satisfy those criteria, and providing a written report that will be: (i) reviewed and commented on by the NYISO stakeholder committees, including the Electric System Planning Working Group, the Operating Committee, the Management Committee, (ii) reviewed and commented on by the MMU, and (iii) review and approved by the NYISO Board.<sup>90</sup>

### **3. Comprehensive Reliability Plan**

#### *i. Development of the Comprehensive Reliability Plan*

The Filing Parties propose to revise the requirements for the CRP in new Section 31.2.7 (previously 31.2.6) to account for the new evaluation and selection process. Specifically, the Filing Parties propose that the NYISO will identify in the draft CRP: (i) a list of the qualified Developers, (ii) its findings regarding the viability and sufficiency of proposed solutions, (iii) the Trigger Dates of regulated solutions, (iv) the Responsible Transmission Owner and its regulated backstop solution, and (v) whether market-based solutions will be available or whether it is necessary to implement a regulated solution.<sup>91</sup> The draft CRP will reflect input from the NYDPS.

The Filing Parties anticipate that the NYISO's reliability planning process will take two years to complete now that the NYISO is responsible for evaluating and selecting the more efficient or cost-effective transmission solutions to meet a Reliability Need. Because study

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<sup>88</sup> Order No. 1000 at PP 149, 157, 158.

<sup>89</sup> Order No. 1000 at P 223; April 18 Order at PP 77, 78 and 81.

<sup>90</sup> Sections 31.2.7, 31.2.7.1 and 31.2.7.2.

<sup>91</sup> To consolidate all of the CRP requirements in one location, the Filing Parties have relocated into this Section 31.2.7 from the previous Section 31.2.5.6 the requirements that the NYISO identify in the CRP: (i) the Responsible Transmission Owner and its regulated backstop solution, and (ii) whether market-based solutions will be available or whether it is necessary to implement a regulated solution.

inputs, conditions and projects change over time, it is possible that the reliability planning process could take longer than two years, especially the first time it is implemented beginning (as the Filing Parties propose herein) in January 2014. As described in Part X.A below, the tariff provides that if the NYISO finds that the CRP cannot be completed within the two-year planning cycle, it will notify stakeholders, provide an estimated completion date, and provide an explanation for why additional time is required.<sup>92</sup> In any event, the NYISO will conduct an RNA at least once every two years to ensure that no Reliability Needs remain unidentified.<sup>93</sup>

*ii. Inclusion of the Selected Transmission Solution in the CRP and the Updated CRP Report*

Under new Section 31.2.7, the draft CRP will also indicate whether the NYISO determines that the Trigger Date to any proposed regulated solution will occur within thirty-six months of the NYISO's presentation of the results of its evaluation of the viability and sufficiency of the proposed solutions. If the NYISO determines that none of the proposed regulated solutions has a Trigger Date within this thirty-six month time frame, the draft CRP will not include a selected transmission solution. If, however, the NYISO determines that any of the proposed regulated solutions does have a Trigger Date within the thirty-six month time frame, the NYISO will address the NYISO's selection process in the CRP as follows:

(i) If the NYISO recommends selection of the more efficient or cost-effective transmission solution prior to the completion of the CRP, the NYISO will report the selected transmission solution in the CRP and indicate whether the project must be triggered.

(ii) If the NYISO determines in its discretion that, based on the Trigger Date of the proposed solution(s), it is not necessary to select the more efficient or cost-effective transmission solution prior to the completion of the draft CRP, the draft CRP will not include a selected transmission solution. If, following the completion of the CRP and prior to the completion of the thirty-six month period, the NYISO selects the more efficient or cost-effective transmission solution to satisfy the Reliability Need, the NYISO will report the selected regulated transmission solution in an updated CRP report and will indicate whether the project must be triggered.<sup>94</sup> The draft updated CRP report must be reviewed by stakeholders and forwarded to the NYISO Board for review and action under the same process as the normal CRP.<sup>95</sup>

*iii. Stakeholder Review and NYISO Board Action on the CRP*

Consistent with the NYISO's existing process, the draft CRP will be provided to NYISO stakeholders for their review under new Section 31.2.7.1 (previously 31.2.6.1) and then forwarded to the NYISO Board for its review and action under new Section 31.2.7.2 (previously

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<sup>92</sup> Sections 31.1.8.2, 31.2.7.

<sup>93</sup> See Section 31.1.8.2.

<sup>94</sup> Sections 31.2.7 and 31.2.7.3.

<sup>95</sup> Section 31.2.7.3.



31.2.6.2).<sup>96</sup> The Filing Parties, however, propose minor revisions to the NYISO Board requirements to clarify that it is the NYISO Board, and not state authorities or agencies, that will be responsible for the review and selection in the CRP of the more efficient or cost-effective transmission solution for cost allocation purposes, if a selection must be made in that planning cycle.<sup>97</sup> Once approved, the NYISO will post on its website the CRP, including its determination whether a regulated solution is needed to maintain reliability and should proceed to obtain government approvals and commence construction.<sup>98</sup>

#### **4. Requirements for Triggering and Halting the Regulated Solution**

##### *i. Triggering of Regulated Solution*

The Filing Parties propose revisions to new Section 31.2.8 (previously Section 31.2.5.6) to establish the process by which the NYISO will direct Responsible Transmission Owners, Other Developers, or Transmission Owners to proceed with their regulated solutions to satisfy a Reliability Need – *i.e.*, “trigger” the projects – following the completion of the NYISO’s evaluation and selection process. The NYISO’s reliability planning process strives to achieve market-based solutions to Reliability Needs and will not trigger a regulated solution if it determines that there are sufficient market-based solutions to satisfy the identified Reliability Need.<sup>99</sup>

If, however, the NYISO determines that: (i) there are not sufficient market-based solutions to satisfy a Reliability Need and (ii) the Trigger Date for a regulated solution – either the regulated backstop solution or an alternative regulated transmission solution selected by the NYISO in its CRP as the more efficient or cost-effective transmission solution – will occur within thirty-six months of the NYISO’s presenting the results of its review of the viability and sufficiency of proposed solutions, the NYISO will trigger the regulated solution(s) in the following manner:

- If the regulated backstop solution is the only proposed viable and sufficient regulated solution or has been selected as the more efficient or cost-effective transmission solution, the NYISO will trigger the regulated backstop solution at its Trigger Date.<sup>100</sup>
- If an alternative regulated transmission solution has been selected by the NYISO as the more efficient or cost-effective transmission to satisfy the Reliability Need and the Trigger Date for the alternative regulated transmission solution precedes the Trigger Date

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<sup>96</sup> The Filing Parties have also relocated along with these provisions Section 31.2.7.4 – Reliability Disputes (previously Section 31.2.6.3) and Section 31.2.7.5 – Posting of Approved Solution (previously Section 31.2.6.4). The Filing Parties propose one minor revision to these provisions. In Section 31.2.7.5, the Filing Parties propose to clarify that the ISO will post on its website a list of all Developers that have undertaken a commitment “to the ISO” to build a project . . . .”

<sup>97</sup> Section 31.2.7.2.

<sup>98</sup> Sections 31.2.7.2, 31.2.7.2.

<sup>99</sup> Section 31.2.8.1.1.

<sup>100</sup> Section 31.2.8.1.2.

for the regulated backstop solution, the NYISO will trigger the alternative regulated transmission solution at its Trigger Date.<sup>101</sup> If the NYISO then determines prior to or at the Trigger Date for the regulated backstop solution that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution in parallel with the selected alternative regulated transmission solution, the NYISO may also trigger the regulated backstop solution.<sup>102</sup>

- If an alternative regulated transmission solution has been selected by the NYISO as the more efficient or cost-effective transmission solution to satisfy the Reliability Need and the Trigger Date for the alternative regulated transmission solution follows the Trigger Date for the regulated backstop solution, the NYISO will trigger both the alternative regulated transmission solution and the regulated backstop solution at the Trigger Date for the reliability backstop solution.<sup>103</sup> In these circumstances, the NYISO will trigger both solutions to ensure that both are available to the NYISO to meet a Reliability Need. For system reliability, the NYISO may maintain the availability and development of both the alternative regulated solution and the regulated backstop solution until the NYISO is confident that the alternative regulated solution will come into service.

The NYISO will inform the relevant Responsible Transmission Owner, Other Developer, or Transmission Owner of the triggered reliability solution(s) that it should submit its proposed solution to the appropriate governmental agencies and/or authorities to begin the necessary approval process to site, construct, and operate the solution.<sup>104</sup> The Responsible Transmission Owner, Other Developer, or Transmission Owner will then make such a submission.<sup>105</sup>

The NYISO currently has the discretion to determine that a regulated backstop solution should continue to develop and seek necessary approvals in parallel with a market-based solution.<sup>106</sup> The NYISO has discretion to proceed in this manner if it does not have sufficient confidence that the market-based solution will be able to satisfy the identified Reliability Need by the need date. Some interested parties, including non-incumbent transmission Developers, have argued that if the NYISO selects an alternative regulated solution as the more efficient or cost-effective transmission solution to satisfy a Reliability Need, the NYISO should have no ability to call upon the current Responsible Transmission Owner to continue to develop its regulated backstop solution, nor should the NYISO be able to compensate the Responsible Transmission Owner for the costs of its further development.

The Filing Parties believe it is necessary for the NYISO to have the ability to make sure that a reliability solution is available to address a Reliability Need by the need date in case reliability solutions proposed by a non-incumbent Developer ceases to move forward or is not

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<sup>101</sup> Section 31.2.8.1.3.

<sup>102</sup> Section 31.2.8.1.3.

<sup>103</sup> Section 31.2.8.1.4.

<sup>104</sup> Sections 31.2.8.1.2, 31.2.8.1.3, and 31.2.8.1.4.

<sup>105</sup> *Id.*

<sup>106</sup> Section 31.2.8.2.1 (previously Section 31.2.5.7.2.1).

meeting the milestones needed to complete the project by the need date. Practically speaking, a non-incumbent Developer may not have a legal obligation to provide public service until it enters into service, and the Commission has indicated that the incumbent Responsible Transmission Owner is not required to complete a non-incumbent Developer's project. A non-incumbent Developer that has not entered into operation may not have any legal obligation under the New York Public Service Law not to abandon its project and is not bound to provide safe and adequate service, build power lines and other improvements, and provide electric service as an electric corporation as defined under New York law.<sup>107</sup>

The Commission has approved the recovery of costs reasonably incurred by a Responsible Transmission Owner in developing regulated backstop solutions to an identified Reliability Need at the direction of the NYISO. Similarly, the Commission should allow the NYISO to hedge the risk of not having an alternative regulated solution in service by the need date by allowing the NYISO to determine that a regulated backstop solution should proceed in parallel with an alternative regulated solution to maintain reliability. To be clear, the NYISO is not suggesting that two facilities should be built and enter into service to meet the same need. Rather, the tariff indicates that the NYISO can direct the Responsible Transmission Owner to continue developing its regulated backstop solution until such time as the NYISO is confident that the alternative regulated solution will enter into service. As discussed in Part V.B.4.iv below, the NYISO will halt the regulated backstop solution at the point at which the non-incumbent Developer satisfies certain requirements that will provide the NYISO with reasonable certainty that the alternative backstop solution will proceed to construction.<sup>108</sup>

*ii. NYISO Agreement with Developer of Alternative Regulated Solution*

The NYISO must ensure that Reliability Needs on the New York BPTFs are addressed. In June 2010, the NYISO executed with the NYTOs an *Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs* pursuant to which the NYTOs agree to develop and construct regulated backstop solutions to address Reliability Needs on the New York BPTFs if market-based solutions are not sufficient.<sup>109</sup> If the NYISO selects an alternative regulated transmission solution as the more efficient or cost-effective transmission solution to satisfy a Reliability Need, the NYISO requires the same assurance from the Other Developer or Transmission Owner that it will develop and construct the selected project to meet the Reliability Need by the need date.

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<sup>107</sup> N.Y. Pub. Serv. L. § 2(13) (defining “electric corporation”); N.Y. Pub. Serv. L. § 65 (requiring “electric corporations” to “furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable”) N.Y. Pub. Serv. L. § 66(2)(requiring “electric corporations” to make “reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other such reasonable devices, apparatus and property of . . . electric corporations”).

<sup>108</sup> Section 31.2.8.2.3.

