153 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

ISO New England Inc. Docket Nos. ER13-193-004
ER13-193-005
ER13-196-003
ER13-196-004

ORDER ON REHEARING AND CLARIFICATION AND COMPLIANCE

(Issued October 2, 2015)

1. On March 19, 2015, the Commission issued an order[1] conditionally accepting, subject to further compliance, ISO New England Inc. (ISO-NE) and the Participating Transmission Owners Administrative Committee's (collectively, Filing Parties) second filing (Second Compliance Filing) to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000[2] and the Commission's first compliance order issued in this proceeding on May 17, 2013.[3]

2. On April 20, 2015, ISO-NE submitted a timely request for expedited clarification or rehearing of the Second Compliance Order.

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[1] *ISO New England Inc.*, 150 FERC ¶ 61,209 (2015) (Second Compliance Order).

[2] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

[3] *ISO New England Inc.*, 143 FERC ¶ 61,150 (2013) (First Compliance Order).

3. On May 18, 2015, in Docket Nos. ER13-193-005, *et al.*, Filing Parties submitted revisions to the ISO-NE Transmission, Markets and Services Tariff (Tariff) and the Transmission Operating Agreement (Operating Agreement) to comply with the Second Compliance Order (Third Compliance Filing).[4] Filing Parties request that all of the proposed revisions be made effective May 18, 2015, consistent with the Second Compliance Order.

4. As discussed below, we grant ISO-NE's request for clarification and rehearing and conditionally accept the Third Compliance Filing. We also direct Filing Parties to submit further revisions to the Tariff and the Operating Agreement within 30 days of the date of this order.

I. Background

5. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890[5] to require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its tariff to describe procedures for the consideration of transmission needs driven by Public Policy Requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

6. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its tariff a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional

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[4] Filing Parties state that the Commission should treat the two filings as a single compliance filing. They explain that the two-part filing was necessitated by the technical limitations associated with the Commission's eTariff system. Third Compliance Filing at 1-2.

[5] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

II. Notice of Filing and Responsive Pleadings

7. Notice of Filing Parties' May 18, 2015 Third Compliance Filing was published in the *Federal Register*, 80 Fed. Reg. 30,223 (2015), with interventions and protests due on or before June 8, 2015. On June 5, 2015, New England Power Pool Participants Committee (NEPOOL) filed comments supporting the Third Compliance Filing. On June 8, 2015, LS Power Transmission, LLC, and LSP Transmission Holdings, LLC (together, LS Power) filed a protest.

8. On June 18, 2015, ISO-NE filed an answer in response to LS Power's Protest. On June 26, 2015, LS Power submitted an answer in response to ISO-NE's answer.

9. On April 29, 2015, LS Power filed an answer to ISO-NE's request for clarification or rehearing. On May 4, 2015, several New England transmission owners filed comments in response to ISO-NE's request for clarification or rehearing.[6] On May 11, 2015, ISO-NE filed a response to LS Power's answer to ISO-NE's request for clarification or rehearing.

III. Discussion

A. Procedural Matters

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept ISO-NE's answer to LS Power's protest and LS Power's answer to ISO-NE's answer because they have provided information that assisted us in our decision-making process.

11. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits an answer to a request for rehearing. Accordingly, we reject all responsive pleadings to ISO-NE's request for clarification and rehearing.

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[6] New England Transmission Owners that submitted the comments are: Emera Maine; Central Maine Power Company; New England Power Company; Northeast Utilities Service Company (on behalf of: The Connecticut Light and Power Company, NSTAR Electric Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire); The United Illuminating Company; Vermont Electric Power Company, Inc.; and Vermont Transco LLC.

B. Substantive Matters

12. As discussed below, we grant ISO-NE's request for clarification and rehearing. We also find that Filing Parties' Third Compliance Filing partially complies with the directives of the Second Compliance Order. We thus conditionally accept Filing Parties' proposed revisions to the Tariff and the Operating Agreement, subject to a further compliance filing due within 30 days of the date of this order.

1. Local Public Policy Transmission Planning

a. Second Compliance Order

13. In the Second Compliance Order, the Commission found that Filing Parties partially complied with the requirements to incorporate the consideration of transmission needs driven by federal, state, or local public policy requirements into the local transmission planning processes. The Commission indicated that Filing Parties noted that, if any of the identified transmission needs are driven by state or local public policy requirements, they will coordinate with the appropriate state and local authorities to determine which of these needs will be further evaluated for potential solutions. However, the Commission noted that Filing Parties did not describe a process for identifying which federal public policy requirements may drive local transmission needs, and how such needs will be evaluated for potential solutions in the local transmission planning process. Therefore, the Commission directed Filing Parties to submit a further compliance filing to describe a just and reasonable and not unduly discriminatory process through which each Participating Transmission Owner will identify, out of the larger set of potential transmission needs driven by federal public policy requirements that may be proposed, those transmission needs for which transmission solutions will be evaluated in the local transmission planning process.[7] In addition, the Commission directed Filing Parties to submit a further compliance filing that describes: (1) procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders; and (2) how Participating Transmission Owners will provide stakeholders other than local and state authorities with an opportunity to offer input during the evaluation of those potential transmission solutions in the local transmission planning process.[8]

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[7] Second Compliance Order, 150 FERC ¶ 61,209 at P 153.

[8] *Id.* P 154.

b. Third Compliance Filing

14. Filing Parties propose a new process to identify public policy requirements driving local transmission needs. In the proposed process, each Participating Transmission Owner will review the New England States Committee on Electricity's (NESCOE) written explanation of which transmission needs driven by state or federal public policy requirements will be evaluated by ISO-NE and why other suggested transmission needs will not be evaluated in the regional transmission system planning process. If NESCOE does not provide a listing of identified transmission needs and explanation, each Participating Transmission Owner will review ISO-NE's explanations of which transmission needs driven by state or federal public policy requirements will be evaluated by ISO-NE and why other suggested transmission needs will not be evaluated. In addition, each Participating Transmission Owner will review ISO-NE's explanation of which transmission needs driven by local public policy requirements will be evaluated in the regional transmission system planning process and why other suggested transmission needs driven by local public policy requirements will not be evaluated. Each Participating Transmission Owner will then determine if any of the posted state, federal, or local public policy requirements are driving a need on its non-Pool Transmission Facility (i.e., local) transmission system and will include the local transmission needs in its local transmission planning process.[9]

