

potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles (discussed below) and to clearly describe that process in a new attachment (Attachment K) to their OATTs.⁴

3. As discussed more fully below, the nine planning principles each transmission provider was directed by Order No. 890 to address in its planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. However, the Commission also explained that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process, and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.⁵

4. As for Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) with Commission-approved transmission planning processes already on

rollover rights, and reassignments of transmission capacity. These reforms have been or will be addressed in other orders.

⁴ NYISO revised Attachment Y of its OATT, since Attachment Y contains NYISO's existing planning process, known as the Comprehensive Reliability Planning Process (CRPP). *See New York Independent System Operator, Inc.*, 109 FERC ¶ 61,372 (2004) (December 28 Order).

⁵ As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need be codified in the transmission provider's OATT. Rules, standards and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission provider's website, provided there is a link to those business practices on its Open Access Same-Time Information System. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55. Transmission providers could therefore use a combination of tariff language in Attachment K and a reference to planning manuals on their website, to satisfy their planning obligations under Order No. 890.

file, such as NYISO, the Commission explained that when it approved these processes, it had found them to be consistent with or superior to the existing *pro forma* OATT. Because the *pro forma* OATT was being reformed by Order No. 890, the Commission found that it was necessary for each RTO and ISO to either reform its planning process or show that its planning process is consistent with or superior to the *pro forma* OATT, as modified by Order No. 890.⁶ RTOs and ISOs were also directed to indicate in their compliance filings how all participating transmission owners within their footprints will comply with Order No. 890's planning requirements.⁷

II. NYISO's Compliance Filing

5. NYISO states that it already has a multifaceted, open, and transparent process, approved by the Commission in December 2004, to identify transmission upgrades and other types of resources needed to meet reliability needs (i.e. conditions that are violations or potential violations of established reliability rules).⁸ NYISO states that this process encourages the deployment of solutions from market participants that are paid for solely by the developer,⁹ but also requires the development of solutions that rely on regulated revenues (regulated solutions) as a "backstop" if market-based proposals do not solve identified reliability needs. NYISO states that market-based and regulated solutions can be proposed by transmission, generation, or demand side resources and all proposals are evaluated on a comparable basis.

6. In response to Order No. 890, NYISO has submitted revisions to Attachment Y of its OATT to incorporate (1) a new economic planning process aimed at removing transmission constraints that do not violate reliability criteria, but nonetheless impede efficient transmission on its system, (2) cost allocation provisions, (3) local planning provisions, as well as (4) other revisions to its overall planning process necessary to comply with Order No. 890.

⁶ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 439; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 174-75.

⁷ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440.

⁸ *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,372 (2004).

⁹ If a project is developed as a market-based solution, developers contract directly with one or more market participants for the construction of an economic upgrade. Under this option, the costs of the project are borne solely by those market participants, and the NYISO's cost allocation procedures in Attachment Y are not invoked.

7. NYISO states that the new planning process, which will be known as the Comprehensive System Planning Process (CSPP), will contain three major components; (1) local transmission planning; (2) reliability planning, and (3) economic planning. Each two-year cycle will begin with the Local Transmission Planning Process of the New York transmission owners.¹⁰ The current planning process outlined in Attachment Y will, with the modifications described herein, be conducted for the New York Bulk Power System building upon the information contained in the transmission owners' Local Transmission Plans and other data gathered during the input phase of the Comprehensive Reliability Planning Process. A reliability needs assessment and a solutions phase will be conducted to develop a Comprehensive Reliability Plan (CRP), completing the reliability planning process. Thereafter, an economic planning process will be conducted through the Congestion Assessment and Resource Integration Study (CARIS), which will consist of a series of three congestion studies developed with market participant input and any additional studies for which individual market participants wish to pay. Following completion of the CARIS, a new two-year cycle will begin. NYISO states that nothing in this process will preclude additional reliability, local and economic planning activities from occurring by the transmission owners, through the NYISO stakeholder process or by the individual market participants, as needed.

III. Notice of Filing and Responsive Pleadings

8. Notice of NYISO's December 7, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 73,016 (2007), with interventions and protests due on or before December 28, 2007. By notice of December 20, 2007, the comment period was extended to January 7, 2008.

9. NRG Companies,¹¹ Competitive Power Ventures, L.P. (CPV), and Electric Power Supply Association filed motions to intervene. The New York Public Service Commission (NYPSC) filed a notice of intervention and comments. Central Hudson Gas & Electric Corporation, Rochester Gas & Electric Corporation, and Niagara Mohawk

¹⁰ The New York Transmission Owners consist of Central Hudson Gas & Electric Corp., Niagara Mohawk, New York State Electric & Gas Corp., Consolidated Edison Co. of New York, Inc., New York Power Authority (NYPA), Long Island Power Authority (LIPA), Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corp.

¹¹ The NRG Companies are: NRG Power Marketing Inc, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC.

Power Corporation (collectively, Upstate NY Utilities); and PSEG Companies¹² filed motions to intervene and comments. Consolidated Edison Company of New York, Inc. (ConEd), Orange and Rockland Utilities, Inc. (O&R), Long Island Lighting Company (LIPA), and the New York Power Authority (collectively, Downstate TOs); New York Association of Public Power (NYAPP); Multiple Intervenors;¹³ and Niagara Mohawk Power Corporation (Niagara Mohawk) filed motions to intervene and protests.

10. On January 22 and 23, 2008, Niagara Mohawk and NYISO filed answers to certain comments and protests.

11. On June 18, 2008, NYISO filed revisions to its December 7, 2007 compliance filing. Notice of this filing was published in the *Federal Register*, 73 Fed. Reg. 36,857 (2008), with interventions and protests due on or before July 9, 2008. On June 27, 2008, NYISO filed changes to its June 18, 2008 submittal. Notice of this filing was published in the *Federal Register*, 73 Fed. Reg. 40,569 (2008), with interventions and protests due on or before July 18, 2008.

12. Independent Power Producers of New York, Inc. filed a motion to intervene. NYPSC and Competitive Power Ventures filed comments. LIPA filed a motion to intervene and comments. Multiple Intervenors and New York Regional Interconnect, Inc. (NYRI) filed motions to intervene and protests. Niagara Mohawk and NYAPP filed protests.

13. On July 21, 2008, PSEG Companies filed an answer to NYRI's protest. On July 24, 2008, the New York Transmission Owners, NYISO, Upstate NY Utilities and LIPA filed answers to certain comments and protests. On August 8, 2008, Multiple Intervenors, Niagara Mohawk and NYRI filed answers. On August 22, NYISO filed an answer and a motion to strike the answers by Niagara Mohawk and Multiple Intervenors.

¹² The PSEG Companies are Public Service Electric and Gas Company, PSEB Power LLC, and PSEG Energy Resources & Trade LLC.

¹³ Multiple Intervenors states that it is an unincorporated association of over 50 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008) prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept all of the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

16. As discussed below, we find that NYISO's transmission planning process proposed in revised Attachment Y to its OATT, with certain modifications, complies with each of the nine planning principles and other planning requirements adopted in Order No. 890. Accordingly, we conditionally accept for filing NYISO's revisions to its existing transmission planning process, effective December 7, 2007. We also direct NYISO to file, within 90 days of the date of this order, a further compliance filing as discussed below.

17. While we conditionally accept NYISO's transmission planning process in Attachment Y to its OATT, we nevertheless encourage further refinements and improvements to NYISO's planning process as NYISO and its customers and other stakeholders gain more experience through actual implementation of this process. Commission staff will also periodically monitor the implementation of the planning process to determine if adjustments are necessary and will inform NYISO and the Commission of any such recommendations. Specifically, beginning in 2009, the Commission will convene regional technical conferences similar to those conferences held in 2007 leading up to the filing of the OATT Attachment K compliance filings. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas which may need improvement.

C. NYISO Planning Process and the Role of Transmission Owners

18. At the outset, we address the interaction between the NYISO's proposed CSPP and the transmission planning activities conducted locally by each of the New York transmission owners. In Order No. 890, the Commission found that, in order for an RTO's or ISO's planning process to be open and transparent, transmission customers and

stakeholders must be able to participate in any underlying transmission owner planning processes upon which the RTO or ISO relies.¹⁴ In Order No. 890-A, the Commission made clear that each RTO and ISO may fulfill its own obligations under Order No. 890 by delegating certain actions to, or otherwise relying on, their transmission-owning members,¹⁵ but again stressed that the rights and responsibilities of all parties must be clearly stated in the transmission provider's OATT so that stakeholders are able to participate in each aspect of the planning process.¹⁶

1. NYISO's Filing

19. NYISO states that the transmission owners will continue to plan for their respective systems under the CSPP. NYISO adds that each transmission owner will be responsible for administering its Local Transmission Planning Process, for making provisions for stakeholder input into that process, and for preparing its Local Transmission Plan.

20. Proposed language in Attachment Y explains this process. To begin, each transmission owner will post on its website the planning criteria and assumptions used in its current Local Transmission Planning Process as well as a list of any applicable software and/or analytical tools used in that process. Any planning criteria or assumptions for a transmission owner's bulk power transmission lines will meet or exceed any applicable NERC,¹⁷ NPCC¹⁸ or NYSRC¹⁹ criteria. Each Local Transmission Planning Process shall include a description of the needs addressed, as well as the

¹⁴ Order No. 890, FERC Stats.& Regs. ¶ 31,241 at P 440.

¹⁵ A transmission-owning RTO or ISO member that continues to have an OATT on file under which it provides service over jurisdictional facilities not under control of the RTO or ISO must file an Attachment K to that OATT covering planning for those facilities. This applies equally to a transmission provider that has retained operational control of facilities governed by other non-OATT arrangements. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 175 & n.71.

¹⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 175.

¹⁷ North American Electric Reliability Corporation.

¹⁸ Northeast Power Coordinating Council, Inc.

¹⁹ New York State Reliability Council, L.L.C.

assumptions, applicable planning criteria and methodology utilized. A link to each transmission owner's website will be posted on the NYISO website.²⁰

21. Attachment Y also provides that each transmission owner, in accordance with a schedule set forth in the NYISO's Comprehensive Reliability Planning Process Manual, will post its current Local Transmission Plan on its website for review by customers and other market participants²¹ sufficiently in advance of the time for submission to the NYISO for input to its own reliability needs assessment (described below), so as to allow adequate time for stakeholder review and comment. Each Local Transmission Plan will include a description of the transmission facilities covered by the plan.²² To the extent the current Local Transmission Plan utilizes data or inputs related to the NYISO's planning process, not already reported by NYISO in Form 715 and referenced on its website, such data will be provided to the NYISO at the time each transmission owner posts its current plan and will be posted by NYISO on its website subject to any confidentiality or CEII restrictions or requirements.²³

22. Attachment Y further provides that each planning cycle, the NYISO shall hold one or more stakeholder meetings of the Electric System Planning Working Group (ESP Working Group) and Transmission Planning Advisory Subcommittee (TPAS), at which each transmission owner's current Local Transmission Plan will be discussed.²⁴ Such meetings will be held either at the transmission owner's transmission district or at a NYISO location. The NYISO shall post notice of the meeting and shall disclose the agenda and any other material distributed prior to the meeting.²⁵ Market participants may

²⁰ Attachment Y at section 4.1.