<sup>109</sup> This agreement is available at:  
[http://www.nyiso.com/public/webdocs/markets\\_operations/documents/Legal\\_and\\_Regulatory/Agreements/NYISO/Comprehensive\\_Planning\\_Process\\_for\\_Reliability\\_Needs\\_Agreement.pdf](http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/Comprehensive_Planning_Process_for_Reliability_Needs_Agreement.pdf)

The Filing Parties propose under new Section 31.2.8.1.5 to require that, within 60 days of the NYISO's triggering of an alternative regulated transmission solution or such other reasonable time period as determined by the NYISO, the Other Developer or Transmission Owner execute an agreement with the NYISO committing the Other Developer or Transmission Owner to seek all necessary approvals required for its proposed project, to develop and construct its proposed project if approvals are received, and to abide by the related requirements set forth in Attachment Y of the NYISO OATT, the NYISO Tariffs, and NYISO Procedures. The Other Developer or Transmission Owner must also provide construction milestones necessary to develop and construct its proposed project to achieve the required in-service date, including milestone dates for obtaining all necessary approvals, and must inform the NYISO of any material changes to its construction milestones within 30 days of the change. If the Other Developer or Transmission Owner does not perform these actions, it will not be eligible for cost allocation under the NYISO Tariffs.<sup>110</sup>

*iii. Role of Governing Agencies/Authorities in Implementing a Proposed Solution*

The NYISO's reliability planning process proposed in the October 2012 Filing provided that the NYISO will submit proposed solutions to the appropriate government agencies or authorities to select the preferred solution.<sup>111</sup> Consistent with the revised evaluation and selection process, the Filing Parties propose to revise Section 31.2.8.1.6 (previously Section 31.2.10.1.4) to clarify that it will not be the role of the government agencies or authorities to select the more efficient or cost-effective transmission solution for cost allocation under the NYISO tariffs, but rather to determine which projects will be provided with the appropriate permits and allowed to construct, as well as to provide cost allocation and recovery for any non-transmission projects such agencies may authorize.

*iv. Halting Requirements*

As described above, the NYISO's reliability planning process strives to achieve market-based solutions to Reliability Needs. Even if the NYISO is required to trigger a regulated solution to ensure that the Reliability Need is met, the NYISO may later halt the development of that backstop regulated project if sufficient market-based solutions are available to satisfy the Reliability Need. The current halting requirements address the circumstances under which the NYISO would halt a regulated backstop solution proposed by the Responsible Transmission Owner. However, the current requirements do not address how the NYISO will halt an alternative regulated transmission solution proposed by an Other Developer or Transmission Owner that the NYISO has selected as the more efficient or cost-effective transmission solution and that the NYISO has triggered to proceed.

The Filing Parties, therefore, propose to make the following revisions to the halting requirements set forth in Section 31.2.8.2 (previously located in Section 31.2.7.3) to address the

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<sup>110</sup> Section 31.2.8.1.5.

<sup>111</sup> Current Section 31.2.10.1.4.

interaction between market-based, regulated backstop, and alternative regulated transmission solutions:<sup>112</sup>

- Currently, the NYISO will halt a regulated backstop solution if circumstances reveal that there are sufficient market-based solutions to satisfy a Reliability Need. The Filing Parties propose to establish that the NYISO will also halt a regulated backstop solution if: (i) the NYISO has triggered an alternative regulated transmission solution that the NYISO selected as the more efficient or cost-effective transmission solution to a Reliability Need, and (ii) the Other Developer or Transmission Owner of the alternative solution has executed an agreement with the NYISO, described in Part V.B.4.ii above and has received its Article VII certification.<sup>113</sup> In such case, so long as the Other Developer has received its approvals on a timely basis, the NYISO will have sufficient assurance that the alternative regulated backstop solution will actually proceed to construct its project and satisfy the Reliability Need. The NYISO, therefore, would no longer need the regulated backstop solution to proceed in parallel as a second backstop project.
- Consistent with the requirements for a regulated backstop solution, the Filing Parties also propose to provide that the NYISO will halt a selected and triggered alternative transmission solution if there are sufficient market-based solutions to satisfy a Reliability Need.<sup>114</sup> The Other Developer or Transmission Owner of the alternative solution will similarly be able to recover its costs prior to halting.<sup>115</sup>
- Currently, a regulated backstop solution cannot be halted once it submits its application for regulatory approval. The Filing Parties propose to revise this requirement to apply this requirement to a selected and triggered alternative regulated transmission solution as well.<sup>116</sup> In addition, the Filing Parties propose to align the date at which a regulated solution can no longer be halted with the project's receipt of its siting certificate or other required regulatory approval, rather than its application for such approval.<sup>117</sup> Projects

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<sup>112</sup> The Filing Parties propose to relocate the halting requirements, so that they are addressed in the same Section 31.2.8 as the triggering requirements. In relocating these requirements, the Filing Parties also propose to relocate from existing Section 31.2.7.4 to Section 31.2.8.3 the related requirements for establishing a cutoff date for determining whether a market-based solution will not be available to meet a Reliability Need. This relocation will clarify the timing of the NYISO's triggering and halting process with respect to regulated solutions to Reliability Needs. The Filing Parties propose one minor substantive revision to Section 31.2.8.3.7. The Filing Parties propose to clarify that in the event a market-based solution is no longer viable, the NYISO will request that a "regulated solution" proceed. The current language is limited to a regulated backstop solution proposed by the Responsible Transmission Owner.

<sup>113</sup> Section 31.2.8.2.3.

<sup>114</sup> Section 31.2.8.2.4.

<sup>115</sup> *Id.*

<sup>116</sup> Section 31.2.8.2.5.

<sup>117</sup> *Id.*

selected by the NYISO that make an application for siting and related permits may or may not enter into service. The receipt of siting and permits, however, indicate that projects have progressed to the point where permitting agencies have sanctioned the project and a significant investment has been made to bring the project to fruition and, therefore, should not be subject to cancellation by the NYISO.

- The Filing Parties propose to remove the requirement set forth in the existing halting requirements that the NYISO continue to monitor a market-based solution following the point at which the NYISO will no longer halt a regulated solution.<sup>118</sup> This requirement is not necessary because Section 31.2.12 (previously Section 31.2.7) already provides for the NYISO's monitoring of the development of market-based solutions.
- The Filing Parties propose to insert a reference to the selected and triggered alternative regulated transmission solution throughout Section 31.2.8.2 to provide for the equal application of the halting requirements to the regulated backstop solution and the alternative regulated transmission solution.<sup>119</sup>
- Consistent with the requirements of a regulated backstop solution, the Filing Parties proposed to clarify that the NYISO will also report to the Commission if the Other Developer or Transmission Owner of an alternative regulated transmission solution selected by the NYISO as the more efficient or cost-effective solution does not seek the necessary regulatory action or has been unable to receive the necessary approvals or property rights.<sup>120</sup>

### **C. Conforming Revisions to Reliability Needs Assessment Process**

For purposes of identifying any Reliability Needs through its RNA, the NYISO analyzes resource adequacy, transmission security, and transfer capability on the New York BPTFs and identifies the location and nature of any potential factors and issues that could adversely affect reliability. The NYISO currently divides the ten-year planning horizon, or Study Period,<sup>121</sup> over which it evaluates and identifies Reliability Needs into two parts – the first five years and the second five years – performing more detailed analysis of solutions for the first five year period. In addition, the NYISO currently requests that Developer's submit different levels of project information depending on whether its proposed project will arise in the first five years or second five years of the Study Period.

The Filing Parties propose removing this first five years/second five years distinction from the NYISO's reliability planning process. Transmission projects can take much longer than five years to plan, build, permit, construct and bring online. Providing for a consistently detailed analysis for the entire ten years of the Study Period will enhance the NYISO's ability to evaluate

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<sup>118</sup> Current Section 31.2.7.3.2.

<sup>119</sup> Sections 31.2.8.2.6, 31.2.8.2.7, 31.2.8.2.8, 31.2.8.2.9,

<sup>120</sup> Section 31.2.8.2.2.

<sup>121</sup> The Filing Parties propose to revise the definition of "Study Period" in Section 31.1.1 to clarify that a Study Period is the ten year period evaluated in both the RNA and the CRP.

large scale transmission projects that have a lead time longer than five years. Accordingly, the Filing Parties propose the following revisions to Attachment Y to remove this two-part process:

- Replace in Section 31.1.1 (“Definitions”) the term “Five Year Base Case,” which is the model representing the New York State Power System over the first five years of the Study Period, with “RNA Base Case,” which model will represent the New York State Power System over the entire ten-year Study Period.
- Consolidate the first five year and second five year requirements set forth in Section 31.2.2.3 for developing the system representation of the New York State Power System and evaluating whether the BPTFs meet all Reliability Criteria for both resource adequacy and transmission security in each year to provide for the development of the system representation and evaluation over the entire ten-year Study Period.
- Remove the regulated backstop project information requirements for the second five year period set forth in Sections 31.2.4.3.1, 31.2.4.4.1 and 31.2.4.4.2 because the NYISO will not be requesting separate information requirements based on whether a Reliability Need will arise in the first or second five years of the Study Period, but rather will determine when to request more detailed information based upon the timing of the Trigger Date for the project (See Part V.B.2 above).
- Relocated from Section 31.2.4.4.2 to Section 31.2.2.8 (“Reliability Needs Assessment Report Preparation”) and clarify the requirement that the NYISO will develop one or more compensatory MW/Load adjustment scenarios as a guide to the Developer of proposed market based and regulated solutions to meet the identified Reliability Need.

#### **D. Additional Proposed Revisions to NYISO’s Reliability Planning Process**

##### **1. Monitoring Requirements**

While the April 18 Order accepted the monitoring process proposed in the October 2012 Filing, the Filing Parties are proposing to consolidate the NYISO’s requirements located throughout Section 31.2 for monitoring and reporting on the status of market-based and regulated solutions. Specifically, the Filing Parties propose to consolidate the detailed monitoring and reporting requirement set forth in Section 31.2.4.6 for market-based solutions and Section 31.2.4.8 for alternative regulated solutions with the general monitoring requirements in Section 31.2.12 (previously 31.2.7). The proposed revisions will eliminate any confusion regarding the application of similar monitoring requirements in different locations in Section 31.2. The Filing Parties have clarified that the monitoring requirements apply to all regulated solutions, including the regulated backstop solution, and not only to alternative regulated solutions.

##### **2. Additional Revisions**

The Filing Parties propose the following additional revisions regarding the NYISO’s reliability planning process that arose out of incorporating changes to the NYISO’s tariff to implement an evaluation and selection process for regulated transmission solutions to Reliability Needs on a local and regional basis:

- Revise Section 31.2.2.4.2 to specify that the NYISO and NYTOs will coordinate with each other in reviewing the NYTO's LTPs, lowercase "Reliability Need" where the term refers to a local need identified in an LTP, and insert "local" with regard to such needs.
- Revised Section 31.2.4.3.1 to provide that the NYTOs and the NYISO will present at the ESPWG and TPAS any updates to the LTPs and the NYISO's determinations with respect to the NYTOs' LTPs.
- Clarify in Section 31.2.2.4 that Market Participants, Developers and other parties will provide "data," rather than "input."
- Delete the word "alternate" in Section 31.2.2.6 as inaccurate because the NYISO does not perform "alternate" reliability scenarios. Instead, the NYISO conducts scenario analysis and sensitivity analysis off of its reliability planning process base case.
- Relocate from Section 31.2.4.4.3 to the stakeholder requirements in Section 31.2.3.1 the requirement that Market Participants and interested parties may suggest changes to NYISO rules or procedures to identify additional resources or market alternatives to meet Reliability Need.
- Clarify in Section 31.2.4.3.1 that the Responsible Transmission Owner will provide the NYISO a proposal for a regulated backstop solution pursuant to the project submission requirements, rather than "as soon as reasonably possible."
- Clarify the following sentence in Section 31.2.4.3.1 that "Should more than one regulated backstop solution be proposed by a Responsible Transmission Owner to address a Reliability Need, it will be the responsibility of that Responsible Transmission Owner(s) to determine which of the regulated backstop solutions that will proceed following a finding by the ISO under Section 31.2.105.7.2 of this Attachment Y."
- Clarify in Section 31.2.9 (previously Section 31.2.5.8) that the requirements for a Developer to provide a presentation to the ESPWG regarding its triggered project and its project's costs applies in the same manner to a Responsible Transmission Owner of a regulated backstop solution and an Other Developer or Transmission Owner of an alternative regulated transmission solution that was selected by the NYISO as the more efficient or cost-effective transmission solution.
- Remove Section 31.2.5.9 regarding regulated backstop solutions proceeding in parallel with market-based solutions because the interactions of market-based, regulated backstop, and alternative regulated solutions are now addressed in the triggering and halting provisions in new Section 31.2.8.
- Clarify throughout Section 31.2 that the description of satisfying a Reliability Need "in a timely manner" means satisfying a Reliability Need "by the need date."<sup>122</sup>

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<sup>122</sup> See, e.g., Section 31.2.10.1.



