

155 FERC ¶ 61,037  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System  
Operator, Inc.

Docket No. ER16-966-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued April 18, 2016)

1. On February 18, 2016, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to the Public Policy Transmission Planning Process.<sup>2</sup> NYISO states that the proposed revisions, reflected in Attachment Y of its Open Access Transmission Tariff (OATT), clarify and enhance its existing Order No. 1000<sup>3</sup> Public Policy Transmission Planning Process. As discussed below, we accept in part, subject to condition, to become effective on February 19, 2016, as requested, and reject in part NYISO's proposed OATT revisions.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> Capitalized terms that are not otherwise defined have the meaning specified in the NYISO OATT and the NYISO Market Administration and Control Area Services Tariff.

<sup>3</sup> *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).

## I. Background

2. NYISO states that, on January 1, 2014, it began its 2014-2015 transmission planning cycle in accordance with the requirements in Attachment Y of its OATT, as amended to meet the requirements of Order No. 1000.<sup>4</sup> NYISO states that, on August 1, 2014, it solicited from interested parties proposed transmission needs driven by public policy requirements pursuant to its Public Policy Transmission Planning Process. NYISO states that, based on experience in implementing Order No. 1000, NYISO and its stakeholders agreed to reform its existing process.<sup>5</sup>

3. Relevant here, on June 29, 2015, NYISO submitted proposed revisions in Docket No. ER15-2059-000, which included the requirement that a transmission developer submit, as applicable, a valid Interconnection Request for a project under Attachment X of the OATT, or a Study Request for the project pursuant to sections 3.7.1 or 4.5.1 of the OATT. NYISO also proposed other clarifying revisions to the Public Policy Transmission Planning Process.<sup>6</sup> By an order issued on December 23, 2015, the Commission rejected NYISO's filing as unjust and unreasonable, because it proposed to subject nonincumbent transmission developers to an interconnection process with different requirements than the interconnection process that applies to incumbent transmission owners.<sup>7</sup>

## II. NYISO's Filing

4. NYISO states that the instant filing contains many of the same clarifying tariff revisions it proposed in Docket No. ER15-2059-000, absent references to the existing interconnection and transmission expansion process that the Commission rejected in the

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<sup>4</sup> The Commission accepted a January 1, 2014 effective date for the Order No. 1000-related revisions to Attachment Y of the NYISO Tariff to provide for their implementation in the current 2014-2015 planning cycle. *See N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044, at P 37 (2014).

<sup>5</sup> NYISO February 18, 2016 Transmittal Letter at 4 (NYISO Transmittal Letter).

<sup>6</sup> *See generally* NYISO, Transmittal Letter, Docket No. ER15-2059-000 (filed June 29, 2015).

<sup>7</sup> *N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,340, at P 32 (2015) (December 23 Order).

December 23 Order. NYISO notes that concurrent with this filing, it is submitting the interconnection-related requirements for transmission projects in Docket No. ER13-102-007.<sup>8</sup>

5. NYISO requests waiver of the Commission's prior notice requirements<sup>9</sup> to allow its proposed tariff revisions to become effective on February 19, 2016. NYISO argues that it has good cause to request the waiver because the proposed tariff provisions are necessary to implement an imminent, integral stage of its public Policy Planning Process.<sup>10</sup>

### **III. Notice of Filings and Responsive Pleadings**

6. Notice of NYISO's February 18, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 9181 (2016), with protests and interventions due on or before March 10, 2016. No protests or comments were filed. The New York Commission; ITC New York Development, LLC; Exelon Corp.; NRG Companies;<sup>11</sup> and New York Transmission Owners<sup>12</sup> filed a notice of intervention or timely motions to intervene on or before March 10, 2016.

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<sup>8</sup> NYISO Transmittal Letter at 6.

<sup>9</sup> 18 C.F.R. §§ 35.3 and 35.11 (2015).

<sup>10</sup> NYISO Transmittal Letter at 18.