²¹ NYISO defines a market participant as “[a]n entity, excluding the ISO, that produces, transmits, sells, and/or purchases for resale Capacity, Energy and Ancillary Services in the Wholesale Market. Market participants include: Transmission Customers under the ISO OATT, customers under the ISO Services Tariff, Power Exchanges, transmission owners, Primary Holders, LSEs, Suppliers and their designated agents. Market Participants also include entities buying or selling TCCs.” Section 1.18.f.

²² Attachment Y at section 4.0.a.

²³ Attachment Y at section 4.0.b.

²⁴ As discussed below, NYISO coordinates stakeholder involvement in its planning activities through the ESP Working Group and TPAS, in which any stakeholder may participate.

²⁵ Attachment Y at section 4.0.c.

submit written comments to a transmission owner with respect to its current plan within thirty days after the meeting. Each transmission owner shall list on its website, as part of its plan, the person and/or location to which comments should be sent by market participants. All comments will be posted on the NYISO website. Each transmission owner will consider comments received in developing any modifications to its plan.²⁶ Any such modification will be explained in the current plan posted on its website above and discussed at the next meeting.

23. Each planning cycle, each transmission owner will submit the finalized portions of its current plan to the NYISO as contemplated in section 5.4.b below for timely inclusion in the NYISO's reliability needs assessment, discussed in further detail below.²⁷

2. Comments

24. NYAPP argues that there are deficiencies in NYISO's Local Transmission Planning Process. According to NYAPP, Niagara Mohawk made a commitment to the NYPSC, as a condition of its being allowed to acquire KeySpan Corporation, to make \$1.47 billion in capital investment in transmission and distribution facilities in the next five years.²⁸ According to NYAPP, on October 22, 2007, Niagara Mohawk made a compliance filing with the NYPSC containing: (1) its transmission and distribution capital investment plan and (2) a report on physical elements of the transmission and distribution systems. According to NYAPP, the capital investment plan and condition report are heavily redacted and, therefore, are not transparent or open for comments of the NYISO stakeholders. NYAPP states that Niagara Mohawk requested trade secret protection of the planning information.

25. NYAPP states that it offered to execute and be bound by the non-disclosure and use of information agreement, which is patterned after the Commission's CEII guidance and the NYISO's standard confidentiality agreement. However, according to NYAPP, Niagara Mohawk did not agree and instead requested that NYAPP's members be bound by an "Agreement Governing Information Designated As Confidential" which would categorically deny access to the materials to any entity that is subject to disclosure obligations under the New York Freedom of Information Law, N.Y. Public Officers Law

²⁶ Attachment Y at section 4.0.d.

²⁷ Attachment Y at section 4.0.e.

²⁸ NYAPP states that it is actively seeking a similar commitment from NYSEG related to the proposed acquisition of NYSEG parent Energy East Corporation by Iberdrola.

§§ 87.2 and 89.5. NYAPP states that as municipal electric utilities located in New York State, the municipal members of NYAPP are subject to the New York Freedom of Information Law and categorically excluded from reviewing the redacted materials.

26. In its answer, Niagara Mohawk states that the reports described by the NYAPP are Niagara Mohawk obligations under the Niagara Mohawk/KeySpan merger proceeding before the NYPSC and fall outside of the scope of Commission Order No. 890. Moreover, Niagara Mohawk states that its commitment to invest \$1.47 billion in capital expenditures is meant to improve the reliability of existing elements of its electric transmission and distribution system and is not being proposed in response to the NYISO's CRPP, which considers the needs of the system moving forward in time.

3. Commission Determination

27. A central element of Order No. 890 is that all aspects of a transmission provider's planning process must be open and transparent, including the planning performed by transmission owners within an RTO or ISO.²⁹ Consistent with Order No. 890, NYISO's proposed Attachment Y provides customers and market participants the opportunity to review and comment on each transmission owner's Local Transmission Plan, as well as the assumptions and planning criteria used by the transmission owners. However, NYISO does not explain whether stakeholders will have the opportunity to review and comment on that information, as well as other data and models used by the transmission owners, in the early stages of each local planning process. The Commission emphasized in Order No. 890 that it is insufficient to merely provide for review of plans developed in the first instance without stakeholder input.³⁰ Similarly, NYISO does not explain the opportunities for customers to submit information to the transmission owners for use in developing assumptions and models used in developing their transmission plans, which in turn are incorporated into the NYISO's planning activities. NYISO further fails to identify a dispute resolution mechanism for matters that arise in the local planning processes. We therefore direct NYISO to submit a compliance filing within 90 days of the issuance of this order to indicate how all participating transmission owners within its footprint will comply with the planning requirements of Order No. 890.³¹

²⁹ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440.

³⁰ See *id.* P 454.

³¹ This requires, among other things, a demonstration that all interested parties, and not solely market participants, have an opportunity to participate in the local transmission planning process.

28. With respect to NYAPP's concern regarding access to Niagara Mohawk's transmission and distribution capital investment plan, it does not appear that this plan is the Local Transmission Plan relied upon by NYISO in its CRPP, which is the subject of this compliance proceeding. NYISO states that each transmission owner's Local Transmission Plan shall be posted on its website for customer review. To the extent such postings are not occurring, NYAPP may invoke the dispute resolution provision of Attachment Y, as modified below, to raise its concerns.

D. Compliance with Order No. 890's Planning Principles

1. Coordination

29. In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process. The purpose of the coordination requirement, as stated in Order No. 890, is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. The planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers and other stakeholders to participate in the early stages of development. In its OATT Attachment K planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.³²

a. NYISO's Filing

30. NYISO explains that its CSPP will be the process by which NYISO members will rely upon NYISO to prepare an open and coordinated biennial plan for the enhancement and expansion of the transmission facilities.³³ Under the CSPP, NYISO will develop a reliability needs assessment and alternate reliability scenarios in consultation with market participants, including the input data and assumptions to be used in the development of reliability assessment scenarios. Specifically, NYISO states that it uses the Annual Transmission Reliability Assessment, developed in NYISO's interconnection process in coordination with market participants pursuant to Attachment S of the OATT, as the baseline for the first five years of each ten-year study period. NYISO states that it develops the system representation to be used in its evaluation of the second five years of

³² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-54.

³³ Sections 5.2, 6.1, 6.2, 6.4, 9.1, 9.2, 11.2, 11.4, 12.1, 12.2, 12.3, 15.5, 15.6 of Attachment Y.

the study period pursuant to all of the public data inputs listed in section 5.3.e of Attachment Y.³⁴ NYISO adds that it obtains additional data necessary for the development of its reliability needs assessment from market participant inputs pursuant to section 5.4.a³⁵ and individual transmission owners' plans pursuant to section 5.4.b. NYISO explains that, to assist parties in developing market-based solutions to the reliability needs identified in the CSPP, the transmission owners are required to provide any additional data necessary for the party to develop its response.³⁶ Finally, NYISO states that its load and capacity data report (Gold Book) and the load forecasting data used in NYISO's interconnection and reliability planning processes also are developed with review and input from market participants.

31. NYISO states that it coordinates participation in the planning process primarily through permanent planning committees that provide technical advice and assistance to NYISO. These include TPAS and the ESP Working Group.³⁷ NYISO explains that,

³⁴ This includes: (1) the most recent Load and Capacity Data Report published by the NYISO on its web site; (2) the most recent versions of NYISO reliability analyses and assessments provided for or published by NERC, NTCC, NYSRC, and Neighboring Control Areas; (3) information reported by neighboring control areas such as power flow data, forecasted load, significant new or modified generation and transmission facilities, and anticipated system conditions; and (4) market participant data.

³⁵ This input includes but is not limited to: (1) existing and planned additions to the New York State transmission system (to be provided by transmission owners and municipal electric utilities); (2) proposals for merchant transmission facilities (to be provided by merchant developers); (3) generation additions and retirements (to be provided by generator owners and developers); (4) demand response programs (to be provided by demand response providers); and (5) any long-term firm transmission requests made to the NYISO.

³⁶ Attachment Y at section 7.2 provides that "such responses will be open on a comparable basis to all resources, including generation, demand response providers, and merchant transmission developers.

³⁷ TPAS has primary responsibility for the reliability analyses, while the ESP Working Group has primary responsibility for providing commercial input and assumptions utilized in the development of reliability assessment scenarios and the reporting and analysis of historic congestion costs. TPAS and ESP Working Group are both subcommittees of the Operating Committee, which, in turn, reports to NYISO's Management Committee. Both the Operating Committee and the Management Committee have sector voting. Management Committee reports its recommendations to NYISO's Independent Board of Directors for final approval.

through these groups, committee members have an opportunity to review materials and provide input during each of the key steps in the reliability planning process. NYISO states that it provides meeting notices and agendas to stakeholders well in advance of the actual meeting and that committee members may comment on all issues and drafts during meetings. If any committee member should disagree with a Management Committee decision regarding development of the plan, that party has the ability to appeal to the independent Board of Directors.

b. Protests/Comments

32. The NYPSC protests NYISO's proposed biennial planning cycle. The NYPSC supports the goal of eventually moving to a two-year cycle, but not at this time. The NYPSC argues that New York is in the midst of renewable development and electricity conservation initiatives, which could significantly affect system reliability in a short time period. Thus, according to the NYPSC, a biennial cycle does not allow sufficient reaction time to ensure continued system reliability. The NYPSC asserts that NYISO should maintain its annual planning cycle for at least the next five years. Alternatively, if a biennial cycle is approved, the NYPSC argues that NYISO should be required to submit an abbreviated interim annual update.

33. In its answer, NYISO states that the full CSPP cannot be completed in a one-year period. It adds that the NYPSC's suggested update is unnecessary, as NYISO has an obligation to monitor proposed reliability solutions on an ongoing basis, an obligation it currently performs on a quarterly basis. If necessary, NYISO has the ability under Attachment Y to trigger a "gap" solution at any time to meet an identified Reliability Need. NYISO also states that it can trigger the Responsible Transmission Owners³⁸ to proceed with a regulated backstop solution any time that, in the NYISO's judgment, the thresholds and trigger dates contained in the most recent reliability needs assessment or CRP are crossed.

34. NYISO also argues that it has recently adopted a Comprehensive Reliability Planning Process Manual and a Technical Bulletin to provide for a much more detailed monitoring program, and it is monitoring the progress of market-based solutions,³⁹

³⁸ According to section 2.0 of Attachment Y, responsible transmission owners are designated by the NYISO, to prepare a proposal for a regulated solution to a reliability need or to proceed with a regulated solution to a reliability need. The responsible transmission owner will normally be the transmission owner in whose transmission district the NYISO identifies a reliability need.

³⁹ NYISO January 22, 2008 answer at 16.

triggered reliability solutions (if any), and the trigger dates for regulated reliability solutions on a quarterly basis.

c. Commission Determination

35. We find that NYISO's revised Attachment Y partially complies with the requirements of the coordination principle stated in Order No. 890 as they apply to the planning activities conducted by NYISO. NYISO states that its planning process will be coordinated with interested parties through the TPAS and ESP Working Group. Attachment Y establishes NYISO's role as a facilitator in meetings of those committees, providing an opportunity for input and review by interested parties. However, NYISO's tariff does not explicitly state whether the TPAS and ESP Working Group have responsibility for making decisions during the development of transmission plans or whether they merely advise the Operating Committee and, in turn, Management Committee. If the former, NYISO fails to explain how decisions will be reached, such as through voting or some other mechanisms. Accordingly, we direct NYISO to revise its transmission planning process, in a compliance filing to be made within 90 days of issuance of this order, to identify clearly the process for reaching decisions in the development of its transmission plans.

