148 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

New York Independent System Operator, Inc. Docket Nos. ER13-102-001
ER13-102-002
ER13-102-004

ORDER ON REHEARING AND COMPLIANCE

(Issued July 17, 2014)

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1. On April 18, 2013, the Commission issued an order accepting, subject to modifications,[1] the New York Independent System Operator, Inc.'s (NYISO) and the New York Transmission Owners'[2] (together, Filing Parties) compliance filing made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.[3]

2. On May 17, 2013, Independent Power Producers of New York, Inc. (IPPNY), Multiple Intervenors, and Pace Energy and Climate Center (PACE) jointly submitted a timely request for clarification or rehearing of the First Compliance Order.[4] LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively LS Power) also submitted a timely request for clarification of the First Compliance Order.[5]

3. On October 15, 2013, the Filing Parties jointly submitted, pursuant to section 206 of the Federal Power Act (FPA),[6] revisions to Attachment Y of the NYISO Open Access

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[1] *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013) (First Compliance Order).

[2] The New York Transmission Owners comprise Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company d/b/a the Long Island Power Authority (the Long Island Power Authority), New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc. The Filing Parties note that the Long Island Power Authority and New York Power Authority, as transmission owners not subject to the Commission's jurisdiction under section 205 of the Federal Power Act (FPA), have voluntarily participated in the development of the Filing Parties' filing.

[3] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

[4] We note that, while Pace joined in IPPNY's and Multiple Intervenors' request for clarification and rehearing, Pace initially intervened and participated in the proceeding jointly with Sustainable FERC Project and Natural Resources Defense Council as Public Interest Organizations.

[5] LS Power Transmission, LLC and LSP Transmission Holdings, LLC initially intervened and participated with Pattern Transmission LP; however, Pattern Transmission LP did not seek rehearing.

[6] 16 U.S.C. § 824e (2012).

Transmission Tariff (OATT) to comply with the First Compliance Order. For the reasons discussed below, we grant in part and deny in part rehearing and accept the Filing Parties' proposed OATT revisions, subject to conditions, and direct the Filing Parties to submit further revisions to the NYISO OATT in a further compliance filing due within 60 days of the date of issuance of this order.[7]

I. Background

4. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890[8] to require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

5. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

6. On October 11, 2012, the Filing Parties filed revisions to Attachment Y of the NYISO OATT to comply with the local and regional transmission planning and cost

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[7] We note that the same or similar issues are addressed in the following orders that have been issued: *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,198 (2014); *PacifiCorp*, 147 FERC ¶ 61,057 (2014); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014); *S.C. Elec. & Gas Co.*, 147 FERC ¶ 61,126 (2014); *Louisville Gas & Elec. Co.*, 147 FERC ¶ 61,241 (2014); and *Maine Pub. Serv. Co.*, 147 FERC ¶ 61,129 (2014).

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

allocation requirements of Order No. 1000.[9] On April 18, 2013 the Commission accepted the Filing Parties' compliance filing, subject to further modifications.[10]

II. Request(s) for Rehearing or Clarification – Docket No. ER13-102-001

7. IPPNY, Multiple Intervenors, and PACE requested clarification or rehearing of the provisions of the First Compliance Order regarding NYISO's consideration of non-transmission alternatives proposed as solutions both to reliability transmission needs and transmission needs driven by public policy requirements. LS Power Transmission, LLC requested clarification of the Commission's findings on NYISO's evaluation of whether a transmission developer is eligible to develop a project as a solution to an identified transmission need, the requirement that a transmission developer with an existing right-of-way must indicate whether it would incur any incremental costs in connection with placing new and additional facilities on such rights-of-way, and issues regarding cost recovery. The Filing Parties submitted an answer to the above requests for rehearing and clarification.

III. Compliance Filing – Docket Nos. ER13-102-002 and ER13-102-004

8. In response to the First Compliance Order, the Filing Parties have submitted further revisions to Attachment Y of the NYISO OATT, as well as conforming revisions to NYISO's Market Administration and Control Area Services Tariff (Services Tariff), to comply with the Commission's requirements in the First Compliance Order, including modifications regarding the regional transmission planning process requirements, the requirement to consider transmission needs driven by public policy requirements, the nonincumbent transmission developer reforms, and the regional cost allocation reforms. The Filing Parties indicate that NYISO held twelve joint stakeholder meetings of the Interregional Planning Task Force and the Electric System Planning Working Group. They explain that interested parties were encouraged to submit comments for consideration throughout the process and numerous parties provided input into the review and development of the compliance proposal.[11] The Filing Parties request an effective date of January 1, 2014 for the proposed revisions.

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[9] NYISO, Compliance Filing, Docket No. ER13-102-000, (filed October 11, 2012) (October 11, 2012 Compliance Filing).

[10] First Compliance Order, 143 FERC ¶ 61,059.

[11] NYISO, Compliance Filing, Docket No. ER13-102-002, Transmittal at 1-2 (filed Oct.15, 2013) (October 15, 2013 Compliance Filing).

9. On July 2, 2014, in Docket Number ER13-102-003, NYISO requested to defer the proposed effective date of the proposed revisions to its reliability and economic transmission planning processes to January 1, 2016.[12] In addition, NYISO requested that the OATT revisions for the public policy planning process become effective on the date the Commission issues its order on the changes proposed in the October 15, 2013 Compliance Filing. On July 3, 2014, NYISO submitted a supplemental ministerial filing to provide redline versions of the OATT and Services Tariff sections.[13]

10. Notice of Filing Parties' compliance filings was published in the *Federal Register*, 78 Fed. Reg. 63,175 (2013), with interventions and protests due on or before November 14, 2013. Notice of NYISO's request to defer the effective date proposed in the October 15, 2013 Compliance Filing was published in the *Federal Register*, 79 Fed. Reg. 41,268 (2013), with interventions and protests due on or before July 14, 2014.

11. LS Power and NextEra Energy Resources, LLC filed protests to the October 15, 2013 Compliance Filing regarding the regional transmission planning requirements and the evaluation process for transmission proposals for selection in the regional transmission plan for purposes of cost allocation. Multiple Intervenors and IPPNY, jointly, and Entergy Nuclear Power Marketing, LLC, filed protests to the October 15, 2013 Compliance Filing regarding the regional transmission planning requirements and the regional public policy cost allocation method. The New York State Public Service Commission and the New York Transmission Owners filed protests regarding the proposed public policy transmission planning process. The Long Island Power Authority proposed amendments to NYISO's OATT regarding the Long Island Power Authority's jurisdictional responsibilities on Long Island. The Filing Parties and NextEra Energy Resources filed answers to various comments and protests.

12. LS Power and IPPNY filed protests to NYISO's July 3 Filing regarding NYISO's request to defer the proposed effective date of the proposed changes in the October 15, 2013 Compliance Filing.

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[12] NYISO, Request to Defer Effective Date of Compliance Tariff Revisions, Docket No. ER13-102-003 (July 2, 2014).

[13] NYISO, Supplement to Request to Defer Effective Date of Compliance Tariff Revisions, Docket No. ER13-102-004 (July 3, 2014) (July 3 Filing).

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

15. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2013), prohibits an answer to a request for rehearing. Accordingly, NYISO's answer to the requests for rehearing is hereby rejected.

16. We note the Filing Parties' compliance filing includes tariff provisions submitted on July 10, 2013 in Docket Nos. ER13-1957, ER13-1960, ER13-1946, ER13-1926, ER13-1942, and ER13-1947 to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000. The tariff records the Filing Parties submitted in their interregional compliance filings are pending before the Commission and will be addressed in a separate order. Therefore, any acceptance of the tariff records in the instant filings that include tariff provisions submitted to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000 is made subject to the outcome of the Commission order addressing the Filing Parties' interregional compliance filing in the relevant dockets.

B. Substantive Matters

17. We deny in part and grant in part the requests for rehearing or clarification, as discussed more fully below. We also find that the Filing Parties' compliance filing partially complies with the directives in the First Compliance Order. Accordingly, we accept the Filing Parties' compliance filing to be effective January 1, 2014, subject to a further compliance filing, as discussed below. We direct the Filing Parties to submit the compliance filing within 60 days of the date of issuance of this order.

1. Overview of NYISO Transmission Planning Process

18. NYISO's regional transmission planning process, the Comprehensive System Planning Process, consists of four components: (1) a local transmission planning process; (2) a reliability transmission planning process; (3) an economic transmission

planning process; and (4) a public policy transmission planning process[14] The Comprehensive System Planning Process, a two-year planning process,[15] begins with the local transmission planning process, during which each Transmission Owner[16] with a transmission district[17] in New York develops a local transmission plan.[18] The reliability, economic, and public policy transmission planning processes stem from the transmission needs and solutions identified and evaluated during the local transmission planning process.[19]

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[14] *See* First Compliance Order, 143 FERC ¶ 61,059 at PP 31-32 & n.41 (citing October 11, 2012 Compliance Filing at 7-10).

[15] October 15, 2013 Compliance Filing at 18.

[16] Transmission Owner is defined in the NYISO OATT as "the public utility or authority (or its designated agent) that owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff." NYISO OATT, Definitions-T § 1.2. Transmission Owner is defined in the NYISO Agreement as "[a]n entity that owns, controls and operates facilities in New York State used for the transmission of Energy in interstate commerce. A Transmission Owner must own, individually or jointly, at least 100 circuit miles of 115 kV or above in New York State and has become a signatory to the ISO/TO Agreement." NYISO Agreement, Art. 1 (Definitions).

[17] Transmission district refers to the "geographic area served by the [i]nvestor-[o]wned Transmission Owners and the Long Island Power Authority, as well as the customers directly interconnected with the transmission facilities of the Power Authority of the State of New York." NYISO OATT, Attachment Y, § 1.20.

[18] October 11, 2012 Compliance Filing at 10-13; *see also* First Compliance Order, 143 FERC ¶ 61,059 at PP 31-32; NYISO OATT, Attachment Y, § 31.2.1. The local transmission plan is defined as the "[l]ocal Transmission Owner [p]lan, developed by each Transmission Owner, which describes its respective plans that may be under consideration or finalized for its own [t]ransmission [d]istrict." NYISO OATT, Attachment Y (New York ISO Comprehensive System Planning Procedures), § 31.1.1 (Definitions).

[19] October 15, 2013 Compliance Filing at 59.

19. To develop local transmission plans, each Transmission Owner that has a transmission district conducts an individual local transmission planning process.[20] Each Transmission Owner must post the planning criteria and assumptions used in its local transmission planning process and allow market participants and other parties to review and comment on the criteria, assumptions, data, and models.[21] Additionally, each Transmission Owner must consider the comments and explain any modifications it makes to its local transmission plan in response to such comments. NYISO reviews each Transmission Owner's local transmission plan to identify any alternative solutions proposed to meet transmission needs driven by reliability needs, congestion, or public policy requirements of the New York Control Area region more efficiently or cost-effectively than solutions proposed in the Transmission Owner's local transmission plan.[22]

20. NYISO then utilizes the local transmission plans in the regional reliability transmission planning process as inputs into the base case of the Reliability Needs Assessment – the process by which NYISO, in consultation with all interested parties, identifies reliability transmission needs over a ten year horizon.[23] NYISO solicits and

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[20] NYISO OATT, Attachment Y, § 31.2.1; *see also* First Compliance Order, 143 FERC ¶ 61,059 at P 46 (referencing the Filing Parties' October 11, 2012 Compliance Filing at 11-12).

[21] October 11, 2012 Compliance Filing at 11-12 (citing NYISO OATT, Attachment Y, § 31.2.1.1.1); *see also* First Compliance Order, 143 FERC ¶ 61,059 at P 46.

[22] NYISO OATT, Attachment Y, § 31.2.1.1.3 (3.0.0).

[23] October 11, 2012 Compliance Filing at 13; *see* NYISO OATT, Attachment Y, § 31.2.3 (3.0.0) (providing that the Reliability Needs Assessment is developed in consultation with all interested parties, reviewed by NYISO's stakeholder committees and the Market Monitoring Unit, and approved by the NYISO Board of Directors). NYISO's Reliability Needs Assessment uses scenario analyses, which take into account load growth, energy efficiency, retirements, and environmental regulations, to identify violations, and potential violations, of reliability criteria developed by the North American Electric Reliability Corporation, Northeast Power Coordinating Council, and the New York State Reliability Council. *See* NYISO, Manual 26: Comprehensive Reliability Planning Process, 4.2 (Develop Scenarios) at 4-5, 4-6 (1.0) (Nov. 20, 2007) (Comprehensive Reliability Planning Process Manual), *available at* http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Planning/CRPPManual120707.pdf.

evaluates solutions proposed to address the Reliability Needs[24] identified in the Reliability Needs Assessment and reports the results of its analyses in the Comprehensive Reliability Plan.[25] For each identified Reliability Need, NYISO solicits: (1) a regulated[26] backstop solution (i.e., a solution that the Responsible Transmission Owner[27] proposes for selection in the regional transmission plan for purposes of cost allocation); (2) alternative regulated solutions (i.e., solutions a nonincumbent Transmission Owner or Other Developer[28] proposes for selection in the regional transmission plan for purposes of cost allocation); and (3) market-based solutions (i.e., solutions a Transmission Owner or Other Developer proposes but not for selection in the regional transmission plan for purposes of cost allocation).[29] NYISO then evaluates the proposed solutions with a

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[24] A Reliability Need is defined in the NYISO OATT as "a condition identified by [NYISO] [during the Reliability Needs Assessment] as a violation or potential violation of one or more Reliability Criteria." NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

[25] *See* First Compliance Order, 143 FERC ¶ 61,059 at P 33 (citing October 11, 2013 Compliance Filing at 12).

[26] The term "regulated" refers to a transmission solution for which the proponent seeks to obtain regional cost allocation. *See* First Compliance Order, 143 FERC ¶ 61,059 at P 32 & n.45; October 15, 2013 Compliance Filing at ii n.8 (explaining that a regulated solution refers to a transmission solution for which the developer is seeking to obtain regional cost allocation through the NYISO OATT or a non-transmission solution for which the developer is seeking to obtain regional cost allocation through the appropriate state agency).

[27] Responsible Transmission Owner is defined as "[t]he Transmission Owner or Transmission Owners designated by [NYISO], pursuant to section 31.2.4.2, to prepare a proposal for a regulated backstop 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 [NYISO] identifies a Reliability Need." NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

[28] Other Developers are defined in NYISO's OATT as "[p]arties or entities sponsoring or proposing to sponsor regulated economic projects, transmission solutions driven by [p]ublic [p]olicy [r]equirements, or regulated solutions to Reliability Needs who are not Transmission Owners. NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

[29] NYISO OATT, Attachment Y, § 31.2.4.3 (providing that NYISO shall "request market based responses from the market place"). According to NYISO's Comprehensive Reliability Planning Process Manual, "market-based project developers obtain revenues

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preference for market-based solutions to remedy reliability transmission needs.[30] If NYISO determines that neither market-based nor regulated proposals can satisfy the reliability needs by the need date, NYISO will decide whether a Gap Solution[31] is necessary and will also request the Responsible Transmission Owner to seek a Gap Solution, which may include generation, transmission, or demand side resources.[32] The results of NYISO's evaluation of proposed solutions are incorporated into the Comprehensive Reliability Plan, which, like the Reliability Needs Assessment, is subject to stakeholder and Market Monitoring Unit review and comment as well as approval by the NYISO Board of Directors (NYISO Board).[33]

21. Following the reliability transmission planning process, NYISO conducts the economic and public policy transmission planning processes.[34] NYISO's economic transmission planning process is a two phase process through which NYISO identifies factors that may produce or increase congestion and evaluates projects proposed to reduce congestion.[35] Specifically, in Phase I, NYISO develops the Congestion Analysis and Resource Integration Study and prepares, with review and comment by interested parties, a draft report that discusses NYISO's assumptions and inputs, and the results of

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through the NYISO's energy and capacity markets, ancillary services sales, and bilateral contracting arrangements." *See* NYISO, Comprehensive Reliability Planning Process Manual at 6-2.

[30] *See* NYISO OATT, Attachment Y, § 31.2.7 (providing that "if [NYISO] determines that a market-based solution will not be available in time to meet a Reliability Need, and finds that it is necessary to take action to ensure reliability, it will state in the [Comprehensive Reliability Plan] that implementation of a regulated solution (regulated backstop or alternative regulated solution) is necessary").

[31] A Gap Solution is defined as "[a] solution to a Reliability Need that is designed to be temporary and to strive to be compatible with permanent market-based proposals. A permanent regulated solution, if appropriate, may proceed in parallel with a Gap Solution." NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

[32] *Id.* § 31.2.10.

[33] First Compliance Order, 143 FERC ¶ 61,059 at P 37 & n.61 (citing NYISO OATT, Attachment Y, § 31.2.6).

[34] *Id.* PP 38-39, 92 n.174.

[35] October 11, 2012 Compliance Filing at 16-17, 41-44.

the analysis.[36] In Phase II, NYISO evaluates specific projects, including market-based or regulated solutions proposed by New York Transmission Owners and Other Developers.[37]

22. In its review of project proposals, NYISO completes a benefit-cost analysis for all types of solutions in coordination with stakeholders and uses a metric that evaluates the cost of the project compared to the total New York Control Area-wide production cost reduction that it would provide.[38] Proposed transmission solutions are eligible to be included in the regional transmission plan for purposes of cost allocation if the proposed project provides benefits in excess of its costs over the ten years from the expected date of service, costs at least $25 million, and receives a positive vote from at least 80 percent of the designated beneficiaries determined on the basis of savings in zonal load payments or location-based marginal pricing.[39]

23. NYISO's public policy transmission planning process includes the identification of transmission needs driven by public policy requirements and the evaluation of transmission solutions proposed to address those transmission needs driven by public policy requirements identified for evaluation. NYISO provides a 60-day period for stakeholders and other interested parties to submit, or NYISO on its own initiative to identify, proposed transmission needs that are being driven by public policy requirements.[40] At the conclusion of the 60-day period, NYISO posts all submittals on its website and submits them to the New York State Department of Public Service and the New York Public Service Commission for consideration. With input from interested parties and NYISO, the New York State Department of Public Service reviews the

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[36] First Compliance Order, 143 FERC ¶ 61,059 at P 39; NYISO OATT, Attachment Y, § 31.3.1 (Congestion Assessment and Resource Integration Study for Economic Planning); NYISO, NYISO Tariffs, MST, Attachment O (Market Monitoring Unit), § 30.4.6.8.5 (7.0.0) (providing that the draft report is reviewed in the NYISO stakeholder process, evaluated by the Market Monitoring Unit, and approved by the NYISO Board).

[37] First Compliance Order, 143 FERC ¶ 61,059 at PP 38-41; NYISO OATT, Attachment Y, § 31.3.2 ([Congestion Assessment and Resource Integration Study] Review Process and Actual Project Proposals) (2.0.0).

[38] NYISO OATT, Attachment Y, §§ 31.3.2.4, 31.5.4.3 (Project Eligibility for Cost Allocation).

[39] *Id.* §§ 31.5.4.3, 31.5.4.6.

[40] *Id.* § 31.4.2.

proposed transmission needs, identifies the transmission needs for which transmission solutions should be requested and evaluated,[41] and issues a written statement with an explanation of why certain transmission needs driven by public policy requirements were identified for further evaluation and why transmission solutions to other suggested transmission needs should not be evaluated.[42]

24. NYISO then provides a 60-day period during which both Transmission Owners and Other Developers may propose specific transmission solutions to address the transmission needs driven by public policy requirements identified for further evaluation.[43] NYISO evaluates the proposed solutions with stakeholder input and prepares a report[44] that identifies the assumptions, inputs, and methodologies that NYISO

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[41] *Id.* § 31.4.2.1. In addition, the New York State Department of Public Service may identify a transmission need driven by a public policy requirement on its own initiative, but must comply with the same submittal requirements as stakeholders (i.e., identify the public policy requirement driving the transmission need and describe how a transmission solution will fulfill that need).

[42] *Id.* § 31.4.2.1. The provision further provides that "[t]he [New York State Department of Public Service] statement identifying the transmission needs for which transmission solutions will be evaluated by [NYISO] may also provide additional criteria for the evaluation of transmission solutions and the type of analyses that it will request from [NYISO]. If the [New York State Department of Public Service] does not identify any transmission needs, it will provide confirmation of that conclusion to [NYISO]. [NYISO] shall post the [New York State Department of Public Service] statement on its website." In addition, NYISO must post the written explanation on the NYISO website. *Id.*

[43] *Id.* § 31.4.3.1. The Filing Parties note that, where a decision by the New York State Department of Public Service on a transmission need driven by public policy requirements is under appeal, the 60-day period will commence after the resolution of the appeal. *See* October 11, 2012 Compliance Filing at 43.

[44] As discussed more fully below in Parts IV.B.2.c and IV.B.3.d, the Filing Parties propose a new term to refer to this report, the Public Policy Transmission Planning Report. Specifically, the Filing Parties propose to define the Public Policy Transmission Planning Report as "[t]he report approved by the [NYISO] Board of Directors pursuant to this Attachment Y on the [NYISO]'s evaluation of all proposed solutions to an identified Public Policy Transmission Need pursuant to Section 31.4.6 and the [NYISO]'s selection of a proposed transmission solution, if any, that is the more efficient or cost effective solution to the identified Public Policy Transmission Need pursuant to Section 31.4.8."

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used, including the results of NYISO's analyses.[45] This report is subject to stakeholder and Market Monitoring Unit review and comment as well as approval by the NYISO Board.[46]

2. Regional Transmission Planning Requirements

25. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan and that complies with the identified transmission planning principles of Order No. 890.[47] The regional transmission planning reforms required public utility transmission providers to consider and select, in consultation with stakeholders, transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related transmission needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.[48]

a. Transmission Planning Region

26. Order No. 1000 required each public utility transmission provider to participate in a transmission planning region, which is a region in which public utility transmission providers, in consultation with stakeholders and affected states, agree to participate for

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NYISO OATT, Attachment Y, §§ 31.1.1 (Definitions), 31.4.10; *see* October 15, 2013 Compliance Filing at 42.

[45] First Compliance Order, 143 FERC ¶ 61,059 at P 99; NYISO OATT, Attachment Y, §§ 31.4.8.2 (ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Public Policy Transmission Need), 31.4.10 (Public Policy Transmission Planning Report). As discussed more fully below in Part IV.B.2.c (Consideration of Transmission Needs Driven by Public Policy Requirements), the Filing Parties propose a new defined term, the Public Policy Transmission Planning Report, which refers to the report, approved by the ISO Board of Directors, on NYISO's evaluation of all proposed solutions to an identified Public Policy Transmission Need and on NYISO's selection of a proposed transmission solution, if any, that is the more efficient or cost-effective solution to the identified need. NYISO OATT, Attachment Y, §§ 31.1.1, 31.4.10.

[46] *Id.* § 31.4.10.

[47] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

[48] *Id.* PP 11, 148.

purposes of regional transmission planning.[49] The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.[50] However, an individual public utility transmission provider cannot, by itself, satisfy Order No. 1000.[51]

27. In addition, Order No. 1000 required public utility transmission providers to explain how they will determine which transmission facilities are subject to the requirements of Order No. 1000.[52] Order No. 1000 also required public utility transmission providers in each transmission planning region to have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region[53] and, thus, become eligible to be allocated costs under the regional cost allocation method.[54] Order No. 1000 also required that each public utility transmission provider include in its OATT a list of all the public utility and non-public utility transmission providers enrolled as transmission providers in the transmission planning region.[55]

i. <u>First Compliance Order</u>

28. In the First Compliance Order, the Commission found that the scope of the NYISO transmission planning region complied with the requirements of Order No. 1000.[56]

29. However, the Commission required the Filing Parties to provide on compliance further information on how NYISO will determine the transmission facilities within NYISO's local and regional transmission planning processes to which the proposed OATT revisions will apply as of the effective date of the Filing Parties' compliance filing (i.e., which transmission facilities are new transmission facilities subject to evaluation or

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[49] *Id.* P 160.

[50] *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

[51] *Id.*

[52] *Id.* PP 65, 162.

[53] Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

[54] *Id.* PP 276-277.

[55] *Id.* P 275.

[56] First Compliance Order, 143 FERC ¶ 61,059 at PP 23-24.

reevaluation within the local or regional transmission planning process after the effective date of the compliance filing) and an explanation of how NYISO will evaluate transmission projects under consideration before such effective date.[57] Further, the Commission directed the Filing Parties to establish in the compliance filing an appropriate effective date, which the Commission explained should coincide with the beginning of NYISO's next reliability transmission planning cycle following the issuance of the First Compliance Order, or an alternative effective date that coincides with a full reliability transmission planning cycle and that is accompanied with an explanation of why the alternative proposed effective date is appropriate.[58]

30. Finally, the Commission required the Filing Parties to file OATT revisions that clearly specify the enrollment process by which entities, including non-public utility transmission providers, make the choice to become part of the NYISO transmission planning region and that include a list of all of the public utility and non-public utility transmission providers that have enrolled as transmission providers in NYISO's transmission planning region.[59]

ii. Summary of Compliance Filing

31. To comply with the Commission's directive to submit an appropriate effective date, the Filing Parties propose that the revisions be effective January 1, 2014. They explain that January 1, 2014 is the start date for the next transmission planning cycle for NYISO's regional transmission planning process.[60] Regarding the transition to the revised regional transmission planning process, the Filing Parties state that NYISO has identified sufficient market-based projects to meet Reliability Needs identified in prior transmission planning cycles and has not previously had to trigger a regulated transmission solution – a transmission solution seeking regional cost allocation – to proceed.[61] Accordingly, they explain that there will be no carry-over of transmission

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[57] *Id.* P 25.

[58] *Id.* P 26.

[59] *Id.* P 27.

[60] October 15, 2013 Compliance Filing at 60.

[61] NYISO's reliability transmission planning process is discussed in greater detail in Part IV.B.2.b (Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Transmission Solutions).

projects being reviewed under the existing transmission planning cycle to the next transmission planning cycle that begins on January 1, 2014.[62]

32. On July 2, 2014, NYISO filed a request that the Commission defer the proposed effective date for the revisions to NYISO's OATT to bring its Comprehensive System Planning Process into compliance with the Order No. 1000 regional transmission planning requirements.[63] NYISO states that its request in the October 15, 2013 Compliance Filing that the OATT revisions become effective January 1, 2014 was conditioned upon the Commission issuing an order accepting the revisions in the first quarter of 2014. NYISO states that the Commission has not yet issued an order on the Filing Parties' October 15, 2013 Compliance Filing. NYISO states that without such order, NYISO lacks clear tariff authority to implement the revised Comprehensive System Planning Process. Under these circumstances, NYISO states that it will proceed under its currently authorized Comprehensive System Planning Process for the 2014-2015 planning cycle to ensure the timely development of solutions to system reliability needs in New York. Accordingly, NYISO requests that the Commission defer the effective date of the compliance revisions that relate to the reliability and economic planning portions of its Comprehensive System Planning Process until January 1, 2016, which is the start date of its next planning cycle. NYISO also requests that the OATT revisions for the new public policy planning portion of its Comprehensive System Planning Process become effective on the date the Commission issues its order substantively accepting the changes proposed in its October 15, 2013 Compliance Filing.

33. The Filing Parties propose to revise Attachment Y to clarify how an interested entity can further participate and enroll in NYISO's transmission planning region. They specify that an interested entity may enroll in NYISO's transmission region to fully participate in NYISO's governance process by becoming a party to NYISO's Independent System Operator Agreement (NYISO Agreement).[64] The Filing Parties also propose to revise Attachment Y to state that any owner of transmission in New York State may become a Transmission Owner in NYISO by (1) satisfying the definition of a transmission owner in the NYISO Agreement and (2) executing the NYISO Transmission Owners Agreement or an agreement with NYISO under terms comparable to the NYISO Transmission Owners Agreement and turning over operational control of its transmission facilities to NYISO. Moreover, the Filing Parties propose to include in Attachment Y a

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[62] October 15, 2013 Compliance Filing at 59.

[63] On July 3, 2014, NYISO submitted a supplemental ministerial filing to provide redline versions of the OATT and Services Tariff sections.

[64] *Id.* at 2-3; NYISO OATT, Attachment Y, § 31.1.7; *see* NYISO Agreement, Art. 2, § 2.02.

list of all of the Transmission Owners in New York as of October 15, 2013.[65] They add that NYISO will update this list as new entities enroll as Transmission Owners in New York.[66]

iii. Protests/Comments

34. IPPNY asserts that despite NYISO's claim that the lack of a Commission order within the first quarter of 2014 will prevent it from implementing the policies required by the October 15, 2013 Compliance Filing's tariff changes, those policies can be implemented in the current planning cycle if the Commission issues an order within the next three months. IPPNY states that NYISO claims that the effective date must be deferred until 2016 because it cannot seek project qualification information from developers until the Commission accepts NYISO's compliance filing; however, developers who wish to propose a solution to an identified reliability need are not required to submit project qualification information until 60 days after NYISO issues its notice soliciting developers for proposed solutions. IPPNY believes that, based on the Reliability Needs Assessment schedule, no such issuance is likely to occur until September 2014 and that NYISO should have already developed the project qualification form. IPPNY believes that developers would therefore have until November, or possibly even later, to submit their project qualification forms and therefore, the Commission should reject NYISO's request for deferral at this time.

35. IPPNY and LS Power also argue that the Commission has already rejected the Filing Parties' proposal to defer implementation of NYISO's Order No. 1000-compliant transmission planning process until the two-year planning cycle beginning 2016. IPPNY and LS Power state that in the October 11, 2012 Compliance Filing, NYISO proposed an effective date of the first planning cycle following a final order by the Commission accepting NYISO's proposed tariff changes, and the Commission rejected the Filing Parties' proposed effective date, explicitly noting that it is not necessary to delay the effective date of the proposed revisions "until every issue in this proceeding has been resolved."[67] IPPNY asserts that prompt implementation of the Commission's Order

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[65] NYISO OATT, Attachment Y, § 31.1.7. The Transmission Owners on the list include Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; the Power Authority of the State of New York; and Long Island Lighting Company d/b/a the Long Island Power Authority.

[66] October 15, 2013 Compliance Filing at 3.

[67] LS Power at 2 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 26).

No. 1000 requirements is critical to address regional needs—whether economic, reliability, or PPR-based—and the proper functioning of competitive energy markets. IPPNY adds that, because the Commission has clearly articulated that NYISO, not the New York Public Service Commission, is the entity that should occupy the role of selecting transmission solutions to identified transmission needs, it should deny NYISO's request for deferral until the 2016 planning period.

iv. Commission Determination

36. We find that the description of transmission facilities that will be subject to the requirements of Order No. 1000 complies with the directives in the First Compliance Order.

37. We find that the Filing Parties' proposed effective date of January 1, 2014 complies with the directives in the First Compliance Order, and thus we accept the proposed effective date. We deny Filing Parties' request to change the proposed effective date for its proposed OATT revisions from January 1, 2014 to January 1, 2016.[68] NYISO states in its request for extension that it has been able to perform the initial stages of its reliability planning process during the first half of 2014.[69] In addition, as IPPNY notes in its protest to the extension request, transmission developers who wish to propose a transmission solution to an identified reliability need are not required to submit transmission project qualification information until 60 days after NYISO issues its notice soliciting transmission developers for proposed regulated backstop solutions and, based on the schedule for the Reliability Needs Assessment, no such issuance is likely to occur

[68] As the Filing Parties note in their extension request, the Commission already found that it is not necessary to delay the effective date of the proposed revisions until every issue in this proceeding has been resolved. NYISO Extension Request at 6 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 26 (rejecting Filing Parties' proposal that the proposed compliance OATT modifications become effective only upon completion of the next reliability planning cycle following the Commission's issuance of a final order approving the proposed OATT changes)). We disagree with NYISO's claim that this finding does not apply because of the "fundamental changes" the Filing Parties proposed to NYISO's role in the transmission planning process, such as evaluating and selecting transmission projects instead of the New York Public Service Commission. NYISO Extension Request at 6. In the First Compliance Order, the Commission made clear that NYISO must evaluate and select transmission facilities in the regional transmission plan for purposes of cost allocation. First Compliance Order, 143 FERC ¶ 61,059 at PP 77-79.

[69] NYISO Extension Request at 6.

until September 2014.[70] Given this, and because we are issuing this order only two weeks after NYISO submitted its extension request, we find that NYISO will have sufficient opportunity to implement its revised transmission planning process during the remaining 17 months of the current transmission planning cycle. We therefore reject NYISO's request for an extension of the effective date and accept Filing Parties' initial proposal to make the revisions submitted in the compliance filing effective January 1, 2014.

38. We find that the Filing Parties' proposed OATT revisions specifying the enrollment process by which entities, including non-public utility transmission providers, make the choice to become part of the NYISO transmission planning region comply with the directives of the First Compliance Order. We further note that the Filing Parties' OATT revisions also include a list of all enrolled public utility and non-public utility transmission providers in NYISO's transmission planning region, and thus comply with the Commission's directive in the First Compliance Order.

b. Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Transmission Solutions

39. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.[71] Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the transmission planning region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.[72] In addition, whether or not public utility transmission providers within a transmission planning region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is a more efficient or cost-effective solution to their needs.[73]

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[70] IPPNY Protest to Extension Request at 6.

[71] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

[72] *Id.* P 149.

[73] *Id.* P 331.

40. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer[74] must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.[75]

41. Finally, the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's transmission needs.[76] Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

i. Selecting Regional Transmission Projects in the Regional Transmission Plan for Purposes of Cost Allocation

(a) First Compliance Order

42. The Commission accepted NYISO's regional economic transmission planning process, finding that the Filing Parties' proposal complied with Order No. 1000.[77] The Commission found that NYISO's economic transmission planning process includes a process that culminates in a regional transmission plan reflecting NYISO's determination of the set of transmission facilities that more efficiently or cost-effectively meet the transmission needs of the transmission planning region. The Commission explained that the NYISO OATT includes a "voting mechanism for economic projects that is applied to determine which economic transmission projects will be selected in the regional

[74] Order No. 1000 defines merchant transmission projects as projects "for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates." *Id.* P 119.

[75] *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

[76] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

[77] First Compliance Order, 143 FERC ¶ 61,059 at PP 75-76.

transmission plan for purposes of cost allocation," which complies with Order No. 1000.[78]

43. However, the Commission found that NYISO's regional reliability transmission planning process did not comply with Order No. 1000's requirement to have a transmission planning process that culminates in a regional transmission plan reflecting NYISO's determination of the set of transmission facilities that more efficiently or cost-effectively meet the transmission needs of the transmission planning region.[79] The Commission explained that, according to the Filing Parties' proposal, NYISO would merely evaluate and report whether transmission projects proposed to meet identified transmission needs would actually satisfy the transmission need and would not select transmission solutions in the regional transmission plan for purposes of cost allocation. In particular, NYISO would evaluate each proposed transmission solution to determine whether that transmission solution could satisfy the transmission need in a timely manner, but would not select transmission solutions in the regional transmission plan for purposes of cost allocation. Instead, NYISO would rely on the New York Public Service Commission to select the transmission facility to be included in the regional transmission plan for purposes of cost allocation (i.e., the transmission facility eligible for regional cost allocation).[80]

44. The Commission stated that "Order No. 1000 places an affirmative obligation on public utility transmission providers to identify and evaluate, in consultation with stakeholders, alternative transmission solutions that may meet the transmission needs of the region more efficiently or cost-effectively."[81] The Commission found that NYISO must do more than simply identify regional transmission needs and evaluate potential solutions to determine whether the proposed solutions timely meet the transmission needs.[82] The Commission determined that the Filing Parties' proposal "does not comply with the requirement that NYISO select in the regional transmission plan for purposes of

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[78] *Id.* P 76 n.137 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 689) ("Order No. 1000 expressly found that a regional cost allocation method for one or more types of regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.").

[79] *Id.* P 77.

[80] *Id.*

[81] *Id.* P 78 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 80, 148-149).

[82] *Id.* P 77; *see also id.* P 78.

cost allocation the more efficient or cost-effective transmission solutions from among competing projects in the reliability planning process."[83] Therefore, the Commission directed the Filing Parties to propose, on compliance, OATT revisions that: (1) eliminate provisions in the reliability transmission planning process allowing a state to select transmission solutions in the regional transmission plan for purposes of cost allocation; and (2) include an evaluation and selection process through which NYISO will select in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions from among competing projects, as well as the developers eligible to use the regional cost allocation method for such facilities.[84]

(b) Summary of Compliance Filing

45. To comply with the Commission's directive to have, as part of the regional reliability transmission planning process, an evaluation[85] and selection process through which NYISO will select in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions, the Filing Parties have proposed a two-phase evaluation process for proposed transmission and non-transmission solutions.[86]

46. In phase one of the Filing Parties' proposed two-phase evaluation process for solutions proposed to address identified Reliability Needs, NYISO will evaluate all proposed projects – regardless of the resource type and whether or not the proposing developer is seeking regional cost allocation – to determine if each proposed transmission and non-transmission project is viable and sufficient to meet the identified transmission need by the need date.[87] Specifically, for each identified Reliability Need NYISO will

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[83] *Id.* P 77.

[84] *Id.* P 81.

[85] The Filing Parties' proposed evaluation processes for solutions proposed to address Reliability Needs and transmission needs driven by public policy requirements, including the metrics that NYISO considers in its evaluation, are discussed more fully below in Part IV.B.3.d.

[86] NYISO October 15, 2013 Compliance Filing at 59 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 28). The Filing Parties also propose to revise Attachment Y to state that an objective of NYISO's reliability transmission planning process is to provide a process by which NYISO will select for eligibility for cost allocation the more efficient or cost-effective regulated transmission solution to satisfy the Reliability Need. NYISO OATT, Attachment Y, § 31.1.2.

[87] *Id.* § 31.2.5.2.

evaluate all proposed regulated transmission solutions[88] (transmission solutions for which the transmission developer seeks regional cost allocation) and market-based solutions (transmission and non-transmission solutions for which the developer is not seeking regional cost allocation) to determine whether: (a) the transmission or non-transmission solution, as implemented by the proposing developer, is viable and can be completed by the need date;[89] and (b) whether the proposed transmission or non-transmission solution is sufficient to satisfy the Reliability Need.[90] In addition, for each proposed solution, NYISO will independently analyze the lead time necessary to implement each transmission and non-transmission solution to establish a Trigger Date[91] (for regulated

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[88] Through the reliability transmission planning process, NYISO identifies Reliability Needs and solicits, from both incumbent transmission owners and nonincumbent transmission developers, regulated solutions and market-based solutions. For each identified Reliability Need, the incumbent transmission owner (Responsible Transmission Owner) is required to provide a "regulated backstop solution." In addition to the regulated backstop solution, other transmission developers may propose "alternative regulated solutions." Thus, for each Reliability Need, there will always be a regulated backstop transmission solution and there may be proposed alternative regulated solutions.

[89] As discussed more fully below in Part IV.B.3.d (Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation), to determine the viability of a proposed solution, NYISO will evaluate whether: (1) the developer has provided the required developer qualification data and project information data; (2) the proposed solution is technically practicable; (3) the developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required timeframe; and (4) the proposed solution can be completed in the required timeline. NYISO OATT, Attachment Y, § 31.2.5.3.

[90] As discussed more fully below in Part IV.B.3.d (Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation), to determine the sufficiency of a proposed solution, NYISO will "perform a comparative analysis" to identify whether the proposed solution satisfies the transmission need. *Id.* § 31.2.5.4.

[91] Trigger Date is defined as "the date by which [NYISO] must request implementation of a regulated backstop solution or an alternative regulated solution pursuant to Section 31.2.8 in order to meet a Reliability Need." *Id.* § 31.1.1.

transmission solutions) and a benchmark lead time (for market-based transmission and non-transmission solutions).[92]

47. If NYISO determines that the Trigger Date of any proposed regulated transmission solution that it found to be viable and sufficient will occur within thirty-six months of NYISO reporting the results of its viability and sufficiency analysis, it will continue to the second step of the evaluation process.[93] During phase two of the evaluation process, NYISO will evaluate only regulated transmission solutions that it has found to be viable and sufficient and that do not have a significant adverse impact on the reliability of the New York State transmission system.[94] NYISO will request all developers of proposed regulated transmission solutions to submit additional transmission project qualification information[95] and NYISO will evaluate each transmission solution to determine whether it is the more efficient or cost-effective regulated transmission solution. In its evaluation, NYISO will consider each regulated transmission solution using the following metrics: estimates of the cost of capital for all components, the cost per MW ratio,[96] expandability,[97] operability,[98] performance,[99] the extent to which the developer has

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[92] *Id.* § 31.2.5.5 (Establishment of Trigger Date of Proposed Regulated Solutions).