<sup>11</sup> NRG Companies includes NRG Power Marketing, LLC, and GenOn Energy Management, LLC.

<sup>12</sup> New York Transmission Owners refers collectively to Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., Power Supply Long Island, New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. (d/b/a National Grid), Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corp.

#### IV. Discussion

##### A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the unopposed notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.<sup>13</sup>

##### B. Substantive Matters

8. The Commission accepts in part, subject to condition, effective February 19, 2016, as requested,<sup>14</sup> and rejects in part NYISO's filing, as discussed below.<sup>15</sup>

##### a. Evaluation and Pre-Selection of Public Policy Transmission Projects

##### i. NYISO's Proposal

9. In section 31.4.6.1 (Evaluation Time Period) of Attachment Y of its OATT,<sup>16</sup> NYISO proposes revisions that will enable it to evaluate a proposed Public Policy Transmission Project<sup>17</sup> or Other Public Policy Project<sup>18</sup> using the most recent base case

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<sup>13</sup> 18 C.F.R. § 385.214 (2015).

<sup>14</sup> *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1992).

<sup>15</sup> The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield, La. v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

<sup>16</sup> Unless otherwise noted, all references herein are to sections in Attachment Y of the NYISO Tariff.

<sup>17</sup> NYISO proposes to define Public Policy Transmission Project as: "A transmission project or a portfolio of transmission projects proposed by Developer(s) to satisfy an identified [p]ublic [p]olicy [t]ransmission [n]eed and for which the Developer(s) seek to be selected by the ISO for purposes of allocating and recovering the project's costs under the ISO OATT." Proposed NYISO OATT, Attachment Y, § 31.1.1.

from the reliability planning process to study proposed solutions to a public policy transmission need.

10. NYISO also proposes to revise the proposed implementation date that developers must meet when submitting a proposed Public Policy Transmission Project or Other Public Policy Project for evaluation. Specifically, NYISO proposes to remove from section 31.4 references to “by the need date” because the quoted language was initially developed for the reliability planning process, where an identified Reliability Need must be satisfied by a certain date in order to maintain system reliability.<sup>19</sup> NYISO states that those timing concerns may not apply to a public policy transmission need. Instead, NYISO proposes to revise section 31.4.2.1 (Identification and Determination of Transmission Needs Driven by Public Policy Requirements) to establish that the New York Public Service Commission (New York Commission) may include with a public policy transmission need a required completion date for a project. In addition, section 31.4.6.3 (Evaluation of Viability of Proposed Solution) clarifies that NYISO will take this timeframe into account, along with additional criteria identified by the New York Commission, when evaluating the proposed solutions.<sup>20</sup>

11. Next, NYISO proposes to add subsections under section 31.4.4.3 (Timing for Submittal of Project Information and Developer Qualification Information and Opportunity to Provide Additional Information) to clarify the requirements for developer qualification and project submission. New subsection 31.4.4.3.1 would enable NYISO to request additional information if a developer’s project information is incomplete, and to give the developer 15 days to provide any project information requested under section 31.4.4.3.<sup>21</sup> Additionally, new section 31.4.5.2 (Requirements for Other Public Policy Projects), sets forth the project information that the developer of an Other Public Policy

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<sup>18</sup> NYISO proposes to define Other Public Policy Project as: “A non-transmission project or a portfolio of transmission and non-transmission projects proposed by a Developer to satisfy an identified [p]ublic [p]olicy [t]ransmission [n]eed.” *Id.*

<sup>19</sup> NYISO Transmittal Letter at 13 (citing Proposed NYISO OATT, Attachment Y, § 31.4.6.2 (Identification and Determination of Transmission Needs Driven by Public Policy Requirements) and 31.4.6.5 (Viability and Sufficiency Assessment)).

<sup>20</sup> *Id.*

<sup>21</sup> NYISO also proposes to move to this section an existing requirement in section 31.4.5.1 that NYISO will not consider a project further if the developer fails to provide the requested data.