36. We accept NYISO's proposal to conduct its planning process based on a two-year cycle. Contrary to the NYPSC's assertions, we do not believe that a two-year cycle will compromise the ability of the customers and other stakeholders to participate fully in the NYISO planning process. As NYISO explained in its filing, it has a well developed schedule of stakeholder meetings that are spread throughout the entire two year period. Importantly, NYISO has sufficient backstop mechanisms in place to be able to respond to reliability needs in a sufficient amount of time. As NYISO indicated in its answer, it monitors proposed reliability solutions on a quarterly basis and will continue to monitor the progress of market-based solutions, triggered reliability solutions, and the trigger dates for regulated reliability solutions on a quarterly basis. Should NYISO's project monitoring process determine that conditions have changed or that market-based solutions or other planned projects that were relied upon in the CRP will not proceed, NYISO will trigger the responsible transmission owner(s) to proceed with regulatory approval and construction of a regulated backstop solution previously accepted in the CRP. Moreover, NYISO can implement a gap solution outside of the normal planning cycle, to meet an identified reliability need.

2. Openness

37. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a

subregional group, the Commission emphasized that the overall development of the transmission plan and the planning process must remain open.⁴⁰ Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and Critical Energy Infrastructure Information (CEII) concerns, such as confidentiality agreements and password protected access to information.⁴¹

a. NYISO's Filing

38. NYISO states that its compliance with the openness principle is reflected in its balanced stakeholder process, which gives all sectors of the industry, as well as state regulators and public interest and consumer groups, an important voice in weighing in on proposals advanced by NYISO or other stakeholders. NYISO states that interested parties may participate in the planning process through the ESP Working Group and TPAS. NYISO states that within each of those groups, stakeholders are organized into one of five sectors: (1) transmission owners, (2) generation owners, (3) other suppliers, (4) end-use consumers, and (5) public power and environmental parties. According to NYISO, state agencies, including the NYPSC, are also active participants in the process. NYISO maintains that, since its inception, market participants and other interested stakeholders have actively participated in the NYISO's open and transparent stakeholder process. NYISO adds that, because it is independent of all market participants and reports to an independent Board of Directors, it has no incentive to exclude any group or individual stakeholder from the planning process. NYISO also conducts public information sessions in order to provide ample exposure for the marketplace to understand the identified reliability and economic needs of the system, as well as the contents of the reliability needs assessment and CARIS.⁴²

39. Further, NYISO states that it has Commission approved procedures in place to safeguard commercially sensitive, proprietary, or CEII information in its Attachment F (Code of Conduct) of its OATT, which will apply to confidential material submitted under the CRPP.⁴³ NYISO states that these procedures provide stakeholders with

⁴⁰ The Commission made clear in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's Attachment K planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

⁴¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

⁴² Sections 6.4 and 12.3 of Attachment Y.

⁴³ NYISO states that CEII falls under the broad category of confidential

(continued...)

assurance that NYISO treats sensitive material in accordance with clearly articulated policies. In addition, NYISO states that its proposed revisions to Attachment Y (sections 8.9 and 3.0.a) provide clearly articulated provisions to protect the confidentiality of reliability and economic solutions. For example, NYISO will not disclose preliminary cost estimates that it may have received in the course of reviewing backstop or other regulated solutions.

b. Protests/Comments

40. No protests or comments were filed.

c. Commission Determination

41. We find that NYISO's revised Attachment Y partially complies with the requirements of the openness principle stated in Order No. 890 as they apply to the planning activities conducted by NYISO. Participation in NYISO planning activities will be coordinated through the TPAS and ESP Working Group, which will be organized by sector. Pursuant to Attachment F and the newly proposed sections of Attachment Y of the NYISO OATT, interested parties may obtain confidential and CEII information used in the planning process. However, it is unclear whether the TPAS and ESP Working Group will be open to all parties that are interested in the planning process. Participation in the Operating Committee, for example, is open only to parties that have executed the NYISO Operating Agreement.⁴⁴ If similar restrictions apply to the TPAS and ESP Working Group, it is not clear how other parties could participate in the development of NYISO's planning studies, including any decisions for which these groups have responsibility. Accordingly, we direct NYISO to revise its transmission planning process, in a compliance filing to be made within 90 days of issuance of this order, to provide that all interested parties can participate in the planning process.

3. Transparency

42. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, assumptions and data used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must describe the method(s) it will use to disclose the criteria, assumptions and data that underlie its

information covered by Attachment F.

⁴⁴http://www.nyiso.com/public/webdocs/committees/general_information/committee_faqs_final.pdf

transmission system plans.⁴⁵ The Commission specifically found that reliance on Form Nos. 714 and 715 was not sufficient to provide transparency in planning because those forms were designed for different purposes. Transmission providers were also directed to provide information regarding the status of upgrades identified in the transmission plans.

43. The Commission explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate Standards of Conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand response resources in transmission planning. The Commission held that where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.⁴⁶

a. NYISO's Filing

44. NYISO states that its existing tariff provisions already include transparency in the development and implementation of transmission system plans. NYISO explains that information regarding the basic criteria, assumptions, and data that are used to develop the transmission system plans is available to its market participants through its ESP Working Group and TPAS planning committees. In addition, NYISO notes that it provides data and information to stakeholders as requested, with the appropriate confidentiality safeguards in place.

45. NYISO states that Order No. 890's transparency goal is also achieved by its Comprehensive Reliability Planning Process Manual, which was approved by the Operating Committee in October 2007 and is publicly available on NYISO's website.⁴⁷ According to NYISO, the Comprehensive Reliability Planning Process Manual clearly explains the objectives of the CRPP (including the evaluation of reliability needs, the

⁴⁵ In Order No. 890-A, the Commission made clear that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

⁴⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-479.

⁴⁷ <http://www.nyiso.com/public/documents/manuals/planning.jsp?maxDisplay=20>

identification of the factors that could adversely impact system reliability, and the development of a process to solve identified reliability issues in a timely and effective manner) and provides for the coordination of NYISO's reliability assessments with neighboring control areas. NYISO states that the Comprehensive Reliability Planning Process Manual also outlines the procedures and criteria for developing valid market-based responses, regulated backstop responses, and alternative regulated responses to reliability needs. Further, NYISO states that the Comprehensive Reliability Planning Process Manual describes the process for the submission of data inputs to NYISO (so that it may evaluate system reliability, identify reliability needs, and develop base cases and alternative scenarios for the assessment of needs), the approach NYISO will take in determining what is a reliability need, and the drafting, review, and approval process for the reliability needs assessment and the CRP.

46. NYISO's proposal also requires it to monitor the status of reliability projects.⁴⁸ Thus, NYISO will monitor and report on the status of market-based solutions to ensure their continued viability to meet reliability needs on a timely basis in the CRP. NYISO will also monitor and report on the status of regulated solutions to ensure their continued viability to meet reliability needs on a timely basis in the CRP. The NYISO's criteria to assess the continued viability of such projects are included in the NYISO's Comprehensive Reliability Planning Process Manual.

b. Protests/Comments

47. No protests or comments were filed.

c. Commission Determination

48. We find that NYISO's revised Attachment Y partially complies with requirements of the transparency principle stated in Order No. 890 as they apply to the planning activities conducted by NYISO. Customers and other stakeholders are provided access to the basic methodology, criteria, and processes used by NYISO to develop transmission plans. In addition, Attachment Y describes the process for model development and the planning assumptions used to develop the CRP, as well as how NYISO will collaborate with market participants to develop the reliability needs assessment and CRP and monitor the status of upgrades. However, it is not clear from Attachment Y whether NYISO will disclose sufficient information for stakeholders to be able to replicate the results of transmission planning studies. Accordingly, in a compliance filing to be made within 90 days of issuance of this order, NYISO is directed to clarify that stakeholders have access to sufficient information or, if necessary, revise the tariff to provide such access.

⁴⁸ Section 10.0 of Attachment Y.

4. Information Exchange

49. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native load. Point-to-point customers are required to submit any projections they have of a need for service over the planning horizon and at what receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.⁴⁹ Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

50. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand response resources if they wish to have them considered in the development of the transmission plan. The Commission stressed that information collected by transmission providers to provide transmission service to their native load customers must be transparent and equivalent information must be provided by transmission customers to ensure effective planning and comparability. In Order No. 890-A, the Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer, and that the transmission provider must maintain the confidentiality of this information. To this end, transmission providers must clearly define the information sharing obligations placed on customers in the context of economic planning.⁵⁰

51. The Commission emphasized that transmission planning is not intended to be limited to the mere exchange of information and after the fact review of transmission provider plans. The planning process is instead intended to provide a meaningful opportunity for customers and stakeholders to engage in planning along with their transmission providers. To that end, the Commission clarified that information exchange relates to planning, not other studies performed in response to interconnection or transmission service requests.⁵¹

⁴⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 207.

⁵⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 206.

⁵¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

a. NYISO's Filing

52. NYISO states that it complies with the information exchange principle by virtue of the provisions in its OATT that require NYISO to gather and share data and assumptions that will be used in the development of reliability assessment scenarios.⁵² NYISO adds that the data required for conducting the reliability needs assessments are solicited during an input phase established in an annual cycle and that this process has been incorporated into the Comprehensive Reliability Planning Process Manual.⁵³ NYISO states that alternate reliability scenarios are developed with input from market participants,⁵⁴ and these scenarios are used to test the robustness of the New York bulk power system or to evaluate whether the system remains reliable under unexpected but possible future conditions, such as higher than expected load growth, accelerated resource retirements, and environmental restrictions. NYISO further states that, to assist any party in developing a market-based solution to a reliability need, the transmission owners are required to provide the data necessary for the party to develop its response. According to NYISO, its Gold Book and the load forecasting data used in its reliability planning processes are developed with review and input from market participants.

53. In addition, NYISO states that it obtains data on demand response resources for the reliability needs assessment from market participants pursuant to Attachment Y, section 5.4(a) and from the transmission owners' plans pursuant to Attachment Y, section 5.4(b). According to NYISO, during the phase of the planning process where

⁵² Sections 5.3.e, 5.4.a and 5.4b of Attachment Y.

⁵³ This input includes but is not limited to: (1) existing and planned additions to the New York State transmission system (to be provided by transmission owners and municipal electric utilities); (2) proposals for merchant transmission facilities (to be provided by merchant developers); (3) generation additions and retirements (to be provided by generator owners and developers); (4) demand response programs (to be provided by demand response providers); and (5) any long-term firm transmission requests made to the NYISO.