- Revise the confidentiality requirements in Sections 31.2.11.2 and 31.2.11.3 (previously Sections 31.2.5.11.2 and 31.2.5.11.3) that the NYISO will maintain the confidentiality of the project information submitted to it for a proposed regulated solution until the NYISO and the Developer have agreed that the proposed solution is viable and sufficient and “the Developer consents to the NYISO’s inclusion of the proposed solution in the CRP.” The NYTOs and Developers expressed concern that their reliability project ideas and engineering specifications should be protected from becoming public as project details are turned over to the NYISO for evaluation and selection in the reliability planning process.
- Revise the high-level description of the reliability planning process in Section 31.1.2 to insert as an objective providing “a process by which the ISO will select the more efficient or cost-effective regulated transmission solution to satisfy the Reliability Need for eligibility for cost allocation under the ISO Tariffs.”

## **VI. PUBLIC POLICY TRANSMISSION PLANNING PROCESS**

### **A. Commission’s Directives Regarding NYISO’s Public Policy Transmission Planning Process**

The NYISO’s Public Policy Transmission Planning Process begins with the NYISO’s request for transmission needs being driven by Public Policy Requirements. The NYDPS reviews all proposed transmission needs being driven by Public Policy Requirements and identifies the transmission needs for which specific transmission solutions should be requested and evaluated. In the October 2012 Filing, the Filing Parties described the proposed process by which the NYISO would solicit and evaluate proposed transmission solutions to satisfy an identified Public Policy Transmission Need. Under the proposed process, the NYISO would evaluate proposed transmission solutions for a Public Policy Transmission Need and provide a report of the results of its evaluation to the NYISO’s stakeholders and the MMU for their review and comment and to the NYISO Board for its approval. The appropriate governmental agencies or authorities would then select the more efficient or cost-effective transmission solution to the Public Policy Transmission Need.

In the April 18 Order, the Commission found that the Filing Parties’ proposed Public Policy Transmission Planning Process complied in part with the Order No. 1000 and directed the Filing Parties to make certain revisions to its process. In particular, the Commission directed the Filing Parties to provide for the solicitation of and comparable evaluation of transmission and non-transmission solutions.<sup>123</sup> The Commission approved a significant role for the NYDPS and the NYPSC to identify or formulate Public Policy Requirements, identify transmission system needs driven by PPRs, and to consult on solutions and cost allocations issues. Nevertheless, the Commission directed the Filing Parties to include an evaluation and selection process through which the NYISO, and not a governmental agency or authority, would select in its regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need.<sup>124</sup> The Filing Parties propose to make

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<sup>123</sup> April 18 Order at P 148.

<sup>124</sup> April 18 Order at PP 145, 147.

revisions to address these and other directives regarding the NYISO's Public Policy Transmission Planning Process, in the manner described in this Part VI.

### **B. Solicitation of Solutions to Public Policy Transmission Needs**

In the October 2012 Filing, the Filing Parties proposed in Sections 31.4.3 and 31.4.3.1 that the NYISO would request, and Transmission Owners and Other Developers would have 30 days to propose, transmission solutions to a transmission need driven by Public Policy Requirements identified by the NYDPS. In the April 18 Order, the Commission directed the Filing Parties to provide that stakeholders and interested parties may submit proposals for non-transmission alternatives.<sup>125</sup> In compliance with this directive, the Filing Parties propose to revise Section 31.4.3 to provide that the NYISO "shall also accept specific proposed non-transmission solutions to a Public Policy Transmission Need identified by the NYDPS." In addition, the Filing Parties propose to revise Section 31.4.3.1 to provide that the NYISO will provide 60 days for Developers to propose specific solutions "whether transmission or non-transmission" to address a Public Policy Transmission Need.

In addition, to ensure that at least one response will be available to address an identified Public Policy Transmission Need, the Filing Parties proposed in Section 31.4.3.3 (now Section 31.4.3.2) that the NYPSC/NYDPS may request that a Transmission Owner propose a transmission solution for a transmission need driven by a Public Policy Requirement. In the April 18 Order, the Commission directed the Filing Parties to clarify that: (i) the NYPSC/NYDPS may request any qualified transmission Developer provide the proposed solution, and (ii) such qualified transmission Developer may recover the prudently incurred costs of preparing the requested solution.<sup>126</sup> The Filing Parties propose to revise Sections 31.4.3.2 (previously Section 31.4.3.3) and 31.5.6 to provide that: (i) the NYDPS/NYPSC may request a Transmission Owner "or Other Developer" to propose a transmission solution to a Public Policy Transmission Need, and (ii) the costs incurred by the Transmission Owner "or Other Developer" in proposing the transmission solution can be recovered.

### **C. NYISO's Evaluation of Proposed Solutions and Selection of the More Efficient or Cost-Effective Transmission Solution to a Public Policy Transmission Need**

In the April 18 Order, the Commission directed the Filing Parties to identify how non-transmission solutions will be evaluated under the Public Policy Transmission Planning Process such that all types of resources are considered on a comparable basis.<sup>127</sup> The Commission also directed the Filing Parties to establish a process by which the NYISO, rather than a governmental authority or agency, will select in the regional transmission plan for cost allocation purposes the more efficient or cost-effective transmission solution from among transmission projects proposed to meet a Public Policy Transmission Need.<sup>128</sup> The Commission stated that the process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a

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<sup>125</sup> April 18 Order at P 149.

<sup>126</sup> *Id.* at P 328.

<sup>127</sup> *Id.* at P 149.

<sup>128</sup> *Id.* at P 147.

particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.<sup>129</sup>

The Filing Parties understand the Commission's directives in the April 18 Order to require the NYISO to both: (i) evaluate on a comparable basis and report on all proposed solutions to satisfy a Public Policy Transmission Need, and (ii) to evaluate all proposed transmission solutions and select in its regional transmission plan for cost allocation purposes the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need.

In response to the Commission's directives, the Filing Parties proposed to revise the Public Policy Transmission Planning Process in the following manner. The NYISO will evaluate on a comparable basis the viability and sufficiency of all proposed solutions whether transmission or non-transmission, to determine whether each solution will satisfy an identified Public Policy Transmission Need and will include the results of its evaluation in the Public Policy Transmission Planning Report. The NYISO will then evaluate all of the proposed regulated transmission solutions that have been found to be viable and sufficient and select in a Public Policy Transmission Planning Report for cost allocation purposes the more efficient or cost-effective transmission solution among the proposed transmission solutions offered to satisfy an identified Public Policy Transmission Need. The Filing Parties' proposed process is described in detail in this Part VI.C.

#### **1. Submission of Project Information and Project Information Qualification Requirements**

In the April 18 Order, the Commission directed the Filing Parties to include the date(s) by which information in support of a transmission project must be submitted for the project to be considered in a given transmission planning cycle.<sup>130</sup> In response, the Filing Parties propose to revise Section 31.4.4.3 (previously Section 31.4.5.4) to provide a Developer<sup>131</sup> must submit within 60 days of the NYPSC's determination of a Public Policy Transmission Need the required project information set forth in Section 31.4.5.1 (previously Section 31.4.8.1) and described in Part IV.C above. In addition, the Developer must submit any additional project qualification information required by the NYISO within 15 days of the NYISO's request. As set forth in Sections 31.4.4.3 and 31.4.5.1, if a Developer fails to submit the required project qualification information or any additional information requested by the NYISO within these time frames, the Developer's project will not be considered during that planning cycle. These deadlines will prevent undue delay in identifying and evaluating potential projects that could meet Public Policy Transmission Needs, and facilitate proceeding with the selection of the more efficient or cost-effective project.

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<sup>129</sup> *Id.* at P 145.

<sup>130</sup> *Id.* at P 213.

<sup>131</sup> The qualification requirements for a Developer proposing a transmission solution are described in Part IV.B above.

## **2. Application Fee and Study Deposit**

Under the proposed evaluation and selection process, the NYISO will be required to perform extensive study work that it does not currently perform to evaluate proposed transmission solutions for purposes of selecting the more efficient or cost-effective transmission solution to an identified Public Policy Transmission Need. As with transmission projects identified to meet a Reliability Need, the Commission has assigned the NYISO additional responsibilities to evaluate and select transmission projects as directed in the April 18 Order. Rather than requiring all Market Participants to pay for these study costs as part of the NYISO budget allocated to all Market Participants through Rate Schedule 1, the Filing Parties would require the Developer of the proposed transmission solution be responsible for these study costs, which is consistent with the treatment of the study costs under the NYISO's interconnection process.

The Filing Parties, therefore, propose to insert a new Section 31.4.4.4 to provide that the Developer of a proposed transmission solution to a Public Policy Transmission Need must provide the NYISO at the same time that it submits its project qualification information: (i) a non-refundable application fee of \$10,000 and (ii) a study deposit of \$100,000. The NYISO will use the application fee and deposit from Developers to cover the costs of performing its evaluation of its transmission project. The NYISO charges a similar fee and study deposit to cover its costs of reviewing parties' requests for interconnection to the NYISO's system and performing the interconnection studies under Attachment X.<sup>132</sup> The requirements for the study deposit in the Public Policy Transmission Planning Process, including the treatment of the deposit, invoices, and refund of the deposit, are the same as in the reliability planning process, as described in Part V.B.2.ii above.<sup>133</sup>

## **3. Evaluation of All Proposed Solutions to a Public Policy Transmission Need**

The Filing Parties propose to insert a new Section 31.4.6 pursuant to which the NYISO will evaluate all proposed solutions submitted by a Developer, whether transmission or non-transmission, to determine whether each is a viable and sufficient solution to satisfy the Public Policy Transmission Need.<sup>134</sup> The NYISO will report the results of its evaluation in its Public Policy Transmission Planning Report. Specifically, the NYISO will evaluate in the general time frame and on a comparable basis all proposed solutions composed of any resource types – including transmission, generation, demand response, or a combination of these resource types –

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<sup>132</sup> See OATT, Attachment X, Sections 30.3.1, 30.13.3.

<sup>133</sup> The Filing Parties propose to remove the existing tariff language in Section 31.4.3.2 regarding study costs, as such costs will be addressed through the requirements in Section 31.4.4.4.

<sup>134</sup> The Commission approved in the April 18 Order in the existing Section 31.4.4 evaluation criteria. The Filing Parties are proposing to remove Section 31.4.4 ("Evaluation and Preparation of ISO Report on Transmission Solutions Driven by Public Policy Requirements") to provide more detailed evaluation procedures and requirements as set forth in this filing letter, so that the NYISO can perform a comparable evaluation of all proposed solutions and evaluate and select the more efficient or cost effective transmission solution.

to determine the viability and sufficiency of each proposed solution to satisfy the identified Public Policy Transmission Need.<sup>135</sup>

The NYISO will evaluate the proposed solutions over a ten-year period,<sup>136</sup> which may be extended by up to an additional twenty years as appropriate based on the Public Policy Requirement and the identified Public Policy Transmission Need.<sup>137</sup> The Commission has previously approved the extension of the study period for the NYISO economic planning process by providing for the NYISO to study proposed transmission solutions to transmission system congestion to ten years from the date of entry of the projects expected entry into commercial operation.<sup>138</sup> Here, the Filing Parties believe the imperative for extending the evaluation period for transmission projects driven by Public Policy Requirements is even greater. Public policies, such as the implementation of transmission to carry more renewable energy, are designed to achieve long-term societal benefits, such as improving air quality and reduced dependence on fossil fuels. The benefits of such transmission projects should be extended commensurate with the useful life of new transmission lines, which can extend well beyond thirty years. Extending the analysis period reduces the risk that lasting longer-term benefits of implementing transmission, such as carrying more energy to reduce congestion, connecting new resources, reducing emissions, bolstering reliability, and enhancing system robustness against disasters, would be overlooked. Accordingly, the NYISO proposes to use its existing planning tools to evaluate system benefits against project costs for up to 30 years from the study date, as appropriate to the Public Policy Transmission Need that is identified. While longer term analysis may not produce precise cost-benefits assessments for the out years, it is better that the long-term benefits of long-lived transmission assets be accounted for as best as practicable. Accordingly, the Commission should grant the NYISO discretion to extend the study period for up to 30 years.

