

143 FERC ¶ 61,059  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER13-102-000

ORDER ON COMPLIANCE FILING

(Issued April 18, 2013)

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Appendix A: Abbreviated Names of Intervenors

Appendix B: Abbreviated Names of Initial Commenters

Appendix C: Abbreviated Names of Reply Commenters

1. On October 11, 2012, New York Independent System Operator, Inc. (NYISO) submitted, with the New York Transmission Owners<sup>1</sup> (together, Filing Parties), pursuant to section 206 of the FPA,<sup>2</sup> revisions to Attachment Y of NYISO’s Open Access Transmission Tariff (NYISO OATT) to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000<sup>3</sup> (October 11 Filing). In this order, we accept the Filing Parties’ compliance filing, subject to further compliance filings, as discussed below.

**I. Background**

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890<sup>4</sup> to ensure that Commission-jurisdictional

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<sup>1</sup> 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 LIPA (LIPA), New York Power Authority (NYPA), New York State Electric & Gas Corp., Niagara Mohawk Power Corp. d/b/a National Grid, Rochester Gas & Electric Corp., and Orange & Rockland Utilities, Inc. The Filing Parties note that LIPA and NYPA, as transmission owners not subject to the Commission’s jurisdiction under section 205 of the Federal Power Act (FPA) have voluntarily participated in the development of the Filing Parties filing.

<sup>2</sup> 16 U.S.C. § 824e (2006).

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

<sup>4</sup> *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).

services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms 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; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000's cost allocation reforms require that each public utility transmission provider participate in a regional transmission planning process that has: (1) a regional cost allocation method or methods for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation and (2) an interregional cost allocation method or methods for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination procedures required by Order No. 1000. Order No. 1000 also requires that each cost allocation method satisfy six cost allocation principles.

4. The Commission acknowledged in Order No. 1000 that each transmission planning region has unique characteristics, and, therefore, Order No. 1000 accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate regional differences.<sup>5</sup> Order No. 1000 does not prescribe the exact manner in which public utility transmission providers must fulfill the regional transmission planning requirements.<sup>6</sup> Similarly, because the Commission did not want to prescribe a uniform method of cost allocation for every transmission planning region, Order No. 1000 adopts the use of cost allocation principles.<sup>7</sup> The Commission stated that it was acting to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential, and it acknowledged that public utility

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<sup>5</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

<sup>6</sup> *Id.* P 157.

<sup>7</sup> *Id.* P 604.

transmission providers in some regions may already meet or exceed some requirements of Order No. 1000.<sup>8</sup>

## **II. Compliance Filing**

5. The Filing Parties assert that NYISO's current transmission planning process, in Attachment Y of the NYISO OATT, already complies with or surpasses most of Order No. 1000's requirements with respect to local and regional transmission planning and cost allocation. They assert that Attachment Y includes NYISO's existing regional transmission planning process that culminates in the preparation of a regional transmission plan for the transmission planning region. They also assert that NYISO's existing transmission planning process fully complies with all Order No. 890 principles and does not contain a right of first refusal. The Filing Parties propose revisions to Attachment Y that they assert bring NYISO's OATT into full compliance with all of the Order No. 1000 local and regional planning and cost allocation requirements, as further explained below. The Filing Parties submit that the proposed compliance OATT modifications fully comply with the Order No. 1000 regional transmission planning process requirements in a manner that allows the flexibility necessary to encourage the further development of transmission.

6. Specifically, the Filing Parties propose OATT revisions to address the requirements not presently covered by NYISO's OATT, including revisions governing: (1) a new public policy requirements planning process, (2) criteria for qualification and monitoring of projects, and (3) a process to consider more efficient or cost effective transmission solutions. The Filing Parties also address certain unresolved issues raised during the NYISO stakeholder meetings on compliance with Order No. 1000's regional transmission planning requirements.

7. The Filing Parties request that these proposed OATT modifications be made effective upon the completion of the next reliability planning cycle following the Commission's issuance of a final order approving these OATT changes. The Filing Parties believe that the analysis of transmission needs driven by public policy requirements should be based on a current Comprehensive Reliability Plan and that this approach will provide the foundation of a reliable bulk power system upon which to consider public policy transmission needs.

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

8. Notice of the Filing Parties' filing was published in the *Federal Register*, 77 Fed. Reg. 64,502 (2012), with interventions and protests due on or before November 26, 2012.

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<sup>8</sup> *Id.* P 13.

9. Notices of intervention and timely-filed motions to intervene were filed by the entities noted in the Appendix A to this order. National Rural Electric Cooperative Association (NRECA) submitted an out-of-time motion to intervene on December 14, 2012. Protests and comments were filed by the entities in Appendix B to this order and are addressed below. American Wind Energy Association (AWEA) submitted comments out of time on November 30, 2012. On March 6, 2013, the Independent Power Producers of New York (IPPNY) submitted a motion to lodge a series of documents and on March 15, 2013, Multiple Intervenors submitted comments in support of IPPNY's motion.

10. Answers were filed by the entities in Appendix C to this order and are addressed below.

#### **IV. Discussion**

##### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process. We will grant IPPNY's motion to lodge and accept the information provided as a supplement to IPPNY's comments filed in this docket.

##### **B. Substantive Matters**

13. We find that the Filing Parties' compliance filings, with certain modifications, partially comply with the obligations relating to regional transmission planning and cost allocation requirements imposed by Order No. 1000. Accordingly, we accept the Filing Parties' compliance filings to be effective as discussed in the body of this order, subject to a further compliance filing as discussed below. We direct the Filing Parties to file the compliance filing within 120 days of the date of issuance of this order.

##### **1. Regional Transmission Planning Requirements**

14. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that complies with the identified transmission planning principles of Order No. 890 and that, in consultation with stakeholders, results in the development of a regional transmission plan.<sup>9</sup> The regional transmission plan will

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<sup>9</sup> *Id.* PP 6, 11, 146.

identify transmission facilities that meet the region's reliability, economic, and public policy requirements-related needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.<sup>10</sup> A primary objective of the reforms in Order No. 1000 is to ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet a transmission planning region's needs more efficiently and cost-effectively.<sup>11</sup>

**a. Transmission Planning Region**

15. Order No. 1000 specifies that a transmission planning region is one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate for purposes of regional transmission planning and development of a single regional transmission plan.<sup>12</sup> 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.<sup>13</sup> However, an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of Order No. 1000.<sup>14</sup>

16. In addition, Order No. 1000 requires that public utility transmission providers explain in their compliance filings how they will determine which transmission facilities evaluated in their local and regional transmission planning processes will be subject to the requirements of Order No. 1000.<sup>15</sup> Order No. 1000's requirements are intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation, or reevaluation as the case may be, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's compliance filing.<sup>16</sup> Each region must

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<sup>10</sup> *Id.* PP 11, 148.

<sup>11</sup> *Id.* PP 4, 6.

<sup>12</sup> *Id.* P 160.

<sup>13</sup> *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

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

<sup>15</sup> *Id.* PP 65, 162.

<sup>16</sup> *Id.*

determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to these requirements.<sup>17</sup>

17. Order No. 1000-A states that public utility transmission providers in each transmission planning region must 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.<sup>18</sup> Each public utility transmission provider (or regional transmission planning entity acting for all of the public utility transmission providers in its transmission planning region) must include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.<sup>19</sup> A non-public utility transmission provider will not be considered to have made the choice to join a transmission planning region and thus be eligible to be allocated costs under the regional cost allocation method until it has enrolled in the transmission planning region.<sup>20</sup>

**i. Filing Parties' Filing**

18. The Filing Parties state that the New York Control Area is a planning region where NYISO, as the transmission provider, and affected state entities and stakeholders participate in a regional transmission planning process to develop a regional transmission plan. They state that the New York Control Area is an integrated region with its own unique reliability and resource issues. The Filing Parties also note that NYISO, as an independent system operator (ISO), already engages in regional transmission planning and coordinates its planning with neighboring regions.<sup>21</sup> In addition, the Filing Parties state that, while non-public utility transmission providers within NYISO's planning region are not subject to a reciprocity tariff, "they fully participate in NYISO's planning processes."<sup>22</sup>

19. Acknowledging that Order No. 1000's requirements are intended to apply to new transmission facilities, the Filing Parties assert that NYISO's current reliability and

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<sup>17</sup> *Id.*

<sup>18</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* PP 276-277.

<sup>21</sup> October 11 Filing at 28.

<sup>22</sup> *Id.* at 37.

economic planning processes already comply with the Commission's directives.<sup>23</sup> Therefore, they explain, projects selected pursuant to those processes have been, and continue to be, eligible for cost allocation and cost recovery.<sup>24</sup>

20. The Filing Parties request that the proposed compliance OATT modifications become effective upon completion of the "next reliability planning cycle following the Commission's issuance of a final order approving" the proposed OATT changes.<sup>25</sup> They assert that analysis of transmission needs driven by public policy requirements should be based on a current Comprehensive Reliability Plan to ensure "the foundation of a reliable bulk power system upon which to build consideration of public policy needs."<sup>26</sup>

**ii. Protests/Comments**

21. Independent Transmission Developers protest the Filing Parties' requested effective date and proposed implementation schedule as an unreasonable delay in execution of the Order No. 1000 reforms. They assert that, by delaying implementation for an additional year, the New York Transmission Owners will have an advantage with respect to reliability projects. Independent Transmission Owners further assert that the delay is particularly serious in New York, because New York is currently advancing a series of proposed reliability projects through the New York Energy Highway Initiative.<sup>27</sup>

**iii. Answer**

22. In response to Independent Transmission Developers, the Filing Parties argue that the proposed effective date is reasonable, ensures that implementation of the public policy requirements transmission planning process does not disrupt NYISO's existing reliability and economic transmission planning processes, and enables the analysis of transmission needs driven by public policy requirements to be based on the most current Comprehensive Reliability Plan.

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<sup>23</sup> *Id.* at 64.

<sup>24</sup> *Id.* at 63-64.

<sup>25</sup> *Id.* at 67.

<sup>26</sup> *Id.* at 68.

<sup>27</sup> Independent Transmission Developers Protest at 31-32.

iv. **Commission Determination**

23. We find that the scope of the transmission planning region, the description of facilities that will be subject to the requirements of Order No. 1000, and the enrollment process specified in the Filing Parties' filing partially comply with the requirements of Order No. 1000. Therefore, we require the Filing Parties to file a further compliance filing, as described more fully below.

24. In Order No. 1000, the Commission stated that every public utility transmission provider has already included itself in a region for purposes of complying with Order No. 890 and that these existing regional processes should guide public utility transmission providers in formulating transmission planning regions to comply with the requirements of Order No. 1000.<sup>28</sup> NYISO, a Commission-approved ISO, has a footprint, the New York Control Area, reflecting a regional scope that complies with Order No. 890.<sup>29</sup> We note that there has been no significant decrease or limitation in the scope or configuration of the NYISO transmission planning region since the Commission accepted NYISO's compliance with respect to Order No. 890. Accordingly, we find that the scope of the NYISO transmission planning region complies with the requirements of Order No. 1000.

25. While the Filing Parties state that transmission projects selected pursuant to NYISO's existing reliability and economic transmission planning processes have been, and continue to be, eligible for regional cost allocation, they do not explain which transmission facilities, including those transmission projects currently under consideration, will be subject to the regional transmission planning processes that the Commission determines comply with Order No. 1000 (i.e., which facilities are new transmission facilities subject to evaluation or reevaluation within the regional transmission planning process after the effective date of the compliance filing). Therefore, the Filing Parties must provide, in a compliance filing discussed more fully below, further information on NYISO's transition to the revised regional transmission planning process, which explains the transmission facilities within NYISO's regional transmission planning processes to which the proposed OATT revisions will apply as of the effective date of the Filing Parties' compliance filing and how NYISO will evaluate those reliability and economic transmission projects currently under consideration.

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<sup>28</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

<sup>29</sup> See *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 (2008), *order on reh'g*, 126 FERC ¶ 61,320 (2009), *reh'g denied*, 129 FERC ¶ 61,045 (2009); *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044 (2009); *New York Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,028 (2010); *New York Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,188 (2010).

26. We also direct the Filing Parties to establish in the compliance filing an appropriate effective date, which the Commission anticipates will coincide with the beginning of the next reliability transmission planning cycle following the issuance of this order. The Filing Parties may propose a different effective date, but must provide a showing demonstrating why such an effective date is more appropriate. We note that any proposed effective date must coincide with the beginning of a NYISO regional transmission planning cycle. Consistent with this determination, we reject the Filing Parties' proposal that the proposed compliance OATT modifications become effective upon completion of the next reliability planning cycle following the Commission's issuance of a final order approving the proposed OATT changes. We do not believe that it is necessary to delay the effective date of the proposed revisions until every issue in this proceeding has been resolved.

27. We also find that, while the Filing Parties state that public utility and non-public utility transmission providers fully participate in NYISO's planning processes, the Filing Parties do not provide a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the NYISO transmission planning region. The Filing Parties also fail to propose OATT revisions that include a list in the NYISO OATT of all of the public utility and non-public utility transmission providers that have enrolled as transmission providers in NYISO's transmission planning region, as required by Order No. 1000.<sup>30</sup>

28. Accordingly, we direct the Filing Parties to file, within 120 days of the date of issuance of this order, a further compliance filing providing: (1) 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; (2) OATT revisions 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 in the NYISO OATT; (3) further information regarding NYISO's transition to the revised regional transmission planning process that explains (a) 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 facilities are new transmission facilities subject to evaluation or reevaluation within the local or regional transmission planning process after the effective date of the compliance filing) and (b) how NYISO will evaluate transmission projects currently under consideration; and (4) a date certain indicating the start of the next full reliability planning cycle, during which the proposed revisions will be effective, or an alternative effective date that coincides with a full reliability planning cycle and that is accompanied with an explanation of why the alternative proposed effective date is appropriate.

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<sup>30</sup> See Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

b. **Regional Transmission Planning Process General Requirements**

29. Order No. 1000 requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan and that complies with certain transmission planning principles of Order No. 890 identified in Order No. 1000.<sup>31</sup> 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.<sup>32</sup> Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.<sup>33</sup> The procedures 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 needs.<sup>34</sup> The process used to produce the regional transmission plan must satisfy the following Order No. 890 transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.<sup>35</sup>

30. Application of these transmission planning principles will ensure that stakeholders have an opportunity to participate in the regional transmission planning process in a timely and meaningful manner. Stakeholders must have an opportunity to express their needs, have access to information, and an opportunity to provide information, and thus have an opportunity to participate in the identification and evaluation of regional solutions.<sup>36</sup> In addition, when evaluating the merits of alternative transmission solutions,

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<sup>31</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 146, 151.

<sup>32</sup> *Id.* P 148.

<sup>33</sup> *Id.* P 149.

<sup>34</sup> *Id.* P 147.

<sup>35</sup> *Id.* P 151. These transmission planning principles are explained more fully in Order No. 890.

<sup>36</sup> *Id.* P 150. As explained in Order No. 1000, the term "stakeholder" means any interested party. *Id.* P 151 n.143.

proposed non-transmission alternatives must be considered on a comparable basis.<sup>37</sup> Public utility transmission providers must identify how they will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis.<sup>38</sup>

**i. Filing Parties' Filing**

31. The Filing Parties state that the existing NYISO transmission planning process, the Comprehensive System Planning Process, meets or exceeds most of Order No. 1000's local and regional transmission planning requirements.<sup>39</sup> The Filing Parties explain that the Comprehensive System Planning Process is a regional transmission planning process that produces a regional transmission plan by evaluating resource adequacy and transmission system security of New York State's bulk power system over a ten year period.<sup>40</sup> The Filing Parties state that the Comprehensive System Planning Process consists of three components: (1) a local transmission planning process; (2) a reliability transmission planning process; and (3) an economic transmission planning process.<sup>41</sup>

32. As discussed more fully below, the Comprehensive System Planning Process begins with the local transmission planning process, during which each Transmission Owner<sup>42</sup> develops a local transmission plan.<sup>43</sup> Next, in the reliability transmission

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<sup>37</sup> *Id.* P 148.

<sup>38</sup> *Id.* P 155.

<sup>39</sup> October 11 Filing at 7-8.

<sup>40</sup> *Id.* at 9-10.

<sup>41</sup> The Filing Parties note that, pursuant to the proposed revisions in its compliance filing, the public policy requirements transmission planning process will be added as a fourth component of the Comprehensive System Planning Process. *Id.* at 10 n.54.

<sup>42</sup> Transmission Owner is defined as the "public utility or authority (or its designated agent) that owns facilities used for the transmission of [e]nergy in interstate commerce and provides [t]ransmission [s]ervice under the [OATT]." NYISO, NYISO Tariffs, OATT, § 1.20 (Definitions – T).

<sup>43</sup> The local transmission plan or "LTP" 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, NYISO Tariffs, OATT, Attachment Y (New York ISO Comprehensive System Planning Procedures), § 31.1.1 (Definitions).

planning process, NYISO utilizes the local transmission plans as inputs into the Reliability Needs Assessment, through which NYISO identifies reliability transmission needs.<sup>44</sup> The Filing Parties illustrate that, for each identified reliability need, NYISO solicits: (1) a regulated<sup>45</sup> backstop solution (i.e., a solution that is proposed by the Responsible Transmission Owner<sup>46</sup> for selection in the regional transmission plan for purposes of cost allocation),<sup>47</sup> (2) alternative regulated solutions (i.e., solutions proposed by nonincumbent Transmission Owners or Other Developers<sup>48</sup> for selection in the regional transmission plan for purposes of cost allocation), and (3) market-based solutions (i.e., solutions proposed by Transmission Owners or Other Developers that do

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<sup>44</sup> See *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 23 (2008) (explaining that, in “[e]ach planning cycle, each [T]ransmission [O]wner will submit the finalized portions of its current plan to the NYISO . . . for timely inclusion in the NYISO’s [R]eliability [N]eeds [A]ssessment”).

<sup>45</sup> The Filing Parties indicate that the term “regulated” refers to a transmission solution for which the proponent seeks to obtain regional cost allocation. According to NYISO’s OATT, the “cost allocation principles and methodologies” in Attachment Y cover “*regulated* transmission solutions to [r]eliability [n]eeds, *regulated* transmission responses to congestion identified in the [Congestion Analysis and Resource Integration Study], and *regulated* transmission solutions to needs driven by [p]ublic [p]olicy [r]equirements . . . whether proposed by a Responsible Transmission Owner or a Transmission Owner or Other Developer,” if selected in the regional transmission plan for purposes of cost allocation. NYISO, NYISO Tariffs, OATT, Attachment Y, § 31.5.1.1 (0.0.0) (emphasis added).

<sup>46</sup> 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 [r]eliability [n]eed or to proceed with a regulated solution to a [r]eliability [n]eed. The Responsible Transmission Owner will normally be the Transmission Owner in whose Transmission District [NYISO] identifies a [r]eliability [n]eed.” NYISO OATT, Attachment Y, § 31.1.1.

<sup>47</sup> NYISO, NYISO Tariffs, OATT, Attachment Y, § 31.2.5.8 (3.0.0) (providing that the Responsible Transmission Owner is “entitled to full recovery of all reasonably incurred costs” related to the regulated backstop solution).

<sup>48</sup> Other Developers are defined as “[p]arties or entities sponsoring or proposing to sponsor regulated economic projects or regulated solutions to [r]eliability [n]eeds who are not Transmission Owners.” NYISO OATT, Attachment Y, § 31.1.1.

not seek to be selected in the regional transmission plan for purposes of cost allocation).<sup>49</sup> Following the reliability transmission planning process, NYISO conducts the economic transmission planning process, during which Transmission Owners and Other Developers may propose market-based or regulated solutions to relieve congestion.

(a) **Reliability Transmission Planning Process**

33. The Filing Parties state that NYISO's reliability transmission planning process is built around two documents, the Reliability Needs Assessment and the Comprehensive Reliability Plan.<sup>50</sup> The Filing Parties explain that the Reliability Needs Assessment evaluates the future reliability of the New York State bulk power system over a ten year horizon by analyzing resource adequacy, transmission security, and transfer capability on the New York State bulk power transmission facilities.<sup>51</sup> Further, the Filing Parties explain that the Reliability Needs Assessment identifies conditions that violate or potentially violate established reliability criteria and analyzes historic congestion costs.<sup>52</sup> They state that market participants, developers and other parties provide the data necessary for the development of the Reliability Needs Assessment, including existing

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<sup>49</sup> See 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 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.

<sup>50</sup> October 11 Filing at 12.

<sup>51</sup> *Id.* (referencing NYISO OATT, Attachment Y, § 31.2.2.3).

<sup>52</sup> 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) (November 20, 2007) (Comprehensive Reliability Planning Process Manual), *available at* [http://www.nyiso.com/public/markets\\_operations/documents/manuals\\_guides/index.jsp](http://www.nyiso.com/public/markets_operations/documents/manuals_guides/index.jsp); NYISO OATT, Attachment Y, § 31.1.1 (defining Reliability Criteria as "[t]he electric power system planning and operating policies, standards, criteria, guidelines, procedures, and rules promulgated by the North American Electric Reliability Corporation . . . , Northeast Power Coordinating Council . . . , and the New York State Reliability Council . . . , as they may be amended from time to time").

and planned transmission additions, proposals for merchant transmission facilities, generation additions and retirements, demand response programs, and any long-term firm transmission requests made to NYISO.<sup>53</sup> The Filing Parties state 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.<sup>54</sup>

34. As previously noted, NYISO solicits, and the Comprehensive Reliability Plan includes, solutions proposed to address the reliability transmission needs identified in the Reliability Needs Assessment. However, the Filing Parties explain that NYISO requests solutions to the identified reliability transmission needs with the expectation that market-based solutions will be proposed to fulfill such transmission needs.<sup>55</sup> They also state that, following the Reliability Needs Assessment, NYISO will identify the Responsible Transmission Owner that is obligated to submit a regulated backstop solution to address each reliability transmission need. In addition, according to the NYISO's OATT and Comprehensive Reliability Planning Process Manual, NYISO will request market-based solutions and alternative regulated solutions at the same time that it requests the regulated backstop solution.<sup>56</sup>

35. As previously noted, the Filing Parties state that NYISO has a preference for market-based solutions to remedy reliability transmission needs. The Filing Parties explain that NYISO analyzes the viability and sufficiency of market-based solutions and, if market-based solutions prove to be insufficient, NYISO evaluates the viability and sufficiency of regulated backstop solutions and alternative regulated solutions concurrently.<sup>57</sup> In addition, Attachment Y provides that, "should [NYISO] determine that it has not received adequate regulated backstop or market-based solutions to satisfy the [r]eliability [n]eed, [NYISO] may, in its discretion, solicit additional regulated

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<sup>53</sup> October 11 Filing at 12 (referencing NYISO OATT, Attachment Y, § 31.2.2.4).

<sup>54</sup> *Id.* at 13; *see* NYISO OATT, Attachment Y, § 31.2.3.

<sup>55</sup> *Id.*

<sup>56</sup> *See* NYISO OATT, Attachment Y, §§ 31.2.4.4, 31.2.4.6.

<sup>57</sup> October 11 Filing at 13. As further discussed below, the Filing Parties indicate that, if NYISO determines that a market-based solution will not be available in time to meet a reliability need and that it is necessary to take action to ensure reliability, then NYISO will state in the Comprehensive Reliability Plan that implementation of a regulated solution is necessary. *See* NYISO OATT, Attachment Y, § 31.2.5.6.

backstop or market-based solutions. Other Developers may submit additional alternative regulated solutions for [NYISO's] consideration at that time.”<sup>58</sup>

36. The Filing Parties state that NYISO considers all types of solutions to reliability transmission needs on a comparable basis, including generation, transmission and demand-side programs.<sup>59</sup> Specifically, Attachment Y provides that “[w]hen evaluating proposed solutions to [r]eliability [n]eeds from any [d]eveloper, all resource types shall be considered on a comparable basis as potential solutions to the [r]eliability [n]eeds identified: generation, transmission, and demand response.”<sup>60</sup>

37. The Filing Parties state that NYISO's evaluations 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 and approval by the NYISO Board of Directors.<sup>61</sup> If more than one proposed transmission solution will meet an identified reliability transmission need, the Filing Parties state that the appropriate governmental agency or authority, not NYISO, will select the solution that will be implemented.<sup>62</sup> However, the Filing Parties indicate that, if NYISO determines that there is an imminent threat to reliability on the New York State bulk power transmission facilities<sup>63</sup> between planning processes, NYISO may call for the Responsible Transmission Owner to submit and seek approval to implement a Gap Solution.<sup>64</sup>

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<sup>58</sup> NYISO OATT, Attachment Y, § 31.2.4.8.

<sup>59</sup> October 11 Filing at 13 (citing NYISO OATT, Attachment Y, § 31.2.5.1).

<sup>60</sup> NYISO OATT, Attachment Y, § 31.2.5.1.

<sup>61</sup> October 11 Filing at 14 (referencing NYISO OATT, Attachment Y, § 31.2.6).