⁵⁴ NYISO notes that it has a unique market that does not encompass the physical contract path model that has been the traditional model and that no one has opted to use the network service provisions in NYISO's OATT. NYISO explains that it does have, in essence, point-to-point transmission service, although this service is not based on physical contract paths. Instead, the NYISO operates a financial, bid-based market that does not use physical transmission reservations to reserve transmission capacity to effectuate customer needs. The transmission capacity needed to effectuate transactions is implicitly reserved.

solutions are developed, market-based, regulated backstops and/or alternative regulated proposals may include demand response resources on an equal footing with transmission and generation solutions.⁵⁵ NYISO also states that it gathers and reports to the Commission and its market participants' data concerning participation in its three demand response programs – special case resources, day-ahead demand response program, and emergency demand response program resources.⁵⁶ These programs are also modeled in the reliability needs assessment.

b. Protests/Comments

54. No protests or comments were filed.

c. Commission Determination

55. We find that NYISO's revised Attachment Y satisfies the requirements of the information exchange principle stated in Order No. 890 as they apply to the planning activities conducted by NYISO. As NYISO indicates, its Attachment Y requires transmission owners, generation owners, transmission customers, market participants, and other entities requesting transmission or interconnection service to submit information on their projected loads and resources on a comparable basis (subject to specified confidentiality and CEII protections); any information including cost estimates; and data that is reasonably required to prepare a regional system plan or to perform a needs assessment or solutions study. In addition, information regarding demand response and generation resources is also made available to NYISO.

5. Comparability

56. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop a transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers historically have planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also

⁵⁵ NYISO December 7, 2007 Filing, Transmittal Letter at 4.

⁵⁶ *Id.* at 24.

explained that demand resources should be considered on a comparable basis to the service provided by comparable generation resources where appropriate.⁵⁷ Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.⁵⁸

a. NYISO's Filing

57. NYISO states that its regional system planning process meets the comparability principle by virtue of its independent structure. NYISO states that as an independent entity it does not have any affiliates or any ownership of any assets within or that do business with the New York markets. NYISO reports to an independent Board of Directors and has a balanced stakeholder governance process. Therefore, NYISO argues that it has no incentive to give preferential treatment to any of its market participants. NYISO states that the open and inclusive structure of its planning process serves as a method by which any interested party can remain apprised of, and provide input into, how NYISO is carrying out its planning function. NYISO states that its regional planning process allows any stakeholder to request the initiation of a needs assessment to explore potential problems in the system based on its particular concerns.

58. Moreover, in both its economic and reliability planning processes, NYISO states that it treats all potential solutions to an identified need on a comparable basis – whether transmission, generation, or demand response.⁵⁹ Thus, according to NYISO, not only does its planning process not discriminate against any transmission customer, it actively seeks to treat all types of resources that can provide solutions to reliability and economic needs comparably.⁶⁰

⁵⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494-95.

⁵⁸ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁵⁹ Attachment Y at sections 8.1 and 11.3c.

⁶⁰ For instance, NYISO's 2007 CRP shows that demand side providers were able to submit 250 MW of "alternative regulated" proposals for measures in southeastern New York. NYISO's 2008 CRP shows that demand side providers offered 425 MW of "market-based" solutions in southeastern New York. *See* http://www.nyiso.com/public/services/planning/reliability_assessments.jsp

b. Protests/Comments

59. No protests or comments were filed.

c. Commission Determination

60. We find that NYISO's revised Attachment Y complies with requirements of the comparability principle stated in Order No. 890 as they apply to the planning activities conducted by NYISO. NYISO's planning process accommodates input from all parties and allows developers of all potential solutions to propose projects in response to identified needs. We note, however, that Order No. 890-A was issued on December 27, 2007, subsequent to NYISO and its transmission owners submitting their Order No. 890 Attachment K compliance filing. In Order No. 890-A, the Commission provided additional guidance, among other things, as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning."⁶¹ Here, NYISO has submitted tariff language providing that, as a general matter, all resource types will be considered on a comparable basis. However, since Order No. 890-A was issued subsequent to the filing before us, NYISO and its transmission owners did not have an opportunity to demonstrate that they comply with this requirement of Order No. 890-A. Therefore, NYISO is directed to file within 90 days of issuance of this order, a compliance filing addressing the necessary demonstration required by Order No. 890-A.⁶²

6. Dispute Resolution

61. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be utilized, but that transmission providers seeking to rely on an existing dispute resolution process must specifically address how its procedures will address matters related to transmission planning. The Commission encouraged transmission providers, customers, and other

⁶¹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494 and 549.

⁶² For example, tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

stakeholders to utilize the Commission's Dispute Resolution Service (DRS) to help develop a three step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider's dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under FPA section 206 to file complaints with the Commission.⁶³

a. NYISO's Filing

62. NYISO states that the reliability needs assessment and CRP development processes are appealable from the Management Committee to NYISO's Board of Directors and minority opinions taken on these reports at the Operating Committee are reported to the Management Committee and to the Board. Any disputes not resolved through the plan development process will be governed by the dispute resolution procedures contained in the NYISO OATT.⁶⁴ Under the NYISO OATT, disputes between a transmission customer and NYISO are first referred to designated senior representatives of the customer and NYISO. Unresolved disputes may be submitted to the NYISO's Dispute Resolution Administrator, which may refer the dispute to non-binding mediation or binding arbitration.⁶⁵ NYISO's dispute resolution provisions state that nothing restricts the right of any party to file a complaint with the Commission under the FPA. NYISO's proposed Attachment Y also specifically recognizes that there may be disputes that are subject to the jurisdiction of the NYPSC and some disputes that are subject to the jurisdiction of this Commission. NYISO adds that consequently, disputes over matters solely within the NYPSC's jurisdiction are to be resolved by the NYPSC, and disputes concerning matters within the Commission's jurisdiction are referred to the Commission for resolution.

b. Protests/Comments

63. No protests or comments were filed.

⁶³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-03.

⁶⁴ Attachment Y at section 3.0.d.

⁶⁵ NYISO OATT, section 12.

c. Commission Determination

64. We find that the transmission planning process proposed by NYISO partially complies with the requirements of the dispute resolution principle stated in Order No. 890. NYISO will resolve planning-related disputes with transmission customers pursuant to the existing dispute resolution provisions included in their OATT. We note that those provisions apply only to disputes between NYISO and their transmission customers. NYISO does not identify dispute resolution procedures to be used by other parties involved in planning-related activities, such as stakeholders and other entities with which NYISO interacts in the transmission planning process. Accordingly, we direct NYISO to revise its transmission planning process, in a compliance filing to be made within 90 days of issuance of this order, to provide dispute resolution procedures for all parties involved in all transmission planning activities.

7. Regional Participation

65. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider is required to coordinate with interconnected systems to: (i) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and (ii) identify system enhancements that could relieve congestion or integrate new resources. The Commission stated that the specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical practices. The Commission declined to mandate the geographic scope of particular planning regions, instead stating that the geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and subregions. The Commission also made clear that reliance on existing NERC planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. To the extent a transmission provider's implementation of the NERC processes are not appropriate for such economic issues, individual regions or subregions must develop alternative processes.⁶⁶

66. In Order No. 890-A, the Commission clarified that while the obligation to engage in regional coordination is directed to transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested

⁶⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-528.

customers and stakeholders.⁶⁷ In Order No. 890-A, the Commission also emphasized that effective regional planning should include coordination among regions and subregions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.⁶⁸

a. NYISO's Filing

67. NYISO states that its neighbors in the United States are the market-based RTO regions administered by Independent System Operator-New England (ISO-NE) and PJM Interconnection LLC (PJM). NYISO states that it also shares a border with Ontario (IESO) and Quebec (Hydro-Quebec TransEnergie). NYISO states that it coordinates with these entities on planning on many levels and that NYISO, ISO-NE, and PJM each have transmission planning processes for their regions that examine reliability needs and solutions and consider input on future system plans from each of their neighboring systems. NYISO adds that it will coordinate its planning activities with those of NERC, NPCC, and other applicable regional reliability organizations and develop consistent models, databases, and assumptions used in making reliability determinations.⁶⁹

68. NYISO states that, even beyond these provisions in their respective regional planning processes, NYISO, ISO-NE, and PJM have together developed a separate protocol to address regional planning issues. The Northeastern ISO/RTO Planning Coordination Protocol provides for coordinated planning across the entire Northeast region, including portions of Canada.⁷⁰ This region encompasses New York, New-England, PJM, Ontario, Quebec and the Maritimes. NYISO, ISO-NE, and PJM have also formed the Joint Interregional Planning Committee, consisting of staff members of those organizations, to coordinate their planning processes and proposed system upgrades. NYISO adds that the Interregional Planning Stakeholder Advisory Committee (IPSAC) has also been formed to provide broad stakeholder participation from all sectors for the entire Northeast region. NYISO states that these committees meet regularly and are actively discussing how to improve regional planning and further study congestion on a regional basis in response to Order No. 890.

⁶⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

⁶⁸ *Id.*

⁶⁹ Attachment Y at section 3.0.c.

⁷⁰ See www.interiso.com/documents.cfm.

b. Protests/Comments

69. No protests or comments were filed.

c. Commission Determination

70. We find that NYISO's revised Attachment Y satisfies the requirements of the regional participation principle stated in Order No. 890 as they apply to the planning activities conducted by NYISO. For example, 1.1, 1.3, 3.0.c and 5.3.e of Attachment Y requires NYISO to conduct the regional system planning process and develop the annual system plan in coordination with neighboring control areas. The Northeastern ISO/RTO Planning Coordination Protocol provides the procedures for the exchange of planning-related data and information and establishes the system planning analysis procedures to be utilized by the parties, contributing to the ongoing reliability and enhanced operational and economic performance of the neighboring systems. The Protocol also provides, among other things, for the development of a Northeastern Coordinated System Plan among PJM, NYISO, and ISO-NE (including the technical participation of the Ontario IESO, Ontario Power Authority, Hydro Québec, and New Brunswick) which will integrate the individual system plans of the parties. In addition, ISO-NE and NYISO entered into a seams issue resolution agreement that includes, among other things, coordination of inter-regional planning.⁷¹ The seams resolution agreement also includes a work plan for ongoing identification of additional seams issues. Moreover, NYISO posts updates of seams resolutions that involve neighboring regions.⁷²

8. Economic Planning Studies

71. The economic planning studies principle requires transmission providers to account for economic, as well as reliability, considerations in the transmission planning process. The Commission explained in Order No. 890 that good utility practice requires vertically integrated transmission providers to plan not only to maintain reliability, but also to consider whether transmission upgrades can reduce the overall cost of serving native load. The economic planning principle is designed to ensure that economic considerations are adequately addressed when planning for OATT customers as well. The Commission emphasized that the scope of economic studies should not be limited just to individual requests for transmission service. Customers must be given the

⁷¹ *ISO New England Inc.*, 109 FERC ¶ 61,147 (2004); *ISO New England Inc.*, 106 FERC ¶ 61,280 (2004).

⁷² See NYISO's website at:
http://www.nyiso.com/public/documents/regulatory/seams_issues.jsp.

opportunity to obtain studies that evaluate potential upgrades or other investments that could reduce congestion or integrate new resources and loads on an aggregated or regional basis.