[93] *Id.* § 31.2.6.1. The Filing Parties propose that if NYISO determines that none of the proposed regulated transmission solutions that it found to be viable and sufficient have a Trigger Date that will occur within thirty-six months of NYISO reporting the results of its viability and sufficiency analysis, NYISO will not evaluate or select a more efficient or cost-effective regulated transmission solution for that transmission planning cycle. *Id.*

[94] *Id.* § 31.2.6.5 (ISO Selection of More Efficient or Cost Effective Transmission Solution for Cost Allocation Purposes). As part of the second-step evaluation, NYISO will evaluate the submitted information to determine whether it is reasonable and how such information should be used in evaluating each metric.

[95] *Id.* § 31.2.6.1. The transmission project qualification information is discussed more fully below in Part IV.B.3.c (Information Requirements).

[96] In calculating the cost per MW ratio of the regulated transmission solution, NYISO will determine the present worth, in current dollars, of the total capital cost of the proposed regulated transmission solution and divide that by the MW value of the regulated transmission solution. *Id.* § 31.2.6.5.1.2.

[97] NYISO will "consider the impact of the proposed [regulated transmission] solution on future construction and the extent to which any subsequent expansion will continue to use this proposed solution within the context of system expansion." *Id.* § 31.2.6.5.1.3.

necessary property rights or "ability to obtain the property rights," and potential issues associated with delay in constructing the proposed solution consistent with the major milestone schedule.[100]

48. As part of phase two of the evaluation process, NYISO will rank each proposed regulated transmission solution based on how well it satisfies the listed metrics and select the proposed regulated transmission solution, if any, that is the more efficient or cost-effective transmission solution proposed to satisfy each transmission need. If NYISO selects a regulated transmission solution as the more efficient or cost-effective solution, the solution "shall be eligible to be triggered by [NYISO] to satisfy the identified Reliability Need . . . ."[101]

49. Following NYISO's evaluation of the proposed market-based solutions and regulated transmission solutions, NYISO will prepare a report, the Comprehensive Reliability Plan, that sets forth: (1) the viability and sufficiency of all proposed solutions; (2) the Trigger Dates of regulated transmission solutions; and (3) whether there are sufficient market-based solutions to meet the Reliability Need by the need date and, if not, that it is necessary to trigger a regulated transmission solution.[102] By triggering a regulated transmission solution, NYISO indicates that the developer "should submit [the transmission solution] to the appropriate governmental agency(ies) and/or authority(ies)

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[98] NYISO will consider how the proposed regulated transmission solution may affect additional flexibility in operating the system, such as dispatch of generation, access to operating reserves, access to ancillary services, or ability to remove transmission for maintenance. *Id.* § 31.2.6.5.1.4.

[99] NYISO will consider how the proposed regulated transmission project may affect the utilization of the system (e.g. interface flows, percent loading of facilities). *Id.* § 31.2.6.5.1.5.

[100] *Id.* § 31.2.6.5.1.

[101] *Id.* § 31.2.6.5.2.

[102] *Id.* §§ 31.2.6.5.2 (ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need), 31.2.7 (Comprehensive Reliability Plan), 31.2.8 (Determination of Necessity). In the public policy transmission planning process, NYISO will report the results of its evaluation in the Public Policy Transmission Planning Report. NYISO OATT, Attachment Y, §§ 31.4.8.2 (ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Public Policy Transmission Need), 31.4.10 (Public Policy Transmission Planning Report).

to begin the necessary approval process to site, construct, and operate the solution."[103] In determining whether it is necessary to trigger a regulated transmission solution, NYISO will consider if there are sufficient market-based solutions to meet the transmission need.[104] Assuming that implementation of a regulated solution is necessary, the draft Comprehensive Reliability Report will also indicate: (1) whether NYISO has determined that the Trigger Date to any regulated transmission solution will occur within thirty-six months of NYISO's presentation of its viability and sufficiency analysis; and (2) NYISO's selection of a more efficient or cost-effective transmission solution.[105]

50. Attachment Y sets forth the following scenarios to indicate the conditions under which NYISO will trigger the regulated transmission backstop solution, an alternative regulated transmission solution (if selected as the more efficient or cost-effective solution), or both the selected alternative regulated transmission solution and the regulated backstop transmission solution;

> (1) NYISO will trigger the regulated backstop transmission solution if: there are no market-based solutions, the only viable and sufficient regulated solution is the Responsible Transmission Owner's regulated backstop transmission solution, and the Trigger Date for the regulated backstop solution is within thirty-six months;[106]
>
> (2) NYISO will trigger an alternative regulated transmission solution if: there are no market-based solutions, NYISO selects the alternative regulated solution as the more efficient or cost-effective solution, the Trigger Date for the regulated backstop solution is later than the Trigger Date for the alternative regulated solution, and the Trigger Date for the alternative regulated transmission solution is within thirty-six months. However if NYISO determines prior to the regulated backstop solution's Trigger Date that it is necessary for the regulated backstop solution to proceed in parallel with the selected alternative regulated solution, NYISO will then trigger the regulated backstop solution as well. The

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[103] *See id.* § 31.2.8 (Determination of Necessity of a Regulated Solution).

[104] *Id.*

[105] *Id.* § 31.2.7 (Comprehensive Reliability Plan).

[106] NYISO OATT, Attachment Y, § 31.2.8.1.2.

> Responsible Transmission Owner must proceed with developing the regulated backstop solution unless or until NYISO notifies it that the regulated backstop solution is no longer needed;[107]
>
> (3) NYISO will trigger both an alternative regulated transmission solution and the regulated backstop transmission solution if: there are no market-based solutions, NYISO selects an alternative regulated solution as the more efficient or cost-effective solution, the Trigger Date for the regulated backstop solution is before the Trigger Date for the alternative regulated solution, and the Trigger Date for the regulated backstop transmission solution is within thirty-six months.[108]

51. NYISO will submit the draft Comprehensive Reliability Plan to stakeholders for review and comment, "mak[ing] available to any interested party sufficient information to replicate the results of the draft Comprehensive Reliability Plan."[109] Following completion of stakeholder review, the draft Comprehensive Reliability Plan reflecting any revisions resulting from stakeholder review will be forwarded, first, to the NYISO Operating Committee and, second, to the Management Committee[110] for discussion and action.[111] Following the Management Committee vote, the draft report, with input from stakeholders and the Operating and Management Committees, will be forwarded to the NYISO Board for review and action. At the same time, the draft report will be forwarded to the Market Monitoring Unit for its review and consideration of whether market rules are necessary to address an identified failure. Upon final approval by the NYISO Board,

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[107] *Id.* § 31.2.8.1.3.

[108] *Id.* § 31.2.8.1.4.

[109] *Id.* § 31.2.7.1 (Collaborative Governance Process).

[110] The Management Committee is defined as the "standing committee of [NYISO] of that name created pursuant to the [NYISO] Agreement." According to the NYISO Agreement, the Management Committee is comprised of each party to the NYISO Agreement. NYISO Agreement, Art. 7, § 7.01 (Membership).

[111] NYISO OATT, Attachment Y, § 31.2.7.1.

NYISO shall issue the Comprehensive Reliability Plan to the marketplace by posting it on the NYISO website.[112]

52. The Filing Parties state that, with the proposed changes to the reliability transmission planning process, NYISO should still be able to conduct each transmission planning process in regular two-year cycles. However, they propose that, if the reliability or public policy transmission planning process[113] cannot be completed within a two-year cycle, NYISO will notify stakeholders and provide an estimated completion date, along with an explanation of why the additional time is needed.[114] They also state that, because the study results from the reliability transmission planning process are utilized in both the economic and public policy transmission planning processes, revisions are needed to establish that: (1) the Congestion Analysis and Resource Integration Study will begin after NYISO completes its report on the viability and sufficiency of solutions proposed in the reliability transmission planning process;[115] and (2) the written explanation of the transmission needs driven by public policy requirements that were identified for further evaluation by New York Public Service Commission and the New York Department of Public Service will be posted after the study results from the draft Reliability Needs Assessment are posted.[116]

53. Finally, the Filing Parties propose to relocate an existing provision that states that if a market participant or interested party "raises a dispute solely within the [New York Public Service Commission's] jurisdiction concerning [NYISO's] final determination in the [Comprehensive Reliability Plan] that a proposed solution will or will not meet a

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[112] *Id.* § 31.2.7.2 (Board Review, Consideration, and Approval of [Comprehensive Reliability Plan]).

[113] The public policy transmission planning process is discussed more fully below in Part IV.B.2.c.

[114] *See* NYISO OATT, Attachment Y, §§ 31.1.8.2, 31.2.7, 31.3.1.3.2, 31.4.1 (5.0.0).

[115] After NYISO determines the viability and sufficiency of solutions to Reliability Needs, and in the course of drafting the Comprehensive Reliability Plan, NYISO will create a base-case model to begin economic planning in the Congestion Assessment and Resource Integration process. In order to accomplish this, NYISO adds several provisions to allow for flexibility in the timing of each planning track. NYISO October 15, 2013 Compliance Filing at 59 (citing revisions to NYISO OATT, Attachment Y, §§ 31.1.8.2, 31.2.7, 31.3.1.3.2, 31.4.1).

[116] *See* NYISO OATT, Attachment Y, §§ 31.1.8.2, 31.2.7, 31.3.1.3.2, 31.4.1.

Reliability Need," then the party seeking review shall refer the dispute to the New York Public Service Commission and its determination is binding subject only to judicial review in the courts of New York.[117]

(c) Protests/Comments

54. LS Power and NextEra protest the Filing Parties' proposal to allow NYISO to trigger the Responsible Transmission Owner's regulated backstop solution, even when NYISO has selected an alternative regulated solution as the more efficient or cost-effective transmission solution in the regional transmission plan for purposes of cost allocation, authorizing the Responsible Transmission Owner to develop the regulated backstop solution until the alternative regulated solution selected as the more efficient or cost-effective solution satisfies the listed regulatory approvals[118] and milestones, including final Article VII certification.[119]

55. LS Power argues that this proposal shifts the decision making as to which transmission project should be eligible to use the regional cost allocation method and receive cost recovery away from NYISO to the New York State Public Service Commission, particularly since the proposed provision explains that "the appropriate governmental agency(ies) and/or authority(ies) make[] a final determination that an alternative regulated solution should be permitted and constructed to satisfy a Reliability Need and that the regulated backstop solution should not proceed."[120] LS Power asserts that this directly contradicts the mandate of the First Compliance Order that NYISO make that determination.[121]

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[117] October 15, 2013 Compliance Filing at 25 n.96; *see* NYISO OATT, Attachment Y, § 31.2.7.4.

[118] *See* NYISO OATT, Attachment Y, §§ 31.2.8.1.5, 31.2.8.2.3 (5.0.0).

[119] Nextera Protest at 17; LS Power Protest at 7.

[120] LS Power Protest at 11-12 (citing NYISO OATT, Attachment Y, § 31.2.8.1.6). LS Power further notes that the Commission rejected the concept of a siting authority selecting the transmission project to receive cost allocation, and required the public utility transmission provider to decide which transmission developer would be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. *Id.* at 12 n.17 (citing *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057, at PP 224, 227 (2013)).

[121] *Id.* at 5, 8 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 81 (requiring the Filing Parties to "(1) eliminate provisions in the reliability transmission

(continued…)

56. LS Power and NextEra argue that, contrary to the Filing Parties' assertion, there should be no need for a regulated backstop solution to ensure that a reliability solution is available to address a Reliability Need in case a nonincumbent transmission developer ceases to move forward with its selected reliability solution. NextEra argues that a nonincumbent transmission developer selected by NYISO in the competitive process should be as capable as the incumbent transmission owner in developing and constructing the transmission solution and will have gone through the extensive pre-qualification process to be eligible to compete. LS Power states that under the regional transmission planning process, NYISO is only selecting transmission projects proposed by technically and financially qualified entities and those entities then enter into a contractual commitment.[122] LS Power adds that the Commission has already addressed the possibility that a transmission solution may cease to move forward in Order Nos. 1000 and 1000-A, holding that reevaluation was the appropriate mechanism to deal with incumbent reliability concerns.[123] LS Power also notes that the Filing Parties' reliability concerns are addressed by the proposed OATT revisions that require the transmission developer of an alternative regulated solution to execute an agreement with NYISO committing the transmission developer to seek all necessary approvals required for its proposed project, provide milestones necessary to achieve the required in-service date, develop and construct its proposed project if approvals are received, and abide by related requirements set forth in Attachment Y and the ISO Procedures.[124]

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planning process allowing a state to select transmission solutions in the regional transmission plan for purposes of cost allocation; and (2) include an evaluation and selection process . . .through which NYISO will select in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions from among competing projects in the reliability transmission planning process, *as well as the developers eligible to use the regional cost allocation method for such facilities*") (emphasis added)).

[122] *Id.* at 13.

[123] *Id.* at 10 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329 for the proposition that a transmission provider's tariff must "describe the circumstances and procedures under which public utility transmission providers . . . will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions . . . to ensure the incumbent transmission provider can meet its reliability needs or service obligations").

[124] *Id.* at 12-13.

57. In addition, LS Power and NextEra protest that NYISO intends to allow the Responsible Transmission Developer to use the regional cost allocation method for costs incurred related to a regulated backstop solution, not only prior to NYISO's selection of a transmission project as the more efficient or cost-effective transmission project, but also after another transmission project is selected as the more efficient or cost-effective transmission project. They contend that this proposal would unnecessarily require consumers to pay the costs associated with the Article VII certification process for two transmission projects, which could undermine alternative regulated solutions by increasing the overall costs to consumers and give incumbent transmission owners a significant advantage over nonincumbent transmission developers.[125] LS Power argues that at the point NYISO selects a transmission project as a more efficient or cost-effective transmission solution in the regional transmission plan for purposes of cost allocation, the only project to move forward under the cost allocation method in the tariff should be the NYISO-approved more cost-effective and efficient transmission solution.[126] LS Power adds that only the transmission solution selected as more efficient or cost-effective should move forward with cost allocation under the Commission-approved tariff for recovery of further development expenses, including the cost of required regulatory submittals.[127]

58. LS Power argues that if the Filing Parties' proposal to delay evaluation of the more efficient or cost-effective proposal is accepted, the OATT should be revised to provide that no entity, including those proposing regulated backstop solutions, receives cost recovery for activities undertaken during this interim period to advance the proposed project unless and until the project is ultimately selected as the more efficient or cost-effective solution.[128] LS Power also protests the Filing Parties' proposal that NYISO will not evaluate proposed regulated transmission solutions for selection in the regional transmission plan for purposes of cost allocation until NYISO determines that the Trigger Date of any proposed regulated transmission solution will occur within thirty-six months

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[125] NextEra Protest at 16-17; LS Power Protest at 10-11 & n.13 (citing NYISO OATT, Attachment Y, § 31.2.8.1.5). LS Power states that Article VII certification refers to the New York Public Service Commission's process for environmental and siting review of proposed transmission facilities. LS Power at 10 (referring to http://www3.dps.ny.gov/W/PSCWeb.nsf/e39882fda3461f1a852574440062cc4b/a021e67e05b99ead85257687006f393b/$FILE/Article%20VII%20Guide%20web%2010-13%20.pdf).

[126] *Id.* at 13.

[127] *Id.* at 8.

[128] *Id.* at 8, 16.

of NYISO's viability and sufficiency evaluation.[129] LS Power argues that in the period before NYISO conducts its evaluation for selection as the more efficient or cost-effective solution, the incumbent transmission provider appears to have the ability to continue to develop its regulated backstop project, at ratepayer expense, while all other developers must fund additional development activities at their own risk.[130] As a result, LS Power states, the potential savings of making an earlier selection of the more efficient or cost-effective solution due to the discontinuation of this cost recovery outweigh any alleged inefficiency of evaluating transmission projects prior to the need date.[131]

59. NextEra asserts that, if the Commission agrees with the Filing Parties that regulated backstop solutions should continue, notwithstanding the anti-competitive implications, then receipt of an Article VII certification process for environmental and siting review should not be used as the milestone that determines when a regulated backstop solution is halted, since an Article VII certification process can take approximately two years to complete and is resource intensive. NextEra proposes that the regulated backstop solution be halted at an earlier point in the Article VII process—when the New York Public Service Commission deems an Article VII application to meet the requirements of section 122 of the Public Service Law – or no later than when the New York Public Service Commission deems the alternative regulated solution's Article VII application to be complete.[132]

60. LS Power also protests the Filing Parties' proposal that, if a particular transmission planning process cannot be completed in the proposed rolling two-year transmission planning cycle, NYISO will notify stakeholders and provide an estimated completion date and an explanation of the reasons the additional time is needed.[133]

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[129] *Id.* at 13.

[130] LS Power states that two of the evaluation criteria for selecting the more efficient or cost-effective project (property rights acquisition under Attachment Y section 31.2.6.5.1.6 and permitting under section 31.2.6.5.1.7) go directly to matters that the incumbent developer could proceed with at consumer expense prior to NYISO's selection of the more efficient or cost-effective solution; similarly, section 31.2.8.2.5 provides that "Once the Responsible Transmission Owner receives state . . . [or] necessary regulatory approval, the entry of a market-based solution or an alternative regulated transmission solution will not result in the halting by the ISO of the regulated backstop solution." *Id.* at 15-16.

[131] *Id.* at 16.

[132] NextEra Protest at 3.

[133] LS Power Protest at 23.

LS Power asserts that these provisions provide an opportunity for an open-ended transmission planning process, and asks the Commission to require NYISO not only to notify stakeholders, but also submit the information above to the Commission as an informational filing. LS Power asserts that delays in completing the transmission planning processes in the transmission planning cycle have the potential for significant competitive impacts, and all parties benefit from a clear end to the transmission planning cycle, with a change to that process only in exceptional circumstances.[134]

61. In addition, LS Power urges the deletion of the provision that, if a market participant or other party raises a dispute solely within the jurisdiction of the New York Public Service Commission concerning NYISO's final determination that a proposed solution will or will not meet a Reliability Need, that dispute will be referred to the New York Public Service Commission for resolution and that resolution will be binding subject only to judicial review in the courts of the State of New York.[135] LS Power states that this provision appears to preclude Commission review, and does not identify how a dispute regarding NYISO's determination that a proposed solution will or will not meet a Reliability Need can ever be a dispute solely within the exclusive jurisdiction of the New York Public Service Commission. LS Power asserts that NYISO and its tariff are subject to Commission jurisdiction, and thus, any disputes should be handled under the Commission-approved dispute resolution provision or by the Commission, not referred to the New York Public Service Commission and subject to state law.[136]

(d) <u>Answer</u>

62. The Filing Parties ask the Commission to reject LS Power's and NextEra's challenges to NYISO's authority to trigger a regulated backstop solution after NYISO has selected an alternative regulated transmission solution as the more efficient or cost-effective transmission solution to an identified Reliability Need.[137] They state that NYISO is responsible for ensuring that Reliability Needs on the New York bulk power system are addressed, and it must have the ability to trigger a regulated backstop solution to meet that responsibility. The Filing Parties add that, since nonincumbent transmission developers are not required to construct transmission and provide transmission service,

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[134] *Id.*

[135] *See* NYISO OATT, Attachment Y, § 31.2.7.4 (relocating provision from section 31.2.6.3).

[136] LS Power Protest at 20-21.

[137] Filing Parties Answer at 27 (citing NextEra Protest at 16-18; LS Power Protest at 513).

NYISO must have the ability to call on the Responsible Transmission Owner to develop its regulated backstop solution and to be compensated for this additional development until NYISO has sufficient confidence that a selected alternative regulated transmission solution will proceed to construction and satisfy the Reliability Need. The Filing Parties state that the New York Transmission Owners have a legal obligation to prepare a regulated backstop solution to an identified Reliability Need if designated by NYISO as the Responsible Transmission Owner and this obligation was memorialized by the New York Transmission Owners in a contract with NYISO, which was approved by the Commission.[138] The Filing Parties state that nonincumbent transmission developers have no obligation to provide service and are free to discontinue their proposed projects.

63. The Filing Parties note that, while LS Power believes that such concerns could be addressed through a reevaluation process,[139] given the length of time required to develop and construct a transmission project, it is unlikely that NYISO would be able to solicit, evaluate, and select an alternative project that could be implemented prior to the need date if a nonincumbent transmission developer's project was stalled. Rather, the Filing Parties state, given that the Commission has indicated an incumbent utility is not responsible for stepping in and completing a nonincumbent transmission developer's abandoned project, NYISO would have to turn to short-term Gap Solutions to address the Reliability Need, which would likely be less efficient than a properly planned long-term transmission solution and could require ratepayers to pay for both the Gap Solution and then a permanent solution.[140]

64. The Filing Parties further ask the Commission to reject NextEra's request that NYISO be required to halt a regulated backstop solution at the point at which the selected alternative regulated transmission solution's Article VII application is complete, because the completion of the Article VII application provides no assurance that the New York Public Service Commission will issue a certificate for the project and that such project will proceed to construction. They additionally state that LS Power is incorrect in asserting that NYISO's triggering of both the regulated backstop solution and the alternative regulated solution shifts the decision-making as to which project is selected in

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[138] *See* Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs (June 10, 2010) (NYISO/TO Reliability Agreement), *available at* http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/Comprehensive_Planning_Process_for_Reliability_Needs_Agreement.pdf.

[139] Filing Parties Answer at 28 (citing LS Power Protest at 9-10).

[140] *Id.* at 28-29.

the regional transmission plan for purposes of cost allocation from NYISO to the New York Public Service Commission, because, while the New York Public Service Commission has the authority to provide the required siting certification for a project to move forward to construction in New York State, NYISO is the entity responsible for selecting the more efficient or cost-effective solution in the regional transmission plan for purposes of allocating costs under its tariffs as required by the Commission.[141]

65. The Filing Parties further state that the Commission has previously determined that a Responsible Transmission Owner may use the regional cost allocation method for the costs of developing regulated backstop solutions,[142] and that NYISO does not intend to provide for the parallel development of both a selected alternative regulated transmission solution and a regulated backstop solution any longer than necessary to ensure that the alternative regulated transmission solution will proceed to construction and meet the reliability need. The Filing Parties note that NYISO's reliability transmission planning process favors market-based solutions and that NYISO will halt any regulated transmission solutions if it determines that there are sufficient market-based solutions to ensure that the Reliability Need is met. The Filing Parties explain that, in the absence of sufficient market-based solutions, NYISO will halt a regulated backstop solution as soon as the nonincumbent transmission developer of a selected alternative regulated solution satisfies certain requirements, including obtaining its Article VII certification for the project.[143]

66. In response to LS Power's protest regarding proposed revisions to the regional transmission planning process timeline, the Filing Parties state that NYISO has every incentive to timely complete its transmission planning processes. They add that, under reliability organization requirements, NYISO is responsible for planning for the reliability of the bulk power system.[144] Further, they state that multiple state agencies

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[141] *Id.* at 30 nn.89-90 (citing NextEra Protest at 18 and LS Power Protest at 7-8).

[142] *Id.* at 29 n.85 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 326 ("it is appropriate for the Responsible Transmission Owner to be permitted to recover costs that it prudently incurred to meet its obligation, even when the project is not selected, since only the Responsible Transmission Owner is required to provide the regulated backstop solution for a reliability transmission need")).

[143] *Id.* at 30 n.88 (citing NYISO OATT, Attachment Y, § 31.2.8.1.5).

[144] *Id.* at 45 ("Under . . . North American Electric Reliability Corporation Transmission Planning Standards, and the resource adequacy planning requirements of the Northeast Power Coordinating Council and New York State Reliability Council, NYISO is responsible for planning for the reliability of the bulk power system.").

rely on NYISO's transmission planning process to provide information as to energy policy and needs in New York State.[145] Thus, the Filing Parties assert, LS Power's proposed informational filing is not necessary and would impose an unnecessary burden on both NYISO and the Commission.

67. The Filing Parties contend that the Commission should reject LS Power's request to delete the existing OATT provision that states that, if a party raises a dispute solely within the New York Public Service Commission's jurisdiction concerning NYISO's final determination in its Comprehensive Reliability Plan that a proposed solution will or will not meet a Reliability Need, the dispute will be referred to the New York Public Service Commission for resolution.[146] The Filing Parties state that LS Power's challenge is outside the scope of the Commission's directives in the First Compliance Order and that the OATT language predates NYISO's initial Order No. 1000 regional compliance filing. The Filing Parties state that the First Compliance Order did not direct the Filing Parties to revise this existing OATT language and that, in the October 15, 2013 Compliance Filing, the Filing Parties have not proposed any substantive changes to this provision; rather as part of the reordering of the provisions in Attachment Y, the Filing Parties propose to relocate the language without making any modifications. Moreover, the Filing Parties contend that this provision does not create or alter the scope of the Commission's or the New York Public Service Commission's jurisdiction; instead, it provides that, to the extent a dispute arises that falls solely within the New York Public Service Commission's jurisdiction, it will be referred to the New York Public Service Commission.[147]

(e) <u>Commission Determination</u>

68. Regarding the reliability transmission planning process, we find that the Filing Parties' proposed process to select transmission solutions in the regional transmission plan for purposes of cost allocation partially complies with Order No. 1000's requirement that NYISO have a process to select in the regional transmission plan for purposes of cost

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[145] *Id.* (referencing the New York Public Service Commission, the New York State Siting Board, the State Energy Planning Board, the New York State Energy Research and Development Authority, the Energy Highway Task Force, and the New York State Legislature).

[146] *See* LS Power Protest at 20-21; *see also* NYISO OATT, Attachment Y, § 31.2.7.4.

[147] Filing Parties Answer at 26-27.

allocation the more efficient or cost-effective transmission solutions.[148] As discussed below, NYISO's reliability transmission planning process culminates in a regional transmission plan reflecting NYISO's determination of the set of transmission facilities that more efficiently or cost-effectively meet the transmission needs of the transmission planning region. Attachment Y provides that NYISO "shall select . . . the proposed regulated transmission solution, if any, that is the more efficient or cost effective transmission solution proposed in the planning cycle to satisfy the identified [r]eliability [n]eed."[149] In addition, the Filing Parties have eliminated provisions specifying that the "appropriate governmental agency(ies) and/or authority(ies)" will select more efficient or cost-effective regional transmission solutions in the regional transmission plan for purposes of cost allocation, as well as the transmission developers eligible to use the regional cost allocation method for such facilities.[150]

69. The Filing Parties' proposed selection process in the reliability transmission planning process partially complies with Order No. 1000, because the proposal includes procedures for NYISO to select a regulated transmission solution as the more efficient or cost-effective solution and report the selected regulated transmission solution in the Comprehensive Reliability Plan. We find that Attachment Y provides a two-phase process through which NYISO: (1) shall evaluate both transmission and non-transmission solutions proposed in the reliability transmission planning process to determine if they are viable and sufficient to address a specific reliability need; and (2) may evaluate proposed regulated transmission solutions to determine if any is a more efficient or cost-effective transmission solution and select that transmission solution in the regional transmission plan for purposes of cost allocation. We note that, through this process, NYISO will evaluate all proposed transmission and non-transmission solutions – regardless of the resource type and whether the proposing developer seeks regional cost

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[148] For the reliability and public policy transmission planning processes, NYISO's proposal for evaluating transmission solutions for selection in the regional transmission plan for purposes of cost allocation, including the criteria NYISO considers, is discussed more fully below in Part IV.B.3.d. We note that for the economic transmission planning process, the Commission accepted NYISO's evaluation and selection process in the First Compliance Order. First Compliance Order, 143 FERC ¶ 61,059 at P 244 ("We find that the Filing Parties' process for evaluating economic transmission projects complies with Order No. 1000.").

[149] NYISO OATT, Attachment Y, § 31.2.6.5.2 (5.0.0).

[150] *See id.* § 31.2.8.1.

allocation – to determine if each proposed transmission and non-transmission project satisfies the viability,[151] sufficiency,[152] and system impact[153] requirements.[154]

70. In addition, NYISO will then conduct phase two if the Trigger Date of any of the proposed regulated transmission solutions satisfying the phase-one requirements will occur within thirty-six months of NYISO presenting the results of phase one of NYISO's evaluation.[155] We determine that, in phase two of the two-phase process, NYISO will evaluate those regulated transmission solutions satisfying the phase-one requirements to determine if any is a more efficient or cost-effective transmission solution and will then select the proposed regulated transmission solution, if any, that is the more efficient or cost-effective transmission solution proposed to satisfy each Reliability Need. NYISO will report the selected regulated transmission solution in the Comprehensive Reliability Plan, indicating whether that transmission solution should be triggered.[156] In this way, NYISO's transmission planning process culminates in a regional transmission plan reflecting NYISO's determination of the set of transmission facilities that more efficiently or cost-effectively meet the transmission needs of the transmission planning region.

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[151] *See id.* § 31.2.5.3.

[152] *See id.* § 31.2.5.4.

[153] *See id.* § 31.2.6.3.

[154] *Id.* § 31.2.5.2 (5.0.0).

[155] *Id.* § 31.2.6.5 (ISO Selection of More Efficient or Cost Effective Transmission Solution for Cost Allocation Purposes).

[156] *Id.* §§ 31.2.6.5.2 (ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need), 31.2.7 (Comprehensive Reliability Plan). If NYISO "makes a selection of the more efficient or cost effective transmission solution" and the Trigger Date of the selected transmission solution has or will occur within thirty-six months of NYISO presenting the results of phase one of NYISO's evaluation of proposed solutions (the viability and sufficiency analysis), NYISO will trigger the selected transmission solution. Upon triggering the selected transmission solution, NYISO informs the transmission developer that it should begin any necessary approval process to site, construct, and operate the transmission solution and the developer of the transmission solution becomes eligible to use the regional cost allocation method for the regional transmission project. *Id.* §§ 31.2.6.5.2, 31.2.8.1.

71. However, the Filing Parties' proposal creates an additional step that must occur before an alternative regulated transmission solution selected in the regional transmission plan for purposes of cost allocation is eligible for regional cost allocation, namely, that NYISO triggers the selected transmission solution.[157] In particular, we find that, while NYISO will "select . . . the proposed regulated transmission solution, if any, that is the more efficient or cost-effective transmission solution proposed in the planning cycle to satisfy the identified Reliability Need," if NYISO selects an alternative regulated transmission solution as the more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation, the solution is not eligible for regional cost allocation unless NYISO triggers it.[158] Tying eligibility for cost allocation to NYISO triggering the alternative regulated transmission solution, which occurs after NYISO selects the transmission facility in the regional transmission plan for purposes of cost allocation, is inconsistent with Order No. 1000. In Order No. 1000, the Commission stated that "each public utility transmission provider must participate in a regional transmission planning process that makes each transmission facility selected in the regional transmission plan for purposes of cost allocation eligible for such cost allocation."[159] Therefore, the Filing Parties must propose on compliance, within 60 days of the date of issuance of this order, revisions to clarify that, pursuant to the reliability transmission planning process, once NYISO has identified the more efficient or cost-effective regional transmission facility in the Comprehensive Reliability Plan, that transmission facility is selected in the regional transmission plan for purposes of cost allocation making the transmission developer of that solution eligible to use the regional cost allocation method.

72. The Filing Parties also propose in the regional reliability transmission planning process that, if NYISO selects an alternative regulated transmission solution in the regional transmission plan for purposes of cost allocation but the Trigger Date for the regulated backstop solution is before the Trigger Date for the selected alternative, NYISO will trigger both the selected alternative regulated transmission solution and the regulated backstop solution. According to the proposal, NYISO will trigger both solutions at the Trigger Date for the regulated backstop solution.[160] NYISO will notify a Responsible Transmission Owner that its regulated backstop solution is no longer needed and should be halted, "as soon as the non-incumbent Developer of a selected alternative regulated

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[157] *See id.* § 31.2.6.5.2 (ISO Selection of More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need).

[158] *Id.* § 31.2.6.5.2.

[159] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 335.

[160] NYISO OATT, Attachment Y, § 31.2.8.1.4 (5.0.0).

solution satisfies certain requirements," including receipt of Article VII certification for the nonincumbent transmission developer's transmission project.[161] We note that the provisions allowing NYISO to request a Responsible Transmission Owner to provide a regulated backstop solution for an identified reliability transmission need have been a component of NYISO's reliability transmission planning process since the Commission accepted NYISO's filing to establish the comprehensive system planning process in 2004.[162] We further note that these provisions are consistent with the NYISO/TO Reliability Agreement,[163] which "obligates the [New York Transmission Owners] to develop and construct necessary facilities,"[164] and helps NYISO to ensure the reliability needs of the New York bulk power system are met in a timely manner.[165] Thus, we find that the Filing Parties' proposal that gives NYISO the discretion to request a Responsible Transmission Owner to provide a regulated backstop solution for an identified reliability transmission need is not inconsistent with Order No. 1000 as nothing in Order No. 1000 required NYISO to change its existing process that allows NYISO to direct an incumbent transmission provider to develop a regulated backstop solution for an identified reliability transmission need.

73. As discussed above, in Order No. 1000, the Commission directed public utility transmission providers to have a process for evaluating and selecting more efficient or cost-effective transmission solutions to meet regional transmission needs.[166] The

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[161] Filing Parties Answer at 29, 30 n.88; NYISO OATT, Attachment Y, §§ 31.2.8.1.5, 31.2.8.2.3 (5.0.0).

[162] *See N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372, at PP 2, 34 (2004).

[163] *See supra* note 139.

[164] *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 at P 38; *see also N.Y. Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,320, at P 13 (2009).

[165] The regulated backstop solution is an existing, conservative reliability approach and section 215 of the FPA states "that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards." Consistent with this provision, on June 18, 2009, the New York Public Service Commission issued a Revised Policy Statement on Backstop Project Cost Recovery and Allocation (Case 07-E-1507 – Proceeding to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process) which states that it addresses all constrained interface deficiencies in a consistent manner and allocates the project costs to those zones which need resources due to a constrained interface.

[166] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 80, 148-149.

Commission finds in this order that NYISO satisfies this obligation because it has a process for evaluating and selecting the more efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation. NYISO's proposal to also direct an incumbent transmission developer to develop a backstop solution and trigger that solution after NYISO selects a different transmission project as the more efficient or cost-effective transmission solution is not required for NYISO to comply with Order No. 1000, but also is not prohibited by Order No. 1000.

74. Furthermore, this separate process is consistent with statements the Commission made related to an incumbent transmission provider's reliability obligations. For instance, in Order No. 1000, the Commission clarified that the reforms "are not intended to diminish the significance of an incumbent transmission provider's reliability needs or service obligations"[167] and noted that Order No. 1000 "continues to permit an incumbent transmission provider to meet its reliability needs or service obligations by choosing to build new transmission facilities that are located solely within its retail distribution service territory or footprint and that are not submitted for regional cost allocation."[168] We note that NYISO is the entity responsible for ensuring the reliability of the transmission system grid in the region. Therefore, contrary to protestors' assertions, the Filing Parties' proposal is not inconsistent with Order No. 1000 and reasonably provides NYISO the ability to ensure that a solution is available to timely address a reliability transmission need.

75. We also find that it is reasonable for the transmission developer of that transmission solution to be provided with the opportunity to recover costs prudently incurred to meet its obligation. As the Commission found in the First Compliance Order, "it is appropriate for the Responsible Transmission Owner to be permitted to recover costs that it prudently incurred to meet its obligation, even when the project is not selected, since only the Responsible Transmission Owner is required to provide the regulated backstop solution for a reliability transmission need."[169] Additionally, as the Filing Parties explain, NYISO does not intend to provide for the parallel development of a selected alternative regulated transmission solution and a regulated backstop solution any longer than necessary to ensure the reliability need will be timely addressed.[170]

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[167] *Id.* P 262.

[168] *Id.* In Order No. 1000-A, the Commission clarified that it used the phrase, "not submitted for regional cost allocation," where it meant to use the phrase, "selected in a regional transmission plan for purposes of cost allocation." Order No. 1000-A, 139 FERC ¶ 61,132 at P 425 n.503.

[169] First Compliance Order, 143 FERC ¶ 61,059 at P 326.

[170] Filing Parties Answer at 29.

Rather, one of NYISO's stated objectives for the reliability transmission planning process is to "provide an opportunity first for the implementation of market-based solutions while ensuring the reliability of the [bulk power transmission facilities]."[171] Consistent with this stated objective, "NYISO will halt any regulated solution(s) – whether a regulated backstop solution, a selected alternative regulated transmission solution, or both – if the NYISO determines that there are sufficient market-based solutions to ensure the identified [r]eliability [n]eed is met."[172] However, it is unclear in sections 31.2.8.1.3 and 31.2.8.2.1 under what circumstances NYISO will "determine[..] prior to or at the Trigger Date for the regulated backstop solution that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution in parallel with the selected alternative regulated transmission solution" or "that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution."[173] Therefore, the Filing Parties must propose on compliance, within 60 days of the date of issuance of this order, revisions to explain the circumstances under which NYISO will determine that it is necessary for a regulated backstop project to proceed in parallel with the alternative regulated solution, and the circumstances under which NYISO will determine that it is necessary for the Responsible Transmission Owner to proceed with a regulated backstop solution.

76. As the Filing Parties point out, the New York Transmission Owners have a legal obligation to prepare a regulated backstop solution to an identified Reliability Need if designated by NYISO as the Responsible Transmission Owner.[174] The NYISO/TO Agreement and the OATT contain provisions requiring the Responsible Transmission Owner to make a section 205 filing "consistent with FERC regulations" before including the cost of a regulated backstop solution in its revenue requirement, and, thus, the Responsible Transmission Owners must make such filings consistent with the

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[171] NYISO OATT, Attachment Y, § 31.1.2 (Reliability Planning Process) (5.0.0).

[172] Filing Parties Answer at 29; *see* NYISO OATT, Attachment Y, §§ 31.2.8.2.3, 31.2.8.2.4 (5.0.0).

[173] *See* NYISO OATT, Attachment Y, §§ 31.2.8.1.3, 31.2.8.2.1 (5.0.0).

[174] NYISO/TO Reliability Agreement, Art. 2, *available at* http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/Comprehensive_Planning_Process_for_Reliability_Needs_Agreement.pdf. The Commission approved this agreement in *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 (2004) (emphasis added).

Commission's regulations.[175] In addition, because the costs of a regulated backstop solution will be allocated pursuant to the regional cost allocation method, we require the Responsible Transmission Owner to provide project specific data related to the regulated backstop solution when making any future section 205 filing to recover the costs of that transmission solution. This project specific data would include the following information related to any regulated backstop solution that is not selected in the regional transmission plan for purposes of cost allocation but whose costs are allocated pursuant to the regional cost allocation method: (1) a timeline of the Responsible Transmission Owner's expenditures; a description of the development of the backstop solution; and (2) the total cost of developing the backstop solution, including a breakdown of study, engineering and design costs, rights-of-way and land acquisition costs, equipment costs, regulatory costs, and legal costs. This project-specific data must be filed as part of the proceeding initiated by the Responsible Transmission Owner at the Commission seeking cost recovery for the regulated backstop projects.

77. Concerning the timing of NYISO's regional transmission planning processes, we deny LS Power's request to require NYISO to submit to the Commission an informational filing regarding the explanation NYISO provides to stakeholders if it is unable to timely complete a particular transmission planning process. As the Filing Parties explain, NYISO, as the entity responsible for planning for the reliability of the bulk power system, has an incentive to timely complete its transmission planning process.[176] In addition, Attachment Y requires NYISO to notify stakeholders if the Comprehensive Reliability Plan cannot be completed within a two-year cycle and provide stakeholders with both an estimated completion date and an explanation of the reasons the additional time is required.[177] Thus, we disagree that this proposal provides an

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[175] NYISO/TO Reliability Agreement, Art. 3, §§ 3.03, 3.06. In addition, NYISO's 6 OATT Rate Schedules - 6.10 OATT Schedule 10 requires applicants to be consistent with Commission regulations on cost recovery:

> "The filing will further provide for the recovery of the full revenue requirement for a regulated reliability transmission project *consistent with FERC regulations including but not limited to any incentives for the construction of transmission project provided for in [s]ection 219 of the Federal Power Act and the FERC regulations implementing that section*."

NYISO's 6 OATT Rate Schedules - 6.10 OATT Schedule 10, § 6.10.2 (emphasis added).

[176] Filing Parties Answer at 45.

[177] NYISO OATT, Attachment Y, § 31.1.8.2 (5.0.0).

opportunity for an open-ended transmission planning process and agree with Filing Parties that requiring an informational filing would impose an unnecessary burden on NYISO and the Commission.