*i. Evaluation of Viability and Sufficiency of Proposed Solution to a Public Policy Transmission Need*

Pursuant to new Section 31.4.6.3, the NYISO will evaluate the viability of a proposed solution by considering whether: (i) the Developer has provided the required Developer qualification and project qualification information, (ii) the proposed solution is technically practicable, (iii) the Developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required time frame, and (iv) the proposed solution can be completed in the required time frame for the Public Policy Transmission Need. In addition, pursuant to new Section 31.4.6.4, the NYISO will evaluate each proposed solution independently to confirm the extent to which the proposed solution will satisfy the Public Policy Transmission Need, including satisfying any evaluation criteria provided by the NYPSC/NYDPS. If the NYISO determines that the proposed

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<sup>135</sup> Section 31.4.6.2.

<sup>136</sup> The NYISO will study a proposed solution using the RNA Base Case and compensatory MWs as needed to resolve the Reliability Needs over the ten-year Study Period.

<sup>137</sup> Section 31.4.6.1. The NYISO will extend the most recent reliability and economic planning models for modeling solutions for Public Policy Transmission Needs by up to an additional twenty years following the Study Period.

<sup>138</sup> Section 31.5.4.3.1.

solution is not viable and sufficient, the NYISO will reject the proposed solution from further consideration during the planning cycle.

*ii. Presentation of Evaluation Results*

The NYISO will present the results of its evaluation to the NYISO's stakeholders, interested entities, and the NYDPS for their input.<sup>139</sup> The NYISO will include in a Public Policy Transmission Planning Report the results of its evaluation, including whether each proposed solution is viable and is sufficient to satisfy the identified Public Policy Transmission Need in a timely manner.<sup>140</sup> As described below, the Public Policy Transmission Planning Report is submitted to the NYISO's stakeholders and the MMU for their review and input and to the NYISO Board for its review and action.<sup>141</sup>

**4. Selection of More Efficient or Cost-Effective Transmission Solution to a Public Policy Transmission Need**

The Filing Parties propose to insert a new Section 31.4.8 pursuant to which the NYISO will evaluate proposed transmission solutions that the NYISO has found to be viable and sufficient for purposes of selecting in the Public Policy Transmission Planning Report for cost allocation purposes the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need. For the same reasons stated in Part V.B.4 above, the Filing Parties are proposing to select the more efficient or cost effective transmission solution to a transmission need driven by a Public Policy Requirement, and understand that the Commission has not required the NYISO to select non-transmission projects that are not eligible for cost allocation and cost recovery under its federal transmission tariff.<sup>142</sup>

The Filing Parties propose in new Section 31.4.8.1 the metrics that the NYISO will use to evaluate proposed transmission solutions for purposes of selecting the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need. The NYISO will consider, and will consult with the NYDPS, regarding the proposed transmission solution's satisfaction of these metrics and will rank each proposed solution based on the quantity of its satisfaction of the metrics. In evaluating each proposed solution, the NYISO will determine whether the information submitted by the Developer is reasonable and how such information should be used for purposes of evaluating each metric.<sup>143</sup> The NYISO may engage an independent consultant to review the reasonableness and comprehensiveness of the information

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<sup>139</sup> Section 31.4.6.5.

<sup>140</sup> Sections 31.4.6.5 and 31.4.10.

<sup>141</sup> Section 31.4.10.

<sup>142</sup> See April 18 Order, P 145 ("Therefore we require the Filing Parties to provide, on compliance, OATT revisions providing the process by which the NYISO will select in the regional transmission plan for purposes of cost allocation more efficient or cost-effective solutions from among transmission projects proposed to meet transmission needs driven by public policy requirements . . ."); Answer at 7.

<sup>143</sup> Section 31.4.8.

submitted by the Developer and may rely on the independent consultant's analysis in evaluating each metric.<sup>144</sup>

The NYISO will use the following metrics set forth in new Section 31.4.8.1 in evaluating the proposed transmission solution also used in the NYISO's reliability planning process and described in Part V.B.2.iv above:

- the capital cost estimates of the proposed transmission solution
- the cost per MW ratio of the proposed transmission solution<sup>145</sup>
- the expandability of the proposed transmission solution
- the operability of the proposed transmission solution
- the performance of the proposed transmission solution
- the extent to which the Developer of the proposed transmission solution has the property rights or ability to obtain the property rights required to implement the solution, and
- The potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule and the schedule for obtaining any permits and other certifications as required to timely meet the need.

In addition to these metrics, the NYISO will also consider the following:

- any criteria specified by the Public Policy Requirement or criteria/analysis provided by the NYPSC/NYDPS, to the extent feasible;<sup>146</sup> and
- in consultation with its stakeholders, any additional metrics based on the context of the Public Policy Requirement, such as: changes in production costs, LBMP, losses, emissions, ICAP, TCC, congestion, impact on transfer limits, and deliverability.<sup>147</sup> The NYISO will also evaluate the impact of proposed transmission solutions on the NYISO's wholesale electricity markets using primarily the net production cost savings and ICAP savings metrics, and will report the results of this analysis in its Public Policy Transmission Planning Report.<sup>148</sup>

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<sup>144</sup> *Id.*

<sup>145</sup> For purposes of this evaluation of proposed transmission solutions to a Public Policy Transmission Need under Section 31.4.8.1.2, the NYISO will first determine the present worth, in dollars, of the total capital cost of the proposed solution in current year dollars. The NYISO will then determine the cost per MW ratio by dividing the capital cost by the MW value of increased transfer capability.

<sup>146</sup> The April 18 Order accepted the NYISO's use of NYDPS/NYPSC criteria and analysis under the current version of Section 31.4.4. As described above, the Filing Parties are proposing to remove Section 31.4.4 and replace it with more detailed evaluation procedures to enable the NYISO to evaluate and select the more efficient or cost effective transmission solution, including any criteria evaluated in the Public Policy Requirement or by the NYDPS/NYPSC.

<sup>147</sup> The April 18 Order accepted this category of evaluation requirements under the existing Section 31.4.4.

<sup>148</sup> Section 31.4.9.

Based on its evaluation of proposed transmission solutions using these metrics, the NYISO will select the more efficient or cost-effective transmission solution to an identified Reliability Need and report the selected solution in the Public Policy Transmission Planning Report.

## **5. Public Policy Transmission Planning Report**

### *i. Development of Public Policy Transmission Planning Report*

The Filing Parties propose to insert new Section 31.4.10 to provide that following the NYISO's evaluation of proposed solutions to a Public Policy Transmission Need, the NYISO will prepare a draft Public Policy Transmission Planning Report, reflecting any input received from the NYDPS. The draft report will include: (i) the NYISO's assumptions, inputs, methodologies, and the results of its analysis, (ii) a list of qualified Developers and proposed solutions, (iii) the findings regarding the viability and sufficiency of proposed solutions, (iv) the regulated transmission solution, if any, that NYISO staff recommends for selection for cost allocation purposes as the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need. To incorporate the results of the Interregional Transmission Planning Process, the draft report "shall include a comparison of a proposed regional solution to an identified Public Policy Transmission Need to an Interregional Transmission Project, if any, identified and evaluated under the 'Analysis and Consideration of Interregional Transmission Projects' section of the Interregional Planning Protocol."<sup>149</sup> The tariff states that such an Interregional Transmission Project "may be selected as a regulated transmission solution under the provisions of this process."<sup>150</sup>

### *ii. Stakeholder Review and NYISO Board Action on Public Policy Transmission Planning Report*

Consistent with the review process accepted by the April 18 Order, the draft Public Policy Transmission Planning Report will be provided to NYISO stakeholders for their review and input under new Section 31.4.10.1 (previously Section 31.4.6) and then forwarded to the NYISO Board for its review and action under new Section 31.4.10.2 (previously Section 31.4.7).<sup>151</sup> The Filing Parties propose two revisions to this process in connection with the NYISO's role in selecting a transmission solution.

First, the Filing Parties propose to revise Sections 31.4.10.1 and 31.4.10.2 to formalize in the tariff provisions for the Public Policy Transmission Planning Process the NYISO's existing practice of providing the MMU's reports to stakeholders before they vote on the NYISO's reliability and economic planning reports. Specifically, the Filing Parties propose to submit the MMU's evaluation of the impacts of a proposed project on wholesale electric markets to: (i)

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<sup>149</sup> Section 31.4.10.

<sup>150</sup> *Id.*

<sup>151</sup> The Filing Parties propose to relocate the substance of the existing Sections 31.4.6 and 31.4.7 provisions, so that they appear in the correct chronological order in Section 31.4 of Attachment Y. Notwithstanding the relocation of these provisions, the only substantive changes to the provisions are described in this Part VI.C.5.ii.



NYISO stakeholders prior to the stakeholder Management Committee takes an advisory vote on the draft Public Policy Transmission Planning Report, and (ii) to the NYISO Board at the same time that it receives the draft report. To provide the MMU sufficient time to perform its analysis, Section 31.4.10.1 will be revised to indicate that the NYISO will provide the MMU with the draft report at the same time that the NYISO initially provides the draft report to stakeholders. The Filing Parties propose to make conforming changes to the MMU requirements in Section 30.4.6.8.5 of Attachment O of the NYISO Services Tariff.

Second, the NYISO proposes to revise Section 31.4.10.2 to provide the NYISO Board with the authority to elect to not select a transmission solution for cost allocation purposes to satisfy a Public Policy Transmission Need if the Board determines that the project will adversely affect price signals in the NYISO's wholesale electricity markets.<sup>152</sup> Notwithstanding that a transmission project may meet a Public Policy Transmission Need, in the unlikely event that the project proposed for cost allocation and recovery under the NYISO's tariffs would send price signals directly contrary to economic investment decisions, as measured by production cost savings and ICAP savings as compared to the costs of the transmission project, the NYISO's Board reserves the discretion to deny regulated cost recovery to that project. Were the Commission to deny the NYISO Board's ability to disallow uneconomic transmission project cost recovery, its ability to fulfill its responsibility to maintain economically competitive markets that send price signals for investment in new transmission and resources would be undermined.<sup>153</sup>

#### **D. Revisions to Defined Terms**

In the April 18 Order, the Commission directed the Filing Parties to revise the definition of the term "Public Policy Requirement" to make the following two changes: (i) to remove the phrase "that drives the need for expansion or upgrades to the New York State bulk transmission facilities,"<sup>154</sup> and (ii) to clarify that the NYISO will also consider duly enacted laws or regulations passed by a local governmental entity.<sup>155</sup> In response, the Filing Parties propose to revise the definition of the term "Public Policy Requirement" in Section 31.1.1 ("Definitions") as follows:

**Public Policy Requirements:** A federal or New York State statute or regulation, including a NYPSC order adopting a rule or regulation subject to and in

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<sup>152</sup> The NYTOs disagree with this proposed revision and will provide comments regarding this revision separately.

<sup>153</sup> Pursuant to Sections 2.01 and 5.08 of the ISO Agreement, the NYISO is obligated to administer competitive markets and to "maintain the reliable, safe, and efficient operation of the NYS Power System (including adjustment of generation, and coordination of maintenance and outage schedules of certain Generators and transmission facilities)." Moreover, Section 6.01 of the ISO Agreement gives the NYISO the responsibility of administering a Market Power Monitoring Program, including hiring an outside market advisor and ensuring that the NYISO compliance staff and the outside advisor have access to all necessary information.

<sup>154</sup> April 18 Order at P 140.