72. The Commission also stated that existing regional processes conducted by RTOs and ISOs are not exempt from economic planning study requirements. All transmission providers, including RTOs and ISOs, were directed to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as part of the transmission provider's overall OATT cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.⁷³

73. In Order No. 890-A, the Commission made clear that the transmission provider must clearly describe the process by which economic planning studies can be requested and how they will be prioritized.⁷⁴ In Order No. 890-A, the Commission also made clear that a transmission provider's affiliates should be treated like any other stakeholder and, therefore, their requests for studies should be considered comparably.⁷⁵ Additionally, in Order No. 890-A, the Commission clarified that to the extent an RTO or ISO delegates any of its responsibilities in the context of economic planning, it will be the obligation of the RTO or ISO, as the transmission provider, to ensure ultimate compliance with the requirements of Order No. 890.⁷⁶

a. NYISO's Filing

74. NYISO's proposal includes an economic planning process through which market participants will be encouraged to develop, on a voluntary basis, projects to reduce transmission congestion. NYISO states that it will consider all resource types—transmission, generation, and demand response—on an equal footing.⁷⁷ NYISO states that its economic planning activities will be performed through development of the CARIS under new section 11 of its Attachment Y. According to NYISO, the CARIS,

⁷³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-551.

⁷⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

⁷⁵ *Id.* P 237.

⁷⁶ *Id.* P 238.

⁷⁷ Section 11.3.c of Attachment Y.

which will consist of a series of three congestion and resource integration studies,⁷⁸ will project transmission congestion over a ten year horizon. The CARIS will assume a reliable system throughout the ten year planning horizon, using the most recently conducted and approved CRP, including the solutions to identified reliability problems included therein, as the baseline transmission system on which the CARIS will be developed.

75. The CARIS will measure the cost of congestion as the change in bid production costs that results from transmission congestion as the principle metric, but CARIS will also measure (1) the impact on load payments; (2) the impact on generator payments; and (3) hedged and unhedged congestion payments. The CARIS will also report the results of congestion integration scenarios, which will examine variables such as load forecast uncertainty, fuel price uncertainty, new resources, retirements, emission data, and the cost of allowances and potential requirements imposed by proposed environmental and energy efficiency mandates.⁷⁹ Market participants are required under Attachment Y to provide, at the NYISO's request, the data necessary for development of the CARIS.⁸⁰ Through the ESP Working Group, interested stakeholders may provide input regarding this data and any other assumptions used in the development of the congestion assessment.⁸¹

b. Protests/Comments

76. No protests or comments were filed.

⁷⁸ NYISO, in conjunction with the ESP Working Group, will develop criteria for the study selection and grouping of the three congestion and resource integration studies that comprise each CARIS, as well as for setting the associated timelines for completion of the selected studies. NYISO will also develop a process by which individual customers can request and fund additional congestions and resource integration studies not selected for the CARIS.

⁷⁹ NYISO will work with the ESP Working Group to consider the development and implementation of similar scenario analyses, for information only, to shed additional light on the cost and benefit of a proposed economic transmission project.

⁸⁰ Such data includes, but is not limited to information relating to existing and planned additions to the New York State transmission system, merchant transmission projects, generator additions and retirements, and demand response programs. See section 11.4 of Attachment Y.

⁸¹ Section 11.2.a of Attachment Y.

c. **Commission Determination**

77. We find that NYISO's revised Attachment Y satisfies the requirements of the economic planning principle as they apply to the planning activities performed by NYISO. The CARIS complements the existing reliability planning process and allows market participants to request studies regarding congestion and the integration of new resources. Market participants are required to provide data necessary for development of the CARIS, and interested stakeholders may provide input regarding this data and any other assumptions used in the development of the congestion assessment.

9. Cost Allocation

78. The cost allocation principle requires that transmission providers address the allocation of costs of new facilities that do not fit under existing rate structures. In Order No. 890, the Commission suggested that such new facilities might include regional projects involving several transmission owners or economic projects that are identified through the study process, rather than individual requests for service. The Commission did not impose a particular allocation method for such projects and, instead, permitted transmission providers and stakeholders to determine the criteria that best fits their own experience and regional needs. Transmission providers therefore were directed to identify the types of new projects that are not covered under existing cost allocation rules and, as a result, would be affected by the cost allocation proposal.

79. The Commission suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.⁸² In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.⁸³

⁸² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-61.

⁸³ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

80. NYISO proposes two cost allocation methodologies in its revised Attachment Y for transmission facilities built in response to identified needs. The first applies to transmission projects constructed in response to a reliability need. The second applies to transmission projects constructed in response to congestion identified in the CARIS. We discuss each of these proposals below.

a. **NYISO's Proposal for Cost Allocation for Regulated Reliability Projects**

81. NYISO and the New York Transmission Owners propose to allocate the costs of transmission projects constructed in response to reliability needs, referred to by NYISO as regulated reliability solutions, based on a three-step approach that focuses on whether a need is a locational need, a statewide need, or a bounded region need.⁸⁴ NYISO states that the needs will be determined in accordance with a reliability standard that requires sufficient resources to ensure that the New York Control Area has a Loss-of-Load-Expectation of less than 0.1 days per year.

82. Under the proposal, step one of the methodology focuses only on those areas within the New York Control Area that have locational capacity requirements (LCRs) for installed capacity - currently New York City and Long Island. The costs of any upgrades in those areas required to satisfy locational reliability requirements are allocated solely to load serving entities in those LCR zones. Step two of the methodology involves the running of the NYISO's reliability simulation model using the "free flow method" - that is, with all internal transmission constraints relaxed - to determine whether an unconstrained New York Control Area would have a Loss-of-Load-Expectation of less than 0.1 days per year. If not, the reliability upgrades necessary to bring the New York Control Area within the reliability threshold would be allocated to all load zones based on their contribution to the coincident peak load. The LCR zones receive credit for meeting their locational capacity requirements under this allocation. In the calculation of the load-ratio share, the localized upgrades that the ratepayers in the LCR zones already have paid for are used to offset those zones' total cost responsibility for these types of statewide reliability upgrades. If step two is invoked, the cost allocation process will end with this step.

83. If step two demonstrates no reliability needs using the free flow method, then NYISO would move to step three - the application of the binding interface test. Step

⁸⁴ Amended section 14.2 of Attachment Y. NYISO states that costs related to non-transmission projects constructed in response to reliability needs will be recovered by transmission owners and other developers in accordance with the provisions of state law. Section 13.6 of Attachment Y.

three identifies binding transmission constraints that are preventing sufficient capacity from being deliverable throughout the New York Control Area. Under this step the NYISO would run the binding interface test, once again accounting for any compensatory MWs added in step one, and determine what zones were within bounded regions (i.e., those zones with binding interfaces as determined by the binding interface test). The NYISO would resolve any identified issues by adding compensatory MWs to the bounded region that has the greatest impact on reducing the Loss-of-Load-Expectation. The NYISO would iteratively run the binding interface test, determining new bounded regions as applicable, and add additional compensatory MWs to the bounded regions based on greatest New York Control Area Loss-of-Load-Expectation reduction on a per MW basis until sufficient compensatory MWs are added for the New York Control Area to reach 0.1 Loss-of-Load-Expectation. The compensatory MWs are allocated to the applicable bounded regions, isolated as a result of the constrained interface limits, based on their New York Control Area coincident peaks.

84. The NYISO and the New York Transmission Owners propose a new Rate Schedule 10 establishing a reliability facilities charge to recover costs associated with transmission projects constructed in response to reliability needs. Schedule 10 provides that each transmission owner shall have on file at the Commission the rate treatment that will be used to derive and determine the revenue requirement to be included in the reliability facilities charge collected by NYISO. For transmission owners other than LIPA, construction of a regulated reliability solution will commence once the applicable transmission owner receives all necessary federal, state, and local approvals, including Commission acceptance of the rates associated with the project.

85. Upon completion of the project, either the transmission owner or the NYISO will make an informational filing with the Commission to provide the final project cost and resulting revenue requirement, and cost recovery will commence upon the making of an informational filing under the formula set forth in section 3.0 of Rate Schedule 10. According to NYISO, that formula involves a four-step process under which total costs are determined for each zone and then allocated to Load Serving Entities (LSEs) within those zones. Step one involves the allocation of total dollars associated with each transmission reliability upgrade to each zone in accordance with the methodology set forth in section 14.2 of Attachment Y based on MWs. Step two requires the calculation of a per-MWh rate for each zone (by dividing the aggregate monthly dollars allocated to that zone by the aggregate monthly withdrawals for that zone). Step three involves the calculation of a monthly charge for each LSE in each zone, while step four involves the

calculation of a monthly charge for each LSE across all zones based on each LSE's MWh withdrawals. The resulting charge is imposed on a per MWh basis.⁸⁵

86. NYISO states that the process is similar for LIPA, except that the rate recovery will be accomplished in two steps. First, the costs of LIPA projects to be allocated to customers in the Long Island Transmission District will be collected by LIPA directly from those customers and will be filed as part of the NYISO tariff for informational purposes only. This tracks the manner in which the transmission service charge under Attachment H of the NYISO OATT is currently collected as applied to LIPA customers. Second, to the extent that costs of a LIPA regulated transmission upgrade are allocable to customers outside of the Long Island Transmission District, the NYISO will file those costs for Commission review under the same comparability standard as is applied to review of changes in LIPA's transmission service charge under Attachment H. LIPA will intervene in support of such filings at the Commission and will be responsible for resolving all concerns that might be raised in related proceedings. These costs will be recovered pursuant to a separate reliability facilities charge for LIPA under the NYISO tariff.

87. Finally, proposed Rate Schedule 10 specifies that the reliability facilities charge will be the mechanism under which the costs of alternative regulated transmission reliability solutions will be recovered by either a transmission owner or other developer.

88. The NYISO and the New York Transmission Owners request that the Commission grant these proposed amendments an effective date of June 18, 2008, the date on which they were filed. NYISO also states that the cost allocation formula will be applicable to all regulated reliability projects triggered prior to January 1, 2016, and will be revisited in the NYISO's stakeholder process prior to its expiration. The NYISO will make a filing before the expiration date to continue this methodology or to submit an alternative for the Commission's consideration.

i. Commission Review of Cost Allocation

(a) Protests/Comments

89. The NYPSC requests that the Commission indicate its intent to review and approve the final costs and resulting revenue requirements for regulated reliability

⁸⁵ NYISO states that some parties believe that a per MW charge is a superior cost recovery methodology and others do not. NYISO has expressed its willingness to analyze the costs and resources required to implement a per MW charge and to bring this issue back to the stakeholder process for discussion.

transmission projects before those costs are recovered from ratepayers.⁸⁶ The NYPSC also states that, while the recovery of reasonably-incurred costs is appropriate, it is inappropriate to allow recovery of those costs without first determining that they are reasonable. The NYPSC argues that the Commission must indicate that the underlying project costs and resulting revenue requirement will be subject to the Commission's review and approval prior to cost recovery. NYAPP agrees that increasing rates based on informational filings submitted by the New York Transmission Owners is inappropriate in light of the Commission's statutory duty to determine what rates and charges are just and reasonable.

90. The New York Transmission Owners disagree, arguing that the Commission may authorize use of a formula rate and the formula itself constitutes the rate, not the varying charges that result from the implementation of the formula. They also state that the reliability facilities charge also specifically provides for the ongoing collection by NYISO of backstop reliability transmission project costs from the LSE's in service areas benefited by the projects and the reliability facilities charge states that each transmission owner shall have on file at the Commission the rate treatment that will be used to derive and determine the revenue requirement for each project whose costs will be included in the reliability facilities charge.⁸⁷ Thus, according to the New York Transmission Owners, the reliability facilities charge together with the individual transmission owner tariff provisions that set forth the parameters to be utilized in determining the individual project revenue requirements create a formula rate mechanism. The New York Transmission Owners argue that parties have the right to challenge such rate formulas under section 206 of the FPA. The New York Transmission Owners further argue that NYISO's proposal is appropriate given that a regulated backstop transmission solution to reliability problems will only go forward after the market has failed to produce sufficient solutions, after interested parties have had time to discuss such projects, and after all necessary federal, state, and local approvals, including Commission acceptance of the reliability facilities charge and the individual transmission owner's revenue requirement formula for individual project costs.