<sup>62</sup> *Id.* The Filing Parties' proposal regarding the selection of transmission solutions for inclusion in the regional transmission plan for purposes of cost allocation is discussed more fully in Part IV.B.1.c.

<sup>63</sup> The Filing Parties state that New York State bulk power transmission facilities are the transmission facilities for which NYISO conducts its annual transmission review submitted to the Northeast Power Coordinating Council pursuant to its requirements. *Id.* at 1 n.7.

<sup>64</sup> October 11 Filing at 14-15 (citing NYISO OATT, Attachment Y, § 31.2.5.10). A Gap Solution is “[a] solution to a [r]eliability [n]eed that is designed to be temporary and to strive to be compatible with permanent market-based proposals.” NYISO OATT, Attachment Y, § 31.1.2. In addition, section 31.2.5.10.1 of Attachment Y provides that  
(continued...)

**(b) Economic Transmission Planning Process**

38. The Filing Parties state that NYISO's economic transmission planning process is a two phase process that first identifies factors that may produce or increase congestion, and second identifies and evaluates projects to reduce congestion. The Filing Parties explain that in Phase I, NYISO develops the Congestion Analysis and Resource Integration Study, while in Phase II, NYISO evaluates specific projects, including proposed transmission projects to relieve congestion and provide economic benefits.<sup>65</sup> The Filing Parties explain that this process aligns with the reliability transmission planning process, projecting congestion over the New York State bulk power transmission facilities over the Comprehensive System Planning Process's ten year planning period.

39. The Filing Parties state that, in identifying factors that may affect congestion and identifying and evaluating potential solutions, the Congestion Assessment and Resource Integration Study provides information on generic solutions that could reduce congestion and compares the costs of generic solutions to net production cost savings over the ten year planning period to determine if there is a favorable benefit-to-cost ratio to relieving congestion.<sup>66</sup> They further state that the data necessary for developing the Congestion Assessment and Resource Integration Study are identical to those obtained to complete the Reliability Needs Assessment. The Filings Parties explain that, at the conclusion of the Phase I process, NYISO prepares a draft report that discusses its assumptions, inputs, and the results of the analysis. The Filings Parties state that the report is reviewed in the NYISO stakeholder process, evaluated by the Market Monitoring Unit, and approved by the NYISO Board of Directors.<sup>67</sup>

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“[i]f [NYISO] determines that neither market-based proposals nor regulated proposals can satisfy the [r]eliability [n]eeds in a timely manner, [NYISO] will set forth its determination that a Gap Solution is necessary in the [Comprehensive Reliability Plan]. [NYISO] will also request the Responsible Transmission Owner to seek a Gap Solution. Gap Solutions may include generation, transmission, or demand side resources.” NYISO OATT, Attachment Y, § 31.2.5.10.1.

<sup>65</sup> October 11 Filing at 16.

<sup>66</sup> *Id.* at 17 (citing NYISO, NYISO Tariffs, OATT, Attachment Y, § 31.3.1.3 (2.0.0)).

<sup>67</sup> *Id.* (citing NYISO OATT, Attachment Y, § 31.3.2 and NYISO, NYISO Tariffs, MST, Attachment O (Market Monitoring Unit), § 30.4.6.8.5 (7.0.0)).

40. The Filing Parties explain that the Congestion Assessment and Resource Integration Study allows developers to propose solutions for congestion and requires NYISO to actively solicit the input of stakeholders through its stakeholder committees.<sup>68</sup> The Filing Parties assert that, to provide transparency, 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. The Filing Parties note that 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% of the designated beneficiaries determined on the basis of savings in zonal load payments or location-based marginal pricing.<sup>69</sup>

41. The Filing Parties also state that the NYISO OATT provides that “[a]ll resource types shall be considered on a comparable basis as potential solutions to the congestion identified: generation, transmission, demand response, and energy efficiency.”<sup>70</sup> In support of its proposal, they note that the Commission has determined that the Comprehensive System Planning Process procedures fully comply with the comparability principle of Order No. 890, as further discussed below.<sup>71</sup>

(c) **Compliance with Order No. 890 Principles**

42. The Filing Parties state that the Commission previously found that NYISO’s existing Comprehensive System Planning Process for local, reliability, and economic transmission planning complies with all of the Order No. 890 planning principles, and describes how its existing process already complies with the coordination;<sup>72</sup> openness;<sup>73</sup>

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<sup>68</sup> *Id.* (citing NYISO OATT, Attachment Y, § 31.3.2.1).

<sup>69</sup> *Id.* (citing NYISO, NYISO Tariffs, OATT, Attachment Y, §§ 31.5.4.3, 31.5.4.6 (2.0.0)). The Filing Parties’ proposed procedures regarding the selection of transmission solutions for inclusion in the regional transmission plan for purposes of cost allocation is discussed more fully in Part IV.B.1.c.

<sup>70</sup> *See* NYISO OATT, Attachment Y, § 31.3.1.3.3.

<sup>71</sup> October 11 Filing at 22 (referencing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 60 (2008), *order on reh’g*, 126 FERC ¶ 61,320 (2009), *reh’g denied*, 129 FERC ¶ 61,045 (2009)).

<sup>72</sup> *Id.* at 19-20 (citing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 at P 35; *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044, at P 22 (2009); *New York Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,028, at P 10 (2010)).

comparability;<sup>74</sup> transparency;<sup>75</sup> information exchange;<sup>76</sup> dispute resolution;<sup>77</sup> and economic planning principles.<sup>78</sup> The Filing Parties assert that there is no reason to reconsider these findings now. In addition, to ensure that the reliability transmission planning process complies with the comparability principle, the Filing Parties propose OATT language clarifying 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.”<sup>79</sup>

43. The Filing Parties also explain how the proposed public policy requirements transmission planning process complies with the Order No. 890 planning principles. The Filing Parties state that the proposed public policy transmission planning process contains the same provisions regarding participation and input by all interested parties in the governance process, and by the NYISO Board of Directors, and thus fully complies with the coordination principle.<sup>80</sup> The Filing Parties state that the proposed OATT revisions also contain the same provisions requiring openness and enabling participation by all interested parties throughout the process, and, therefore, fully comply with the openness principle.<sup>81</sup>

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<sup>73</sup> *Id.* at 21 n.94 (citing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 at P 41; *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044 at P 1).

<sup>74</sup> *Id.* at 22-24 (citing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 at P 60; *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044 at P 27).

<sup>75</sup> *Id.* at 24 (citing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 at P 48; *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044 at P 1).

<sup>76</sup> *Id.* at 25-26 (citing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 at P 55).

<sup>77</sup> *Id.* at 26 (citing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 at P 64; *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044 at P 1).

<sup>78</sup> *Id.* at 26-27 (citing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 at P 77).

<sup>79</sup> *Id.* at 62 (quoting NYISO OATT, Attachment Y, § 31.2.5.1).

<sup>80</sup> *Id.* at 20.

<sup>81</sup> *Id.* at 21.

44. The Filing Parties further state that the proposed public policy requirements transmission planning process provides stakeholders sufficient information to replicate the studies conducted in that process, consistent with NYISO's existing policy to protect confidential information and Critical Energy Infrastructure Information, and thus meets the transparency principle.<sup>82</sup> As for the dispute resolution principle, the Filing Parties state that section 31.1.7.4 of Attachment Y provides that: "[a]ny party participating in the [Comprehensive System Planning Process] and having a dispute arising out of the [Comprehensive System Planning Process] may seek to have its dispute resolved in accordance with NYISO's governance procedures during the course of the [Comprehensive System Planning Process]."<sup>83</sup> The Filing Parties state that actions taken by the Management Committee in NYISO's proposed public policy requirements transmission planning process, similar to the Reliability Needs Assessment, Comprehensive Reliability Plan, and Congestion Assessment and Resource Integration Study processes, are appealable to the NYISO Board of Directors and any disputes not resolved through the planning development processes will be governed by the existing dispute resolution procedures contained in the NYISO OATT.<sup>84</sup>

45. The Filing Parties also propose OATT provisions governing the proposed public policy requirements transmission planning process that they assert will ensure comparable treatment of non-transmission alternatives, as discussed more fully in Part IV.B.1.d.<sup>85</sup>

**(d) Local Transmission Planning Process**

46. The Filing Parties state that, under the local transmission planning process, the New York Transmission Owners that have a transmission district<sup>86</sup> will provide information and seek market participant input on their transmission plans through their

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<sup>82</sup> *Id.* at 24.

<sup>83</sup> *Id.* at 26 (quoting NYISO OATT, Attachment Y, § 31.1.7.4).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 42.

<sup>86</sup> Transmission district refers to the "geographic area served by the [i]nvestor-[o]wned Transmission Owners and LIPA, 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.

individual local transmission planning processes.<sup>87</sup> The Filing Parties explain that each local transmission plan requires the posting of the planning criteria and assumptions used in each New York Transmission Owner's local transmission planning process, and review and comment by market participants and other parties on those criteria and assumptions as well as the data and models used.<sup>88</sup> The Filing Parties state that NYISO facilitates this process. The Filing Parties assert that NYISO's OATT requires that each New York Transmission Owner take into consideration comments from all interested parties on the planning criteria, assumptions, data and models used and explain any modifications it makes to its local transmission plan in response to such comments. The New York Transmission Owners' local transmission plans are included in the base case of the Reliability Needs Assessment.<sup>89</sup>

**ii. Protests/Comments**

47. Exelon states it supports the Filing Parties' Order No. 1000 compliance proposal, as it represents a practical compromise among stakeholders and helps make NYISO's transmission planning process more transparent for developers and other stakeholders.<sup>90</sup>

48. AWEA believes the Filing Parties' proposed planning horizon of ten years is too short, and will likely prevent the region from evaluating transmission plans that would meet regional transmission needs more efficiently or cost-effectively than plans produced under a longer planning horizon. AWEA believes that a short planning horizon tends to bias the selection of transmission plans towards proposers of smaller, local transmission plans, such as incumbent transmission service providers, and that longer planning horizons allow greater quantities of load growth and generating resource development to be considered in the planning process. AWEA recommends that costs and benefits be calculated over the first forty years of the project's life, but that at least a minimum of twenty years should be used.<sup>91</sup>

49. IPPNY protests that the Filing Parties' proposal would allow any dispute of a New York State Department of Public Service finding regarding the identification of a transmission need driven by a public policy requirement to be "raised through a petition

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<sup>87</sup> October 11 Filing at 11-12 (referring to NYISO OATT, Attachment Y, § 31.2.1); *see* NYISO OATT, Attachment Y, §§ 31.2.1.2.4, 31.2.1.2.5, 31.2.1.3.

<sup>88</sup> *Id.* (citing NYISO OATT, Attachment Y, § 31.2.1.1.1).

<sup>89</sup> *Id.* at 12 (citing NYISO OATT, Attachment Y, § 31.2.1.2.5).

<sup>90</sup> Exelon Comments at 2-3.

<sup>91</sup> AWEA Comments at 28.

to the [New York Public Service Commission]” and resolved by a New York Public Service Commission order.<sup>92</sup> IPPNY argues that the New York Public Service Commission cannot be given authority to address these disputes.

### iii. Commission Determination

50. The Commission previously found that the Filing Parties’ regional transmission planning process satisfied each of the transmission planning principles of Order No. 890.<sup>93</sup> Therefore, the Commission’s focus in this proceeding is on the incremental changes to the Filing Parties’ regional transmission planning process developed to comply with the requirements of Order No. 1000. We find that the amendments to the regional transmission planning process proposed in the Filing Parties’ filing partially comply with the requirements of Order No. 1000 and are otherwise just and reasonable and not unduly discriminatory.<sup>94</sup>

51. With regard to IPPNY’s protest of the proposed role for the New York Public Service Commission in dispute resolution in the public policy requirements transmission planning process, we find that the proposal is consistent with the dispute resolution processes previously approved for reliability projects and therefore complies with the requirements of Order No. 1000.<sup>95</sup>

52. We disagree with AWEA that the proposed ten year planning horizon is too short and will prevent the region from evaluating transmission plans that would meet regional transmission needs more efficiently or cost-effectively than plans assessing a longer planning horizon. Order No. 1000 did not establish a minimum long-term planning

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<sup>92</sup> IPPNY Protest at 11-12.

<sup>93</sup> *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 16 (2008), *order on reh’g*, 126 FERC ¶ 61,230, *reh’g denied*, 129 FERC ¶ 61,045 (2009).

<sup>94</sup> *See infra* Part IV.B.1.d for a discussion of the Filing Parties’ compliance with the principles of Order Nos. 890 and 1000 with respect to the proposed public policy requirements transmission planning process.

<sup>95</sup> We note that Attachment Y provides that disputes directly relating to NYISO’s compliance with its tariffs that are not resolved in the internal NYISO collaborative governance appeals process or NYISO dispute resolution process, and all disputes relating to matters that fall within the exclusive jurisdiction of the Commission, shall be reviewed at the Commission pursuant to the FPA if such review is sought by any party to the dispute. *See* NYISO OATT, Attachment Y, § 31.6.1.

horizon for regional transmission planning.<sup>96</sup> We also note that a ten year planning horizon is consistent with planning horizons used to comply with the North American Electricity Reliability Corporation (NERC) transmission planning standards.<sup>97</sup> Therefore, we find that a ten year planning horizon is a reasonable timeframe for use in the regional transmission planning process.

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

53. 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.<sup>98</sup> Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.<sup>99</sup> 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.<sup>100</sup>

54. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer<sup>101</sup> must provide to the regional transmission planning process to

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<sup>96</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 157.

<sup>97</sup> *Pub. Serv. Co. of Colorado*, 142 FERC ¶ 61,206, at P 5 (2013).

<sup>98</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

<sup>99</sup> *Id.* P 149.

<sup>100</sup> *Id.* P 331.

<sup>101</sup> 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. The Commission noted in Order No. 1000 that “a merchant transmission developer assumes all financial risk for developing its transmission project and constructing the proposed transmission facilities. . .” *Id.* P 163.

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.<sup>102</sup>

55. 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 needs.<sup>103</sup> Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

**i. Filing Parties' Filing**

**(a) Regional Evaluation of Solutions Identified in the Local Transmission Planning Process**

56. The Filing Parties explain that the Comprehensive System Planning Process already produces a regional transmission plan that includes input from the New York Transmission Owners' local transmission plans. However, to ensure that NYISO and the New York Transmission Owners consider alternative transmission solutions that could meet regional transmission needs more efficiently or cost-effectively than solutions proposed by the New York Transmission Owners in their local transmission plans, the Filing Parties propose to expand the scope of the local transmission planning process to require NYISO to consider regional alternatives. The Filing Parties specify that the proposed OATT language, which governs the local transmission planning process, provides NYISO the ability and responsibility to review a New York Transmission Owner's local transmission plan and to identify any alternative solutions that may more efficiently or cost-effectively meet the transmission needs of the New York Control Area transmission planning region.<sup>104</sup>

**(b) Selection of More Efficient or Cost-Effective Solutions to be Included in the Regional Plan for the Purpose of Cost Allocation**

57. The Filing Parties state that, in the reliability transmission planning process, NYISO evaluates all proposed solutions — whether market-based solutions, alternative

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<sup>102</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

<sup>103</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>104</sup> October 11 Filing at 54 (citing NYISO OATT, Attachment Y, § 31.2.1.1.3).

regulated solutions, or the regulated backstop solution — to determine whether the proposed solution will timely meet the identified reliability needs and then sets forth the results of its evaluation in the Comprehensive Reliability Plan.<sup>105</sup> The Filing Parties state that, if market-based solutions do not timely fulfill an identified reliability transmission need or if more than one proposed solution will meet that need, NYISO will not select the solution that will be implemented.<sup>106</sup> Rather, they explain that the appropriate governmental agency or authority will select the solution that would seek the necessary local, state, and federal authorizations.<sup>107</sup> The Filing Parties propose to modify Attachment Y to emphasize that the appropriate governmental authorities, not NYISO, select among proposed solutions proposed to address reliability transmission needs. They indicate that proposed section 31.2.5.7.1 provides that “[i]f more than one regulated solution would meet the Reliability Need, [NYISO] does not determine which solution will be implemented.”<sup>108</sup>

58. The Filing Parties indicate that, in the reliability transmission planning process, the New York Public Service Commission<sup>109</sup> selects the regulated backstop solution or alternative regulated solution that would seek the necessary local, state, and federal authorizations, and the New York Power Authority and the Long Island Power Authority

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<sup>105</sup> *Id.* at 14. The Filing Parties state that NYISO posts the Comprehensive Reliability Plan to the NYISO website and submits the Comprehensive Reliability Plan to the appropriate regulatory agencies for selection. *Id.*; see NYISO OATT, Attachment Y, § 312.6.2. The Filing Parties proposal regarding NYISO’s process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation is discussed more fully below in Part IV.B.1.d (for the public policy requirements transmission planning process) and Part IV.B.2.d (for the reliability and economic transmission planning processes).

<sup>106</sup> As discussed more fully in Part IV.B.2.d, the Filing Parties explain that, for an identified reliability transmission need, NYISO’s role is to evaluate solutions proposed to address the reliability need, and, if more than one proposed solution will fulfill the need in a timely manner, NYISO will report the results of its evaluation in the Comprehensive Reliability Plan.

<sup>107</sup> October 11 Filing at 14.

<sup>108</sup> *Id.* at 14, 64 (referencing NYISO OATT, Attachment Y, § 31.2.5.7.1).

<sup>109</sup> The New York Public Service Commission is the decision-making body that resides in the New York State Department of Public Service, which is a state agency. *Id.* at 38 n.173.

select solutions to the reliability transmission needs of their customers under the New York Public Authorities Law.<sup>110</sup>

59. In support of their proposal, the Filing Parties assert that Order No. 1000 does not require NYISO to select the most efficient project; rather, Order No. 1000 requires NYISO and the New York Transmission Owners to “consider such solutions and allow for their selection in the regional transmission plan.”<sup>111</sup> In addition, the Filing Parties state that Other Developers proposing alternative regulated solutions that NYISO has determined will resolve the identified reliability need may submit these proposals to the appropriate governmental agencies or authorities for review.<sup>112</sup>

60. The Filing Parties propose OATT language providing that NYISO will post a list of all entities who have undertaken a commitment to build a project pursuant to the reliability, economic, and public policy planning processes to NYISO’s website.<sup>113</sup> In addition, they state, for reliability projects that qualify pursuant to proposed section 31.2.4.1, NYISO will include this information in the Comprehensive Reliability Plan.<sup>114</sup>

61. As previously discussed, the Filing Parties indicate that during NYISO’s economic transmission planning process, NYISO, along with market participants and other interested parties, prepares the Congestion Assessment and Resource Integration Study. Through the Congestion Assessment and Resource Integration Study, NYISO identifies factors that may produce or reduce congestion and evaluates information on generic solutions by comparing the costs of generic solutions to net production cost savings over the planning period to determine if there is a favorable benefit-to-cost ratio to relieving congestion.<sup>115</sup> Following issuance of the Congestion Assessment and Resource Integration Study, potential transmission developers that have met the entity pre-

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<sup>110</sup> *Id.* at 14.

<sup>111</sup> *Id.* at 55.

<sup>112</sup> *Id.* at 14 n.64; *see also* NYISO OATT, Attachment Y, § 31.2.5.7.1. The Filing Parties also note that the regulated backstop solution may be a transmission, generation, or demand reduction project.

<sup>113</sup> October 11 Filing at 62-63; NYISO OATT, Attachment Y, §§ 31.2.6.4, 31.3.2.5, 31.4.9.

<sup>114</sup> *Id.* at 61 (quoting NYISO OATT, Attachment Y, § 31.2.6.4).

<sup>115</sup> *Id.* at 17.

qualification criteria<sup>116</sup> are “eligible to propose a project as a solution to address specific congestion identified in the [Congestion Assessment and Resource Integration Study.]”<sup>117</sup>

62. The Filing Parties explain that a transmission project proposed by a qualified transmission developer<sup>118</sup> is eligible to be included in the regional plan for purposes of cost allocation if: (1) the benefits of the project exceed the costs, as provided by the transmission developer, over ten years from the date it is expected to enter service; (2) the project costs at least \$25 million; and (3) the project receives a positive vote from at least 80% of the designated beneficiaries.<sup>119</sup> The Filing Parties add that designated beneficiaries are determined on the basis of savings in zonal load payments or Locational Based Marginal Price. The Filing Parties state that these analyses, the identification of project beneficiaries, and the calculation of the project cost allocation, are all reviewed in the stakeholder process and incorporated in a report that is approved by the Business Issues Committee and the Management Committee and that must be approved by the NYISO Board of Directors.<sup>120</sup>

(c) **Merchant Transmission Developers**

63. The Filing Parties state that the Comprehensive System Planning Process requires merchant transmission developers to provide information and data necessary for NYISO to assess the potential reliability and operational impacts of the merchant transmission developer’s proposed transmission facility on other systems in the region. In particular, the Filing Parties note that Attachment Y requires merchant transmission developers to provide NYISO with “data necessary for the development of the [Reliability Needs Assessments],” which includes “proposals for merchant transmission facilities.”<sup>121</sup> Additionally, the Filing Parties state that any merchant transmission project that seeks to interconnect to the NYISO transmission planning region must comply with NYISO’s

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<sup>116</sup> The Filing Parties’ proposed pre-qualification criteria for entities seeking to become eligible to propose to develop a project are further discussed in Part IV.B.2.b below.

<sup>117</sup> NYISO OATT, Attachment Y, § 31.3.2.4.1.1.

<sup>118</sup> The Filing Parties’ proposed entity qualification criteria for entities seeking to offer a regulated economic transmission project to be included in the regional plan for purposes of cost allocation are further discussed in Part IV.B.2.b below.

<sup>119</sup> NYISO OATT, Attachment Y, § 31.5.4.3.

<sup>120</sup> October 11 Filing at 17 (citing NYISO OATT, Attachment Y, § 31.3.2).

<sup>121</sup> *Id.* at 29 (citing NYISO OATT, Attachment Y, § 31.2.2.4.1).

interconnection procedures that require merchant transmission developers to submit information and complete studies that assess potential reliability and operational impacts of interconnecting facilities.<sup>122</sup>

**ii. Protests/Comments**

64. Several protestors argue that NYISO's transmission planning process does not result in a regional transmission plan that reflects a determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's transmission needs because NYISO defers the selection decision to the New York Public Service Commission or other New York State agencies.<sup>123</sup> Protestors argue that NYISO must decide which transmission facilities are selected in the regional transmission plan.<sup>124</sup> Independent Transmission Developers assert that the Comprehensive System Planning Process simply lists the projects that can meet identified reliability transmission needs, deferring the selection decision to the New York Public Service Commission, or other New York State agencies, whose decision is not limited to the more efficient or cost-effective project.<sup>125</sup> Independent Transmission Developers point out that NYISO does not evaluate whether to select a proposed transmission facility in the regional plan for purposes of cost allocation, "but instead includes the incumbent transmission owner's project in the plan until, if ever, the New York Public Service Commission selects a different project."<sup>126</sup> In addition, the Independent Transmission Developers state that the Filing Parties make no attempt to explain how the New York Public Service Commission process complies with Order No. 1000's requirement to establish a not unduly discriminatory process that results in the more efficient or cost-effective project being selected in the regional transmission plan for purposes of cost allocation.

65. IPPNY states that Order No. 1000 contemplates a role for state regulators, but that allowing the New York Public Service Commission to both select projects and mandate their implementation is well beyond the scope of the Commission's specific directives.

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<sup>122</sup> *Id.* at 29-30 (referencing NYISO OATT, Attachment S, § 25.1.1).

<sup>123</sup> Independent Transmission Developers Protest at 9; IPPNY at 18-19; E.ON Climate and Renewables Comments at 3.

<sup>124</sup> PSEG Companies Comments at 8; E.ON Climate and Renewables Comments at 3.

<sup>125</sup> Independent Transmission Developers Protest at 10.

<sup>126</sup> *Id.* at 18.

66. PSEG Companies assert that NYISO's regional transmission planning process does not comply with Order No. 1000 because it does not ensure the selection of the most efficient or cost effective transmission project. PSEG Companies assert that the Filing Parties' proposal does not explain how NYISO can revise its regional transmission plan to include a regional project that NYISO concludes is better than a project proposed by a Transmission Owner in the Transmission Owner's local transmission plan. In particular, PSEG Companies assert that the proposal does not require a New York Transmission Owner to adopt any changes to its local transmission plan that NYISO recommends.<sup>127</sup>

67. Independent Transmission Developers request that the Commission reject the Filing Parties' compliance filing and require NYISO to evaluate and select among those projects submitted for inclusion in the regional transmission plan. Independent Transmission Developers propose specific edits to the Filing Parties' OATT revisions to require NYISO to evaluate the project proposals and select a project for inclusion in the Comprehensive Reliability Plan as the more efficient and cost-effective solution. Similarly, IPPNY argues that the Commission should reject these aspects of the compliance filing as beyond the scope of Order No. 1000 and require NYISO to put them properly before the stakeholder working groups.<sup>128</sup>

68. AWEA states that placing transmission plans into artificial categories (reliability, economic, and public policy) ignores the fact that the most cost-effective transmission projects are typically those that serve multiple purposes simultaneously. AWEA argues that using proposed planning categories will tend to produce a result that is sub-optimal for cost-effectiveness and efficiency, and will also tend to bias the planning process against larger transmission projects, resulting in undue discrimination. AWEA requests that the Commission require the proposal to be revised to adopt an integrated planning process for transmission needs.<sup>129</sup>

### iii. Answer

69. Addressing Independent Transmission Developers' assertion that NYISO's regional transmission plan will not result in the selection of "the most efficient or cost effective solution," the Filing Parties again assert that Order No. 1000 requires NYISO to evaluate "alternative transmission solutions that might meet the needs of the . . . region more efficiently or cost-effectively than solutions identified by individual public utility

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<sup>127</sup> PSEG Companies Comments at 7-8.