<sup>155</sup> *Id.*

accordance with the State Administrative Procedure Act, ~~or any successor statute, or any duly enacted law or regulation passed by a local governmental entity in New York State, that may relate to transmission planning on the BPTFs that drives the need for expansion or upgrades to the New York State Bulk Power Transmission Facilities.~~

The Filing Parties also propose to insert the following new defined terms in Section 31.1.1 to clarify the terms used in Attachment Y in connection with the NYISO's evaluation and selection process for solutions to needs driven by Public Policy Requirements and to make conforming changes throughout Attachment Y to use these new terms:

**Public Policy Transmission Planning Process:** The process by which the ISO solicits needs for transmission driven by Public Policy Requirements, evaluates all solutions on a comparable basis, and selects the more efficient or cost effective transmission solution, if any, for eligibility for cost allocation under the ISO Tariffs.

**Public Policy Transmission Need:** A transmission need identified by the NYPSC/NYDPS that is driven by a Public Policy Requirement pursuant to Section 31.4.2.1.

**Public Policy Transmission Planning Report:** The report approved by the ISO Board of Directors pursuant to this Attachment Y on the ISO's evaluation of all proposed solutions to an identified Public Policy Transmission Need pursuant to Section 31.4.6 and the ISO's selection of a proposed transmission solution, if any, that is the more efficient or cost effective solution to the identified Public Policy Transmission Need pursuant to Section 31.4.8.

#### **E. Additional Proposed Revisions to Public Policy Transmission Planning Process**

The Filing Parties' proposed evaluation and selection process for solutions to Public Policy Transmission Needs necessitates certain additional revisions in the NYISO's Public Policy Transmission Planning Process to enable the NYISO to implement it. The Filing Parties, therefore, propose the following additional revisions:

- Insert new Section 31.4.11 to establish that the NYISO may monitor the continued development of transmission projects selected as the more efficient or cost-effective transmission solution. The purpose of the monitoring requirement is to provide the NYISO with the assurance that the selected transmission project will satisfy the identified Public Policy Transmission Need by the need date, if any. This will also enable the NYISO to keep policymakers informed of the progress of such projects in meeting the goals of the Public Policy Requirement.
- Unlike in the NYISO's reliability planning process, the Public Policy Transmission Planning Process does not currently provide that the NYISO will protect the confidentiality of a Developer's proposed solution. Many NYTOs and other Developers have expressed their concern about protecting the transmission expansion ideas and

detailed engineering analyses and studies. The Filing Parties propose to insert new Section 31.4.13 to establish that the NYISO will maintain the confidentiality of a Developer's proposed solution provided in response to the NYISO's request for solutions to a Public Policy Transmission Need. The NYISO will maintain as confidential the information designated by the Developer as "Confidential Information" until such time as the NYISO determines that the Developer's proposed solution is sufficient and viable and the Developer consents to the inclusion of its project in the Public Policy Transmission Planning Report.<sup>156</sup>

- Establish in Section 31.4.2 that an entity proposing a transmission need to the NYISO that it believes is being driven by a Public Policy Requirement will include along with the proposed need "proposed criteria for the evaluation of transmission solution to that need." The NYISO will submit to the NYDPS/NYPSC "all submittals" to the NYISO, including the proposed transmission needs and proposed evaluation criteria for the NYDPS/NYPSC's identification of transmission needs and determination of evaluation criteria. The Filing Parties also propose to clarify in Section 31.4.2.1 that the NYDPS/NYPSC will provide criteria for the NYISO's evaluation of both transmission and "non-transmission projects." The NYISO will use the criteria identified by the NYDPS/NYPSC as one of its metrics for selecting the more efficient or cost-effective transmission solution.
- Clarify in Section 31.4.2.1 that if the NYDPS does not identify a Public Policy Transmission Need, the NYISO will not request solutions.
- Clarify that the requirements set forth in Sections 31.4.2.1, 31.4.2.2, and 31.4.3 refer to the NYISO's request for, rather than evaluation of, solutions. The NYISO's evaluation process is described in subsequent provisions.
- Revise the high-level description of the Public Policy Transmission Planning Process in Sections 31.1.5 and 31.4.1 to revise the objectives to clarify that the NYISO will perform a comparable evaluation of all proposed solutions to a Public Policy Transmission Need and will evaluate and select the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need, if any transmission solutions are proposed.

## **VII. CONSIDERATION OF TRANSMISSION NEEDS IN TRANSMISSION OWNERS' LOCAL TRANSMISSION PLANNING PROCESS**

### **A. Determination of Local Transmission Needs by Public Policy Requirements and Evaluation of Proposed Local Solutions**

To comply with Order No. 1000's requirement that transmission providers' OATTs describe procedures for the consideration of transmission needs driven by public policy requirements in their LTP processes,<sup>157</sup> the October 2012 Filing proposed in Section 31.2.1.1.2

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<sup>156</sup> The NYISO will not disclose the preliminary cost estimates that the Developer provides the NYISO. Section 31.4.13.

<sup>157</sup> Order No. 1000 at P 203.

to obligate investor owned NYTOs and LIPA to consider transmission needs driven by Public Policy Requirements in the development of their LTPs.<sup>158</sup> The proposed addition required that, in developing its LTP, each Transmission Owner would “consider whether there is a transmission need on its system that is being driven by a Public Policy Requirement.”<sup>159</sup> Further, the LTP would “identify any transmission project included in the LTP as a solution to a transmission need being driven by a Public Policy Requirement,” and the transmission owner would consider Public Policy Requirement objectives in evaluating potential transmission solutions.<sup>160</sup> Market Participants and other interested parties would also submit comments concerning transmission needs relevant to each TO’s LTP that they believed were driven by Public Policy Requirements.<sup>161</sup> The NYTO would explain via its website which transmission needs it identified as being driven by a Public Policy Requirement (either in the initial LTP or as a result of comments), and why solutions to any suggested transmission need would not be evaluated.<sup>162</sup>

In its April 18 Order, the Commission determined that the proposed Section 31.2.1.1.2 partially complied with the relevant Order No. 1000 requirements.<sup>163</sup> In particular, the Filing Parties satisfied Order No. 1000’s requirements that the proposal: (1) include procedures to identify at the local level transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input regarding the transmission needs they believe are driven by public policy requirements; and (2) provide that there will be postings on the NYTO’s website describing; (i) transmission needs driven by public policy requirements that have been identified for evaluation in the LTP process, and (ii) transmission needs driven by public policy requirements introduced by stakeholders that were not identified for evaluation for potential transmission solutions in the LTP process, with an explanation of why they were not selected for future evaluation.<sup>164</sup>

The Commission also held, however, that the October 2012 Filing did not describe a “just and reasonable and not unduly discriminatory process through which the Transmission Owners will identify, out of the larger set of potential transmission needs driven by public policy requirements that may be proposed, those transmission needs for which transmission solutions will be evaluated in the local transmission planning process.”<sup>165</sup> The Commission further determined that the Filing Parties had not included “procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders.”<sup>166</sup> As a result, the Commission

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<sup>158</sup> October 2012 Filing at 53.

<sup>159</sup> October 2012 Filing, Attachment IV, § 31.2.1.1.2.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> April 18 Order at P 156.

<sup>164</sup> *Id.* at P 158.

<sup>165</sup> *Id.* at P 159.

<sup>166</sup> *Id.*

directed the Filing Parties to submit a further compliance filing containing additional revisions to address these two points.<sup>167</sup>

Consistent with the directives of the April 18 Order, the Filing Parties now propose revisions and additions to their original proposed Section 31.2.1.1.2. The new language retains provisions set forth in the October 2012 Filing that the Commission found compliant with Order No. 1000 requirements, and further addresses the areas identified in the April 18 Order.

Specifically, to comply with the requirement that the tariff set forth a process for the identification of transmission needs for which solutions will be evaluated in the LTP process, under the revised Section 31.2.1.1.2 a Market Participant or other interested party proposing a transmission need driven by a Public Policy Requirement may submit its proposal to the NYISO and relevant NYTO. Such proposals must identify the specific Public Policy Requirement that is driving the transmission need, and explain why a local transmission upgrade is necessary to implement it. All proposed local system transmission needs will be posted on the NYISO website, and the NYISO will also request that the NYDPS review the proposals and provide the relevant NYTO with guidance. After considering NYDPS input and any other information provided by the entity submitting the proposal, the NYTO will determine whether there is a transmission need driven by Public Policy Requirements for which local transmission solutions should be evaluated. Then, following the procedure outlined in the October 2012 Filing, the NYTO will post a list of such needs on its website. The NYTO will also explain why it identified the needs for which solutions are to be evaluated, and why it declined to identify other proposed needs.

Further, to comply with the Order No. 1000 requirement that it provide procedures for evaluation by the NYTO of potential transmission solutions to identified transmission needs driven by Public Policy Requirements, the revised Section 31.2.1.1.2 sets forth a process for such NYTO evaluation. It adds to the October 2012 proposal a requirement that the NYTO evaluate proposed transmission solutions to identified transmission needs in consultation with the NYDPS. In cooperation with the NYDPS, the Transmission Owner will evaluate transmission solutions, including those proposed by Market Participants and other parties for inclusion in its LTP, to determine the more efficient or cost-effective solutions. The proposal provides that the NYTO will consider relative costs and benefits of proposed transmission solutions, as well as their impact on the NYTO's transmission system and customers, and other criteria relevant to the Public Policy Requirement that drives the transmission need. Following identification of the transmission solution by the NYTO through the LTP process, the solution will be reviewed with stakeholders and will then be included in the NYTO's subsequent LTP posted on its website.

#### **B. NYISO Evaluation of Regional Solutions to Reliability Needs Identified in NYTOs' Local Transmission Plans**

In the October 2012 Filing, the Filing Parties proposed under Section 31.2.1.1.3 that the NYISO would: (i) review the NYTOs' LTPs as they related to the New York BPTFs to evaluate whether other solutions proposed to meet reliability needs or needs driven by Public Policy

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<sup>167</sup> *Id.* at 160.

Requirements<sup>168</sup> may meet such BPTF needs more efficiently or cost-effectively than the NYTOs' proposed LTP solutions, and (ii) report the results of its evaluation in the relevant planning report. While the April 18 Order found the proposed process to be acceptable,<sup>169</sup> the Filing Parties now propose to clarify the manner in which the NYISO will perform this evaluation as part of the new evaluation and selection process in the reliability and public policy processes.<sup>170</sup>

The Filing Parties propose to set forth in Sections 31.2.6.4 (for reliability) and 31.4.7 (for public policy) the process by which the NYISO will review LTPs as they related to the New York BPTFs and determine, using engineering judgment, whether proposed regional transmission solutions on the BPTFs may more efficiently or cost-effectively satisfy Reliability Needs or Public Policy Transmission Needs identified in the LTPs. Specifically, if the NYISO identifies that a regional transmission solution on the BPTFs has the potential to more efficiently or cost-effectively satisfy a reliability need or a need driven by a Public Policy Requirement identified in the LTPs, it will perform a sensitivity analysis to determine whether the proposed regional transmission solution on the BPTFs would better satisfy the need identified in the LTPs. If so, the NYISO will evaluate the proposed regional transmission solution using the selection metrics described in Parts V.B.2.iv and VI.C.4 above to determine whether it may be a more efficient or cost-effective solution on the BPTFs to satisfy the need identified in the LTPs than the local solution proposed in the LTPs. Order No. 1000 does not require the NYISO to supplant the NYTOs' LTPs with regional solutions to local needs addressed by the NYTOs. Accordingly, the NYISO will report the results of its analysis to the NYTOs for their consideration in formulating their LTPs and will include the results in the draft CRP or draft Public Policy Transmission Planning Report, as applicable, which are provided to stakeholders for their review and comment.<sup>171</sup>

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<sup>168</sup> October 2012 Filing at p 54. Section 31.2.1.1.3 also applies to evaluating solutions proposed to meet congestion identified in CARIS.

<sup>169</sup> April 18 Order at P 80.

<sup>170</sup> The Filing Parties also propose to make conforming changes to Section 31.2.2.4.2 to clarify that the NYISO will coordinate with the NYTOs regarding the LTPs and will, following its review of the NYTOs' LTPs, recommend alternate means to resolve "local" needs from a regional perspective.

<sup>171</sup> Sections 31.2.6.4 and 31.4.7.