78. We also reject LS Power's argument that NYISO should remove the OATT provision concerning disputes solely within the New York Public Service Commission's jurisdiction. As the Filing Parties explain, the OATT language at issue predates NYISO's initial Order No. 1000 regional compliance filing and the Filing Parties have not proposed any substantive changes to this provision. In accepting the provision concerning such disputes,[178] the Commission found that, since the footprint of NYISO is contiguous with the state of New York, "the New York Commission is singularly suited to address certain disputes relating to . . . NYISO's final determination in the [Comprehensive Reliability Plan]," clarifying that NYISO would continue to take the lead responsibility in the planning process.[179] The Commission also clarified its jurisdiction and explained, "[t]o the extent that disputes regarding matters over which all the participating commissions have jurisdiction and responsibility for action, the Commission will entertain a request from the New York Commission or the parties for a joint or concurrent hearing to resolve the dispute, consistent with our regulations."[180] As these circumstances have not changed, we find that this provision continues to be just and reasonable.

ii. Affirmative Obligation to Plan on a Regional Basis

(a) First Compliance Order

79. In the First Compliance Order, the Commission found that the Filing Parties' proposal to expand the scope of the local transmission planning process to require NYISO to consider regional alternatives complied with Order No. 1000.[181] The Commission determined that the Filing Parties' proposal requires NYISO to review, in consultation with stakeholders, New York Transmission Owners' local transmission plans to identify any alternative transmission solutions proposed to meet transmission needs driven by reliability needs, congestion, or public policy requirements of the New York Control Area region more efficiently or cost-effectively than solutions that

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[178] *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 (2004).

[179] *Id.* P 19.

[180] *Id.*

[181] First Compliance Order, 143 FERC ¶ 61,059 at P 80 (referring to NYISO OATT, Attachment Y, § 31.2.1.1.3 (3.0.0).

individual public utility transmission providers identified in their local transmission planning processes.[182]

80. In addition, the Commission found that NYISO's practice of requiring merchant transmission developers to provide the data necessary for NYISO to assess the potential reliability and operational impacts of a merchant transmission project and to develop the Reliability Needs Assessment complied with the merchant information requirement of Order No. 1000.[183]

(b) Summary of Compliance Filing

81. The Filing Parties note that the Commission accepted, in the First Compliance Order, NYISO's process for evaluating alternative transmission solutions that might meet the transmission needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.[184] However, they propose additional OATT revisions that would apply to the regional reliability and public policy transmission planning processes to clarify the manner in which NYISO will perform its evaluation of local transmission plans as part of NYISO's proposed process to evaluate and select transmission solutions proposed in the reliability and public policy transmission planning processes.[185] For both reliability and public policy projects, the Filing Parties propose that NYISO will review local transmission plans as they relate to New York Bulk Power Transmission Facilities and determine, "using engineering judgment, . . . whether proposed regional transmission solutions on [the Bulk Power Transmission Facilities] may more efficiently or cost-effectively satisfy" reliability or public policy transmission

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[182] *Id.*

[183] *See* October 15, 2013 Compliance Filing at 29-30 (citing NYISO OATT, Attachment Y, § 31.2.2.4.1 and Attachment S, § 25.1.1).

[184] *Id.* at 45-46.

[185] *Id.*; *see* NYISO OATT, Attachment Y, §§ 31.2.6.4 (Evaluation of Proposed Regional Transmission Solutions on the Bulk Power Transmission Facilities to Address Reliability Needs Identified in Local Transmission Plans), 31.4.7 (Evaluation of Proposed Regional Transmission Solution as More Efficient or Cost Effective Solution on the Bulk Power Transmission Facilities to Address Needs Driven by Public Policy Requirement Identified in Local Transmission Plan) (5.0.0).

needs identified in the local transmission plan.[186] If NYISO identifies a regional transmission solution that may potentially be a more efficient or cost-effective solution to a reliability need or transmission need driven by public policy requirements in the local transmission plan, the Filing Parties propose that NYISO will "perform a sensitivity analysis to determine whether the proposed regional transmission solution on the [Bulk Power Transmission Facilities] would satisfy" the reliability or public policy needs identified in the local transmission plans.[187] If so, the Filing Parties propose that NYISO "will evaluate the proposed regional transmission solution" using the evaluation metrics in the reliability or public policy regional transmission planning process "to determine whether it may be a more efficient or cost effective solution on the [Bulk Power Transmission Facilities]" to satisfy the transmission need identified in the local transmission plans than the local transmission solutions included in those plans.[188]

82. The Filing Parties propose that NYISO will provide the results of its analysis to the Transmission Owners for their consideration and will report the results in the draft Comprehensive Reliability Plan or draft Public Policy Transmission Planning Report, which is provided to stakeholders for their review.[189] However, the Filing Parties argue, Order No. 1000 does not require NYISO to supplant the New York Transmission Owner's local transmission plan.[190]

(c) <u>Protests/Comments</u>

83. NextEra and LS Power protest that the Filing Parties' proposal gives too much discretion to Transmission Owners and could ultimately undermine regional transmission planning. NextEra protests that NYISO's role will be limited to reviewing "whether a regional [transmission] project meets a local transmission planning need more efficiently and cost-effectively" and NYISO will "apparently not have authority to supplant an inefficient local transmission project with a more efficient or cost effective regional

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[186] NYISO OATT, Attachment Y, § 31.2.6.4; *see also id.* § 31.4.7 (Evaluation of Proposed Regional Transmission Solution as More Efficient or Cost Effective Solution on the Bulk Power Transmission Facilities to Address Needs Driven by Public Policy Requirement Identified in Local Transmission Plan).

[187] *Id.* §§ 31.2.6.4, 31.4.7.

[188] *Id.*

[189] *Id.* § 31.4.10.1.

[190] October 15, 2013 Compliance Filing at 46.

solution . . . ."[191] NextEra argues that the Commission should require OATT revisions ensuring that NYISO has "explicit authority to reject local solutions when there is a more efficient solution under the regional transmission plan, or when it appears likely that such a solution will be developed."[192] LS Power similarly argues that NYISO's OATT should be clarified so that adjacent incumbent transmission owners cannot piece together several connected local transmission projects through their local transmission planning processes and make a large regional transmission project, thereby bypassing the NYISO regional transmission planning process.[193]

84. NextEra adds that the Filing Parties' proposal could "lead to costly and redundant facilities" and the Market Monitoring Unit should have the authority to point out when local transmission planning is undermining efficient regional transmission planning.[194] NextEra adds that the Commission should "consider invoking its authority . . . to exercise jurisdiction over all interstate transmission, including the transmission component of bundled retail sales," as a "deterrent" to actions that would "undermine efficient regional planning."[195]

(d) Answer

85. In their answer, the Filing Parties urge the Commission to reject the protest that (1) the New York Transmission Owners should not be able to use the local transmission planning process to evade regional transmission planning; (2) NYISO should supplant an inefficient local transmission plan; and (3) the Commission should consider invoking its jurisdiction over all interstate transmission, including the transmission component of bundled retail rates.[196] The Filing Parties consider these arguments to be an untimely request for rehearing of Order Nos. 1000 and 1000-A. They state that the Commission has ruled that incumbent transmission owners can reserve the right to build any transmission facilities provided they are not seeking regional cost allocation,[197] and that

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[191] NextEra Protest at 19.

[192] *Id.* at 20.

[193] LS Power Protest at 17-18.

[194] NextEra Protest at 20-21.

[195] *Id.* at 20-21.

[196] Filing Parties Answer at 42 n.130 (citing NextEra Protest at 3, 20-21).

[197] *Id.* at 42 n.131 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 63-64).

NextEra's request that the Commission extend its jurisdiction falls outside the scope of the compliance filing.[198]

(e) Commission Determination

86. We find that the Filing Parties' revisions to the reliability and public policy transmission planning processes to clarify how NYISO evaluates proposed regional transmission solutions to determine whether they would satisfy local transmission needs more efficiently or cost-effectively than solutions identified by New York Transmission Owners in their local transmission planning processes do not comply with Order No. 1000. In the First Compliance Order, the Commission accepted the Filing Parties' proposal, finding that Attachment Y requires that NYISO, in consultation with stakeholders, "will review the Transmission Owner [local transmission plans] as they relate to [Bulk Power Transmission Facilities] and will also evaluate whether other solutions proposed to meet Reliability Needs, congestion identified in the [Congestion Assessment and Resource Integration Study], or [p]ublic [p]olicy [r]equirements may meet such [Bulk Power Transmission Facility] needs of the [New York Control Area] region more efficiently or cost-effectively than the Transmission Owners' proposed [local transmission plan] solutions."[199] The Commission found that, by requiring NYISO to both review local transmission plans as they relate to Bulk Power Transmission Facilities and evaluate proposals from interested parties, this provision complied with Order No. 1000's requirement that NYISO "evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the transmission needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission provider in their local transmission planning processes."[200]

87. However, the Filing Parties' clarifying revisions indicate that, while NYISO will evaluate proposed regional transmission solutions to determine whether any proposed transmission solution may be a more efficient or cost-effective alternative to a local solution in a local transmission plan, absent regional transmission solutions proposed by interested parties, NYISO has no process to determine whether alternative regional transmission solutions might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public

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[198] *Id.* at 42.

[199] First Compliance Order, 143 FERC ¶ 61,059 at P 80.

[200] *Id.*

utility transmission providers in their local transmission planning processes.[201] We find that NYISO may not rely exclusively on proposals from interested parties in evaluating whether regional transmission solutions might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning processes.[202] Rather, NYISO has an affirmative obligation to determine whether alternative transmission solutions might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning processes, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider.[203] In addition, NYISO must comply with this affirmative obligation in each of the regional transmission planning process: reliability, economic, and public policy. Accordingly, we require the Filing Parties to submit, within 60 days of the date of issuance of this order, a further compliance filing that revises NYISO's OATT to clarify how NYISO "will review the Transmission Owners' [local transmission plans] as they relate to [Bulk Power Transmission Facilities]" to determine whether alternative transmission solutions might meet the reliability, congestion, or public policy transmission needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning processes, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider.[204]

88. However we disagree with NextEra's and LS Power's assertions that the Filing Parties' local transmission planning process gives too much discretion to Transmission Owners and must be revised to give NYISO the authority to supplant a local transmission

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[201] *See* NYISO OATT, Attachment Y, §§ 31.2.6.4 (Evaluation of Proposed Regional Transmission Solutions on the Bulk Power Transmission Facilities to Address Reliability Needs Identified in Local Transmission Plans), 31.4.7 (Evaluation of Proposed Regional Transmission Solution as More Efficient or Cost Effective Solution on the Bulk Power Transmission Facilities to Address Needs Driven by Public Policy Requirement Identified in Local Transmission Plan) (5.0.0).

[202] *See Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 56 (2013).

[203] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 12, 80, 147-148; *Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 56 (2013).

[204] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 12, 80, 147-148; *see also Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 56 (2013).

project with a more efficient or cost effective regional solution. Order No. 1000 is "not intended to appropriate, supplant, or impede any local transmission planning processes that public utility transmission providers undertake" and does not authorize a public utility transmission provider to require Transmission Owners to revise their local transmission plan to remove local solutions to identified transmission needs if more efficient or cost-effective solutions are identified in the regional transmission plan.[205] Order No. 1000 does "not require that the transmission facilities in a public utility transmission provider's local transmission plan be subject to approval at the regional or interregional level, unless that public utility transmission provider seeks to have any of those facilities selected in the regional transmission plan for purposes of cost allocation," and "nothing in Order No. 1000 explicitly or implicitly requires that any transmission facilities be sited, permitted, or constructed."[206] Thus, the selection of a regional transmission solution in the regional transmission plan for purposes of cost allocation does not require the transmission owner to revise its local transmission plan to replace a local transmission project.[207]

89. We also find that NextEra's recommendation that the Commission invoke its authority to exercise jurisdiction over all interstate transmission – including the transmission component of bundled retail rates – is outside the scope of compliance with Order No. 1000's requirements. We find, therefore, that this proceeding is not the proper forum for addressing the issue and reject NextEra's recommendation.

c. Consideration of Transmission Needs Driven by Public Policy Requirements

90. Order No. 1000 required public utility transmission providers to amend their OATTs to include procedures for the consideration of transmission needs driven by Public Policy Requirements in both the local and regional transmission planning processes.[208] Public Policy Requirements are requirements established by local, state or federal laws or regulations (i.e., enacted statutes passed by the legislature and signed by

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[205] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 161.

[206] Order No. 1000-A, 139 FERC ¶ 61,132 at PP 190-191.

[207] *See Pub. Serv. Co. of Colorado*, 142 FERC ¶ 61,206, at P 243 (2013).

[208] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).[209]

91. The Commission in Order No. 1000 explained that, to consider transmission needs driven by Public Policy Requirements, public utility transmission providers must adopt procedures to: (1) identify transmission needs driven by Public Policy Requirements; and (2) evaluate potential solutions to meet those identified needs.[210] More specifically, public utility transmission providers must adopt procedures in their local and regional transmission planning processes for identifying transmission needs driven by Public Policy Requirements that give all stakeholders a meaningful opportunity to provide input and to offer proposals regarding what they believe are transmission needs driven by Public Policy Requirements.[211] Each public utility transmission provider must explain how it will determine at both the local and regional level, the transmission needs driven by Public Policy Requirements for which solutions will be evaluated[212] and must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that were identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) why other proposed transmission needs driven by Public Policy Requirements were not selected for further evaluation.[213]

92. Order No. 1000 also required public utility transmission providers, in consultation with stakeholders, to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements, including transmission facilities proposed by stakeholders.[214] The evaluation procedures must give

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[209] *Id.* P 2. Order No. 1000-A clarified that Public Policy Requirements included local laws and regulations passed by a local governmental entity, such as a municipal or county government. Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

[210] *Id.* P 205.

[211] *Id.* PP 206-209; Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

[212] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 208-209.

[213] *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

[214] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211 & n.191. The details of the proposed process to evaluate solutions for selection in the regional transmission plan for purposes of cost allocation in the public policy transmission planning process, including the metrics NYISO considers in its evaluation, are discussed more fully below in Part IV.B.3.d (Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation).

stakeholders the opportunity to provide input and enable the Commission and stakeholders to review the record created by the process.[215]

i. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process

(a) First Compliance Order

93. In the First Compliance Order, the Commission found that the Filing Parties partially complied with the provisions of Order No. 1000 addressing the consideration of transmission needs driven by public policy requirements in the regional transmission planning process. In particular, the Commission found the Filing Parties' proposed procedures to identify transmission needs driven by public policy requirements and evaluate solutions proposed to address such transmission needs complied with Order No. 1000.[216] The Commission explained that, in evaluating potential solutions to meet transmission needs driven by public policy requirements, "NYISO will use its existing reliability, economic, and interconnection planning process tools, databases and models, as applicable," as well as "tools such as power flow, stability and short circuit models for system planning analysis, probabilistic models of generator availability for resource adequacy and production cost simulation models for economic and environmental analysis."[217] Further, the Commission explained that "NYISO's evaluation will compare the costs and benefits of the proposed transmission solutions, and impacts of the proposed transmission solution on NYISO-administered markets."[218] On this basis, the Commission determined that the proposed process for evaluating potential transmission solutions proposed to meet transmission needs driven by public policy requirements complied with the requirements of Order No. 1000.[219]

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[215] Order No. 1000-A, 139 FERC ¶ 61,132 at PP 320-321.

[216] First Compliance Order, 143 FERC ¶ 61,059 at PP 141,144. NYISO's process to evaluate solutions proposed to address transmission needs driven by public policy requirements, including additional revisions proposed in the October 15, 2013 Compliance Filing, is discussed more fully in the Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation section.

[217] *Id.* P 144.

[218] *Id.*

[219] *Id.*

94. However, the Commission found that the Filing Parties' proposal for selecting, in the public policy transmission planning process, more efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation did not comply with Order No. 1000. The Commission explained that, "a public utility transmission provider has an affirmative obligation to select more efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation."[220] The Commission determined that the Filing Parties must provide, on compliance, OATT revisions describing the process by which NYISO will select in the regional transmission plan for purposes of cost allocation more efficient or cost-effective solutions from among transmission projects proposed to meet transmission needs driven by public policy requirements.[221] The Commission added that this process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.[222]

95. The Commission also found that the Filing Parties' proposed definition of public policy requirements only partially complied with the requirements of Order No. 1000. Specifically, the Commission determined that the inclusion of the phrase "that drives the need for expansion or upgrades to the New York State bulk transmission facilities" in the Filing Parties' proposed definition was inconsistent with the requirements of Order No. 1000, which does not limit the definition of public policy requirements to those that provide transmission related benefits.[223] In addition, the Commission found that the definition did not expressly include consideration of duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government.[224] Accordingly, the Commission ordered that the Filing Parties provide on compliance a revised definition of public policy requirements that complies with the Commission's definition as specified in Order Nos. 1000 and 1000-A, including the removal of the phrase "that drives the need for expansion or upgrades to the New York State bulk transmission facilities" and an express clarification in the NYISO OATT that NYISO will also consider duly enacted laws or regulations passed by a local governmental entity.[225]

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[220] *Id.* P 145.

[221] *Id.*

[222] *Id.*

[223] *Id.* PP 137-138.

[224] *Id.* P 139.

[225] *Id.* P 140.

96. In addition, the Commission found that the Filing Parties' proposal did not comply with the requirements of Order No. 1000 because the proposal did not provide for comparable treatment of non-transmission alternatives.[226] The Commission found that the Filing Parties failed to identify how stakeholders and interested parties may submit proposals for non-transmission alternatives and how competing solutions will be evaluated and considered on a comparable basis. The Commission ordered a further compliance filing that identifies how, in the public policy requirements transmission planning process, non-transmission solutions will be evaluated such that all types of resources are considered on a comparable basis and that proposes OATT revisions providing that stakeholders and interested parties may submit proposals for non-transmission alternatives.[227]

97. With respect to OATT revisions proposed by the Long Island Power Authority to recognize the Long Island Power Authority as responsible for the identification of transmission needs for physical modification to the Long Island Transmission District, the Commission determined that Order No. 1000 does not require that a public utility transmission provider include any particular role for state regulators in the transmission planning process.[228] However, the Commission encouraged the Long Island Power Authority, NYISO, and other interested parties to work together to develop amendments that allow all relevant regulatory entities to participate fully in the transmission planning process.[229]

(b) <u>Summary of Compliance Filing</u>

98. The Filing Parties propose various revisions to NYISO's public policy transmission planning process[230] to address the Commission's directives in the First Compliance Order, including a revised definition of public policy requirements and a

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[226] *Id.* P 148.

[227] *Id.* P 149.

[228] *Id.* P 150.

[229] *Id.*

[230] The Filing Parties propose to define the Public Policy Transmission Planning Process as "[t]he process by which [NYISO] solicits needs for transmission driven by [p]ublic [p]olicy [r]equirements, evaluates all solutions on a comparable basis, and selects the more efficient or cost-effective transmission solution, if any, for eligibility for cost allocation under the ISO Tariffs." NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

process for NYISO to select[231] in the regional transmission plan for purposes of cost allocation more efficient or cost-effective transmission solutions to transmission needs driven by public policy requirements.[232] According to the Filing Parties' proposal, NYISO's public policy transmission planning process includes three steps: (1) the identification of Public Policy Transmission Needs;[233] (2) a request for proposed transmission and non-transmission solutions to address identified Public Policy Transmission Needs and evaluation of proposed solutions; and (3) the selection of the more efficient or cost-effective transmission solution, if any, to satisfy the Public Policy Transmission Need and be eligible for cost allocation.[234]

99. To comply with the Commission's directive to provide a revised definition of public policy requirements, the Filing Parties propose to define a public policy requirement as "[a] federal or New York State statute or regulation, including a [New York Public Service Commission] order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act, any successor statute, or any duly enacted law or regulation passed by a local governmental entity in New York State, that may relate to transmission planning on the [Bulk Power Transmission Facilities]."[235]

100. Regarding the identification of Public Policy Transmission Needs, the Filing Parties propose new language requiring any entity that submits a proposed Public Policy Transmission Need to include with its submittal, proposed criteria for NYISO to consider when it evaluates transmission solutions to that Public Policy Transmission Need, including the metrics for evaluating proposed transmission solutions for selection as more

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[231] The details of the proposed process to evaluate solutions for selection in the regional transmission plan for purposes of cost allocation in the public policy transmission planning process, including the metrics NYISO considers in its evaluation, are discussed more fully below in the Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation section.

[232] October 15, 2013 Compliance Filing at 33-46.

[233] The Filing Parties propose to define a Public Policy Transmission Need as a "transmission need identified by the [New York Public Service Commission/New York Department of Public Service] that is driven by a [p]ublic [p]olicy [r]equirement pursuant to [s]ection 31.4.2.1." NYISO OATT, Attachment Y, § 31.1.1 (Definitions).

[234] *Id.* § 31.4.1.

[235] October 15, 2013 Compliance Filing at 41-42.

efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation.[236]

101. The Filing Parties propose to revise the high level description of the public policy transmission planning process to clarify that the objectives of the public policy transmission planning process include providing a process whereby: "all solutions to Public Policy Transmission Needs are proposed and evaluated on a comparable basis" and NYISO "will select the more efficient or cost effective regulated transmission solution, if any, to satisfy the Public Policy Transmission Need for eligibility for cost allocation under the [NYISO] Tariffs."[237] Moreover, the Filing Parties propose to revise Attachment Y to state that:

> NYISO shall evaluate any proposed solution submitted by a Developer to a Public Policy Transmission Need. [NYISO] will evaluate whether each proposed solution is viable . . . and is sufficient to satisfy the Public Policy Transmission Need by the need date. . . . The proposed solution may include multiple components and resource types. When evaluating proposed solutions to a Public Policy Transmission Need from any Developer, [NYISO] shall consider all resource types – including generation, transmission, demand response, or a combination of these resource types – on a comparable basis as potential solutions.[238]

102. In response to the Commission's requirement that the Filing Parties identify how stakeholders and interested parties may submit proposals for non-transmission alternatives, the Filing Parties propose to revise Attachment Y to provide that NYISO will accept specific proposed non-transmission solutions to a Public Policy Transmission Need identified by the New York Department of Public Service.[239] The Filing Parties also propose to revise Attachment Y to state that NYISO will provide 60 days for

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[236] *Id.* at 43.

[237] *Id.*; NYISO OATT, Attachment Y, § 31.1.5. The proposed public policy evaluation process is discussed in the Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation section.

[238] NYISO OATT, Attachment Y, § 31.4.6.2 (Comparable Evaluation of All Proposed Solutions).

[239] October 15, 2013 Compliance Filing at 34 (referring to NYISO OATT Attachment Y, § 31.4.3).

developers to propose solutions, whether transmission or non-transmission, to address a Public Policy Transmission Need.[240]

103. To comply with the Commission's directive to propose a process for NYISO to select in the regional transmission plan for purposes of cost allocation more efficient or cost-effective transmission solutions, the Filing Parties propose a two-phase evaluation and selection process similar to the process for evaluating solutions to Reliability Needs discussed in the Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Transmission Solutions section above. In phase one, NYISO will evaluate proposed solutions from all resource types to determine whether they are viable and sufficient solutions, using the same criteria proposed for evaluating reliability solutions, as well as any evaluation criteria provided by the New York Public Service Commission or the New York Department of Public Service. NYISO will present the results of the viability and sufficiency analysis to NYISO's stakeholders, interested entities, and the New York Department of Public Service for comment.[241]

104. In phase two, the Filing Parties propose that NYISO will evaluate, for selection as the more efficient or cost-effective transmission solution in the regional transmission plan for purposes of cost allocation, proposed transmission solutions that NYISO has determined are viable and sufficient to meet the identified Public Policy Transmission Need.[242] The Filing Parties propose that NYISO will rank each proposed solution based on its satisfaction of the metrics[243] and will evaluate each viable and sufficient transmission solution to determine "the impacts on the [NYISO]-administered wholesale electricity markets."[244]

105. At the completion of this two-phase evaluation process, the Filing Parties explain, NYISO selects the more efficient or cost-effective transmission solution, if any,[245] and includes the regulated transmission solution in the Public Policy Transmission Planning

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[240] *Id.*; NYISO OATT, Attachment Y, § 31.4.3.1.

[241] NYISO OATT, Attachment Y, § 31.4.6.5 (5.0.0).

[242] October 15, 2013 Compliance Filing at 38 (citing NYISO OATT, Attachment Y, § 31.4.8).

[243] NYISO OATT, Attachment Y, § 31.4.8.1.

[244] *Id.* §31.4.9 (Evaluation of Impact of Proposed Transmission Solution on ISO Wholesale Electricity Markets).

[245] *Id.* § 31.4.8.

Report for purposes of cost allocation.[246] Specifically, NYISO staff prepares a draft Public Policy Transmission Planning Report that includes: (1) the regulated transmission solution, if any, that NYISO staff recommends for selection for cost allocation purposes as the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need; (2) the assumptions, inputs, and methodologies used in the evaluation, and the results of this analysis,[247] including the impacts of each proposed transmission solution on NYISO-administered wholesale electricity markets;[248] (3) a list of qualified developers and proposed solutions; (4) the results of the viability and sufficiency analysis of proposed transmission and non-transmission solutions; and (5) the results of NYISO's analysis of the local transmission plans with respect to transmission needs driven by public policy requirements.[249] The draft report will also compare the proposed regional transmission solution identified to meet a Public Policy Transmission Need to an interregional transmission project, which may be selected as a regulated transmission solution.[250]

106. According to the Filing Parties' proposal, NYISO will provide the draft Public Policy Transmission Planning Report to stakeholders for review and input as accepted in the First Compliance Order, with the following revisions.[251] First, the Filing Parties propose to formalize NYISO's existing practice of providing the Market Monitoring Unit's reports to the Management Committee prior to its vote on NYISO's reliability and economic planning reports.[252] The Filing Parties also propose to revise Attachment Y to state that the draft Public Policy Transmission Planning Report will be submitted to the Market Monitoring Unit for its review and consideration concurrently with its submission to the Transmission Advisory Planning Subcommittee and the Electric System Planning

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[246] *Id.* §§ 31.4.8, 31.4.8.2.

[247] *Id.* § 31.4.10.

[248] *See id.* § 31.4.9.

[249] October 15, 2013 Compliance Filing at 40; NYISO OATT, Attachment Y, § 31.4.10.

[250] NYISO OATT, Attachment Y, § 31.4.10.

[251] October 15, 2013 Compliance Filing at 40; *see also* First Compliance Order, 143 FERC ¶ 61,059 at P 144.

[252] October 15, 2013 Compliance Filing at 40-41; NYISO OATT, Attachment Y, § 31.4.10.1.

Working Group.[253] In addition, revised Attachment Y provides that the Market Monitoring Unit's evaluation will be provided to the NYISO Board concurrently with the draft Public Policy Transmission Planning Report, containing Business Issues Committee and Management Committee input.[254]

107. Second, NYISO[255] proposes to authorize the NYISO Board to elect not to select a transmission solution for cost allocation purposes to satisfy a Public Policy Transmission Need if the NYISO Board determines that the project will adversely affect price signals in NYISO's wholesale markets.[256] Specifically, NYISO proposes to revise Attachment Y to state that "[t]he Board may approve the Public Policy Transmission Planning Report as submitted or propose modifications on its own motion, including a determination not to select a transmission project to satisfy the Public Policy Transmission Need."[257] NYISO argues that if a proposed project sends price signals directly contrary to economic investment decisions, as measured by production cost savings and installed capacity savings compared to the cost of the proposed project, the NYISO Board reserves the discretion to deny regulated cost recovery to fulfill its responsibility to maintain economically competitive markets.[258] However, if the NYISO Board proposes changes, the revised report is returned to the Management Committee for further comment and the NYISO Board will not make a final determination on the revised report until it has reviewed the Management Committee's comments.[259] Upon final approval by the NYISO Board, NYISO proposes to issue the Public Policy Transmission Planning Report to the marketplace by posting it on the NYISO website.[260]

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[253] NYISO OATT, Attachment Y, § 31.4.10.1.

[254] *Id.* § 31.4.10.2.

[255] The Filing Parties state that the New York Transmission Owners disagree with this proposed revision and will provide comments and revisions separately. *See* October 15, 2013 Compliance Filing at n.152.

[256] *Id.* at 41.

[257] NYISO OATT, Attachment Y, § 31.4.10.2.

[258] October 15, 2013 Compliance Filing at 41.

[259] NYISO OATT, Attachment Y, § 31.4.10.2 (Board Review, Consideration, and Approval of Public Policy Transmission Planning Report).

[260] *Id.*

108. To ensure that a solution to address an identified Public Policy Transmission Need is available, the Filing Parties propose that the New York Public Service Commission or the New York Department of Public Service may request that a Transmission Owner or Other Developer propose a transmission solution for a transmission need driven by a public policy requirement.[261]

(c) Protests/Comments

109. Several commenters object to various aspects of NYISO's proposal to authorize the NYISO Board to elect to not select a transmission solution for cost allocation purposes to satisfy a Public Policy Transmission Need if the NYISO Board determines that the project will adversely affect price signals in NYISO's wholesale markets. Some of these commenters argue that the Commission did not require NYISO's proposal in the First Compliance Order and that it should not be considered on compliance.[262] The New York Public Service Commission argues that NYISO's newly created test based on how a proposed solution may affect price signals is an entirely discretionary determination that is not in line with Order No. 1000, because Order No. 1000 requires the selection of a more efficient or cost-effective transmission project for purposes of cost allocation.[263] Similarly, the New York Transmission Owners argue that the Commission has not given the NYISO Board the discretionary authority to refuse to select transmission solutions proposed to meet a need driven by public policy based on exogenous factors such as potential market impacts.[264] The New York Public Service Commission adds that, in addition to meeting federal and state public policy requirements, a new transmission facility may broaden wholesale markets by allowing certain generators to compete more economically, enhancing competition.[265]

110. Furthermore, the New York Public Service Commission and the New York Transmission Owners argue that NYISO's proposal may hinder the successful

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[261] NYISO OATT, Attachment Y, § 31.4.3.2; *see* October 15, 2013 Compliance Filing at 34 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 328); NYISO OATT, Attachment Y, §§ 31.4.3.2, 31.5.6.

[262] New York Public Service Commission Protest at 2; New York Transmission Owners at 2-3; NextEra Protest at 21-22.

[263] New York Public Service Commission Protest at 2, 4-5 (citing October 15, 2013 Compliance Filing at 41).

[264] New York Transmission Owners Comments at 3.

[265] New York Public Service Commission Protest at 6.

implementation of duly-enacted public policy requirements and deny cost allocation to solutions for which a need has been identified and evaluated.[266] The New York Transmission Owners state that the transmission planning process created by the First Compliance Order provides that once a determination of need is made, it becomes NYISO's responsibility to evaluate proposed solutions to meet that need and to select the more efficient or cost-effective transmission solutions to meet that need. They assert that transmission solutions, by their very nature, alter an interconnected network and will have some impact on the competitive wholesale electricity market, whether on capacity prices, energy prices, or other market outcomes, and that NYISO should not be permitted to hinder the achievement of state or federal public policy objectives on this basis.[267]

111. NextEra similarly contends that the NYISO Board should not be given the discretion to veto transmission projects at this late stage, at which NYISO will already have evaluated the impact of the proposed transmission solution.[268] NextEra also asserts that the Market Monitoring Unit should be provided an opportunity to offer recommendations earlier in the process to allow stakeholders an opportunity to comment prior to any recommendation to the NYISO Board that may terminate the project. Alternatively, NextEra recommends that if the NYISO Board is provided a late opportunity to reject a transmission project, this decision should be constrained by criteria defined in the NYISO OATT.[269]

112. The Long Island Power Authority offers an amendment to the Filing Parties' compliance filing. The Long Island Power Authority states that after working with the Filing Parties and the New York Department of Public Service, as encouraged in the First Compliance Order, the Long Island Power Authority has developed OATT language that accommodates its jurisdictional responsibilities on Long Island and allows the Long Island Power Authority to participate in the NYISO public policy transmission planning process.[270] The Long Island Power Authority's proposed revisions cover three areas: (1) the identification of Public Policy Transmission Needs within the Long Island Transmission District; (2) a requirement that any physical modification to the Long Island Power Authority's transmission facilities be authorized by the Long Island Power Authority Board of Trustees; and (3) the development of cost allocation methods and

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[266] *Id.* at 3-5; New York Transmission Owners Comments at 2-4.

[267] New York Transmission Owners Comments at 3-4.

[268] NextEra Protest at 21 (citing NYISO OATT, Attachment Y, § 31.4.8.1).

[269] *Id.* at 21-22.

[270] Long Island Power Authority Comments at 2, 4.

rates for any the Long Island Power Authority-developed projects meeting a public policy need.[271]

113. The Long Island Power Authority proposed tariff language to clarify that it, as opposed to the New York Public Service Commission and New York Department of Public Service, has jurisdiction over the identification of transmission needs requiring physical modifications of transmission facilities within the Long Island Transmission District. The Long Island Power Authority recognizes, however, that the New York Department of Public Service determines whether a transmission need identified by the Long Island Power Authority is considered a Public Policy Transmission Need for purposes of evaluation by NYISO.[272]

(d) <u>Answer</u>

114. NYISO[273] recommends that the Commission reject protests regarding the NYISO Board's authority not to select a transmission project to satisfy a Public Policy Transmission Need.[274] NYISO refutes protests from New York Transmission Owners, New York Public Service Commission, and NextEra who contend that the NYISO Board's authority to not select a transmission solution is inconsistent with Order No. 1000.

115. NYISO states that Order No. 1000 requires a transparent and not unduly discriminatory process to evaluate whether to select a proposed transmission facility in a regional transmission plan for purposes of cost allocation,[275] but does not mandate the selection of a solution to a transmission need driven by public policy requirements. NYISO also states that Order No. 1000 requires that an evaluation process be sufficiently detailed for stakeholders to understand why a particular transmission project was or was not selected in the regional transmission plan for purposes of cost allocation, but that the Commission did not dictate that any particular proposals be accepted or that selected transmission facilities be constructed.[276] NYISO contends that its public policy

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[271] *Id.* at 7-8.

[272] *Id.* at 8.

[273] The New York Transmission Owners do not join NYISO in these comments.

[274] Filing Parties Answer at 46.

[275] *Id.* at 46-47 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328).

[276] *Id.* at 47 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 328, 331).

transmission planning process provides a mechanism for NYISO to select the more efficient or cost-effective solution to satisfy the Public Policy Transmission Need, but preserves the NYISO Board's duty and responsibility not to make a selection if it independently determines that it should not do so.[277]

116. In response to protests from the Transmission Owners and New York Public Service Commission that the NYISO proposal to allow the NYISO Board to elect to not select a proposed transmission project may frustrate enacted federal or state laws and regulations, NYISO contends that Order No. 1000 does not make a public utility transmission provider responsible for the fulfillment of public policy requirements. Citing to specific language from Order No. 1000, NYISO highlights that the Commission did not establish an independent requirement to satisfy an identified public policy requirement and that the Commission did not mandate a public utility transmission provider to consider the public policy requirement itself.[278] NYISO clarifies that it does not expect the NYISO Board to often decline to approve a transmission project that addresses a public policy requirement and that NYISO does not intend to second guess or undermine federal, state, or local public policy determinations.[279] NYISO states that the NYISO Board's authority to approve or propose modifications to the public policy planning report, which was not challenged in protests, logically includes the authority not to select a transmission project. NYISO adds that its proposal is consistent with the NYISO Board's authority to make final and independent decisions for NYISO and is consistent with Commission-approved OATT language authorizing the NYISO Board to evaluate the impacts of proposed transmission projects on the NYISO-administered competitive markets.[280]

117. NYISO contends that arguments from the Transmission Owners that the NYISO proposed revision should not be selected because it was not discussed during the original stakeholder process and was not discussed in the initial compliance filing are without merit. NYISO argues that the Filing Parties' initial filing proposed an evaluation and selection process in which the New York Public Service Commission selected transmission solutions. To comply with the First Compliance Order, NYISO states that, in consultation with stakeholders, it began considering the implications of the NYISO

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[277] *Id.*

[278] *Id.* at 48-49 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 109, 204, 213).

[279] *Id.* at 49.

[280] *Id.* (citing section 31.4.4 of the NYISO OATT accepted in the First Compliance Order, 143 FERC ¶ 61,059 at P 144).

Board selecting transmission projects. NYISO contends that its intentions regarding its scope of authority were known to stakeholders and stakeholder input was considered.[281]

118. NYISO responds to comments from NextEra that (1) the Market Monitoring Unit should provide input earlier in the process and that concerns regarding the adverse impact of a proposed transmission solution should be clearly articulated and vetted with stakeholders prior to project termination, and (2) any transmission project rejection should be constrained by defined criteria in the NYISO OATT.[282] NYISO argues that part of NextEra's requests are addressed in the October 15, 2013 Compliance Filing, which states that the Market Monitoring Unit receives the draft Public Policy Transmission Planning Report concurrently with stakeholders and will provide its evaluation of the draft report to stakeholders prior to the NYISO stakeholder management committee's advisory vote on the report.[283] NYISO notes that if the NYISO Board revises the report, it will be returned to the NYISO stakeholder management committee for review and comment, adding that the NYISO Board cannot make a final determination on the revised report without reviewing such comments.[284]

119. The Filing Parties offer no objection to the OATT revisions proposed by the Long Island Power Authority to account for its role in the transmission planning process in the Long Island Transmission District, with one exception, and therefore offer no objection to incorporating the Long Island Power Authority's proposed revisions, along with any conforming edits, into the NYISO OATT in a further compliance filing.[285] However, the Filing Parties state that the Long Island Power Authority's proposed revisions to section 31.4.8.2, clarifying that any selection of a transmission project by NYISO that involves the physical modification of transmission facilities within the Long Island Transmission District shall not affect the project proponent's responsibility to apply for and receive all necessary permits or authorizations, may be read to limit NYISO's ability to include certain regional or interregional transmission projects in its regional transmission plan or limit the effectiveness of NYISO's interconnection

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[281] *Id.* at 49-50.

[282] *Id.* at 50 (citing NextEra Comments at 22).

[283] *Id.* (citing NYISO OATT, Attachment Y, §§ 31.4.10.1, 31.4.6.8.5).

[284] *Id.* (citing NYISO OATT, Attachment Y, § 31.4.2.10).

[285] *Id.* at 43.

requirements.[286] The Filing Parties propose, after discussion with the Long Island Power Authority, that section 31.4.8.2 state:

> Any selection of a project by the [NYISO] under this Section 31.4.8 that involves the physical modification of facilities within the Long Island Transmission District shall not affect the obligation and responsibility of the project proponent to apply for, and receive all necessary authorizations or permits required by federal or state law for such modifications.

120. The Filing Parties state that the Long Island Power Authority agrees that this formulation fulfills the Long Island Power Authority's expressed purpose.[287]

(e) <u>Commission Determination</u>

121. We find that the Filing Parties' proposed revisions to its regional transmission planning process partially comply with the directives in the First Compliance Order concerning the consideration of transmission needs driven by public policy requirements, and the evaluation[288] and selection of more efficient or cost-effective transmission solutions to meet such transmission needs.

122. We find the Filing Parties' revised definition of public policy requirements to be consistent with the requirements of Order No. 1000. In response to the First Compliance Order, the Filing Parties have removed the clause "that drives the need for expansion or upgrades to the New York State bulk transmission facilities" and included a reference to duly enacted laws or regulations passed by a local governmental entity.

123. We further find that the Filing Parties' proposed OATT revisions to identify how stakeholders and interested parties in the public policy transmission planning process may submit proposals for non-transmission alternatives meet the requirements of Order No. 1000. The Filing Parties' proposal provides that a proposed solution to meet a Public

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[286] *Id.* at 44 (citing the Long Island Power Authority Comments at 11-12).

[287] *Id.*

[288] NYISO's process for evaluating, for selection in the regional transmission plan for purposes of cost allocation, solutions proposed to address transmission needs driven by public policy requirements, including the criteria NYISO considers, is discussed more fully below in the Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation section.

Policy Transmission Need may include multiple components or resource types and that NYISO will consider all resource types, including generation, transmission, demand response, or a combination of these resource types.[289]

124. We find that the Filing Parties' proposal regarding the identification of Public Policy Transmission Needs that NYISO should evaluate and request specific proposed solutions to address, as well as the proposed process for selecting the more efficient or cost-effective transmission solution to satisfy an identified Public Policy Transmission Need in the regional transmission plan for purposes of cost allocation comply with the requirements of Order No. 1000. Several commenters contend that NYISO's proposed OATT provisions to allow the NYISO Board to elect to not select a transmission solution to satisfy a Public Policy Transmission Need were not expressly required in the First Compliance Order. The First Compliance Order directed NYISO to amend its previous proposal, pursuant to which the New York Public Service Commission would select among proposed solutions, and required that NYISO select in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solution to meet transmission needs driven by public policy requirements. NYISO's current proposal relating to the NYISO Board's authority to select transmission solutions falls within the context of revisions to allow NYISO to select relevant transmission solutions; thus, we do not consider the proposed changes to be beyond the scope of the Commission's directives in the First Compliance Order.