<sup>128</sup> IPPNY Protest at 32.

<sup>129</sup> AWEA Comments at 19-20.

transmission providers,” but does not require transmission providers to “select” the “most efficient or effective” solution.<sup>130</sup>

70. The New York Public Service Commission argues that Independent Transmission Developers incorrectly assume that a project should be selected in the regional transmission plan for purposes of cost allocation if a nonincumbent transmission developer demonstrates that its proposal is the most efficient or cost-effective. The New York Public Service Commission asserts that focusing solely on this one input would inappropriately ignore the broader public policy context of a particular project, and a project that does demonstrate that it is the most efficient or cost-effective option should not necessarily be selected in a regional transmission plan for purposes of cost allocation.

71. Regarding selection of the transmission solutions to be included in the regional transmission plan for purposes of cost allocation, the Filing Parties contend that Order No. 1000 does not require NYISO to determine which solution will be implemented. They assert that it is appropriate for New York State agencies to make the selection decision, since the selection of a regulated reliability project is not based simply on the developer’s projected costs, but on other factors including the developer’s experience, environmental impacts and benefits, the likelihood of obtaining the necessary property rights, and similar issues.<sup>131</sup> The Filing Parties argue that NYISO’s role in the transmission planning process is “to provide for participation by all interested parties, and to perform the technical evaluations necessary to determining whether a proposed project will meet the identified needs in a cost effective and efficient manner.”<sup>132</sup>

72. The Filing Parties state that Independent Transmission Developers’ focus on the provision of regulated solutions to a reliability need ignores the market-based planning framework that is the foundation of NYISO’s planning processes. They state that NYISO determines that a regulated reliability solution is needed only if an acceptable market-based solution is not available. The Filing Parties assert that these provisions are not discriminatory. The Filing Parties further state that proponents of alternative regulated solutions may submit their projects for review during the same timeframe that the Responsible Transmission Owner submits its solution.<sup>133</sup>

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<sup>130</sup> Filing Parties Answer at 40-41 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

<sup>131</sup> *Id.* at 38-39.

<sup>132</sup> *Id.* at 21.

<sup>133</sup> *Id.* at 36-37.

73. The New York Public Service Commission also asserts that its authority includes the power to balance competing public policy needs and to determine not only what projects should move forward, but how they should be prioritized in light of other public investments. The New York Public Service Commission argues that requiring NYISO to select which projects should go forward to satisfy public policy needs, to the exclusion of other projects, would create significant jurisdictional issues and raise the possibility of conflict between the Commission and state regulatory authorities.<sup>134</sup>

74. In response to AWEA's request that the Commission require the Filing Parties to adopt an integrated planning process for transmission needs, the Filing Parties note that Order No. 1000 states that "nothing in this Final Rule prohibits the development of a separate class of transmission projects" and that "public utility transmission providers might comply with this Final Rule by implementing procedures to consider transmission needs driven by [p]ublic [p]olicy [r]equirements separately from transmission addressing reliability needs or economic considerations." The Filing Parties state that, even if Order No. 1000 *might* allow transmission providers to develop a single planning process, protestors may not argue that such a process must be established in New York.<sup>135</sup>

#### iv. Commission Determination

75. We find that Comprehensive System Planning Process specified in the Filing Parties' compliance proposal partially complies with the requirements of Order No. 1000. We find that the Filing Parties' proposal regarding the economic transmission planning process, which includes a process for selecting in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions, complies with Order No. 1000.<sup>136</sup> In contrast, we find that the Filing Parties' proposed reliability transmission planning process does not comply with Order No. 1000's requirement regarding selection in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions.

76. With respect to NYISO's economic transmission planning process, we find that it includes a process for selecting in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective transmission solutions from among competing projects that complies with Order No. 1000. Order No. 1000 expressly found

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<sup>134</sup> New York Public Service Commission Answer at 6.

<sup>135</sup> Filing Parties Answer at 33.

<sup>136</sup> See Part IV.B.1.d (discussing the Filing Parties' proposal for selecting, in the public policy requirements transmission planning process, more efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation).

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.<sup>137</sup> The NYISO OATT provides such a voting mechanism for economic projects that is applied to determine which economic transmission projects will be selected in the regional transmission plan for purposes of cost allocation.

77. However, we find that the Filing Parties' proposed reliability transmission planning process does 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. According to the proposal, in the reliability transmission planning process, NYISO identifies regional transmission needs and evaluates potential solutions to determine those that timely meet the reliability need. However, if market-based solutions do not timely fulfill an identified reliability transmission need or if more than one proposed solution will meet that need, NYISO will not select the solution that, in its view, efficiently and cost-effectively satisfies the identified transmission need. Rather than select transmission solutions in the regional transmission plan for purposes of cost allocation, NYISO only reports on whether proposed projects will meet identified reliability needs, and directs the Responsible Transmission Owner to initiate a proceeding at the New York Public Service Commission. Thus, NYISO does not determine which transmission facility is selected in the regional transmission plan for purposes of cost allocation and, instead, relies on the New York Public Service Commission for that determination. We find that this proposal does not comply with the requirement that NYISO 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 planning process.

78. 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.<sup>138</sup> For example, Order No. 1000 provides, "[w]hether or not *public utility transmission providers* within a 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 an efficient or cost-effective solution to their needs."<sup>139</sup> Similarly, Order No. 1000-A explains, "Order No. 1000 . . . requires *public utility transmission providers* in a region to adopt transparent and not

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<sup>137</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 689.

<sup>138</sup> *Id.* PP 80, 148-149.

<sup>139</sup> *Id.* P 331 (emphasis added).

unduly discriminatory criteria for selecting a new transmission project in a regional transmission plan for purposes of cost allocation.”<sup>140</sup> While the Filing Parties’ proposal requires NYISO to evaluate proposed transmission solutions to identified reliability transmission needs and report the results of its evaluation in the Comprehensive Reliability Plan, the proposal does not provide that NYISO will select the more efficient or cost-effective solutions in the regional transmission plan for purposes of cost allocation.<sup>141</sup>

79. Although the Commission requires that NYISO select those transmission facilities that are in the regional transmission plan for purposes of cost allocation, we agree with the Filing Parties and the New York Public Service Commission that, to the extent state regulatory authorities want to participate, they must be able to participate. In Order No. 1000, the Commission reiterated that “states have a critical role with respect to transmission planning” and “strongly encourage[d] states to participate actively not only in transmission planning processes in general, but specifically in the identification of transmission needs driven by Public Policy Requirements.”<sup>142</sup> The role of state regulatory authorities within the context of a public utility transmission provider’s Order No. 1000 compliance must be to provide guidance and recommendations and must be defined in the NYISO OATT. For instance, a state entity or regional state committee can consult, collaborate, inform, and even recommend a transmission project for selection in the regional transmission plan for purposes of cost allocation, but the public utility transmission providers in a transmission planning region must make the transmission project selection decision, not the state entity or regional state committee.

80. In addition the Filing Parties’ proposal includes a new section 31.2.1.1.3 in Attachment Y, which requires that NYISO will review a New York 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<sup>143</sup> of the New York Control Area region more efficiently or cost-effectively than solutions proposed in the Transmission Owners’ local transmission plans. NYISO will also report the results of its evaluation in the relevant transmission planning reports,

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<sup>140</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 455 (emphasis added).

<sup>141</sup> See *infra* P 241.

<sup>142</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 688.

<sup>143</sup> The Filing Parties’ proposal to comply with Order No. 1000’s requirements with respect to public policy requirements is discussed more fully below in Part IV. B.1.d.

which are submitted to stakeholders for review and comment.<sup>144</sup> We find that this process allows NYISO to 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 providers in their local transmission planning processes.

81. Accordingly, we direct the Filing Parties to file, within 120 days of the date of this order, a further compliance filing with 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, as part of the reliability transmission planning 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.

82. Order No. 1000 requires a transmission developer proposing a merchant transmission project to “provide adequate information and data to allow 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.”<sup>145</sup> Order No. 1000 further states that the public utility transmission providers in each transmission planning region, in the first instance, should propose what information would be required.<sup>146</sup> NYISO proposes to continue its existing practice of obtaining adequate information and data to assess the potential reliability and operational impacts of a merchant transmission project by permitting NYISO to request that merchant transmission developers provide data necessary for the development of the Reliability Needs Assessment and comply with the interconnection and other procedures in Attachments S, X, or Z of NYISO’s OATT.<sup>147</sup> We find that this practice complies with the merchant information requirement of Order No. 1000.

83. With regard to AWEA’s request that the Commission require NYISO to adopt an integrated planning process for transmission needs, we note that Order No. 1000 gave

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<sup>144</sup> NYISO OATT, Attachment Y, §§ 31.2.1.1.3, 31.2.6.1, 31.3.1.2, 31.4.6.

<sup>145</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 164.

<sup>146</sup> *Id.*

<sup>147</sup> See October 11 Filing at 29-30 (citing NYISO OATT, Attachment Y, § 31.2.2.4.1 and Attachment S, § 25.1.1).

regions the flexibility to craft their own processes consistent with the order's requirements. Moreover, Order No. 1000 recognized that it may be appropriate to have different cost allocation methods for transmission facilities that are planned for different purposes or planned pursuant to different regional transmission planning processes.<sup>148</sup> While we encourage NYISO and its stakeholders to continue to explore options to improve its regional transmission planning and cost allocation processes, we find that the Filing Parties' approach of having separate analysis of reliability, economics, and public policy projects is consistent with Order No. 1000.

**d. Consideration of Transmission Needs Driven by Public Policy Requirements**

84. Order No. 1000 requires public utility transmission providers to amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.<sup>149</sup> The Commission clarified in Order No. 1000-A that Order No. 1000 requires that transmission needs driven by Public Policy Requirements be considered just as transmission needs driven by reliability or economic concerns are also considered.<sup>150</sup> 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 the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).<sup>151</sup> As explained further below, Order No. 1000 specifies that the consideration of transmission needs driven by Public Policy Requirements means: (1) the identification of transmission needs driven by Public Policy Requirements and (2) the evaluation of potential solutions to meet those identified needs.<sup>152</sup>

85. To comply with the requirement to identify transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with their stakeholders, must establish procedures in their OATTs to identify at the local and

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<sup>148</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 687.

<sup>149</sup> *Id.* P 203.

<sup>150</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 204, 206, 208-211, 317-319.

<sup>151</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 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.

<sup>152</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

regional level those transmission needs driven by Public Policy Requirements for which potential transmission solutions will be evaluated.<sup>153</sup> The process for identifying transmission needs driven by Public Policy Requirements must allow stakeholders, including, but not limited to, those responsible for complying with the Public Policy Requirements at issue and the developers of potential transmission facilities that are needed to comply with one or more Public Policy Requirements, an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements.<sup>154</sup> Public utility transmission providers must explain in their compliance filings how the procedures adopted give all stakeholders a meaningful opportunity to submit what the stakeholders believe are transmission needs driven by Public Policy Requirements.<sup>155</sup>

86. In addition, public utility transmission providers, in consultation with stakeholders, must establish a just and reasonable and not unduly discriminatory process through which public utility transmission providers will identify, out of this larger set of needs, those needs for which transmission solutions will be evaluated.<sup>156</sup> Public utility transmission providers must explain in their compliance filings how their open and transparent transmission planning process determines whether to move forward regarding transmission needs driven by Public Policy Requirements.<sup>157</sup> In addition, each public utility transmission provider must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that have been identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) how other transmission needs driven by Public Policy Requirements introduced by stakeholders were considered during the identification stage and why they were not selected for further evaluation.<sup>158</sup>

87. To comply with the requirement to evaluate potential solutions to meet the identified transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with stakeholders, must also establish procedures

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<sup>153</sup> *Id.* PP 206, 207.

<sup>154</sup> *Id.* PP 207, 208.

<sup>155</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

<sup>156</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

<sup>157</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

<sup>158</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

in their OATTs to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements.<sup>159</sup> These procedures must include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by Public Policy Requirements.<sup>160</sup> Stakeholders must be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.<sup>161</sup> In addition, the Commission and stakeholders must be able to review the record that is created by the process to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.<sup>162</sup> The Commission will review the proposed evaluation procedures to ensure they comply with the objective of meeting the identified transmission needs more efficiently or cost-effectively.<sup>163</sup>

88. Public utility transmission providers must amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.<sup>164</sup> There are no restrictions on the type or number of Public Policy Requirements to be considered as long as any such requirements arise from local, state, or federal laws or regulations that drive transmission needs and as long as the requirements of the procedures required in Order No. 1000 are met.<sup>165</sup> In addition, Order No. 1000 does not preclude any public utility transmission provider from considering in its transmission planning process transmission needs driven by additional public policy objectives not specifically required by local, state or federal laws or regulations. However, Order No. 1000 creates no obligation for any public utility transmission provider or its transmission planning processes to consider transmission needs driven by a public policy objective that is not

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<sup>159</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211; *see also id.* n.191 (“This requirement is consistent with the existing requirements of Order Nos. 890 and 890-A which permit sponsors of transmission and non-transmission solutions to propose alternatives to identified needs.”).

<sup>160</sup> *Id.* P 211.

<sup>161</sup> *Id.* P 220.

<sup>162</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

<sup>163</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

<sup>164</sup> *Id.* P 203.

<sup>165</sup> *Id.* P 214; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

specifically required by local, state or federal laws or regulations.<sup>166</sup> In addition, public utility transmission providers are not required to consider Public Policy Requirements themselves as part of the transmission planning process.<sup>167</sup>

**i. Regional Transmission Planning Process**

**(a) Filing Parties' Filing**

89. The Filing Parties propose to add a new public policy requirements transmission planning process to the NYISO OATT, which, they state, provides for the identification, evaluation, and selection of transmission solutions to address transmission needs driven by public policy requirements.<sup>168</sup>

90. First, the Filing Parties propose to add the term “Public Policy Requirements” to Attachment Y, which they define 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,<sup>169</sup> or any successor statute, that drives the need for expansion or upgrades to the New York State Bulk Power Transmission Facilities.”<sup>170</sup> They assert that this definition enables NYISO to address and evaluate transmission solutions for any public policy requirement identified in New York State by law or regulation, and as such, complies with Order No. 1000.<sup>171</sup> Specifically, the Filing Parties explain that the term “Public Policy Requirement” includes New York Public Service Commission orders adopting rules or regulations pursuant to the State Administrative Procedure Act because such orders constitute state rules or regulations with the force of law in New York State.<sup>172</sup> They

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<sup>166</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

<sup>167</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 204.

<sup>168</sup> October 11 Filing at 38-39. The Filing Parties state that the new public policy requirements transmission planning process is set forth in section 31.4 of Attachment Y. *See* NYISO OATT, Attachment Y, § 31.4.

<sup>169</sup> *See* N.Y. Admin. Procedure Act Law § 102(2)(a)(i)-(ii) (McKinney 2009).

<sup>170</sup> *See* NYISO OATT, Attachment Y, § 31.1.1.

<sup>171</sup> October 11 Filing at 40.

<sup>172</sup> The Filing Parties state that the State Administrative Procedure Act provides interested parties and affected entities notice and an opportunity to be heard on consideration of potential public policy requirements. *Id.* at 39.

note, however, that the defined term “Public Policy Requirement” does not include a public policy requirement defined in a New York Public Service Commission order issued in an adjudicatory or licensing permitting proceeding, ensuring that public policy requirements are only identified pursuant to a rule of general application intended to establish statewide policy.<sup>173</sup>

91. The Filing Parties explain that because the New York Public Service Commission approves the siting of all transmission lines over a certain size threshold in New York State and its decisions include determinations that such facilities are needed, are in the public interest, and will be compatible with the environment, the New York Public Service Commission will be the primary source of public policy requirements that drive the need for transmission in New York State.

92. The Filing Parties state that the public policy requirements transmission planning process will be conducted in a two-year cycle in parallel with NYISO’s reliability and economic transmission planning processes.<sup>174</sup> As proposed, the public policy requirements transmission planning process has two steps: (1) identification of transmission needs driven by public policy requirements that NYISO should evaluate and (2) evaluation of transmission solutions proposed to address those transmission needs driven by public policy requirements identified for evaluation.

93. With respect to the identification of transmission needs driven by public policy requirements, the Filing Parties assert that all stakeholders have an opportunity to provide input and offer proposals regarding the transmission needs they believe should be identified. They state that NYISO will provide 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.<sup>175</sup> The Filing

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<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 41. Specifically, they state that each public policy requirements planning cycle will begin following the posting of the Comprehensive Reliability Plan report in each two-year reliability and economic planning cycle. In addition, they note that if the public policy requirements planning process does not identify any public policy requirements driving transmission needs, the process will be considered complete until the next two-year reliability and economic planning cycle. They explain, however, that in the interim, the New York Public Service Commission may request that NYISO analyze transmission needs driven by public policy requirements. *Id.* at 38, 41.

<sup>175</sup> *Id.* at 41 (referring to NYISO OATT, Attachment Y, § 31.4.2).

Parties state that each proposal must identify the public policy requirement driving the transmission need and describe how a transmission solution will fulfill that need.<sup>176</sup>

94. At the conclusion of the 60-day period, the Filing Parties state that NYISO will post all submittals on its website and submit them to the New York State Department of Public Service and the New York Public Service Commission. They further state that, with input from interested parties and NYISO, the New York State Department of Public Service will review the proposed transmission needs and identify the transmission needs for which transmission solutions should be requested and evaluated.<sup>177</sup> Regarding the process to identify those transmission needs for which transmission solutions will be requested and evaluated, the Filing Parties propose that NYISO's OATT provide:

[t]he [New York State Department of Public Service] will develop procedures to govern the process by which it will review proposed transmission need(s), which procedures shall ensure that such process is open and transparent, provides [NYISO] and interested parties a meaningful opportunity to participate in such process and provide input regarding the [New York State Department of Public Service's] considerations, and results in the development of a written determination as required by law, inclusive of the input provided by [NYISO] and interested parties.<sup>178</sup>

95. In addition, the Filing Parties note that 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). Further, the Filing Parties provide that if the New York State Department of Public Service so identifies a transmission need driven by public policy requirements, the transmission need must be posted to NYISO's

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 42 (referring to NYISO OATT, Attachment Y, § 31.4.2.1).

<sup>178</sup> NYISO OATT, Attachment Y, § 31.4.2.1. The Filing Parties note that, as of the date of the compliance filing, the New York Department of Public Service had not developed procedures establishing additional details of the above-mentioned process for identifying transmission needs driven by public policy requirements. However, the Filing Parties state that the Chairman of the New York Public Service Commission has provided a letter indicating that it intends to initiate a proceeding to establish those procedures. October 11 Filing at 43 n.191.

website and the posting must provide NYISO and interested parties an opportunity to provide input to the New York State Department of Public Service regarding its proposed transmission needs.<sup>179</sup>

96. The Filing Parties state that the New York State Department of Public Service must issue a written statement identifying the relevant public policy requirements driving transmission needs, including an explanation of why the New York State Department of Public Service has identified the transmission needs driven by public policy requirements for which transmission solutions will be evaluated by NYISO and why transmission solutions to other suggested transmission needs should not be evaluated.<sup>180</sup> They add that any New York State Department of Public Service-identified transmission needs must be posted before the New York State Department of Public Service issues this required explanation.<sup>181</sup> The Filing Parties propose to require NYISO, under its OATT, to post the written explanation on the NYISO website.<sup>182</sup> The Filing Parties state that any disputes concerning any New York State Department of Public Service determination as to whether solutions should be evaluated for a proposed transmission need driven by public policy requirements can be raised through a petition to the New York Public Service Commission, or the New York Public Service Commission may on its own motion initiate a proceeding concerning such a needs. The Filing Parties state that NYISO must post information regarding such disputes on its website.<sup>183</sup>

97. With respect to the evaluation of transmission solutions proposed to address the transmission needs driven by public policy requirements identified for evaluation, the Filing Parties state that NYISO will request and evaluate transmission solutions to transmission needs driven by public policy requirements identified by the New York

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<sup>179</sup> *Id.* at 42.

<sup>180</sup> NYISO OATT, Attachment Y, § 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.”

<sup>181</sup> October 11 Filing at 42.

<sup>182</sup> NYISO OATT, Attachment Y, § 31.4.2.1.

<sup>183</sup> October 11 Filing at 43 (referring to NYISO OATT, Attachment Y, § 31.4.2.2).

State Department of Public Service.<sup>184</sup> They explain that, after posting the transmission needs driven by public policy requirements identified for evaluation by the New York State Department of Public Service, NYISO will provide a 60-day period during which both Transmission Owners and Other Developers<sup>185</sup> may propose specific transmission solutions to address such transmission needs.<sup>186</sup> They add that, to ensure that at least one solution is proposed for an identified need, the New York State Department of Public Service or the New York Public Service Commission may request the appropriate Transmission Owner or Transmission Owners propose a solution.<sup>187</sup>

98. The Filing Parties state that NYISO will evaluate the proposed solutions with stakeholder input and utilizing the resources and modeling capabilities available, including its existing reliability, economic, and interconnection planning process tools, databases, and models. Under the proposed revisions to NYISO's OATT, tools used in the planning process that may be used in the calculation include 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.<sup>188</sup> They state that NYISO will identify the benefits, costs, and market-impacts of proposed solutions using the following type of metrics that NYISO determines in consultation with stakeholders: change in production costs; locational based marginal pricing; losses; emissions; installed capacity market; transmission congestion contracts; congestion; impact on transfer limits; and deliverability.<sup>189</sup> They indicate that NYISO also will use criteria that the New York State Department of Public Service or the New York Public Service Commission provide, where feasible, as well as any analytical methodology identified by the New York State

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<sup>184</sup> *Id.*

<sup>185</sup> As previously noted, according to NYISO's OATT, Other Developers include those parties or entities sponsoring or proposing to sponsor transmission solutions who are not Transmission Owners. NYISO OATT, Attachment Y, § 31.1.1.

<sup>186</sup> NYISO OATT, Attachment Y, § 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 Filing at 43.

<sup>187</sup> *Id.* at 44; *see* NYISO OATT, Attachment Y, § 31.4.3.3.

<sup>188</sup> NYISO OATT, Attachment Y, § 31.4.4.

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

Department of Public Service or the New York Public Service Commission.<sup>190</sup> According to NYISO's OATT, NYISO's evaluation will compare the costs and benefits of the proposed transmission solutions, and impacts of the proposed transmission solutions on NYISO-Administered markets.

99. In addition, the Filing Parties state that NYISO will prepare a report that will identify the assumptions, inputs, and methodologies that NYISO used to evaluate the transmission solutions proposed to address the identified transmission needs driven by public policy requirements and will include the results of NYISO's analyses.<sup>191</sup> They explain that stakeholders will have the opportunity to review the report through the "appropriate stakeholder working groups."<sup>192</sup> Moreover, the Filing Parties state that the report will be forwarded to the Market Monitoring Unit for review and consideration of how the proposed projects could affect NYISO's wholesale markets.<sup>193</sup>

100. The Filing Parties assert that the proposed process fully complies with Order No. 1000, because it carefully balances the expertise, ability, and authority of both NYISO and the New York Public Service Commission.<sup>194</sup> They argue that the New York Public Service Commission, "as the agency responsible for the development of energy policies under New York State law," is the appropriate entity to identify transmission needs and select among proposed solutions.<sup>195</sup> Further, they argue that the proposal is "consistent with the 'important and unique role' that the Commission found state regulators play in the transmission planning process."<sup>196</sup> In addition, they explain that NYISO's role in the transmission planning process is appropriately defined, because NYISO is in the best position to analyze needs and coordinate with stakeholders.<sup>197</sup>

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<sup>190</sup> October 11 Filing at 44.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* (referencing NYISO OATT, Attachment Y, § 31.4.7 and NYISO MST, Attachment O, § 30.4.6.8.5).

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 45 (quoting Order No. 1000-A, 139 FERC ¶ 61,132 at P 337).