## VIII. COST ALLOCATION AND COST RECOVERY

### A. Public Policy Transmission Planning Process Cost Allocation Methodology<sup>172</sup>

In the October 2013 Filing, the Filing Parties proposed a cost allocation methodology for transmission solutions to Public Policy Transmission Needs under a new Section 31.5.5.4. In the April 18 Order, the Commission indicated certain concerns with the timing of applying this process, particularly the possibility of unnecessary delays in the proposed approach.<sup>173</sup> In response, the Filing Parties have reviewed the proposed process and suggest the following revisions to clarify ambiguities regarding the implementation of the process and to address possible delays in the determination of the cost allocation methodology.<sup>174</sup>

The NYISO will apply the cost allocation methodology accepted by the Commission for the transmission solution selected to satisfy an identified Public Policy Transmission Need.<sup>175</sup> The Filing Parties propose to clarify the process under Section 31.5.5.4 by which a proposed cost allocation methodology will be filed with the Commission. Given the potential impact of the requirements in Section 31.5.5.4 on the Section 205 rights of an existing or new Transmission Owner or Other Developer, the Filing Parties have made clear that nothing in Section 31.5.5.4

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<sup>172</sup> LIPA does not join this portion of the filing due to the still-outstanding need for language accommodating LIPA's participation in the Public Policy Requirements planning process. In the April 18 Order, the Commission acknowledged that LIPA had filed comments and proposed tariff language regarding the appropriate treatment of the Long Island Power Authority ("Authority") in the identification of transmission needs and solutions meeting Public Policy Requirements for the Long Island Transmission District as well as the cost allocation process and methodology for transmission projects satisfying a Public Policy requirement that are undertaken by LIPA. With respect to the LIPA proposed language, the Commission noted, that "such agreement was not included in the Filing Parties' compliance filing and the Filing parties have not proposed to amend their compliance filing to reflect such provisions." April 18 Order at P 150. The Commission encouraged "LIPA, NYISO and other interested parties to work together to develop further tariff amendments that allow all relevant regulatory entities to participate fully in the transmission planning process and noted that "while we will not require the Filing Parties to revise the NYISO OATT to address LIPA's proposal, should the Filing Parties and LIPA agree to further OATT modifications, consistent with the Commission's findings in this order, the Filing Parties may include those OATT revisions in their next compliance filing." *Id.* at P 150. The Filing Parties, including LIPA, are working to complete discussions, as soon as possible, on revisions to the OATT to address the role of the Authority with the Public Policy Requirements process among themselves and with the New York State Department of Public Service. It is LIPA's intention to finalize discussions with the Filing Parties and New York State Department of Public Service by the comment deadline for this compliance filing and to inform the Commission of the status of those discussions as part of comments filed on the compliance filing.

<sup>173</sup> April 18 Order at P 324.

<sup>174</sup> Although many iterations of revisions to the cost allocation process for public policy were reviewed with stakeholders, the final tariff language described herein was agreed to among the NYISO, the NYDPS and the NYTOs after the final stakeholder meeting on October 4. Notwithstanding the fact that there was no remaining time to post the language, the Filing Parties submit that the final revisions resolve the concerns of the interested parties.

<sup>175</sup> Section 31.5.5.4.

“shall deprive a Transmission Owner or Other Developer of any rights it may have under Section 205 of the Federal Power Act to submit filings proposing any other cost allocation methodology to the Commission or create any Section 205 filing rights for any Transmission Owner, Other Developer, the ISO, or any other entity.”

Accordingly, the Filing Parties propose to clarify the process in Section 31.5.5.4 as follows:

- As described in Section 31.5.5.4.1, the NYISO will file with the Commission any cost allocation methodology prescribed by the identified Public Policy Requirement.<sup>176</sup> If a Transmission Owner or Other Developer files a different proposed cost allocation methodology under Section 205, it will have the burden of demonstrating that its proposed methodology is compliant with the Order No. 1000 Regional Cost Allocation Principles taking into account the methodology specified in the Public Policy Requirement.<sup>177</sup>
- Subject to the provisions of Section 31.5.5.4.1, the Transmission Owner or Other Developer of the project may, after consideration of any guidance that may be provided by the NYDPS/NYPSC, propose a cost allocation methodology, which may include a cost allocation based on load ratio share, adjusted to reflect, as applicable, the Public Policy Requirement or Public Policy Transmission Need, the party(ies) responsible for complying with the Public Policy Requirement, and the party(ies) who benefit from the transmission facility (“Adjusted Load Ratio Share”).<sup>178</sup> If the NYDPS/NYPSC supports the proposed cost allocation methodology, the Transmission Owner or Other Developer will file that cost allocation methodology and will have the burden of demonstrating its compliance with the Order No. 1000 Regional Cost Allocation Principles.<sup>179</sup>
- In the event the NYDPS/NYPSC does not support the Transmission Owner or Other Developer’s proposed cost allocation methodology, the Transmission Owner or Other Developer will take reasonable steps over a period of no more than 60 days to respond to the NYDPS/NYPSC’s concerns and to develop a mutually agreeable cost allocation methodology.<sup>180</sup>
- If a mutually acceptable cost allocation methodology is developed, the Transmission Owner or Other Developer will file it with the Commission and has the burden of

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<sup>176</sup> Section 31.5.5.4.1.

<sup>177</sup> *Id.*

<sup>178</sup> Section 31.5.5.4.2.

<sup>179</sup> Section 31.5.5.4.2.1. The Filing Parties proposed revisions make the Transmission Owner or Other Developer, rather than the NYISO, responsible for filing with the Commission its proposed cost allocation methodology.

<sup>180</sup> Section 31.5.5.4.2.2.



demonstrating its compliance with the Order No. 1000 Regional Cost Allocation Principles.<sup>181</sup>

- If the Transmission Owner or Other Developer does not reach an agreement with the NYDPS/NYPSC, the Transmission Owner or Other Developer will promptly file with the Commission its preferred cost allocation methodology and will have the burden of demonstrating that its proposed methodology's complies with the Order No. 1000 Regional Cost Allocation Principles, in consideration of the position of the NYDPS/NYPSC.<sup>182</sup> The Transmission or Other Developer will include with its filing the methodology supported by the NYDPS/NYPSC for the Commission's consideration.<sup>183</sup>
- If the Commission does not accept an alternative cost allocation methodology under the approaches described above, the NYISO will allocate the costs of the transmission project to all Load Service Entities in the New York Control Area based upon a load ratio share methodology.<sup>184</sup>

The Filing Parties believe that the revised process will provide for the determination without undue delay of a cost allocation methodology for a transmission solution to a Public Policy Transmission Need. As part of their review of the process, the Filing Parties identified the interaction between the Transmission Owner or Other Developer and the NYDPS/NYPSC as the point in the process most likely to lead to delays in determining the cost allocation methodology. For this reason, the Filing Parties, following discussions with the NYDPS, developed a period of no longer than 60 days, as described above, for the Transmission Owner or Other Developer and the NYDPS/NYPSC to work towards developing a mutually agreeable cost allocation methodology.

The Filing Parties also propose to clarify that the NYISO will make any Section 205 filings related to these requirements in Section 31.5.5.4 on behalf of NYPA, which is a non-Commission jurisdictional entity,<sup>185</sup> to the extent requested by NYPA.<sup>186</sup> NYPA will bear the

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<sup>181</sup> Section 31.5.5.4.2.3.

<sup>182</sup> Section 31.5.5.4.2.4.

<sup>183</sup> *Id.*

<sup>184</sup> Section 31.5.5.4.3.

<sup>185</sup> NYPA will be solely responsible for making any jurisdictional reservations or arguments related to its status as a non-Commission jurisdictional utility that is not subject to various provisions of the Federal Power Act. Section 31.5.5.4.4. In addition, the Filing Parties propose in Section 31.5.5.4.5 that the inclusion in the NYISO OATT or in a filing with the Commission on an informational basis of the cost allocation and charges for recovery of costs incurred by NYPA related to a solution to a transmission need driven by a Public Policy Requirement or Interregional Project as provided for in Sections 31.5.5.4.3 and 31.5.5.4.4 shall not be deemed to modify the treatment of such rates as non-jurisdictional pursuant to Section 201(f) of the FPA.

<sup>186</sup> Section 31.5.5.4.4.

burden of demonstrating that such a filing is compliant with the Order No. 1000 Regional Cost Allocation Principles.<sup>187</sup>

**B. Additional Support for the Proposed Default Cost Allocation Methodology for Public Policy Transmission Projects**

The April 18 Order found that the Filing Parties' proposed default load ratio share cost allocation method for public policy transmission projects "may be reasonable" but that additional support was needed to establish compliance with Order No. 1000.<sup>188</sup> The April 18 Order emphasized: (i) that "Order No. 1000 requires the Filing Parties to show that the regional cost allocation method allocates the costs of new transmission facilities in a manner that is at least roughly commensurate with estimated benefits";<sup>189</sup> and (ii) that such showings "must be based on more than a mere assertion of generalized system benefits."<sup>190</sup> This section provides the additional support required by the April 18 Order.

The Filing Parties respectfully submit that the justness and reasonableness of the proposed default load ratio share cost allocation method is integrally related to the circumstances that it is intended to address and in which it is likely to be applied.<sup>191</sup> Consistent with Order No. 1000, the Filing Parties' proposed default *ex ante* cost allocation methodology is intended to avoid uncertainty that could present a barrier to new transmission projects needed to meet public policy needs. As the Commission has recognized it is advantageous to have an *ex ante* methodology in place as an option that could be quickly adopted, and readily implemented, in the absence of an alternative methodology. The proposed *ex ante* load ratio share methodology has these attributes.

Moreover, a load ratio share methodology is a reasonable option in the context of a single-state Independent System Operator such as the NYISO. The New York State Transmission System is a tightly integrated grid that has been centrally administered since the formation of the New York Power Pool in 1969. It was substantially shaped by coordinated statewide policy initiatives in the decades before that. Consistent with this history, New York State is currently pursuing public policy transmission requirements that may lead to changes to the bulk power grid. The NYISO CSPP, and thus this compliance filing, applies to BPTFs on the New York State Transmission System. The BPTFs form the "highway system" over which large amounts of power can be delivered from the major generation sources to lower voltage sub-transmission and distribution systems. That highway system provides statewide benefits when it is used to satisfy Public Policy Transmission Needs.

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<sup>187</sup> Section 31.5.5.4.4.

<sup>188</sup> *Id.* at P 320.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at P 321.

<sup>191</sup> Section 31.5.5.4.3; *Request for Leave to Answer and Answer* at 25, Docket No. ER13-102-000 (Dec. 11, 2012).

Accordingly, it is reasonable to anticipate that public policy transmission projects will provide some level of benefits to all consumers in New York State. The sponsors of such projects, or applicable Public Policy Requirements, may propose other just and reasonable cost allocation methodologies for a specific Public Policy Requirement and related transmission solutions, but this does not mean that the use of a load ratio share cost allocation methodology would not also be just and reasonable in the absence of any such proposals.

Given the NYISO-specific context described above, the use of a load ratio share based *ex ante* allocation methodology for public policy transmission projects satisfies the roughly commensurate requirement. The April 18 Order itself recognized that courts have accepted region-wide allocations of costs incurred to support projects, *e.g.*, the construction of a Regional Transmission Organization's ("RTO's") control center, that provide region-wide benefits regardless of whether individual loads were shown to be direct beneficiaries.<sup>192</sup> Exact mathematical precision in cost allocation is not required.<sup>193</sup>

Subsequent to the April 18 Order, the United States Court of Appeals for the Seventh Circuit upheld the MISO's region-wide cost allocation methodology for high voltage transmission lines classified as multi-value projects ("MVPs").<sup>194</sup> The fact that MVPs are often related to satisfying state renewable energy requirements makes the Court's determination highly relevant. The case stands for the proposition that when multiple factors, including public policy considerations, drive the need for transmission development the use of a load ratio share cost allocation method is a just and reasonable approach to cost allocation. The Court found that it need not be demonstrated that every customer in a region would specifically benefit from a regional project for a region-wide cost allocation to be justified.<sup>195</sup> Likewise, the Commission has recognized that changes to bulk power transmission facilities can provide widespread benefits to all customers.<sup>196</sup> This is particularly true in the case of improvements to the single state backbone BPTFs in New York State that are designed to address Public Policy Requirements.

As was noted above, it may be true that other cost allocation methodologies will be proposed under Section 31.5.5.4 that are better suited to an individual public policy transmission project than any *ex ante* methodology could be. This prospect does not detract from the justness and reasonableness, or the consistency with the "roughly commensurate" standard, of using the load ratio share method as the *ex ante* cost allocation methodology for New York.

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<sup>192</sup> See April 18 Order at P 300, citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004).