Project (i.e., a non-transmission or a partial transmission (hybrid) project) must submit so that NYISO may evaluate the viability of the proposed solution.<sup>22</sup>

12. Regarding a developer's election to proceed with a project, NYISO proposes in section 31.4.6.6 to require a developer to indicate its intent to be evaluated for possible selection by the NYISO Board of Directors as the more efficient or cost-effective Public Policy Transmission Project to satisfy a public policy transmission need.<sup>23</sup>

**ii. Commission Determination**

13. We accept section 31.4.5.2, subject to condition that NYISO add "as applicable" to provisions 31.4.5.2.1(9) and 31.4.5.2.1(10). These provisions require that a developer proposing an Other Public Policy Project must provide "(9) the status of ISO interconnection studies and interconnection agreement; [and] (10) the status of equipment availability and procurement." However, we find that this language may not apply to a non-transmission project that consists of a demand response solution.<sup>24</sup> Accordingly, we direct NYISO to submit a compliance filing, within 30 days of the date of this order, to add "as applicable" to these provisions.

**b. Post Selection of Public Policy Transmission Projects**

**i. NYISO's Proposal**

14. NYISO proposes adding a new section 31.4.12 that sets forth the developer's responsibilities following the selection of its transmission project under the Public Policy Transmission Planning Process. Subsection 31.4.12.2 provides that such a developer be required to enter into a development agreement with NYISO, and sets forth the process

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<sup>22</sup> NYISO states that its proposed project information requirements for Other Public Policy Projects are consistent with the requirements for transmission projects in section 31.4.5.1, but modified to account for the different attributes of such projects. NYISO Transmittal Letter at 13.

<sup>23</sup> NYISO proposes conforming provisions to section 31.4.8 specifying that only developers that have elected to proceed under section 31.4.6.6 are eligible for selection by NYISO as the more efficient or cost-effective Public Policy Transmission Project to satisfy a public policy transmission need. *Id.* n.33.

<sup>24</sup> NYISO OATT, Attachment Y, § 31.4.6.2 (Comparable Evaluation of All Proposed Solutions).

by which the parties negotiate the development agreement.<sup>25</sup> Subsection 31.4.12.3 establishes the consequences if (1) a developer does not timely execute a development agreement or does not request that NYISO file an unexecuted agreement with the Commission, or (2) an effective development agreement is terminated “under the terms of the agreement prior to the completion of the term of the agreement.”<sup>26</sup> Under such circumstance the proposal allows NYISO to submit a report to the New York Commission and/or the Commission to consider whether further action is appropriate under state or federal law, and to “take such action as it reasonably considers is appropriate, following consultation with the [New York Commission], to ensure that the [public policy transmission need] is satisfied, including, but not limited to, revoking its selection of the Public Policy Transmission Project and the eligibility of the [developer] to recover its costs for the project.”<sup>27</sup>

15. Also, NYISO proposes new subsection 31.4.12.4 to clarify that the developer of a selected Public Policy Transmission Project must execute the “Agreement Between the New York Independent System Operator and Transmission Owners” or comparable Operating Agreement prior to energizing the project.<sup>28</sup>

## ii. Commission Determination

16. Sections 31.4.12.2 and 31.4.12.4 cite, respectively, a development agreement and a comparable operating agreement that NYISO filed as part of its Order No. 1000 compliance filing in Docket No. ER13-102-007.<sup>29</sup> We accept sections 31.4.12.2 and

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<sup>25</sup> NYISO states that it will submit a *pro forma* Development Agreement for the Public Policy Transmission Planning Process in a compliance filing in its ongoing Order No. 1000 regional proceeding, in Docket No. ER13-102-007. NYISO proposes as a placeholder Appendix D in section 31.7 of Attachment Y of the OATT. *Id.* at 8.

<sup>26</sup> NYISO Proposed OATT, Attachment Y, § 31.4.12.3.1.

<sup>27</sup> *Id.*, Attachment Y, § 31.4.12.3.1.2.

<sup>28</sup> *Id.*; *see also* NYISO Transmittal Letter at 9.