15. Filing Parties propose that, as part of the local planning process, each Participating Transmission Owner will list the identified transmission needs on its local transmission system driven by state, federal, or local public policy requirements that will be evaluated and provide an explanation of why any identified needs will not be evaluated as part of its annual Local System Plan. Filing Parties propose that the list will be posted in the Participating Transmission Owner's Local System Plan and presented at the annual Planning Advisory Committee meeting. Under the proposal, the Participating Transmission Owner will seek input at the Planning Advisory Committee from stakeholders about whether further study is warranted to identify solutions for local transmission system needs and seek recommendations about whether to proceed with such studies. Filing Parties propose that a stakeholder may provide written input on the list within 30 days from the date of the presentation for consideration by the Participating Transmission Owner. Each Participating Transmission Owner will then confirm, or modify if appropriate, its determination of which identified transmission needs on its local system driven by state, federal, or local public policy requirements will be evaluated and which will not be evaluated, and revise its annual Local System Plan accordingly. If

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[9] ISO-NE, Transmission, Markets and Services Tariff, Attachment K-Local, § 1.6A; *see also* Third Compliance Filing at 6.

the potential local transmission needs identified would affect the local transmission facilities of more than one Participating Transmission Owner, the affected Participating Transmission Owners will coordinate their efforts with other affected Participating Transmission Owners, as necessary.[10]

16. Furthermore, Filing Parties propose new procedures for evaluating potential solutions to local transmission needs that will be evaluated in the local transmission system plans. In the proposed procedures, once a Participating Transmission Owner determines that a local transmission need driven by state, federal, or local public policy requirements will be evaluated, each Participating Transmission Owner "will prepare a scope and associated assumptions as part of a Public Policy Local Transmission Study."[11] Filing Parties propose that for those transmission needs where a scope is available, a Participating Transmission Owner may present the proposed scope for the Public Policy Local Transmission Study within its annual Local System Plan and as part of its Local System Plan presentation to the Planning Advisory Committee. A stakeholder may provide written input to the scope within 30 days after the Local System Plan presentation. Filing Parties propose that each Participating Transmission Owner will schedule a follow-up Planning Advisory Committee meeting presentation for additional stakeholder input within four months of the Participating Transmission Owner's Local System Plan presentation if the proposed scope for a Public Policy Local Transmission Study was not included in its annual Local System Plan presentation. Filing Parties propose that, within 30 days after the follow-up Planning Advisory Committee meeting, a stakeholder may provide written input to the scope for the Participating Transmission Owner to consider. The Participating Transmission Owner will subsequently determine the study scope of the Public Policy Local Transmission Study and revise its annual Local System Plan.[12]

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[10] ISO-NE, Transmission, Markets and Services Tariff, Attachment K-Local, § 1.6A; *see also* Third Compliance Filing at 6.

[11] ISO-NE, Transmission, Markets and Services Tariff, Attachment K-Local, § 1.6B. Public Policy Local Transmission Study is a study conducted by a Participating Transmission Owner and consists of two phases: (i) an initial phase to produce an estimate of the costs and benefits of concepts that could meet transmission needs driven by public policy requirements; and (ii) a follow-on phase designed to produce more detailed analysis and engineering work on transmission concepts identified in the first phase. ISO-NE, Transmission, Markets and Services Tariff, § I.2.2 (Definitions) (73.0.0).

[12] ISO-NE, Transmission, Markets and Services Tariff, Attachment K-Local, § 1.6B; *see also* Third Compliance Filing at 6.

17. In preparation for a Public Policy Local Transmission Study that will be presented to the Planning Advisory Committee as part of the Local System Plan the following year, Filing Parties propose that the Participating Transmission Owner will: (1) perform the initial phase of the Public Policy Local Transmission Study to develop an estimate of costs and benefits and post preliminary results on a website; and (2) use good faith efforts to contact stakeholders and the appropriate state and/or local authorities informing them of the posting and requesting input on whether further study is warranted to identify solutions for local transmission system needs, and seeking recommendations about whether to proceed with further study of a Local Public Policy Transmission Upgrade.[13] Filing Parties propose that each Participating Transmission Owner will then make a determination of whether further study is warranted to identify solutions to local transmission system needs, or will select its final solution and revise its Local System Plan accordingly. Filing Parties propose that Participating Transmission Owners will coordinate with other affected Participating Transmission Owners as necessary and that the results of a Public Policy Local Transmission Study will be provided to the Planning Advisory Committee as part of the Local System Plan for the following year.[14]

c. Commission Determination

18. We find that Filing Parties' revisions comply with the directives of the Second Compliance Order and therefore satisfy the Order No. 1000 requirements to incorporate the consideration of transmission needs driven by federal, state, and local public policy requirements into the local transmission planning processes. We also find that the proposed procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements comply with the directives in the Second Compliance Order.

19. Of further note, in the First Compliance Order, the Commission found that to comply with Order No. 1000, Filing Parties needed to "develop procedures to evaluate at the regional level all identified potential transmission solutions to transmission needs driven by public policy requirements, not only those that NESCOE indicates that it would

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[13] Local Public Policy Transmission Upgrade is any addition and/or upgrade to the New England Transmission System with a voltage level below 115 kV that is required in connection with the construction of a Public Policy Transmission Upgrade approved for inclusion in the Regional System Plan pursuant to Attachment K to the ISO OATT or included in a Local System Plan in accordance with Appendix 1 to Attachment K. ISO-NE, Transmission, Markets and Services Tariff, Section I.2.2 (Definitions) (73.0.0).

[14] ISO-NE, Transmission, Markets and Services Tariff, Attachment K-Local, § 1.6B; *see also* Third Compliance Filing at 6-7.

like ISO-NE to study further."[15] In the Second Compliance Filing, Filing Parties proposed and the Commission accepted revisions giving ISO-NE a more prominent, and NESCOE a less prominent, role in evaluating and selecting solutions to transmission needs driven by public policy requirements in the regional transmission planning process.[16] However, upon further review, we find that section II.C in Attachment N still defines Public Policy Transmission Upgrades as "upgrades designed primarily to meet NESCOE-identified transmission needs driven by public policy requirements."[17] Section 4A of the Tariff is broader and considers Public Policy Requirements identified by NESCOE, as well as Federal Public Policy Requirements not identified by NESCOE and Local Public Policy Requirements. To remove any confusion, we direct Filing Parties to file a conforming change within 30 days of the issuance of this order to eliminate the words "primarily" and "NESCOE-identified" from the definition of Public Policy Transmission Upgrades in section II.C of Attachment N, and add the phrase "including such needs identified by NESCOE" to the end of that definition.