<sup>193</sup> Order No. 890 at P 559 n. 329 citing *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945). "[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."

<sup>194</sup> *Illinois Commerce Commission v. FERC*, Case Nos. 11-3421 (7th Cir. 2013).

<sup>195</sup> See also *W. Mass Electric Co. v. FERC*, 165 F. 3d 922, 927 (D.C. Cir. 1999) (when a system is integrated, any system enhancements are presumed to benefit the entire system.)

<sup>196</sup> *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012); 142 FERC ¶ 61,216 (2013).

In short, in the specific context of the NYISO, there is an “articulable and plausible reason to believe” that the benefits that public policy transmission projects would bring to transmission customers across New York State will be “at least roughly commensurate” with allocating the costs of such projects on a load ratio share basis. This is all that that is required. The Commission should therefore accept the Filing Parties’ proposed *ex ante* default cost allocation methodology that allocates costs of public policy transmission projects to all loads on a load ratio share basis.

## **C. Cost Recovery Requirements**

### **1. Eligibility for Cost Recovery for Reliability Planning Process**

In the April 18 Order, the Commission accepted the Filing Parties’ proposed cost recovery eligibility requirements pursuant to which a Responsible Transmission Owner may recover its costs for its proposed regulated backstop solution, while a non-incumbent Developer may only recover such costs if its project is selected.<sup>197</sup> The Commission accepted these requirements and found that the difference between the timing of eligibility for cost recovery was not discriminatory because the Responsible Transmission Owner has a legal responsibility to prepare a regulated backstop solution, whereas non-incumbents have no such obligation.<sup>198</sup> As recognized by the Commission, the NYTOs assumed this legal responsibility on condition that they would recover the costs reasonably incurred in the preparation of a regulated backstop solution.<sup>199</sup>

In connection with the new evaluation and selection requirements, the Filing Parties propose to clarify the point in the revised process at which a Responsible Transmission Owner, Other Developer, or Transmission Owner will become eligible to recover the costs of its proposed transmission solution.<sup>200</sup> The Filing Parties clarify in Section 31.2.4.3.2.1 that the Responsible Transmission Owner will be eligible to recover the costs for developing its proposal in response to the NYISO’s request for solutions to a Reliability Need. The Filing Parties also propose to clarify in Section 31.2.6.5.2 that an Other Developer or a Transmission Owner of an alternative regulated transmission solution that is selected by the NYISO as the more efficient or cost-effective transmission solution will become eligible for cost recovery once the NYISO triggers its project to proceed. Once a transmission project becomes eligible for cost recovery, the Developer of that project, whether it is a regulated backstop solution or an alternate regulated transmission solution, will be eligible to recover the same types of costs and can recover even if the project is halted, does not receive necessary authorizations, or has such authorizations withdrawn. The Filing Parties propose to clarify in Sections 31.2.8.2.3, 31.2.8.2.4, 31.2.8.2.7, and 31.2.8.2.8 that all Developers of eligible projects can recover such costs. The Filing Parties also propose to clarify that the actual point in time at which an eligible Responsible Transmission Owner, Other Developer, or Transmission Owner can recover its costs is (i) the

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<sup>197</sup> April 18 Order at P 326.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> Solutions that are not transmission (*i.e.*, generation or demand reduction) must obtain cost recovery under state law. OATT Sections 6.10.2.3, 6.10.5.3, 31.5.6.3.

earlier of when the project is completed or at the point at which its project is halted, as set forth in the existing cost recovery requirements in Rate Schedule 10 of the NYISO OATT, or (ii) as otherwise determined by the Commission.<sup>201</sup>

The Filing Parties propose the following additional revisions to the cost recovery requirements for transmission projects under the reliability planning process:

- Establish in Section 31.2.6.5.2 that actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by the Commission.
- Clarify within Rate Schedule 10 of the NYISO OATT that the cost recovery requirements in Rate Schedule 10 also apply to alternative regulated transmission solutions that have been selected and triggered by the NYISO to satisfy a Reliability Need.<sup>202</sup>
- Clarify in Section 6.10.5.1 of Rate Schedule 10 that an Other Developer of a selected and triggered alternative regulated transmission solution may recover the costs that it incurs for “proposing, developing, ~~and~~ constructing, operating, maintaining, and financing” an alternative regulated transmission solution.
- Clarify in Section 31.5.6 that Responsible Transmission Owners, Other Developers, or Transmission Owners are entitled to full recovery of all reasonably incurred costs related to the development, construction, operation and maintenance of regulated solutions, “if eligible for cost recovery under Section 31.2 of this Attachment Y.”
- Revise the description of the formula for the recovery of costs of regulated transmission solutions to a Reliability Need to replace the requirement that the “formula is not applicable to that portion of a project oversized beyond the smallest technically feasible solution that meets the Reliability Need identified in the RNA” with the following: “The formula is not applicable to that portion of a project beyond the size of the solution needed to provide the more efficient or cost effective solution appropriate to the Reliability Need identified in the RNA.” Absent this change, the smallest feasible transmission upgrade to meet a Reliability Need, which may, due to the inherent “lumpiness” of transmission improvements, be larger than non-transmission alternatives, would be precluded from cost recovery by those smaller non-transmission solutions, which are not eligible for selection in the NYISO’s regional transmission plan for purposes of costs allocation. This result would frustrate the very purpose of Order No. 1000 to permit efficient or cost effective transmission solutions to be selected for cost allocation under transmission providers’ Commission-jurisdictional tariffs.

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<sup>201</sup> Sections 31.2.6.5.2, 31.5.6.2.

<sup>202</sup> The Filing Parties also propose to clarify in Section 6.10.1 of Rate Schedule 10 the application of Rate Schedule 10 to alternative regulated Gap Solutions proposed by an Other Developer or Transmission Owner.

## **2. Eligibility for Cost Recovery for Public Policy Transmission Planning Process**

In the October 2012 Filing, the Filing Parties proposed in Section 31.5.5.3 that a proposed solution to Public Policy Transmission Need that is evaluated by the NYISO will be eligible for cost allocation and recovery under the NYISO's tariffs when the NYPSC indicates the project should proceed.<sup>203</sup> In connection with the revised evaluation and selection requirements under which the NYISO will select for cost allocation purposes the more efficient or cost-effective transmission solution to a Public Policy Transmission Need, the Filing Parties propose to clarify at what point in the revised process a Developer will become eligible to allocate and recover under the NYISO's tariffs the costs of its proposed regulated transmission solution. Specifically, the Filing Parties propose to clarify in Sections 31.4.8.2 and 31.5.5.3 that the Developer of a regulated transmission project will be eligible for cost recovery for its transmission project when its project is selected by the NYISO as the more efficient or cost effective transmission solution to satisfy the Public Policy Transmission Need, provided that the Developer may recover costs as determined by the Commission.

The Filing Parties also propose to revise the actual point in time at which an eligible Transmission Owner or Other Developer may recover its costs. For consistency with the NYISO's reliability planning process, the Filing Parties propose to revise Sections 31.4.8.2 and 31.5.6.5 to provide that costs will be recovered when the project is completed pursuant to a rate schedule filed with and accepted by the Commission,<sup>204</sup> or as otherwise determined by the Commission.<sup>205</sup>

In addition, the Filing Parties propose to make the following revisions to the cost recovery requirements for transmission projects under the Public Policy Transmission Planning Process:

- Establish in Section 31.4.8.2 that actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by the Commission.
- Clarify in Section 31.5.6 that: (i) that Other Developers or Transmission Owners are entitled to full recovery of costs "if eligible for cost recovery under Section 31.4 of this Attachment Y," and (ii) specify, consistent with under the reliability planning process, that Other Developer or Transmission Owner will be eligible for "full" recovery costs, including "all reasonably incurred costs, including a reasonable return on investment and any applicable incentives, related to the development, construction, operation and maintenance of regulated solutions" associated with the implementation of a regulated transmission project undertaken to meet a Public Policy Transmission Need.

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<sup>203</sup> October 2012 Filing at p 46.

<sup>204</sup> Section 31.5.6.5 currently provides that the Transmission Owner or Other Developer will file with the Commission under Section 205 of the Federal Power Act the cost associated with implementing its project. The Commission will determine the period of cost recovery and any approved costs.

<sup>205</sup> Sections 31.4.8.2, 31.5.6.5. The Filing Parties propose similar requirements for regulated economic transmission projects. Section 31.5.6.4.

- As described in Part VI.B above, the Filing Parties propose, in response to paragraph 328 of the April 18 Order, to revise Sections 31.4.3.2 and 31.5.6 to provide that: (i) the NYDPS/NYPSC may request a Transmission Owner “or Other Developer” to propose a transmission solution to a Public Policy Transmission Need, and (ii) the costs incurred by the Transmission Owner “or Other Developer” in proposing the transmission solution can be recovered.

#### **D. Identification of Consequences on Other Transmission Planning Regions**

The April 18 Order directed the Filing Parties to provide in the reliability, economic, and public policy processes for the identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation on other transmission planning regions, such as upgrades that may be required in another region.<sup>206</sup> The Commission also directed the Filing Parties to address whether the NYISO transmission planning region has agreed to bear the costs associated with any such upgrades and, if so, how such costs would be allocated.<sup>207</sup>

The NYISO and the NYTOs have developed with the NYISO’s neighboring ISO/RTO regions – PJM Interconnection, L.L.C. (“PJM”) and ISO New England, Inc. (“ISO-NE”) – and filed with the Commission on July 10, 2013, an inter-regional transmission planning process in compliance with the inter-regional requirements set forth in Order No. 1000.<sup>208</sup> As part of this filing, the Filing Parties have proposed to revise Sections 31.2.2.7, 31.3.1.6, and 31.4.3.3 (previously 31.4.4.1) to provide that the NYISO will coordinate with its neighboring ISO/RTO regions (*i.e.*, PJM and ISO-NE) to identify the consequences of reliability transmission projects, economic transmission projects, and transmission solutions driven by Public Policy Requirements on such regions “using the respective planning criteria of such ISO/RTO Regions.”<sup>209</sup> The proposed revisions enable the NYISO to identify the consequences of its regional planning process for neighboring ISO/RTO systems. In addition, the revisions enable the NYISO to coordinate with neighboring ISOs/RTOs to identify the consequences on their systems of an interregional transmission project.

In the inter-regional filing, the Filing Parties have also proposed a process by which the neighboring ISO/RTO regions could bear a share of the costs of an interregional transmission project physically located in two or more regions, if such project has been approved in each of the neighboring region’s transmission planning process.<sup>210</sup> The neighboring entities would allocate their share of the interregional transmission project’s costs using an avoided cost

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<sup>206</sup> April 18 Order at PP 316, 322.

<sup>207</sup> *Id.*

<sup>208</sup> *New York Independent System Operator, Inc. and New York Transmission Owners*, Interregional Compliance Filing, Docket Nos. RM10-23-000, ER13-142-000 (filed July 10, 2013) (“Interregional Compliance Filing”).

<sup>209</sup> Interregional Compliance Filing at p. 39.

<sup>210</sup> *Id.* at pp. 21, 32.

methodology.<sup>211</sup> The NYISO would then allocate its region's share of the costs within the NYISO's region based on the type of regional transmission project that is being displaced by the interregional transmission project.<sup>212</sup> For example, if the interregional transmission project displaces a regional transmission project that is required to satisfy a Reliability Need, the NYISO would allocate its region's share of the costs through the cost allocation methodology under the reliability planning process.<sup>213</sup> The NYISO would similarly apply the cost allocation methodology for its economic or public policy processes for interregional transmission projects that displace regional transmission projects and solve these needs.<sup>214</sup>

The NYISO will not, however, bear the costs of projects located in another region unless they are part of transmission projects that have been approved in the NYISO's regional transmission planning process. Therefore, the Filing Parties propose to revise Sections 31.2.2.7, 31.3.1.6, 31.4.3.3, and 31.5.2.1 to state expressly that the NYISO will not bear the costs of required upgrades in another region.