<sup>29</sup> NYISO Transmittal Letter at 8-9. On March 17, 2016, in Docket No. ER13-102-007, NYISO filed a Motion for Partial Extension of Time, stating that the NYISO tariffs include particular requirements applicable to incumbent transmission owners that are inapplicable to a new, nonincumbent transmission owner. As a result, it has identified the need for additional conforming tariff changes that would directly affect a new *pro forma* Operating Agreement. On March 23, 2016, the Commission granted NYISO’s motion for an extension of time to no later than September 13, 2016. NYISO

31.4.12.4, subject to the outcome of NYISO's ongoing proceeding in Docket No. ER13-102-009.<sup>30</sup>

17. However, we find that NYISO's proposed provisions in subsection 31.4.12.3.1.2 (Process for Addressing Inability of Developer to Complete Selected Public Policy Transmission Project) are unjust, unreasonable, unduly discriminatory or preferential and therefore reject them. For example, if a developer does not enter into a development agreement, the first clause of subsection 31.4.12.3.1.2 provides that NYISO may "submit a report to the [New York Commission] and/or the Commission...for its consideration and determination of whether action is appropriate under state or federal law." However, the provision is unclear as to exactly what the report will entail and the level of detail and support the report must contain.<sup>31</sup> The provision is also unclear as to what type of regulatory action NYISO anticipates in response to the report. In addition, we are concerned by the second clause, which allows NYISO to "take such action as it reasonably considers is appropriate . . . to ensure that the [public policy transmission need] is satisfied."<sup>32</sup> We find that the proposed language is overly broad and vague as to the nature and scope of such action, and therefore, unjust and unreasonable.<sup>33</sup> For example, if a possible action is that NYISO will replace a developer, then its OATT should state that replacing a developer is a possible action, and it should outline the processes and criteria that NYISO will use to select another developer.<sup>34</sup>

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made its filing on March 22, 2016 with a proposed *pro forma* Development Agreement and *pro forma* Operating Agreement in Docket No. ER13-102-009.

<sup>30</sup> NYISO, OATT Filing, Docket No. ER13-102-009 (filed March 22, 2016).

<sup>31</sup> The lack of detail is particularly concerning to the extent NYISO intends for the report to reflect allegations against a developer.

<sup>32</sup> NYISO Proposed OATT, Attachment Y § 31.4.12.3.1.2(ii).

<sup>33</sup> See *Cal. Indep. Sys. Operator Co.*, 149 FERC ¶ 61,107, at P 95 (2014) (agreeing with a protest that the proposed tariff language was "overly broad"); *N. Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,341, at P 101 (2015) (finding that a limited liability provision in a development agreement was overly broad and directing the filing party to revise the provision so that it would only apply to acts or omissions under the agreement).

<sup>34</sup> See, e.g., PJM Interconnection, L.L.C., Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8.(k) (Failure of Designated Entity to Meet Milestones) (9.0.1) (stating the actions that PJM will take if a transmission project's in-service date is delayed because a party fails to meet certain milestones).

18. We further find that subsection 31.4.12.3.1.2 is inconsistent with Order No. 1000<sup>35</sup> and unduly preferential. This provision provides that NYISO may “revok[e] its selection of the Public Policy Transmission Project and the eligibility of the [developer] to recover its costs for the project;”<sup>36</sup> however, it allows an exception that exempts a developer if the New York Commission or Long Island Power Authority specifically asked that developer to submit proposals, pursuant to section 31.4.3.2 (NYPSC and LIPA Requests for Solutions). We find that this exemption, together with section 31.4.3.2, could be preferential to a developer that submits a proposed solution pursuant to the New York Commission’s and Long Island Power Authority’s requests. In preparing a proposal for consideration in NYISO’s evaluation process,<sup>37</sup> an exempted developer may be able to use as an advantage (e.g., obtain superior contract or financing terms) over the other developers the fact that it is likely to recover prudently incurred costs for its project even if its development agreement is terminated. Moreover, this section does not establish the processes and criteria that NYISO will use to determine whether a project should be revoked. Accordingly, we direct NYISO to submit, within 30 days of the date of issuance of this order, a compliance filing to revise its OATT to remove the proposed provisions in 31.4.12.3.1.2.