2. Nonincumbent Agreement

a. Second Compliance Order

20. In the Second Compliance Order, the Commission found that the obligation for transmission developers to hold harmless certain parties was less restrictive under the Operating Agreement than the Nonincumbent Transmission Developer Agreement (Nonincumbent Agreement), causing discrimination against nonincumbent transmission developers. Specifically, in the Nonincumbent Agreement, developers are required, under certain circumstances,[18] to hold harmless and indemnify Participating Transmission Owners, while under the Operating Agreement, Participating Transmission Owners are not required to hold harmless and indemnify each other when a Participating Transmission Owner is building outside of its own retail distribution service territory or footprint. To resolve this discrepancy and because Participating Transmission Owners that act as nonincumbent transmission developers must satisfy the developer qualification criteria, which include the execution of the Nonincumbent Agreement, the Commission

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[15] First Compliance Order, 143 FERC ¶ 61,150 at P 116.

[16] Second Compliance Order, 150 FERC ¶ 61,209 at PP 138, 144.

[17] ISO-NE, Transmission, Markets and Services Tariff, Attachment N, § II.C (Identification of Public Policy Transmission Upgrades) (2.0.0).

[18] ISO-NE, Transmission, Markets and Services Tariff, Attachment O, § 9.01 (Hold Harmless) (3.0.0).

directed ISO-NE to revise its definition of a nonincumbent transmission developer in the ISO-NE Tariff to require that a Participating Transmission Owner that proposes to develop a transmission facility not located within or connected to its existing electric system enter into a Nonincumbent Agreement.[19]

21. The Commission also found that Filing Parties' proposed revisions to the hold harmless provision in the Nonincumbent Agreement continued to be overly broad in two respects. First, the Commission found that Filing Parties' revisions partially addressed the Commission's concerns regarding gross negligence and intentional acts, but did not address the concern that the hold harmless provision requires a nonincumbent transmission developer to hold harmless a Participating Transmission Owner from the Participating Transmission Owner's own acts of ordinary negligence. Furthermore, the Commission found the provision's requirement for a nonincumbent transmission developer to hold harmless and indemnify a Participating Transmission Owner for FERC penalties to be inconsistent with the Commission's statements in the First Compliance Order. Consequently, the Commission directed Filing Parties to revise the hold harmless provision in the Nonincumbent Agreement to exempt a Participating Transmission Owner's own ordinary negligence and to remove the reference to FERC penalties.[20]

b. <u>Request for Clarification</u>

22. ISO-NE requests clarification that the Filing Parties may address the discrimination concerns the Commission found regarding the hold harmless clause of the Nonincumbent Agreement by adding a hold harmless clause in the Operating Agreement rather than, as the Commission directed, by modifying the Tariff to require that Participating Transmission Owners execute the Nonincumbent Agreement.[21] ISO-NE

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[19] Second Compliance Order, 150 FERC ¶ 61,209 at P 255.

[20] *Id.* P 256.

[21] ISO-NE Request at 8. ISO-NE proposes to add the following hold harmless clause as a new section 1.1(h) in Schedule 3.09(a) of the Operating Agreement:

> A [Participating Transmission Owner] that is proposing to develop a New Transmission Facility that is not located within or connected to the [Participating Transmission Owner's] existing facilities (a "[Participating Transmission Owner Non-Incumbent Transmission Developer]") will indemnify and hold harmless all affected [Participating Transmission Owners] from any and all liability (except for that stemming from an affected [Participating Transmission

(continued…)

asserts that requiring Participating Transmission Owners to execute the Nonincumbent Agreement would create a number of problems because while the agreements are substantively identical in some respects, the Nonincumbent Agreement is intended to be a temporary, transitional agreement. Furthermore, ISO-NE contends, the Participating Transmission Owners have a broad scope of obligations under the Operating Agreement that are not captured in the Nonincumbent Agreement.[22]

23. In particular, ISO-NE argues, while the Nonincumbent Agreement addresses some of the same subject matter areas as, and is loosely modeled on, the Operating Agreement, the two agreements differ in some respects given that a signatory to the Nonincumbent Agreement is not already bound by the comprehensive provisions of the Operating Agreement.[23] According to ISO-NE, the Nonincumbent Agreement is simply a transitional document whose terms are designed specifically for an entity that is a non-signatory to the Operating Agreement (because the entity does not yet own operating facilities in New England) that terminates upon the entities' placing the new transmission facilities into service and executing the Operating Agreement, with its more comprehensive commitments.[24] Moreover, ISO-NE argues, if a Participating Transmission Owner must be a party to both the Operating Agreement and the

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> Owner's] negligence, gross negligence or willful misconduct) resulting from the [Participating Transmission Owner Non-Incumbent Transmission Developer's] failure to timely complete (based on the milestone provisions contained in the ISO OATT) a Reliability Transmission Upgrade (as defined in the ISO OATT) that the [Participating Transmission Owner Non-Incumbent Transmission Developer] was chosen in the ISO System Plan to construct. As used herein, an "affected [Participating Transmission Owner]" is one that would be subject to penalties assessed by NERC or FERC or adverse regulatory orders or monetary claims or damages due to the [Participating Transmission Owner Non-Incumbent Transmission Developer's] failure to timely complete the Reliability Transmission Upgrade.

[22] *Id.*

[23] *Id.* at 6, 9.

[24] *Id.*

Nonincumbent Agreement, it would be subject to overlapping but possibly conflicting contemporaneous obligations stemming from the two separate documents.[25]

24. ISO-NE asserts that its approach (i.e., adding a hold harmless clause in the Operating Agreement) will avoid the confusion and conflicts inherent in subjecting Participating Transmission Owners to two different but similar agreements (the Operating Agreement and Nonincumbent Agreement) that were never intended to co-exist for the same entity, given that the Nonincumbent Agreement specifies that it terminates as soon as the entity is able to execute the Operating Agreement.[26] In addition, ISO-NE argues that the simple insertion of a hold harmless clause in the Operating Agreement will achieve the non-discriminatory result sought by the Commission with respect to hold-harmless obligations. ISO-NE claims that the Commission confirmed in the Second Compliance Order that in all other respects, Participating Transmission Owners who propose to develop facilities that are not located within or connected to their existing facilities are held subject to the same qualification criteria as Non-Participating Transmission Owners.[27] ISO-NE alternatively seeks rehearing on this issue, to the extent the Commission does not clarify as ISO-NE asks.

c. <u>Third Compliance Filing</u>

25. Filing Parties propose to modify the definition of a Non-Incumbent Transmission Developer in the Tariff to remove the language stating that, because a Participating Transmission Owner is a party to the Operating Agreement, it is not required to enter into a Nonincumbent Agreement.[28] In addition, Filing Parties propose to revise the Tariff to provide that a Participating Transmission Owner that ISO-NE determines to meet all the qualification criteria will, upon its execution of the Nonincumbent Agreement, be

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[25] *Id.* at 9.