<sup>197</sup> *Id.*

101. The Filing Parties propose specific OATT provisions that they assert will ensure comparable treatment of non-transmission alternatives in the public policy requirements transmission planning process.<sup>198</sup> The Filing Parties explain that the New York State Department of Public Service may request that NYISO evaluate alternative options to address transmission needs driven by public policy requirements.<sup>199</sup> Specifically, they propose to add to NYISO's OATT the following: "[t]he [New York State Department of Public Service] may also request that [NYISO], pursuant to [s]ection 3.8.1 of the [NYISO] OATT, conduct an evaluation of alternative options to address the transmission needs."<sup>200</sup> Further, they indicate, section 3.8.1 provides "[a]t the request of the [New York Public Service Commission], [NYISO] shall, within its available resources and modeling capabilities, evaluate options, and develop associated cost estimates, to address potential [r]eliability [n]eeds, congestion, or transmission needs driven by [p]ublic [p]olicy [r]equirements identified by the [New York Public Service Commission]."<sup>201</sup> The Filing Parties propose OATT changes that will give priority to any requests by the New York Public Service Commission to evaluate transmission reinforcement options, and non-transmission options, as part of the public policy requirements transmission planning process.<sup>202</sup> The Filing Parties state they also propose OATT revisions to provide NYISO the ability to conduct an analysis of non-transmission alternatives.<sup>203</sup> They assert that this provision will ensure comparable treatment of non-transmission alternatives.<sup>204</sup>

**(b) Protests/Comments**

**(1) Definition of Public Policy Requirements**

102. Multiple Intervenors argue that the compliance filing proposes to broaden the Commission's definition of public policy requirements to include certain orders issued by

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<sup>198</sup> *Id.* at 42.

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

<sup>200</sup> NYISO OATT, Attachment Y § 31.4.2.1.

<sup>201</sup> NYISO OATT, Attachment Y, § 3.8.1 (Development of Transmission Reinforcement Options) (1.0.0).

<sup>202</sup> NYISO OATT, Attachment Y, § 3.10.

<sup>203</sup> *See* NYISO OATT, Attachment Y § 3.8.1.

<sup>204</sup> October 11 Filing at 42.

the New York Public Service Commission, which exceeds the minimum compliance requirements of Order No. 1000 and amounts to a discretionary decision by the Filing Parties. Multiple Intervenors assert that NYISO should seek to limit the scope of its definition of public policy requirements to only the minimum requirements of Order No. 1000 while leaving consideration of additional, discretionary proposals to its normal governance process. To do otherwise, Multiple Intervenors contend, would subvert NYISO's shared governance process.<sup>205</sup>

103. Similarly, IPPNY states that by expanding the definition of public policy requirements beyond the definition established in Order No. 1000 to include the orders of the New York Public Service Commission, the Filing Parties contradict the limited scope of public policy requirements as defined in Order No. 1000 without offering a reasonable basis for doing so. IPPNY contends that the proposed definition of public policy requirements would allow the New York Public Service Commission, *inter alia*, to order the development of new transmission for any reason and allocate the costs of such transmission to all customers in New York regardless of benefit under a Commission jurisdictional OATT, a role that IPPNY asserts that the New York Public Service Commission should not be given. Thus, IPPNY supports a definition of public policy requirements that is limited to federal and state laws and regulations that drive transmission needs and requests that the Commission reject the Filing Parties' more expansive definition. Alternatively, IPPNY states that NYISO's proposed definition exceeds the scope of Order No. 1000 and therefore must be rejected because it was not adopted in accordance with NYISO's governance procedures that are necessary for section 205 filings under the FPA. IPPNY contends that any further provisions must be introduced, fully developed, and voted on in the stakeholder process.<sup>206</sup>

104. In contrast, AWEA agrees with the Filing Parties that including New York Public Service Commission orders in the definition of public policy requirements is appropriate because such an order is a state regulation under Order No. 1000. AWEA contends that it would not be reasonable to exclude from the definition of a public policy requirement those orders issued by the agency with the primary responsibility for the development of energy-related public policy in New York State. However, AWEA argues that NYISO's definition of public policy requirements should be revised to include the consideration of laws and regulations enacted by local governments. Similarly, while Public Interest Organizations state their support for the inclusion of New York Public Service Commission orders in the definition of public policy requirements, they also contend that the proposed definition does not include municipal or county laws and regulations.<sup>207</sup>

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<sup>205</sup> Multiple Intervenors Protest at 40.

<sup>206</sup> IPPNY Protest at 15-16, 31-32.

<sup>207</sup> Public Interest Organizations Comments at 8-9.

Moreover, AWEA states that legal or regulatory requirements or standards affecting transmission development that take effect in future years should be included in the transmission planning process.<sup>208</sup>

105. Finally, Public Interest Organizations protest that the Filing Parties' proposed definition of public policy requirements restricts the term to those public policy requirements that actually drive transmission system needs, rather than allowing the needs identification process to determine which public policy requirements drive transmission system needs. They assert that the proposed definition "puts the cart before the horse by restricting [public policy requirements] to those [public policy requirements] that actually drive system needs" and, thus, "could be interpreted to short-circuit the needs identification process."<sup>209</sup> Specifically, by defining public policy requirements as those "that drive[] the need for expansion or upgrades to the New York State Bulk Power Transmission Facilities," Public Interest Organizations argue that the proposed definition fails to account for public policy requirements that could eliminate the need to expand the transmission system, such as local, state and federal energy efficiency standards or public policy requirements to reduce load and/or expand other demand side resources.<sup>210</sup> Public Interest Organizations urge the Commission to require NYISO to propose a definition of public policy requirements that does not include the limiting phrase "that drives the need for expansion or upgrades to the New York State Bulk Power Transmission Facilities" or assume the existence of a determination of impacts of the public policy requirements.<sup>211</sup>

(2) **Including Consideration of  
Transmission Needs Driven by Public  
Policy Requirements in the Regional  
Transmission Planning Process**

106. The New York Public Service Commission supports the Filing Parties' proposal and states that the compliance filing responds to the Commission's directive to incorporate into the OATT a transmission planning process for public policy purposes that affords an opportunity for any stakeholder to provide input in identifying such transmission needs.<sup>212</sup> The New York Public Service Commission states that the

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<sup>208</sup> AWEA Comments at 7-8.

<sup>209</sup> Public Interest Organizations Comments at 6-7.

<sup>210</sup> *Id.* at 6-8.

<sup>211</sup> *Id.* at 7.

<sup>212</sup> New York Public Service Commission Comments at 3.

compliance filing answers the Commission's call for the active participation of state regulators by establishing a mechanism whereby New York State Department of Public Service staff or, upon appeal the New York Public Service Commission, will identify those transmission needs driven by public policy requirements that warrant evaluation by NYISO.

107. Many commenters protest the Filing Parties' proposal to delegate to the New York Public Service Commission and the New York State Department of Public Service significant authority to identify those transmission needs driven by public policy requirements, particularly those transmission needs for which solutions will be evaluated. IPPNY protests that NYISO's proposal not only deprives NYISO of discretion in determining the most cost-effective solution to a public policy-driven need, but also directly contradicts the Commission's findings that Order No. 1000 does not mandate fulfillment of public policy requirements-driven transmission needs.<sup>213</sup> AWEA protests that the Filing Parties' proposal to defer to the New York Public Service Commission and the New York State Department of Public Service the identification of transmission needs driven by public policy, the development of study parameters for public policy-driven projects, and the identification of benefits associated with public policy-driven projects strips NYISO of any meaningful independence and is inconsistent with the requirements of Order No. 1000.<sup>214</sup>

108. While recognizing that state regulators have an important role in the regional transmission planning process, Public Interest Organizations argue that NYISO's proposal will result in NYISO losing control over the process, including its ability to ensure other stakeholders may participate in a meaningful way.<sup>215</sup> More specifically, Public Interest Organizations state that NYISO, by shifting its responsibility regarding the identification of public policy requirements to the New York State Department of Public Service and the New York Public Service Commission, is in violation of the Administrative Procedures Act.<sup>216</sup> Public Interest Organizations argue that NYISO cannot limit the scope of public policy requirements-driven transmission needs to those selected by a non-jurisdictional entity any more than NYISO could shift the responsibility of identifying reliability or economic needs to another entity.<sup>217</sup> Public Interest

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<sup>213</sup> IPPNY Protest at 18.

<sup>214</sup> AWEA Comments at 13.

<sup>215</sup> Public Interest Organizations Comments at 14.

<sup>216</sup> *Id.* at 15-16 (citing *Gibbs v. Baltimore Gas Co.*, 130 U.S. 396, 410 (1889) and *Thomas v. Railroad Co.*, 101 U.S. 71, 83 (1879)).

<sup>217</sup> *Id.* at 16 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 208).

Organizations state that an Order No. 1000 compliant process requires that NYISO develop and provide the forum for the needs identification process, and that all stakeholders have the opportunity for meaningful input into the process.<sup>218</sup>

109. Some protestors also argue that it is unclear what role the New York Public Service Commission and New York State Department of Public Service play in the process. Specifically, NextEra protests that the roles of the New York Public Service Commission and the New York State Department of Public Service are too broad and undefined. E.ON Climate and Renewables questions the timing and process that the New York State Department of Public Service will use to develop procedures to identify those transmission needs driven by public policy requirements for which solutions will be evaluated. In addition, E.ON Climate and Renewables protests that there are no processes or safeguards in place to ensure that the New York State Department of Public Service procedures are developed in a just and reasonable way, and that the procedures themselves and ultimate determinations are just and reasonable.<sup>219</sup> Additionally, Public Interest Organizations contend that the New York State Department of Public Service would not be subject to any deadlines or other requirements to integrate its process into NYISO's transmission planning process, and disputes would proceed independent of the rest of the NYISO public policy requirements transmission planning process.<sup>220</sup>

110. In addition, Public Interest Organizations protest that the OATT provides no process or opportunity for NYISO to propose solutions to identified transmission needs. Public Interest Organizations state that while the proposed NYISO OATT does provide that the New York Department of Public Service may request that the appropriate Transmission Owner propose a transmission solution to ensure there will be a response to an identified transmission need, the responsibility to solicit a response is delegated to a non-Commission jurisdictional entity and is permissive, rather than mandatory.<sup>221</sup>

111. AWEA argues that, while it is appropriate for the New York State Department of Public Service to play a significant role in making the initial determination regarding the need for a transmission facility driven by a public policy requirement, the New York State Department of Public Service should not make the final determination of which needs will be evaluated. AWEA argues that the New York State Department of Public Service and the New York Public Service Commission do not have any expertise in

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<sup>218</sup> *Id.* at 17.

<sup>219</sup> E.ON Climate and Renewables Comments at 2-3.

<sup>220</sup> Public Interest Organizations Comments at 12.

<sup>221</sup> *Id.* at 24.

considering such things as enacted federal environmental regulations, as well as other policies, that might drive transmission.<sup>222</sup> AWEA also is concerned that it would have no ability to verify website posting information provided by the New York State Department of Public Service regarding transmission needs driven by public policy requirements that will or will not be evaluated.

112. Protestors also argue that NYISO's proposal to identify transmission needs driven by public policy requirements is different than the process NYISO uses to identify reliability and economic transmission needs.<sup>223</sup> For instance, E.ON Climate and Renewables points out that NYISO's processes to decide what transmission is needed for reliability or economic criteria do not delegate the decision to the New York State Department of Public Service or the New York Public Service Commission. Rather, it argues that NYISO "takes ownership for this FERC-jurisdictional regional transmission planning function."<sup>224</sup> Similarly, AWEA protests the Filing Parties' proposal on the grounds that it does not consider public policy requirements in the same manner as reliability or economic concerns. Public Interest Organizations state that since the Filing Parties' proposal would relegate NYISO's role to that of a mere agent acting at the direction of the New York Department of Public Service and the New York Public Service Commission, it is inconsistent with Order No. 1000 and should be rejected.

113. Thus, NextEra and AWEA argue that NYISO must play a more active role in identifying and evaluating public policy requirements in the local and regional planning processes.<sup>225</sup> In support, AWEA asserts that Order No. 1000 requires "*each public utility transmission provider* to coordinate with its stakeholders to identify [p]ublic [p]olicy [r]equirements that are appropriate to include in its local and regional transmission planning processes."<sup>226</sup>

114. Public Interest Organizations are unclear of the role that the New York Public Service Commission will play in the solutions evaluation process. Public Interest Organizations state that the proposed NYISO OATT provides that the New York Public

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<sup>222</sup> AWEA Comments at 11-12.

<sup>223</sup> See, e.g., *id.* at 13; E.ON Climate and Renewables at 3; Public Interest Organizations Comments at 10.

<sup>224</sup> E.ON Climate and Renewables North America Comments at 3.

<sup>225</sup> See, e.g., AWEA Comments at 14; NextEra Protest at 4.

<sup>226</sup> AWEA Comments at 11-12 (referring to Order No. 1000-A, 139 FERC ¶ 61,132 at P 167) (emphasis in original).

Service Commission identify transmission needs for which NYISO should evaluate solutions, and that the New York Public Service Commission will release a statement regarding identified transmission needs that also shall explain why transmission solutions to other suggested transmission needs should not be evaluated. For this reason, Public Interest Organizations express concern that the New York Public Service Commission may have the opportunity to foreclose solutions that only NYISO is in the position to evaluate for cost-effectiveness and efficiency. Public Interest Organizations argue that the New York Public Service Commission is able to participate as a stakeholder in the NYISO transmission planning processes and therefore the Commission should require NYISO to remove the references to the New York Public Service Commission from its OATT.<sup>227</sup>

115. AWEA protests that the Filing Parties' proposal strips NYISO of any meaningful independence by deferring to the New York Public Service Commission the selection of transmission projects to address identified transmission needs driven by public policy requirements. AWEA believes that since NYISO can determine whether a reliability need exists or whether a project would provide the level of economic benefits required under the Congestion Assessment and Resource Integration Study, NYISO can also determine, by applying an analysis clearly defined in its tariffs and procedures, whether a transmission project is needed to achieve the goals of public policy requirements.<sup>228</sup>

116. Multiple Intervenors argue that the extensive stakeholder process undertaken in developing the joint New York Transmission Owners and NYISO proposal can best be characterized as a one-way street as it relates to the public policy requirement aspects of the compliance filing. Multiple Intervenors assert that the compliance filing does not represent a consensus proposal resulting from a fair and careful consideration and balancing of stakeholder interests.

**(3) Consideration of Non-Transmission Alternatives in the Public Policy Requirements Transmission Planning Process**

117. Public Interest Organizations protest that the proposed process to identify transmission needs driven by public policy requirements expressly favors transmission solutions over non-transmission solutions. They state that the process limits requests for proposed solutions to transmission needs driven by public policy requirements to

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<sup>227</sup> Public Interest Organizations Comments at 25-26.

<sup>228</sup> AWEA Comments at 13 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 209).

transmission solutions only, and protest that NYISO does not allow stakeholders to propose non-transmission alternatives as solutions.<sup>229</sup> Public Interest Organizations assert that this process may violate the comparability requirements outlined in Order Nos. 890 and 1000, which, they assert, impose an affirmative obligation on NYISO to consider transmission and non-transmission alternatives comparably when evaluating solutions that may meet the transmission needs of the region more efficiently or cost-effectively.<sup>230</sup>

118. Public Interest Organizations also protest that the Filing Parties do not explain how NYISO will select from competing solutions and resources such that all types of resources are considered on a comparable basis or how it will apply the referenced methodology and metrics.<sup>231</sup> They assert that NYISO's procedures must include metrics for evaluating and selecting solutions on a comparable basis.<sup>232</sup>

119. IPPNY argues that the Commission should direct NYISO to consider non-transmission alternatives to the proposed solutions rather than only allowing NYISO to consider non-transmission alternatives upon the New York Public Service Commission's request.<sup>233</sup>

#### (4) LIPA

120. LIPA states that it is providing suggested clarifications to the proposed OATT sheets implementing the public policy requirements planning process to allow for appropriate recognition of LIPA's jurisdictional responsibility as to the identification of transmission needs for physical modifications to the Long Island Transmission District. LIPA states that NYISO and the other New York Transmission Owners do not object to these changes, and that it also has briefed the New York Public Service Commission on the proposed changes. LIPA asks the Commission to direct NYISO to make a compliance filing incorporating LIPA's proposed changes into the NYISO OATT, together with any other OATT changes that may be required, when the Commission rules on NYISO's compliance filing.

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<sup>229</sup> Public Interest Organizations Comments at 23.

<sup>230</sup> *Id.* at 18 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 79-80, 148, 154-155, 779).

<sup>231</sup> *Id.* at 25 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 155).

<sup>232</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 155).

<sup>233</sup> IPPNY Protest at 33.

121. LIPA states that NYISO's compliance filing, which provides a state-driven process for identification of transmission needs and related steps for implementation, improperly gives the New York Public Service Commission sole control over the identification of transmission needs and planning in the Long Island Transmission District. LIPA asserts that under New York State law, LIPA rather than the New York Public Service Commission has statutory responsibility for implementation of public policy and transmission planning for the Long Island Transmission District,<sup>234</sup> and therefore LIPA has exclusive jurisdiction over transmission planning for LIPA's transmission system within the Long Island Transmission District. LIPA states that it and the other New York Transmission Owners have agreed on a set of changes to the public policy requirements transmission planning process that recognize the separate jurisdictional spheres of responsibility between LIPA and the New York Public Service Commission.

122. Specifically, with respect to the identification of transmission needs for physical modifications of the Long Island Transmission District, LIPA proposes to undertake the actions and responsibilities otherwise held by the New York Public Service Commission. LIPA also proposes to have a role in determining whether a proposed transmission solution meets an identified transmission need for the purposes of eligibility for cost allocation as a public policy requirements project. LIPA explains that it and the New York Public Service Commission will make the determination together if the project is located partially within the Long Island Transmission District, but if the project is located wholly within the Long Island Transmission District, then LIPA will be solely responsible for the determination.<sup>235</sup>

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<sup>234</sup> LIPA states that the Long Island Power Authority Act (LIPA Act) empowers LIPA's Board of Trustees to oversee planning for the Long Island transmission system. LIPA points to provisions of the LIPA Act that confer general powers on LIPA that include but are not limited to the power to: fix rates and charges for the furnishing or rendition of electric or any related service; make inquiries, investigations, surveys, and studies; and adopt rules and regulations "with respect to operations, properties and facilities" as necessary to carry out the Board's regulatory oversight of the Long Island Transmission District. LIPA states that it also has the authority to provide and maintain transmission under the LIPA Act, including the power to "acquire, construct, improve, rehabilitate, maintain and operate" the Long Island transmission system as necessary; determine "the location, type, size, construction ... use and operation of any generating, transmission or other related facility"; and proceed with the physical construction or completion of transmission facilities. LIPA Comments at 4-5 (quoting N.Y. Pub. Auth. Law, § 1020 *et seq.*).

<sup>235</sup> *Id.* at 8.

123. LIPA emphasizes that its proposed OATT changes provide for consultation between LIPA and the New York Public Service Commission regarding LIPA's determination of transmission needs within the Long Island Transmission District, and that, if the New York Public Service Commission does not concur with LIPA's identification of a transmission need within the Long Island Transmission District, a project addressing such a LIPA-identified need would not be eligible for cost allocation to market participants outside of Long Island.<sup>236</sup>

124. While AWEA understands LIPA's interest in ensuring adequate and appropriate transmission related to public policy needs, AWEA argues that LIPA should not share the responsibility to determine statewide-public policy requirements. AWEA reads LIPA's proposal as essentially allowing it to opt out of cost allocation for regional projects that may benefit its Transmission District, which may have the effect of either derailing a project or assigning costs to others in the state. AWEA argues that affording LIPA the treatment it requests, separate from any similar treatment for other transmission providers in NYISO, would be discriminatory and should be rejected.<sup>237</sup>

(c) Answer

125. The Filing Parties argue that the compliance filing's definition of "Public Policy Requirement" is appropriate.<sup>238</sup> The Filing Parties state that it complies fully with Order No. 1000's directive that regional transmission plans consider "transmission needs driven by public policy requirements established by state or federal laws or regulations," consistent with the Commission's statements in Order No. 1000.<sup>239</sup> The Filing Parties and the New York Public Service Commission argue that orders of the New York Public Service Commission established under notice and comment under the State Administrative Procedure Act are state regulations under New York law, and are therefore within the definition of public policy requirements in Order No. 1000. The Filing Parties add that the definition properly acknowledges the role played by the New York Public Service Commission in the oversight of transmission planning for the state. The Filing Parties point out that the New York Public Service Commission has adopted

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<sup>236</sup> *Id.* at 10.

<sup>237</sup> AWEA Comments at 30-31.

<sup>238</sup> Filing Parties Answer at 11 (citing NYISO OATT, Attachment Y, § 31.1.1).

<sup>239</sup> *Id.* at 12 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 2, 319).

renewable portfolio standards, an energy efficiency portfolio standard, smart grid projects, and further rules of general application for energy policy in New York State.<sup>240</sup>

126. The New York Public Service Commission further asserts that, assuming *arguendo* that New York Public Service Commission orders do not equate with state regulations, the Commission should nevertheless find that such orders are consistent with Order No. 1000.<sup>241</sup> The New York Public Service Commission notes that the Commission stated in Order No. 1000 that the planning process could consider “transmission needs driven by additional public policy objectives not specifically required by state or federal laws or regulations,” and this definition could encompass New York Public Service Commission orders.<sup>242</sup>

127. In addition, the Filing Parties assert that no modification to the definition of public policy requirements is necessary to encompass duly enacted local laws or regulations. They state that the proposed “definition’s reference to ‘New York State statutes and regulations’ already accounts for all New York State laws, which include local laws under ‘Home Rule’ in New York.”<sup>243</sup> Similarly, the Filing Parties assert that defining public policy requirements as “transmission-related” is consistent with the public policy requirements planning directives in Order No. 1000, which, they assert, are restricted to transmission needs driven by public policy requirements. They also point out that the proposed public policy transmission planning process allows for the identification and evaluation of non-transmission solutions to transmission needs driven by public policy requirements as appropriate.<sup>244</sup>

128. The Filing Parties argue that the roles of NYISO and the New York Public Service Commission in the transmission planning process for public policy requirements are appropriately defined. They assert that the filing complies with Order No. 1000’s directive that each region establish a process that would consider transmission needs driven by public policy requirements through the identification of transmission needs driven by public policy requirements and the evaluation of potential solutions to meet those transmission needs.<sup>245</sup> According to the Filing Parties, NYISO is responsible for

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<sup>240</sup> *Id.* at 12-13.

<sup>241</sup> New York Public Service Commission Answer at 7.

<sup>242</sup> *Id.* at 7-8 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 214).

<sup>243</sup> Filing Parties Answer at 14.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 16 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205).

requesting stakeholder input to identify transmission needs driven by public policy requirements as well as soliciting and evaluating solutions proposed to meet the identified transmission needs. The Filing Parties further explain that, based on NYISO's evaluation of the proposed solutions, the New York Public Service Commission selects which projects should move forward, and the project(s) are then included in NYISO's regional transmission plan.<sup>246</sup> The Filing Parties state that this does not inappropriately shift NYISO's obligations to the New York Public Service Commission, and does not contravene Order No. 1000. They argue that the Commission has stated that Order No. 1000 is not intended to preempt or conflict with state authority regarding siting, permitting and construction of transmission facilities or integrated resource planning, and that state regulators play an important role in the transmission planning and integrated resource planning processes.<sup>247</sup> Similarly, the Filing Parties state that the proposed process will allow NYISO to manage the transmission needs identification process and provides NYISO with the ability to propose solutions, contrary to protesters' assertions.<sup>248</sup> The Filing Parties also recognize that LIPA filed language in support of the adoption of a parallel role for LIPA in the public policy requirements transmission planning process. NYISO does not take a position on the limited additional tariff revisions proposed by LIPA, and the New York Transmission Owners (including LIPA) clarify that they do not object to LIPA's filing and the inclusion of the proposed tariff provisions in the NYISO tariff.<sup>249</sup>

129. Additionally, the Filing Parties state that, because NYISO is a single state ISO, the New York Public Service Commission already has a significant role in determining if the construction of a transmission facility is warranted. They also state that the Filing Parties sought to avoid expending NYISO's limited resources on the evaluation of a large number of transmission projects that may not be consistent with state policy goals and, therefore, are unlikely to receive state siting approval. They further note that the Commission has previously authorized the New York Public Service Commission to play a similar role in NYISO's reliability transmission planning process. The Filing Parties assert that NYISO's role in the existing reliability and economic planning processes is to provide for participation by all interested parties, and to perform the technical evaluations necessary to determine whether a proposed project will meet the identified transmission

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<sup>246</sup> *Id.*

<sup>247</sup> *Id.* at 17 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at PP 186, 337).

<sup>248</sup> *Id.* at 18-19.