125. To the extent that a transmission facility to address transmission needs driven by public policy requirements is selected in the regional transmission plan for purposes of cost allocation, NYISO must make that selection. However, Order No. 1000 does not require public utility transmission providers to select any particular transmission facility to address transmission needs driven by public policy requirements in the regional transmission plan for purposes of cost allocation.[290] Thus, we find that the Filing Parties' proposal to allow the NYISO Board to elect to not select a transmission solution to satisfy a Public Policy Transmission Need is reasonable and is not inconsistent with the requirements of Order No. 1000. Nevertheless, Order No. 1000 also requires that the process to make any such selection culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.[291] As

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[289] NYISO OATT, Attachment Y § 31.4.6.2.

[290] *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 ("[T]he Commission is not dictating that any particular proposals be accepted or that selected transmission facilities be constructed.").

[291] *Id.* P 328.

such, it is important that any decision relating to the selection of more efficient or cost-effective transmission solutions allow for stakeholder participation and transparency. Therefore, the Filing Parties must provide on compliance, within 60 days of the date of issuance of this order, OATT revisions that require the NYISO Board, in making a decision regarding the more efficient or cost-effective transmission solution to a Public Policy Transmission Need, to provide an explanation of why any proposed solutions, determined to be sufficient and viable, were not selected in the regional transmission plan for purposes of cost allocation.

126. In addition, we note that NYISO states in its answer that the Market Monitoring Unit will provide its evaluation of the draft Public Policy Transmission Planning Report to stakeholders prior to NYISO's Management Committee's advisory vote on the report. We expect, as this report is provided to stakeholders, any relevant stakeholder comments related to the report's findings will be considered by the NYISO Board in its final decision.[292]

127. Regarding the Long Island Power Authority's proposed revisions, Order No. 1000 strongly encourages state regulators to participate actively in the transmission planning process, particularly with regard to the identification of transmission needs driven by public policy requirements.[293] As discussed in the First Compliance Order, the Commission also encouraged the Long Island Power Authority to actively participate in the public policy transmission planning process.[294] While we recognize that the Filing Parties offer no objection to the OATT revisions proposed by the Long Island Power Authority, with one exception, such provisions were not included in the Filing Parties' compliance filing and the Filing Parties have not proposed to amend their compliance filing to reflect such provisions. Therefore, we will not require the Filing Parties to revise the NYISO OATT to address the Long Island Power Authority's proposal. If the Filing Parties and the Long Island Power Authority agree to further OATT modifications, consistent with the Commission's findings in this order, the Filing Parties may include those OATT revisions in a section 205 filing or in their next compliance filing and we will consider the proposed OATT revisions at that time.

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[292] NYISO OATT Attachment Y, § 31.4.10.1.

[293] *See* Order No. 1000-A, 139 FERC ¶ 61,132 at P 338.

[294] First Compliance Order, 143 FERC ¶ 61,059 at P 150.

ii. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Local Transmission Planning Process

(a) First Compliance Order

128. In the First Compliance Order, the Commission found that the Filing Parties' proposal to incorporate the consideration of transmission needs driven by public policy requirements in the local transmission planning process partially complied with the requirements of Order No. 1000.[295] The Commission stated that the Filing Parties satisfied Order No. 1000's requirement that each public utility transmission provider revise its OATT to include procedures to identify at the local level transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input regarding the transmission needs they believe are driven by public policy requirements. In addition, the Commission determined that the Filing Parties' proposal provided that there will be a posting on the Transmission Owner's website that describes (i) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the local transmission planning process; and (ii) those transmission needs driven by public policy requirements introduced by stakeholders that were not identified for evaluation for potential transmission solutions in the local transmission planning process and why they were not selected for further evaluation.[296]

129. However, the Commission found that the Filing Parties failed to describe a just and reasonable and not unduly discriminatory process through which the Transmission Owners will identify, out of the larger set of transmission needs driven by public policy requirements that may be proposed, those transmission needs for which transmission solutions will be evaluated in the local transmission planning process, including an explanation of how each Transmission Owner's local transmission planning process determines whether to move forward regarding transmission needs driven by public policy requirements.[297] Therefore, the Commission directed the Filing Parties to propose such a process on compliance, as well as procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders.[298]

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[295] *Id.* P 156.

[296] *Id.* P 157.

[297] *Id.* P 159.

[298] *Id.* P 160.

(b) Summary of Compliance Filing

130. To comply with the Commission's directive that the NYISO OATT set forth a process to identify transmission needs for which solutions will be evaluated in the local transmission planning process, the Filing Parties propose that a market participant or other interested party may submit its proposal for a transmission need driven by public policy requirements to NYISO and the relevant New York Transmission Owner.[299] The Filing Parties propose to revise Attachment Y to state that such proposals must identify the specific public policy requirement driving the transmission need and explain why a local upgrade is needed to implement it. The Filing Parties propose to post all proposed local system transmission needs on the NYISO website and will request that the New York Department of Public Service review the proposals and provide input to the relevant New York Transmission Owner to assist that Transmission Owner in its determination.[300]

131. After considering input from the New York Department of Public Service and information submitted by the entity proposing the proposal or any other party, the New York Transmission Owner will determine whether there are transmission needs driven by public policy requirements for which a local transmission solution should be evaluated. A list of such needs will be posted on the New York Transmission Owner's website and the Filing Parties state that the New York Transmission Owner will explain why it identified the needs for which solutions are to be evaluated, and why it declined to identify other such needs.[301]

132. In response to the Commission's directive that the Filing Parties provide procedures for evaluating potential transmission solutions to identified transmission needs driven by public policy requirements in the local transmission planning process, the Filing Parties propose that each New York Transmission Owner will evaluate proposed transmission solutions for inclusion in its local transmission plan.[302] In consultation with the New York Department of Public Service, the Filing Parties propose that the New York Transmission Owner will evaluate proposed transmission solutions to determine the more efficient or cost-effective solutions by considering relative costs and benefits of proposed transmission solutions, and their impact on the New York

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[299] NYISO OATT, Attachment Y, § 31.2.1.1.2.2.

[300] *Id.*

[301] October 15, 2013 Compliance Filing at 45; NYISO OATT, Attachment Y, § 31.2.1.1.2.2.

[302] October 15, 2013 Compliance Filing at 45; NYISO OATT, Attachment Y, § 31.2.1.1.2.3.

Transmission Owner's transmission system and customers. Any local transmission solution identified by the New York Transmission Owner will be reviewed with stakeholders as part of its local transmission planning process and will be included in the New York Transmission Owner's subsequent local transmission plan posted on its website.[303] In conducting its evaluation, the New York Transmission Owner will use criteria relevant to the public policy requirement driving the transmission need, which may include published local planning criteria and assumptions.[304]

(c) Protests/Comments

133. NextEra expresses concerns with the local transmission planning process for local transmission needs driven by public policy requirements. NextEra contends that the Filing Parties' proposal appears to grant incumbent transmission owners "unfettered discretion" to determine whether a given public policy requirement is best served through regional or local transmission planning by allowing a transmission owner to itself determine whether there is a transmission need driven by a public policy requirement on its local system and to then select the transmission solution to fit that need.[305]

(d) Commission Determination

134. We find that the Filing Parties' proposed revisions to the local transmission planning process comply with the directives of the First Compliance Order concerning the consideration of transmission needs driven by public policy requirements. The Filing Parties have proposed a just and reasonable and not unduly discriminatory process by which each NYISO Transmission Owner will identify those transmission needs driven by public policy requirements for which transmission solutions will be evaluated in the local transmission planning process. The Filing Parties' proposed process provides stakeholders an opportunity to propose transmission needs driven by public policy requirements, which will be posted on the NYISO website. Each New York Transmission Owner will also post on its website a list of transmission needs for which transmission solutions will be requested and evaluated, and an explanation of why other identified transmission needs were not selected. The Filing Parties' proposal also includes procedures to evaluate proposed transmission solutions in the local transmission planning process to determine the more efficient or cost-effective solution in coordination

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[303] October 15, 2013 Compliance Filing at 45; NYISO OATT, Attachment Y, § 31.2.1.1.2.3.

[304] NYISO OATT, Attachment Y, § 31.2.1.1.2.3.

[305] NextEra Protest at 19 (citing NYISO OATT, Attachment Y, §§ 31.2.1.1.2.2, 31.2.1.1.2.3).

with stakeholders and the New York Department of Public Service. Accordingly, we find that the Filing Parties' proposal complies with the Commission's directives in the First Compliance Order that the Filing Parties revise the NYISO OATT to: (1) describe a just and reasonable and not unduly discriminatory process through which the New York Transmission Owners will identify those transmission needs driven by public policy requirements for which transmission solutions will be evaluated in the local transmission planning process; and (2) include procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders.

135. NextEra contends that allowing a transmission owner to identify transmission needs driven by public policy requirements and select the more efficient or cost-effective solution for inclusion in the transmission owner's local transmission plan provides the transmission owner with "unfettered discretion" to determine whether a public policy requirement is best served through the local or regional transmission planning process. We disagree with this assertion as the Filing Parties' proposed process provides ample opportunity for stakeholder engagement. Moreover, the Filing Parties' proposed local transmission planning process provides that NYISO will review New York Transmission Owner local transmission plans, evaluate whether other proposed solutions may effectively meet the local transmission need, and report these results in NYISO's Public Policy Transmission Planning Report.

3. Nonincumbent Transmission Developer Reforms

136. In Order No. 1000, the Commission adopted a framework of reforms to ensure that nonincumbent transmission developers have the opportunity to participate in the transmission development process. In particular, public utility transmission providers must eliminate federal rights of first refusal from Commission-jurisdictional tariffs and agreements and develop not unduly discriminatory qualification criteria and processes governing the submission and evaluation of proposals for new transmission facilities.

a. Federal Rights of First Refusal

137. Order No. 1000 required each public utility transmission provider to remove provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.[306] The

[306] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. In Order No. 1000-A, the Commission clarified that the phrase "a federal right of first refusal" refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

requirement to eliminate a federal right of first refusal does not apply to local transmission facilities,[307] or to the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.[308] In addition, the requirement does not remove, alter, or limit an incumbent transmission provider's use and control of its existing rights-of-way under state law.[309]

i. First Compliance Order

138. In the First Compliance Order, the Commission determined that NYISO's proposal concerning federal rights of first refusal partially complied with the requirements of Order No. 1000, finding as an initial matter that NYISO did not have a federal right of first refusal designated in the OATT. The Commission accepted, subject to compliance, NYISO's proposal to add a new section to Attachment Y providing that:

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[307] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 258, 318. Order No. 1000 defined local transmission facilities as transmission facilities located solely within a public utility transmission provider's retail distribution service territory or footprint that are not selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63. The Commission clarified in Order No. 1000-A that a local transmission facility is one that is located within the geographical boundaries of a public utility transmission provider's retail distribution service territory, if it has one; otherwise the area is defined by the public utility transmission provider's footprint. In the case of an RTO or ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owing members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

[308] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

[309] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

> Nothing in this Attachment Y affects the right of an incumbent Transmission Owner to: (1) build, own, and recover costs for upgrades to the facilities it owns, regardless of whether the upgrade has been selected in the regional transmission plan for purposes of cost allocation; (2) retain, modify, or transfer rights-of-way subject to relevant law or regulation granting such rights-of-way; or (3) develop a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its own service territory or footprint.[310]

139. The Commission explained that the provision stating that "[n]othing in this Attachment Y affects the right of an incumbent Transmission Owner to . . . retain, modify, or transfer rights-of-way subject to relevant law or regulation granting such rights-of-way" simply reiterates Order No. 1000's conclusion that the "retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way," and that the Order No. 1000 reforms "are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way."[311]

140. The Commission also found that NYISO did not define the term "upgrade" as it is used in that section of Attachment Y. Therefore, the Commission required NYISO to define the term consistent with the definition of upgrade in Order No. 1000, so that it would be clear which transmission facilities may fall within the definition of upgrade in Attachment Y.

ii. Summary of Compliance Filing

141. In response to the Commission's directive that NYISO provide on compliance a definition of the term "upgrade" in Attachment Y that is consistent with the definition of upgrade in Order No. 1000, the Filing Parties propose to add a new provision to Attachment Y that states "[f]or purposes of [s]ection 31.6.4, the term 'upgrade' shall refer to an improvement to, addition to, or replacement of an existing transmission facility or any part thereof and shall not refer to an entirely new transmission facility."[312]

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[310] First Compliance Order, 143 FERC ¶ 61,059 at PP 168-171; *see also* NYISO OATT, Attachment Y, § 31.6.4 (2.0.0).

[311] First Compliance Order, 143 FERC ¶ 61,059 at P 171.

[312] NYISO OATT, Attachment Y, § 31.6.4.

142. In addition, the Filing Parties propose additional revisions to section 31.6.4 of Attachment Y to provide:

> ~~Nothing in this Attachment Y affects the right of a~~An incumbent Transmission Owner shall have the right to: (1) build, own, and recover costs for upgrades to the transmission facilities it owns, regardless of whether the upgrade has been selected in the regional transmission plan for purposes of cost allocation; (2) retain, modify, or transfer rights-of-way subject to relevant law or regulation granting such rights-of-way; or (3) develop, build, own, and operate a ~~local~~ transmission solution that is not eligible for regional cost allocation to meet its reliability or other needs or service obligations in its own service territory or footprint.

143. The Filing Parties assert that the New York Transmission Owners have an express right to take the actions set forth above, and, therefore, the clarifications "eliminate ambiguity regarding the incumbent [New York Transmission Owners'] rights concerning upgrades to their facilities and the development of transmission facilities not eligible for regional cost allocation to meet the needs of their service territories."[313]

144. The Filing Parties add that removing the word local is necessary to clarify that incumbent Transmission Owners may continue to develop and construct transmission facilities "that pass through or are located, in part, in the neighboring [New York Transmission Owner's] service territory or are jointly owned by neighboring [New York Transmission Owners]" if the incumbent Transmission Owner is not seeking regional cost allocation.[314]

iii. Protests/Comments

145. LS Power argues that the intent or purpose of section 31.6.4 providing that an "incumbent transmission owner shall have the right to build, own, and recover costs for upgrades to the transmission facilities it owns, regardless of whether the upgrade has been selected in the regional plan for purposes of cost allocation" is unclear. In LS Power's estimation, under Order No. 1000, the incumbent transmission owner has the right to build any "local" projects and in addition, the incumbent transmission owner retains a right of first refusal to construct "upgrades" to its transmission facilities. LS Power thus argues that the situation the OATT provision is intended to address is

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[313] October 15, 2013 Compliance Filing at 57.

[314] *Id.*

unclear, particularly with its reference to "regardless of whether the upgrade has been selected in the regional plan for purposes of cost allocation." According to LS Power, the provision adds nothing to the rights of incumbent transmission owners and should be struck. LS Power argues that upgrades, even if ultimately assigned to the incumbent transmission owners, should not be permitted to have an end-run around an Order No. 1000 transmission planning process.[315]

146. Several protesters assert that the Commission should reject the Filing Parties' proposal to remove the term "local" from section 31.6.4 of Attachment Y. Entergy and Multiple Intervenors and IPPNY assert that the Commission did not require Filing Parties to remove the term "local" in the First Compliance Order and therefore the revisions exceed the scope of the First Compliance Order.[316] Multiple Intervenors and IPPNY state that the NYISO Agreement clearly delineates the stakeholder process and procedures required to amend the NYISO OATT and argue that the Filing Parties may not use a compliance filing to amend the OATT in violation of the NYISO's shared governance procedures by including proposals beyond the scope of the directives in the First Compliance Order.

147. In addition, Multiple Intervenors and IPPNY argue that the removal of the term would allow incumbent transmission owners to develop, build, and operate any number of facilities on joint systems and would permit them to do so completely outside of the NYISO's regional transmission planning framework, including its cost allocation and cost recovery mechanisms. Multiple Intervenors and IPPNY assert that NYISO's proposal directly contradicts Order No. 1000's directives regarding NYISO's review of local transmission plans and would substantially impair NYISO's ability to serve its planning function.[317] LS Power notes that NYISO's OATT does not include a definition of local transmission projects,[318] but does include numerous references to the Transmission Owner's "local system" in other sections, such as "Local Transmission

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[315] LS Power Protest at 23-24.

[316] Multiple Intervenors and IPPNY Protest at 34-35; Entergy Nuclear Power Marketing Protest at 16-18.

[317] Multiple Intervenors and IPPNY Protest at 32-33.

[318] LS Power Protest at 16 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63 and Order No. 1000-A, 139 FERC ¶ 61,132 at P 423).

Owner Planning Process and "Evaluation of Proposed Local Transmission Solutions."[319] LS Power argues that "local system" should be a defined term that clarifies that the local transmission plan is confined to projects within the retail distribution service territory of the transmission owner and for which the costs will be allocated exclusively to the customers within that retail distribution service territory.[320]

iv. Answer

148. The Filing Parties respond that the Commission should accept the proposed changes to section 31.6.4, because removing the term "local" furthers the intent of Order No. 1000. They point to the Commission's statement that Order No. 1000 applies to facilities included in a regional transmission plan "for purposes of cost allocation," and that such facilities may be only a "subset of the transmission facilities in the regional transmission plan."[321] The Filing Parties state that, rather than seeking to bypass NYISO's regional planning process, the removal of the term "local" from section 31.6.4 clarifies that an incumbent transmission owner may build and own transmission facilities in another transmission owner's service territory in order to reliably serve its own customers without seeking regional cost allocation, as permitted by Order No. 1000. They argue that removing the term local eliminates ambiguity and ensures that an incumbent transmission owner retains the right to develop and construct transmission to meet its customers' needs, even to the extent that the facilities may pass through or be located in a neighboring New York Transmission Owner's service territory, provided the incumbent transmission owner is not seeking regional cost allocation.[322]

149. With regard to the term "upgrade," the Filing Parties also respond to LS Power's arguments that the Commission should delete the provision in section 31.6.4 that the "incumbent transmission owner shall have the right . . . to build, own and recover costs for upgrades to the transmission facilities it owns, regardless of whether the upgrade has been selected in the regional plan for cost allocation purposes," and that this language is unclear because the incumbent transmission owner already has the right to build any local

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[319] *Id.* at 17 (referencing section 31.2.1 (Local Transmission Owner Planning Process), section 31.2.1.1.2.2 (Determination of Local Transmission Needs Driven by Public Policy Requirements) and section 31.2.1.1.2.3 (Evaluation of Proposed Local Transmission Solutions)).

[320] *Id.*

[321] Filing Parties Answer at 40 n.121 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63).

[322] *Id.* at 40.

transmission projects and retains a right of first refusal to construct upgrades.[323] They note that the Commission has ruled that an incumbent transmission owner has the right to build, own, and recover costs for upgrades to the transmission facilities that it owns, regardless of whether the upgrade has been selected in the regional transmission plan for purposes of cost allocation,[324] and the Filing Parties' proposed addition to section 31.6.4 clarifies that point and tracks the language expressly approved by the Commission with regard to the meaning of the term "upgrades." The Filing Parties state that they have defined "upgrade" consistent with the Commission's definition set forth in Order No. 1000-A, which defines an upgrade as "an improvement to, or addition to, or replacement of a part of, an existing transmission facility."[325] They additionally note that the Commission has required clarification on the definition of "upgrades" in other Order No. 1000 compliance filings,[326] and state that their proposed section 31.6.4 provides the necessary clarification.

v. Commission Determination

150. We find that the Filing Parties have partially complied with the Commission's directive in the First Compliance Order to provide a definition of an upgrade. However, we reject the additional changes NYISO proposes to section 31.6.4 as beyond the directives of the First Compliance Order.

151. The Filing Parties propose to define the term upgrade to be "an improvement to, addition to, or replacement of an existing transmission facility or any part thereof," which, for purposes of section 31.6.4(1), "shall not refer to an entirely new transmission facility."[327] We find that the Filing Parties' proposed definition of upgrade partially

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[323] *Id.* at 41 nn.125-26 (citing LS Power Protest at 24-25).

[324] *Id.* at 41 n.127 (citing LS Power Protest at 23).

[325] *Id.* at 42 (referring to October 15, 2013 Compliance Filing at 57, which cites to Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

[326] *Id.* at 42 n.12 (citing *PJM Interconnection, LLC*, 142 FERC ¶ 61,214 at P 227 (2013) (requiring PJM to revise section 1.5.8(l)(i) of its Schedule 6 to clarify and define the term "upgrade" and make any necessary conforming revisions to Schedule 6, its OATT and Agreements. PJM had proposed that "Transmission Owner(s) in whose Zone(s) a proposed Short-term Project or Long-lead Project is to be located will be the Designated Entity for the project, when the Short-term Project or Long-lead Project is an upgrade to a Transmission Owner's own transmission facilities . . .")).

[327] October 15, 2013 Compliance Filing at 57.

complies with Order No. 1000. Order No. 1000-A defines an upgrade as "an improvement to, addition to, or replacement of a part of, an existing transmission facility," and provides that the term "does not refer to an entirely new transmission facility."[328] The Filing Parties' proposed definition is inconsistent with the definition in Order No. 1000-A because it would include as an upgrade the replacement of an entire transmission facility rather than the replacement *of a part* of an existing transmission facility. We therefore direct the Filing Parties to submit, within 60 days of the issuance of this order, further compliance filings that revise the NYISO OATT to modify the definition of upgrades so that only the replacement of part of an existing transmission facility can be considered an upgrade.

152. The Filing Parties also propose to change the language related to rights of way in section 31.6.4. Specifically, NYISO proposes: (1) to replace the statement that "[n]othing in this Attachment Y affects the right of an incumbent Transmission Owner to… retain, modify, or transfer rights-of-way," with the statement that "[a]n incumbent Transmission Owner shall have the right to… retain, modify, or transfer rights-of way subject to relevant law or regulation granting such rights-of-way"; and (2) to replace language recognizing the right of an incumbent transmission owner to "develop a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its own service territory or footprint," with language providing that an incumbent transmission owner may "develop, build, own, and operate a transmission solution that is not eligible for regional cost allocation to meet its reliability or other needs or service obligations in its own service territory or footprint." In the First Compliance Order, the Commission accepted these aspects of section 31.6.4 as originally proposed and, beyond defining the term upgrades, did not direct NYISO to make any further changes. Accordingly, the Commission rejects the proposed changes to section 31.6.4 as outside the scope of compliance with the First Compliance Order.

153. We will not require NYISO to define the term "local system" consistent with Order No. 1000. LS Power's request that NYISO define "local system" consistent with Order No. 1000 is beyond the directives of the First Compliance Order. In the First Compliance Order, the Commission accepted NYISO's proposed exceptions from the requirement to eliminate the federal right of first refusal, including an exception for local transmission projects in section 31.6.4 and did not require further changes to that part of the provision.[329] Accordingly, we reject LS Power's request.

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[328] Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

[329] First Compliance Order, 143 FERC ¶ 61,059 at P 169.

b. Qualification Criteria

154. Order No. 1000 required each public utility transmission provider to revise its OATT to establish appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.[330] These criteria must not be unduly discriminatory or preferential when applied to either an incumbent transmission provider or a nonincumbent transmission developer.[331] In addition, public utility transmission providers must adopt procedures for timely notifying transmission developers of whether they satisfy the region's qualification criteria and allowing them to remedy any deficiencies.[332]

155. Order No. 1000-A clarified that it would be an impermissible barrier to entry to require a transmission developer to demonstrate, as part of the qualification criteria, that it has, or can obtain, state approvals necessary to operate in a state to be eligible to propose a transmission facility.[333]

i. First Compliance Order

156. The Commission found that NYISO's proposal partially complied with Order No. 1000's requirement to establish qualification criteria that are not unduly discriminatory or preferential for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.[334] Regarding NYISO's proposal to have a two-phase qualification process, consisting of a pre-qualification phase and a qualification phase, the Commission determined that "it is reasonable for NYISO to use a two stage qualification process that considers, first, whether an entity has or can draw upon the financial resources, technical expertise, and experience needed to develop, construct, operate and maintain a [transmission] project, and later, after the transmission developer has proposed a transmission project for selection in the regional transmission plan for purposes of cost

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[330] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

[331] *Id.* P 323.

[332] *Id.* P 324.

[333] Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

[334] First Compliance Order, 143 FERC ¶ 61,059 at P 191.

allocation, whether an entity is eligible to develop a transmission project that is selected in the regional transmission plan for purposes of cost allocation."[335]

157. However, the Commission found that the Filing Parties' proposed pre-qualification procedures did not identify when NYISO "will inform an entity whether it is pre-qualified and thus eligible to propose a transmission project for selection in the regional transmission plan."[336] The Commission explained that NYISO should make this determination before the entity submits the transmission project for selection in the regional transmission plan for purposes of cost allocation and thus directed the Filing Parties to file a further compliance filing proposing OATT revisions that explain when NYISO will inform an entity whether or not it has met the pre-qualification criteria.[337]

158. In addition, the Commission explained that it would be inconsistent with Order No. 1000 to permit only qualified entities to propose transmission projects for selection in the regional transmission plan for purposes of cost allocation because Order No. 1000 specifically stated that the transmission developer qualification criteria should not be

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[335] *Id.* P 193 (internal citations omitted). In the October 11, 2012 Compliance Filing, the Filing Parties proposed pre-qualification criteria to give entities seeking to qualify as transmission developers an opportunity to demonstrate that they have or can draw upon the financial resources, technical expertise, and experience needed to develop, construct, operate and maintain: (1) a project to meet identified reliability needs; (2) a project proposed to address specific congestion identified in the Congestion Assessment and Resource Integration Study; or (3) a transmission solution to a transmission need driven by a public policy requirement.

In addition, the Filing Parties proposed to use the following criteria to determine whether a pre-qualified transmission developer is eligible to develop a project as a solution to an identified reliability need: (1) the current and expected capabilities of the entity to finance, license, and construct a proposed solution and operate and maintain it for the life of the project; (2) the entity's existing rights-of-way and substations that would contribute to the project in question; (3) the experience of the entity in acquiring rights-of-way, and the ability of the entity to acquire rights-of-way, if necessary, that would facilitate approval and construction; (4) the financial resources of the entity; (5) the technical and engineering qualifications and experience of the entity; and (6) whether the entity has the ability to meet the requirements for the submission of a valid Interconnection Request as provided in the [NYISO] OATT Attachments X or Z, or a valid transmission expansion Study Request under [NYISO] OATT [s]ection 3.7.

[336] First Compliance Order, 143 FERC ¶ 61,059 at P 192.

[337] *Id.*

applied to an entity proposing a transmission project if that entity does not intend to develop the proposed transmission project.[338] Therefore, the Commission directed the Filing Parties to remove provisions that require that entities be qualified in order to offer projects for consideration in the regional economic and public policy requirements transmission planning processes.

159. Further, the Commission found that Filing Parties' proposal did not include sufficient detail about the demonstration that a prospective transmission developer must make regarding its financial resources. The Commission stated that, without more detailed qualification criteria, the Filing Parties cannot meet Order No. 1000's requirement that they establish not unduly discriminatory or preferential qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation. The Commission directed the Filing Parties to revise the proposed financial prequalification and entity qualification criteria to describe the information that a potential transmission developer must provide to demonstrate that it meets these criteria.[339]

160. The Commission also found that the Filing Parties' proposed criteria that would consider an entity's existing rights-of-way, an entity's experience in acquiring or ability to acquire rights-of-way, and an entity's current and expected capabilities to license a proposed transmission solution did not comply with Order No. 1000.[340] Therefore, the Commission directed the Filing Parties to remove these criteria from the entity qualification criteria. Regarding the Filing Parties' proposal to consider whether an entity has the ability to meet the requirements for the submission of a valid Interconnection Request, the Commission noted that such a requirement includes a demonstration of Site Control.[341] The Commission found that "requiring an entity to demonstrate that is has Site Control as part of the qualification criteria is inappropriate" and "could act as a barrier to entry."[342] Therefore, the Commission required the Filing Parties to specify which requirements associated with submitting an interconnection request or transmission expansion study request will apply in evaluating a transmission

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[338] *Id.* P 193 (referring to Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324 n.304).

[339] *Id.* P 194.

[340] *Id.* P 196.

[341] *Id.* P 197.

[342] *Id.*

developer's qualifications. Finally, the Commission required the Filing Parties to revise NYISO's OATT to clarify that the term "entity" includes affiliates.

161. The Commission required the Filing Parties to either provide further justification explaining why the new section providing that "[a]ll entities developing an approved project pursuant to the provisions in this Attachment Y must register with NERC and the Northeast Power Coordinating Council [] for appropriate reliability functions and must comply with all applicable Reliability Criteria" is needed or to remove the provision from the OATT.

ii. Requests for Rehearing or Clarification

(a) Summary of Requests for Rehearing or Clarification

162. LS Power seeks clarification of the Commission's finding that NYISO, in evaluating a transmission developer's qualifications to develop a transmission project, may consider whether the transmission developer's existing resources and commitments provide sufficient assurance that the transmission developer will be able to operate and maintain a transmission facility for the life of the project.[343] LS Power asserts that, while it "does not disagree with the Commission's statement that it would be 'reasonable' for [NYISO] to consider the ability to maintain and operate a project for its life," the Commission should require NYISO to provide additional detail on what showing NYISO would "deem sufficient to establish that an entity has sufficient financial resources to operate and maintain a project for its life."[344] LS Power argues that it is unclear how NYISO, or any other entity, can evaluate the ability of a company to operate and maintain a transmission project "whose lifespan may be in excess of 40 years."[345]

(b) Commission Determination

163. We deny LS Power's request to require NYISO to provide additional detail in Attachment Y identifying what showing NYISO would consider adequate to establish that a prospective transmission developer has sufficient financial resources to operate and maintain a transmission facility "for the life of the project." As the Commission found in the First Compliance Order, it is reasonable for NYISO to consider "whether [a]

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[343] LS Power Request for Clarification at 1 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 195).

[344] *Id.* at 2.

[345] *Id.*

transmission developer's existing resources and commitments provide sufficient assurance that the transmission developer will be able to operate and maintain a transmission facility for the life of the project" in evaluating that transmission developer's qualification to be eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.[346] Attachment Y provides a sufficient level of detail to allow prospective transmission developers to understand that NYISO will consider the transmission developer's ability to operate and maintain the transmission facility for the life of the project when reviewing the transmission developer's current and expected capabilities to finance, develop, construct, operate, and maintain a transmission facility. Additionally, in the First Compliance Order, the Commission required NYISO to propose OATT revisions describing the information that a potential transmission developer must provide to demonstrate sufficient financial resources to meet the qualification criteria.[347] We note that NYISO's revised qualification criteria are sufficiently clear as to the specific financial information that potential transmission developers must submit to demonstrate that they satisfy NYISO's qualification criteria and therefore deny LS Power's request for further revisions.[348] We also note that, as revised on compliance, Attachment Y requires NYISO to notify a prospective transmission developer if the information submitted is incomplete and allows the transmission developer 30 days to submit additional information.[349]

iii. Compliance

(a) Summary of Compliance Filings

164. The Filing Parties explain that they have concluded, after having additional discussions with NYISO stakeholders, that a single-stage qualification process will be a faster, less confusing, and more efficient process for both NYISO and interested Developers.[350] The Filing Parties state that this single-stage process does not make substantive or material changes to entity qualification requirements. Therefore, the Filing Parties propose revisions to consolidate the pre-qualification and qualification

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[346] First Compliance Order, 143 FERC ¶ 61,059 at P 195.

[347] *Id.* P 194.

[348] NYISO OATT, Attachment Y, § 31.2.4.1.1.

[349] *Id.* §§ 31.2.5.1, 31.4.4.3.

[350] *See* October 15, 2013 Compliance Filing at 3. Developer is defined in NYISO's OATT as a person or entity, including a Transmission Owner, sponsoring or proposing a project pursuant to Attachment Y. NYISO OATT, Attachment Y, § 31.1.1.

requirements in all three planning processes. The Filing Parties also propose revisions to establish time frames for the developer qualification requirements and to provide the additional detail required by the Commission.[351]

165. As the Filing Parties state, Attachment Y requires that NYISO "shall provide each Developer with an opportunity to demonstrate that it has or can draw upon the financial resources, technical expertise, and experience needed to develop, construct, operate and maintain a transmission project to meet identified Reliability Needs," and NYISO "shall consider the qualifications of each Developer in an evenhanded and non-discriminatory manner, treating Transmission Owners and Other Developers alike." [352]

166. The proposed OATT language states that NYISO shall make a determination on the qualification of any Developer to propose to develop a transmission project as a solution to an identified Reliability Need based on the following criteria:[353]

> 31.2.4.1.1.1 The technical and engineering qualifications and experience of the Developer relevant to the development, construction, operation and maintenance of a transmission facility, including evidence of the Developer's demonstrated capability to adhere to standardized construction, maintenance, and operating practices and to contract with third parties to develop, construct, maintain, and/or operate transmission facilities;
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> 31.2.4.1.1.2 The current and expected capabilities of the Developer to finance, develop and construct a transmission facility and to operate and maintain it for the life of the facility. For purposes of this criteria, the Developer shall provide NYISO a description of transmission facilities (not to exceed ten) that the Developer has previously developed, constructed, maintained or operated and the status of those facilities, including whether the construction was completed, whether the facility entered into commercial operations, whether the facility has been suspended or terminated for any reason, and evidence demonstrating the ability of the Developer to address and timely remedy any operational failure of the facilities; and

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[351] First Compliance Order, 143 FERC ¶ 61,059 at P 200.

[352] NYISO OATT, Attachment Y, § 31.2.4.1.1.

[353] *Id.*

31.2.4.1.1.3 The Developer's current and expected capability to finance, or its experience in arranging financing for, transmission facilities. For purposes of NYISO's determination, the Developer shall provide NYISO:

(1) evidence of its demonstrated experience financing or arranging financing for transmission facilities, including a description of such projects (not to exceed ten) over the previous ten years, the capital costs and financial structure of such projects, a description of any financing obtained for these projects through rates approved by the Commission or a state regulatory agency, the financing closing date of such projects, and whether any of the projects are in default;

(2) its audited annual financial statements from the most recent three years and its most recent quarterly financial statement, or equivalent information;

(3) its credit rating from Moody's Investor Services, Standard & Poor's, or Fitch, or equivalent information, if available;

(4) a description of any prior bankruptcy declarations, material defaults, dissolution, merger or acquisition by the Developer or its predecessors or subsidiaries occurring within the previous five years; and

(5) such other evidence that demonstrates its current and expected capability to finance a project to solve a Reliability Need.

167. The Filing Parties propose to revise the developer qualification criteria set forth in sections 31.2.4.1.1 (reliability), 31.3.2.4.1.1 (economic), 31.4.4.1 (public policy) to make the specific edits required by the Commission regarding removing the provisions regarding rights-of-way.

168. Any Developer seeking to become qualified may submit the required information, or update previously submitted information, at any time. NYISO shall within 15 days of a Developer's submittal, notify the Developer if the information is incomplete. If the submittal is deemed incomplete, the Developer shall submit the additional information within the 30 days of NYISO's request. NYISO shall notify the Developer of its qualification status within 30 days of receiving all necessary information. A Developer shall retain its qualification status for a three-year period following the notification date; provided, however, that NYISO may revoke this status if it determines that there has been a material change in the Developer's qualifications and the Developer no longer meets the qualification requirements. A Developer that has been qualified shall inform NYISO within thirty days of any material change to the information it provided regarding its

qualifications and shall submit to NYISO each year its most recent audited annual financial statement when available. At the conclusion of the three-year period or following NYISO's revocation of a Developer's qualification status, the Developer may re-apply for qualification status.[354]

169. The Filing Parties proposed qualification criteria and timing requirements for economic projects[355] and public policy projects[356] that are similar to those above for reliability projects. Any Developer that has not been determined by NYISO to be qualified, but that wants to propose to develop a reliability or public policy project, must submit to NYISO the information required for Developer qualification under sections 31.2.4.1.1 or 31.4.4.1 respectively within 30 days after a request for solutions is made by NYISO.[357]

170. The Filing Parties propose revisions to provide that for purposes of fulfilling the requirements of the developer qualification criteria, the term "developer" includes "affiliates" as that term is defined in the NYISO OATT.[358] The revisions further propose that if a transmission developer relies on its affiliate to satisfy its developer qualification criteria, the affiliate must provide NYISO with the information required to demonstrate its capability to satisfy the applicable qualification criteria. The affiliate must also provide NYISO with a notarized officer's certificate, signed by an authorized officer of the affiliate with signatory authority, certifying that the affiliate will participate in the transmission developer's project in the manner described by the developer and will abide by the requirements set forth in Attachment Y, the NYISO Tariffs, and the NYISO Procedures related and applicable to the affiliate's participation.[359]

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[354] October 15, 2013 Compliance Filing at 4.

[355] NYISO OATT, Attachment Y, § 31.3.2.4.1.1.

[356] *Id.* § 31.4.4.1.

[357] *Id.* §§ 31.2.5.1, 31.4.4.3.

[358] Affiliate is defined in the NYISO OATT as: "[w]ith respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term 'control' shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control." *Id.* § 31.1.

[359] *Id.* §§ 31.3.2.4.1, 31.3.2.4.1, 31.4.4.5.

171. The Filing Parties propose to retain section 31.6.5, which requires that "[a]ll entities developing an approved project pursuant to the provisions in [] Attachment Y must register with NERC, and [Northeast Power Coordinating Council] for appropriate reliability functions and must comply with all applicable Reliability Criteria."[360] They assert that the requirements in this provision are not part of the developer qualification requirements and compliance with this requirement is not required as part of the information a developer must provide in the project information requirements or part of the metrics evaluated by NYISO in selecting a project. The Filing Parties state that the purpose of this provision is to provide notification to new entities developing transmission projects in New York that they must register with the appropriate reliability organizations and comply with the applicable Reliability Criteria. The Filing Parties believe that it is especially appropriate to include this notice in Attachment Y in light of the Order No. 1000 requirements that incumbents and nonincumbent transmission Developers are to be treated in the same manner.

(b) <u>Commission Determination</u>

172. We find that Filing Parties' proposed single-stage qualification process and criteria partially comply with the directives in the First Compliance Order. While the Commission found reasonable in the First Compliance Order the Filing Parties' proposal to use a two-phase qualification process,[361] we find that the Filing Parties' proposal to adopt a single-stage qualification process instead of a two-phase qualification process is also reasonable. The Filing Parties explain that this proposal will result in a faster, less confusing, and more efficient process and was developed after additional discussions with NYISO stakeholders.[362]

173. Regarding the Commission's finding that the Filing Parties must propose OATT revisions identifying when NYISO will inform an entity whether it is pre-qualified and thus eligible to propose a transmission project for selection in the regional transmission plan, the Filing Parties explain that NYISO will notify a Developer seeking to be qualified whether the information submitted is incomplete within 15 days of the submission of such information. If the submittal is incomplete, the Developer will have 30 days from NYISO's notice to submit the additional information. After receiving all necessary information, NYISO will have 30 days to notify the Developer of its

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[360] NYISO OATT, Attachment Y, § 31.6.5.

[361] *See supra* paragraph 156; *see also* October 15, 2013 Compliance Filing at 3.

[362] *See* First Compliance Order, 143 FERC ¶ 61,059 at P 158.

qualification status. We find that NYISO complied with these directives in the First Compliance Order.[363]

174. Second, the Commission directed the Filing Parties to remove provisions that require entities to be qualified to offer projects for consideration in the regional economic and public policy requirements transmission planning processes. The Filing Parties have complied with this directive by removing the provisions in the formerly proposed sections 31.3.2.4.1.3 (economic) and 31.4.5.3 (public policy).

175. Third, the Commission directed the Filing Parties to revise the proposed financial pre-qualification and entity qualification criteria to describe in greater detail the information that a potential transmission developer must provide to demonstrate that it meets certain criteria. The Filing Parties partially complied by providing a list, for each criteria, of information a Developer can provide to demonstrate that it is qualified. In addition, the Filing Parties explain that a Developer may submit information at any time, or update any previous submitted information it considers relevant to its qualifications.