(b) Commission Determination

91. We find that NYISO's proposed cost allocation methodology for transmission projects constructed in response to reliability needs is consistent with the requirements of the cost allocation principle stated in Order No. 890 as it applies to the planning activities

⁸⁶ Citing the NYISO/NYTO Reliability Agreement, Attachment V to the June 18, 2008 filing.

⁸⁷ Section 2 of Rate Schedule 10.

performed by NYISO. Responsible transmission owners, transmission owners, and other developers will be entitled to full recovery of all reasonably incurred costs, including a reasonable return on investment and any applicable incentives, related to the development, construction, operation and maintenance of regulated reliability projects, including gap solutions, undertaken pursuant to section 9.4 of this Attachment Y. We are approving tariff provisions establishing “formula rates.” The Commission has encouraged public utilities to explore the benefits of filing transmission-related formula rates.⁸⁸ Further, the Commission has found that the use of formula rates encourages the construction and timely placement into service of needed transmission infrastructure.⁸⁹

92. With respect to the NYPSC’s request that the underlying project final costs and resulting revenue requirement of regulated reliability transmission projects be subject to the Commission’s review and approval prior to recovery from ratepayers, we note that Schedule 10, section 2.0, of the proposed tariff requires each transmission owner to make a section 205 filing at the Commission detailing the rate treatment that it will use to determine the revenue requirement to be included in its reliability facilities charge. Until the Commission approves each individual transmission owner’s rate determination, NYISO will not be able to recover costs under Schedule 10. Even after such approval, market participants will be free to file a complaint with the Commission at any time regarding the specific inputs into the formula rates.

93. In approving any formula rate, the Commission approves the formula itself, the algebraic equation used to calculate the rates. It does not approve the inputs into the formula or the charges resulting from the application of the inputs to the algebraic equation. The courts have recognized that section 206 permits customers to challenge formula rates.⁹⁰ The Commission’s long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at

⁸⁸ See *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 386, citing *Allegheny Power System Operating Companies*, 111 FERC ¶ 61,308, at P 51 (2005); *Allegheny Power System Operating Companies*, 106 FERC ¶ 61,003, at P 32 (2004).

⁸⁹ See *Northeast Utilities Service Company*, 105 FERC ¶ 61,089, at P 23 (2003).

⁹⁰ *Public Utilities Commission of California v. FERC*, 254 F.3d 250, 258 (D.C. Cir. 2001) (“Because relief can be sought pursuant to section 206 in the event a pass through of ... costs results in unjust and unreasonable rates, the Commission’s acceptance of the ISO’s formula rate without additional section 205 filings does not leave the [state public utilities commission] or ratepayers without any statutory recourse.”).

whatever time they discover errors in the inputs to or implementation of the formula.⁹¹ Indeed, customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the rates take effect.⁹²

94. Consistent with our decision in *VEPCO*,⁹³ any challenge to the projected or final costs or resulting revenue requirements and reliability facilities charges under Rate Schedule 10 would not require the complainant to bear the ultimate burden of proof. Rather, NYISO continues to bear the ultimate burden of proof, i.e., to demonstrate the justness and reasonableness of the charges resulting from application of the formula rate.

ii. Consistency Between Sections 13.6 and 16.0c

(a) Protests/Comments

95. CPV notes that section 13.6 of the proposed Attachment Y provides that non-transmission projects constructed in response to reliability problems will be recovered pursuant to applicable state law and, as revised in its June 18, 2008 filing, also states that “nothing in this section shall affect the Commission’s jurisdiction over wholesale sales.” CPV further notes that section 16.0c of proposed Attachment Y similarly refers to recovery of costs for such non-transmission projects in accordance with state law, but fails to include language protecting the Commission’s jurisdiction over wholesale sales.

⁹¹ *North Carolina Electric Membership Cooperative v. Carolina Power & Light Co.*, 57 FERC ¶ 61,332, at 62,065 (1991) (rejecting the utility’s efforts to limit the period of review to the prior 12 months by stating “[w]hile prompt identification of disputes is certainly a reasonable goal to strive for, the Commission cannot allow utilities to recover excessive rates through automatic adjustment clauses because the customer did not complain in as prompt a manner as the company believes the customer should have.”). The Commission has held repeatedly that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate. *See Appalachian Power Co.*, 23 FERC ¶ 61,032, at 61,088 (1983); *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005); *Quest Energy, L.L.C. v. The Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 21 (2004).

⁹² *See, e.g., Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992) (allowing review of potentially imprudent costs charged to customers in prior-year formula rates).

⁹³ *Virginia Electric Power Co.*, 123 FERC ¶ 61,098, at P 47 (2008) (*VEPCO*).

CPV requests that NYISO be directed to include in section 16.0c the same language in section 13.6 regarding the Commission's jurisdiction over wholesale sales.

96. The NYISO states that it does not object to including the language requested by CPV in section 16 to parallel the language in section 13.6.

(b) Commission Determination

97. We agree with CPV that the Commission retains primary jurisdiction over the rates and charges for or in connection with both the transmission and sale of electric energy subject to jurisdiction of the Commission. Therefore, we will require NYISO to amend both Section 13.6 and Section 16.0c to provide that nothing in those sections shall affect the Commission's jurisdiction over both the transmission and sale of electric energy subject to jurisdiction of the Commission.

iii. MW-based Charge vs MWh Charge

(a) Protests/Comments

98. Niagara Mohawk and Multiple Intervenors argue that a disconnect exists between NYISO's proposed cost allocation and cost recovery for regulated reliability solutions. They argue that under NYISO's proposal, costs are allocated to load zones using a MW charge based on the zonal contribution to New York Control Area coincident peak load, while costs are recovered by load serving entities using a MWh charge based on aggregate monthly withdrawals. Niagara Mohawk and Multiple Intervenors argue that NYISO should use a MW based charge for both cost allocation and cost recovery. They also state that revising the reliability facilities charge to be allocated on a MW basis would be consistent with the manner in which costs are recovered from load serving entities for their installed capacity cost obligations. Niagara Mohawk and Multiple Intervenors request that the Commission require NYISO to modify the proposed Schedule 10 to implement a MW-based reliability facilities charge by January 1, 2009, at the latest. In the alternative, these protestors argue that NYISO should be directed to perform an analysis of the costs and resources required to implement a MW charge and to bring this issue back to the stakeholder process for resolution as to whether or not the NYISO should re-file the reliability facilities charge as a demand charge within a short time period, such as no later than October 1, 2008.

99. In their answers, NYISO, LIPA and the Upstate NY Utilities contend that a MWh-based charge for cost recovery is appropriate. NYISO further explains that the proposed MWh-based mechanism used in the reliability facilities charge is consistent with the cost recovery mechanism used by the transmission service charge and the NYPA Transmission Adjustment Charge, that recover the embedded costs of the existing transmission facilities owned by the transmission owners. Additionally, NYISO contends that there is nothing inherently objectionable about high load factor customers paying

more than low load factor customers. NYISO explains that such a cost recovery mechanism avoids potential unreasonable cost shifts that would be realized under a MW-based charge if a customer happens to consume a minimal amount of power during the monthly peak. NYISO also states that it is not technically feasible for the NYISO to implement a MW-based reliability facilities charge, because implementation of such a MW-based charge would require NYISO to reconfigure its billing software (currently constructed to perform all cost allocations authorized by the NYISO OATT as well as the reliability facilities charge calculations on a MWh basis) at a significant cost with benefits limited to only the allocation of the reliability facilities charge and only if a regulated transmission reliability backstop project would ever be invoked. In addition, NYISO states that the reference to the capacity cost allocation methodology is unavailing; even though both capacity costs and the reliability facilities charge are allocated to load, those allocations are performed differently. NYISO explains that the allocation of capacity costs is based on transmission districts, while the reliability facilities charge allocation is based on load zones. For this reason, the processes and systems in place to support the ICAP market are inadequate to support a reliability facilities charge based on MWh. Finally, NYISO responds that it has held all along that it is willing to entertain the MW-based and MWh-based charge issue back to its stakeholder process for reconsideration.

100. In their answer, Niagara Mohawk and Multiple Intervenors argue that, because the cost allocation for the reliability facilities charge is radically different than the transmission service charge, the NYISO's assertion that cost recovery under each charge should be the same is fundamentally flawed on its face.

(b) Commission Determination

101. We will accept NYISO's proposal to recover charges for regulated reliability solutions on a MWh basis. As NYISO notes, calculating the reliability facilities charge on a MWh basis is consistent with the calculation of the transmission service charge, which recovers transmission costs for the existing bulk power transmission facilities in the New York Control Area on a MWh basis. Both the existing and new transmission facilities provide reliability to the New York transmission system. We have previously found a MWh-based rate to be just and reasonable for existing transmission facilities, and Niagara Mohawk and Multiple Intervenors have not convinced us that it would be unreasonable to recover the costs for new transmission facilities on a per MWh basis. However, we note that NYISO has committed to exploring this issue further with its stakeholders. Our finding here is without prejudice to either NYISO's right to file a revised methodology in the future or any party's right to challenge the reasonableness of the MWh methodology under section 206.

b. NYISO's Proposal for Selection of and Cost Allocation for Regulated Economic Projects

102. NYISO proposes a separate methodology in section 15 for allocating and recovering costs associated with economic transmission projects constructed to resolve congestion identified through the CARIS. In order for a project to be eligible for cost allocation and recovery, it must satisfy several threshold requirements. First, the benefit of the proposed project must exceed its cost. The benefit metric for eligibility will be expressed as the present value and annual New York system-wide production cost savings that would result from the implementation of the proposed project, measured for the first ten years from the project's proposed commercial operation date. Likewise, the cost metric, to be supplied by the project's developer, will be expressed as the present value and annual total revenue requirement for the project, allocated over the first ten years from the project's proposed commercial operation date. Second, the total capital cost of the project must exceed \$25 million. Third, a supermajority of the project beneficiaries must support the project. NYISO defines supermajority as 80 percent or more of the project's identified beneficiaries, weighted in accordance with each beneficiary's share of the total project benefits. Finally, NYISO's proposal requires Commission approval of an economic transmission project's cost in order for the project to achieve eligibility for cost allocation and recovery under NYISO's Attachment Y.

103. NYISO states that general principles of cost allocation for economic projects were agreed to and are captured in section 15 of Attachment Y. These principles state that NYISO will identify the project's beneficiaries over a ten-year time period commencing with the project's proposed commercial operation date. To identify beneficiaries, NYISO will measure the present value and annual LBMP load savings for all load zones which would have a load savings, net of reductions in transmission congestion credit payments, and bilateral contracts (based on available information) as a result of the implementation of the proposed project. The beneficiaries will be those load zones who experience net benefits measured over the first ten years from the proposed commercial operation date for the project.⁹⁴ For each load zone that would experience a benefit, NYISO will allocate the cost of the project to load based on share of total savings.⁹⁵ Within zones, costs will be allocated to LSEs based on each load's MW of consumption.⁹⁶

⁹⁴ Section 15.4.b of Attachment Y.