c. **Cost Allocation for Proposed and Selected Public Policy Transmission Projects**

i. **NYISO’s Proposal**

19. NYISO proposes to revise section 31.5.5.3 (Project Eligibility for Cost Allocation) to clarify that if during the Public Policy Transmission Planning Process the developer of a transmission project is selected by NYISO as the more efficient or cost-effective transmission solution to a public policy transmission need but does not receive necessary governmental approvals, then NYISO will allocate any costs the developer is eligible to recover to all Load Serving Entities using the default load ratio share method set forth in

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<sup>35</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328 (requiring each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional plan for purposes of cost allocation).

<sup>36</sup> NYISO Proposed OATT, Attachment Y § 31.4.12.3.1.2(ii).

<sup>37</sup> NYISO Proposed OATT, Attachment Y § 31.4.6 (ISO Evaluation of Proposed Solutions to Public Policy Transmission Needs).

subsection 31.5.5.4.3.<sup>38</sup> In addition, section 31.1.5.3 provides that a developer of a selected transmission project may recover its costs in accordance with section 31.5.6 (Cost Recovery for Regulated Projects). Similarly, NYISO proposes to consolidate into section 31.5.6 the remaining cost recovery requirements for Public Policy Transmission Process. To that end, subsection 31.5.6.5 provides that a developer has the right to file for cost recovery under section 205 of the FPA,<sup>39</sup> for costs that are eligible for recovery under section 31.4 (Public Policy Planning Process).

20. Also, in new section 31.4.12.1, NYISO proposes that the developer of a selected Public Policy Transmission Project: (1) must seek any necessary governmental authorizations to the extent they have not already been requested or obtained, and (2) may recover certain costs if the requested authorization is rejected.<sup>40</sup> NYISO states that these provisions incorporate requirements on project permitting and cost recovery that are parallel to those in the reliability planning process, and described in part in section 31.5.6.5.<sup>41</sup>

21. Lastly, NYISO proposes to revise section 31.4.4.4 (Application Fee and Study Deposit for Proposed Regulated Public Policy Transmission Project) to require that a developer must pay a non-refundable \$10,000 application fee and a \$100,000 study deposit, upon submission of a proposed Public Policy Transmission Project. To implement the requirements of this section, NYISO states that it developed a *pro forma* “Study Agreement for Evaluation of Public Policy Transmission Projects,” which is included in NYISO’s Public Policy Transmission Planning Process Manual.<sup>42</sup>

## ii. Commission Determination

22. We accept NYISO’s proposed revisions to sections 31.4.12.1 and 31.5.6.5, which address cost recovery requirements, subject to NYISO adding language to clarify that any

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<sup>38</sup> NYISO Transmittal Letter at 6-7. Also, NYISO proposes a related, corresponding edit in section 31.5.6.5.2.

<sup>39</sup> 16 U.S.C. § 824d (2012).

<sup>40</sup> NYISO Proposed OATT, Attachment Y § 31.4.12.1 (Developer’s Responsibility to Obtain Necessary Approvals and Authorizations).

<sup>41</sup> NYISO Transmittal Letter at 7.