176. However, we find that the Filing Parties' proposed qualification criteria requiring a Developer to provide information regarding its technical, engineering, and financial qualifications and experience and transmission facilities that it has already developed[364] are unreasonably stringent and may effectively prohibit a prospective transmission developer that does not have past experience in financing, developing, constructing, operating, and maintaining transmission facilities from qualifying, even though it could provide other evidence, such as a plan to rely on third-party contractors with such experience.[365] We find that additional flexibility is warranted where a prospective transmission developer itself does not have previous experience financing, developing, constructing, operating, or maintaining transmission facilities. In such a case, the prospective transmission developer should have the option of submitting a detailed plan for financing, developing, constructing, operating, and maintaining a transmission facility, such as the financial, technical, and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes. Moreover, the prospective transmission developer should only be required to provide information about transmission facilities that it has already developed to the extent that it has developed transmission facilities. Accordingly, we require the Filing Parties to submit, within 60 days of the date of issuance of this order, a further compliance filing revising the qualification criteria to: (1) allow a prospective transmission developer to

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[363] *Id.* P 192.

[364] NYISO OATT, Attachment Y, §§ 31.2.4.1.1.1, 31.2.4.1.1.2.

[365] *PacifiCorp*, 143 FERC ¶ 61,151, at P 158 (2013).

submit a detailed plan for financing, developing, constructing, operating, and maintaining a transmission facility, such as the financial, technical, and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes, in the absence of previous experience financing, developing, constructing, operating, or maintaining transmission facilities; and (2) require a prospective transmission developer to provide information about transmission facilities that it has already developed to the extent that it has developed transmission facilities.

177. The Commission directed NYISO to remove the proposed criteria to consider an entity's existing rights-of-way and experience in acquiring rights-of-way. NYISO removed the criteria from the qualification requirements section. Therefore, we find that the Filing Parties have complied with this directive of the First Compliance Order. The Commission also directed NYISO to remove the reference to the current and expected capabilities of the entity to "license" a proposed solution. In their compliance filing, the Filing Parties proposed to remove this reference. Therefore, we find that the Filing Parties have complied with this directive of the First Compliance Order. Furthermore, the Commission directed NYISO to specify which requirements associated with submitting an interconnection request or transmission expansion study request will apply in evaluating a transmission developer's qualifications. The Filing Parties removed the requirements associated with submitting an interconnection request or transmission expansion study request that will apply in evaluating a transmission developer's qualifications; therefore, we find that no further explanation is required.

178. In addition, the Commission directed NYISO to revise its OATT to "clarify that the term 'entity' includes affiliates."[366] The Filing Parties have now replaced the term "entity" with Developer. The Filing Parties propose revisions to sections 31.2.4.1, 31.3.2.4.1, and 31.4.4 of NYISO's OATT to provide that for purposes of fulfilling the requirements of the Developer's qualification criteria, the term Developer includes "Affiliates" as that term is defined in NYISO's OATT. The Filing Parties state that NYISO shall consider the qualification of each entity in an evenhanded and non-discriminatory manner, treating transmission owners and other developers alike.[367] The Filing Parties further propose that if a Developer relies on its affiliate to satisfy its Developer qualification criteria, the affiliate must provide NYISO with the information required to demonstrate its capability to satisfy the applicable qualification criteria. The affiliate also must provide NYISO with a notarized officer's certificate, signed by an authorized officer of the affiliate with signatory authority, certifying that the affiliate will participate in the Developer's transmission project in the manner described by the Developer and will abide by the requirements set forth in Attachment Y, the NYISO

[366] First Compliance Order, 143 FERC ¶ 61,059 at P 190.

[367] NYISO OATT, Attachment Y, § 31.4.5.1.

Tariffs, and the NYISO Procedures related and applicable to the affiliate's participation. However, as stated above, NYISO must revise its OATT to allow transmission developers to satisfy these criteria by submitting a detailed plan for developing, constructing, operating, and maintaining a transmission facility, including the technical and engineering qualifications and experience and capabilities of any third parties with which it will contract for these purposes, in the absence of previous experience developing, constructing, operating, or maintaining transmission facilities.

179. On compliance, the Filing Parties explain that the provision directing entities developing an approved transmission project to register with NERC and the Northeast Power Coordinating Council is meant to notify new entities that they must register with NERC. In Order No. 1000-A, the Commission explained that "procedures for registering as a Functional Entity are set by NERC and approved-by the Commission under section 215[], and it is not appropriate for the Commission to amend or interpret those procedures here…to provide that a potential transmission developer must register with NERC if not otherwise required under the NERC procedures… ."[368] The Filing Parties' explanation that they want to put new transmission developers on notice that they will need to register with NERC is consistent with the Commission's statements in Order No. 1000. However, the provision can still be read as requiring new transmission developers to register with NERC while developing a transmission project, because it states that "all entities *developing* an approved project … must register with NERC and [Northeast Power Coordinating Council]… and must comply with all applicable Reliability Criteria."[369] This would be inconsistent with Order No. 1000. Accordingly, we require the Filing Parties to submit, within 60 days of the date of issuance of this order, a further compliance filing revising section 31.6.5 consistent with their explanation that the section only puts new transmission developers on notice that they must register with NERC and does not require new transmission developers to register with NERC.

c. <u>Information Requirements</u>

180. Order No. 1000 required each public utility transmission provider to identify in its OATT the information that a prospective transmission developer must submit in support of a transmission project proposed in the regional transmission planning process.[370] The information requirements must be sufficiently detailed to allow a proposed transmission project to be evaluated comparably to other transmission facilities proposed in the regional transmission planning process. The information requirements must be fair and

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[368] Order No. 1000-A, 139 FERC ¶ 61,132 at P 444.

[369] NYISO OATT, Attachment Y, § 31.6.5 (emphasis added).

[370] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

not be so cumbersome as to effectively prohibit transmission developers from proposing transmission facilities, yet not be so relaxed that they allow for relatively unsupported proposals.[371] Order No. 1000 also required each public utility transmission provider to identify in its OATT the date by which a transmission developer must submit information on a proposed transmission project to be considered in a given transmission planning cycle.[372]

i. First Compliance Order

181. In the First Compliance Order, the Commission found that the provisions in NYISO's OATT dealing with information requirements for submitting transmission projects for selection in the regional transmission plan for purposes of cost allocation, including reliability, economic, and public policy transmission projects, partially comply with the requirements of Order No. 1000. The Commission found that the Filing Parties' proposed information requirements largely identify the information that a prospective transmission developer must submit in support of its proposed transmission project in sufficient detail to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects that are proposed in this process.[373]

182. However, the Commission found the Filing Parties' proposal to be inconsistent with Order No. 1000 because it did not propose dates by which information in support of any of the three types of transmission projects that may be selected in the regional transmission plan for purposes of cost allocation must be submitted for a proposed transmission project to be considered in a given transmission planning cycle. Thus, the Commission ordered the Filing Parties to file a further compliance filing proposing OATT revisions that include the date(s) by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle, consistent with the requirements of Order No. 1000, noting that these dates may be flexible or rolling.[374] In addition, as part of the compliance filing, the Commission required the Filing Parties to provide further information that: (1) describes the kind of evidence that a transmission developer proposing an alternative regulated solution must provide to indicate "the status of any contracts (other than an Interconnection Agreement)," "the status of any required permits," and "evidence of financing"; and

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[371] *Id.* P 326.

[372] *Id.* P 325.

[373] First Compliance Order, 143 FERC ¶ 61,059 at P 210.

[374] *Id.* P 212.

(2) clarifies why transmission developers proposing alternative regulated solutions must provide this additional information related to the status of any contracts, the status of any required permits, and evidence of financing while the Responsible Transmission Owner proposing a regulated backstop solution does not have to provide this additional information.[375]

ii. Summary of Compliance Filings

183. Although not required by the First Compliance Order, the Filing Parties propose to revise the project information requirements to require developers to provide additional information specific to each proposed solution. They explain that these revisions will allow NYISO to obtain the information necessary to perform its new obligation to select the more efficient or cost-effective transmission solution to identified needs. In addition, the Filing Parties propose to align the project information required from each type of proposed solution offered under all three planning processes, with limited exceptions for proposed market-based solutions as NYISO does not select these projects for purposes of cost allocation.

184. All developers proposing solutions to any type of transmission need must provide the following information: [376] (1) contact information; (2) the lead time necessary to complete the project, including, if available, the construction windows in which the developer can perform construction and what, if any, outages may be required during these periods; (3) a description of the project, including type, size, and geographic and electrical location, as well as planning and engineering specifications as appropriate; (4) evidence of a commercially viable technology; (5) a major milestone schedule; (6) a schedule for obtaining any required permits and other certifications; (7) a demonstration of Site Control or a schedule for obtaining such control; (8) status of any contracts (other than an Interconnection Agreement) that are under negotiation or in place; (9) status of NYISO interconnection studies and interconnection agreement; (10) status of equipment availability and procurement; (11) evidence of financing or ability to finance the project; (12) capital cost estimates for each segment of the project; (13) a description of permitting or other risks facing the project at the stage of project development, including evidence of the reasonableness of project cost estimates, all based on the information available at the time of the submission; and (14) any other information requested by NYISO.[377]

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[375] *Id.* P 211.

[376] Based on this information, NYISO will establish a Trigger Date for all projects proposed to satisfy a Reliability Need.

[377] NYISO OATT, Attachment Y, §§ 31.2.4.4.1, 31.3.2.4.2; 31.3.2.4.2.

185. As proposed, the above project information requirements apply to all developers proposing solutions to any type of transmission need, with the exception that a developer that proposes a market-based solution to a Reliability Need or an economic need[378] is not required to provide the detailed capital cost estimates or the risk profile information. The Filing Parties explain that NYISO will not evaluate the cost-effectiveness or efficiency of proposed market-based solutions for purposes of selecting a project for purposes of cost allocation so that the submission of data related to costs is unnecessary.[379]

186. The Filing Parties propose to require a developer proposing a solution to an identified Reliability Need or Public Policy Transmission Need to submit its project qualification information within 60 days after NYISO's request for solutions or the New York Public Service Commission's determination of a Public Policy Transmission Need.[380] The developer of a proposed regulated economic project may submit the required project information at any time.[381] According to the proposal, the developer of a proposed regulated transmission project addressing a Reliability Need will submit the required information in two phases; however, developers of solutions proposed to address congestion identified in the Congestion Analysis and Resource Integration Study or Public Policy Transmission Needs will submit the required information in one phase.[382]

187. The Filing Parties propose that developers shall submit the following information to indicate the status of any contracts: (1) copies of all final contracts that NYISO determines are relevant to its consideration; and (2) where one or more contracts is pending, a timeline on the status of discussion and negotiations with the relevant documents and when the negotiations are expected to be completed. Developers must submit any final contract to NYISO when available. The revised language also specifies that NYISO shall treat any contract that is submitted and designated as confidential on a

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[378] The project information requirements for solutions proposed to congestion identified in Congestion Analysis and Resource Integration Study apply to "[a]ny [d]eveloper seeking to offer a *regulated* economic transmission project. . . ." *Id.* § 31.3.2.4.2 (emphasis added). In addition, Attachment Y indicates that only proposed *regulated* transmission solutions, and not proposed market-based solutions or generation or demand side management projects, are eligible for regional cost allocation pursuant to NYISO's OATT. *Id.* § 31.5.4.1 (emphasis added).

[379] October 15, 2013 Compliance Filing at 8.

[380] NYISO OATT, Attachment Y, §§ 31.2.5.1; 31.4.4.3.

[381] *Id.* § 31.3.2.4.1.

[382] October 15, 2013 Compliance Filing at 4 n.28.

confidential basis in accordance with the requirements of its code of conduct in Attachment F of the NYISO OATT.[383]

188. Also, the Filing Parties propose that, to indicate the status of any required permits, a developer must submit: (1) copies of all final permits received that NYISO determines are relevant to its consideration or; (2) where one or more permits are pending, the completed permit applications with information on what additional actions must be taken to meet the permit requirements and a timeline providing the expected timing for finalization and receipt of the final permit. As with any final contracts, developers must submit any final permits to NYISO when available.[384]

189. In addition, the Filing Parties propose to specify that, to demonstrate evidence of financing by the developer or any affiliate, a developer must submit the following information, as appropriate: (1) evidence of self-financing or project financing through approved rates or the ability to do so; (2) copies of all loan commitment letters and signed financing contracts; or (3) where such financing is pending, the status of the application for any relevant financing, including a timeline providing the status of discussions and negotiations of relevant documents and when the negotiations are expected to be completed.[385] In addition, the developer must submit copies of final contracts or approved rates to NYISO when available. A developer that proposes a market-based solution to a Reliability Need is not required to submit evidence of self-financing through rates because it is not seeking, and will not be evaluated for, cost allocation through the NYISO OATT.[386]

190. The Filing Parties propose that, if additional information is requested from a developer, that developer is required to submit the additional project qualification information to NYISO within 15 days of NYISO's request. If a developer fails to submit the required project qualification information or any additional information that NYISO requests, the Filing Parties propose that NYISO will not consider the project during that transmission planning cycle.[387]

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[383] NYISO OATT, Attachment Y, § 31.2.4.4.2.

[384] *Id.*

[385] *Id.*

[386] October 15, 2013 Compliance Filing at 9.

[387] *Id.* at 35; NYISO OATT, Attachment Y, § 31.4.4.3.

191. In order to pay for the costs of the evaluation process the Commission required in the First Compliance Order, the Filing Parties propose that the developer of a proposed transmission solution be responsible for related study costs, consistent with the treatment of study costs under NYISO's interconnection process.[388] The Filing Parties propose to require the developer of a proposed public policy transmission solution to provide NYISO with its project qualification information as well as: (1) a non-refundable application fee of $10,000; and (2) a $100,000 study deposit. The Filing Parties explain that NYISO charges a similar fee and study deposit to cover the cost of interconnecting parties to the NYISO system.[389] A Developer proposing a public policy transmission solution shall pay the actual costs of NYISO's evaluation of the Developer's proposed transmission solution.

iii. Commission Determination

192. We find that the Filing Parties' proposed revisions addressing information requirements for submitting proposals partially comply with the directives in the First Compliance Order.

193. In the First Compliance Order, the Commission stated that the Filing Party's information requirements must be sufficiently detailed to allow a proposed transmission project to be evaluated comparably to other transmission facilities proposed in the regional transmission planning process. The Commission specifically required the Filing Parties to identify in the NYISO OATT the date by which a transmission developer must submit information on a proposed transmission project to be considered in a given transmission planning cycle. The Filing Parties propose time frames for the developer's submission of required project information. Specifically, information related to reliability projects must be submitted 60 days after a request for solutions is made by NYISO, as described in section 31.2.5.1, and additional requested information must be submitted within 15 days of the request, as described in section 31.2.6.1. The Filing Parties propose similar deadlines for submitting information related to public policy projects, and those deadlines are set forth in section 31.4.4.3. For the economic planning process the required information may be submitted at any time rather than upon NYISO's request.[390] Once a developer begins this process, it will have 15 days to submit

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[388] October 15, 2013 Compliance Filing at 36.

[389] *Id.* (citing NYISO OATT, Attachment X, §§ 30.3.1, 30.13.3).

[390] Attachment Y section 31.3.2.4.1.3 does not provide a time frame by which a Developer must submit its project information. Rather, "the required information for project qualification may be submitted at any time, but the proposed regulated economic transmission project will be evaluated against the most recently available CARIS Phase II database." NYISO OATT, Attachment Y, § 31.3.2.4.1.3.

additional project information required by NYISO. If a developer fails to provide the project information within these times frames, the developer's project will not be considered during that transmission planning cycle.[391]

194. The Commission also required the Filing Parties to provide further information that: (1) describes the kind of evidence that a transmission developer proposing an alternative regulated solution must provide to indicate "the status of any contracts (other than an Interconnection Agreement)," "the status of any required permits," and "evidence of financing"; and (2) clarifies why transmission developers proposing alternative regulated solutions must provide this additional information related to the status of any contracts, the status of any required permits, and evidence of financing while the Responsible Transmission Owner proposing a regulated backstop solution does not provide this additional information. In response to these directives, the Filing Parties have inserted a description of the material in sections 31.2.4.4 (reliability –regulated backstop solution), 31.2.4.6 (reliability – market-based solution), 31.2.4.8 (reliability – regulated backstop solution), 31.3.2.4.2 (economic), and 31.4.5.1 (public policy) that a developer must provide to indicate "the status of any contracts (other than an Interconnection Agreement)," "the status of any required permits," and "evidence of financing." All developers, including Responsible Transmission Owners proposing an alternative regulated solution, must provide the required information.

195. The Filing Parties have established appropriate deadlines for submitting information related to project proposals, consistent with the Commission's directives. The Filing Parties have described the kind of evidence that must be provided to indicate "the status of any contracts (other than an Interconnection Agreement)," "the status of any required permits," and "evidence of financing" as stated above, and have revised the NYISO OATT to require both Transmission Owners and Other Developers proposing alternative regulated solutions to provide this additional information. We also accept the revisions the Filing Parties made to certain information requirements to accommodate NYISO's obligation to select the more efficient or cost-effective transmission solution to identified needs, finding that the revised requirements are consistent with Order No. 1000.

196. We find that the application of a study deposit in this circumstance is consistent with Order No. 1000.[392] The Filing Parties propose to require the developer of a proposed public policy transmission solution to submit a non-refundable application fee of $10,000 and a $100,000 study deposit, stating that NYISO charges a similar fee and study deposit to cover the cost of interconnecting parties to the NYISO system under

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[391] *See* NYISO OATT, Attachment Y, §§ 31.2.4.6, 31.2.4.8.3, 31.3.2.4.2, 31.4.5.1.

[392] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 327.

Attachment X.[393] Because Attachment X applies to merchant transmission facilities as well as large generating facilities, we find that the proposed amounts of the non-refundable application fee and study deposit are just and reasonable and not unduly discriminatory or preferential.[394] The Commission accepted the application deposit for a project sponsor proposal as high as $75,000 with a cap of $150,000, as used by California Independent System Operator (CAISO).[395] Similarly, MISO proposed, and the Commission accepted, a requirement that a transmission developer that submits a bid must pay a deposit equaling the lesser of one percent of the projected costs or $500,000 to cover the expense of evaluating the bids.[396]

197. However, we find that the Filing Parties must revise the provisions regarding the handling of the difference between a developer's study deposit and the actual cost of the study. The Filing Parties' proposal requires transmission developers to pay NYISO amounts due, with interest calculated in accordance with section 35.19a(a)(2) of the Commission's Rules and Regulations, for disputed study costs held in escrow, but does not specify the interest calculation where refunds are due to the transmission developer.[397] Therefore, we require the Filing Parties to revise NYISO's OATT to refund to the transmission developer the difference between the study deposit and the costs of performing the study, including interest calculated in accordance with section 35.19a(a)(2) of the Commission's Rules and Regulations. In addition to the proposed refund and interest provisions, the Filing Parties must provide to each transmission developer a description of the costs to which the deposit will be applied, how those costs will be calculated, and an accounting of the actual costs. The Filing Parties must submit a further compliance filing within 60 days of the date of issuance of this order to implement these directives.

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[393] Instructions for Submittal of a Large Facility Interconnection Request to the NYISO; A Developer must submit all of the following: (i) a $10,000 non-refundable application fee; (ii) a study deposit of $30,000; (iii) a completed application in the form of Appendix 1 of the LFIP; and (iv) demonstration of Site Control or a posting of an additional deposit of $10,000.

[394] NYISO OATT, Attachment X, § 30.2.1.

[395] *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,237 (2014).

[396] *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 (2013) (MISO First Compliance Order).

[397] 18 C.F.R. § 35.19a(a)(2) (2013); *see, e.g.*, NYISO OATT, Attachment Y, § 31.2.6.2.

d. Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

198. Order No. 1000 required each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.[398] The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.[399] In addition, the evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.[400]

i. First Compliance Order

199. In the First Compliance Order, the Commission found that NYISO's process for evaluating solutions proposed to address economic transmission needs complied with the requirements of Order No. 1000.[401] The Commission explained that NYISO's evaluation process for economic transmission solutions evaluates the benefits against the costs of each proposed regulated economic transmission project to determine whether the benefit of the proposed solution exceeds its costs and "explains how NYISO will consider 'the relative efficiency and cost-effectiveness' of regulated economic transmission projects."[402] The Commission also found the requirement that an economic project receive a positive vote from at least 80 percent of its designated beneficiaries to be eligible to be selected in the regional transmission plan for purposes of cost allocation to be consistent with Order No. 1000 The Commission noted that NYISO will file an informational report with the Commission explaining the substantive reasons underlying

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[398] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

[399] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

[400] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

[401] First Compliance Order, 143 FERC ¶ 61,059 at P 244.

[402] *Id.*

any beneficiary's vote against a transmission project's selection in the regional transmission plan for purposes of cost allocation.[403]

200. In addition, the Commission found that the Filing Parties' proposed procedures to evaluate solutions proposed to address transmission needs driven by public policy requirements complied with Order No. 1000.[404] The Commission explained that, in evaluating potential solutions to meet transmission needs driven by public policy requirements, "NYISO will use its existing reliability, economic, and interconnection planning process tools, databases and models, as applicable," as well as "tools such as power flow, stability and short circuit models for system planning analysis, probabilistic models of generator availability for resource adequacy and production cost simulation models for economic and environmental analysis."[405] Further, the Commission explained that "NYISO's evaluation will compare the costs and benefits of the proposed transmission solutions, and impacts of the proposed transmission solution on NYISO-administered markets."[406] On this basis, the Commission determined that the proposed process for evaluating potential transmission solutions proposed to meet transmission needs driven by public policy requirements complied with the requirements of Order No. 1000.[407]

201. However, regarding the evaluation process for solutions proposed to address reliability transmission needs, the Commission found that the Filing Parties' proposal partially complied with the requirements of Order No. 1000.[408] The Commission determined that, while the proposal described the process through which NYISO evaluates proposed solutions "relative to their ability to meet identified reliability transmission needs,"[409] the proposal did not describe how NYISO evaluates whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.[410] The Commission explained that the Filing Parties must provide on

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[403] *Id.* P 245.

[404] *Id.* PP 141,144.

[405] *Id.* P 144.

[406] *Id.*

[407] *Id.*

[408] *Id.* P 238.

[409] *Id.* (internal punctuation omitted).

[410] *Id.* P 240.

compliance OATT revisions that include "a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation, in which alternative regulated solutions are evaluated in the same detail as the regulated backstop solution in all circumstances," and which "consider[s] the relative efficiency and cost-effectiveness of any proposed transmission solution."[411] The Commission also directed the Filing Parties to explain how NYISO will ensure that its evaluation will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective transmission solution in the regional transmission plan for purposes of cost allocation.[412]

ii. Requests for Rehearing or Clarification

(a) Summary of Requests for Rehearing or Clarification

202. LS Power seeks clarification of the Commission's finding that while NYISO may not consider developers' existing rights of way or the developers' experience in or ability to acquire rights of way as part of its qualification criteria, "it would be appropriate for NYISO to consider whether an entity has existing rights of way . . . as part of its process for evaluating whether to select a proposed transmission facility in the regional plan for purposes of cost allocation."[413] LS Power asserts that, to ensure that NYISO's evaluation process for selecting transmission solutions in the regional transmission plan for purposes of cost allocation does not give inappropriate weight to the ownership of a right-of-way, NYISO must require a transmission developer with existing rights-of-way to "indicate whether it would incur any incremental costs in connection with placing new and additional facilities on such existing rights-of-way."[414] LS Power notes that CAISO voluntarily offered to include this language in its OATT, and argues that there is no reason why the language cannot be incorporated in the NYISO OATT.[415]

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[411] *Id.* P 241 (internal punctuation omitted).

[412] *Id.*

[413] LS Power Request for Clarification at 2 (quoting First Compliance Order, 143 FERC ¶ 61,059 at P 196).

[414] *Id.* at 3 (quoting *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057, at P 238 (2013) (CAISO First Compliance Order)).

[415] *Id.*

203. IPPNY, Multiple Intervenors, and Pace request that the Commission clarify, or alternatively find on rehearing, that NYISO must: (a) evaluate the relative cost-effectiveness and efficiency of non-transmission alternatives using the same criteria and producing comparable information as that used and produced when evaluating reliability transmission projects and transmission needs driven by public policy requirements; and (b) publicly identify which solution of the studied transmission and non-transmission solutions most cost-effectively meets the transmission need.[416] IPPNY, Multiple Intervenors, and Pace argue that, to allow NYISO to use a different means of evaluating non-transmission alternatives than it uses for transmission projects or to stop short of identifying a non-transmission alternative as the best option would be discriminatory because analyses of alternative solutions would be unduly truncated. They assert that subjecting transmission and non-transmission alternatives to different methods of analysis would lead to results that are, by definition, incomparable.[417] They also contend that allowing a non-comparable means of analysis for non-transmission alternatives would mean that NYISO will have failed to select the most cost-effective and efficient solution to address a given need any time that a non-transmission alternative is superior to its transmission-based competition.[418] Moreover, they contend that allowing NYISO to use different criteria to evaluate transmission solutions and non-transmission alternatives is unduly discriminatory because the type of evaluation performed would depend on the type of solution proposed.[419]

204. IPPNY, Multiple Intervenors, and Pace also request that the Commission find that the First Compliance Order does not require NYISO to select a transmission solution for purposes of cost allocation if NYISO determines that the more efficient or cost-effective solution is a non-transmission alternative.[420] IPPNY, Multiple Intervenors, and Pace are concerned that if the First Compliance Order indeed requires NYISO to select a transmission solution when NYISO has determined that a non-transmission alternative is more efficient or cost-effective, the requirement would conflict with Order No. 1000's

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[416] IPPNY, Multiple Intervenors, and Pace Request for Rehearing at 8-9.

[417] *Id.* at 6-7.

[418] *Id.* at 8.

[419] *Id.* at 14-15.

[420] *Id.* at 2.

stated purpose of "meeting [transmission] needs more efficiently and cost-effectively" and unjustly burden ratepayers with unnecessary costs.[421]

(b) Commission Determination

205. We deny LS Power's request for rehearing that the Commission must require NYISO to revise its OATT to provide that a transmission developer with existing rights-of-way must indicate any incremental costs in connection with placing new facilities on the existing rights-of-way. We note that public utility transmission providers may consider the effect of state laws and regulatory processes as one factor in evaluating whether a proposed transmission project is the more efficient or cost-effective solution. In this case, NYISO considers right-of-way ownership as one of many factors in the evaluation process. In Order No. 1000, the Commission provided each transmission planning region with the flexibility to develop its own process to meet the minimum requirements of the rule and to determine the more efficient or cost-effective transmission solution, so long as it was performed in a transparent and not unduly discriminatory manner. The Commission did not specify how each evaluation provision should be considered or direct how each specific cost should be addressed. Therefore, we deny LS Power's rehearing request.

206. However, as explained further below, the Filing Parties have proposed revisions to the evaluation metrics that should address LS Power's concern. Specifically, for reliability projects, NYISO will consider, in consultation with the New York Department of Public Service, the capital cost estimates of a proposed transmission facility, including the accuracy of the proposed estimates.[422] Similarly, for public policy projects, the Filing

[421] *Id.* at 11-12, 16. As the basis for their concern, IPPNY, Multiple Intervenors, and Pace cite language in the First Compliance Order directing NYISO to create, as part of the reliability transmission planning process, an evaluation and selection process "through which the NYISO will select in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions from among competing projects" and, as part of the public policy requirements planning process, "the process by which NYISO will select in the regional transmission plan for purposes of cost allocation more efficient or cost-effective solutions from among transmission projects proposed to meet transmission needs driven by public policy requirements." *See* First Compliance Order, 143 FERC ¶ 61,059 at PP 81, 145.

[422] NYISO OATT, Attachment Y, § 31.2.6.5.1.1 (The criterion requires that the developer shall provide NYISO with credible capital cost estimates for its proposed solution, with itemized supporting work sheets that identify all material and labor cost assumptions, and related drawings to the extent applicable and available. The work sheets should include an estimated quantification of cost variance and the estimate shall

(continued…)

Parties propose that NYISO will consider, and will consult with the New York Department of Public Service regarding, the capital cost estimates for all components of the proposed solution.[423] We expect that the incremental cost of placing new and additional transmission facilities on existing rights-of-way will be a component of the capital cost estimates that NYISO considers for transmission solutions proposed in the reliability and public policy transmission planning processes.

207. We reject IPPNY's, Multiple Intervenors', and Pace's request for clarification or rehearing regarding comparable treatment of non-transmission alternatives. In the First Compliance Order, the Commission noted its prior finding that NYISO's comprehensive system planning process, specifically the local, reliability, and economic transmission planning processes, satisfied the requirements of Order No. 890, and stated that its focus in the First Compliance Order was thus on the "incremental changes to the Filing Parties' regional transmission planning process developed to comply with the general regional transmission planning requirements of Order No. 1000."[424] The Commission noted that there was no reason to reconsider its prior findings on compliance with the Order No. 890 requirements and that the NYISO OATT provides that "when NYISO evaluates proposed solutions to reliability transmission needs 'from any Developer,' it will consider all resource types on a comparable basis as potential solutions and '[a]ll solutions will be evaluated in the same general timeframe.'"[425] In the First Compliance Filing, the Commission did not prescribe the method by which NYISO would evaluate and consider non-transmission alternatives on a comparable basis.[426] We agree with the Filing Parties that the Commission's requirement in the First Compliance Order is consistent with the requirements of Order No. 1000.[427] The Commission stated that it will not establish the appropriate metrics to measure non-transmission alternatives against transmission alternatives, but that those considerations are best managed among public utility

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include all components that are needed to meet the Reliability Need throughout the study period.).

[423] *Id.* § 31.4.8.1.1.

[424] First Compliance Order, 143 FERC ¶ 61,059 at P 50 & n.93 (citing *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 16 (2008), *order on reh'g*, 126 FERC ¶ 61,320, *reh'g denied*, 129 FERC ¶ 61,045 (2009)).

[425] *Id.* P 42 (citing NYISO OATT, Attachment Y, §§ 31.3.1.3.3, 31.2.5.1).

[426] *Id.* PP 148-149.

[427] *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 155.

transmission providers and their stakeholders through the regional transmission planning process.[428]

208. While Order No. 1000 requires each public utility transmission provider to post on its website an explanation of which transmission needs it has identified for further evaluation, as well as an explanation of why other proposed transmission needs will not be evaluated,[429] there is no new requirement regarding the posting of project information by a public utility transmission provider to publicly identify which transmission and non-transmission solutions more efficiently or cost-effectively meet identified transmission needs. Rather, as stated in Order No. 1000-A, by requiring a process that is open and transparent and satisfies all of the transmission principles set out in Order Nos. 890 and 1000, there is a record for the Commission and stakeholders to review to help ensure that the identification and evaluation decisions are open and fair and not unduly discriminatory or preferential.[430]

209. Similarly, while Order No. 1000 states that a public utility transmission provider must have a process to evaluate proposed transmission solutions to identify the more efficient or cost-effective transmission solutions from among competing projects, nothing in Order No. 1000 prevents public utility transmission providers in a region from deciding not to select a transmission project in the regional transmission plan for purposes of cost allocation and instead pursuing a non-transmission alternative. Order No. 1000 states that by requiring the evaluation of proposed transmission solutions in the regional transmission planning process, the Commission is not dictating that any particular transmission proposals be accepted or that selected transmission solutions be constructed.[431] Moreover, Order No. 1000 acknowledges that it may be the case that non-transmission alternatives result in transmission providers in a regional transmission planning process deciding that a proposed transmission facility is not a more efficient or cost-effective solution and, accordingly, that transmission facility may not be selected in the regional transmission plan for purposes of cost allocation.[432]

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[428] *Id.* P 211.

[429] *Id.* P 209.

[430] *Id.* P 321.

[431] *Id.* P 331.

[432] *Id.* P 193 n.254.

iii. Compliance

(a) Summary of Compliance Filings

(1) Reliability Evaluation Process

210. The Filing Parties propose to revise the reliability transmission planning process to include a two-phase evaluation process for solutions proposed to identified reliability transmission needs. The Filing Parties propose that in the first phase of the reliability planning process, NYISO will evaluate projects of all resource types—generation, transmission and demand response—to determine whether they are viable and sufficient solutions to meet the identified transmission need by the need date and to determine the Trigger Date for any proposed regulated solution. The proposed revisions provide that NYISO shall consider all resource types "on a comparable basis as potential solutions to the Reliability Needs identified" and "[a]ll solutions will be evaluated in the same general time frame."[433]

211. The Filing Parties state that this comparable evaluation of all resources will inform NYISO and its stakeholders about the ability of all proposed solutions to meet a Reliability Need.[434] Further, the Filing Parties propose that NYISO's evaluation will specifically inform the New York Public Service Commission, the New York Power Authority, and the Long Island Power Authority should any of them decide to proceed with a non-transmission solution to satisfy a Reliability Need with cost allocation and cost recovery under state law, as currently described under NYISO's OATT.[435]

212. In determining whether a proposed solution is viable, NYISO will evaluate whether: (1) the developer has provided the required developer qualification information and the required project qualification information; (2) the proposed solution is technically practicable; (3) the developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required timeframe; and (4) the proposed solution can be completed in the required timeframe.[436] In addition, in determining whether a proposed

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[433] NYISO OATT, Attachment Y, § 31.2.5.2 (Comparable Evaluation of All Proposed Solutions).

[434] October 15, 2013 Compliance Filing at 13.

[435] NYISO OATT, Attachment Y, § 31.5.1.6 (Regulated Non-Transmission Solutions to Reliability Needs – cost recovery under state law).

[436] *Id.* § 31.2.5.3 (Evaluation of Viability of Proposed Solution).

solution is sufficient, NYISO "will evaluate each solution independently to confirm that the solution proposed by the [d]eveloper eliminates the Reliability Need(s)."[437] If NYISO determines that the proposed solution is not sufficient, and for regulated solutions, the developer does not address any identified deficiency as required, NYISO shall reject the proposed solution from further consideration during that transmission planning cycle.[438] NYISO will report the results of its viability and sufficiency analysis to stakeholders, interested parties, and the New York Department of Public Service for comment and will indicate whether any of the proposed regulated solutions found to be viable and sufficient will have a Trigger Date within thirty-six months of this presentation.[439]

213. In the second phase of the evaluation process, if NYISO determines that any developer's proposed regulated solution is both viable and sufficient and has a Trigger Date that will occur within thirty-six months, as indicated above, NYISO will request all developers of viable and sufficient regulated transmission proposals to submit additional project qualification information, as well as a $100,000 study deposit.[440] In determining which of the proposed regulated transmission solutions is the more efficient or cost-effective, NYISO will consider, in consultation with the New York Department of Public Service, the following metrics: (1) capital cost estimates, including the accuracy of the proposed estimates;[441] (2) cost per MW ratio of the proposed solution;[442] (3) the expandability of the proposed transmission solution, including the impact on future construction and the extent to which any subsequent expansion will continue to use the proposed solution within the context of system expansion;[443] (4) the operability of the

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[437] *Id.* § 31.2.5.4 (Evaluation of Sufficiency of Proposed Solution).

[438] *Id.*

[439] *Id.* § 31.2.5.7 (ISO Report of Evaluation Results).

[440] *Id.* §§ 31.2.6.1, 31.2.6.2.

[441] *Id.* § 31.2.6.5.1.1 (This criterion requires that the developer shall provide NYISO with credible capital cost estimates for its proposed solution, with itemized supporting work sheets that identify all material and labor cost assumptions, and related drawings to the extent applicable and available. The work sheets should include an estimated quantification of cost variance and the estimate shall include all components that are needed to meet the Reliability Need throughout the study period.).

[442] *Id.* § 31.2.6.5.1.2.

[443] *Id.* § 31.2.6.5.1.3.

proposed regulated transmission solution, including how the proposed solution may affect the additional flexibility in operating the system and may affect the cost of operating the system;[444] (5) the performance of the proposed regulated transmission solution, including how the proposed solution may affect the utilization of the system, such as interface flows and percent loading of facilities;[445] (6) the extent to which the developer of a proposed regulated transmission solution has the property rights, or ability to obtain the property rights, required to implement the solution;[446] and (7) the potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule and the schedule for obtaining any permits and other certifications as required to timely meet the Reliability Need.[447]

214. The Filing Parties propose that a regulated transmission solution that will have a significant adverse impact on the reliability of the New York State Transmission System may not be eligible for selection in the regional transmission plan for purposes of cost allocation.[448] The Filing Parties propose that, to determine whether a transmission project will have a significant adverse impact, NYISO will evaluate the system impacts for the entire study period of the proposed solution and will perform power flow, short circuit, and other studies. If NYISO identifies a significant adverse impact based on these studies, NYISO will request that the transmission developer make an adjustment to address this impact, to remain eligible for selection in the regional transmission plan for purposes of cost allocation. If the developer modifies its proposed regulated transmission solution, NYISO will confirm that the adjusted solution still satisfies the viability and sufficiency requirements.[449]

215. As the Filing Parties explain, following NYISO's two-phase evaluation of all solutions proposed to address Reliability Need(s), NYISO will prepare a draft report, the Comprehensive Reliability Plan, that sets forth NYISO's findings on the viability and sufficiency of solutions and the Trigger Dates of regulated solutions. In addition, if NYISO determines in its evaluation that a market-based solution will not be available in

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[444] *Id.* § 31.2.6.5.1.4.

[445] *Id.* § 31.2.6.5.1.5.

[446] *Id.* § 31.2.6.5.1.6.

[447] *Id.* § 31.2.6.5.1.7.

[448] *Id.* § 31.2.6.3. (Evaluation of System Impact of Proposed Regulated Transmission Solution).

[449] *Id.*

time to meet a Reliability Need, it will state in this report that implementation of a regulated solution (which may be a Gap Solution) is necessary to ensure system reliability.[450] Assuming that implementation of a regulated solution is necessary, the draft report will also indicate: (1) whether NYISO has determined that the Trigger Date to any regulated solution will occur within thirty-six months of NYISO's presentation of its viability and sufficiency analysis; and (2) NYISO's selection of the more efficient or cost-effective solution.[451] The Filing Parties add that all of the transmission planning processes approved by the Commission under Order No. 1000 to date call for the evaluation and selection of transmission projects, and the Commission has not required the selection of non-transmission projects in regional transmission plans for purposes of cost allocation.[452]

216. NYISO will submit the draft Comprehensive Reliability Plan to stakeholders for review and comment, through the Transmission Advisory Planning Subcommittee and the Electric System Planning Working Group, "mak[ing] available to any interested party sufficient information to replicate the results of the draft Comprehensive Reliability Plan."[453] Following completion of stakeholder review, the draft Comprehensive Reliability Plan reflecting any revisions resulting from stakeholder review, will be forwarded, first, to the NYISO Operating Committee and, second, to the Management Committee for discussion and action.[454] Following the Management Committee vote, the draft report, with input from stakeholders and the Operating and Management Committees, will be forwarded to the NYISO Board for review and action. At the same time, the draft report will be forwarded to the Market Monitoring Unit for its review and consideration of whether market rules are necessary to address an identified failure.

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[450] A Gap Solution is defined as "[a] solution to a Reliability Need that is designed to be temporary and to strive to be compatible with permanent market-based proposals. A permanent regulated solution, if appropriate, may proceed in parallel with a Gap Solution." *Id.* § 31.1.1.

[451] *Id.* § 31.2.7 (Comprehensive Reliability Plan).

[452] October 15, 2013 Compliance Filing at 14 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 52-55 (2013); *Mw. Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at PP 47-48 (2013); *Sw. Power Pool, Inc*., 144 FERC ¶ 61,059, at PP 46-48 (2013); *Cal. Indep. Sys. Operator Corp*., 143 FERC ¶ 61,057, at PP 35-37 (2013); *ISO New England Inc.*, 143 FERC ¶ 61,150, at PP 45-50 (2013)).

[453] NYISO OATT, Attachment Y, § 31.2.7.1 (Collaborative Governance Process).

[454] *Id.*

Upon final approval by the NYISO Board, NYISO shall issue the Comprehensive Reliability Plan to the marketplace by posting it on the NYISO website.[455]

(2) Public Policy Evaluation Process

217. The Filing Parties indicate that, to comply with the Commission's directive to establish a process for NYISO to select more efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation and to incorporate this process into the public policy transmission planning process, the Filing Parties propose a two-phase evaluation and selection process. The Filing Parties explain that this new two-phase process to evaluate for selection in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective solutions is similar to the process for evaluating reliability solutions, discussed above. The Filing Parties propose to clarify that when NYISO forwards proposed Public Policy Transmission Needs to the New York Public Service Commission and New York Department of Public Service, NYISO will include the proposed evaluation criteria, as well as any additional evaluation criteria that NYISO identifies.[456] In addition, the Filing Parties' proposal would establish that, in its identification of Public Policy Transmission Needs, the New York Public Service Commission and New York Department of Public Service may also specify criteria for NYISO's evaluation of transmission and non-transmission projects.[457] The Filing Parties also propose to clarify that if the New York Department of Public Service does not identify a Public Policy Transmission Need, NYISO will not request solutions.[458]

218. Using the same criteria proposed for reliability solutions, as well as any evaluation criteria provided by the New York Public Service Commission and New York Department of Public Service, NYISO will first evaluate proposed solutions from all resource types for viability and sufficiency. NYISO will present the results of its evaluation, in the form of a Public Policy Transmission Planning Report, to NYISO's stakeholders, interested entities, and the New York Department of Public Service for comment.[459]

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[455] *Id.* § 31.2.7.2 (Board Review, Consideration, and Approval of [Comprehensive Reliability Plan]).