⁹⁵ The NYISO, in conjunction with the ESP Working Group, will develop procedures to allocate the risk of project cost increases that occur after the NYISO completes its cost/benefit analysis.

⁹⁶ Section 15.4.d of Attachment Y.

i. Cost Allocation**(a) Protests/Comments**

104. The NYPSC states that section 15 of Attachment Y that describes cost allocation for economic planning proposal contains only broad outlines; thus, the NYPSC argues that section 15 should be remanded to NYISO and its stakeholders for further consideration.

(b) Commission Determination

105. In Order No. 890, the Commission directed transmission providers to develop cost allocation methodologies for projects not already subject to existing rate mechanisms and to clearly define those cost allocation methodologies so that participants seeking to support new transmission investment can have certainty regarding cost allocation.⁹⁷ NYPSC argues that NYISO's economic planning process is incomplete in that it only describes the general principles and does not identify the actual cost allocation methodology that will be used for economic transmission projects. We find that NYISO's proposal has clearly identified its approach to identifying the projects eligible for cost allocation, which will be based on comparing the production cost benefit metric of a project to the project's costs over a period of 10 years. We will address the protests raised about eligibility for cost allocation below.

106. However, NYISO has not fully explained all the details of the actual cost allocation methodology, such as the method that NYISO will use to model the impact of a certain project (e.g. power transfer distribution factor or some other method) and whether cost allocation will be based on actual or hypothetical uses of facility. We, therefore, direct NYISO to file a detailed methodology for allocating the cost of eligible transmission projects constructed in response to congestion identified in the CARIS, consistent with the requirement of Order No. 890, no later than 90 days after the issuance of this order.

⁹⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 558; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

ii. Eligibility for Cost Allocation**(a) Production Cost Metric****(1) Protests/Comments**

107. The Upstate NY Utilities argue that using a production cost metric to allocate the costs of economic transmission projects will understate the value of those upgrades to customers. The Upstate NY Utilities argue that changes in production costs do not capture the entirety of economic benefit and that payments to load should also be included as a metric. The Upstate NY Utilities also claim that it is inappropriate to exclude reductions in capacity payments in a benefit analysis because capacity costs have a substantial impact on the overall charges assigned to New York ratepayers.

108. Downstate TOs argue that the details of additional metrics addressed in the economic planning proposal, i.e. LBMP, generator payments, capacity costs, need to be further developed.

109. In its answer, NYISO explains that the use of production costs is appropriate because it examines a project's total benefits on the entire system. NYISO also states that capacity costs should not be a component of the benefit metric, because NYISO currently has no long-term capacity cost measure with which to perform such an analysis. NYISO adds that approximately half of the capacity procured in New York is under bilateral contracts, the terms of which may not be available to the NYISO. Finally, NYISO argues that capacity payments at the time of the calculation would not be an accurate metric for the study period, because there could be many reasons why capacity payments may change significantly in the future.⁹⁸

(2) Commission Determination

110. We find that NYISO's proposal to use a production cost metric to evaluate economic projects is just and reasonable. The total economic benefit of an expansion is

⁹⁸ For example, under its market rules, NYISO files to revise the capacity demand curves every three years, which may significantly affect the prices paid to capacity suppliers. Further, the New York State Reliability Council (NYSRC) reviews – and may change -- the statewide installed reserve margin on an annual basis. Finally, changes in load demand for electricity, along with the entrance and exit of generation and other resources from the market will also impact the level of future capacity payments. Because of this constantly changing landscape, capacity payments at the time of the calculation would not be an accurate metric for the study period.

equal to the change in the sum of the total producer benefit and the total consumer benefit resulting from the construction of the contemplated transmission project. Contrary to the assertion of the Upstate NY Utilities, changes in production costs resulting from a transmission project measures a project's total benefits on the entire system, i.e. the change in the difference between the value of the electricity to consumers and the real resource costs incurred by suppliers to produce the electricity.⁹⁹

111. We disagree with Upstate NY Utilities that it is necessary to consider separately the effect of a project on the energy payments made by loads; considering separately the effects on load payments will not accurately measure the net economic effect of the project on the market as a whole, because it does not consider the effects of the project on generator revenues.¹⁰⁰ The benefit to the system from the project comes from the fact

⁹⁹ To explain this, consider the following example. Suppose that consumers are completely insensitive to price, and thus, will consume the same amount of electricity regardless of the price that they are charged. And suppose that consumers in NYISO will consume an average of 100,000 MWhs of electricity per hour. So if a new transmission project is built, consumers will continue to consume the same 100,000 MWhs per hour and the value of this electricity to them will not be affected by the project. But the project may reduce the real resource costs incurred by suppliers to produce the electricity. The net system benefit of a project—i.e. the project's total benefits on the entire system—is the reduction in the net real resource cost of meeting NYISO's demand. Suppose that consumers are willing to pay \$1000/MWh for electricity that they consumed. That means that the total value of their 100,000 MWhs per hour of consumption would be \$100 million per hour (i.e., \$1000/MWh x 100,000 MWh). Suppose that, prior to building the transmission project, the production costs incurred by suppliers to meet this demand was equal to \$15 million per hour. That would mean that the net system benefit of producing the 100,000 MWhs per hour would be \$85 million (i.e., \$100 million - \$15 million). Now, suppose that building the transmission project would allow NYISO to dispatch lower-cost generators to meet demand, so that the cost of meeting the demand would fall to \$12 million per hour – a reduction of \$3 million. That means that the net system benefit per hour of producing the electricity is now \$100 million - \$12 million = \$88 million. That is, the net system benefit of producing electricity has increased from \$85 million per hour to \$88 million, which is a \$3 million per hour increase. That \$3 million increase in benefits is entirely attributable to the reduction in production costs created by the transmission project; so, the system benefit of the project is the \$3 million reduction in production costs.

¹⁰⁰ The effect of a transmission project on load's energy payments (net of revenues from holding TCCs) will generally be offset by the effect on generator revenues. That is, when a project reduces load's net energy payments, generators will suffer a comparable

(continued...)

that the production costs of serving load will decrease – cheaper energy from the exporting areas can flow into congested importing areas, displacing more expensive resources under least cost security constrained dispatch.

112. However, we will require NYISO to make a compliance filing explaining two issues pertaining to calculation of benefits and costs. First, in its filing, NYISO states that to identify beneficiaries, it will measure “the present value and annual LBMP load savings” for all load zones which would have a load savings, net of reductions in TCC payments. This statement does not make it clear whether NYISO will be (1) comparing the total present value of benefits incurred over a ten year period to the total amount of costs or (2) comparing the benefits and the costs for each year. We will require NYISO to make a compliance filing to clarify this.

113. Second, under NYISO’s supermajority voting regime, market participants responsible for funding such projects could consider metrics in addition to production cost savings.¹⁰¹ We agree with Downstate TOs that NYISO has not provided the details of the additional metrics it has committed to develop. For market participants to be given an opportunity to consider multiple metrics in their voting decisions, those metrics must be fully developed and clearly explained. NYISO is directed to submit, within 90 days of the date of this order, an explanation how such metrics will be calculated, weighed and/or

reduction in energy revenues (at least to the extent that the project does not affect the total amount of energy purchased by loads).

¹⁰¹ For informational purposes, NYISO will calculate the present value and annual total revenue requirement for the project over a 30 year period. Additionally, section 15.3(f) provides that “In addition to the metrics used in its benefit/cost analysis, the NYISO will work with the ESP Working Group to consider the development and implementation of additional metrics, for information only, that estimate the potential benefits of the proposed project. These additional metrics shall include those that measure reductions in LBMP load costs, changes to generator payments, ICAP costs, Ancillary Service costs, emissions costs, losses and TCC payments. Consideration of these additional metrics will take into account the overall resource commitments of the NYISO.” Section 15.3(g) provides that “[i]n addition to the benefit/cost analysis performed by the NYISO under this section 15.3, the NYISO will work with the ESP Working Group to consider the development and implementation of scenario analyses, for information only, that shed additional light on the cost and benefit of a proposed project. These additional scenario analyses may cover fuel and load forecast uncertainty, emissions data and the cost of allowances, pending environmental or other regulations, and alternate resource and energy efficiency scenarios. Consideration of these additional scenarios will take into account the annual resource commitments of the NYISO.”

combined. This is especially important in light of the apparent disagreement between NYISO and the Upstate NY Utilities over whether and how to consider the impact of capacity costs. In its answer, NYISO argued against incorporating capacity costs as one of the primary components of the benefit metric, and yet, its tariff commits NYISO to supply capacity cost data for “informational purposes.” It is not clear how such “informational” data would be collected and what role it would play in the planning process.

(b) **Cost/Benefit Multiplier**

(1) **Protests/Comments**

114. PSEG argues that NYISO’s proposal is too lenient in that it does not establish a cost/benefit multiplier. Under NYISO proposal, if a transmission facility is projected to produce 1 additional dollar of benefits over its costs, the project passes the cost/benefit analysis. PSEG argues that the Midwest ISO and PJM have adopted cost/benefit multipliers, whereby the benefits must exceed the costs by a certain ratio (in Midwest ISO, this ratio increases as the in-service date for the project increases and ends up at a 3 to 1 ratio; in PJM, it is a flat 1.25 to 1 ratio).

115. In its answer, NYISO argues that it is not necessary to adopt a benefit-cost multiplier for its economic planning process, because its proposal incorporates a supermajority vote requirement, which requires an 80 percent beneficiaries vote in favor of an economic project in order to receive cost allocation under NYISO's tariff. If the project beneficiaries conclude that a project's benefits exceed its costs by too little an amount, NYISO argues that they can take that factor into consideration when casting their vote on the project. In addition, NYISO argues that it will provide to the stakeholders several additional metrics that should help the stakeholder in evaluating projects.

(2) **Commission Determination**

116. We agree with NYISO that the ability of project beneficiaries to vote on potential projects will serve to check-and-balance the costs and benefits of projects subject to cost allocation under NYISO’s tariff. The voting requirement allows identified beneficiaries to conduct their own cost/benefit analyses and determine for themselves whether to support construction of a particular project.

(c) **Cost/Benefit Comparison Period**

(1) **Protests/Comments**

117. Intervenors raise several concerns regarding the period used for comparing costs and benefits of economic projects that will be used by NYISO when allocating the costs

of an economic project. First, Downstate TOs and PSEG object to the length of the proposed planning horizon. They argue that under NYISO's proposal, in certain cases, NYISO would be required to make predictions about fuel costs, load growth and generation up to 20 years into the future. For example, if NYISO identifies in its 2008 plan a project that is needed in 10 years, the benefits of that project would have to be evaluated for the 10 years following the in-service date. Accordingly, NYISO would need to forecast fuel prices, load growth, generation availability and other factors for the next 20 years. Downstate TOs favor a study period to evaluate economic transmission projects that is equivalent to that used in the reliability planning process, i.e. to limit it to 10 years from the start of the planning period (instead of 10 years from the in-service date of the facility). They also argue that discrete economic benefits of a project cannot be quantified when the underlying reliability solutions to be developed in future CRPs have not been identified, and in turn cannot be appropriately modeled in the analysis.