[26] *Id.* at 3.

[27] *Id.* at 9 (citing Second Compliance Order, 150 FERC ¶ 61,209 at PP 247, 253).

[28] Third Compliance Filing at 7; *see also* ISO-NE, Transmission, Markets and Services Tariff, § I.2.2.

deemed a Qualified Transmission Project Sponsor.[29] Filing Parties state that these proposed changes do not waive ISO-NE's request for clarification to modify this compliance requirement.[30]

26. Filing Parties also propose to modify the hold harmless provision in the Nonincumbent Agreement and the Operating Agreement to remove the reference to NERC and FERC penalties.[31] In addition, Filing Parties propose to modify the hold harmless provisions in the Nonincumbent Agreement and the Operating Agreement so that the hold harmless provision does not apply to liability stemming from an affected Participating Transmission Owner's own "negligence."[32]

d. Commission Determination

27. As an initial matter, we grant ISO-NE's requested clarification. We find that the Filing Parties' proposal to add a hold harmless clause as a new section 1.1(h) in Schedule 3.09(a) of the Operating Agreement addresses the Commission's concerns of discriminatory treatment of Non-Participating Transmission Owners that arose because the obligation for transmission developers to hold harmless certain parties was less restrictive under the Operating Agreement than the Nonincumbent Agreement. Specifically, ISO-NE's proposed hold harmless clause is substantively identical to the hold harmless provision that appears in the Nonincumbent Agreement. Thus, ISO-NE's proposal ensures that both nonincumbent transmission developers that are Participating Transmission Owners and nonincumbent transmission developers that are Non-Participating Transmission Owners are subject to comparable requirements with respect to indemnifying and holding harmless affected Participating Transmission Owners. We also note that once a nonincumbent transmission developer that is not a Participating Transmission Owner executes the Operating Agreement, that nonincumbent transmission developer's rights and obligations under the Nonincumbent Agreement will

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[29] Third Compliance Filing at 7; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K, § 4B.3.

[30] Third Compliance Filing at 7.

[31] *Id.* at 8; *see also* ISO-NE, Agreements and Contracts, Transmission Operating Agreement, § 1.1(g) and ISO-NE, Transmission, Markets and Services Tariff, Attachment O, § 9.01 (Hold Harmless) (4.0.0).

[32] Third Compliance Filing at 8; *see also* ISO-NE, Agreements and Contracts, Transmission Operating Agreement, § 1.1(g) and ISO-NE, Transmission, Markets and Services Tariff, Attachment O, § 9.01 (Hold Harmless) (4.0.0).

be terminated,[33] and it will then assume the rights and obligations of a Participating Transmission Owner under the Operating Agreement. Therefore, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, a further compliance filing to revise the Operating Agreement to include the hold harmless clause that ISO-NE proposes in its request for clarification.

28. In light of our decision to grant clarification, we find that Filing Parties' proposals in the compliance filing on this issue are now moot. Specifically, we find moot Filing Parties' proposal to: (1) modify the definition of a Non-Incumbent Transmission Developer in the Tariff to remove the language stating that, because a Participating Transmission Owner is a party to the Operating Agreement, it is not required to enter into a Nonincumbent Agreement; and (2) revise the Tariff to provide that a Participating Transmission Owner that ISO-NE determines to meet all the qualification criteria will, upon its execution of the Nonincumbent Agreement, be deemed a Qualified Transmission Project Sponsor. Accordingly, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, a further compliance filing that removes these proposed revisions from the Tariff.

29. Finally, we find that Filing Parties' proposal to revise the hold harmless provision in the Nonincumbent Agreement and the Operating Agreement so that it does not apply to liability stemming from an affected Participating Transmission Owner's own negligence, as well as to remove the reference in that provision to FERC and NERC penalties, complies with the Second Compliance Order.

3. Backstop Transmission Solution

a. Second Compliance Order

30. In the Second Compliance Order, the Commission accepted Filing Parties' proposal to replace a delayed transmission project that was selected in the regional transmission plan for purposes of cost allocation with a Participating Transmission Owner's backstop transmission solution in certain instances. However, to provide more clarity about such backstop solutions, the Commission directed Filing Parties to create a

[33] "NTD shall execute and deliver to the ISO a counterpart of the Transmission Operating Agreement as an Additional PTO…Upon such execution and delivery, this Agreement shall terminate automatically." ISO-NE, Transmission, Markets and Services Tariff, Attachment O, § 10.05 (Transmission Operating Agreement and Disbursement Agreement; Registration) (4.0.0).

defined term for a backstop transmission solution and to use this single term consistently in both the Tariff and the Operating Agreement.[34]

31. The Commission also found that Filing Parties had proposed new language that expanded the scope of a Participating Transmission Owner's obligation to provide a Phase One Proposal as a backstop transmission solution by requiring the Participating Transmission Owner to continue developing the backstop transmission solution until ISO-NE provided notification that the sponsor had accepted responsibility for the selected transmission project.[35] Filing Parties' proposal also allowed ISO-NE to require a Participating Transmission Owner to continue developing a backstop transmission solution even past that point if the year of need or other factors, as applicable, associated with the project are such that ISO-NE determines that development of the backstop transmission solution should continue. The Commission found that these aspects of Filing Parties' proposal went beyond what the Commission accepted in the First Compliance Order and directed Filing Parties to remove the new language in section 4.3(k) of Attachment K that would require a Participating Transmission Owner to continue developing a backstop transmission solution beyond what was originally proposed and beyond what the Commission accepted in the First Compliance Order.[36]

b. <u>Third Compliance Filing</u>

32. In the Third Compliance Filing, Filing Parties propose a new defined term, Backstop Transmission Solution, both in the Tariff and the Operating Agreement. A Backstop Transmission Solution is defined as a solution proposed: (i) to address a reliability or market efficiency need identified by ISO-NE in a Needs Assessment

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[34] Second Compliance Order, 150 FERC ¶ 61,209 at P 305.