[456] *Id.* § 31.4.2.

[457] *Id.* § 31.4.2.1.

[458] *Id.*

[459] *Id.* § 31.4.6.5.

219. In phase two, the Filing Parties propose that NYISO will evaluate transmission solutions that it has determined are viable and sufficient in the Public Policy Transmission Report for selection as the more efficient or cost-effective transmission solution to meet the identified Public Policy Transmission Need.[460] The Filing Parties assert that the Commission has not required NYISO to select non-transmission projects that are ineligible to use the regional cost allocation method under NYISO's OATT.[461] The Filing Parties state that the proposed metrics for evaluation and selection mirror those used in NYISO's reliability planning process,[462] and add that NYISO will consider any criteria specified by the New York Public Service Commission and New York Department of Public Service and any additional metrics based on the context of the public policy requirement identified in consultation with stakeholders.[463]

220. The Filing Parties propose that NYISO will rank each proposed solution based on its satisfaction of the metrics.[464] Moreover, the Filing Parties propose that NYISO may engage an independent consultant to review the reasonableness and comprehensiveness of the information submitted by the developer and may rely on that independent consultant's analysis in evaluating each metric.[465] In addition, NYISO will evaluate each viable and sufficient transmission solution to determine "the impacts on the [NYISO]-administered wholesale electricity markets."[466]

221. The Filing Parties propose that NYISO will utilize a ten-year period for its evaluation, which may be extended by up to an additional 20 years as appropriate based

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[460] October 15, 2013 Compliance Filing at 38 (citing NYISO OATT, Attachment Y, § 31.4.8).

[461] *Id.* at 38 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 124).

[462] *Id.* at 39 (citing NYISO OATT, Attachment Y, § 31.4.8.1); *see supra* Part IV.B.3.d (Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation) for a discussion of the proposed evaluation metrics.

[463] *Id.*

[464] NYISO OATT, Attachment Y, § 31.4.8.1.

[465] October 15, 2013 Compliance Filing at 38-39; NYISO OATT, Attachment Y, § 31.4.8.

[466] NYISO OATT, Attachment Y, § 31.4.9 (Evaluation of Impact of Proposed Transmission Solution on ISO Wholesale Electricity Markets).

on the public policy requirement and the identified Public Policy Transmission Need.[467] The Filing Parties state that NYISO will use its existing planning tools to evaluate system benefits against project costs for up to 30 years from the study date, contending that public policies are designed to achieve long-term societal benefits and the benefits of such transmission projects should be extended commensurate with the useful life of new transmission lines. The Filing Parties assert that while longer term analysis may not produce precise cost-benefit assessments for the later years, it is better that the long-term benefits of long-lived transmission assets be accounted for as best as practicable.[468]

222. The Filing Parties explain that, at the completion of this two-phase evaluation process, NYISO selects the more efficient or cost-effective transmission solution, if any,[469] and includes the regulated transmission solution in the Public Policy Transmission Planning Report for purposes of cost allocation.[470] The Public Policy Transmission Planning Report also includes, among other things,[471] the assumptions, inputs, and methodologies NYISO used in its evaluation; the results of NYISO's analyses,[472] including the impacts of each proposed transmission solution on NYISO-administered wholesale electricity markets[473] and the results of the viability and sufficiency evaluation; and any input from the New York Department of Public Service.[474] The draft report will also compare the proposed regional transmission solution identified to meet a Public

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[467] *Id.* § 31.4.6.

[468] October 15, 2013 Compliance Filing at 37.

[469] NYISO OATT, Attachment Y, § 31.4.8.

[470] *Id.* §§ 31.4.8, 31.4.8.2.

[471] The Public Policy Transmission Planning Report is discussed in more detail above in Part IV.B.2.c.i (Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process).

[472] NYISO OATT, Attachment Y, § 31.4.10.

[473] *See id.* § 31.4.9.

[474] October 15, 2013 Compliance Filing at 40; NYISO OATT, Attachment Y, § 31.4.10.

Policy Transmission Need to an interregional transmission project, which may be selected as a regulated transmission solution.[475]

223. NYISO will provide the draft Public Policy Transmission Planning Report to stakeholders, through the Transmission Advisory Planning Subcommittee and the Electric System Planning Working Group, for their review and consideration. Concurrently, NYISO will submit the draft Public Policy Transmission Planning Report to the Market Monitoring Unit for its review and consideration.[476] Following completion of stakeholder and Market Monitoring Unit review, the draft Public Policy Transmission Planning Report, "reflecting the revisions resulting from [Transmission Advisory Planning Subcommittee and the Electric System Planning Working Group] review shall be forwarded to the Business Issues Committee and the Management Committee for discussion and an advisory vote."[477] In addition, the Market Monitoring Unit's evaluation will be provided to the Management Committee prior to its advisory vote.[478]

224. Following the Management Committee vote, NYISO forwards the draft Public Policy Transmission Planning Report, with input from the Business Issues Committee and the Management Committee and with the Market Monitoring Unit's evaluation, to the NYISO Board for review and action.[479] The NYISO Board may approve the draft Public Policy Transmission Planning Report as submitted or propose modifications on its own motion. However, if the NYISO Board proposes changes, the revised report is returned to the Management Committee for further comment and the NYISO Board will not make a final determination on the revised report until it has reviewed the Management Committee's comments.[480] Upon final approval by the NYISO Board,

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[475] NYISO OATT, Attachment Y, § 31.4.10 (Public Policy Transmission Planning Report).

[476] October 15, 2013 Compliance Filing at 40; NYISO OATT, Attachment Y, § 31.4.10.1 (Collaborative Governance Process). Pursuant to NYISO's collaborative governance provision, NYISO will make available to any interested party sufficient information to replicate the results of the draft Public Policy Transmission Planning Report. *Id.*

[477] NYISO OATT, Attachment Y, § 31.4.10.1 (Collaborative Governance Process).

[478] *Id.*

[479] *Id.* § 31.4.10.2 (Board Review, Consideration, and Approval of Public Policy Transmission Planning Report).

[480] *Id.*

NYISO shall issue the Public Policy Transmission Planning Report to the marketplace by posting it on the NYISO website.[481]

225. The Filing Parties also propose to add a new section to establish the confidentiality of a developer's proposed solution until such a time as NYISO determines the proposed solution is sufficient and viable and the developer consents to the inclusion of the project in the Public Policy Transmission Planning Report.[482] Further, the Filing Parties state that any preliminary cost estimates that may have been provided to NYISO will not be disclosed.[483] Additionally, the Filing Parties propose various edits to clarify the OATT's reference to NYISO's request for, rather than evaluation of, solutions. Specifically, the Filing Parties' proposed revisions to Attachment Y replace references to NYISO's evaluation of proposed solutions to meet an identified Public Policy Transmission Need, to NYISO's request for proposed solutions.[484]

(b) <u>Protests/Comments</u>

226. Entergy and Multiple Intervenors and IPPNY contend that the Filing Parties have only partially complied with the Commission's directive in the First Compliance Order, asserting that Order No. 1000 requires NYISO to evaluate and select the more efficient or cost-effective solution from among all competing projects, whether transmission solutions or non-transmission alternatives.[485] Entergy, Multiple Intervenors, and IPPNY argue that because the Filing Parties have proposed that NYISO will limit its analysis of non-transmission solutions to their viability and sufficiency, NYISO may not select the more efficient or cost-effective solution to address a given need.[486] Multiple Intervenors and IPPNY add that subjecting transmission and non-transmission alternatives to different methods of analysis would render consideration of non-transmission alternatives inconsequential because NYISO would not have the means to determine whether a non-transmission alternative was a more efficient or cost-effective solution.[487] Multiple

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[481] *Id.*

[482] October 15, 2013 Compliance Filing at 43.

[483] *Id.*; NYISO OATT, Attachment Y, § 31.4.13.

[484] NYISO OATT, Attachment Y, §§ 31.4.2.1, 31.4.2.2, 31.4.3.

[485] Entergy Protest at 5-9; Multiple Intervenors and IPPNY Protest at 37-39.

[486] Entergy Protest at 5-6; Multiple Intervenors and IPPNY Protest at 39.

[487] Multiple Intervenors and IPPNY Protest at 38-39.

Intervenors and IPPNY argue that the Commission has found in other Order No. 1000 compliance cases that the evaluation of the efficiency and cost-effectiveness of non-transmission alternatives' is necessary to satisfy the comparability principle.[488] In addition, Multiple Intervenors and IPPNY state that the Commission has found that the comparability principle is satisfied when solutions are evaluated against one another "based on a comparison of their relative economics and effectiveness of performance."[489]

227. In addition, Multiple Intervenors and IPPNY argue that NYISO is not required to select a transmission project to satisfy a transmission need driven by public policy requirements as long as proposed solutions are considered.[490] Therefore, they contend that the Commission should direct the Filing Parties to modify the NYISO OATT to provide that NYISO is not required to select a transmission solution to meet a need driven by public policy requirements if a non-transmission alternative will more efficiently or cost-effectively meet the Public Policy Transmission Need.[491] In addition, Multiple Intervenors and IPPNY assert that for the reliability planning process, if NYISO identifies a non-transmission alternative to be the more efficient or cost-effective solution, the Commission should direct the Filing Parties to modify their OATT to require that NYISO must select that project as the backstop solution to address the reliability need.[492]

228. Several protesters assert that the metrics the Filing Parties propose for evaluating more efficient or cost-effective transmission solutions are too vague and lack transparency. NextEra and Multiple Intervenors and IPPNY protest that the Filing

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[488] *Id.* at 39-40 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013) (PJM First Compliance Order); *Pub. Serv. Co. of Colorado*, 142 FERC ¶ 61,206 (2013) (PSC Colorado First Compliance Order); *NorthWestern Corp.*, 128 FERC ¶ 61,040, at P 38 (2009); *El Paso Elec. Co.*, 128 FERC ¶ 61,063, at P 15 (2009); *N.Y. Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044, at P 35 (2009)).

[489] Multiple Intervenors and IPPNY Protest at 40 (citing PSC Colorado First Compliance Order, 142 FERC ¶ 61,206 at P 68 n.108).

[490] *Id.* at 43 ("Whether or not public utility transmission providers in a region select a transmission facility in the regional plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is an efficient or cost-effective solution to their needs." (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331)).

[491] *Id.* at 43-44.

[492] *Id.* at 6.

Parties propose to merely list the metrics that NYISO will consider, without providing any further detail regarding the manner in which such factors will be considered or the relative weight assigned to various factors and argue that this process is not sufficiently transparent for stakeholders to understand why a particular project ultimately was selected or not selected to meet an identified need.[493] NextEra contends that the Commission should require NYISO to specify in Attachment Y how NYISO will evaluate, weigh, and rank the score of each proposed transmission project to determine the more efficient or cost-effective solution,[494] arguing that providing more clarity will reduce perceived arbitrariness in the decision-making process and should lead to less litigation concerning selected transmission solutions.[495] NextEra also requests that the Filing Parties clarify whether the terms "efficient" and "cost-effective" are intended to have different meanings. Moreover, NextEra argues it is not clear whether the evaluation of a proposed solution's viability has a later impact on how NYISO evaluates a project according to the listed evaluation metrics or whether the viability analysis is just a pass-fail evaluation. According to NextEra, NYISO should apply the evaluation metrics independently of the viability analysis.[496] NextEra asserts that NYISO should evaluate each proposal independently and assign a score without regard to other proposals' scores.[497]

229. LS Power and Multiple Intervenors and IPPNY assert that, in determining the more efficient or cost-effective solution to identified needs, overall cost should be weighed more heavily than non-cost factors.[498] LS Power does not suggest a specific weighting system for New York, but asserts that, if NYISO must rank each proposed solution based on the proposal's satisfaction of these metrics, it must have some formula for evaluating and ranking the proposals to avoid arbitrariness. LS Power asks the Commission to require that NYISO reveal the formula by which it will rank each

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[493] *Id.* at 6-7 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328); NextEra Protest at 5.

[494] Nextera Protest at 10-11.

[495] *Id.* at 11-12.

[496] *Id.* at 15-16.

[497] *Id.* at 11-12.

[498] Multiple Interventors and IPPNY Protest at 52, LS Power at 19.

proposed solution.[499] LS Power adds that, in the absence of requiring cost factors to be weighted more heavily that non-cost factors, there is no mechanism to ensure that the more efficient or cost-effective solution is selected.[500]

230. Similarly, NextEra argues that, assuming a proposed solution meets threshold technical and operability needs, the project's cost is the most critical evaluation metric, stating that costs are the metric that is most directly related to whether transmission rates are just and reasonable.[501] NextEra asserts NYISO must implement an evaluation process that weighs cost over other metrics and assigns the two cost metrics a total weight of 50 percent.[502] NextEra adds that such an approach would be consistent with the Commission's determinations in *Midwest Independent System Operator, Inc.* and *Southwest Power Pool, Inc.*, which, NextEra asserts, recognized the importance of costs in project selection to ensure consumer benefits.[503] NextEra also asserts that NYISO should evaluate each proposal independently and assign a score without regard to other proposals' scores.[504] Finally, NextEra also recommends that the willingness of a

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[499] LS Power Protest at 19-20 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 315); *id.* at 20 n.22 (asserting that the Commission has required public utility transmission providers to include in their tariffs language that identifies how they will evaluate and select among competing solutions and resources).

[500] LS Power Protest at 19 n.21 (citing to *Sw. Power Pool*, 144 FERC ¶ 61,059, at P 284 (2013) and *Midwest Indep. Transmission Sys. Operator*, 142 FERC ¶ 61,215, at P 339 (2013)).

[501] NextEra Protest at 7.

[502] *Id.* at 10. NextEra recommends that each of the two cost metrics should be given 25% weight in the overall evaluation, which allocates 50% overall to the costs of a given proposed solution. NextEra believes that property access and potential issues related to delays in construction should jointly count for 14%, or 7% each, which leaves 36% for the remaining three metrics of expandability, operability and performance. NextEra states that it is appropriate for each of these metrics to be assigned a weight of 12%. *Id.* at 7.

[503] *Id.* at 7, 8-10 (citing *Midwest Indep. Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 339 (2013) and *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 283 (2013)). Similarly, Multiple Intervenors and IPPNY argue that these orders demonstrate the importance of cost considerations in the evaluation process. Multiple Intervenors and IPPNY Protest at 50, 51.

[504] NextEra Protest at 11-12.

developer to assume the risk of cost increases should be given a separate and significant ranking, as this metric can have a great impact on rate certainty. NextEra contends that even if Attachment Y is interpreted to allow developers to assume such risks, it does not explain how NYISO would treat that assumption of risk.[505]

231. Regarding the proposed metrics for evaluating the more efficient or cost-effective regulated transmission solution to satisfy Public Policy Transmission Needs, LS Power notes that in evaluating competing public policy proposals, NYISO "shall apply any criteria specified by the Public Policy Requirement or provided by the [New York Department of Public Service/New York Public Service Commission] and perform the analyses requested by the [New York Department of Public Service/New York Public Service Commission], to the extent compliance with such criteria and analyses are feasible." LS Power is concerned that the reference to "any criteria" provided by those state agencies could be different from "more cost-effective and efficient" project selection and provide a back door for non-NYISO entities, rather than NYISO, to select the public policy projects. LS Power states that any criteria identified as part of a Public Policy Transmission Need should be specifically identified prior to NYISO's solicitation of solutions, and that the proposed OATT language should be amended to delete the language referring to the specification of criteria by the New York Department of Public Service and the New York Public Service Commission.[506]

232. LS Power also asserts that, while it agrees that NYISO should make an initial sufficiency determination, the Filing Parties' proposal that NYISO will evaluate each proposed solution to confirm it *eliminates* the Reliability Need may not encourage cost-effective selection, could justify over-building of the grid, and is unnecessarily vague. LS Power recommends that the language be changed to NYISO "will evaluate each solution independently to confirm that the solution proposed by the [d]eveloper resolves the Reliability Need(s) *cost effectively*," so that NYISO can examine the full range of options.[507]

233. LS Power protests the Filing Parties' proposal to request additional project qualification information and evaluate proposed transmission projects for selection as the more efficient or cost-effective solution only if the Trigger Date of any Developer's proposed regulated solution will occur within thirty-six months of NYISO's reporting the results of its viability and sufficiency analysis to stakeholders.[508] LS Power argues that

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[505] *Id.* at 13-15.

[506] LS Power Protest at 20.

[507] *Id.* at 18 (emphasis added).

[508] *Id.* at 12 13 (citing NYISO OATT, Attachment Y, §§ 31.2.5, 31.2.6.1 (5.0.0)).

the delay provides a discriminatory advantage to incumbent transmission owners and provides no benefit to consumers. Moreover, LS Power contends that this delay does not provide any efficiency to the regional transmission planning process and will not save consumers money.[509] LS Power protests that the criteria and information NYISO considers during the viability and sufficiency analysis appear to suggest that the more finalized a project is, the better it will fare.

(c) Answers

234. The Filing Parties assert that the Commission should reject protestor's challenges and proposed revisions to NYISO's process for evaluating the more efficient or cost-effective transmission solutions.[510] The Filing Parties believe that Order No. 1000 provides each public utility transmission provider with flexibility in establishing its approach for evaluating proposed transmission solutions to determine the more efficient or cost-effective transmissions solution and does not require the use of specific criteria or a particular ranking or weighting system.[511] The Filing Parties state that NYISO will evaluate all transmission solutions using the same selection metrics in a non-discriminatory manner, regardless of whether the project is proposed by an incumbent or nonincumbent transmission developer, and that NYISO's evaluation and selection process will be an open and transparent process that will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected for cost allocation purposes in the regional transmission plan. The Filing Parties state that NYISO's use of the selection metrics for purposes of selecting the more efficient or cost-effective solution will include extensive communications and feedback with all interested parties, and NYISO will detail in a draft report – the draft Comprehensive Reliability Plan or Public Policy Transmission Planning Report – its analysis of the proposed transmission solutions based on the selection metrics and its reasons for recommending the selection of a particular project based on this analysis.[512]

235. The Filing Parties contend that the Commission should reject protestors' assertion that the Filing Parties proposal does not provide for NYISO to perform a comparable evaluation of transmission and non-transmission alternatives to an identified Reliability

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[509] *Id.* at 16.

[510] Multiple Intervenors and IPPNY Protest at 48-52; LS Power Protest at 18-20; NextEra Protest at 3-12.

[511] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 223.

[512] Filing Parties Answer at 16-17.

Need or Public Policy Transmission Need.[513] The Filing Parties state that protestors' argument that NYISO should be capable of performing a comparable evaluation of transmission and non-transmission alternatives is inaccurate.[514] The Filing Parties also contend that neither the First Compliance Order nor Order No. 1000 require NYISO to select among all resource types, but to provide a process for NYISO to evaluate all resource types, including transmission, generation, and demand response, on a comparable basis.[515] The Filing Parties explain that the First Compliance Order only required the Filing Parties to establish a mechanism for NYISO to select the more efficient or cost-effective *transmission* solution for purposes of regional cost allocation.[516] The Filing Parties reiterate their argument that, consistent with NYISO's existing process already accepted by the Commission, NYISO will evaluate all solution types—transmission and non-transmission—to determine if they are viable projects, and whether the characteristics of the project are sufficient in type, scope and timing to meet the identified transmission system need.[517]

236. The Filing Parties assert that nothing in the First Compliance Order or Order No. 1000 disturbs the separation between transmission planning by a public utility transmission provider under its Commission-approved OATT and resource portfolio planning by the state public service commission under state law.[518] The Filing Parties argue that the New York Public Service Commission, not NYISO, carries out planning for the state's resource mix and therefore an evaluation by NYISO of the more efficient or cost effective solution among transmission and non-transmission alternatives is not necessary.[519] The Filing Parties assert that the existing OATT provisions recognize that

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[513] *Id.* at 5.

[514] *Id.* at 5, 11.

[515] *Id.* at 6.

[516] *Id.* at 5-6 (citing First Compliance Order, 143 FERC ¶ 61,059 at PP 81, 147).

[517] *Id.* at 6.

[518] *Id.* at 7.

[519] *See* New York Public Service Commission Case No. 06-M-1017, *Proceeding on Motion of the Commission As to the Policies, Practices and Procedures for Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers*, Order Establishing Electric Supply Portfolio Standards, Goals, and Reporting Requirements (Feb. 26, 2008).

the state plays a lawful and legitimate role in resource planning.[520] The Filing Parties state that if the New York Public Service Commission decides that non-transmission resources should be selected over transmission to meet an identified need, or that the transmission is not needed and should not be sited, that state determination can obviate the need for transmission cost allocation and recovery under NYISO's transmission tariffs.

237. In response to NextEra's request that the Filing Parties clarify whether NYISO will perform the viability analysis of proposed solutions on a pass/fail basis or as input into NYISO's analysis of the more efficient or cost-effective solution to an identified need, the Filing Parties clarify that the viability analysis is part of NYISO's initial threshold determination that a proposed solution can satisfy an identified Reliability Need or Public Policy Transmission Need, which NYISO will perform on a pass/fail basis. For example, the Filing Parties' proposal provides that NYISO will reject from further consideration in a transmission planning cycle a proposed solution that is not viable.[521]

238. Regarding the evaluation metrics, the Filing Parties respond that the Commission should also reject protestors' assertion that cost must be the primary factor in NYISO's selection of the more efficient or cost-effective transmission solution since the Commission did not direct public utility transmission providers to establish specific selection criteria or processes and has not indicated that cost must be the primary factor in the selection determination. The Filing Parties assert that the Commission has not indicated in Order No. 1000 or its orders in response to filings in compliance with Order No. 1000 that cost must constitute the primary selection factor or must outweigh other factors. Further, the Filing Parties argue that NYISO should not be bound to select a transmission project that may as a stand-alone project be the cheapest transmission solution, but may not benefit the New York State Transmission System or provide the same flexibility or long-term benefits of an alternative transmission solution.[522]

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[520] Filing Parties Answer at 10; *see* NYISO OATT, Attachment Y, §§ 31.5.1.6, 31.5.6.3; OATT, Rate Schedule 10 §§ 6.10.2.3, 6.10.5.3. The Filing Parties state that consistent with its role in ensuring resource adequacy, the New York Public Service Commission may determine that non-transmission resources – including generation resources, demand response, or energy efficiency projects – can resolve an identified need, the costs of which may be recovered through utilities' bundled retail rates approved by the New York Public Service Commission under state law.

[521] Filing Parties Answer at 13.

[522] *Id.* at 19-20.

239. The Filing Parties state that if the Commission were to require NYISO to adopt a particular weighting or ranking system, the Commission should reject the system proposed by NextEra in which it recommends specific weighted values for each of NYISO's proposed selection criteria and a methodology for NYISO's ranking of the selection criteria.[523] The Filing Parties argue that NextEra has not provided any justification or support for its proposed methodology or weighted values. The Filing Parties also believe that the Commission should reject NextEra's proposed revision to include an additional cost metric based on a developer's willingness to accept cost risks since NYISO's evaluation and selection process is not a rate making proceeding, and NYISO's selection of a particular transmission project will not limit a transmission developer's ability to recover its prudent costs in a proceeding before the Commission. The Filing Parties state that NYISO will evaluate proposed transmission solutions using a variety of selection metrics, which collectively provide for NYISO's selection of the more efficient or cost-effective transmission solution and that the metrics defined in the Filing Parties' filing were developed to collectively address these two separate concepts. They explain that NYISO's selection of the more efficient or cost-effective transmission solution will be based on the totality of its evaluation of the proposed transmission solutions using these selection metrics.[524]

240. The Filing Parties state that the Commission should reject LS Power's requested revisions regarding NYISO's proposal to proceed with its analysis only if the Trigger Date of any Developer's proposed regulated solution will occur within thirty-six months of NYISO's reporting the results of its viability and sufficiency analysis to stakeholders. The Filing Parties state that NYISO's process was developed at stakeholders' behest to avoid parties' prematurely incurring significant costs and expending significant resources in the development of transmission projects that may not be required since market-based solutions are preferred. The Filing Parties state that Order No. 1000 was crafted to create processes for the consideration of transmission projects to be built to meet actual needs, not to launch endless analyses of merely hypothetical projects, and this is a conservative approach that reasonably balances the benefits of advanced planning with the costs of making a selection close in time to when a transmission solution would actually have to be implemented to meet a Reliability Need.[525] The Filing Parties believe that since NYISO will be making its selection closer in time to the actual implementation of the proposed transmission solution, the developer will have the opportunity to improve its initial project proposal and cost estimates, which will enable NYISO to make its determination based on more precise information.

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[523] NextEra Protest at 10-12; Filing Parties Answer at 19-20.

[524] Filing Parties Answer at 20-21.

[525] *Id.* at 23.

241. In response to NextEra's request that the Filing Parties clarify whether the terms "efficient" and "cost-effective" are intended to have different meanings and how NYISO will select among competing projects, if one is found to be more efficient while the other is more cost-effective, the Filing Parties clarify that for purposes of NYISO's regional transmission planning process, the terms "efficient" and "cost-effective" have different meanings. They state that a project's "efficiency" pertains to its ability to transfer power or avoid needs in terms of megawatts of capability or total megawatt-hours of energy for a given technology or project, compared with competing projects. By comparison, they explain, a project's "cost-effectiveness" pertains to the cost of the project on a per MW basis or on a per MWh basis. The Filing Parties state that NYISO will evaluate proposed transmission solutions using a variety of selection metrics, which collectively provide for NYISO's selection of the more efficient or cost-effective transmission solution and the metrics defined in the Filing Parties' filing were developed to collectively address these two separate concepts.[526]

242. In response to the Filing Parties' answer, NextEra argues that the lack of weighting in NYISO's evaluation of proposed transmission solutions is inconsistent with Order No. 1000's emphasis on ensuring just and reasonable rates. NextEra reiterates that NYISO's evaluation should assign greater weight to cost items than to other metrics in the evaluation. NextEra adds that, while cost should not trump all other considerations, an appropriate ranking system pursuant to weighted metrics should reveal the best overall solution, because any advantage that an inferior technical solution can gain with regard to costs will be outweighed by a low score on the other metrics.[527] NextEra also states that the Filing Parties already have proposed a viability analysis that should preclude unacceptable solutions from further consideration, and thus, their concern that cheap but technically inadequate solutions will compete with fully viable solutions at the evaluation stage is unrealistic. Further, NextEra responds that it justified and supported its proposed methodology and weighted values and cited to Order No. 1000's discussion that eliminating the right of first refusal was intended to help obtain cost savings in transmission construction and thus ensure transmission rates are just and reasonable.[528]

243. In addition to its argument that the metrics proposed by the Filing Parties to evaluate more efficient or cost-effective transmission solutions are too vague and lack transparency, NextEra also reiterates its view that the NYISO's evaluation scheme should explicitly assign greater weight to cost than to other metrics. NextEra states that in its

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[526] Filing Parties Answer at 20-21.

[527] NextEra Answer at 2 (citing Filing Parties Answer at 19-20).

[528] *Id.* at 2-3 (citing NextEra Protest at 6-10, which referenced Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 43, 226).

protest, it urged the Filing Parties to include a provision by which transmission developers could signal their willingness to assume some level of cost risks and the Filing Parties rejected this proposal on the basis that the evaluation process is not a ratemaking process.[529] NextEra responds that its suggestion was not made in the context of ratemaking, but rather as a means of providing developers with a way to distinguish some proposals as being more beneficial to ratepayers than others. NextEra argues that in Order No. 1000, the Commission made clear that allowing more competition in transmission development could lead to cost savings.[530] Thus, it argues, allowing developers to merely provide financial estimates is less desirable than allowing developers themselves to stand behind these estimates by specifying their own risk tolerance. NextEra acknowledges that any rates must be approved by the Commission, including any assumption of cost risk by a developer, but it continues to assert that seeking to ascertain the level of risk a developer is prepared to incur at the project selection stage is essential, because there is less incentive for a developer to propose to incur such risks once it has already been awarded a project. Thus, NextEra disagrees with the Filing Parties' rejection of this feature.[531]

244. Additionally, NextEra urges the Filing Parties to include definitions for "efficient" and "cost effective" in the NYISO OATT. NextEra states that the Filing Parties have indicated that a project's efficiency "pertains to its ability to transfer power or avoid needs in terms of megawatts of capability or total megawatt-hours of energy," whereas its cost-effectiveness "pertains to the cost of the project on a per MW basis or on a per MWh basis."[532] NextEra asks the Commission to require the Filing Parties to include these

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[529] *Id.* at 4 (citing NextEra Protest at 13-14 ("a given developer may want to submit proposed costs that are not just estimates based on cost-of-service ratemaking and presumed full cost recovery, but rather a bid that exposes the developer to some risk in the event the project costs exceed a given amount. Project developers could . . . propos[e] declining ROEs on any costs in excess of their estimate, and even . . . being at risk for some or all recovery of costs above a given amount") and Filing Parties Answer at 20 ("The NYISO's evaluation and selection process is not a rate making proceeding, and the NYISO's selection of a particular project will not limit a Developer's ability to recover its prudent costs in a proceeding before the Commission, including prudent costs that exceed its initial estimates")).

[530] *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 284-285).

[531] *Id.* at 5.

[532] *Id.* (citing Filing Parties Answer at 21).

definitions in the NYISO OATT, and to provide that NYISO will select the solution that is both more efficient and more cost effective.[533]

(d) Commission Determination

245. We find that the provisions in Filing Parties' filing addressing the evaluation of proposed transmission facilities partially comply with the directives in the First Compliance Order. The Filing Parties' proposed revisions adequately explain how NYISO will ensure its evaluation, in the reliability and public policy transmission planning processes, will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation. NYISO's evaluation process gives stakeholders and interested parties the opportunity to review and comment on NYISO's evaluation of proposed transmission projects and NYISO's collaborative governance process provides that NYISO staff considers stakeholder input as it compiles all aspects of the required transmission plans.[534] We find this open and transparent evaluation process ensures that stakeholders may monitor and participate in the process.

246. We reject protestors' arguments that to provide comparable treatment of proposed transmission solutions and non-transmission alternatives the Filing Parties' must apply the same methods of analysis to all proposed solutions regardless of resource type, including evaluating the efficiency and cost-effectiveness of non-transmission alternatives.[535] In Order No. 890-A, the Commission stated that "[t]reating similarly-situated resources on a comparable basis does not necessarily mean that the resources are treated the same."[536] Thus, in an order on NYISO's compliance with Order No. 890, the Commission found that "NYISO's role in both soliciting market-based and regulated solutions and in evaluating competing proposals for their ability to meet the designated [reliability transmission need] in a timely manner affords comparable treatment to all types of competing solutions and resources, and is therefore compliant with Order No. 890-A's requirements."[537]

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[533] *Id.* at 6.

[534] NYISO OATT, Attachment Y, §§ 31.2.7.1, 31.4.10.1; *see also N.Y. Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044, at P 19 (2009).

[535] *See* Multiple Intervenors and IPPNY Protest at 38-40.

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

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

247. As previously discussed, the Commission found in the First Compliance Order that there was no reason to reconsider its prior finding that NYISO's regional reliability transmission planning process complies with Order No. 890 requirements, including each of the transmission planning principles.[538] The Commission noted in its prior finding that the NYISO OATT already provides that "when NYISO evaluates proposed solutions to reliability transmission needs 'from any Developer,' it will consider all resources types on a comparable basis as potential solutions.'"[539] Order No. 1000 applies to regional transmission planning the comparability transmission planning principle stated in Order Nos. 890 and 890-A. Thus, in the First Compliance Filing, the Commission neither required further compliance with respect to comparability in the reliability transmission planning processes nor prescribed a method by which NYISO would evaluate and consider non-transmission alternatives on a comparable basis.[540] We therefore find that NYISO's OATT continues to comply with the comparability principle as established in Order No. 890 and as applied in Order No. 1000.

248. We also note that, as discussed above, to the extent that a transmission facility is selected in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective transmission solution, the public utility transmission providers in the transmission planning region must make that selection. Additionally, neither the First Compliance Order nor Order No. 1000 dictates that any particular transmission solutions be selected in the regional transmission plan for purposes of cost allocation.[541] In response to protestors, Order No. 1000 does not require that NYISO select a non-transmission solution.

249. With respect to protestors' arguments that NYISO's evaluation criteria are vague and that NYISO does not sufficiently explain how it selects the more efficient or cost-effective solution or evaluates public policy requirements, we find that NYISO's proposal is generally consistent with the evaluation requirements of Order No. 1000 and complies with the requirement to describe a transparent and not unduly discriminatory process for evaluating proposed transmission solutions for selection in the regional transmission plan for purposes of cost allocation. Attachment Y defines a reasonable framework for NYISO's evaluation process that allows NYISO flexibility in conducting its evaluation and applying the evaluation metrics, while not giving NYISO unwarranted

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[538] First Compliance Order, 143 FERC ¶ 61,059 at P 42 (citing NYISO OATT, Attachment Y, §§ 31.3.1.3.3, 31.2.5.1).

[539] *Id.*

[540] *Id.* PP 148-149.

[541] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331.

discretion. The individual evaluation metrics in general are sufficiently detailed to provide prospective transmission developers with an understanding of how NYISO will evaluate their proposals. In addition, Attachment Y specifies not only the evaluation factors that NYISO will consider when selecting among competing transmission developers' proposals, but also NYISO's procedures for an open and transparent stakeholder process through which NYISO determines the more efficient or cost-effective transmission solutions.[542]

250. We disagree with protestors that the Filing Parties must further clarify in Attachment Y NYISO's procedures for evaluating proposed transmission solutions, including the specific evaluation metrics that NYISO considers or the relative weight assigned to various factors. We therefore decline to require NYISO to provide additional detail in Attachment Y regarding the relative weight attributable to the factors considered in the evaluation process and reject the system proposed by NextEra in which it recommends specific weighted values for each of NYISO's proposed metrics and a methodology for NYISO's ranking of the selection criteria. NYISO's evaluation criteria are sufficiently descriptive to provide prospective transmission developers with an understanding of how their proposals will be evaluated and are consistent with Order No. 1000. Order No. 1000 does not require a public utility transmission provider to specify in its OATT the relative weight of the factors considered in the evaluation process. Furthermore, the Commission recognized in Order No. 1000 that the process for meeting Order No. 1000's requirements regarding evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation will likely vary from region to region.[543] In addition, the Commission acknowledged that "the selection of any transmission facility in the regional transmission plan for purposes of cost allocation requires the careful weighing of data and analysis specific to each transmission facility."[544]

251. We agree with the Filing Parties that NextEra has not provided any justification or support for its proposed methodology or weighted values.[545] We agree with the Filing Parties that if all other factors among proposed transmission solutions are equal from an engineering and operational standpoint, it is clear that costs would be the primary metric in NYISO's selection of the more efficient or cost-effective solution.[546] We also reject

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[542] NYISO OATT, Attachment Y, §§ 31.2.7.1, 31.4.10.1.

[543] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323.

[544] *Id.* P 330.

[545] *See* Filing Parties Answer at 20.

[546] *Id.* at 19.

NextEra's proposed revision to include an additional cost metric based on a transmission developer's willingness to accept cost risks since NYISO's evaluation and selection process is not a rate making proceeding, and a transmission developer has the opportunity to recover its prudent costs in a proceeding before the Commission. With regard to NextEra's concern of whether there is an association between the metrics and the viability analysis, we note that the Filing Parties clarify in their answer that the viability analysis is a pass-fail evaluation.[547]

252. We are not convinced by the arguments that cost-effectiveness is not appropriately central to NYISO's evaluation process. While NYISO considers capital cost estimates and the cost per MW ratio for the proposed regulated transmission solution among several other enumerated factors when evaluating proposed transmission solutions, we note that the other factors that NYISO will consider in some way evaluate the cost of the proposed transmission project to the customer. For instance, considering the potential issues associated with delay in constructing the proposed regulated transmission solution consistent with the major milestone schedule allows NYISO to consider the likelihood that a transmission project will be delayed and thereby expose customers to increased costs from a prolonged, unresolved transmission need. Given that the capital costs and cost per MW ratio of each proposed transmission solution are separate factors, and that cost-effectiveness is considered throughout NYISO's other evaluation criteria, we find that cost-effectiveness is appropriately assessed in NYISO's proposed evaluation process. We therefore reject the assertion that cost must be the primary factor in NYISO's selection of the more efficient or cost-effective transmission solution. For the same reasons, we reject LS Power's proposal to replace the language "eliminating the Reliability Need(s)" with "resolves the Reliability Need(s) cost-effectively" as unnecessary.

253. We find that the Filing Parties have complied with the requirement to provide OATT revisions ensuring that alternative regulated solutions are evaluated in the same level of detail as the regulated backstop solution, under all circumstances, in the reliability transmission planning process. For the proposed reliability analysis, NYISO will evaluate the viability and sufficiency of alternative regulated solutions and the regulated backstop solutions in the same level of detail; therefore, the Filing Parties have complied with this requirement.[548]

254. We accept NYISO's proposal to proceed with its analysis only if the Trigger Date of any developer's proposed regulated transmission solution will occur within thirty-six months of NYISO's reporting the results of its viability and sufficiency analysis

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[547] *Id.*at 13.

[548] NYISO OATT, Attachment Y, § 31.2.5.2.

to stakeholders. We agree that NYISO making its selection closer in time to the actual implementation of the proposed transmission solution will allow the developer to have the opportunity to improve its initial project proposal and cost estimates, which will enable NYISO to make its determination based on more precise information and will allow NYISO to utilize more accurate load forecasts.

255. We find that the Filing Parties' proposal for NYISO to consider, as part of the viability and sufficiency of all proposed solutions in phase one, whether a developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required time frame complies with Order No. 1000.[549] It is appropriate for NYISO to consider whether an entity has existing rights-of-way, as well as whether the entity has experience or ability to acquire rights-of-way, as part of the process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation. As the Commission explained in the First Compliance Order "it would be appropriate for NYISO to consider whether an entity has existing rights of way as well as whether the entity has experience or ability to acquire rights of way as part of its process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation."[550]

256. Regarding the Filing Parties' proposal to utilize a ten-year period for its evaluation, which may be extended by up to an additional 20 years as appropriate based on the public policy requirement and the identified Public Policy Transmission Need,[551] the Filing Parties state that NYISO proposes to use its existing planning tools to evaluate system benefits against project costs for up to 30 years from the study date, contending that public policies are designed to achieve long-term societal benefits and the benefits of such transmission projects should be extended commensurate with the useful life of new transmission lines. The Filing Parties assert that "while longer term analysis may not produce precise cost-benefit assessments for the out years, it is better that the long-term benefits of long-lived transmission assets be accounted for as best as practicable."[552] We

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[549] October 15, 2013 Compliance Filing at 37; NYISO OATT, Attachment Y, §§ 31.2.5.3, 31.4.6.3 (providing that NYISO will evaluate the viability of a proposed solution by considering whether, among other things, the developer has indicated possession of, or an approach for acquiring, any necessary rights-of-way, property, and facilities that will make the proposal reasonably feasible in the required time frame).

[550] First Compliance Order, 143 FERC ¶ 61,059 at P 196.

[551] NYISO OATT, Attachment Y, § 31.4.6.

[552] October 15, 2013 Compliance Filing at 37.

accept the Filing Parties' proposal. We are persuaded by the Filing Parties' argument that the benefits of public policy transmission projects "should be extended commensurate with the useful life of new transmission lines, which can extend well beyond thirty years."[553] While in Order No. 1000 we stated that we would "not impose additional rules that would . . . establish[] a minimum long-term planning horizon[],"[554] we nonetheless allowed "public utility transmission providers developing the regional transmission planning processes to craft . . . requirements that work for their transmission planning region.[555] We therefore accept the Filing Parties' proposal to utilize a ten-year period, which may be extended by up to an additional 20 years as appropriate, recognizing that all solutions must be evaluated in a not unduly discriminatory manner.