118. Second, Downstate TOs object to the NYISO's proposal to include only the first ten years of a project's costs in its benefits eligibility assessment, although the project's life extends to 30 years. Downstate TOs assert that an assessment to determine an economic transmission project's eligibility for cost allocation should include all project cost estimates over the project life. According to the Downstate TOs, the benefits assessment would be incomplete and could potentially lead to studies finding that projects are eligible for cost allocation although the total costs might exceed the benefits.

119. Third, the Downstate TOs argue that the cost recovery period should be accelerated to be aligned with the study period. For example, if a study period of seven years from the project in-service date to the end of the CRP period provides sufficient benefits to justify the initial project cost, then the recovery period should be seven years. According to the Downstate TOs, matching the benefits and costs is important to approximate the competitive markets, thereby recovering costs within the expected period of benefits. They further state that aligning the recovery and benefit periods will ensure that project costs are paid by its beneficiaries and will mitigate the risks of unrealized benefits.

120. In its answer, NYISO argues that restricting the study period as proposed by Downstate TOs and PSEG could require that the benefits and costs be assessed for as little as one or two years and could potentially understate the longer-term benefits of proposed projects with long lead times. Moreover, NYISO notes that its supermajority voting requirement will allow stakeholders to consider any uncertainties when considering whether certain projects will move forward or not.

121. With regard to the 10-year period of time over which the costs of the project are estimated, NYISO argues that it is reasonable to compare a project's costs and benefits over the same time period in order to allow for a clear match between the two values. Moreover, NYISO notes that it has proposed to provide stakeholders with the total annual

project revenue requirement over an assumed 30-year period, which can provide valuable information in determining whether to vote in favor for a particular project.

122. Finally, NYISO argues against a 10-year cost recovery period, because the Commission typically allows cost recovery over the useful life of a facility, which in the case of transmission facilities is longer than ten years.

(2) **Commission Determination**

123. We recognize PSEG's and Downstate TOs' concerns over using a period for cost/benefit evaluation that does not begin until the in-service date of the project. We acknowledge that predictions about the more distant future can be uncertain. However, any predictions about system conditions are inherently uncertain. Including the first ten years from a project's in-service date provides a sufficient number of years to observe persisting benefits of a transmission proposal; while a shorter period could potentially understate the longer-term benefits of proposed projects and exclude projects with long lead times. However, a longer period allows the uncertainties associated with forecasting variables such as fuel costs, locational demand, and other drivers of energy prices to distort the system model. Thus, determining the appropriate cost/benefit evaluation period is a balancing act intended to provide enough of a horizon to capture a project's persistent long-term benefits without introducing unnecessary forecasting uncertainty. The Commission believes that NYISO's proposed use of a 10-year period that begins with the in-service date of an economic project achieves a reasonable balance.

124. Additionally, transmission projects often require long lead times due to a number of factors, including receiving the necessary permits and rights-of-way. Thus, effectively shortening the timeframe for evaluating the costs and benefits of economic transmission projects could leave stakeholders with an incomplete picture of the viability of economic transmission projects. Rather than shrink the evaluation period to less than 10 years from the project's in-service date, the Commission believes it is better to mitigate the uncertainty of system-condition predictions with bright-line cost-benefit analysis of the metrics and a robust stakeholder process. We find that NYISO has achieved both of these goals. NYISO proposes to evaluate production cost savings over a period of 10 years, ensuring that for the entire cost/benefit evaluation period, project benefits exceed costs. Additionally, NYISO proposes a requirement that a supermajority of the project beneficiaries votes in favor of each proposal before it can go forward,¹⁰² allowing those parties to support or oppose a particular project based on their own view of projected costs and benefits. For these reasons, we find NYISO's planning horizon to be just and reasonable.

¹⁰² We address NYISO's proposed supermajority voting process below.

125. Downstate TOs also object to the NYISO's proposal to include only the first ten years of a project's costs in its benefits eligibility assessment, although the project's annual revenue requirement may be based on a 30-year amortization period. However, as NYISO indicated in its answer, it is reasonable to compare a project's costs and benefits over the same time period in order to allow for a clear match between the two values. NYISO's cost/benefit analysis also only includes the first 10 years of forecasted benefits, which we find to be appropriate when forecasting power markets, as discussed above. It is appropriate that an analysis matches a project's costs and benefits over the same time period. Furthermore, NYISO will supply market participants with information regarding a proposal's annual project revenue requirement over a 30-year period, which a market participant can consider before casting its vote on whether to support a project.

126. Finally, we disagree with the Downstate TOs' proposal to accelerate the cost recovery period to that of the study period used to identify beneficiaries. A cost recovery period that allocates costs over the estimated life of a project is standard industry practice, and Downstate TOs have not shown why project developers should be allowed to obtain anything more advantageous.

(d) **Supermajority voting rule**

(1) **Protests/Comments**

127. The Upstate NY Utilities protest the requirement to have a supermajority vote in favor of a proposed economic transmission project in order for that project to receive cost allocation and recovery under Attachment Y. The Upstate NY Utilities suggest that the supermajority voting regime permits a small minority to block projects for any reason and could nullify the economic planning proposal. They argue that the proposed voting regime allows "free-ridership" by permitting a "customer with, say, 21% of the estimated benefits to block a project that would benefit another [customer] by, say, 79%, with the expectation that the larger-benefiting [customer] would likely move forward with the project anyhow by assuming 100% of the costs outside of the tariff."¹⁰³ Further, the Upstate NY Utilities argue that such a requirement, with the ability to impede transmission development, is at odds with provisions in the Energy Policy Act of 2005¹⁰⁴ that promote transmission development. Instead, the Upstate NY Utilities believe that the correct approach would ensure that all stakeholders "have input in determining the

¹⁰³ Upstate NY Utilities at 7.

¹⁰⁴ Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005).

assumptions used in economic planning studies as well as the costs and benefits of the specific project and cannot be vetoed by a minority (even an interested minority).”

128. Similarly, NYRI argues that under the NYISO’s proposal, a single LSE with 21 percent of the beneficiary load could bring to a halt, by preventing regulated cost recovery, a project that (1) is objectively determined by the NYISO or the Commission to reduce congestion or enhance system reliability and (2) is authorized by the Commission consistent with the criteria in Order No. 679 to receive transmission rate incentives or (3) a project permitted for construction in a national interest electric transmission corridor (NIETC).

129. In its answer, NYISO states that the supermajority voting requirement is the result of careful deliberation in NYISO’s stakeholder process. NYISO asserts that the voting mechanism results in a check-and-balance of the cost viability of a particular project and that the Upstate NY Utilities have provided no evidence that the voting mechanism will thwart the construction of economic transmission projects. Further, NYISO states that if it detects that the super-majority voting mechanism is being used by some stakeholders to improperly undermine projects, it will take appropriate steps at that time. In addition, it states that there are general avenues for redress for anyone who believes that some entities are abusing the super-majority process, including the dispute resolution procedures contained in Attachment Y, the Commission's dispute resolution service, and a section 206 complaint.

(2) Commission Determination

130. We find that NYISO’s supermajority voting proposal is a reasonable component of NYISO’s economic planning process and that it is a valuable element in the process of selecting those economic transmission projects whose costs should be allocated through the NYISO tariff. The supermajority rule provides a useful check to ensure that a project has net benefits, by requiring that most of those whom NYISO expects to benefit from a project agree that they actually will benefit. Since this is the group of parties that will bear the costs of the project if it goes forward, this group has a particularly strong incentive to ensure that NYISO’s estimate of benefits is accurate. At the same time, market participants remain free to individually or jointly develop projects that have not received super-majority support at their own cost. The Commission accepts NYISO’s commitment to monitor the super-majority voting mechanism to determine if it is being used to improperly undermine projects. We will require NYISO to file a report, for informational purposes, with the Commission after the completion of each economic planning cycle. In that report, NYISO is directed to include the results of each vote on economic projects, the identified beneficiaries, the results of the cost/benefit analysis, and, if vetoed, whether the developer has provided any formal indication to NYISO as to the future development of the project.

131. NYRI's contention that a supermajority voting mechanism "is in direct conflict with" the Commission's incentive rate policy and its backstop transmission siting authority is also without merit. The incentive rate policy provides for the grant of incentive transmission rates to transmission projects that satisfy the criteria of FPA section 219, while the backstop siting authority under FPA section 216 allows the Commission to site transmission lines in designated National Interest Electric Transmission Corridors under specific circumstances. Neither the incentive rate policy nor the backstop siting authority have any bearing on how the costs of economic transmission upgrades should be allocated, or whether those costs can or should be imposed on beneficiaries over their objections.

(e) **Cost Overruns**

(1) **Protests/Comments**

132. Upstate NY Utilities take exception to the NYISO's statement that it will develop, through its stakeholder process, procedures to allocate the risk of project cost increases that occur after NYISO's cost-benefit analysis. Upstate NY Utilities argue that regulators already provide adequate oversight and substantial portions of such costs are outside the control of the developer. Upstate NY Utilities add that substantial portions of the costs of new transmission upgrades, such as labor and materials costs, are mostly outside the control of the developer. The establishment of hard thresholds by NYISO over which actual costs may not be recovered ignores some fundamental issues acting upon the cost of transmission development and will make NYISO assume the role of a regulator. Instead, such judgments must be made on a case-by-case basis under the review of regulators who are best-suited to make the necessary discernments relative to the cause of overruns. On the contrary, PSEG states that treatment of cost overruns should be defined in the NYISO tariff or manuals.

133. In its answer, NYISO states the majority of NYISO's stakeholders support this measure and that therefore such procedures must be incorporated into the NYISO Tariff filed with the Commission.

(2) **Commission Determination**

134. It is premature to address the reasonableness of procedures to allocate the risk of cost overruns at this time, as NYISO has yet to develop or propose such procedures. Upstate NY Utilities may raise any concerns they have regarding those procedures through the stakeholder process as they are being developed and on review at the Commission when they are filed for review. Accordingly, we direct NYISO to file procedures to address the risk of cost overruns as soon as practicable.

10. Recovery of Planning Costs

135. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically addressing that issue after discussing the nine principles that govern the planning process. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals in order to determine whether all relevant parties, including state agencies, have the ability to recover the costs of participating in the planning process. The Commission also suggested that transmission providers consider whether mechanisms for regional cost recovery may be appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.¹⁰⁵

a. NYISO's Filing

136. NYISO states that the costs of performing "core" economic studies, i.e., the studies that will be included in the development of the CARIS (three studies per cycle as noted above), will be recovered from all Transmission Customers under Rate Schedule 1 of the OATT. NYISO also states that the costs of any other congestion and resource integration studies performed by NYISO at the request of market participants, including the analysis, will be paid by the requesting entity.

b. Protests/Comments

137. No protests or comments were filed.

c. Commission Determination

138. We find that NYISO's OATT and agreements provide all relevant parties, including state agencies, with the ability to recover the costs of participating in the planning process. NYISO's costs associated with implementation of the transmission planning process and associated studies are recovered under Schedule 1.¹⁰⁶

The Commission orders:

(A) NYISO's compliance filings are hereby conditionally accepted effective December 7, 2007 and June 18, 2008, as discussed in the body of this order.

¹⁰⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

¹⁰⁶ Section 3.0.e of Attachment Y.

(B) NYISO is hereby directed to submit a compliance filing, within 90 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.