#### **E. Methodology for Allocating the Costs of Resolving Transmission Security Violations**

In the course of developing its response to the Commission's directives regarding the NYISO's reliability planning process in the April 18 Order, the NYISO reviewed the related cost allocation requirements. The NYISO identified a potential concern that its current tariffs provide for the allocation through its tariffs of the costs associated with transmission projects that resolve resource adequacy issues, but does not provide for such cost allocation for transmission projects that resolve transmission security violations, other than those that also resolve resource adequacy issues. Presently, Section 31.5.3.2.1.4 treats the allocation of costs associated with resolving thermal or voltage security issues as a local issue and does not provide cost allocation and recovery through the NYISO's tariff. The absence of the NYISO's ability to allocate and recover these costs through its tariffs is a gap that should be addressed.

The NYISO brought this issue to stakeholders, who were generally receptive to addressing this matter in the NYISO's cost allocation procedures. However, there was not sufficient time prior to this compliance filing for the NYISO to explore fully with stakeholders a methodology for allocating the costs of transmission solutions to resolve a transmission security violation. The Filing Parties, therefore, propose to insert a placeholder in Section 31.5.3.2.1.4 stating that the NYISO "will address through its stakeholder process the development of a methodology to allow for the allocation of costs of transmission solutions to thermal or voltage security issues." The NYISO will initiate a stakeholder review process to develop this cost allocation methodology and file with Commission through a Section 205 filing by the end of the third quarter of 2014. This will enable the methodology to be in place by the time the NYISO begins to consider possible solutions to needs identified in the next RNA.

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<sup>211</sup> Interregional Compliance Filing at pp. 21, 32.

<sup>212</sup> Interregional Compliance Filing at pp. 37-38.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*



## **IX. ADDITIONAL CHANGES AND MINISTERIAL MODIFICATIONS**

### **A. Revisions to the Term “Upgrades”**

In the October 2012 Filing, the Filing Parties proposed a new Section 31.6.4. In the April 18 Order, the Commission accepted Section 31.6.4 and directed the Filing Parties to define “upgrade” consistent with its definition in Order No. 1000-A to clarify which transmission facilities fall within Section 31.6.4.<sup>215</sup> Order No. 1000-A defines upgrade as “an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term upgrades does not refer to an entirely new transmission facility.”<sup>216</sup>

The Filing Parties propose to clarify that the Transmission Owners have the right to construct upgrades to their facilities consistent with the Commission’s Order No. 1000 policies and orders. Consistent with the Commission’s April 18 Order, we propose to insert at the conclusion of Section 31.6.4: “For purposes of Section 31.6.4(1), the term “upgrade” shall refer to an improvement to, addition to, or replacement of an existing transmission facility or any part thereof. The term “upgrade” in subsection (1) hereof shall not refer to an entirely new transmission facility.” Thus, the proposed changes are entirely consistent with the Commission’s rulings.

In addition, the Filing Parties propose to make certain clarifications to Section 31.6.4 to eliminate ambiguity regarding the incumbent NYTOs’ rights concerning upgrades to their facilities and the development of transmission facilities not eligible for regional cost allocation to meet the needs of their service territories. Specifically, the Filing Parties propose to clarify that:

- The NYTOs have an express right to take the actions set forth in Section 31.6.4,
- Facilities as described in Section 31.6.4.1 refers to “transmission facilities,” and
- The NYTOs may not only develop, but also “build, own, and operate” the transmission solutions that are not eligible for regional cost allocation described in Section 31.6.4(3), and that such transmission solutions include solutions for meeting both reliability needs or “other needs” in the NYTOs’ service territory.

Similarly, the Filing Parties also propose to remove “local” from the description of transmission solutions in Section 31.6.4(3) that the NYTOs can develop if they are not seeking regional cost allocation. The NYTOs are often required to develop and construct transmission facilities that pass through or are located, in part, in the neighboring NYTO’s service territory or are jointly owned by neighboring NYTOs. The Filing Parties, therefore, propose to remove “local” from transmission facilities to make clear that the NYTOs may continue to develop and construct such transmission facilities without regional cost allocation under the NYISO tariffs.

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<sup>215</sup> April 18 Order at P 172.

<sup>216</sup> Order No. 1000-A at P 426.

## **B. Compliance with Reliability Requirements**

Section 31.6.5 establishes that an entity developing an approved project must register with NERC and NPCC for appropriate reliability functions and must comply with all applicable Reliability Criteria. In the April 18 Order, the Commission indicated that the Filing Parties had not explained the “why this provision needs to be included in order for a project to qualify as a regional project eligible for costs allocation” and required that the Filing Parties either explain why the provision was needed or remove it.<sup>217</sup>

The Filing Parties propose to retain Section 31.6.5. The requirements in this provision are not part of the Developer qualification requirements, nor is compliance with this requirement include as part of the information a Developer must provide in the project information requirements or part of the metrics evaluated by the NYISO in selecting a project. Rather, the purpose of this provision is simply to provide notification to new entities developing transmission projects in New York that they must register with the appropriate reliability organizations and comply with the applicable Reliability Criteria. It is especially appropriate to include this notice in Attachment Y in light of the Order No. 1000 requirements that incumbents and non-incumbent transmission Developers are to be treated in the same manner. In accordance with these new requirements, it is anticipated that Developers previously unfamiliar with applicable reliability requirements will be proposing transmission projects in New York.

The NYISO has numerous similar notification requirements throughout its tariffs. For example, Section 5.1.1.1 of the NYISO Services Tariff sets forth that “all Customers shall conform to all applicable reliability criteria, policies, standards, rules, regulations and other requirements of NERC, NPCC, NYSRC, any applicable regional council, or their successors, the ISO’s specific reliability requirements and ISO Procedures, and applicable operating guidelines and all applicable requirements of federal and state regulatory authorities.” In addition, Section 4.1.7 of the NYISO Services Tariff provides: “All Customers shall comply with all applicable federal, state and local laws, regulations and orders, including orders from the ISO.” Accordingly, the notification language in Section 36.1.5 is in no way discriminatory and the Commission should allow the NYISO to retain it.

## **C. Additional Ministerial Modifications in Attachment Y and OATT Rate Schedule 10**

The Filing Parties also propose several non-substantive modifications to correct omissions, grammatical, and typographical errors related to implementation of the tariff modifications proposed to comply with the April 18 Order, or that were identified in the course of drafting those changes and that need to be addressed for the tariff to read logically and consistently. Among such ministerial revisions, the Filing Parties propose to ensure the consistent use of defined terms throughout the submitted tariff provisions. For example, the Filing Parties propose to capitalize the defined term “Reliability Need” in Rate Schedule 10 of the NYISO OATT and to lowercase in that schedule the terms “alternative regulated solution,” “regulated transmission backstop solution,” and “alternative regulated transmission solution,” which are not defined terms. The Filing Parties also propose to correct typographical errors,

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<sup>217</sup> April 18 Order at P 199.

such as inserting the missing period in the first sentence of Section 31.5.3.2.1.6. In addition, the Filing Parties propose to make assorted other ministerial revisions.

## **X. TRANSITION PERIOD AND EFFECTIVE DATE**

### **A. Transmission and Planning Period**

In the April 18 Order, the Commission directed the Filing Parties to provide further information regarding the NYISO's transition to the revised regional transmission planning process that explains: (i) which transmission facilities would be subject to evaluation or re-evaluation within the local or regional transmission planning process after the effective date of the compliance filing, and (ii) how the NYISO will evaluate transmission projects currently under consideration.<sup>218</sup> In response, the Filing Parties clarify that there is no need for a transition process. The Filing Parties have requested January 1, 2014, as the effective date for the proposed revisions, which is the start date for the next planning cycle for the NYISO's regional transmission planning process. The NYISO has identified sufficient market-based projects to meet Reliability Needs identified in prior planning cycles and has not previously had to trigger a regulated transmission solution – whether a regulated backstop solution, alternative regulated solution, or Gap solution – to proceed. Accordingly, there will be no carry-over of transmission projects being reviewed under the existing planning cycle to the next planning cycle that begins on January 1, 2014.

The Filing Parties do, however, propose minor revisions to the existing two-year time frame for the planning cycle to reflect revisions to accommodate the new evaluation and selection process for the NYISO's reliability planning process. The planning cycle commences with the NYISO's evaluation of needs under the reliability planning process. Section 31.1.8.2 currently provides that once the reliability planning process is completed, it is followed by the economic planning process and the Public Policy Transmission Planning Process, concurrently, over the course of the second year of the planning cycle. Given the scope of responsibilities assigned to the NYISO by the April 18 Order to conduct evaluation and selection of transmission projects driven by Reliability Needs and Public Policy Requirements, the NYISO can no longer feasibly implement these planning processes sequentially as originally proposed.

The current two-year planning cycle was created for a process in which the NYISO did not have to make a selection of the more efficient or cost-effective transmission solution to satisfy a Reliability Need. The NYISO now intends to conduct its three planning processes roughly in parallel two year processes for reliability planning, economic planning, and public policy planning. All three processes still stem from the NYTOs' presentation of their LTPs, which are inputs into the RNA in the reliability planning process. After the results of Reliability Needs analysis are determined, the NYDPS/NYPSC will identify transmission needs driven by Public Policy Requirements. After the NYISO determines the viability and sufficiency of solutions to Reliability Needs in the course of formulating a draft CRP, the NYISO will create a reliable base-case model to begin economic planning in the CARIS. The Filing Parties submit that all of these changes still allow the NYISO to conduct individually each of its planning processes (reliability, economic, and public policy) in rolling two year cycles. In order to make

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<sup>218</sup> April 18 Order at P 28.

these timing provisions clearer and to provide needed flexibility to run all three planning processes roughly in two year periods, the Filing Parties propose to revise the time frame described in Section 31.1.8.2, and to make conforming changes in Sections 31.2.7, 31.3.1.3.2, and 31.4.1, as follows:

- The NYISO may from time to time require additional time to perform the more extensive evaluation and selection process and complete the related CRP. For this reason, the Filing Parties propose to establish that if the CRP cannot be completed with a two-year cycle, the NYISO will notify stakeholders and provide an estimated completion date and an explanation of the reasons the additional time is required.
- Currently, the NYISO uses the solutions identified in the most recently completed and approved CRP for purposes of performing a CARIS study as part of its economic transmission planning process. However, as described above, the CRP completion date may be extended from time to time. In addition, under the proposed evaluation and selection process for Reliability Needs, the NYISO will obtain the information it requires for the CARIS study at the point at which it completes its analysis of the viability and sufficiency of proposed solutions to a Reliability Need. For these reasons, the Filing Parties propose to establish that the CARIS study will commence upon the NYISO's completion of the viability and sufficiency portion of the analysis for the CRP, as set forth in Section 31.2.5.7.
- While the Public Policy Transmission Planning Process will run to the extent practicable in parallel with the reliability planning process, the Filing Parties propose to provide some time for the NYPSC/NYDPS to review the draft RNA study results and to consider what Reliability Needs will, therefore, be addressed in the CRP prior to issuing its written statement under Section 31.4.2.1 identifying Public Policy Transmission Needs for which the NYISO will solicit solutions.

## **B. Effective Date**

In the April 18 Order, the Commission directed the Filing Parties either to provide a date certain indicating the start of the next full reliability planning cycle, during which the Filing Parties proposed compliance tariff revisions would be effective, or to provide an alternative effective date for the provisions that coincides with a full reliability planning cycle accompanied by an explanation of why the alternative proposed effective date is appropriate.<sup>219</sup>

The Filing Parties respectfully propose that the tariff revisions accepted by the Commission in the April 18 Order as well as the further compliance revisions proposed herein become effective on January 1, 2014. This date coincides with the start of NYISO's next transmission planning process, which begins with the reliability planning process. As clarification, the Filing Parties are proposing to delete Section 31.5.1.8, *Effective Date of Cost*

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<sup>219</sup> April 18 Order at P 28.

**C. Request for Commission Action**

The Filing Parties respectfully requests that the Commission take action on this compliance filing by the first quarter of 2014. This time frame will enable the NYISO to implement the new evaluation and selection requirements in the upcoming planning cycle beginning January 1, 2014.

**XI. SERVICE**

The NYISO will send an electronic copy of this filing to the official representative of each party to this proceeding, to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission and the New Jersey Board of Public Utilities. In addition, the complete public version of this filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com).

**XII. CONCLUSION**

WHEREFORE, the New York Independent System Operator, Inc. and the New York Transmission Owners respectfully request that the Commission accept this compliance filing, without requiring any modifications, and make the tariff revisions proposed herein effective on January 1, 2014.

Respectfully submitted,

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<sup>220</sup> See April 18 Order at P 26.

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