<sup>249</sup> *Id.* at 2-3 n.5.

needs in a cost-effective and efficient manner, and this is precisely the role proposed for NYISO in the compliance filing with respect to public policy requirements.<sup>250</sup>

130. The New York Public Service Commission also responds to protests against its role in identifying transmission needs driven by public policy requirements and in selecting the transmission projects to be included in the regional transmission plan for purposes of cost allocation. The New York Public Service Commission asserts that the compliance proposal reflects an appropriate balance of federal and state authority, as states define and pursue public policy objectives and conduct siting reviews for new facilities, while the Commission ensures any wholesale transmission rates are just and reasonable. The New York Public Service Commission further states that it has authority, independent of Order No. 1000, to pursue transmission planning efforts for public policy purposes.<sup>251</sup>

131. The New York Public Service Commission also points out that it already plays a significant part in selecting among alternative solutions in NYISO's reliability planning process.<sup>252</sup> The New York Public Service Commission states that it identified the procedures by which it selects the reliability solutions subsequent to the Commission's approving the conceptual framework for implementing NYISO's Comprehensive Reliability Planning Process, and the Commission should follow this previous determination and adopt the same approach regarding the public policy planning process.<sup>253</sup> The New York Public Service Commission points to its commitment to identify the procedures that will be used by New York State Department of Public Service staff and the New York Public Service Commission under the transmission planning process for public policy purposes, and to initiate a proceeding in which it will solicit input from interested stakeholders in crafting appropriate procedures. The New York Public Service Commission states it intends to initiate a proceeding, pending the Commission's review and determination regarding the compliance filing, and to solicit input from interested stakeholders in crafting appropriate procedures.<sup>254</sup>

132. In response to comments from IPPNY regarding the New York Public Service Commission role in dispute resolution, the Filing Parties argue that the proposed OATT

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<sup>250</sup> *Id.* at 20-21.

<sup>251</sup> New York Public Service Commission Answer at 4-5.

<sup>252</sup> *Id.* at 9.

<sup>253</sup> *Id.* at 9-10.

<sup>254</sup> *Id.* at 10.

provisions appropriately provide for dispute resolution through the New York Public Service Commission, because the New York State Department of Public Service makes the original determination and, therefore, the dispute is most appropriately resolved through a New York Public Service Commission process.<sup>255</sup> Filing Parties add that nothing precludes any dispute within the Commission's jurisdiction from being resolved by the Commission, consistent with the NYISO's Commission-approved dispute resolution provisions for reliability planning disputes.<sup>256</sup>

133. In response to IPPNY and Public Interest Organizations, the Filing Parties argue that the proposed public policy requirements transmission planning process already requires NYISO to conduct an evaluation of non-transmission alternatives as responses to transmission needs driven by public policy requirements when requested by the New York Public Service Commission. Furthermore, they note that nothing in the proposed OATT revisions limits an entity's right to propose a non-transmission alternative to address a public policy requirement and to be considered by the New York Public Service Commission. The Filing Parties assert that it would be inefficient and unduly burdensome to require NYISO to conduct an extensive evaluation of proposed non-transmission solutions where the state entity responsible for the implementation of non-transmission solutions has expressed no interest in them.<sup>257</sup>

134. The Filing Parties state that NYISO is a not-for-profit entity with no incentive to favor any class of stakeholders, including the New York Transmission Owners, and thus the compliance filing has no bias for or against any parties. The Filing Parties explain that the compliance filing was developed and reviewed over months of stakeholder proceedings and reflects competing stakeholder interests, and assert there is no merit to the allegation that the compliance filing requires additional scrutiny because it is not a consensus filing. They further assert that Order No. 1000 gave regions the flexibility to craft their own processes consistent with the order's requirements, and NYISO has done so here.<sup>258</sup>

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<sup>255</sup> Filing Parties Answer at 21 (citing IPPNY Protest at 14 n.54).

<sup>256</sup> *Id.* at 22 (citing NYISO OATT, Attachment Y, §§ 31.2.3.3, 31.2.6.3).

<sup>257</sup> *Id.* at 21.

<sup>258</sup> *Id.* at 9-10.

(d) **Commission Determination**

135. We find that the proposed public policy requirements transmission planning process partially complies with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements, as discussed below.

(1) **Definition of Public Policy Requirements**

136. We find that the Filing Parties' proposed definition of public policy requirements partially complies with the requirements of Order No. 1000. Accordingly, the Filing Parties must make a further compliance filing to revise the NYISO OATT, as discussed below.

137. Contrary to protestors' arguments, we find that the Filing Parties' proposal to include "a New York Public Service Commission order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act<sup>259</sup> or any successor statute" in the definition of public policy requirements complies with Order No. 1000. In their answer, the Filing Parties explain that "[New York Public Service Commission] orders established after notice and comment under the State Administrative Procedure Act are in fact state regulations under New York law and, therefore, within the definition of [public policy requirements] in Order No. 1000."<sup>260</sup> Order No. 1000 defines public policy requirements as requirements established by local, state, or federal laws or regulations (i.e., enacted statutes passed by the legislature and signed by the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).<sup>261</sup> We find that "a New York Public Service Commission order adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act or any successor statute" is a state regulation under New York State law and, therefore, is appropriate to include in the definition.

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<sup>259</sup> See N.Y. Admin. Procedure Act Law § 102(2)(a)(i)-(ii) (McKinney 2009).

<sup>260</sup> Filing Parties Answer at 12 (citing N.Y. Admin. Procedure Act Law § 102(2)(a)(i)-(ii) and noting that New York Public Service Commission orders established under the New York State Administrative Procedure Act "are issued subject to requirements that there be notice and hearing, the development of a record, and a right to appeal").

<sup>261</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 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.

138. In response to comments from Public Interest Organizations, we agree that the Filing Parties' proposed definition of public policy requirements may not be consistent with the term as defined in Order No. 1000 and "could be interpreted to short-circuit the needs identification process."<sup>262</sup> By incorporating the phrase "that drives the need for expansion or upgrades to the New York State bulk transmission facilities" into the Filing Parties' proposed definition of public policy requirements, the proposed definition is inconsistent with the Order No. 1000 definition of public policy requirements, which is not limited to those that provide transmission-related benefits. Order No. 1000 provided that public policy requirements are requirements established by local, state, or federal laws or regulations,<sup>263</sup> and Order No. 1000-A stated it would not "revise the definition of Public Policy Requirements to limit it to those that provide transmission-related benefits," noting that "Order No. 1000 does not require the consideration of Public Policy Requirements: rather, it requires the consideration of transmission needs driven by Public Policy Requirements."<sup>264</sup>

139. Additionally, we agree with AWEA and Public Interest Organizations that the proposed definition of public policy requirements does not comply with Order No. 1000's requirement that the definition include duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government. While the Filing Parties' explain that "the definition's reference to 'New York State statutes and regulations' already accounts for all New York State laws, which include local laws under 'Home Rule' in New York,"<sup>265</sup> the Filing Parties have not included express language to specify that "duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government"<sup>266</sup> are included in the definition of public policy requirements in the NYISO OATT. Thus, we require the Filing Parties to submit a further compliance filing to revise the proposed definition of public policy requirements to comply with the Commission's definition as specified in Order No. 1000, including removing the phrase "that drives the need for expansion or upgrades to the New York State bulk transmission facilities" and clarifying expressly in the NYISO OATT

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<sup>262</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Public Interest Organizations Comments at 7.

<sup>263</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

<sup>264</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

<sup>265</sup> Filing Parties Answer at 14.

<sup>266</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

that NYISO will also consider duly enacted laws or regulations passed by a local governmental entity, consistent with the requirements of Order No. 1000.

140. Accordingly, we direct the Filing Parties to file, within 120 days of the date of this order, a further compliance filing proposing OATT revisions that revise the proposed definition of public policy requirements to comply with the Commission's definition as specified in Order Nos. 1000 and 1000-A, including removing the phrase "that drives the need for expansion or upgrades to the New York State bulk transmission facilities" and clarifying expressly in the NYISO OATT that NYISO will also consider duly enacted laws or regulations passed by a local governmental entity.

(2) **Procedures to Identify Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process**

141. We find that the Filing Parties' proposal for the identification of transmission needs driven by public policy requirements complies with the requirements of Order No. 1000. NYISO's regional transmission planning process as described in Attachment Y of NYISO's OATT makes clear when and how stakeholders may identify transmission needs driven by public policy requirements, as well as how it will identify those transmission needs driven by public policy requirements for which transmission solutions will be evaluated. Specifically, NYISO will provide a 60-day window for all stakeholders to propose transmission needs driven by public policy requirements. NYISO will then submit the proposals to the New York State Department of Public Service to identify those transmission needs driven by public policy requirements for which solutions will be evaluated. The New York State Department of Public Service has committed to conduct an open and transparent process that provides interested parties a meaningful opportunity to participate in the identification of transmission needs for which solutions should be evaluated.

142. Several commenters argue that the proposed role of the New York State Department of Public Service in identifying transmission needs driven by public policy requirements for which transmission solutions will be evaluated does not comply with Order No. 1000. However, in Order No. 1000, the Commission "strongly encourage[d] states to participate actively in the identification of transmission needs driven by Public Policy Requirements," providing that a public utility transmission provider may "conclude, in consultation with stakeholders, to develop procedures that rely on . . . a committee of state regulators . . . to identify those transmission needs for which potential solutions will be evaluated in the transmission planning processes."<sup>267</sup> The Filing

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<sup>267</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209 n.189.

Parties' proposal, according to which the New York State Department of Public Service, with input from interested parties and NYISO, will review proposed transmission needs and identify the transmission needs for which transmission solutions should be requested and evaluated, is consistent with the Commission's determination in Order No. 1000 that such procedures may rely on a committee of state regulators. Accordingly, we find the Filing Parties' proposed process for identifying transmission needs driven by public policy requirements for which potential solutions will be evaluated complies with Order No. 1000.

143. Order No. 1000 also requires that each public utility transmission provider post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the regional transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation.<sup>268</sup> Under NYISO's OATT, the New York State Department of Public Service shall issue a written statement that: (1) identifies the relevant public policy requirements driving transmission needs and explains why it has identified the transmission needs driven by public policy requirements for which transmission solutions will be evaluated by NYISO; and (2) explains why transmission solutions to other suggested transmission needs should not be evaluated.<sup>269</sup> The Filing Parties propose that NYISO will post the statement issued by New York State Department of Public Service on the NYISO website.<sup>270</sup> Accordingly, we find that the Filing Parties' proposal complies with the requirement in Order No. 1000.

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<sup>268</sup> *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

<sup>269</sup> *See* NYISO OATT, Attachment Y, § 31.4.2.1.

<sup>270</sup> *Id.* We note that the requirement to post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the regional transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation is on NYISO. While NYISO may rely on the New York State Department of Public Service to provide the statement for NYISO to post, should the New York State Department of Public Service choose not to provide such statement, then NYISO must submit an alternative proposal.

(3) **Procedures to Evaluate Potential Solutions to Meet Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process**

144. We find that the Filing Parties' proposed process for evaluating potential transmission solutions proposed to meet transmission needs driven by public policy requirements complies with the requirements of Order No. 1000. While the Commission recognized that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation likely will vary from region to region, such evaluation must consider "the relative efficiency and cost-effectiveness of [any proposed transmission] solution."<sup>271</sup> Under the proposed revisions to NYISO's OATT, NYISO will use its existing reliability, economic, and interconnection planning process tools, databases and models, as applicable. In addition, NYISO may use 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.<sup>272</sup> Furthermore, NYISO's evaluation will compare the costs and benefits of the proposed transmission solutions, and impacts of the proposed transmission solutions on NYISO-administered markets.<sup>273</sup> Therefore, we find that the criteria NYISO includes in its evaluation process for transmission solutions proposed to meet transmission needs driven by public policy requirements appropriately indicate how NYISO will consider "the relative efficiency and cost-effectiveness of [any proposed transmission] solution"<sup>274</sup> and the proposed process for evaluating potential transmission solutions proposed to meet transmission needs driven by public policy requirements complies with the requirements of Order No. 1000.

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<sup>271</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

<sup>272</sup> NYISO OATT, Attachment Y, § 31.5.4.3.5.

<sup>273</sup> NYISO OATT, Attachment Y, § 31.4.4.

<sup>274</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

(4) **Selection of More Efficient or Cost-Effective Solutions to be Included in the Regional Plan for the Purpose of Cost Allocation**

145. We find that the Filing Parties' proposal regarding the selection, in the public policy requirements transmission planning process, of more efficient or cost-effective solutions to be included in the regional plan for the purposes of cost allocation does not comply with Order No. 1000. We agree with commenters who suggest that NYISO should have a central role in selecting transmission solutions proposed to meet transmission needs driven by public policy requirements and find that NYISO does not comply with this requirement of Order No. 1000. As discussed above,<sup>275</sup> a public utility transmission provider has an affirmative obligation to select more efficient and cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation. Therefore, we require the Filing Parties to provide, on compliance, OATT revisions providing 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 and we require 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.<sup>276</sup>

146. Multiple Intervenors indicate their displeasure with the outcome of the NYISO stakeholder process and assert that the compliance filing does not represent a consensus proposal. However, we have considered the protestors concerns and find that no accusation of bias is warranted. As discussed above, in Order No. 1000, the Commission directed public utility transmission providers to undertake specific substantive reforms to their transmission planning processes 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. We find that issues related to general RTO and ISO governance are outside of the scope of compliance with Order No. 1000's requirements.<sup>277</sup>

147. Accordingly, we direct the Filing Parties to file, within 120 days of the date of this order, a further compliance filing proposing OATT revisions that describe a process by

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<sup>275</sup> See *supra* Part IV.B.1.c.

<sup>276</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328.

<sup>277</sup> See *id.* P 149 n.139 (clarifying that "nothing in [Order No. 1000] is intended to modify or abrogate governance procedures of RTOs and ISOs").

which NYISO will select in the regional transmission plan for purposes of cost allocation the more efficient or cost-effective solutions from among transmission projects proposed to meet transmission needs driven by public policy requirements.

(5) **Consideration of Non-Transmission Alternatives in the Public Policy Requirements Transmission Planning Process**

148. We agree with Public Interest Organizations' concern that the Filing Parties do not provide for comparable treatment of non-transmission alternatives in the consideration of transmission needs driven by public policy requirements.<sup>278</sup> Building on the requirements of Order No. 890,<sup>279</sup> Order No. 1000 requires public utility transmission providers to identify how they will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis.<sup>280</sup> However, according to the Filing Parties' proposal, NYISO can consider non-transmission alternatives as solutions to transmission needs driven by public policy requirements only if the New York State Department of Public Service requests NYISO to "conduct an evaluation of alternative options to address a [transmission need driven by a public policy requirement]."<sup>281</sup> Although NYISO asserts that nothing in its transmission planning process limits an entity's right to propose non-transmission alternatives as solutions to transmission needs driven by public policy requirements, the Filing Parties fail to identify how stakeholders and interested parties may submit proposals for non-transmission alternatives and how competing solutions will be evaluated in a way that allows proposed non-transmission alternatives to be considered on a comparable basis. Therefore, we find that the Filing Parties' proposal is inadequate to satisfy the comparability principle outlined in Order No. 1000.

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<sup>278</sup> See *supra* Part IV.B.1.b for a further discussion of the Filing Parties' compliance with the principles of Order No. 890, in which the Commission notes that it previously found that the Filing Parties' regional transmission planning process satisfied each of the transmission planning principles of Order No. 890; see also *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 16 (2008), *order on reh'g*, 126 FERC ¶ 61,230, *reh'g denied*, 129 FERC ¶ 61,045 (2009).

<sup>279</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

<sup>280</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 155.

<sup>281</sup> NYISO OATT, Attachment Y, § 31.4.2.1.

149. Accordingly, we direct the Filing Parties to file, within 120 days of the date of issuance of this order, 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.

(6) **LIPA**

150. While Order No. 1000 does not require that a public utility transmission provider (here, NYISO) include any particular role for state regulators in the transmission planning process,<sup>282</sup> we encourage LIPA, NYISO and other interested parties to work together to develop further tariff amendments that allow all relevant regulatory entities to participate fully in the transmission planning process. As addressed above, Order No. 1000 strongly encourages states to participate actively in the identification of transmission needs driven by public policy requirements. Similarly, we encourage LIPA to actively participate in the public policy transmission planning process, and specifically in the identification of transmission needs driven by public policy requirements. Although LIPA states that it has come to agreement with the New York Transmission Owners regarding the division of responsibility between LIPA and the New York Public Service Commission in identifying transmission needs for the Long Island Transmission District, such agreement was not included in the Filing Parties' compliance filing and the Filing Parties have not proposed to amend their compliance filing to reflect such provisions. Therefore, while we will not require the Filing Parties to revise the NYISO OATT to address LIPA's proposal, should the Filing Parties and LIPA agree to further OATT modifications, consistent with the Commission's findings in this order, the Filing Parties may include those OATT revisions in their next compliance filing.

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

(a) **Filing Parties' Filing**

151. The Filing Parties state that, under the proposed local transmission planning process, the New York Transmission Owners that have a transmission district are obligated to consider transmission needs driven by public policy requirements in the development of their local transmission plans.<sup>283</sup> The Filing Parties explain that

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<sup>282</sup> See Order No. 1000-A, 139 FERC ¶ 61,132 at P 338.

<sup>283</sup> October 11 Filing at 53.

“[m]arket [p]articipants and other interested parties may submit comments for the Transmission Owner’s consideration regarding a transmission need that they believe is being driven by a [public policy requirement].”<sup>284</sup> According to the Filing Parties’ proposal, each Transmission Owner:

will post on its website an explanation of any transmission need it has identified as being driven by a [public policy requirement] either in its initial [local transmission plan] or as a result of [m]arket [p]articipant comments for which potential transmission solutions will be evaluated, as well as an explanation of why solutions to any suggested transmission needs will not be evaluated.<sup>285</sup>

152. In addition, Attachment Y provides that “each Transmission Owner will post on its website the planning criteria and assumptions currently used in its [local transmission planning process]” and that the “[local transmission planning processes] shall include a description of the needs addressed by the [local transmission planning process] as well as the assumptions, applicable planning criteria and methodology utilized and the [public policy requirements] considered.”<sup>286</sup>

153. The Filing Parties state that the New York Transmission Owners’ local transmission plans are included in the base case of the Reliability Needs Assessment.<sup>287</sup> Further, Attachment Y provides that:

[NYISO] 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 [r]eliability [n]eeds, congestion identified in the [Congestion Assessment and Resource Integration Study], or [public policy requirements] may meet such [bulk power transmission facility] needs of the [New York Control Area] region more efficiently or cost-effectively than the

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<sup>284</sup> NYISO OATT, Attachment Y, § 31.2.1.1.2.

<sup>285</sup> *Id.*

<sup>286</sup> NYISO OATT, Attachment Y, § 31.2.1.1.1.

<sup>287</sup> *See supra* Part IV.B.1.b.

Transmission Owners' proposed [local transmission plan] solutions.<sup>288</sup>

(b) **Protests/Comments**

154. PSEG Companies assert that, while the Filing Parties' proposed OATT language in section 31.2.1.1.3 of Attachment Y states that NYISO will review a Transmission Owner's local transmission plan to evaluate whether other solutions proposed to meet the identified reliability need may do so more efficiently or cost-effectively than the Transmission Owner's proposed local transmission solution, the OATT provides no details regarding how NYISO will address an instance where a regional project is the more efficient or cost-effective option.<sup>289</sup> PSEG Companies state that the Filing Parties have proposed no OATT language that would require a New York Transmission Owner to accept the changes or NYISO's suggestion in the Transmission Owner's local transmission plan.<sup>290</sup>

155. Similarly, Public Interest Organizations contend that the Filing Parties' proposed process to consider transmission needs driven by public policy requirements does not require the transmission provider to evaluate transmission alternatives to local proposed facilities that may meet the needs of the region more efficiently or cost-effectively.<sup>291</sup> In addition, Public Interest Organizations contend that the process to identify transmission needs driven by public policy requirements in the local transmission plan should not be shifted to the New York Public Service Commission or the New York Department of Public Service.<sup>292</sup>

(c) **Commission Determination**

156. We find that the Filing Parties' proposal partially complies with the requirements of Order No. 1000 addressing consideration of transmission needs driven by public policy requirements in the local transmission planning process. Order No. 1000 requires all public utility transmission providers to amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by public policy

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<sup>288</sup> NYISO OATT, Attachment Y, § 31.2.1.1.3.

<sup>289</sup> PSEG Companies Comments at 6-7.

<sup>290</sup> *Id.* at 7.

<sup>291</sup> Public Interest Organizations Comments at 13 n.24.

<sup>292</sup> *Id.* at 9-10.

requirements in the local transmission planning process.<sup>293</sup> As the Filing Parties explain, Attachment Y requires each Transmission Owner to allow market participants and other interested parties to submit comments regarding the transmission needs that they believe are being driven by public policy requirements for the Transmission Owner to consider in its local transmission planning process.

157. In addition, the Filing Parties state that each Transmission Owner must post on its website an explanation of: (1) any transmission need it has identified as being driven by a public policy requirement, either in its initial local transmission plan or as a result of market participant comments, for which potential transmission solutions will be evaluated; and (2) why solutions to any suggested transmission needs will not be evaluated.<sup>294</sup> Each Transmission Owner must also post on its website the planning criteria, assumptions, data and models currently used in its local transmission planning process and allow market participants and other interested parties to review and comment.<sup>295</sup> Moreover, the Filing Parties state that each New York Transmission Owner must consider comments from all interested parties on the planning criteria, assumptions, data and models used and explain any modifications it makes to its local transmission plan in response to such comments.<sup>296</sup>

158. We thus disagree with the Public Interest Organizations' contention that the Filing Parties propose to shift the responsibility to identify transmission needs driven by public policy requirements in the local transmission planning process to the New York Public Service Commission or the New York Department of Public Service. We find that the Filing Parties satisfy Order No. 1000's requirements that each public utility transmission provider revise its OATT to: (1) include procedures to identify at the local level transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input regarding the transmission needs they believe are driven by public policy requirements; (2) provide 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

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<sup>293</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

<sup>294</sup> NYISO OATT, Attachment Y, § 31.2.1.1.2.

<sup>295</sup> October 11 Filing at 11 (citing NYISO OATT, Attachment Y, § 31.2.1.1.1).

<sup>296</sup> *Id.* at 12 (citing NYISO OATT, Attachment Y, §§ 31.2.1.2.4, 31.2.1.2.5, 31.2.1.3).

evaluation for potential transmission solutions in the local transmission planning process and why they were not selected for further evaluation.

159. In response to comments from PSEG Companies that a Transmission Owner is not required by the NYISO OATT to revise its local transmission plan in order to reflect a more efficient or cost-effective regional solution, we reiterate our prior determination that the Filing Parties' proposed transmission planning process allows NYISO to evaluate, in consultation with stakeholders, alternative transmission solutions that may meet the transmission needs of the transmission planning region more efficiently or cost-effectively.<sup>297</sup> However, the Filing Parties have not met the requirement to describe a just and reasonable and not unduly discriminatory process through which the Transmission Owners will identify, out of the larger set of potential transmission needs driven by public policy requirements that may be proposed, those transmission needs for which transmission solutions will be evaluated in the local transmission planning process. As noted above, while the Transmission Owners will decide which transmission needs driven by public policy requirements to identify for further evaluation after consulting with stakeholders, the Filing Parties do not describe the process they will use to do so. In addition, we agree with Public Interest Organizations that the Filing Parties do not 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.

160. Accordingly, we direct the Filing Parties to submit, within 120 days of the date of this order, a further compliance filing to revise the NYISO OATT to include: (1) 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;<sup>298</sup> and (2) procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders.

## **2. Nonincumbent Transmission Developer Reforms**

161. Order No. 1000 institutes a number of reforms that seek to ensure that nonincumbent transmission developers have an opportunity to participate in the

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<sup>297</sup> See *supra* P 76.

<sup>298</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

transmission development process. These reforms involve the elimination of federal rights of first refusal from Commission-jurisdictional tariffs and agreements, and the development of requirements regarding qualification criteria for transmission developers and processes for evaluating proposals for new transmission facilities.

**a. Federal Rights of First Refusal**

162. Order No. 1000 requires that each public utility transmission provider eliminate 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.<sup>299</sup> Order No. 1000 defines a transmission facility selected in a regional transmission plan for purposes of cost allocation as a transmission facility that has been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because it is a more efficient or cost-effective solution to regional transmission needs.<sup>300</sup> If a public utility transmission provider's tariff or other Commission-jurisdictional agreements do not contain a federal right of first refusal provision, a public utility transmission provider should state this in its compliance filing.<sup>301</sup>

163. The requirement in Order No. 1000 to eliminate a federal right of first refusal does not apply to local transmission facilities,<sup>302</sup> which are defined 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.<sup>303</sup> The requirement also does not apply to the right of an incumbent

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<sup>299</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. 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.

<sup>300</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 5, 63.

<sup>301</sup> *Id.* P 314 n.294.

<sup>302</sup> *Id.* PP 226, 258, 318.

<sup>303</sup> *Id.* 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

(continued...)