[35] *See id.* P 306. ISO-NE refers to Phase One/Phase Two for its reliability and market efficiency competitive transmission planning process, and to Stage One/Stage Two for its public policy competitive planning process. *Id.* P 30 n.23. If the need-by date of a reliability-related solution(s) is more than three years away, or if the solution(s) is identified as a market efficiency solution, ISO-NE will utilize a two-step process, in which Qualified Transmission Project Sponsors (Qualified Sponsors) will submit proposals (called Phase One Proposals) that address the needs identified in the Needs Assessment. *Id.* P 27. ISO-NE then seeks input from the Planning Advisory Committee to determine which proposals would move forward to Phase Two, based on the selection criteria of cost, electrical performance, future system expandability, or feasibility. *Id.* P 28.

[36] *Id.* PP 307-308.

reported by ISO-NE pursuant to Attachment K of the Tariff; (ii) by the Participating Transmission Owner(s) with an obligation under the Operating Agreement to address the identified need; and (iii) in circumstances in which the competitive solution process specified in Attachment K to the Tariff will be utilized.[37] Filing Parties state that the defined term has been substituted in the Tariff and the Operating Agreement for the formerly undefined phrases.[38]

33. Filing Parties also propose to remove from section 4.3(k) of Attachment K language that allows a Participating Transmission Owner to continue developing the Backstop Transmission Solution if the "year of need or other factors, as applicable, associated with the project are such that [ISO-NE] determines that the [Participating Transmission Owner] should continue the development of the backstop regulated transmission solution."[39] Filing Parties propose to remove the requirement that, in such circumstances, "[a] determination by [ISO-NE] for the [Participating Transmission Owner] to continue work on the backstop project shall be communicated by [ISO-NE] to the [Participating Transmission Owner] in writing and shall also be communicated to the Planning Advisory Committee."[40]

c. <u>Protest</u>

34. LS Power contends that Filing Parties misstate the required directives of the Second Compliance Order and, thus, have failed to remove certain inappropriately inserted revisions to the Tariff made in the Second Compliance Filing.[41] It argues that, while the Commission directed Filings Parties to "remove the new language in section 4.3(k) of Attachment K that would require a Participating Transmission Owner to continue developing a backstop transmission solution beyond what was originally proposed and that the Commission accepted in the First Compliance Order," Filing

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[37] Third Compliance Filing at 10; *see also* ISO-NE, Transmission, Markets and Services Tariff, § I.2.2 (Definitions) (73.0.0); ISO-NE, Agreements and Contracts, Transmission Operating Agreement (4.0.0), Schedule 1.01 (Schedule of Definitions).

[38] Third Compliance Filing at 10.

[39] *Id.*; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), § 4.3(k) (Milestone Schedules).

[40] Third Compliance Filing at 10; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), § 4.3(k) (Milestone Schedules).

[41] LS Power Protest at 2.

Parties only removed that language "requiring a [Participating Transmission Owner] to continue developing a Backstop Transmission Solution after the Qualified Sponsor has accepted responsibility for the competitively selected project." As a result, LS Power states that the Third Compliance Filing inappropriately retains edits from the Second Compliance Filing not mandated by the Commission, which include the requirement that the Qualified Sponsor "accept responsibility" for a competitively selected project, and that the Participating Transmission Owner providing a backstop regulated transmission solution cease developing its project as of the date of the selected sponsor's acceptance of the responsibility.

35. Additionally, to make clear that a Backstop Transmission Solution is only a Phase One or Phase Two submittal until such time as the more efficient or cost-effective transmission project is replaced because it is not moving forward or is otherwise unable to be built, LS Power proposes a revised definition for Backstop Transmission Solutions and requests that the Commission direct Filing Parties to adopt the suggested definition.[42]

d. <u>Answer</u>

36. According to ISO-NE, LS Power's protest focuses only on a single provision of the Second Compliance Order, while ignoring prior Commission direction in the First Compliance Order to provide additional detail regarding the backstop solution process.[43] ISO-NE states that, in the First Compliance Order, the Commission acknowledged that the Operating Agreement obligates the Participating Transmission Owner to build reliability and other transmission projects as a backstop if the designated Qualified Sponsor cannot build its project, but the Commission sought clarification regarding the options that ISO-NE would pursue when a selected transmission project is delayed. It argues that in response to the First Compliance Order, ISO-NE clarified section 4.3(k) to provide that if ISO-NE finds that the Qualified Sponsor has failed to pursue project approvals or construction in a reasonably diligent fashion, or is unable to proceed due to forces beyond its reasonable control, ISO-NE would request that the applicable Participating Transmission Owner implement the Backstop Transmission Solution. ISO-NE also states that the changes to section 4.3(k) in the Second Compliance Filing also recognized that if the Participating Transmission Owner is to be in a position to implement the Backstop Transmission Solution promptly following discontinuance of the selected nonincumbent project, the Backstop Transmission Solution could not, in the interim, be left in the status of a bare Phase One Proposal or Phase Two Solution.[44]

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[42] *Id.* at 3-4.

[43] ISO-NE Answer at 1.

[44] *Id.* at 3.

Accordingly, to address the unfinished nature of a Phase One Proposal or Phase Two Solution as a promptly implementable Backstop Transmission Solution, section 4.3(k) permits continued development of the Backstop Transmission Solution until the date of the selected Qualified Sponsor's acceptance of responsibility for the transmission project selected in the Regional System Plan.

37. ISO-NE argues that the Second Compliance Order allows ISO-NE to explain or provide justification for requiring a Participating Transmission Owner to go beyond developing a Phase One or Phase Two Proposal as a Backstop Transmission Solution before the backstop replaces the selected transmission solution.[45] It argues that the provisions allow a Backstop Transmission Solution to be implemented when needed because "a [Participating Transmission Owner] cannot be (without interim efforts) in a position to promptly implement a reliability or market efficiency project that has proceeded only to a bare Phase One Proposal or Phase Two Solution."[46] ISO-NE also argues that the degree of continued development of the Backstop Transmission Solution beyond selection for the preferred Phase Two Solution may vary based on the nature of Backstop Transmission Solution, where a smaller project may require less preparation to be implementable in a reasonable time frame, while a larger project may require more. As a safeguard, ISO-NE argues that actions that go beyond what is needed for the Backstop Transmission Solution to be sufficiently developed to ensure reliability are subject to review by the Commission for prudence, as decisions on regulated transmission projects have always been, which could impact cost recovery.

38. ISO-NE also requests that the Commission reject LS Power's suggested revisions to the proposed definition of Backstop Transmission Solution.[47] It argues that limiting a Backstop Transmission Solution to a bare Phase One Proposal or Phase Two Solution is not consistent with the provisions of Section 4.3(k) which provide for Participating Transmission Owners to promptly implement a Backstop Transmission Solution, as argued above. Furthermore, it argues that process points that are set out in Attachment K need not be reiterated in the definition because such an act creates needless duplication and can lead to conflicts over time in the event of future revisions.