<sup>42</sup> *Id.* at 14.

cost recovery will be consistent with Commission regulations on abandoned plant recovery.<sup>43</sup>

23. NYISO states that it developed a *pro forma* “Study Agreement for Evaluation of Public Policy Transmission Projects” in order to implement the requirements of section 31.4.4.4. However, we note that this study agreement is located in NYISO’s Public Policy Transmission Planning Process Manual. To the extent the terms and conditions in the agreement “in any manner affect or relate to”<sup>44</sup> jurisdictional “charges... made, demanded or received by a public utility for or in connection with the transmission or sale of electric energy,” it is subject to filing with the Commission.<sup>45</sup> We find that this study agreement affects the rates, terms, and conditions of transmission service because a transmission developer must enter into it for its proposed Public Policy Transmission Project to be eligible for selection in the regional transmission plan for purposes of cost allocation. Accordingly, we direct NYISO to submit a compliance filing, within 30 days of the date of issuance of this order, to incorporate this study agreement into its OATT.<sup>46</sup>

**d. Other OATT Revisions**

**i. NYISO’s Proposal**

24. NYISO proposes revisions that would prevent it from having to disqualify a project in the Public Policy Transmission Planning Process based on minor delays. Specifically, NYISO proposes in section 31.1.8.6 that, in the event that NYISO is unable to meet a deadline in Attachment Y, it will be allowed to extend such deadline if the extension will not result in a reliability violation, provided that NYISO must inform interested parties, explain the reasons for missing the deadline, and provide an estimated

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<sup>43</sup> See 16 U.S.C. §§ 824d, 824s (2012); see also *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

<sup>44</sup> 16 U.S.C. § 824d(c) (2012).

<sup>45</sup> *Id.* § 824d(a).

<sup>46</sup> We note that to the extent that a study agreement sets forth a requirement that a developer attest to the accuracy of the information in the agreement, such attestation should require the developer to provide information that is true to the best of the developer’s knowledge and belief because absolute accuracy may not be tenable when a developer relies on information provided by third parties. *Midcontinent Indep. Sys. Operator*, 153 FERC ¶ 61,168, at P 44 (2015).

time to complete the action.<sup>47</sup> Additionally, NYISO proposes in section 31.1.8.7 that it may also extend other parties' deadlines set forth in Attachment Y for a reasonable period of time, so long as the extension is applied equally to all parties that must meet the deadline and the extension will not result in a reliability violation.<sup>48</sup> NYISO emphasizes that the deadline extension requirements will not apply to any deadlines set forth in a development agreement entered into pursuant to Attachment Y.<sup>49</sup>

25. NYISO proposes to revise section 31.4.3.1, to clarify that NYISO will not proceed with its Public Policy Transmission Planning Process if the New York Commission's order identifying a Public Policy Transmission need has been stayed pending the resolution of an appeal. Also, in section 31.4.15, NYISO proposes to clarify what project information it may disclose or must maintain confidential as part of the Public Policy Transmission Planning Process.<sup>50</sup> Specifically, after a developer's election for its project to proceed to the selection stage, NYISO will maintain as confidential contract information, preliminary cost estimates, and non-public financial qualification information,<sup>51</sup> while the identity of the developer, the proposed facility type, the proposed facility size, the proposed location of the facility, and the proposed in-service date for the facility will not be considered confidential during the entire Public Policy Transmission Planning Process.<sup>52</sup>

26. NYISO also proposes to create two new defined terms in section 31.1.1 and to make a number of clean-up revisions to its OATT.<sup>53</sup>

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<sup>47</sup> NYISO Proposed OATT, Attachment Y § 31.1.8.6.

<sup>48</sup> NYISO Proposed OATT, Attachment Y § 31.1.8.7; *see also* NYISO Transmittal Letter, Attachment III (listing 36 deadlines in Attachment Y that would be subject to the extension provision in section 31.1.8.7).

<sup>49</sup> NYISO Proposed OATT, Attachment Y § 31.1.8.7; *see also* NYISO Transmittal Letter at 11 (stating that as an example, this provision will not apply to the Public Policy Transmission Planning Process development agreement that NYISO will be proposing in Docket No. ER13-102-007).

<sup>50</sup> NYISO Transmittal Letter at 12.

<sup>51</sup> NYISO Proposed OATT, Attachment Y § 31.4.15.2.

<sup>52</sup> *Id.*, Attachment Y § 31.4.15.1.