257. NextEra asks the Commission to require the Filing Parties to include definitions for efficiency and cost-effectiveness in the NYISO OATT, and to provide that NYISO will select the transmission solution that is both more efficient and more cost-effective. We find that NextEra's request for definitions is unnecessary because the Filing Parties' proposed metrics explain the selection process. The Filing Parties have stated that in its evaluation, NYISO will consider each regulated transmission solution using the following metrics: estimates of the cost of capital for all components, the cost per MW ratio, expandability, operability, performance, the extent to which the developer has necessary property rights or "ability to obtain the property rights," and potential issues associated with delay in constructing the proposed solution consistent with the major milestone schedule.[556] Since the metrics are in NYISO's proposed OATT, we find that no further definition in the OATT is needed. With regard to NextEra's request that NYISO select the transmission solution that is both more efficient and more cost-effective, we deny this request as it goes beyond the requirement of Order No. 1000 which used the "more efficient *or* cost-effective" criterion rather than "the more efficient and cost-effective" criterion.[557] Furthermore, as the Commission explained before, the "more efficient *or* cost-effective" standard provides more flexibility in the evaluation process.[558]

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[553] *Id.*

[554] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 157.

[555] *Id.*

[556] NYISO OATT, Attachment Y, §31.2.6.5.1 (Metrics for Evaluating More Efficient or Cost Effective Regulated Transmission Solution to Satisfy Reliability Need).

[557] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148 (emphasis added).

[558] *Louisville Gas & Elec. Co.*, 147 FERC ¶ 61,241 at P 363.

e. Reevaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

258. To ensure the incumbent transmission provider can meet its reliability needs or service obligations, Order No. 1000 required each public utility transmission provider to amend its OATT to describe the circumstances and procedures for reevaluating the regional transmission plan to determine if alternative transmission solutions must be evaluated as a result of delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation.[559] If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.[560]

i. First Compliance Order

259. In the First Compliance Order, the Commission found that the Filing Parties' proposal dealing with the reevaluation of proposed transmission projects complied with the requirements of Order No. 1000.[561] The Commission noted that Attachment Y describes the criteria that NYISO will use to assess the continued viability of market-based solutions, including status of final permits, interconnection studies, financing, and equipment.[562] The Commission noted that NYISO's assessment of such projects becomes more detailed as the Trigger Date for the relevant regulated backstop solution proposed to meet a Reliability Need, approaches. As proposed and accepted in the First Compliance Order, the Filing Parties' reevaluation procedures provide that any projects selected pursuant to the reliability planning process are monitored by NYISO to ensure that they will be constructed in time to meet the identified reliability need.[563]

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[559] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

[560] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

[561] First Compliance Order, 143 FERC ¶ 61,059 at P 250

[562] *Id.*

[563] This includes provisions for: (1) the halting of market-based or regulated backstop solutions; (2) monitoring of Responsible Transmission Owner solutions; (3) enabling requests for supplemental reliability review in the event of material

(continued…)

260. The Commission found that the Filing Parties' proposal was consistent with the requirement in Order No. 1000 that, if evaluation of an alternative is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement in its own retail distribution service territory or footprint.[564]

ii. Summary of Compliance Filings

261. The Filing Parties propose to revise NYISO's existing procedures in the reliability transmission planning process for monitoring and reporting on the status of market-based solutions and regulated transmission solutions to consolidate the requirements into one section.[565] They explain that revisions are non-substantive and will eliminate any confusion regarding the application of similar monitoring requirements that previously appeared in different sections of Attachment Y.[566] Additionally, they explain that the revisions clarify that the monitoring requirements apply to all regulated solutions, including the regulated backstop solution, and not only to alternative regulated solutions.

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modifications proposed by regulators to the regulated backstop solutions; (4) enabling recovery of necessary and reasonable costs of a regulated backstop solution, or an alternative regulated reliability solution selected by the New York Public Service Commission to proceed, in the event regulatory approval is not obtained or is withdrawn; (5) determining whether a market-based solution will be available to meet a reliability need on a timely basis; and (6) allowing NYISO to request a Gap Solution, in the event a market-based solution is viable but will be delayed beyond the target year. According to Attachment Y, NYISO shall assess the continued viability of such projects using the following criteria: (1) between three and five years before the trigger date for the project, NYISO will use a screening analysis to verify the feasibility of the project; (2) between one and two years before the trigger date for the project, NYISO will review the status of the required interconnection studies, contract negotiations, permit applications, financing, and Site Control; and (3) less than one year before the trigger date, NYISO will perform a detailed review of the project's status, including the status of final permits, required interconnection studies, an effective interconnection agreement, financing, equipment, and the implementation of construction schedules. *See* October 11, 2012 Compliance Filing at 15-16.

[564] First Compliance Order, 143 FERC ¶ 61,059 at P 250.

[565] October 15, 2013 Compliance Filing at 31; *see also* NYISO OATT, Attachment Y, §§ 31.2.4.6, 31.2.4.8.

[566] October 15, 2013 Compliance Filing at 31.

262. The Filing Parties also propose a new provision governing the monitoring of transmission projects selected as more efficient or cost-effective solutions in the public policy transmission planning process. Specifically, they propose to revise Attachment Y to state that NYISO will "monitor transmission projects selected by [NYISO] as the more efficient or cost effective transmission solutions to Public Policy Transmission Needs to confirm that they continue to develop consistent with the conditions, actions, or schedules for the transmission projects."[567] The Filing Parties state that this revision provides assurance that the solution will be implemented by the need date, if any, and will enable NYISO to inform policymakers of the progress of such transmission projects.[568]

iii. Commission Determination

263. We find that the provisions in Attachment Y addressing NYISO's monitoring of transmission projects addressing Reliability Needs and Public Policy Transmission Needs comply with the reevaluation requirements of Order No. 1000. The Commission notes that NYISO's Technical Bulletin 171[569] clarifies that quarterly status updates are required for each of the Transmission Owners' updated plans that were included in the Comprehensive Reliability Plan base case, and that were identified in the Reliability Needs Assessment or Comprehensive Reliability Plan as affecting the identified reliability needs of the bulk power system. Similarly, quarterly updates are required for each Market Based Solution included in the Comprehensive Reliability Plan, from Responsible Transmission Owners regarding regulated backstop solutions that are triggered by NYISO to begin the regulatory approval process, and from developers of alternative regulated solutions.

f. Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation

264. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that provides nonincumbent transmission developers and incumbent transmission developers the same eligibility to use a regional cost allocation method or methods for any transmission facility selected in the regional

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[567] NYISO OATT, Attachment Y, § 31.4.11.

[568] October 15, 2013 Compliance Filing at 42.

[569] *See* NYISO Technical Bulletin 171, Subject: Monitoring Viability of Solutions to Meet Reliability Needs, *available at* http://www.nyiso.com/public/webdocs/markets_operations/documents/Technical_Bulletins/Technical_Bulletins/Technical_Bulletins/tb_171.pdf.

transmission plan for purposes of cost allocation.[570] Order No. 1000 also required that the regional transmission planning process have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for transmission facilities selected in the regional transmission plan for purposes of cost allocation.[571]

i. First Compliance Order

265. In the First Compliance Order, the Commission found that the Filing Parties' proposal regarding cost allocation for nonincumbent transmission developer projects complied with the requirements of Order No. 1000, explaining that NYISO's OATT provides that "[a]ny entity, whether Transmission Owner or Other Developer, shall be eligible for cost allocation and cost recovery, as set forth in [s]ection 31.5 [(Cost Allocation and Cost Recovery)] and associated rate schedules, as applicable, for any approved reliability, economic, or public policy requirement driven transmission project."[572]

266. The Commission also found in the First Compliance Order that it was appropriate for a Responsible Transmission Owner to be able to use the regional cost allocation method for costs associated with developing a regulated backstop solution to an identified reliability transmission need, even if that project was not ultimately selected as a more efficient or cost effective transmission solution in the regional transmission plan for purposes of cost allocation, while a nonincumbent transmission developer could only recover such costs if selected in the regional transmission plan for purposes of cost allocation.[573] However, the Commission also stated that any transmission developer should be permitted to use the regional cost allocation method for any prudently incurred study costs when it has been requested to develop such a solution by the New York Public Service Commission or the New York Department of Public Service, and that the Filing Parties had not explained why the state agencies should be able to identify only an

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[570] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

[571] *Id.* P 336.

[572] First Compliance Order, 143 FERC ¶ 61,059 at P 255 (citing NYISO OATT, Attachment Y, § 31.5.1. 7 (Eligibility for Cost Allocation and Cost Recovery)).

[573] *See id.* P 326 (stating that "[w]here an alternative regulated solution receives the necessary governmental approval, a non-incumbent developer will be entitled to the same cost recovery as a Responsible Transmission Owner if the regulated backstop solution were implemented, (i.e., full recovery of all reasonably incurred costs, including costs related to the development of the project)").

incumbent Transmission Owner as the appropriate party to develop such a solution.[574] Further, with regard to the proposal to allow only an "appropriate" Transmission Owner to recover costs incurred in preparing a solution to a transmission need driven by a public policy requirement, if requested by the New York Department of Public Service or the New York Public Service Commission, the Commission stated that the proposal was unduly discriminatory, and could discourage the New York Department of Public Service or the New York Public Service Commission from seeking the participation of other transmission developers in the transmission planning process.[575]

267. The Commission therefore directed the Filing Parties to submit a compliance filing revising the NYISO OATT to clarify that (1) in the event the New York Public Service Commission or the New York Department of Public Service requests a proposed transmission solution for a transmission need driven by a public policy requirement, the New York Public Service Commission or the New York Department of Public Service may request any qualified transmission developer to provide the proposed solution; and (2) any qualified transmission developer that proposes a transmission solution for a transmission need driven by a public policy requirement in response to a request from the New York Public Service Commission or the New York Department of Public Service should be eligible to use the regional cost allocation method for prudently incurred costs of preparing the requested solution.[576]

ii. Requests for Rehearing or Clarification

268. LS Power seeks clarification of the Commission's statement that "[w]here an alternative regulated solution receives the necessary governmental approval, a non-incumbent developer will be entitled to the same cost recovery as a Responsible Transmission Owner if the regulated backstop solution were implemented (i.e., full recovery of all reasonably incurred costs, including costs related to the development of the project)."[577] LS Power asserts that the Commission should have stated that nonincumbent transmission developers are entitled to the same cost recovery as a Responsible Transmission Owner where the nonincumbent transmission developer's alternative regulated solution receives the necessary approval from NYISO, rather than governmental approval. Thus, LS Power argues, the Commission should clarify that,

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[574] *Id.* PP 326-327.

[575] *Id.* P 328.

[576] *Id.*

[577] LS Power Request for Clarification at 3-4 (quoting First Compliance Order, 143 FERC ¶ 61,059 at P 326).

where an alternative regulated solution receives the necessary approval from NYISO, a nonincumbent transmission developer will be entitled to the same cost recovery as a Responsible Transmission Owner.[578]

269. LS Power also asserts that the transmission solution that NYISO selects as the more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation should be the sole transmission project eligible to use the regional cost allocation method. LS Power agrees that it is appropriate for a Responsible Transmission Owner to be eligible to use the regional cost allocation method for the original development of a proposal for a regulated backstop solution. However, LS Power argues that, if NYISO selects an alternative regulated solution in the regional transmission plan for purposes of cost allocation, then the Responsible Transmission Owner should not be eligible to use the regional cost allocation method for costs incurred to challenge the alternative regulated solution at the state siting level.[579] LS Power argues that costs incurred by a Responsible Transmission Owner to pursue such challenges would not be "prudently incurred to meet its obligation" for cost allocation purposes under the NYISO OATT.[580]

iii. Compliance Filing

270. In conjunction with their revisions to implement NYISO's new evaluation and selection process, the Filing Parties propose to clarify the points in NYISO's regional reliability and public policy transmission planning processes that a Responsible Transmission Owner, Other Developer, or Transmission Owner becomes eligible to use the regional cost allocation method for costs related to a proposed transmission solution.

(a) Eligibility to Use the Regional Cost Allocation for Reliability Projects

271. In the reliability transmission planning process, the Filing Parties propose that a Responsible Transmission Owner will be eligible to use the regional cost allocation method for the costs for developing its regulated backstop solution proposal in response to NYISO's request for solutions to a Reliability Need,[581] and an Other Developer or a

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[578] *Id.* at 4.

[579] *Id.* at 4-5.

[580] *Id.*

[581] October 15, 2013 Compliance Filing at 52 (citing NYISO OATT, Attachment Y, § 31.2.4.3.2.1).

Transmission Owner of an alternative regulated transmission solution that is selected as the more efficient or cost-effective transmission solution will become eligible to use the regional cost allocation method if, and when, NYISO triggers its project to proceed.[582] Specifically, Attachment Y provides that "[a]n Other Developer or Transmission Owner of a selected alternative regulated transmission project shall not be eligible to recover costs for its project unless its project is triggered pursuant to [s]ection 31.2.8. Once such project is triggered, the Other Developer or Transmission Owner shall be eligible to recover costs for the project."[583]

272. In addition, according to Schedule 10, the transmission developer of an alternative regulated solution may recover its costs pursuant to NYISO's determination that: (1) a regulated solution is needed to address the Reliability Need (i.e., there are no market-based solutions);[584] (2) the transmission developer is "otherwise authorized to propose, develop or construct a regulated transmission project under applicable state and federal law"; (3) the alternative transmission solution is the more efficient or cost-effective solution; and (4) as discussed above, the alternative transmission solution is triggered.[585] After the alternative regulated solution is triggered, and upon receipt of all necessary federal, state, and local authorizations, the transmission developer shall commence construction of the project. Upon completion of the project, the transmission developer may file with the Commission the resulting revenue requirement. The Responsible Transmission Owner may recover its costs for developing its regulated backstop transmission solution proposal and seeking any necessary approvals (if triggered by NYISO) under Rate Schedule 10.[586]

273. The Filing Parties also propose to clarify that once a transmission project becomes eligible to use the regional cost allocation method, the developer of that project, whether it is the Responsible Transmission Owner or a nonincumbent transmission developer of an alternative regulated transmission solution, will be eligible to include the same types of costs and can recover those costs even if the project is halted, does not receive

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[582] *Id.* (citing NYISO OATT, Attachment Y, § 31.2.6.5.2).

[583] NYISO OATT, Attachment Y, § 31.2.6.5.2.

[584] *See id.* § 31.2.8 (Determination of Necessity).

[585] NYISO OATT, § 6.10.5 (Schedule 10 – Rate Mechanism for Recovery of the Reliability Facilities Charge) (Recovery of Costs Incurred by an Other Developer Related to an Alternative Regulated Solution).

[586] NYISO OATT, Attachment Y, § 31.2.4.3.1 (Regulated Backstop Solutions).

necessary authorizations, or has such authorizations withdrawn.[587] The Filing Parties also propose to add that the actual point in time at which an eligible Responsible Transmission Owner, Other Developer, or Transmission Owner can recover its costs is: (i) the earlier of when the transmission project is completed or at the point at which its project is halted, as set forth in the existing cost recovery requirements in Rate Schedule 10 of the NYISO OATT; or (ii) as otherwise determined by the Commission.[588]

274. The Filing Parties similarly clarify that Responsible Transmission Owners, Other Developers, or Transmission Owners are entitled to full recovery of all reasonably incurred costs related to the development, construction, operation, and maintenance of regulated solutions, "if eligible for cost recovery under Section 31.2 of this Attachment Y.[589] The Filing Parties propose to revise the description of the formula for the recovery of costs of regulated transmission solutions to a Reliability Need to replace the requirement that the "formula is not applicable to that portion of a project oversized beyond the smallest technically feasible solution that meets the Reliability Need identified in the [Reliability Needs Assessment]" with the following: "The formula is not applicable to that portion of a project beyond the size of the solution needed to provide the more efficient or cost effective solution appropriate to the Reliability Need identified in the [Reliability Needs Assessment]." The Filing Parties state that absent this change, the smallest feasible transmission upgrade to meet a Reliability Need, which may, due to the inherent "lumpiness" of transmission improvements, be larger than non-transmission alternatives, would be precluded from cost recovery by those smaller non-transmission solutions, and so would frustrate the purpose of Order No. 1000 to permit efficient or cost-effective transmission solutions to be selected for regional cost allocation.[590]

(b) Eligibility for Cost Recovery for Public Policy Projects

275. In response to the First Compliance Order, the Filing Parties propose OATT revisions to provide that the New York Department of Public Service or the New York Public Service Commission may request that a Transmission Owner or Other Developer

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[587] October 15, 2013 Compliance Filing at 52 (citing to §§ 31.2.8.2.3, 31.2.8.2.4, 31.2.8.2.7, and 31.2.8.2.8).

[588] *Id.* at 52-53 (citing to §§ 31.2.6.5.2 and, 31.5.6.2).

[589] *Id.* at 53 (citing to NYISO OATT, Attachment Y, § 31.5.6).

[590] *Id.* (citing to NYISO OATT, Attachment Y, §§ 31.2.6.5.2, 31.5.6, Rate Schedule 10 of the NYISO OATT, and § 6.10.5.1 of Rate Schedule 10).

propose a transmission solution to a Public Policy Transmission Need.[591] Additionally, the Filing Parties propose to clarify that, in the event the New York Public Service Commission or the New York Department of Public Service requests that a Transmission Owner or Other Developer propose a transmission solution for a transmission need driven by a public policy requirement,[592] the Transmission Owner or Other Developer is eligible to use the regional cost allocation method to recover the prudently incurred costs of preparing the requested solution as requested by the New York Public Service Commission or the New York Department of Public Service.[593]

276. In connection with the revised evaluation and selection requirements for transmission solutions to a Public Policy Transmission Need, the Filing Parties propose to clarify that the developer of a regulated transmission project will be eligible to use the regional cost allocation method when NYISO selects its project as the more efficient or cost-effective transmission solution to satisfy the Public Policy Transmission Need.[594] The Filing Parties also propose to provide that, consistent with NYISO's reliability transmission planning process, costs will be recovered when the transmission project is completed pursuant to a rate schedule filed with and accepted by the Commission, or as otherwise determined by the Commission.[595]

277. In addition, the Filing Parties propose to establish that actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to the Commission. They also seek to clarify that Other Developers or Transmission Owners, "if eligible for cost recovery under Section 31.4 of this Attachment Y," are entitled to "full" recovery of costs, including "all reasonably incurred costs, including a reasonable return on investment and any applicable incentives, related to the development, construction, operation and maintenance of regulated solutions" associated

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[591] *Id.* at 54-55 (citing NYISO OATT, Attachment Y, §§ 31.4.8.2, 31.5.6).

[592] NYISO OATT, Attachment Y, §§ 31.4.3.2, 31.4.3.2, 31.5.6; *see* October 15, 2013 Compliance Filing at 34 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 328).

[593] October 15, 2013 Compliance Filing at 34 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 328); NYISO OATT, Attachment Y, §§ 31.4.3.2, 31.5.6.

[594] October 15, 2013 Compliance Filing at 54 (citing NYISO OATT, Attachment Y, §§ 31.4.8.2, 31.5.5.3).

[595] *Id.* (citing NYISO OATT, Attachment Y, §§ 31.4.8.2, 31.5.6.5).

with the implementation of a regulated transmission project undertaken to meet a Public Policy Transmission Need.[596]

iv. Protests/Comments

278. LS Power asks the Commission to require NYISO to delete specific language contained in section 6.10.5 of Attachment Y, which provides for cost recovery for an alternative regulated reliability transmission project "that is proposed, developed or constructed by an Other Developer who is otherwise authorized to propose, develop, or construct a regulated transmission project under applicable state law."[597] LS Power is concerned that this language might prohibit a transmission developer sponsoring a project that was selected as the more efficient or cost-effective solution from being able to use the regional cost allocation method for the selected project if the transmission developer was denied a permit to site or construct the project and thus is not "authorized to . . . construct a regulated transmission project under applicable state law."[598]

v. Answer

279. The Filing Parties oppose LS Power's request that the Commission require the deletion of the proposed language indicating that costs will be recovered "when the project is completed," and stating that cost recovery should only occur "pursuant to a Rate Schedule filed with and accepted by the Commission."[599] The Filing Parties state that they have already addressed LS Power's concern by proposing new language providing that a transmission developer can begin to recover its costs either when the transmission project is completed pursuant to a rate schedule filed with and accepted by the Commission, "or as otherwise determined by the Commission."[600]

280. The Filing Parties oppose LS Power's argument that the language limiting cost recovery for an alternative regulated reliability transmission project "that is proposed, developed or constructed by an Other Developer who is otherwise authorized to propose,

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[596] NYISO OATT, Attachment Y, § 31.5.6.

[597] LS Power Protest at 21-22; *see* NYISO OATT, 6 OATT Rate Schedules - 6.10 OATT Schedule 10, § 6.10.2.

[598] *See* NYISO OATT, 6 OATT Rate Schedules - 6.10 OATT Schedule 10, § 6.10.2.

[599] Filing Parties Answer at 36 n.110 (citing LS Power Protest at 21-22).

[600] *Id.* at 37.

develop, or construct a regulated transmission project under applicable law" should be deleted.[601] The Filing Parties argue that LS Power's fears that this language conditions cost recovery on state regulatory considerations are misplaced. The Filing Parties state that, while the Commission has prohibited state siting approval as a pre-requisite to selection of an entity as transmission developer, it allows state siting approval to be considered as a factor in the regional transmission planning process.[602] The Filing Parties further state that it is appropriate to require transmission developers to comply with applicable state laws, and that Order Nos. 1000 and 1000-A do not preclude consideration of state law approvals.[603] The Filing Parties state that the provision simply limits cost recovery to transmission projects that have received the necessary approval to construct, and does not exclude any proposed project from consideration for reasons of state law. They further state that LS Power's request is outside the scope of the Commission's directives in the First Compliance Order and should be rejected on that basis.[604]

vi. Commission Determination

281. As an initial matter, we grant the first clarification requested by LS Power, and state that a nonincumbent transmission developer must have the same eligibility to use the regional cost allocation method for costs associated with developing a regulated transmission solution to an identified reliability transmission need as a Responsible Transmission Owner, where an alternative regulated solution receives the necessary approval from NYISO (rather than from a state agency).

282. However, we deny LS Power's request that we clarify that, when NYISO selects an alternative regulated solution as the more efficient or cost-effective solution, only that alternative regulated solution should be able to use the regional cost allocation method. As we previously noted in the Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Transmission Solutions section, Order No. 1000's reforms "are not intended to diminish the significance of an incumbent transmission provider's

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[601] *Id.* at 37 n.113 (citing LS Power Protest at 22).

[602] *Id.* at 38 n.115 (citing *PJM Interconnection, LLC*, 142 FERC ¶ 61,214, at P 232 (2013) ("[I]t is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process. Indeed, the Commission has identified points at which such consideration might be appropriate")).

[603] *Id.* at 38 n.116 (citing *PJM Interconnection, LLC*, 142 FERC ¶ 61,214, at PP 232-233 (2013)).

[604] *Id.* at 38.

reliability needs or service obligations"[605] and nothing in Order No. 1000 "limits public utility transmission providers from developing mechanisms to impose an obligation to build transmission facilities in a regional transmission plan."[606] The Commission found in the First Compliance Order that "it is appropriate for the Responsible Transmission Owner to be permitted to recover costs that it prudently incurred to meet its obligation, even when the project is not selected, since only the Responsible Transmission Owner is required to provide the regulated backstop solution for a reliability transmission need."[607] As the Filing Parties point out, the New York Transmission Owners have a legal obligation to prepare a regulated backstop solution to an identified Reliability Need if designated by NYISO as the Responsible Transmission Owner and this obligation was memorialized by the New York Transmission Owners in a contract with NYISO.[608] We therefore reject LS Power's argument that the Responsible Transmission Owner should not be eligible to use the regional cost allocation method for costs incurred to challenge the alternative regulated solution at the state siting level.

283. We also note that there appears to be an inconsistency between section 6.10.5 and section 31.2.8.2.7. As LS Power notes, the phrase in section 6.10.5 appears to limit a transmission developer's eligibility to use the regional cost allocation method for an alternative regulated transmission solution to a transmission developer "who is otherwise authorized to propose, develop, or construct a regulated transmission project under applicable state law."[609] However, section 31.2.8.2.7 states that, if the "appropriate federal, state or local agency(ies) does not approve a necessary authorization for the regulated backstop solution or a triggered alternative regulated transmission solution, all

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[605] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 262.

[606] *Id.* P 159 n.155.

[607] First Compliance Order, 143 FERC ¶ 61,059 at P 326.

[608] *See* Agreement Between the New York Independent System Operator, Inc. and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs (June 10, 2010) (NYISO/TO Reliability Agreement), *available at* http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/NYISO/Comprehensive_Planning_Process_for_Reliability_Needs_Agreement.pdf. The Commission approved the NYISO/TO Reliability Agreement in *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 (2004) (emphasis added). This contract provides that a transmission owner's obligation to propose, develop, and construct a regulated backstop transmission project is subject to "full recovery in wholesale and retails rates of all reasonably incurred costs" related to the regulated transmission project.

[609] NYISO OATT, 6 OATT Rate Schedules - 6.10 OATT Schedule 10, § 6.10.5.

of the necessary and reasonable costs incurred and commitments … *will be recoverable*."[610] We therefore require the Filing Parties to address this inconsistency in a compliance filing made within 60 days of the date of issuance of this order.

4. Cost Allocation

284. Order No. 1000 required each public utility transmission provider to have in its OATT a method, or set of methods, for allocating the costs of any new transmission facility selected in the regional transmission plan for purposes of cost allocation.[611] Each public utility transmission provider must demonstrate that its cost allocation method satisfies six regional cost allocation principles.[612] In addition, while Order No. 1000 permitted participant funding, participant funding cannot be the regional cost allocation method.[613]

285. Regional Cost Allocation Principle 1 requires that the cost of transmission facilities be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. The cost allocation methods must clearly and definitively specify identifiable benefits and the class of beneficiaries, and the transmission facility costs allocated must be roughly commensurate with that benefit.[614]

286. Regional Cost Allocation Principle 2 requires that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, not be involuntarily allocated any of the costs of those transmission facilities.[615]

287. Regional Cost Allocation Principle 3 specifies that, if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Such a threshold may not include a ratio of benefits to costs that

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[610] NYISO OATT, Attachment Y, § 31.2.8.2.7 (emphasis added).

[611] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 558, 690.

[612] *Id.* P 603.

[613] *Id.* P 723.

[614] *Id.* PP 625, 678.

[615] *Id.* P 637.

exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.[616]

288. Regional Cost Allocation Principle 4 specifies that the regional cost allocation methods must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. In addition, each regional transmission planning process must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.[617]

289. Regional Cost Allocation Principle 5 specifies that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.[618]

290. Regional Cost Allocation Principle 6 specifies that a transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, but there can be only one cost allocation method for each type of transmission facility.[619] If a transmission planning region chooses to use a different cost allocation method for different types of transmission facilities, each cost allocation method must be determined in advance for each type of facility.[620] A regional cost allocation method may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.[621]

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[616] *Id.* P 646.

[617] *Id.* P 657.

[618] *Id.* P 668.

[619] *Id.* PP 685-686.

[620] *Id.* P 560.

[621] *Id.* P 689.

a. Cost Allocation for Reliability and Economic Projects

i. First Compliance Order

291. In the First Compliance Order, the Commission found that NYISO's proposed cost allocation methods for reliability and economic transmission projects largely complied with the regional cost allocation principles of Order No. 1000. Specifically, for regulated reliability transmission projects, Filing Parties proposed that costs be allocated according to a three-step approach that focuses on whether there is a locational, statewide, or a bounded regional need.[622] For regulated economic transmission projects, project costs are allocated among beneficiaries based on relative economic benefit, apportioned according to zonal load savings.[623] In particular, the Commission found that these regional cost allocation methods addressed Regional Cost Allocation Principles 1 and 2, by considering which areas within the New York Control Area are affected by a particular transmission need and allocating the costs to zones in a manner that is roughly commensurate with benefits. The Commission found that NYISO's cost allocation methods complied with Regional Cost Allocation Principle 3, because the Filing Parties did not propose to apply a benefit-to-cost ratio as part of the reliability cost allocation method and the proposed benefit-to-cost ratio that would apply to economic transmission projects was below the maximum threshold established in Order No. 1000.[624] The Commission also found that the NYISO OATT contained sufficient detail regarding the methodology and data requirements for identifying the beneficiaries of reliability and economic transmission projects, satisfying Regional Cost Allocation Principle 5. Finally, the Commission noted that it is reasonable for NYISO to distinguish among reliability, economic, and public policy transmission projects and thus found that the Filing Parties' proposal satisfied Regional Cost Allocation Principle 6.[625]

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[622] First Compliance Order, 143 FERC ¶ 61,059 at PP 311-314. In the first step, the costs of upgrades in zones that have Locational Capacity Requirements for Installed Capacity are allocated to load-serving entities in those zones. In the second step, NYISO runs its reliability simulation model with all internal transmission constraints relaxed and, if a state-wide reliability need is identified, costs will be allocated to all load zones based on their coincident peak load contribution. In the third step, if no transmission needs are identified in step two, NYISO uses a binding interface test to identify binding transmission constraints that are preventing the deliverability of capacity throughout the New York Control Area and allocates costs accordingly.

[623] *Id.* PP 268, 269 & n.516 (citing October 11, 2012 Compliance Filing at 32, 36).

[624] *Id.* P 315.

[625] *Id.* P 317.

292. However, the Commission determined that the Filing Parties' did not fully comply with Regional Cost Allocation Principle 4. The Commission explained that, while the Filing Parties stated that the costs of reliability and economic transmission solutions are allocated solely to entities within NYISO's transmission planning region, the Filing Parties' proposal to defer addressing consequences in neighboring transmission planning regions and the potential allocation of costs associated with upgrades in another region to the interregional compliance proceeding did not adequately address Regional Cost Allocation Principle 4. The Commission explained that Order No. 1000 requires that the regional transmission planning process identify consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation on other transmission planning regions. The Commission therefore directed the Filing Parties to revise NYISO's OATT to provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation, and to address (1) whether the NYISO transmission planning region has agreed to bear the costs associated with any required upgrades in another transmission planning region and (2), if so, how such costs will be allocated under the NYISO regional cost allocation methods.[626]

ii. Summary of Compliance Filing

293. The Filing Parties state that, with regard to identifying the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation on other transmission planning regions, the Filing Parties have worked with NYISO's neighboring regions, PJM and ISO-NE, and developed an interregional transmission planning process that will enable NYISO to identify the consequences of its regional transmission planning process for neighboring ISO/RTO systems, and to coordinate with those systems to identify the consequences of an interregional transmission project on their systems. The Filing Parties note that they made this interregional compliance filing on July 10, 2013.[627]

294. In the interregional compliance filing, the Filing Parties have also proposed a process by which the neighboring ISO/RTO regions could share the costs of an interregional transmission project physically located in two or more regions, if such project has been approved in each of the neighboring region's transmission planning process. The neighboring entities will allocate their share of the interregional transmission project's costs using an avoided cost method. NYISO will then allocate its

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[626] *Id.* P 316.

[627] October 15, 2013 Compliance Filing at 55 (citing New York Independent System Operator, Inc. and New York Transmission Owners, Interregional Compliance Filing, Docket Nos. RM10-23-000, ER13-142-000 (Interregional Compliance Filing)).

region's share of the costs within the NYISO region based on the type of regional transmission project that is being displaced by the interregional transmission project, so that, for example, if the interregional transmission project displaces a regional transmission project that is required to satisfy a Reliability Need, NYISO will allocate its region's share of the costs through the cost allocation method under the reliability transmission planning process. NYISO will not, however, bear the costs of projects located in another region unless they are part of transmission projects that have been approved in the NYISO's regional transmission planning process.[628]

295. The Filing Parties additionally state that they have become aware that NYISO's OATT does not currently provide for cost allocation for transmission projects that resolve transmission security violations, other than those that also resolve resource adequacy issues.[629] NYISO is currently working with its stakeholders to develop a method for allocating the costs for such projects, but has not completed that work, and the Filing Parties therefore propose to insert a placeholder in Attachment Y stating that NYISO will address through its stakeholder process the development of a method to allow for the allocation of costs of transmission solutions to thermal or voltage security issues, and will make a filing with the Commission pursuant to section 205 of the FPA by the end of the third quarter of 2014.[630]

iii. Commission Determination

296. We find that Filing Parties' proposed regional cost allocation method complies with the Commission's directives in the First Compliance Order. The Filing Parties have provided sufficient explanation regarding how agreements with neighboring transmission planning regions will allow for the identification of impacts of Required Transmission Enhancements on other transmission planning regions. The Filing Parties have further explained that NYISO has not agreed to bear the costs of required upgrades in other transmission planning regions, with the exception of certain transmission facilities subject to interregional coordination agreements between NYISO and neighboring transmission planning regions. For such transmission facilities, allocating the costs in a

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[628] *Id.* at 55-56 (citing NYISO OATT, Attachment Y, §§ 31.2.2.7, 31.3.1.6, 31.4.3.3, 31.5.2.1 and Interregional Compliance Filing at 21, 32, 37-38).

[629] *Id.* at 56. The Filing Parties state that currently, section 31.5.3.2.1.4 treats the allocation of costs associated with resolving thermal or voltage security issues as a local issue, and does not provide cost allocation and recovery through the NYISO OATT.

[630] *Id.*

manner similar to Required Transmission Enhancements, as proposed by the Filing Parties, is consistent with Order No. 1000.[631]

297. We further find that the Filing Parties have demonstrated whether the NYISO transmission planning region has agreed to bear the costs associated with any required upgrades in another transmission planning region, and how such costs will be allocated under the NYISO regional cost allocation methods. For the reliability, economic, and public policy transmission planning processes, the Filing Parties propose Attachment Y revisions providing that NYISO "shall not bear the costs of required upgrades in another region."[632] The Filing Parties additionally note that, in their filing to comply with the interregional requirements of Order No. 1000, they have proposed revisions to Attachment Y that "enable [NYISO] to identify the consequences of its regional planning process for neighboring ISO/RTO systems . . . [and] enable [NYISO] to coordinate with neighboring ISOs/RTOs to identify the consequences on their systems of an interregional transmission project."[633]

298. We note the Filing Parties' placeholder for a method for allocating the costs of transmission projects that resolve transmission security violations, other than those that also resolve resource adequacy issues, as well as NYISO's commitment to file this cost allocation method with the Commission by the end of the third quarter of 2014. We will address the resulting cost allocation method at the time that NYISO makes that filing.

b. Cost Allocation for Public Policy Transmission Projects

i. First Compliance Order

299. In the First Compliance Order, the Commission addressed the Filing Parties' proposed cost allocation method for public policy transmission projects. Specifically, the Filing Parties proposed a four-step, hierarchical method for allocating costs. First, if the public policy requirement that results in the construction of a transmission project prescribes the use of a particular cost allocation and recovery method, NYISO will use that method. Second, if the public policy requirement does not prescribe a particular cost allocation method, the transmission developer may propose and, subject to any guidance that may be provided by the New York Public Service Commission and subject to the approval of the Commission, use a cost allocation based on load ratio share, adjusted to

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[631] Consideration of other aspects of interregional coordination is outside the scope of this proceeding.

[632] NYISO Attachment Y, §§ 31.2.2.7, 31.3.1.6, 31.4.3.3.

[633] October 15, 2013 Compliance Filing at 55.

reflect the transmission needs driven by the public policy requirement, the party(ies) responsible for compliance with the public policy requirement, and the parties who benefit from the transmission facility. Third, if the public policy requirement does not prescribe a particular cost allocation method, or the transmission developer's cost allocation method is not endorsed by the New York Public Service Commission, the New York Department of Public Service or the New York Public Service Commission may identify an alternative cost allocation method to be applied.[634] Finally, in the absence of any of the above cost allocation methods, NYISO will allocate the costs of the transmission project to all load-serving entities in the New York Control Area using a default cost allocation formula, based upon a load ratio share methodology.[635]

300. Regarding the regional cost allocation method for public policy transmission projects, the Commission found that, while the Filing Parties' proposed default load ratio share regional cost allocation method may be reasonable, the Filing Parties did not provide sufficient detail as to how the proposed default load ratio share regional cost allocation method complies with Order No. 1000's regional cost allocation principles.[636]

301. In particular, the Commission noted that Order No. 1000 requires the Filing Parties to show that the regional cost allocation method allocates the costs of new transmission facilities in a manner that is at least roughly commensurate with estimated benefits.[637] The Commission found that the Filing Parties' statement that "public policies established by government are generally established to benefit everyone"[638] did not explain in sufficient detail how costs are allocated in accordance with estimated benefits (Regional Cost Allocation Principle 1) or provide assurance that those parties that receive no benefit from transmission facilities, either at present or in a likely future scenario, will not be involuntarily allocated the costs of those facilities (Regional Cost Allocation

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[634] In any of these three scenarios, NYISO, on behalf of the Transmission Owner or Other Developer, will file the proposed cost allocation for the transmission project with the Commission, and the filing will include a demonstration that the proposed cost allocation is compliant with the Order No. 1000 Regional Cost Allocation Principles.

[635] First Compliance Order, 143 FERC ¶ 61,059 at PP 275-276 (citing NYISO OATT, Attachment Y §§ 31.5.5.4 – 31.5.5.5).

[636] *Id.* P 314.

[637] *Id.* P 320 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 219).

[638] *Id.* (citing October 11, 2012 Compliance Filing at 48).

Principle 2).[639] The Commission further stated, with respect to the Filing Parties' proposal to use a load ratio share method as its default cost allocation method that "such allocation of costs, without the appropriate support . . . gives too broad a meaning to the definition of benefits," and "any [such] proposal must be based on more than a mere assertion of generalized system benefits."[640]

302. Additionally, the Commission found that the Filing Parties had not explained how their proposed default cost allocation method complies with Regional Cost Allocation Principle 4, and therefore, must submit revisions to explain how NYISO's transmission planning process identifies consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region. If there is an agreement for the NYISO transmission planning region to bear costs associated with such upgrades, then NYISO's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the entities in NYISO.[641]

303. Therefore, with regard to transmission facilities for public policy projects, the Commission directed the Filing Parties to make a compliance filing explaining how the proposed default load ratio share cost allocation method complies with the requirements of Regional Cost Allocation Principles 1, 2 and 4.[642]

304. In addition, while the Commission largely accepted the Filing Parties' proposal to identify the beneficiaries of public policy projects and allocate the costs of those projects using the first three steps of its hierarchical, step-based method, the Commission noted its concern that "there is no limit to the amount of time that may pass in considering the four steps of the hierarchical cost allocation method."[643]

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[639] *Id.* With regard to Regional Cost Allocation Principle 4, as discussed below, the Commission required the Filing Parties to submit revisions to NYISO's OATT to provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation. *Id.* P 316.

[640] *Id.* P 321 & nn.625, 617 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 625 and Order No. 1000-A, 139 FERC ¶ 61,132 at P 683).

[641] *Id.* P 322.

[642] *Id.*

[643] *Id.* P 324.

305. As the Commission stated, under the Filing Parties' proposal, before a project can use the default load ratio share regional cost allocation method: (i) NYISO must determine whether the public policy requirement that results in the construction of a transmission project prescribes the use of a particular cost allocation and recovery method; (ii) the transmission developer may propose a cost allocation based on load ratio share which must then be endorsed by the New York Public Service Commission; and (iii) the New York Department of Public Service or the New York Public Service Commission may identify an alternative cost allocation method. The Commission pointed out that an entity seeking to develop a public policy transmission project could not rely on any particular cost allocation method, or even on a date by which the default method will be available, thus introducing additional uncertainty into the process and leading to a lower likelihood that a public policy transmission project will be constructed.

306. The Commission therefore directed NYISO to: (1) explain how the proposed process will not cause unnecessary delays for entities to obtain the right to use the regional cost allocation method for their proposed public policy transmission project; and (2) provide a timeline for the proposed process so that a transmission developer will know how the costs of its project will be allocated in a timely manner.[644]

ii. Summary of Compliance Filing

307. The Filing Parties[645] state that they are providing additional support for their proposed default load ratio share cost allocation method for public policy transmission projects as the Commission required in the First Compliance Order.[646] They state that this cost allocation method, which can be quickly adopted and readily implemented, is intended to avoid uncertainty that could present a barrier to new transmission projects needed to meet public policy needs. They further state that a load ratio share method is a

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[644] *Id.*

[645] The Filing Parties note that the Long Island Power Authority does not join this portion of the filing, due to the still-outstanding need for language accommodating the Long Island Power Authority's participation in the public policy requirements transmission planning process. The Filing Parties state that they and the Long Island Power Authority are continuing to discuss revisions to the OATT to address the Long Island Power Authority's role in the public policy requirements transmission planning process among themselves and with the New York State Department of Public Service, and that the Long Island Power Authority intends to inform the Commission of the status of those discussions as part of comments filed on the compliance filing. October 15, 2013 Compliance Filing at 47 n.172.