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.<sup>304</sup> In addition, the Commission noted that 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.<sup>305</sup>

164. The Commission clarified in Order No. 1000-A that Order No. 1000 does not require elimination of a federal right of first refusal for a new transmission facility if the regional cost allocation method results in an allocation of 100 percent of the facility's costs to the public utility transmission provider in whose retail distribution service territory or footprint the facility is to be located.<sup>306</sup> The Commission also clarified in Order No. 1000-A that the phrase "selected in a regional transmission plan for purposes of cost allocation" excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.<sup>307</sup> However, the Commission acknowledged in Order No. 1000-A that there may be a range of examples of multi-transmission provider zones, and it would address whether a cost allocation to a multi-transmission provider zone is regional on a case-by-case basis based on the facts presented on compliance.<sup>308</sup>

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underlying transmission owing members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

<sup>304</sup> 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.

<sup>305</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

<sup>306</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.* P 424; Order No. 1000-B, 141 FERC ¶ 61,044 at P 40.

**i. Filing Parties' Filing**

165. The Filing Parties state that the NYISO tariffs do not contain any right of first refusal provisions.<sup>309</sup> They state that NYISO's transmission planning processes specifically allow any developer to submit proposals for reliability transmission solutions, as well as economic transmission solutions.<sup>310</sup> Thus, they assert, NYISO already complies with this Order No. 1000 directive.

166. Noting that Order No. 1000 clarifies that the requirement to eliminate federal right of first refusal provisions is not intended to interfere with upgrades made by incumbent Transmission Owners to meet their local transmission needs, the Filing Parties propose a new section 31.6.4 of Attachment Y that provides:

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.<sup>311</sup>

**ii. Protests/Comments**

167. No comments or protests were filed.

**iii. Commission Determination**

168. We find that the Filing Parties' proposal concerning federal rights of first refusal partially complies with the requirements of Order No. 1000, and conditionally accept the proposed revisions, subject to a further compliance, as discussed below. As an initial

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<sup>309</sup> October 11 Filing at 56.

<sup>310</sup> *Id.* at 31 (referencing NYISO OATT, Attachment Y, §§ 31.2.4.4, 31.2.4.6). We note that, according to NYISO's economic planning provisions, "[a]ny entity that demonstrates that it has or can draw upon the necessary financial resources and technical expertise shall be eligible to propose a project as a solution" to a specific economic need. NYISO OATT, Attachment Y, § 31.3.2.4.1.1.

<sup>311</sup> NYISO OATT, Attachment Y, § 31.6.4.

matter, we find that NYISO does not have a right of first refusal designated in their existing OATT.

169. NYISO proposes to add new OATT language clarifying that nothing in Attachment Y affects an incumbent Transmission Owner's right to: (1) build an upgrade to an incumbent Transmission Owner's own transmission facilities, 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; and (3) develop a local transmission solution that is not eligible for regional cost allocation to meet its reliability transmission needs or service obligations in its own service territory or footprint.<sup>312</sup> We find that NYISO's proposed exceptions to the requirement to eliminate the federal right of first refusal partially comply with the exceptions contemplated in Order No. 1000.

170. Regarding the first proposed exception for upgrades, we note that Order No. 1000 does not remove or limit any right an incumbent Transmission Owner may have to build, own and recover costs for upgrades to the transmission facilities owned by an incumbent.<sup>313</sup> We find that NYISO's proposed exception to allow an incumbent Transmission Owner to build an upgrade to its own transmission facilities partially complies with Order No. 1000. However, we note that NYISO does not define the term "upgrade" as it is used in this section. Therefore in a subsequent compliance filing, as discussed more fully below, we require the Filing Parties to define the term "upgrade" in the NYISO OATT, consistent with the definition of upgrade in Order No. 1000-A, so that it is clear which transmission facilities may fall within the definition of upgrade as used in new section 31.6.4 of Attachment Y.<sup>314</sup>

171. In addition, NYISO includes a 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."<sup>315</sup> We find that this provision is consistent with Order No. 1000's conclusion that the "retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation

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<sup>312</sup> NYISO OATT, Attachment Y, § 31.6.4.

<sup>313</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

<sup>314</sup> In Order No. 1000-A, the Commission clarified 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.

<sup>315</sup> NYISO OATT, Attachment Y, § 31.6.4.

granting the rights-of-way.”<sup>316</sup> This provision is also consistent with Order No. 1000’s statement that its reforms “are not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way.”<sup>317</sup> We highlight that the Filing Parties’ proposed language does not raise the same concerns as the language the Commission addressed in *PJM Interconnection, L.L.C.*<sup>318</sup> and *Midwest Independent Transmission System Operator, Inc.*<sup>319</sup> Unlike the provisions at issue in *PJM Interconnection, L.L.C.* and *Midwest Independent Transmission System Operator, Inc.*, the Filing Parties’ proposal simply reiterates the Commission’s statements in Order No. 1000,<sup>320</sup> by affirming 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.”<sup>321</sup>

172. Accordingly, we direct the Filing Parties to file, within 120 days of the date of issuance of this order, a further compliance filing that proposes OATT revisions that define the term “upgrade,” consistent with the definition of upgrade in Order No. 1000-A,

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<sup>316</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31, 323 at P 319.

<sup>317</sup> *Id.*

<sup>318</sup> 142 FERC ¶ 61,214, at P 229 (2013) (finding that PJM’s proposal “to designate an incumbent transmission owner as the [entity to construct, own, operate, maintain, and finance] a transmission project when the transmission project at issue is ‘proposed to be located on a Transmission Owner’s existing right of way and the project would alter the Transmission Owner’s use and control of its existing rights of way under state law’ . . . establishes a federal right of first refusal in PJM’s [Operating Agreement] that is not permitted by Order No. 1000”).

<sup>319</sup> 142 FERC ¶ 61,215, at P 244 (2013) (finding that “[Midwest Independent Transmission System Operator’s] proposal to allow [an incumbent transmission owner] to maintain a federal right of first refusal for any new transmission facility built on that [incumbent transmission owner’s] right-of-way if such right-of-way contains improvements owned by the [incumbent transmission owner] and is classified as transmission plant is not permitted by Order No. 1000” and that the Commission, in Order No. 1000, “did not find that as part of its compliance filing, a public utility transmission provider may add a federal right of first refusal for a new transmission facility built on an existing right-of-way”).

<sup>320</sup> *See supra* notes 316-317.

<sup>321</sup> *See supra* note 315.

so that it is clear which transmission facilities may fall within the definition of upgrade as used in new section 31.6.4 of Attachment Y.

**b. Qualification Criteria**

173. Order No. 1000 requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established 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, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer.<sup>322</sup> Appropriate qualification criteria must be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developer.<sup>323</sup> These criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.<sup>324</sup>

174. The qualification criteria should also allow for the possibility that an existing public utility transmission provider already satisfies the criteria.<sup>325</sup> There must be procedures in place for timely notifying transmission developers of whether they satisfy the region's qualification criteria and opportunities to remedy any deficiencies.<sup>326</sup> In addition, the qualification criteria should not be applied to an entity proposing a transmission project for consideration in the regional transmission planning process if that entity does not intend to develop the proposed transmission project.<sup>327</sup>

175. The Commission clarified in Order No. 1000-A that it would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it has, or can obtain, state approvals necessary to operate in a

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<sup>322</sup> *Id.* PP 225, 323.

<sup>323</sup> *Id.* P 324.

<sup>324</sup> *Id.* P 323.

<sup>325</sup> *Id.* P 324.

<sup>326</sup> *Id.*

<sup>327</sup> *Id.* P 324 n.304; Order No. 1000-A, 139 FERC ¶ 61,132 at n.520.

state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.<sup>328</sup>

**i. Filing Parties' Filing**

176. The Filing Parties propose to amend the reliability and economic transmission planning processes to include a two stage qualification process, which comprises pre-qualification and entity qualification criteria.<sup>329</sup> The Filing Parties also propose to add the pre-qualification and entity qualification criteria in the new public policy requirements planning process.<sup>330</sup> The Filing Parties state that NYISO shall consider the qualifications of each entity in an evenhanded and non-discriminatory manner and that the qualification criteria will apply to Transmission Owners and Other Developers alike.<sup>331</sup> The Filing Parties add that the pre-qualification criteria allow a potential transmission developer to update previously submitted information.

177. The Filing Parties state that the pre-qualification criteria 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;<sup>332</sup> (2) a project proposed to address specific congestion identified in the Congestion Assessment and Resource Integration Study;<sup>333</sup> or (3) a transmission solution to a transmission need driven by a public policy requirement.<sup>334</sup>

178. In addition, after a pre-qualified transmission developer submits a proposed transmission project for consideration, the developer must meet more detailed entity qualification criteria.<sup>335</sup> Specifically, NYISO will use the following criteria to determine

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<sup>328</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

<sup>329</sup> October 11 Filing at 57.

<sup>330</sup> NYISO OATT, Attachment Y, § 31.4.5.

<sup>331</sup> See October 11 Filing at 58; NYISO OATT, Attachment Y, §§ 31.2.4.1.1, 31.3.2.4.1.1, 31.4.5.1.

<sup>332</sup> See October 11 Filing at 57; NYISO OATT, Attachment Y, § 31.2.4.1.1.

<sup>333</sup> NYISO OATT, Attachment Y, § 31.3.2.4.1.1.

<sup>334</sup> NYISO OATT, Attachment Y, § 31.4.5.1.

<sup>335</sup> October 11 Filing at 57-58.

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.

Any entity determined by [NYISO] to qualify under this [s]ection shall be eligible to use the cost allocation and cost recovery mechanism set forth in [s]ection 31.5 of this Attachment Y and Rate Schedule 10 for any approved project.<sup>336</sup>

179. NYISO will consider the same entity qualification criteria to determine whether a pre-qualified transmission developer is eligible to offer a regulated economic transmission project or a transmission solution to a transmission need driven by a public policy requirement identified by the New York State Department of Public Service or the New York Public Service Commission.<sup>337</sup>

180. The Filing Parties assert that both the pre-qualification and entity qualification criteria apply equally to nonincumbent and incumbent transmission developers and “ensure that potential transmission developers are provided the opportunity to show that they possess qualifications necessary to propose a project.”<sup>338</sup> The Filing Parties also

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<sup>336</sup> NYISO OATT, Attachment Y, § 31.2.4.1.3.

<sup>337</sup> NYISO OATT, Attachment Y, §§ 31.3.2.4.1.3, 31.4.5.3.

<sup>338</sup> October 11 Filing at 58.

state that the criteria provide nonincumbent and incumbent transmission developers the same ability to use regional cost allocation methods.<sup>339</sup>

181. They explain that the pre-qualification criteria allow different types of projects and developers to make varying showings that are appropriate to the specific circumstances. Further, the Filing Parties state that entities may submit the pre-qualification information at any time and are allowed the opportunity to cure any deficiencies identified within the period specified in the NYISO Procedures. Pre-qualified transmission developers may submit entity qualification criteria information after they submit a project proposal.

182. The Filing Parties state that Order No. 1000 held that all entities that are users, owners, and operators of the electric bulk power system must register with NERC, including such nonincumbent transmission providers.<sup>340</sup> Therefore, they propose a new section 31.6.5, “Compliance with Reliability Requirements,” that provides “[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 (NPCC) for appropriate reliability functions and must comply with all applicable Reliability Criteria.”<sup>341</sup>

183. NYISO also proposes that “[a]ny entity seeking to become eligible to propose to develop a project as a solution to an identified Reliability Need shall submit any information, or update any previously submitted information, it considers relevant to its qualifications, to [NYISO]. Such information may be submitted at any time. [NYISO] shall within 15 days of an entity’s submittal, notify the entity if the information is incomplete. The entity shall submit the additional information within the time period specified in the [NYISO] Procedures.”<sup>342</sup>

## ii. Protests/Comments

184. Exelon states it supports the Filing Parties’ Order No. 1000 compliance proposal, as it represents a practical compromise among stakeholders and helps make NYISO’s transmission planning process more transparent for developers and other stakeholders.<sup>343</sup> In particular, Exelon asserts the proposed criteria for project selection strike an

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<sup>339</sup> *Id.*

<sup>340</sup> *Id.* at 65 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 342-344).

<sup>341</sup> *Id.*

<sup>342</sup> NYISO OATT, Attachment Y, § 31.2.4.1.1.

<sup>343</sup> Exelon Comments at 2-3.

appropriate balance between the needs for clarity and for flexibility.<sup>344</sup> Similarly, Exelon argues that the proposed qualification and pre-qualification criteria ensure that NYISO receives enough information without imposing undue burdens on potential developers.<sup>345</sup>

185. Independent Transmission Developers object to the proposed qualification process because they assert that it does not determine whether an entity is eligible to submit a reliability project until after the entity submits a reliability project and it does not appear to apply to similarly-situated incumbent transmission owners.<sup>346</sup> Independent Transmission Developers assert that NYISO should determine whether an entity is qualified to submit a project before the entity submits the project and not after, so that all entities submitting their projects are aware of their qualification status before they invest the time and money proposing a project. Independent Transmission Developers also state that all qualification criteria should specifically identify how, if at all, incumbent transmission owners pre-qualify.<sup>347</sup> Last, they assert NYISO should have the same qualification determination for reliability, economic, and public policy projects alike rather than qualification criteria in three different places.<sup>348</sup>

186. Independent Transmission Developers also disagree with three of the qualification criteria.<sup>349</sup> First, Independent Transmission Developers object to the qualification criterion that suggests the qualification review will include the expected capability of an entity to operate and maintain a proposed solution for the life of the project.<sup>350</sup> They assert that the phrase “for the life of the project” is vague and could be used as a barrier to entry.<sup>351</sup> Specifically, they argue that the useful life of most transmission projects is at least forty years and many new entrants may not have a forty-year history to establish this capability.<sup>352</sup>

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<sup>344</sup> *Id.* at 3.

<sup>345</sup> *Id.*

<sup>346</sup> Independent Transmission Developers Protest at 30.

<sup>347</sup> *Id.* at 30-31.

<sup>348</sup> *Id.* at 31.

<sup>349</sup> *Id.* at 27.

<sup>350</sup> *Id.* at 28.

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

187. Independent Transmission Developers also object to NYISO including the “ability of an entity to acquire rights of way, if necessary, that would facilitate the approval and construction” as a qualification criterion. Independent Transmission Developers state they do not object to NYISO including an entity’s experience in obtaining rights of way as a qualification criterion.<sup>353</sup> However, they assert that the proposed criterion, as written, is inconsistent with Order No. 1000-A,<sup>354</sup> as it includes the ability of an entity to acquire rights of way.<sup>355</sup>

188. Independent Transmission Developers protest the qualification criterion that states “whether the entity has the ability to meet the requirements for the submission of a valid Interconnection Request as provided in [NYISO] OATT Attachments X or Z, or a valid expansion Study Request under [NYISO] OATT [s]ection 3.7.”<sup>356</sup> They assert that, to the extent NYISO intends the criterion to apply to transmission proposals, the criterion is improper as a qualification or evaluation criterion, because, in order to meet this requirement, an entity must have Site Control<sup>357</sup> over the land around the interconnecting substation or the entity must obtain permission from the applicable New York Transmission Owner to interconnect with the substation.<sup>358</sup>

189. Finally, Independent Transmission Developers contend that the Commission should require the Filing Parties to clarify how the words “entity” and “entities” will be applied. In particular, they request the Commission to require the Filing Parties to

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<sup>353</sup> *Id.*

<sup>354</sup> *Id.* at 27 (quoting Order No. 1000-A, 139 FERC ¶ 61,132 at P 441).

<sup>355</sup> *Id.* at 28.

<sup>356</sup> *Id.* at 29 (referencing NYISO OATT, Attachment Y, § 31.2.4.1.3).

<sup>357</sup> According to section 31.1 of Attachment X of NYISO’s OATT, Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site or right of way for the purpose of constructing a proposed project; (2) an option to purchase or acquire a leasehold site or right of way for such purpose; or (3) an exclusivity or other business relationship between the Transmission Owner, or Other Developer, and the entity having the right to sell, lease, or grant the Transmission Owner, or Other Developer, the right to possess or occupy a site or right of way for such purpose.

<sup>358</sup> Independent Transmission Developers Protest at 29.

explain whether NYISO can consider a specific entity's affiliates when determining technical and financial qualification.<sup>359</sup>

**iii. Answer**

190. The Filing Parties state that, contrary to Independent Transmission Developers' assertions, the proposed qualification process is a two-step process that provides for pre-qualification prior to the submittal of any project. The Filing Parties also assert that their proposed qualification criteria do not discriminate against nonincumbent transmission developers or bar their entry. They maintain that the criteria that would allow NYISO to evaluate an entity's ability to acquire rights of way to meet the requirements of a valid interconnection request and to operate and maintain a facility for the life of the project are reasonable considerations for qualification.<sup>360</sup> The Filing Parties note that, with respect to the interconnection request criterion, Independent Transmission Developers are concerned that incumbent transmission owners could use the site control requirements to erect barriers to entry, but this is not the case, since the procedures to be used in the interconnection process would require the provision of interconnection service on an open access nondiscriminatory basis. The Filing Parties also clarify that the term "entity" in its proposed tariff revisions includes affiliates.<sup>361</sup>

**iv. Commission Determination**

191. We find that NYISO's proposal partially complies 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. Therefore, we conditionally accept NYISO's proposed pre-qualification and qualification criteria subject to further compliance as discussed below.

192. We agree, in part, with the Independent Transmission Developers that NYISO should determine, under the pre-qualification criteria, whether an entity is eligible to submit a transmission project for selection in the regional transmission plan for purposes of cost allocation before the entity submits the transmission project. Under NYISO's proposed pre-qualification criteria in Attachment Y, NYISO will "[p]rovide each entity 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

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<sup>359</sup> *Id.* at 29-30.

<sup>360</sup> Filing Parties Answer at 41-42.

<sup>361</sup> *Id.* at 43.

project to meet identified [r]eliability [n]eeds.”<sup>362</sup> After an entity submits its pre-qualification information, NYISO will “notify the entity if the information is incomplete.”<sup>363</sup> However, NYISO does not explain when it will inform the entity whether it is pre-qualified and thus is eligible to propose a transmission project for selection in the regional transmission plan. Accordingly, we direct the Filing Parties to file a further compliance filing that explains when NYISO will inform an entity that it is pre-qualified, under sections 31.2.4.1.1, 31.3.2.4.1.1, and 31.4.5.1, to submit a transmission project for selection in the regional transmission plan for purposes of cost allocation.

193. We find 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 allocation, whether an entity is eligible to develop a transmission project that is selected in the regional transmission plan for purposes of cost allocation.<sup>364</sup> We note, however, that the Filing Parties propose, under the economic transmission planning process and proposed public policy requirements transmission planning process, that NYISO consider whether an entity is eligible to *offer* a regulated economic transmission project and whether an entity is eligible to *offer* a transmission solution to a transmission need driven by a public policy requirement.<sup>365</sup> Order No. 1000 specifically stated that the transmission developer “qualification criteria required herein should not be applied to an entity proposing a transmission project for consideration in the regional transmission

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<sup>362</sup> NYISO OATT, Attachment Y, § 31.2.4.1.1 (3.0.0). NYISO proposes similar pre-qualification criteria that an entity must meet to be eligible to propose a regulated economic transmission project or a transmission solution to a transmission need driven by a public policy requirement identified by the NYDPS/NYPSC. *See* NYISO OATT, Attachment Y, §§ 31.3.2.4.1.1, 31.4.5.1.

<sup>363</sup> NYISO OATT, Attachment Y, § 31.2.4.1.1; *see also id.* § 31.2.4.1.4.

<sup>364</sup> We have found a two stage qualification process to be appropriate for other regions. For example, in PJM, the secondary entity-specific criteria is submitted as part of the transmission project proposal, and PJM uses that information to determine whether the entity proposing a transmission project selected in the regional transmission plan for purposes of cost allocation will be the entity designated to construct, own, operate, maintain, and finance the transmission project. *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 273-283 (2013).

<sup>365</sup> NYISO OATT, Attachment Y, §§ 31.3.2.4.1.3, 31.4.5.3 (emphasis added).

planning process if that entity does not intend to develop the proposed transmission project.”<sup>366</sup> Accordingly, the Filing Parties’ proposal that NYISO will consider whether an entity is eligible to propose a regulated economic transmission project or a transmission solution to a transmission need driven by a public policy requirement for selection in the regional transmission plan for purposes of cost allocation is inconsistent with Order No. 1000. Whether a transmission project is proposed during the regional transmission planning process is different from whether there is an entity qualified to develop such a project. We find that it would be inconsistent with Order No. 1000’s requirements to permit only those qualified entities to propose transmission projects, and accordingly, we direct the Filing Parties to remove this provision in the further compliance filing.

194. With respect to the Filing Parties’ proposed financial pre-qualification criterion (i.e., an entity seeking to qualify as a transmission developer must demonstrate that it has or can draw upon the financial resources needed to develop, construct, operate and maintain transmission facilities) and entity qualification criterion (i.e., when determining whether a pre-qualified transmission developer is eligible to develop a transmission project as a solution to an identified need, NYISO will consider the financial resources of the entity), we find that the Filing Parties’ proposal does not comply with the requirements of Order No. 1000. Specifically, we find that the financial pre-qualification and entity qualification criteria do not provide sufficient detail to prospective transmission developers about what information they must provide for NYISO to determine whether they qualify as a transmission developer. Without more detailed qualification criteria in the NYISO OATT, 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 that must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources to develop, construct, own, operate, and maintain transmission facilities. Accordingly, we direct the Filing Parties to submit in the further compliance filing discussed below revisions to the proposed financial pre-qualification and entity qualification criteria to describe the information that a potential transmission developer must provide to demonstrate that it meets these criteria.

195. We disagree with Independent Transmission Developers that the ability of an incumbent or nonincumbent transmission developer to operate and maintain facilities for the life of the facilities is an inappropriate qualification criteria. We find that it is reasonable that NYISO, in evaluating the qualifications of a transmission developer, consider whether the transmission developer's existing resources and commitments

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<sup>366</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324 n.304; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 439.

provide sufficient assurance that the transmission developer will be able to operate and maintain a facility for the life of the project.

196. In contrast, we find that the Filing Parties' proposed criteria two and three, that would consider the entity's existing rights-of-way, experience of the entity in question in acquiring rights-of-way as well as the ability of the entity to acquire rights-of-way, are inconsistent with Order No. 1000-A. In Order No. 1000-A, the Commission clarified that "it would be an impermissible barrier to entry, to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain state approvals necessary to operate in a state, including state public utility status or the right of eminent domain, to be eligible to propose a transmission facility."<sup>367</sup> For the same reason, we require the Filing Parties to revise the NYISO OATT to remove the reference in the first criterion to the current and expected capabilities of the entity to "license" a proposed transmission solution. Therefore, on compliance, we direct the Filing Parties to remove criteria two and three, which deal with the ability to obtain rights-of-way, and revise criteria one. We note, however, that 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.<sup>368</sup>

197. In addition, under criterion six, NYISO will consider "whether the entity has the ability to meet the requirements for the submission of a valid Interconnection Request as provided in [NY]ISO OATT Attachments X or Z, or a valid transmission expansion Study Request under [NY]ISO OATT [s]ection 3.7."<sup>369</sup> Independent Transmission Developers point out that this criterion requires that an entity demonstrate that it has Site Control. We find that requiring an entity to demonstrate that it has Site Control as part of the qualification criteria is inappropriate because this it could act as a barrier to entry. While we believe that it may be appropriate for NYISO to consider certain requirements associated with submitting an interconnection request or transmission expansion study

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<sup>367</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

<sup>368</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 232 (explaining that "it is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process" and that public utility transmission providers may "take into consideration the particular strengths of either an incumbent transmission provider or a nonincumbent transmission developer during its evaluation.").

<sup>369</sup> NYISO OATT, Attachment Y, §§ 31.2.4.1.3, 31.3.2.4.1.3, 31.4.5.3.

request in evaluating a transmission developer's qualifications, the Filing Parties must clearly specify which requirements will apply.

198. In addition, Independent Transmission Developers contend that the Commission should require the Filing Parties to clarify how the words “entity” and “entities” will be applied. In response, the Filing Parties clarify that the term “entity” in its proposed OATT revisions includes affiliates.<sup>370</sup> Accordingly, we require the Filing Parties to revise NYISO’s OATT to clarify that the term “entity” includes affiliates.

199. Finally, we note that the Filing Parties propose a new [s]ection 31.6.5, “Compliance with Reliability Requirements,” that provides “[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.” As we explained in Order No. 1000-A “all owners and operators of bulk-power system transmission facilities, including nonincumbent transmission developers, that successfully develop a transmission project, are required to be registered as Functional Entities and must comply with all applicable reliability standards.”<sup>371</sup> In other words, nonincumbents are already required to comply with all applicable reliability standards such that the additional provision in NYISO’s OATT requiring registration with NERC and NPCC appears to be unnecessary. The Filing Parties have not explained why this provision needs to be included as a separate criteria in order for a project to qualify as a regional project eligible for costs allocation. Thus, we require the Filing Parties to either provide further justification explaining why this provision is needed or remove this provision from its OATT.