39. In its answer to ISO-NE's answer, LS Power argues that while the First Compliance Order, as ISO-NE notes, sought clarification regarding the options that ISO-NE would pursue *when a selected transmission project is delayed*, the Second

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[45] Second Compliance Order, 150 FERC ¶ 61,209 at P 308.

[46] ISO-NE Answer at 5.

[47] *Id.* at 6.

Compliance Filing revised what happens *before* a selected project is delayed.[48] It argues that ISO-NE provides no support for continuing development of a Backstop Transmission Solution when the more efficient or cost-effective proposal is progressing as contemplated.[49] LS Power also states that ISO-NE's answer attempts to both argue that continued development of a Backstop Transmission Solution is essential in order to implement that project in a timely manner, and that the level of continued development may be small such that the costs would seem minimal.[50]

40. LS Power also argues that the Commission's action in *New York Independent System Operator, Inc.*[51] supports rejection of ISO-NE's effort to provide cost recovery for both the selected Phase II Solution and the Backstop Transmission Solution. LS Power states that, in *NYISO*, the Commission concluded that "the provisions allowing transmission developers to allocate the costs of regulated backstop solutions across customers in New York State pre-date [New York Independent System Operator, Inc.'s (NYISO)] Order No. 1000 compliance and compliance with Order No. 1000 does not necessitate their removal."[52] LS Power argues that no such grandfathering is possible here as ISO-NE's Tariff never contained provisions for backstop proposals until they were added in the Second Compliance Filing.

e. <u>Determination</u>

41. We find that Filing Parties' proposal partially complies with the Commission's directive to remove the language in section 4.3(k) of Attachment K that would require a Participating Transmission Owner to continue developing a backstop transmission solution beyond what was originally proposed and that the Commission accepted in the First Compliance Order. Consistent with the Commission's directives, Filing Parties have removed language proposed in the Second Compliance Filing that allows ISO-NE to require a Participating Transmission Owner to continue development of the Backstop Transmission Solution beyond the point of a Qualified Sponsor's acceptance of responsibility for the selected transmission project. However, we find that Filing Parties'

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[48] LS Power Answer at 3 (citing ISO-NE Answer at 2).

[49] *Id.* at 6.

[50] *Id.* at 7.

[51] 151 FERC ¶ 61,040, at P 35 (2015) (*NYISO*).

[52] LS Protest at 9 (citing *NYISO*, 151 FERC ¶ 61,040 at P 35).

Third Compliance Filing proposal retains revisions from the Second Compliance Filing that were not directed by the Commission. We direct ISO-NE to remove these revisions.

42. As discussed above, we reject language that Filing Parties proposed in the Second Compliance Filing, and which they retained in their Third Compliance Filing, that requires a Participating Transmission Owner to go beyond developing a Phase One Proposal or Phase Two Solution as a Backstop Transmission Solution for a selected reliability or economic efficiency transmission project before ISO-NE determines that the backstop solution must replace the selected transmission solution.[53] ISO-NE notes that in the First Compliance Order, the Commission accepted Filing Parties' proposal that, in the event that a Qualified Sponsor designated to construct transmission facilities fails to complete them on a timely basis, the relevant Participating Transmission Owner has an obligation to work with ISO-NE to develop a backstop solution.[54] However, requiring a Participating Transmission Owner to continue developing the Backstop Transmission Solution until a Qualified Sponsor has accepted responsibility for the selected transmission project is not consistent with the Commission's understanding of Filing Parties' original proposal.[55] In the Second Compliance Order, the Commission found that Filing Parties' proposed language requiring the Participating Transmission Owner to continue developing the Backstop Transmission Solution until ISO-NE notifies the Participating Transmission Owner that the Qualified Sponsor has accepted responsibility for the selected transmission projects (and thus has obtained all siting and other approvals)[56] goes beyond what the Commission accepted in the First Compliance Order by requiring a Participating Transmission Owner to continue developing its Backstop Transmission Solution beyond what is required in Phase One and Phase Two of the transmission planning process and to instead continue to develop the Backstop

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[53] ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), § 4.3(k) (Milestone Schedules) ("The ISO shall provide notification to any PTO providing a Backstop Transmission Solution to cease developing its project as of the date of the selected sponsor's acceptance of responsibility.").

[54] First Compliance Order, 143 FERC ¶ 61,150 at P 291.

[55] ISO-NE, Transmission, Markets and Services Tariff, Attachment K (6.0.0), § 4.3(k) (Milestone Schedules) (providing original proposal).

[56] ISO-NE, Transmission, Markets and Services Tariff, Attachment K (11.0.0), § 4.3(k) (Milestone Schedules).

Transmission Solution until the selected transmission project has all siting and other approvals, or even past that point if ISO-NE decides it is necessary.[57]

43. The Commission also explained in the Second Compliance Order that, under Filing Parties' proposal that the Commission accepted in the First Compliance Order, a Participating Transmission Owner would *not* continue to develop the Backstop Transmission Solution unless and until a selected transmission project is abandoned or ISO-NE determines that the Qualified Sponsor has failed to pursue project approvals or construction for a reliability transmission or market efficiency transmission project in a reasonably diligent fashion, or is unable to proceed due to forces beyond its reasonable control.[58] Thus, the language in the Tariff requiring a Participating Transmission Owner to continue developing a Backstop Transmission Solution beyond what is needed to reach Phase One and Phase Two after ISO-NE has selected an alternate transmission project, but before ISO-NE has determined the selected alternate transmission project is not proceeding in timely manner, goes beyond what the Commission accepted in the First Compliance Order.[59] We also find that this language is not required to comply with the requirements of Order No. 1000.

44. In addition, Filing Parties have not demonstrated that the Backstop Transmission Solution must be developed beyond those information requirements necessary to become a Phase One Proposal or Phase Two Solution to ensure reliability.[60] We note that the Commission found in the First Compliance Order that, to avoid delays in the development of transmission facilities needed to resolve a time-sensitive reliability criteria violation, it is just and reasonable for ISO-NE to exempt from competitive solicitation, under certain conditions and with specific reporting requirements, transmission projects that are needed in three years or less to solve reliability criteria

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[57] Second Compliance Order, 150 FERC ¶ 61,209 at P 307.

[58] *Id.* P 306.

[59] "The ISO shall provide notification to any PTO providing a Backstop Transmission Solution to cease developing its project as of the date of the selected sponsor's acceptance of responsibility." ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), § 4.3(k) (Milestone Schedules).