<sup>53</sup> NYISO Transmittal Letter at 16-17.

ii. **Commission Determination**

27. As for section 31.1.8.7, concerning the extension of certain deadlines,<sup>54</sup> we find that NYISO's proposal to extend a deadline, under specific conditions,<sup>55</sup> is just and reasonable. However, some of the deadlines listed in Attachment III of the NYISO Transmittal Letter are inconsistent with NYISO's proposal to equally apply an extension to all developers. For example, the deadline in section 31.4.4.4 applies to a single developer that needs to make a payment to NYISO to restore the amount of its full study deposit. Such an extension would apply only to a single developer, while other developers would still be required to make their full study deposits on time. We find that extending a developer-specific deadline could lead to a discriminatory treatment of other developers. Accordingly, we direct NYISO to submit, within 30 days of the date of issuance of this order, a compliance filing to revise section 31.1.8.7 to provide that the section applies only to deadlines that apply to all developers, but excludes developer-specific instances.

28. We accept NYISO's proposal to add defined terms for Public Policy Transmission Project and Other Public Policy Project. However, we find that NYISO's proposed treatment of Other Public Policy Projects is inconsistent with Order No. 1000's regional cost allocation requirements because, while such project can include "a portfolio of *transmission and non-transmission* projects," it appears that the transmission portion of such Other Public Policy Project is not eligible to have its costs allocated pursuant to the regional cost allocation method.<sup>56</sup> For example, as proposed, an Other Public Policy Project can consist of a solution that includes both a non-transmission portion and a transmission portion; it appears that NYISO proposes to treat this solution as a non-transmission alternative and therefore disqualify the developer from seeking regional cost allocation for any portion of the project, despite the fact that the solution includes a transmission portion. Order No. 1000 requires that every public utility transmission

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<sup>54</sup> NYISO proposes to use this provision to extend all deadlines set forth in Attachment Y, except for the deadlines imposed by a development agreement. NYISO Proposed OATT, Attachment Y, § 31.1.8.7.

<sup>55</sup> NYISO will grant an extension to all deadlines in Attachment Y, except for those associated with a development agreement, provided that, among other things, the extension is applied equally to all parties that are required to meet the deadline. *Id.*, Attachment Y, § 31.1.8.7.

<sup>56</sup> See NYISO Proposed OATT, Attachment Y, § 31.5.5.1 (stating that this section "does not apply to Other Public Policy Projects, including generation or demand side management projects, nor any market-based projects") (emphasis added).

provider develop a method, or set of methods for, allocating the costs of new *transmission* facilities that are selected in the transmission plan produced by the transmission planning process in which it participates.<sup>57</sup> While the Commission did not specify how the costs of an individual regional transmission facility should be allocated and provided that each transmission planning region may develop a method or methods for different types of transmission projects, such method or methods must apply to all transmission facilities of the type in question.<sup>58</sup> Therefore, if an Other Public Policy Project contains a transmission component and is selected during the regional transmission planning process, NYISO must allocate the costs of transmission component consistent with its regional cost allocation method. Accordingly, we direct NYISO to submit a compliance filing, within 30 days of the date of issuance of this order, to explain in its OATT the cost allocation method for the transmission portion of an Other Public Policy Project.

29. Finally, we note that NYISO has included in the instant filing OATT language that it proposes in Docket No. ER16-120-000.<sup>59</sup> Accordingly, we accept NYISO's filing as discussed herein, subject to NYISO making a compliance filing to revise the language, if necessary, pursuant to Commission action in Docket No. ER16-120-000. All other proposed Tariff revisions not addressed above are hereby accepted.

The Commission orders:

(A) NYISO's proposed OATT revisions are hereby accepted in part, subject to condition, to become effective on February 19, 2016, as requested and reject in part, as discussed in the body of this order.

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<sup>57</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558 (emphasis added).

<sup>58</sup> *Id.* P 560.

<sup>59</sup> NYISO, Compliance Filing, Docket No. ER16-120-000 (filed Nov. 19, 2015).

(B) NYISO is hereby directed to make a compliance filing within thirty (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.