200. Accordingly, we direct the Filing Parties to file, within 120 days of the date of issuance of this order, a further compliance filing proposing OATT revisions that: (1) explain when NYISO will inform an entity whether or not it has met the pre-qualification criteria; (2) 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; (3) revise the proposed financial pre-qualification and entity qualification criteria to describe the information that a potential transmission developer must provide to demonstrate that it meets these criteria; (4) remove criteria two and three from the entity qualification criteria; (5) remove the reference to the current and expected capabilities of the entity to “license” a proposed solution; (6) specify which requirements associated with submitting an interconnection request or transmission expansion study request will apply in evaluating a transmission

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<sup>370</sup> Filing Parties Answer at 43.

<sup>371</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 365 (footnote omitted).

developer's qualifications; and (7) revise NYISO's OATT to clarify that the term "entity" includes affiliates.

**c. Information Requirements**

201. Order No. 1000 requires that each public utility transmission provider revise its OATT to identify the information that a prospective transmission developer must submit in support of a transmission project the developer proposes in the regional transmission planning process.<sup>372</sup> The public utility transmission provider must identify this information 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.<sup>373</sup> The information requirements must not be so cumbersome that they effectively prohibit transmission developers from proposing transmission projects, yet not be so relaxed that they allow for relatively unsupported proposals.<sup>374</sup> They may require, for example, relevant engineering studies and cost analyses and may request other reports or information from the transmission developer that are needed to facilitate evaluation of the transmission project in the regional transmission planning process.<sup>375</sup>

202. Each public utility transmission provider must also revise its OATT to identify the date by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle.<sup>376</sup> Each transmission planning region may determine for itself what deadline is appropriate and may use rolling or flexible dates to reflect the iterative nature of its regional transmission planning process.<sup>377</sup>

**i. Filing Parties' Filing**

203. The Filing Parties state that NYISO's OATT already specifies project information submission requirements for its reliability transmission planning process.<sup>378</sup> Specifically,

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<sup>372</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

<sup>373</sup> *Id.* P 326.

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> *Id.* P 325.

<sup>377</sup> *Id.* P 327.

<sup>378</sup> October 11 Filing at 59-60 (referencing NYISO OATT, Attachment Y, §§ 31.2.4.3.1, 31.2.4.3.2, 31.2.4.5, 31.2.4.7).

the reliability transmission planning process requires the following information submission requirements for regulated backstop solutions:

(1) the lead time necessary to complete the project; (2) a description of the project, including planning and engineering specifications as appropriate; (3) evidence of a commercially viable technology; (4) a major milestone schedule; (5) a schedule for obtaining required siting permits and other certifications; (6) a demonstration of Site Control or a schedule for obtaining such control; (7) status of [NYISO] interconnection studies and interconnection agreement; (8) status of equipment procurement; and (9) any other information requested by [NYISO].<sup>379</sup>

The Filing Parties propose similar information submission requirements for alternative regulated solutions. Specifically, the Filing Parties propose to require the following additional information: the status of any contracts (other than an Interconnection Agreement); the status of any required permits; and evidence of financing.<sup>380</sup>

204. In addition, the Filing Parties propose to add similar lists of project information requirements that apply to the economic and public policy requirements transmission planning processes. The Filing Parties note that the information requirements for the public policy requirements transmission planning process, in particular, provide increased flexibility to ensure that the criteria are applicable to any type of public policy requirement.<sup>381</sup>

205. Specifically, for the economic transmission planning process, the Filing Parties propose the following project information requirements:

Any entity seeking to offer a regulated economic transmission project as a solution to address specific congestion identified in the [Congestion Assessment and Resource Integration Study] must provide, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project; (3) a description of the project, including planning and engineering specifications as appropriate; (4) evidence of a commercially viable

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<sup>379</sup> *Id.* at 60 (NYISO OATT, Attachment Y, § 31.2.4.3.1).

<sup>380</sup> NYISO OATT, Attachment Y, § 31.2.4.7.

<sup>381</sup> October 11 Filing at 60.

technology; (5) a major milestone schedule; (6) a schedule for obtaining required siting permits and other certifications; (7) a demonstration of Site Control or a schedule for obtaining such control; (8) status of [NYISO] interconnection studies and interconnection agreement; (9) status of equipment procurement; (10) detailed capital cost estimates for each segment of the project; (11) a risk profile addressing the stage of project development, required cost overruns sharing, required project cost increase sharing, identification of conditions for cancelling the project including terms and conditions for allocating sunk costs; and (12) any other information requested by [NYISO].<sup>382</sup>

206. For the public policy requirements transmission planning process, the Filing Parties propose similar, but modified, information requirements. Proposed section 31.4.8.1 provides:

Any entity seeking to offer a transmission solution for transmission needs driven by Public Policy Requirements identified by the [New York State Department of Public Service]/New York Public Service Commission, must provide, at a minimum, the following details: (1) contact information; (2) the lead time necessary to complete the project; (3) a description of the project, including type, size, and 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 required siting permits and other certifications; (7) a demonstration of Site Control or a schedule for obtaining such control; (8) status of [NYISO] interconnection studies and interconnection agreement; (9) status of equipment procurement; (10) capital cost estimates for the project; (11) to the extent available a risk profile addressing the stage of project development, required cost overruns sharing, required project cost increase sharing, identification of conditions for cancelling the project including terms and conditions for allocating sunk costs; and (12) any other information requested by [NYISO].<sup>383</sup>

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<sup>382</sup> *Id.* (quoting NYISO OATT, Attachment Y, § 31.3.2.4.2).

<sup>383</sup> *Id.* at 60-61 (quoting NYISO OATT, Attachment Y, § 31.4.8.1).

207. The Filing Parties propose to add OATT sections addressing the timing for submitting project and entity qualification information in the reliability, economic, and public policy requirements transmission planning processes.<sup>384</sup> The Filing Parties explain that, rather than setting a strict deadline, the timing proposals allow entities flexibility when submitting information to NYISO.<sup>385</sup> For the reliability planning process, the proposed language provides that:

the required information for entity and project qualification must be submitted to [NYISO] in accordance with the time frame and other requirements specific in the [NYISO] Procedures after a request for solutions is made by [NYISO] upon completion of the [Reliability Needs Assessment]. [NYISO] shall within 15 days of an entity's submittal, notify the entity if the information is incomplete. The entity shall submit the additional information within the time period specified in the [NYISO] Procedures.<sup>386</sup>

208. The Filing Parties state they propose similar time frames for the economic and public policy requirements transmission planning processes, but that these provisions include modifications reflecting the differences between the planning processes. For example, in the economic planning processes, the provision states "required information . . . may be submitted at any time, but the proposed regulated economic transmission project will be evaluated against the most recently available Congestion Assessment and Resource Integration Study Phase II database."<sup>387</sup> In the public policy requirements planning process, the Filing Parties propose to allow entities to provide information for entity and project qualification at any time,<sup>388</sup> but, under the OATT, NYISO will provide a 60-day period for Transmission Owners and Other Developers to propose specific transmission solutions to address the transmission needs driven by public policy requirements identified by the New York State Department of Public Service.<sup>389</sup>

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<sup>384</sup> *Id.* at 61 (referencing NYISO OATT, Attachment Y, §§ 31.2.4.1.4, 31.3.2.4.1.4, 31.4.5.4, for the reliability, economic and public policy requirements transmission planning processes respectively).

<sup>385</sup> *Id.*

<sup>386</sup> *Id.* (quoting NYISO OATT, Attachment Y, § 31.2.4.1.4).

<sup>387</sup> *Id.* (quoting NYISO OATT, Attachment Y, § 31.3.2.4.1.4).

<sup>388</sup> NYISO OATT, Attachment Y, § 31.4.5.4.

<sup>389</sup> *Id.* § 31.4.3.1.

**ii. Protests/Comments**

209. No comments or protests were filed.

**iii. Commission Determination**

210. We find that the provisions in NYISO's filing 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 Filing Parties' proposed information requirements largely identify the information that a transmission developer must submit regarding 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 the process. Moreover, the Filing Parties' proposed information requirements are not so cumbersome that they effectively prohibit transmission developers from proposing transmission projects, yet not so relaxed that they allow for relatively unsupported proposals.

211. However, regarding the information requirements for transmission solutions proposed in the reliability transmission planning process, the Filing Parties do not describe what kind of evidence Transmission Owners or Other Developers proposing alternative regulated solutions must provide to indicate "the status of any contracts (other than an Interconnection Agreement)," "the status of any required permits," and "evidence of financing." In addition, the Filing Parties do not explain why Transmission Owners or Other Developers proposing alternative regulated solutions must provide this information while the Responsible Transmission Owner proposing a regulated backstop solution is not similarly obligated. Therefore, as discussed more fully below, we direct the Filing Parties to provide, as part of the compliance filing required in this order, further explanation that: (1) describes 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"; and (2) clarifies why Transmission Owners or Other 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.

212. With respect to Order No. 1000's requirement that each public utility transmission provider must revise its OATT to identify the date by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle,<sup>390</sup> the Filing Parties do not propose a strict deadline for any of the three types of

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<sup>390</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

transmission projects that may be selected in the regional transmission plan for purposes of cost allocation. While Order No. 1000 provides that each transmission planning region may determine for itself what deadline is appropriate and may use rolling or flexible dates to reflect the iterative nature of their regional transmission planning process,<sup>391</sup> the Filing Parties have provided no dates whatsoever. Therefore, we direct the Filing Parties to propose 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.

213. Accordingly, we direct the Filing Parties to file, within 120 days of the date of issuance of this order, 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. In addition, as part of the compliance filing required in this order, the Filing Parties must provide further information that: (1) describes 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”; and (2) clarifies why Transmission Owners or Other 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.

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

214. Order No. 1000 requires 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.<sup>392</sup> Public utility transmission providers should both explain and justify the nondiscriminatory evaluation process proposed in their compliance filings.<sup>393</sup>

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<sup>391</sup> *Id.* P 327.

<sup>392</sup> *Id.* P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

<sup>393</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 268.

215. The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.<sup>394</sup> The public utility transmission providers in a transmission planning region must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer.<sup>395</sup> When cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or nonincumbent transmission developer.<sup>396</sup> 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.<sup>397</sup>

**i. Filing Parties' Filing**

**(a) Evaluation of Reliability Projects**

216. According to the Filing Parties' compliance proposal, once NYISO identifies a reliability need, NYISO requests, and the Responsible Transmission Owner<sup>398</sup> must provide, a regulated backstop solution to satisfy the reliability need.<sup>399</sup> The Filing Parties state that, contemporaneous with the request to the Responsible Transmission Owner, NYISO solicits proposals for market-based solutions and alternative regulated

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<sup>394</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

<sup>395</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

<sup>396</sup> *Id.* P 455.

<sup>397</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>398</sup> As previously noted, the Responsible Transmission Owner is “[t]he Transmission Owner or Transmission Owners designated by the ISO, 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 the ISO identifies a Reliability Need.” NYISO OATT, Attachment Y, § 31.1.1.

<sup>399</sup> NYISO OATT, Attachment Y, § 31.2.4.2; *see also* October 11 Filing at 14-15.

solutions.<sup>400</sup> According to section 31.2.4.2, this solicitation of proposals “shall not be a formal [request for proposals] process.”<sup>401</sup>

217. The Filing Parties indicate that NYISO evaluates the Responsible Transmission Owner’s proposed regulated backstop solution to determine whether it will meet the identified need in a timely manner.<sup>402</sup> According to Attachment Y, NYISO establishes a “trigger date”<sup>403</sup> for the reliability need, the date by which NYISO must request implementation of a regulated backstop solution to meet the reliability need, based on NYISO’s own analysis and information that the Responsible Transmission Owner provides on the lead time needed to implement the regulated backstop solution.<sup>404</sup> The Filing Parties explain that NYISO evaluates proposals for market-based solutions to determine whether they resolve the identified need.<sup>405</sup> They further explain that NYISO’s analyses include consideration of information submitted by the proposing entity in support of the proposed solution.<sup>406</sup>

218. According to Attachment Y, if NYISO finds that market-based solutions are sufficient to meet a reliability need in a timely manner, NYISO will so state in the Comprehensive Reliability Plan; however, if more than one proposed market-based solution will meet the same reliability need, NYISO will not select from among the proposals.<sup>407</sup> If NYISO determines that market-based solutions are insufficient to meet

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<sup>400</sup> NYISO OATT, Attachment Y, §§ 31.2.4.2, 31.2.4.6.

<sup>401</sup> *Id.* § 31.2.4.2.1.

<sup>402</sup> *Id.* § 31.2.5.2.

<sup>403</sup> NYISO OATT, Attachment Y, § 31.1.1 (defining Trigger Date as “[t]he date by which [NYISO] must request implementation of a regulated backstop solution pursuant to [s]ection 31.2.5.7 in order to meet a [r]eliability [n]eed”).

<sup>404</sup> NYISO OATT, Attachment Y, § 31.2.4.2. According to NYISO’s tariff, NYISO will also “independently establish benchmark lead times” for market-based and alternative regulated solutions that are proposed.

<sup>405</sup> October 11 Filing at 13. *See* NYISO OATT, Attachment Y, §§ 31.2.5.2, 31.2.5.3.

<sup>406</sup> *Id.* (referencing NYISO OATT, Attachment Y, §§ 31.2.4.3, 31.2.4.4, 31.2.4.7).

<sup>407</sup> As discussed in Part IV.B.1.c above, the Filing Parties state that if more than one regulated solution will meet an identified reliability need, the appropriate governmental agency or authority will select the solution that will be included in the

(continued...)

the identified reliability need, the Filing Parties state that NYISO will evaluate the regulated backstop solution and proposed alternative regulated solutions and will report the results of its evaluation in the Comprehensive Reliability Plan.<sup>408</sup>

219. The Filing Parties explain that the Comprehensive Reliability Plan sets forth NYISO's determination whether the market-based solutions proposed will timely meet the identified reliability transmission needs, or whether the Responsible Transmission Owner must seek to obtain regulatory approval of a regulated backstop solution.<sup>409</sup> Attachment Y provides that, if NYISO "determines that a market-based solution will not be available in time to meet a [r]eliability [n]eed, 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 is necessary."<sup>410</sup> Attachment Y also provides that, "if NYISO determines in the [Comprehensive Reliability Plan], or at any time, that implementation of a regulated backstop solution reviewed in a previous [Reliability Needs Assessment]/[Comprehensive Reliability Plan] cycle is necessary, [NYISO] will request the Responsible Transmission Owner to submit its proposal for a regulated backstop solution to the appropriate governmental agency(ies) and/or authority(ies) to begin the necessary approval process."<sup>411</sup> The Filing Parties add that NYISO will analyze alternative regulated solutions and regulated backstop solutions and may determine that a regulated solution should proceed in parallel with a market-based solution.<sup>412</sup>

220. The Filing Parties also state that, when NYISO evaluates solutions, if NYISO determines that a proposed market-based solution is sufficient to resolve the identified reliability need, NYISO will evaluate alternative regulated solutions at a lesser level of

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regional plan for purposes of cost allocation. October 11 Filing at 14; NYISO OATT, Attachment Y, § 31.2.5.3.

<sup>408</sup> October 11 Filing at 13.

<sup>409</sup> *Id.* at 14. Section 31.2.5.7 of Attachment Y, provides that the Comprehensive Reliability Plan sets forth "NYISO's determination whether the market based solutions proposed will timely meet the identified reliability needs by the need date, or whether the Responsible Transmission Owner should proceed to obtain regulatory approval of a reliability backstop solution." NYISO OATT, Attachment Y, § 31.2.5.7.

<sup>410</sup> October 11 Filing at 14; NYISO OATT, Attachment Y, § 31.2.5.6.

<sup>411</sup> NYISO OATT, Attachment Y, § 31.2.5.7.1.

<sup>412</sup> October 11 Filing at 14.

detail than regulated backstop solutions and market-based solutions.<sup>413</sup> Specifically, NYISO proposes the following language:

if the ISO determines that the submitted market-based solutions are sufficient to resolve the identified Reliability Needs, the ISO will perform a high-level review of any proposed alternative regulated solutions submitted in accordance with [s]ection 31.2.4.5 above. If the ISO determines that the submitted market-based solutions do not resolve an identified Reliability Need, the ISO will perform a more detailed review of the proposed alternative regulated solutions.<sup>414</sup>

**(b) Evaluation of Economic Projects**

221. The Filing Parties state that, with regard to proposed regulated transmission solutions to economic transmission needs, NYISO develops assumptions regarding congestion in Phase I of the Congestion Assessment and Resource Integration Study. The Filing Parties state that Phase I culminates in NYISO's preparation of a report that discusses its assumptions, inputs, and the results of the analysis.<sup>415</sup>

222. In Phase II of the Congestion Assessment and Resource Integration Study process, the Filing Parties state that developers have opportunities to propose solutions to the economic transmission needs. The Filing Parties state that NYISO actively solicits the input of its stakeholders through its stakeholder committees. The Filing Parties further state that NYISO will complete a benefit-to-cost analysis for all types of solutions. The Filing Parties explain that NYISO will evaluate the benefits against the costs (as provided by the developer) of each proposed regulated economic transmission project over a ten-year period commencing with the proposed commercial operation date for the project.<sup>416</sup> They further explain that the benefit-to-cost analysis of a proposed regulated economic transmission solution is produced in coordination with stakeholders and uses an eligibility benefit metric that evaluates the cost of the project compared to the total New

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<sup>413</sup> NYISO OATT, Attachment Y, § 31.2.5.4.

<sup>414</sup> *Id.*

<sup>415</sup> October 11 Filing at 17. The Filing Parties state that “the [Congestion Assessment and Resource Integration Study] Phase I report is reviewed in the NYISO stakeholder process, is evaluated by the NYISO's independent Market Monitoring Unit, and must be approved by the NYISO Board of Directors.” *Id.*

<sup>416</sup> NYISO OATT, Attachment Y, § 31.5.4.3.1.

York Control Area-wide production cost reduction that would result from any potential solution.

223. In addition, according to Attachment Y, for informational purposes only, NYISO evaluates proposed regulated economic transmission solutions according to additional metrics to estimate the potential benefits of the proposed project. Attachment Y provides that “these additional metrics shall include those that measure reductions in [Locational Based Marginal Price] load costs, changes to generator payments, [installed capacity] costs, Ancillary Service costs, emissions costs, and losses.”<sup>417</sup> In addition, Attachment Y provides that NYISO will work with the Electric System Planning Working Group to “consider the development and implementation of scenario analyses, for information only, that shed additional light on the [benefit-to-cost] analysis of a proposed project.”<sup>418</sup>

224. The Filing Parties state that, if a developer proposes a transmission project that provides benefits in excess of costs over ten years from the date the project is expected to enter service, costs at least \$25 million, receives a positive vote from at least 80% of the designated beneficiaries, the transmission project is eligible to be included in the regional plan for purposes of cost allocation.<sup>419</sup> The Filing Parties explain that NYISO’s evaluation and analyses are reviewed in the stakeholder process and incorporated in a report that is approved by the Business Issues Committee, the Management Committee and that must be approved by the NYISO Board of Directors.<sup>420</sup>

**ii. Protests/Comments**

**(a) Evaluation of Reliability Projects**

225. Independent Transmission Developers protest the Filing Parties’ compliance proposal, on the grounds that the proposed planning process for reliability projects is two-tiered, giving incumbent Transmission Owners a discriminatory and inappropriate advantage and ensuring that nonincumbent transmission developers will not be awarded any cost-of-service project.<sup>421</sup> They note that, under the proposed planning process, NYISO directs the Responsible Transmission Owner to propose a regulated backstop

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<sup>417</sup> *Id.* § 31.5.4.3.6.

<sup>418</sup> *Id.* § 31.5.4.3.7.

<sup>419</sup> October 11 Filing at 17 (citing NYISO OATT, Attachment Y, §§ 31.5.4.3, 31.5.4.6).

<sup>420</sup> *Id.* (citing NYISO OATT, Attachment Y, § 31.3.2).

<sup>421</sup> Independent Transmission Developers Protest at 11.

solution to each reliability need for which the Transmission Owner is responsible,<sup>422</sup> and this regulated backstop solution sets the timeline for all other proposed projects, without regards to whether the regulated backstop solution is the more efficient or cost-effective solution.<sup>423</sup> Independent Transmission Developers further state that the Responsible Transmission Owner establishes, as part of its regulated backstop solution, the timeline by which its regulated backstop solution would be implemented. They protest that NYISO uses this proposal, in part, to establish a “trigger date” for the Responsible Transmission Owner’s regulated backstop solution without taking into account Other Developers’ milestones to meet the reliability need. They assert that, while nonincumbent transmission developers may submit alternative regulated responses at the same time as the Responsible Transmission Owner submits its regulated backstop solution, nonincumbent transmission developers are treated quite differently because the Responsible Transmission Owner establishes the timeline by which all other projects must abide.<sup>424</sup> Independent Transmission Developers argue that even if a nonincumbent transmission developer’s project is more efficient or cost-effective, if it has an earlier “trigger date” than the Responsible Transmission Owner’s project, it cannot be advanced. They argue that this “trigger date” is the milestone by which all projects must live, even though the Responsible Transmission Owner’s project has not been determined to be the more efficient or cost-effective. They conclude that, while nonincumbent transmission developers may submit alternative regulated solutions at the same time as the Responsible Transmission Owner’s regulated backstop solution, alternative regulated solutions are treated quite differently because the Responsible Transmission Owner establishes the timeline by which all other projects must abide.<sup>425</sup>

226. Additionally, the Independent Transmission Developers protest that, according to NYISO’s proposal, NYISO will direct the Responsible Transmission Owner to submit its regulated backstop solution to the appropriate state decisional agencies.<sup>426</sup> The

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<sup>422</sup> According to NYISO OATT, Attachment Y, § 31.1.1, the Responsible Transmission Owner is the “Transmission Owner or Transmission Owners designated by the ISO, pursuant to [s]ection 31.2.4.2, to prepare a proposal for a regulation 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 the ISO identifies a Reliability Need.” NYISO OATT, Attachment Y, § 31.1.1.

<sup>423</sup> Independent Transmission Developers Protest at 13-14.

<sup>424</sup> *Id.* at 11-13.

<sup>425</sup> *Id.*

<sup>426</sup> *Id.* at 13.

Independent Transmission Developers also protest that NYISO does not review a project proposed by a nonincumbent seeking regional cost allocation to the same extent as the Responsible Transmission Owner's project, because "if, on initial review, [NYISO] determines that a proposed market solution can meet [a reliability] need, the market solution and the incumbent transmission owner's projects will move forward, but the non-incumbent developer's project will largely remain unreviewed."<sup>427</sup> In order to remain eligible to address the reliability need, the Independent Transmission Developers assert, a nonincumbent must continue to move forward with its project through the state permitting process without a "true evaluation by the NYISO as to the most viable project," because there is no provision for NYISO to evaluate other projects that are more efficient or cost-effective during this phase.<sup>428</sup>

227. Independent Transmission Developers also protest that NYISO does not actually evaluate proposals submitted beyond just a high level evaluation of whether the project meets an identified reliability need. Independent Transmission Developers note a particular concern that, according to the existing and proposed New York Public Service Commission selection process, the incumbent transmission owner, whose project is required by NYISO to move into the [New York Public Service Commission] selection process, has the opportunity to "pass judgment on the projects of its competitors."<sup>429</sup>

228. Accordingly, Independent Transmission Developers request the Commission to reject the Filing Parties' compliance filing with instructions to NYISO to revise the OATT to create "a process that was more consistent for all parties and established a single process for the submission of reliability projects, and provides for NYISO evaluation of the projects for a preliminary determination of the more efficient and cost effective project."<sup>430</sup> They assert that the Commission should require NYISO to adopt the planning process they propose in Appendices I and II of their protest, which would provide for: (1) the submission of all reliability solutions at the same time; (2) the submission of cost estimates and deposits to pay for NYISO evaluation of projects; (3) NYISO to evaluate project proposals and select a project for inclusion in the

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<sup>427</sup> *Id.* at 14.

<sup>428</sup> *Id.*

<sup>429</sup> *Id.* at 21. Independent Transmission Developers note that the Filing Parties state "[u]nder the procedures adopted by the [New York Public Service Commission], [incumbent] [t]ransmission [o]wners must, in a timely fashion, consider alternative regulated solutions that have been found by the NYISO to be capable of meeting the identified [r]eliability [n]eed." *Id.* (quoting October 11 Filing at 55)).

<sup>430</sup> *Id.* at 22.