[646] October 15, 2013 Compliance Filing at 50.

reasonable option in the context of a single-state Independent System Operator like NYISO. The Filing Parties note that New York State is currently pursuing public policy transmission requirements that may lead to changes to the bulk power grid. According to the Filing Parties, the bulk power grid forms the "highway system" over which large amounts of power can be delivered, and this system will provide statewide benefits when used to satisfy Public Policy Transmission Needs. The Filing Parties state that therefore, it is reasonable to anticipate that public policy transmission projects will provide some level of benefits to all consumers in New York State.[647]

308. The Filing Parties further state that given this context, the use of a load ratio share based *ex ante* allocation method for public policy transmission projects satisfies the "roughly commensurate" requirement.[648] They note that the Commission recognized that courts have accepted region-wide allocations of costs of projects, such as an RTO's control center that provides region-wide benefits, regardless of whether individual loads were shown to be direct beneficiaries.[649] The Filing Parties also point to *Illinois Commerce Commission*,[650] in which the United States Court of Appeals for the Seventh Circuit upheld the MISO's region-wide cost allocation method for multi-value projects, noting that the Court's determination is particularly relevant since multi-value projects are often related to satisfying state renewable energy requirements. They state that *Illinois Commerce Commission* supports the proposition that "when multiple factors, including public policy considerations, drive the need for transmission development the use of a load ratio share cost allocation method is a just and reasonable approach to cost allocation,"[651] and that it does not have to be shown that every customer in a region

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[647] *Id.*

[648] *Id.* at 51; *see* First Compliance Order, 143 FERC ¶ 61,059 at P 258 ("Regional Cost Allocation Principle 1 specifies that the cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits.").

[649] October 15, 2013 Compliance Filing at 51 nn.192-193 (referring to First Compliance Order, 143 FERC ¶ 61,059 at P 300, which cites *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004), and Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559 n.329, which cites *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945)).

[650] *Ill. Commerce Comm'n v. FERC*, 721 F.3d 764 (7th Cir. 2013) (*Illinois Commerce Commission*).

[651] October 15, 2013 Compliance Filing at 51.

would specifically benefit from a regional transmission project for region-wide cost allocation to be justified.

309. They further state that the Commission has recognized that changes to bulk power transmission facilities can provide widespread benefits to all customers, and that this is particularly true in the case of improvements to the backbone bulk power transmission facilities in New York State that are designed to address public policy requirements.[652] The Filing Parties state that, while other cost allocation methods may be proposed that are better suited to an individual public policy transmission project, this does not render the load ratio share method unjust and unreasonable as the *ex ante* cost allocation method for New York. The Filing Parties state that, in the specific context of NYISO, there is an "articulable and plausible reason to believe" that the benefits that public policy transmission projects would bring to transmission customers across New York State will be "at least roughly commensurate" with allocating the costs of such projects on a load ratio share basis.[653]

310. Regarding the three steps preceding the default cost allocation method, the Filing Parties propose the following to address the Commission's concerns regarding the timing of the public policy cost allocation method process. They state that NYISO will apply the cost allocation method accepted by the Commission for the transmission solution selected to satisfy an identified Public Policy Transmission Need, but seek to clarify the process by which a proposed cost allocation method will be filed with the Commission.[654] They propose to clarify the process in Section 31.5.5.4 as follows:

- NYISO will file with the Commission any cost allocation method prescribed by the identified public policy requirement. If a Transmission Owner or Other Developer files a different proposed cost allocation method under Section 205, it must demonstrate that its proposed method is compliant with the Order No. 1000 Regional Cost Allocation Principles, taking into account the method specified in the public policy requirement.
- The Transmission Owner or Other Developer of the project may, after consideration of guidance that may be provided by the New York Public Service

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[652] *Id.*

[653] *Id.* at 52.

[654] *Id.* at 47-48. The Filing Parties state that nothing in these revisions to Section 31.5.5.5 is intended to prevent any transmission owner from proposing any other cost allocation method to the Commission under section 205, or to create any section 205 filing rights for any Transmission Owner, Other Developer, NYISO, or any other entity.

Commission or the New York Department of Public Service, propose a cost allocation method, which may be based on load ratio share, adjusted to reflect, as applicable, the public policy requirement or Public Policy Transmission Need, the party(ies) responsible for complying with the public policy requirement, and the party(ies) who benefit from the transmission facility ("Adjusted Load Ratio Share"). If the New York Public Service Commission or the New York Department of Public Service supports the proposed cost allocation method, the Transmission Owner or Other Developer will file that cost allocation method and must demonstrate its compliance with the Order No. 1000 Regional Cost Allocation Principles.

- If the New York Public Service Commission or the New York Department of Public Service does not support the Transmission Owner or Other Developer's proposed cost allocation method, the Transmission Owner or Other Developer will take reasonable steps over a 60-day period to respond to the New York Public Service Commission or the New York Department of Public Service's concerns and to develop a mutually agreeable cost allocation method.
- If a mutually acceptable cost allocation method is developed, the Transmission Owner or Other Developer will file it with the Commission and has the burden of demonstrating its compliance with the Order No. 1000 Regional Cost Allocation Principles.
- If the Transmission Owner or Other Developer does not reach an agreement with the New York Public Service Commission or the New York Department of Public Service, the Transmission Owner or Other Developer will promptly file with the Commission its preferred cost allocation method and must demonstrate that its proposed method complies with the Order No. 1000 Regional Cost Allocation Principles, taking into consideration of the position of the New York Public Service Commission or the New York Department of Public Service. The Transmission or Other Developer will also include with its filing the method supported by the New York Public Service Commission or the New York Department of Public Service.
- If the Commission does not accept an alternative cost allocation method under the approaches described above, the NYISO will allocate the costs of the transmission project to all Load Serving Entities in the New York Control Area based upon a load ratio share method.[655]

311. The Filing Parties believe that these revisions will provide for the determination of a cost allocation method for a transmission solution to a Public Policy Transmission Need without undue delay. The Filing Parties point specifically to the 60-day period for the

[655] *Id.* at 48-49 (citing NYISO OATT, Attachment Y, §§ 31.5.5.4.1 - 31.5.5.4.3).

Transmission Owner or Other Developer and the New York Public Service Commission or the New York Department of Public Service to work towards developing a mutually agreeable cost allocation method. They further state that NYISO will make any section 205 filings related to these requirements on behalf of the New York Power Authority (a non- jurisdictional entity), to the extent requested by the New York Power Authority, in which case the New York Power Authority must demonstrate that such a filing is compliant with the Order No. 1000 Regional Cost Allocation Principles.[656]

iii. Protests/Comments

312. In its comments on the compliance proposal, the Long Island Power Authority proposes new OATT provisions to govern the development of any cost allocation method or rates for cost recovery for a proposed solution to a Public Policy Transmission Need undertaken by the Long Island Power Authority and selected by the NYISO as the more efficient or cost-effective solution. The Long Island Power Authority states that for a solution which meets these criteria, it will have the burden of demonstrating that such cost allocation method or rate complies with the standards set forth in the NYISO OATT and is consistent with the Commission's six cost allocation principles under Order No. 1000. The Long Island Power Authority contends that the proposed OATT revisions adequately balance its authority as the sole entity with authority over transmission planning for the Long Island Transmission District while respecting the rights and obligations of the New York Department of Public Service, New York Transmission Owners, and NYISO.[657]

313. The Long Island Power Authority further asserts that it is a non-jurisdictional utility pursuant to section 201(f) of the Federal Power Act.[658] The Long Island Power Authority thus proposes new section 31.5.5.4.5 to the NYISO OATT, which would govern the development of the cost allocation method or rates for cost recovery for a proposed solution to a Public Policy Transmission Need undertaken by the Long Island Power Authority.[659] Under new section 31.5.5.4.4.1, costs and rates allocated solely to Long Island Power Authority customers will be established pursuant to the Long Island

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[656] *Id.* at 49-50.

[657] Long Island Power Authority Protest at 13.

[658] *Id.* at 12 n.23 (citing 16 U.S.C. § 824f (2012)).

[659] *Id.* at 13. The proposed section exempts Long Island Power Authority projects that address a need that the New York Department of Public Service has determined to be a Public Policy Transmission Need, and has been evaluated and selected by NYISO as the more cost-effective or efficient solution.

Power Authority Act, and the Long Island Power Authority will provide NYISO with the adopted cost allocation and rate for inclusion in the NYISO OATT and for an informational filing to the Commission.[660]

314. The Long Island Power Authority asserts that these changes are consistent with Order No. 1000 and that the Commission has indicated that the statutory requirements of non-jurisdictional entities should be respected in the processes developed to identify transmission needs driven by public policy requirements under Order No. 1000.[661] The Long Island Power Authority states that the Commission has encouraged the Long Island Power Authority, NYISO and other interested parties to work together to develop further OATT amendments that allow all relevant regulatory entities to participate fully in the transmission planning process and its proposed revisions satisfy these directives, but it is the sole entity that has authority to approve the cost allocation and rates for the Long Island Power Authority projects.[662]

315. Multiple Intervenors and IPPNY, and Entergy, state that the Filing Parties have failed to provide a justification for the use of a default load ratio share cost allocation method for public policy-driven transmission projects as well as failed to demonstrate that the proposed method complies with Regional Cost Allocation Principles 1 and 2. They assert that the Filing Parties still rely on mere generalized statements regarding the potential for widespread benefits. Multiple Intervenors ask the Commission to direct the Filing Parties to adopt a default cost allocation method for public policy-driven transmission projects based on the cost allocation formula for economic transmission projects.[663]

316. Multiple Intervenors further state that one of the major potential New York State "public policies" involves potential alternating current transmission projects that address congestion problems on the UPNY/SENY and Central East transmission interfaces that impact the transfer of power from the upstate region (i.e., NYISO Load Zones A-F) for the benefit of consumers located in the southeastern or downstate region (i.e., NYISO Load Zones G-K). Multiple Intervenors state that the [New York Department of Public Service] has found that "congestion relief is the primary objective" of this initiative and thus "[t]he benefits of . . . [t]he congestion relief savings and reduced environmental

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[660] *Id.* at 14.

[661] *Id.* at 16 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at PP 216, 334).

[662] *Id.* (citing First Compliance Order, 143 FERC ¶ 61,059 at P 150).

[663] Multiple Intervenors Protest at 3, 23-24.

impacts are likely to accrue mainly to customers in the southeastern portion of the state."[664]

317. Multiple Intervenors assert that, therefore, public policy initiatives will not always benefit all consumers; in some cases the benefits of such initiatives may flow only to customers in certain regions of the state and may result in higher costs for consumers in other parts of the state.[665] According to Multiple Intervenors, lines bringing generation from the northern part of New York State to downstate would benefit downstate consumers, but would harm upstate consumers who would see their energy costs rise. Multiple Intervenors assert, therefore, that to comply with Order No. 1000's beneficiaries-pay approach, downstate consumers should be allocated all or the majority of the costs associated with such a project. Under the Filing Parties' default proposal, however, Multiple Intervenors state that downstate customers (approximately 60 percent of the load) would pay only slightly more than half the costs of the project, and upstate customers (approximately 40 percent of the load) would pay close to the other half. Multiple Intervenors argue that this result would violate Regional Cost Allocation Principle 1 (that costs be allocated in a manner that is at least roughly commensurate with benefits) and Regional Cost Allocation Principle 2 (costs cannot be involuntarily allocated to non-beneficiaries).[666]

318. Multiple Intervenors urge the Commission to direct the Filing Parties to adopt an alternative cost allocation method consisting of a single, *ex ante* formula, and reiterate that the most appropriate cost allocation method for public policy-driven transmission projects is the formula utilized for allocating the costs of economic projects. They state that that method allocates costs in accordance with the changes in wholesale market prices that result from the addition of a new transmission facility to the system, and consequently, the beneficiaries who experience lower prices pay for the cost of the project in an amount proportionate to the cost savings realized, while those that do not realize cost savings are not involuntarily forced to pay a portion of the project costs.[667]

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[664] *Id.* at 18 nn.47, 49 (citing to New York Public Service Commission, Case 12-T-0502, *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades*, Order Instituting Proceeding (issued November 30, 2012) and New York Public Service Commission, Case 12-T-0502, Energy Highway AC Transmission Initiative Straw Proposal – Cost Allocation, Cost Recovery & Risk Mitigation (July 10, 2013) at 5).

[665] *Id.* at 20.

[666] *Id.* at 20-21.

[667] *Id.* at 29.

Multiple Intervenors state that, unlike the Filing Parties' hierarchical proposal, such a method is fully consistent with the six cost allocation principles established pursuant to Order No. 1000, and is established, well-understood and broadly supported because of its perceived fairness and transparency in allocating costs to beneficiaries.[668] They state that this formula complies with Order No. 1000.[669] Multiple Intervenors then state that, if *arguendo* the Commission determines that some modification to this formula is warranted in order to recognize more generalized, system-wide benefits that may accrue from public policy-driven transmission lines (which Multiple Intervenors continues to state has not been demonstrated by the Filing Parties), they then ask the Commission to require a hybrid allocation formula, under which the majority of project costs (i.e., 80 percent or more) would be allocated pursuant to the existing formula for allocating the costs associated with economic transmission projects, and the remaining portion (20 percent or less) would be allocated pursuant to a load ratio share formula as proposed by the Filing Parties.[670]

319. Entergy similarly states that the Filing Parties' proposed revisions to address the cost allocation method for public policy projects continue to provide no detailed support for their proposed default load ratio share method. Entergy states that the Filing Parties' reliance on arguments that: (i) the default is intended to avoid uncertainty that could present a barrier to new public policy transmission projects; and (ii) it is a reasonable option in the context of a single-state transmission organization such as NYISO, which is "a tightly integrated grid that has been centrally administered since the formation of the New York Power Pool in 1969"[671] do not show that this method satisfies the regional cost allocation principles enumerated in Order No. 1000.[672] Entergy further argues that the recent *Illinois Commerce Commission v. FERC*, 72I F.3d 764 (7th Cir. 2013) is not on point, since in that case, the Court of Appeals for the Seventh Circuit upheld MISO's region-wide cost allocation method for certain projects on the basis that "there would be cost savings . . . spread almost evenly across all Midwest ISO Planning Regions," and

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[668] *Id.* at 30.

[669] *Id.* at 15-16 (citing to Order No. 1000-A, 139 FERC ¶ 61,132 at P 576 (Benefits resulting from an entity's use of the transmission system "include the traditional benefits that transmission facilities can provide, such as lowered congestion, increased reliability, and access to generation resources.")).

[670] *Id.* at 31.

[671] Entergy Protest at 11 n.27 (citing to October 15, 2013 Compliance Filing at 50-51).

[672] *Id.* at 13.

"the projected high-voltage lines would reduce losses of electricity . . . and save [] million[s] by reducing reserve margin losses." [673] Entergy states that, unlike the specific cost-benefit estimates upon which the Seventh Circuit relied, the Filing Parties make no attempt to demonstrate that their method would assess a transmission project's costs to only those entities that would benefit from the project each time that this default approach was applied, and that in fact, if this rule were applied to proceedings currently underway before the New York Public Service Commission, consumers would be forced to bear costs without receiving benefits.[674] Entergy urges the Commission to reject the default load ratio share cost allocation method and direct NYISO to establish a default cost allocation method based on a "beneficiaries pay" principle.

320. Entergy also argues that the Filing Parties go beyond the directives of the First Compliance Order by seeking to interpose a new step into the hierarchical cost allocation process that will result in an *ad hoc* transmission planning process that is unpredictable for transmission developers and unlikely to result in costs being allocated to consumers in a manner that is roughly commensurate with the benefits received.[675] Entergy states that, rather than making the revisions to their proposed hierarchical cost allocation method directed by the Commission and clarifying the time frame for the steps in that process, the Filing Parties have proposed to add a new step to this hierarchical method, namely, that the transmission owner or other developer of the project may, after consideration of any guidance provided by the New York Public Service Commission, propose a cost allocation method that may include a cost allocation based on load ratio share, adjusted to reflect, as applicable, the public policy requirement or Public Policy Transmission Need.[676] Thus, Entergy claims, rather than clarifying the timeline, the Filing Parties have proposed to embed a new cost allocation provision into this method that will engender litigation and breed delay and uncertainty.[677]

321. Multiple Intervenors also argue that the Filing Parties went beyond the compliance directive. They assert that the Filing Parities proposed unauthorized OATT changes that will substantially revise the prior components of the multi-step process that the Commission conditionally approved in the First Compliance Order, and included a further step that will enable the transmission developer to dictate the cost allocation

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[673] *Id.* at 13-14 (citing to *Illinois Commerce Commission*, 721 F.3d 764, 774).

[674] *Id.* at 14 (citing to Multiple Intervenors Protest at Point I 12-31).

[675] *Id.* at 3.

[676] *Id.* at 15 n.40 (citing to October 15, 2013 Compliance Filing at 48).

[677] Entergy Protest at 16.

method to be proposed for Commission approval – a change that, according to Multiple Intervenors, renders meaningless the entire multi-step procedures previously reviewed and conditionally approved by the Commission.[678]

322. Multiple Intervenors point to the following new language added to section 31.5.5.4 of the NYISO OATT: "[n]othing herein shall deprive a Transmission Owner or Other Developer of any rights it may have under Section 205 of the Federal Power Act to submit filings proposing any other cost allocation methodology to the Commission." [679] Multiple Intervenors state that under this provision, regardless of what would otherwise be the result of the multi-step hierarchical cost allocation process, if the transmission developer – including a New York Transmission Owner – does not agree with such outcome, it retains the right to file whatever cost allocation proposal it may desire for approval by the Commission, including the ability to propose an "adjusted load ratio share" method.[680] Multiple Intervenors state that this provision revises the cost allocation procedures that were previously reviewed and conditionally approved by the Commission, and that the Filing Parties must submit this proposal to the stakeholders for consideration through NYISO's usual process, since the Filing Parties are forestalled by the terms of the NYISO Agreement from proposing new OATT modifications for review under Section 205 of the FPA on their own motion. Multiple Intervenors further state that this reservation of authority to transmission developers violates the directive in Order No. 1000 that "if a public utility transmission provider is an RTO or ISO, then the cost allocation method or methods must be set forth in the RTO or ISO OATT." [681] Multiple Intervenors add that this provision will frustrate the objectives of Order No. 1000 by eliminating transparency and adding significant uncertainty to the cost allocation process, and result in increased litigation before the Commission.[682]

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[678] Multiple Intervenors Protest at 23 n.57 (citing to the October 15, 2013 Compliance Filing at 47-49).

[679] *Id.* at 24.

[680] *Id.* at 24.

[681] *Id.* 24 n.58 (citing to Order No. 1000-A, 139 FERC ¶ 61,132 at P 593).

[682] *Id.* at 26 n.61 (citing to Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 499 (lack of clear *ex ante* cost allocation methodologies "may be impairing the ability of public utility transmission providers to implement more efficient or cost-effective transmission solutions identified during the transmission planning process" to the detriment of consumers")).

323. Multiple Intervenors also state that the Filing Parties have failed to provide the required timeline for proceeding through the steps of the hierarchical cost allocation method. Multiple Intervenors note that the Filing Parties proposed to revise the interaction between the second step (i.e., transmission developer proposed cost allocation) and the third step (i.e., New York Public Service Commission or the New York Department of Public Service concurrence with the transmission developer proposed allocation or proposal of an alternative allocation by the New York Public Service Commission or the New York Department of Public Service) by providing that if there is a disagreement between the transmission developer and the New York Public Service Commission or the New York Department of Public Service as to the appropriate cost allocation, they will try to resolve it within 60 days.[683] However, the Filing Parties fail to specify a date or time frame by which the transmission developer must propose its preferred cost allocation or the time frame in which the New York Public Service Commission or the New York Department of Public Service must review any such proposal and determine whether to endorse such proposal or propose an alternative allocation method. Thus, Multiple Intervenors assert, the proposed method results in a process without any certainty for transmission developers as to when the final, approved cost allocation method will be known. Multiple Intervenors assert that the Commission should, therefore, reject in its entirety the multi-step cost allocation process that the Filing Parties have proposed for public policy-driven transmission projects.[684]

324. Entergy also asserts that, although the Filing Parties have not sought to modify section 31.5.1.6 of Attachment Y, the provision addressing cost allocation and recovery for regulated non-transmission reliability projects, they assert that state law controls any cost allocation associated with non-transmission solutions, ignoring the mandate in the First Compliance Order that the Commission shall review and approve these cost allocation methods.[685] Entergy asserts that this position ignores the balance of this OATT provision, which states that "[n]othing in this section shall affect the Commission's jurisdiction over the sale and transmission of electric energy subject to the

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[683] *Id.* at 27 n.63 (citing to the October 15, 2013 Compliance Filing at 48-49).

[684] *Id.* at 27-28.

[685] Entergy Protest at 4, 18 (citing to NYISO OATT, Attachment Y, § 31.5.1.6 (Regulated Non-Transmission Solutions to Reliability Needs). Costs related to regulated non-transmission reliability projects will be recovered by Responsible Transmission Owners, Transmission Owners and Other Developers in accordance with the provisions of New York Public Service Law, New York Public Authorities Law, or other applicable state law. Nothing in this section shall affect the Commission's jurisdiction over the sale and transmission of electric energy subject to the jurisdiction of the Commission.").

jurisdiction of the Commission."[686] Entergy contends that the Commission previously clarified its exclusive authority over rates, terms and conditions of electric energy transmission and sales at wholesale in interstate commerce and states that two recent federal district court decisions provide guidance as to the Commission's authority over rates for wholesale power services.[687] Thus, Entergy urges the Commission to clarify its authority with respect to cost allocation and cost recovery for wholesale generation alternatives identified in the NYISO Transmission Planning Process.[688]

iv. <u>Answer</u>

325. The Filing Parties state that they have demonstrated that the public policy *ex ante* default cost allocation method is reasonable, appropriate, and compliant with Order No. 1000. They state that in the First Compliance Order, the Commission directed the Filing Parties to: "(1) explain how the proposed process will not cause unnecessary delays for entities to obtain the right to use the regional cost allocation method for their proposed public policy transmission project; and (2) provide a timeline for the proposed process so that a transmission developer will know how the costs of its project will be allocated in a timely manner."[689] The Filing Parties state that, to comply with this directive, they proposed to clarify that transmission developers' cost allocation proposals cannot be delayed beyond the 60-day period provided for consultation with the New York Public Service Commission or the New York Department of Public Service, and that the proposed *ex ante* load ratio share cost allocation method is always available to the transmission developer unless an alternative method is proposed and approved by the Commission.[690] Thus, the Filing parties assert, Multiple Intervenors' and Entergy's proposal that the cost allocation method used by NYISO for economic transmission projects should also be the *ex-ante* cost allocation method for all public policy transmission projects: (a) is not required by the First Compliance Order; and (b) not

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[686] *Id.* at 18-19; *see also* NYISO OATT, Attachment Y, § 31.5.1.6.

[687] Entergy Protest at 19-20 & n.48 (citing *PPL Energyplus v. Nazarian*, Civil Action No. MJG-12-1286, 2013 WL 5432346, at *42 (D. Md. Sept. 30, 2013) and *PPL Energyplus v. Hanna*, Civil Action No, 11-745, 2013 WL 56038696, at *35-36 (D.N.J. Oct. 11, 2013)).

[688] *Id.* at 17-20.

[689] Filing Parties Answer at 32 (citing First Compliance Order, 143 FERC ¶ 61,059 at P 324).

[690] *Id.* at 32 nn.96-97 (citing to October 15, 2013 Compliance Filing at 48-49).

necessary, because the Filing Parties' proposal already provides transmission developers with certainty as to a definite available method.[691]

326. In addition, the Filing Parties state that the *ex ante* method proposed by Multiple Intervenors and Entergy is not appropriate for public policy projects because the economic test is based on a production cost simulation model that focuses only on energy savings benefits, and does not consider the non-economic objectives and benefits that may drive the need for public policy transmission projects. Further, the Filing Parties note, it would permit transmission customers (including Multiple Intervenors' large commercial and industrial members) to avoid any contribution to the building of a transmission project unless they receive a net economic benefit, which the Filing Parties allege is inconsistent with the Commission's objective of encouraging the construction of transmission facilities to meet a broad spectrum of federal and state public policy requirements.[692] The Filing Parties also assert that the October 15, 2013 Compliance Filing also clarifies a transmission developer's right to make a section 205 filing to propose an Adjusted Load Ratio Share cost allocation. Moreover, the Commission will also be made aware of any specific method embodied in a public policy requirement and of any cost allocation method that the New York Public Service Commission or the New York Department of Public Service prefers. Thus, the Filing Parties state, there are procedures available for the Commission to order a different cost allocation method if appropriate in a particular case.[693]

327. The Filing Parties further state that it is reasonable for the Commission to conclude that load ratio share is the appropriate *ex ante* allocation method in the context of NYISO, a tightly integrated, centrally-administered grid that had been shaped in large part by coordinated statewide policy initiatives. Thus, the Filing Parties state, it is reasonable to expect that public policy transmission projects will provide some level of benefits to all consumers in New York, so that load ratio share is a just and reasonable *ex ante* method. The Filing Parties cite to cases supporting a load ratio share cost allocation as a just and reasonable method where public policy considerations and a variety of factors drive the need for transmission development.[694] They further state that

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[691] *Id.* at 32.

[692] *Id.* at 32-33.

[693] *Id.* at 33.

[694] *Id.* at 35 n.104 (citing to October 11, 2013 Compliance Filing at 51, which in turn cites to *Ill. Commerce Comm'n v. FERC*, Case No.11-3421 (7th Cir. 2013) and *W. Mass Electric Co. v. FERC*, 165 F.3d 922, 927 (D.C. Cir. 1999) (when a system is integrated, any system enhancements are presumed to benefit the entire system)).

NYISO, the New York Transmission Owners, and the New York Public Service Commission and New York Department of Public Service all find load ratio share to be a reasonable default *ex ante* method.

328. The Filing Parties disagree with Entergy's argument that they have added a new step (undirected by the Commission) to the cost allocation process by allowing transmission developers to file with the Commission an alternative cost allocation method.[695] They state that the process proposed in the First Compliance Filing provided that NYISO would file a proposed cost allocation on behalf of the Transmission Owner or Developer in the event that the New York Public Service Commission and Transmission Owner disagreed on a cost allocation method,[696] and that, additionally, a transmission owner or developer has the right under section 205 of the Federal Power Act to file a cost allocation method for its own transmission project.[697]

329. In responding to Entergy,[698] the Filing Parties contend that the proceedings Entergy cites do not disturb the states' role in planning for adequate generation and other resources, nor their authority to provide for utilities to recover the costs of non-transmission projects through bundled retail rates under applicable state law.[699] The Filing Parties additionally note, in response to Entergy's assertion that they are incorrectly seeking to eliminate the Commission's exclusive authority over cost allocation associated with non-transmission solutions, that resource planning is within the purview of the states, and "NYISO's existing tariff provisions recognize this state role with regard to non-transmission projects."[700]

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[695] *Id.* at 35 n.106 (citing Entergy Nuclear Protest at 15-16).

[696] *Id.* at 35 n.107 (citing October 11, 2012 Compliance Filing at 47).

[697] *Id.* at 36 n.108 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002) ("Section 205 . . . gives a utility the right to file rates and terms for services rendered with its assets")).

[698] Entergy Protest at 19-20 (citing *PPL Energyplus v. Nazarian*, Civil Action No. MJG-12-1286, 2013 WL 5432346, at *42 (D. Md. Sept. 30, 2013) and *PPL Energyplus v. Hanna*, Civil Action No, 11-745, 2013 WL 56038696, at *35-36 (D.N.J. Oct. 11, 2013)).

[699] Filing Parties Answer at 9-10.

[700] *Id.* at 10 (citing NYISO OATT, Attachment Y, § 31.5.1.6 (Regulated Non-Transmission Solutions to Reliability Needs) ("Costs related to regulated non-transmission reliability projects will be recovered by Responsible Transmission Owners, Transmission Owners and Other Developers in accordance with the provisions of

(continued…)

v. Commission Determination

330. We find that the provisions in Filing Parties' filing addressing the regional cost allocation method for public policy transmission projects comply with the directive in the First Compliance Order that NYISO explain how the proposed default load ratio share cost allocation method complies with the requirements of Regional Cost Allocation Principles 1, 2 and 4. However, we find that NYISO has failed to explain how the proposed process will not cause unnecessary delays for transmission developers to obtain the right to use the regional cost allocation method for their proposed public policy transmission project, and has not provided a timeline for the proposed process so that a transmission developer will know how the costs of its project will be allocated in a timely manner. We will therefore require NYISO to make a further compliance filing on this question.

331. We accept the Filing Parties' proposed default statewide load ratio share cost allocation method as compliant with Regional Cost Allocation Principles 1 (all costs must be allocated roughly commensurate with benefits) and 2 (those that receive no benefit must not be involuntarily allocated costs). The Filing Parties have demonstrated the reasonableness of using a load ratio share method in the context of NYISO's specific circumstances. NYISO is a single-state transmission organization that evolved from a tightly integrated grid that has been centrally administered since the formation of the New York Power Pool in 1969. As the Filing Parties point out, NYISO has been shaped by coordinated statewide policy initiatives even prior to the formation of the New York Power Pool,[701] and New York State is currently pursuing public policy transmission

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New York Public Service Law, New York Public Authorities Law, or other applicable state law. Nothing in this section shall affect the Commission's jurisdiction over the sale and transmission of electric energy subject to the jurisdiction of the Commission.") and § 31.5.6.3 ("A Responsible Transmission Owner, a Transmission Owner, or Other Developer may propose and undertake a regulated non-transmission solution, provided that the appropriate state agency(ies) has established cost recovery procedures comparable to those provided in this tariff for regulated transmission solutions to ensure the full and prompt recovery of all reasonably-incurred costs related to such non-transmission solutions. . . . ")).

[701] October 15, 2013 Compliance Filing at 50.

requirements that may lead to changes to the bulk power grid on a unified statewide basis.[702]

332. We further note that this default cost allocation method is the last step of a four-step cost allocation process that we have already accepted,[703] and in earlier steps, the transmission developer of a public policy transmission project may propose other just and reasonable cost allocation methods. As noted above: (1) the public policy requirement that results in the construction of a transmission project may prescribe the use of a particular cost allocation method; (2) the transmission developer may propose another cost allocation metho;, or (3) the New York Department of Public Service or the New York Public Service Commission may propose another cost allocation method; in all of those scenarios, NYISO will file the proposed cost allocation for the project with the Commission, and seek to demonstrate that it complies with the Order No. 1000 Regional Cost Allocation Principles.[704] Thus, NYISO's cost allocation process provides opportunities for transmission developers and state agencies to propose and support other cost allocation methods.

333. There may be circumstances in which some parties believe that the use of a default load ratio share cost allocation method is not just and reasonable, such as Multiple Intervenors' concern that one of the major potential public policies being pursued by the state is to develop new transmission projects that will move power from the northwest to the southeast part of the state to provide congestion relief and reduce environmental impacts to southeastern consumers, so that broad allocation of the costs of such projects throughout the state is inappropriate. In such a circumstance, however, parties will have an opportunity to make those arguments during the regional planning process that leads up to the selection of a transmission project in the regional transmission plan, and seek to arrive at a solution that addresses those parties' concerns.[705] Additionally, in certain

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[702] *See* NEW YORK ENERGY HIGHWAY (July 14, 2014), http://www.nyenergyhighway.com ("The New York Energy Highway Blueprint is an overarching method for collecting ideas to . . . rebuild and rejuvenate New York State's electric power system.").

[703] First Compliance Order, 143 FERC ¶ 61,059 at P 322.

[704] *See supra* paragraph 299 and note 641.

[705] It appears that this type of negotiation is already occurring. The New York Transmission Owners have proposed certain transmission projects as part of their New York Transco proposal, and they have agreed to a cost allocation method in which the zones receiving the majority of the benefits pay the majority of the costs. *See Proceeding on Motion to Examine Alternating Current Transmission Upgrades*, New York Public Service Commission Case No. 12-T-0502, "Statement of Intent to Construct

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situations the Filing Parties' default cost allocation may be particularly appropriate for a single state such as New York, in which the state's government, which represents all of the state's citizens, has made a determination that addressing a particular transmission need driven by public policy requirements will benefit all of the state.[706]

334. Since we find that NYISO's proposed default load share ratio cost allocation method is just and reasonable, we will therefore reject Multiple Intervenors' and Entergy's suggestion that the Commission direct the Filing Parties to adopt a default cost allocation method for public policy-driven transmission projects based on the existing cost allocation formula for economic transmission projects. This is not to say that such a cost allocation method for public policy-driven projects might not also be just and reasonable, but it has not been proposed by the Filing Parties.

335. We find, with regard to the First Compliance Order's directive that NYISO explain how the proposed default load ratio share cost allocation method complies with the requirements of Regional Cost Allocation Principle 4, that the Filing Parties have demonstrated whether the NYISO transmission planning region has agreed to bear the costs associated with any required upgrades in another transmission planning region, and how such costs will be allocated under the NYISO regional cost allocation methods.[707]

Transmission Facilities," filed January 25, 2013, at 21-22 (footnote omitted) (". . . the NYTOs have developed a cost allocation method that takes into account the wide range of public policy, economic and reliability benefits provided by the Projects. The agreed to cost allocation recognizes the differing levels and types of benefits that will occur in different areas of the state. . . . [A]s a result of this agreement on specific cost allocation factors and the funding requirements of each NY Transco member, the NYTOs have agreed to form the NY Transco and to move forward and build the Projects," with specific cost allocation percentages for each transmission owner).

[706] October 15, 2013 Compliance Filing at 50 ("The Filing Parties respectfully submit that the justness and reasonableness of the proposed default load ratio share cost allocation method is integrally related to the circumstances that it is intended to address and in which it is likely to be applied. Consistent with Order No. 1000, the Filing Parties' proposed default *ex ante* cost allocation methodology is intended to avoid uncertainty that could present a barrier to new transmission projects needed to meet public policy needs," footnote omitted); *see also* First Compliance Order, 143 FERC ¶ 61,059 at P 141 (explaining that the New York Department of Public Service identifies transmission needs driven by public policy requirements for which solutions will be evaluated).

[707] *See supra* paragraphs 293-294.

336. It is essential that NYISO have a default cost allocation method in place that parties may rely on in the absence of such other proposals, and that the timing of the steps involved in that default cost allocation method be clearly known. However, we find that the Filing Parties have not met the obligation to (1) explain how the proposed process will not cause unnecessary delays for transmission developers to obtain the right to use the regional cost allocation method for their proposed public policy transmission project; and (2) provide a timeline for the proposed process so that a transmission developer will know how the costs of its project will be allocated in a timely manner. As discussed above, the Filing Parties have set forth the steps that a transmission developer may take to propose and obtain approval of a cost allocation method for a public policy transmission project.[708] The Filing Parties state that, with regard to that part of its process in which a transmission developer may seek an alternative cost allocation method, after consideration of guidance that may be provided by the New York Public Service Commission or the New York Department of Public Service, and if those agencies do not support the developer's proposed cost allocation method, the developer will take reasonable steps over a 60-day period to respond to the agencies' concerns and to develop a mutually agreeable cost allocation method.

337. As discussed above, the Filing Parties have proposed to clarify the process by which a cost allocation method is determined as follows.

> Step One: NYISO may file cost allocation method prescribed by public policy requirement.[709]
>
> Step Two: Transmission developer may file cost allocation method supported by state agencies. If state agencies don't support transmission developer's proposed method, transmission developer must seek to reach agreement with state agencies within 60 days.[710]
>
> Step Three: If transmission developer cannot reach agreement with state agencies, it may file cost allocation method without state agency support.[711]

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[708] *See supra* paragraph 332 & note 711.

[709] NYISO OATT, Attachment Y, § 31.5.5.4.1 .

[710] *Id.* §§ 31.5.5.4.1, 31.5.5.4.2 , 31.5.5.4.2.1, 31.5.5.4.2.2, 31.5.5.4.2.3.

[711] *Id.* § 31.5.5.4.2.4.

> Step Four: If Commission does not accept filing made by transmission developer, NYISO will allocate costs based on default load ratio share cost allocation method.[712]

338. Under the Filing Parties' proposal, if NYISO files the cost allocation method specified by the public policy requirement in question (Step One), there are no timing considerations. If, however, the transmission developer wishes to file a proposed cost allocation method, under the Filing Parties' proposal, there is no limit provided as to how long the entire process will take, and when a decision is made on the cost allocation method for a particular public policy transmission project. The provision for a 60-day period for Step Two is insufficient, because it only provides a specific period for a single step within the overall cost allocation process. We therefore require the Filing Parties to make a compliance filing, within 60 days of the date of issuance of this order, revising the OATT to provide for: (a) the number of days between a determination that the transmission developer does not wish to use the cost allocation method set forth in the public policy requirement (or the public policy requirement does not prescribe a cost allocation method) and a declaration by the transmission developer that it will file a cost allocation method supported by state agencies, and how soon it must file that cost allocation method (i.e., the number of days between Step One and Step Two); and (b) alternatively, if a transmission developer cannot obtain state agency support, the number of days between the transmission developer's declaration to that effect, and the date on which it must file that cost allocation method (i.e., the number of days between Step One and Step Three). As noted above, it is essential that NYISO have a default cost allocation method in place that parties may rely on in the absence of such other proposals, and that the timing of the steps involved in that default cost allocation method be clearly known.

339. Multiple Intervenors and Entergy assert that the Filing Parties have inappropriately added an additional step to this process by providing for an opportunity for a transmission developer to make a section 205 filing to use a different cost allocation method. We note that the language added to Attachment Y, section 31.5.5.4.1 – "[n]othing herein shall deprive a Transmission Owner or Other Developer *of any rights it may have* under Section 205 of the Federal Power Act to submit filings proposing any other cost allocation methodology to the Commission," emphasis added – does not create new rights or alter the existing rights of the parties or the signatories to the NYISO Agreement.

340. We reject Entergy's suggestion that the Commission clarify its authority over cost allocation and cost recovery for non-transmission alternatives. The *Nazarian* and *Hanna*

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[712] *Id.* § 31.5.5.4.3.

decisions cited by Entergy dealt with specific factual circumstances relating to prices in the capacity market, rather than to the selection of solutions to needs in the NYISO planning process. Moreover, as Attachment Y, section 31.5.1.6 states, "[n]othing in this section shall affect the Commission's jurisdiction over the sale and transmission of electric energy subject to the jurisdiction of the Commission." We find that NYISO's existing OATT provision regarding cost recovery for non-transmission reliability projects is consistent with Order No. 1000. As the Commission acknowledged in Order No. 1000, the Final Rule in no way involves an exercise of authority over those specific substantive matters traditionally reserved for the states, including integrated resource planning.[713] Therefore, we see no need for further clarification.

341. Finally, with regard to the issues raised by the Long Island Power Authority, we note that the Long Island Power Authority, which is not a NYISO member, may not file new provisions to the NYISO OATT. Moreover, the Filing Parties state that they and the Long Island Power Authority "are working to complete discussions, as soon as possible, on revisions to the OATT to address the role of [the Long Island Power Authority] with the [p]ublic [p]olicy [r]equirements process among themselves and with the New York State Department of Public Service."[714] Because the Long Island Power Authority may not, alone, file a new provision to the NYISO OATT, and because the Filing Parties indicate that they and the Long Island Power Authority are still negotiating on appropriate provisions, we will make no findings regarding the provision suggested here by the Long Island Power Authority. Order No. 1000 strongly encourages state regulators to participate actively in the transmission planning process, particularly with regard to the identification of transmission needs driven by public policy requirements.[715] As discussed in the First Compliance Order, the Commission also encouraged Long Island Power Authority to actively participate in the public policy transmission planning process.[716] While we recognize that the Filing Parties offer no objection to the OATT revisions proposed by the Long Island Power Authority, with one exception, such provisions were not included in the Filing Parties' compliance filing and the Filing Parties have not proposed to amend their compliance filing to reflect such provisions. Therefore, we will not require the Filing Parties to revise the NYISO OATT to address the Long Island Power Authority's proposal. Should the Filing Parties and the Long Island Power Authority agree to further OATT modifications, consistent with the Commission's findings in this order, the Filing Parties may include those OATT

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[713] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 156.

[714] October 15, 2013 Compliance Filing at 47 n.172.

[715] *See* Order No. 1000-A, 139 FERC ¶ 61,132 at P 338.

[716] First Compliance Order, 143 FERC ¶ 61,059 at P 150.

revisions in a 205 filing or in their next compliance filing and we will consider the proposed OATT revisions at that time.

The Commission orders:

(A) The requests for rehearing and clarification are hereby denied in part and granted in part, as discussed in the body of this order.

(B) The Filing Parties' compliance filing is hereby accepted, effective January 1, 2014, subject to further compliance filings, as discussed in the body of this order.

(C) The Filing Parties are hereby directed to submit further compliance filings, within 60 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.