[60] ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), §§ 4.3(c), 4.3(h).

violations.[61] Thus, pursuant to the Tariff, an incumbent Participating Transmission Owner only shall develop a Backstop Transmission Solution in instances where the relevant reliability need is more than three years away. In instances where the relevant reliability need is three years away or less, ISO-NE shall not conduct a competitive solicitation for transmission solutions, and the incumbent Participating Transmission Owner's shall construct the preferred solution identified by ISO-NE.[62] The requirement for the incumbent Participating Transmission Owner to develop a Backstop Transmission Solution only in instances where the reliability need is more than three years away reduces the likelihood that ISO-NE will have insufficient time to implement the Backstop Transmission Solution prior to the year of need, should a Qualified Sponsor be unable to complete the selected transmission project. For all these reasons, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, a further compliance filing to remove the language in the Tariff stating that "ISO[-NE] shall provide notification to any [Participating Transmission Owner] providing a Backstop Transmission Solution to cease developing its project as of the date of the selected Qualified Sponsor's acceptance of responsibility."[63]

45. We accept Filing Parties' proposed definition of Backstop Transmission Solution and those conforming changes allowing for consistent use of this term throughout the Tariff and the Operating Agreement. We find it unnecessary to require Filing Parties to make LS Power's proposed revisions to the definition of Backstop Transmission Solution to make it clear that such a solution is only a Phase One or Phase Two submittal until such time as the more efficient or cost-effective transmission project is replaced by the Backstop Transmission Solution. As we explain above, a Backstop Transmission Solution will only move beyond the informational requirements necessary for Phase Two, as discussed above, if a transmission project ISO-NE selected in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective transmission solution is abandoned, or if ISO-NE determines that the Qualified Sponsor of the selected transmission project has failed to pursue project approvals or construction

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[61] First Compliance Order, 143 FERC ¶ 61,150 at PP 235-240; *see also* Second Compliance Order, 150 FERC ¶ 61,209 at PP 221-226 (denying a request for rehearing requesting that reliability projects needed in five (instead of three) years or less be exempt from competitive solicitation).

[62] *See* ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), § 4.1(i), (j).

[63] ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), § 4.3(k) (Milestone Schedules).

"in a reasonably diligent fashion" or that the Qualified Sponsor "is unable to proceed with the project due to forces beyond its reasonable control," and ISO-NE triggers the Backstop Transmission Solution as set forth under the Tariff.[64]

4. Regional Cost Allocation Principle 4

a. Second Compliance Order

46. In the Second Compliance Order, the Commission found that Filing Parties' proposed cost allocation method partially complied with Regional Cost Allocation Principle 4.[65] The Commission rejected Filing Parties' proposal that "the costs of any external impacts of New England regional projects will not be borne by New England customers,"[66] and directed Filing Parties to either demonstrate that a process exists in ISO-NE through which such impacts on neighboring regions and their associated costs will be resolved, or propose language in the Tariff explicitly describing how such impacts and their associated costs will be addressed.[67]

b. Request for Clarification or Rehearing

47. ISO-NE seeks clarification or, alternatively, rehearing of the Commission's directive to remove language from Schedule 15 of the ISO-NE Tariff supporting its proposal that "the costs of any external impacts of New England regional projects will not be borne by New England customers."[68] ISO-NE explains that removing this language is not consistent with Order No. 1000, the First Compliance Order,[69] or

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[64] ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), § 4.3(k) (Milestone Schedules).

[65] Second Compliance Order, 150 FERC ¶ 61,209 at P 322.

[66] *Id.* P 325 (quoting Filing Parties, Transmittal, Docket No. ER12-193-003, at 15 (filed Nov. 15, 2013) (Second Compliance Filing)).

[67] *Id.*

[68] ISO-NE Request at 3 (quoting Second Compliance Filing at 15); *see also* Second Compliance Order, 150 FERC ¶ 61,209 at P 396.

[69] First Compliance Order, 143 FERC ¶ 61,150 (2013).

Commission precedent with respect to the NYISO.[70] ISO-NE maintains that no costs of New England projects are being allocated to parties outside New England.[71] Further, ISO-NE states that Attachment K to its Tariff contains a process for coordination with neighboring regions that can be used to resolve impacts of projects located in New England on neighboring regions and their associated costs.[72] According to ISO-NE, Order No. 1000 is clear that it is optional for the original region to bear the costs of the external impacts of the transmission projects built within the original region.[73] ISO-NE states that the First Compliance Order likewise did not mandate that ISO-NE bear the costs of external impacts but rather merely required ISO-NE to address "whether the New England region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated…."[74] Moreover, ISO-NE points out that the Commission acknowledged that another region had not agreed to bear the costs of required upgrades in neighboring transmission planning regions (i.e., external impacts), with limited exception, and had incorporated this into its Tariff.[75]

c. Third Compliance Filing

48. Filing Parties state that the Tariff has been modified to strike the phrase "regional or" from Schedule 15. Filing Parties further state that Attachment K to the Tariff already includes a process for coordination with neighboring regions that can be used to resolve impacts of projects located in New England on neighboring regions and their associated costs. They explain that Attachment K refers to coordination with neighboring entities as the means of identifying external impacts, and states that the impacts will be identified in

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[70] ISO-NE Request at 4 (citing *N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044, at PP 296, 297 (2014) (NYISO Second Compliance Order)).

[71] ISO-NE Request at 10-11.

[72] *Id.* at 11 (referring to sections 4.2(d) and 4A.8(a) in Attachment K with respect to such coordination with neighboring regions).

[73] *Id.* at 11-12 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 657, in reference to such costs: "if the original regional agrees to bear costs…").

[74] *Id.* at 12 (quoting First Compliance Order, 143 FERC ¶ 61,150 at P 357).

[75] *Id.* at 12-13 (quoting NYISO Second Compliance Order, 148 FERC ¶ 61,044 at PP 296, 297).

the Regional System Plan.[76] Furthermore, Filing Parties note that the Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol provides processes that could be used to resolve external impacts and costs.[77] Filing Parties state that in the NYISO Second Compliance Order, the Commission found these measures regarding external impacts to have provided "sufficient explanation regarding how agreements with neighboring transmission planning regions will allow for the identification of impacts on Required Transmission Enhancements on other transmission planning regions."[78]

d. Commission Determination

49. We grant ISO-NE's request for rehearing. Cost Allocation Principle 4 requires that, among other things, the Filing Parties must state how they will identify cost consequences to other regions and whether they will assume the costs associated with a required upgrade on a neighboring region's transmission system.[79] In their Second Compliance Filing, Filing Parties' had proposed to comply with this aspect of Cost Allocation Principle 4 as follows:

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[76] Third Compliance Filing at 10 (citing ISO-NE, Transmission, Markets and Services Tariff, Attachment K, §§ 4.2(d), 4.3(j), 4A.8(a)).

[77] *Id.* at 10-11.

[78] *Id.* at 11 (citing NYISO Second Compliance Order, 148 FERC 61,044 at P 296).

[79] Regional Cost Allocation Principle 4 requires:

> The allocation method for the cost of a transmission facility selected in a regional transmission plan must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.

Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 657.

> *Except as provided in this Schedule 15 or where cost responsibility is expressly assumed by the ISO-NE region in other documents, agreement or tariffs on file with FERC,* the ISO Region shall not be responsible for compensating another region for required upgrades or for any other consequences in another planning region associated with *regional or* interregional transmission facilities….[80]

50. Although the Commission initially rejected that proposal, we find upon further review that Filing Parties' proposal sufficiently identifies the extent to which they will assume the cost consequences that a regional transmission project has on a neighboring region's transmission system. In the Second Compliance Order, the Commission directed Filing Parties to either "demonstrate that a process exists in ISO-NE through which [the] impacts on neighboring regions and their associated costs will be resolved . . . or propose language in the ISO-NE OATT explicitly describing how such impacts and their associated costs will be addressed."[81] On rehearing and clarification, ISO-NE explains that sections 4.2(d) and 4A.8(a) of Attachment K "refer to coordination with neighboring entities as the means of identifying external impacts" and that "the impacts will be identified in the Regional System Plan."[82] Furthermore, Filing Parties explain that the Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol provides processes that could be used to resolve external impacts and costs. Accordingly, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, a further compliance filing to revise section 5 of Tariff Schedule 15 to reinstate the words "regional or" as they appeared in the Second Compliance Filing.

51. We also find that the Filing Parties comply with the directive to demonstrate a process that identifies cost consequences to neighboring regions. Sections 4.2(d) and 4A.8 of Schedule 15, and sections. 2.1 and 3.5 of the Northeastern ISO/RTO Planning Coordination Protocol reasonably address how the Filing Parties' regional planning process will coordinate with neighboring regions to identify external cost impacts associated with transmission projects listed in ISO-NE's regional transmission plan.

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[80] Second Compliance Filing, Schedule 15, § I.5 (Consequences to other Regions from Regional or Interregional Transmission Projects) (emphasis added).

[81] Second Compliance Order, 150 FERC ¶ 61,209 at P 396.

[82] ISO-NE Request at 11.

IV. Other Compliance Directives

52. In the Second Compliance Order, the Commission directed Filing Parties to restore the right-of-way language as proposed in Filing Parties' First Compliance Filing.[83] In their Third Compliance Filing, Filing Parties reinstated this language.[84]

53. In the Second Compliance Order, the Commission directed Filing Parties to remove the proposed process for the preliminary solicitation of alternatives from the Planning Advisory Committee.[85] In their Third Compliance Filing, Filing Parties deleted the previously proposed language.[86]

54. In the Second Compliance Order, the Commission directed Filing Parties to set forth in the Tariff the enrollment process that defines how transmission providers enroll in the New England transmission planning region.[87] In the Third Compliance Filing, ISO-NE proposes revisions that allow an entity to enroll in the New England transmission planning region by executing (or having already executed) a transmission operating agreement with ISO-NE, or a Market Participant Service Agreement coupled with a written notification to ISO-NE that the entity desires to be a transmission provider in the New England Region.[88]

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[83] Second Compliance Order, 150 FERC ¶ 61,209 at PP 228, 237.

[84] Third Compliance Filing at 7; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K, § 4.3(b) (Use and Control of Right of Way); ISO-NE, Agreements and Contracts, Transmission Operating Agreement (4.0.0), Schedule 3.09(a), § 1.1(f).

[85] Second Compliance Order, 150 FERC ¶ 61,209 at P 236.

[86] Third Compliance Filing at 7; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K, § 4.3(a) (Preliminary Solicitation of Alternatives).

[87] Second Compliance Order, 150 FERC ¶ 61,209 at P 62.

[88] Third Compliance Filing at 5; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), § 1.1 (Enrollment).

55. In the Second Compliance Order, the Commission directed Filing Parties to include in the Tariff a list of enrolled transmission providers.[89] In the Third Compliance Filing, Filing Parties propose to include a list of all public utility transmission providers in the region.[90] Filing Parties also propose a new Appendix 3 to Attachment K, which will list those Qualified Sponsors in the region.[91]

56. In the Second Compliance Order, the Commission required Filing Parties to: (1) provide to each Qualified Sponsor a description of the feasibility study costs to which a feasibility study deposit will be applied, how those costs will be calculated, and an accounting of the actual costs; and (2) provide a provision that any disputes arising from this process be addressed under ISO-NE's dispute resolution process.[92] In response, Filing Parties propose to modify the Tariff to state that the feasibility study deposit shall be applied toward the costs incurred by ISO-NE associated with the study of Phase One and Phase Two proposals.[93] Filing Parties also propose to specify in the Tariff that any refund payment and any invoice to collect funds in addition to the deposit shall be accompanied by a detailed and itemized accounting of the actual costs incurred.[94] In addition, Filing Parties propose to specify in the Tariff that any disputes arising from the study process be addressed under the dispute resolution process in the Tariff.[95]

57. We find that Filing Parties' proposals, described above, comply with the directives of the Second Compliance Order.

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[89] Second Compliance Order, 150 FERC ¶ 61,209 at P 63.

[90] Third Compliance Filing at 5; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), app. 2 (List of Entities Enrolled in the Transmission Planning Region).

[91] ISO-NE, Transmission, Markets and Services Tariff, Attachment K (14.0.0), app. 3 (List of Qualified Transmission Project Sponsors).

[92] Second Compliance Order, 150 FERC ¶ 61,209 at P 271.

[93] Third Compliance Filing at 8; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K, §§ 4.3(c), 4A.5(a).

[94] Third Compliance Filing at 9; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K, §§ 4.3(i), 4A.6.

[95] Third Compliance Filing at 9; *see also* ISO-NE, Transmission, Markets and Services Tariff, Attachment K, §§ 4.3(i), 4A.6.

The Commission orders:

(A) ISO-NE's request for clarification or rehearing is hereby granted, as discussed in the body of this order.

(B) Filing Parties' compliance filing is hereby conditionally accepted, effective May 18, 2015, as discussed in the body of this order.

(C) Filing Parties are hereby directed to submit a further compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.