Comprehensive Regional Plan as the more efficient or cost-effective solution; and, (4) NYISO to allow the more efficient or cost-effective project to move forward in the state siting process with cost recovery.<sup>431</sup>

229. NextEra states that the Filing Parties' proposal addressing the qualified elimination of the right of first refusal, as required by Order No. 1000, lacks clarity and will not ensure that the benefits envisioned by Order No. 1000 will be achieved in New York State. NextEra states that under existing section 31.2.5.6 of Attachment Y, 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," NYISO will proceed to identify both the regulated backstop solution that NYISO has determined will meet the reliability need in a timely manner, and the Responsible Transmission Owner. NextEra asserts that this provision appears to grant NYISO great discretion to award a reliability project to the incumbent Transmission Owner, thereby bypassing a competitive process that would allow nonincumbents to develop their alternative regulated solutions to address the reliability need.<sup>432</sup>

230. NextEra also contends that NYISO's proposal does not clarify how a decision will be made on choosing between an alternative regulated solution, developed by a nonincumbent transmission developer, and a regulated backstop solution. When more than one regulated solution will meet an identified transmission need, NextEra states that NYISO defers to the appropriate governmental body with jurisdiction over implementation or siting to decide which regulated solution will be selected to meet the identified Reliability Need. NextEra argues that NYISO's proposal is far too open-ended and vague to provide the needed clarity to transmission developers. NextEra recommends that additional details are needed regarding how competing projects to address reliability needs will be evaluated, including what factors will be considered and how those factors will be weighed.<sup>433</sup>

**(b) Evaluation of Economic Projects**

231. Independent Transmission Developers also request the Commission to reject NYISO's 80% supermajority voting requirement for economic enhancements, as they assert it allows incumbent Transmission Owners who are load serving entities to vote on whether to approve their competitors' projects.<sup>434</sup> Independent Transmission Developers

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<sup>431</sup> *Id.* at 13.

<sup>432</sup> NextEra Protest at 6.

<sup>433</sup> *Id.* at 6-7.

<sup>434</sup> Independent Transmission Developers Protest at 22.

assert that they oppose the specific requirement for a supermajority 80% vote, rather than the voting requirement as a general concept.<sup>435</sup> In particular, they object to the “proposition that [T]ransmission [O]wners as [sic] load serving entities can ‘vote’ on behalf of ‘beneficiaries’ on whether a competitor’s project gets built” and the “chilling effect the rule has on project submissions.”<sup>436</sup> They argue that the mere existence of the 80% voting requirement has been a deterrent to submission of economic projects in New York State and point out that, since implementation of the rule in 2008, not a single economic project has been submitted for vote.<sup>437</sup>

232. Independent Transmission Developers assert that the Filing Parties’ proposed 80% supermajority voting rule is an unduly discriminatory evaluation and selection process and, as such, is inconsistent with the intent of Order No. 1000.<sup>438</sup> They argue that load serving entities are not the direct beneficiaries of relieving congestion, and may actually be harmed by removing congestion. Therefore, they request that, if the stakeholders in New York State maintain a voting mechanism, the Commission require any representatives voting on behalf of ratepayers to have an unbiased view.<sup>439</sup> However, if the Commission determines that load serving entities who are incumbent Transmission Owners may retain a vote on economic projects, Independent Transmission Developers assert the Commission should require revision of the 80% supermajority voting requirement.<sup>440</sup>

### iii. Answer

233. In response to Independent Transmission Developers, the Filing Parties state that a trigger date tied to a regulated reliability solution is necessary to ensure that there will be sufficient time to implement a regulated solution by the Reliability Need date, if no viable market-based solution is available, and further, that a developer with a project with a longer implementation time and an earlier trigger date may also seek siting approval for its project.

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<sup>435</sup> *Id.* at 24.

<sup>436</sup> *Id.*

<sup>437</sup> *Id.*

<sup>438</sup> *Id.* at 25.

<sup>439</sup> *Id.* at 26.

<sup>440</sup> *Id.*

234. The Filing Parties also reiterate that, to the extent NYISO determines that implementation of a regulated solution is necessary, any party is eligible to propose regulated solutions.<sup>441</sup>

235. The New York Public Service Commission responds that it has already developed extensive procedures to allow consideration of nonincumbent proposals that could supplant an incumbent's regulated backstop proposal to a reliability need, and these procedures allow for consideration of a nonincumbent's project with a longer lead time than a regulated backstop solution proposed by a Responsible Transmission Owner. The New York Public Service Commission further states that a nonincumbent may propose a transmission upgrade at any time under the New York Public Service Law.<sup>442</sup>

236. The Filing Parties respond that, contrary to the Independent Transmission Developers' view, the 80% beneficiary voting mechanism through which proposed economic projects are eligible to be included in the regional transmission plan for purposes of cost allocation complies with Order No. 1000.<sup>443</sup> The Filing Parties assert that the Commission previously found the existing 80% beneficiary vote to be just and reasonable.<sup>444</sup> They further assert that the Independent Transmission Developers' basis for this allegation is simply that no project has been submitted for voting under the economic planning process, and, on this basis alone, Independent Transmission Owners assume, without any evidence, that the voting process is the problem.<sup>445</sup> The Filing Parties point out that the Independent Transmission Developers have not demonstrated that incumbent Transmission Owners will bar any Congestion Assessment and Resource Integration Study project.<sup>446</sup>

#### iv. Commission Determination

237. We find that the provisions in the Filing Parties' filing dealing with the evaluation of proposed transmission projects to meet economic and reliability transmission needs partially comply with the requirements of Order No. 1000, as discussed more fully below.

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<sup>441</sup> See NYISO OATT, Attachment Y, § 31.2.5.7.1.

<sup>442</sup> New York Public Service Commission Answer at 11-12.

<sup>443</sup> Filing Parties Answer at 31 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 689).

<sup>444</sup> *Id.* at 30.

<sup>445</sup> *Id.* at 31-32.

<sup>446</sup> *Id.* at 32.

(a) **Evaluation of Reliability Projects**

238. We find that the provisions in the Filing Parties' filing dealing with the evaluation of proposed transmission solutions to meet reliability transmission needs partially comply with the requirements of Order No. 1000.<sup>447</sup> The Filing Parties' proposal describes the process through which NYISO evaluates proposed transmission solutions "relative to their ability to meet . . . identified reliability [transmission] needs and sets forth its evaluation in the [Comprehensive Reliability Plan]."<sup>448</sup> Through this process, NYISO solicits proposals for market-based solutions and alternative regulated solutions to reliability transmission needs at the same time that NYISO requires the Responsible Transmission Owner to provide a regulated backstop solution.<sup>449</sup> In addition, the Filing Parties propose tariff revisions providing that NYISO will evaluate proposed transmission solutions to reliability needs from any transmission developer "in the same general time frame."<sup>450</sup> We also note that the Comprehensive Reliability Plan is reviewed by stakeholders and approved by the Business Issues Committee, the Management Committee and the NYISO Board of Directors.<sup>451</sup>

239. However, we find that certain aspects of NYISO's evaluation process do not comply with the evaluation requirements of Order No. 1000. In particular, we find that the Filing Parties' proposal to evaluate alternative regulated solutions in more detail only if NYISO determines that the submitted market-based solutions do not resolve an identified reliability need does not comply with Order No. 1000.

240. Order No. 1000 requires public utility transmission providers to adopt 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. By evaluating alternative regulated solutions according to a "high-level review" in some circumstances, NYISO is not using "the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer," as required by

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<sup>447</sup> See Part IV.B.1.d for a discussion of the Filing Parties' proposal for the evaluation of transmission solutions proposed to address transmission needs driven by public policy requirements.

<sup>448</sup> October 11 Filing at 14.

<sup>449</sup> NYISO OATT, Attachment Y, § 31.2.4.2.

<sup>450</sup> *Id.* § 31.2.5.1.

<sup>451</sup> See NYISO OATT, Attachment Y, §§ 31.2.6.1, 31.3.1.2, 31.4.6, 31.4.7.

Order No. 1000.<sup>452</sup> The Commission is concerned that the Filing Parties' evaluation process may thus discourage nonincumbent transmission developers from proposing transmission solutions for regional cost allocation because their proposed alternative regulation solutions<sup>453</sup> will not be evaluated in detail unless NYISO finds that any proposed market-based solution is insufficient. Furthermore, there may not be a full record of whether an alternative regulated solution is a more efficient or cost-effective transmission solution to meet regional transmission needs. Therefore, as part of the further compliance filing, the Filing Parties must revise the NYISO OATT to include, as part of the reliability transmission planning process, 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.

241. In addition, Order No. 1000 requires that 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.<sup>454</sup> We note that, while the Commission in Order No. 1000 recognized that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation will likely vary from region to region,<sup>455</sup> such evaluation must consider "the relative efficiency and cost-

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<sup>452</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

<sup>453</sup> As noted in Part IV.B.1.b above, in the proposed reliability transmission planning process, Transmission Owners or Other Developers that seek to propose a transmission solution for selection in the regional transmission plan for purposes of cost allocation must propose an alternative regulated solution. For each identified reliability need, NYISO solicits proposed transmission solutions that must fall into one of three distinct categories: (1) a regulated backstop solution (i.e., a solution that is proposed by the Responsible Transmission Owner for selection in the regional transmission plan for purposes of cost allocation); (2) alternative regulated solutions (i.e., solutions proposed by nonincumbent Transmission Owners or Other Developers for selection in the regional transmission plan for purposes of cost allocation); and (3) market-based solutions (i.e., solutions proposed by Transmission Owners or Other Developers that do not seek to be selected in the regional transmission plan for purposes of cost allocation).

<sup>454</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>455</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331.

effectiveness of [any proposed transmission] solution.”<sup>456</sup> We are concerned that the Filing Parties’ proposal that NYISO evaluate proposed transmission solutions solely on the basis of their ability to meet identified reliability transmission needs does not go far enough in explaining how NYISO will consider “the relative efficiency and cost-effectiveness of a proposed [transmission] solution.”<sup>457</sup> Therefore, we require the Filing Parties, in the further compliance filing discussed below, to propose OATT revisions providing how NYISO will consider, as part of its evaluation of transmission solutions proposed in the reliability transmission planning process, “the relative efficiency and cost-effectiveness”<sup>458</sup> of proposed transmission solutions and to explain how NYISO will ensure its evaluation will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation.

242. Accordingly, we direct the Filing Parties to provide, in a compliance filing within 120 days of the date of this order, as part of 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: (1) 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; (2) OATT revisions providing how NYISO will consider, as part of its evaluation of transmission solutions proposed in the reliability transmission planning process, “the relative efficiency and cost-effectiveness”<sup>459</sup> of proposed transmission solutions; and (3) an explanation of how NYISO will ensure its evaluation, in the reliability transmission planning process, 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.

243. We disagree with Independent Transmission Developers’ assertion that NYISO unreasonably relies solely on data submitted by the Responsible Transmission Owner to establish a “trigger date,” by which all other projects must abide, as part of the reliability transmission planning process. We note that NYISO “independently analyze[s] the lead time required for implementation of the proposed potential regulated backstop solution”

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<sup>456</sup> *Id.* P 331 n.307.

<sup>457</sup> *Id.*

<sup>458</sup> *Id.*

<sup>459</sup> *Id.*

and uses its analysis, in addition to the Responsible Transmission Owner's estimate, to establish the trigger date for the regulated backstop solution.<sup>460</sup> We also disagree that this trigger date "becomes the standard by which all other projects must live."<sup>461</sup> According to Attachment Y, NYISO "independently establish[es] benchmark lead times" for proposed market-based solutions and alternative regulated solutions.<sup>462</sup> In addition, the trigger date is specifically defined as "[t]he date by which NYISO must request implementation of a regulated backstop solution pursuant to [s]ection 31.2.5.7 in order to meet a [r]eliability [n]eed."<sup>463</sup> Therefore, we will not direct NYISO to revise its process for establishing the trigger date.

**(b) Evaluation of Economic Projects**

244. We find that the Filing Parties process for evaluating economic transmission projects complies with Order No. 1000.<sup>464</sup> Order No. 1000 requires that the evaluation process 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.<sup>465</sup> While the Commission in Order No. 1000 recognized that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation likely will vary from region to region, such evaluation must consider "the relative efficiency and cost-effectiveness of [any proposed transmission] solution."<sup>466</sup> The Filing Parties propose to evaluate the benefits against the costs of each proposed regulated economic transmission project to determine "whether the benefit of the proposed [regulated economic transmission project] exceeds its cost measured over the first ten years from the proposed commercial operation date for the project."<sup>467</sup> We find that

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<sup>460</sup> NYISO OATT, Attachment Y, § 31.2.4.2.1.

<sup>461</sup> Independent Transmission Developers Comments at 12.

<sup>462</sup> NYISO OATT, Attachment Y, § 31.2.4.2.1.

<sup>463</sup> NYISO OATT, Attachment Y, § 31.1.1.

<sup>464</sup> See Part IV.B.1.d for a discussion of the Filing Parties' proposal for the evaluation of transmission solutions proposed to address transmission needs driven by public policy requirements.

<sup>465</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>466</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

<sup>467</sup> NYISO OATT, Attachment Y, § 31.5.4.3.5.

NYISO's evaluation process explains how NYISO will consider "the relative efficiency and cost-effectiveness" of regulated economic transmission projects.<sup>468</sup>

245. With regard to economic transmission projects, we find that the Filing Parties' proposed 80 percent beneficiary vote requirement complies with Order No. 1000. In Order No. 1000, the Commission clarified that "a regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities."<sup>469</sup> In addition, as the Filing Parties point out, section 31.5.4.6.5 requires that "[b]eneficiaries voting against approval of a project must submit to [NYISO] their rationale for their vote within 30 days of the date that the vote is taken." We note that NYISO will report each "detailed explanation of the substantive reasons underlying the decision" to the Commission in an informational filing within 60 days of the vote.<sup>470</sup>

246. We also note that the Commission found in the order approving the Filing Parties' proposed 80% beneficiary vote that "the supermajority rule provides a useful check to ensure that a project has net benefits, by requiring that most of those whom NYISO expects to benefit from a project agree that they actually will benefit."<sup>471</sup> The Commission declared that "[s]ince this is the group of parties that will bear the costs of the project if it goes forward, this group has a particularly strong incentive to ensure that NYISO's estimate of benefits is accurate."<sup>472</sup> The Commission also stated that, at the same time, market participants remain free to individually or jointly develop projects that have not received supermajority support at their own cost.

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

247. Each public utility transmission provider must amend its OATT to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional

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<sup>468</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

<sup>469</sup> *Id.* P 689.

<sup>470</sup> NYISO OATT, Attachment Y, § 31.5.4.6.5.

<sup>471</sup> *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 130 (2008), *order on reh'g*, 126 FERC ¶ 61,320, at PP 35-36 (2009).

<sup>472</sup> *Id.*

transmission plan for purposes of cost allocation require evaluation of alternative transmission solutions, including those that the incumbent transmission provider proposes, to ensure the incumbent transmission provider can meet its reliability needs or service obligations. 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.<sup>473</sup>

**i. Filing Parties' Filing**

248. The Filing Parties state that to comply with the reevaluation requirements of Order No. 1000, 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. 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 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.<sup>474</sup> 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.<sup>475</sup>

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<sup>473</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

<sup>474</sup> October 11 Filing at 15-16 (citing NYISO OATT, Attachment Y, § 31.2.7).

<sup>475</sup> NYISO OATT, Attachment Y, § 31.2.7.

**ii. Protests/Comments**

249. No comments or protests were filed.

**iii. Commission Determination**

250. We find that the provisions in the Filing Parties' filing dealing with the reevaluation of proposed transmission projects comply with the requirements of Order No. 1000. In addition, under the Filing Parties' proposal, NYISO has a regulated backstop solution already in-place and ready to execute if there are delays to a transmission project selected in the regional plan for purposes of cost allocation. In addition, we note that section 31.2.7.1 of Attachment Y describes the criteria that NYISO will use to assess the continued viability of projects, including status of final permits, interconnection studies, financing, equipment, etc. We note that NYISO's assessment of such projects becomes more detailed as the trigger date, which is the date by which NYISO must request implementation of a regulated backstop solution in order to meet a reliability need, approaches. We find that this is 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.

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

251. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that provides that a nonincumbent transmission developer has an opportunity comparable to that of an incumbent transmission developer to allocate the cost of a transmission facility through a regional cost allocation method or methods.<sup>476</sup> A nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>477</sup> If a transmission project is selected in a regional transmission plan for purposes of cost allocation, Order No. 1000 requires that the transmission developer of that transmission facility (whether incumbent or nonincumbent) must be able to rely on the relevant cost allocation method or methods within the region should it move forward with its transmission project.<sup>478</sup>

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<sup>476</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

<sup>477</sup> *Id.*

<sup>478</sup> *Id.* P 339.

252. Order No. 1000 specifies that the regional transmission planning process could use a non-discriminatory competitive bidding process as the mechanism to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation.<sup>479</sup> A region may use or retain an existing mechanism that relies on a competitive solicitation to identify preferred solutions to regional transmission needs, and such an existing process may require little or no modification to comply with the framework adopted in Order No. 1000.<sup>480</sup> The regional transmission planning process could allow the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project.<sup>481</sup> If it uses a sponsorship model, the regional transmission planning process would also need to 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 unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>482</sup>

**i. Filing Parties' Filing**

253. The Filing Parties state that, to ensure that any entity, whether an incumbent or nonincumbent, is able to use NYISO's cost recovery and cost allocation provisions, they propose to add an additional OATT section stating "[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 of this Attachment Y and associated rate schedules, as applicable, for any approved reliability, economic, or public policy requirement driven transmission project."<sup>483</sup>

**ii. Protests/Comments**

254. No comments or protests were filed.

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<sup>479</sup> *Id.* P 336.

<sup>480</sup> *Id.* P 321.

<sup>481</sup> *Id.* P 336.

<sup>482</sup> *Id.*

<sup>483</sup> October 11 Filing at 62 (quoting NYISO OATT, Attachment Y, § 31.5.1.7).

### iii. Commission Determination

255. We find that the provisions in the Filing Parties' filing dealing with cost allocation for nonincumbent projects comply with the requirements of Order No. 1000, because NYISO has provided in its OATT that all parties may use NYISO's cost recovery and cost allocation provisions.

### 3. Cost Allocation

256. Order No. 1000 requires each public utility transmission provider to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>484</sup> Each public utility transmission provider must show on compliance that its regional cost allocation method or methods are just and reasonable and not unduly discriminatory or preferential by demonstrating that each method satisfies six regional cost allocation principles described in Order No. 1000.<sup>485</sup> The Commission took a principles-based approach because it recognized that regional differences may warrant distinctions in cost allocation methods among transmission planning regions.<sup>486</sup> In addition, Order No. 1000 permits participant funding, but not as a regional or interregional cost allocation method.<sup>487</sup>

257. If a public utility transmission provider is in an RTO or ISO, Order No. 1000 requires that the regional cost allocation method or methods be set forth in the RTO or ISO OATT. In a non-RTO/ISO transmission planning region, each public utility transmission provider located within the region must set forth in its OATT the same language regarding the cost allocation method or methods that is used in its transmission planning region.<sup>488</sup> Each public utility transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation.<sup>489</sup>

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

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<sup>484</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.

<sup>485</sup> *Id.* P 603.

<sup>486</sup> *Id.* P 604.

<sup>487</sup> *Id.* P 723.

<sup>488</sup> *Id.* P 558.

<sup>489</sup> *Id.* P 690.

from those facilities in a manner that is at least roughly commensurate with estimated benefits. Cost allocation methods must clearly and definitively specify the benefits and the class of beneficiaries.<sup>490</sup> In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.<sup>491</sup> Regional Cost Allocation Principle 1 precludes an allocation where the benefits received are trivial in relation to the costs to be borne.<sup>492</sup>

259. Order No. 1000 does not prescribe a particular definition of “benefits” or “beneficiaries.”<sup>493</sup> The Commission stated in Order No. 1000-A that while Order No. 1000 does not define benefits and beneficiaries, it does require the public utility transmission providers in each transmission planning region to be definite about benefits and beneficiaries for purposes of their cost allocation methods.<sup>494</sup> In addition, for a cost allocation method or methods to be accepted by the Commission as Order No. 1000-compliant, they will have to specify clearly and definitively the benefits and the class of beneficiaries.<sup>495</sup> A benefit used by public utility transmission providers in a regional cost allocation method or methods must be an identifiable benefit, and the transmission facility cost allocated must be roughly commensurate with that benefit.<sup>496</sup> Each regional transmission planning process must provide entities who will receive regional or interregional cost allocation an understanding of the identified benefits on which the cost allocation is based.<sup>497</sup> The public utility transmission providers in a transmission planning region may propose a cost allocation method that considers the benefits and

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<sup>490</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 678.

<sup>491</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

<sup>492</sup> *Id.* P 639.

<sup>493</sup> *Id.* P 624.

<sup>494</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 679.

<sup>495</sup> *Id.* P 678.

<sup>496</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 625.

<sup>497</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 746.

costs of a group of new transmission facilities, although there is no requirement to do so.<sup>498</sup>

260. The regional transmission plan must include a clear cost allocation method or methods that identify beneficiaries for each of the transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>499</sup> Order No. 1000-A stated that public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to generators as beneficiaries that could be subject to regional or interregional cost allocation, but any such allocation must not be inconsistent with the generator interconnection process under Order No. 2003.<sup>500</sup>

261. Regional Cost Allocation Principle 2 specifies that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.<sup>501</sup> All cost allocation methods must provide for allocation of the entire prudently incurred cost of a transmission project to prevent stranded costs.<sup>502</sup> To the extent that public utility transmission providers propose a cost allocation method or methods that consider the benefits and costs of a group of new transmission facilities and adequately support their proposal, Regional Cost Allocation Principle 2 would not require a showing that every individual transmission facility in the group of transmission facilities provides benefits to every beneficiary allocated a share of costs of that group of transmission facilities.<sup>503</sup>

262. The Commission clarified in Order No. 1000-A that public utility transmission providers may rely on scenario analyses in the preparation of a regional transmission plan and the selection of new transmission facilities in the regional transmission plan for purposes of cost allocation. Regional Cost Allocation Principle 2 would be satisfied if a project or group of projects is shown to have benefits in one or more of the transmission planning scenarios identified by public utility transmission providers in their Commission-approved Order No. 1000-compliant cost allocation methods.<sup>504</sup> The

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<sup>498</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 627, 641.

<sup>499</sup> *Id.* P 11; Order No. 1000-A, 139 FERC ¶ 61,132 at P 585.

<sup>500</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

<sup>501</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 637.

<sup>502</sup> *Id.* P 640.

<sup>503</sup> *Id.* P 641.

<sup>504</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 690.

Commission clarified in Order No. 1000-B that it did not intend to remove the “likely future scenarios” concept from transmission planning and that likely future scenarios can be an important factor in public utility transmission providers’ consideration of transmission projects and in the identification of beneficiaries consistent with the cost causation principle.<sup>505</sup>

263. 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. Public utility transmission providers may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.<sup>506</sup>

264. Regional Cost Allocation Principle 4 specifies that the allocation method for the cost of a transmission facility selected in a regional transmission plan for purposes of cost allocation must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region’s cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.<sup>507</sup>

265. 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.<sup>508</sup>

266. 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

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<sup>505</sup> Order No. 1000-B, 141 FERC ¶ 61,044 at P 72.

<sup>506</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

<sup>507</sup> *Id.* P 657.

<sup>508</sup> *Id.* P 668.

facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements.<sup>509</sup> If the public utility transmission providers choose to have a different cost allocation method for each type of transmission facility, there can be only one cost allocation method for each type.<sup>510</sup> In addition, if public utility transmission providers choose to propose a different cost allocation method or methods for different types of transmission facilities, each method would have to be determined in advance for each type of facility.<sup>511</sup> A regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.<sup>512</sup> However, the public utility transmission providers in a region may not designate a type of transmission facility that has no regional cost allocation method applied to it.<sup>513</sup>

**i. Filing Parties' Filing**

267. The Filing Parties state that the Comprehensive System Planning Process already includes regional cost allocation methods for regulated reliability and economic solutions, which they contend comply with many of the Order No. 1000 cost allocation principles. They note, however, that, where enhancements to NYISO's process were necessary, they propose OATT modifications to come into full compliance with the cost allocation principles.<sup>514</sup>

**(a) Cost Allocation Methods and Compliance with the Regional Cost Allocation Principles**

268. For regulated reliability solutions, the Filing Parties state that costs are allocated according to a three-step approach that focuses on whether there is a locational, statewide, or a bounded regional need.<sup>515</sup> They explain that, in the first step, the costs of

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<sup>509</sup> *Id.* P 685.

<sup>510</sup> *Id.* PP 560, 686.

<sup>511</sup> *Id.* P 560.

<sup>512</sup> *Id.* P 689.

<sup>513</sup> *Id.* P 690.

<sup>514</sup> October 11 Filing at 31-32.

<sup>515</sup> *Id.* at 32 (referencing NYISO OATT, Attachment Y, § 31.5.3).

upgrades in zones that have Locational Capacity Requirements for Installed Capacity are allocated to load-serving entities in those zones. In the second step, they state, 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, the Filing Parties state, 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.<sup>516</sup>

269. For regulated economic transmission projects, the Filing Parties state that project costs are allocated among beneficiaries based on relative economic benefit, apportioned according to zonal load savings. Specifically, the Filing Parties explain, beneficiaries are those load zones that experience present value and annual Locational Based Marginal Price load savings net of reductions in transmission congestion credit payments and bilateral contracts resulting from implementation of the project.<sup>517</sup> The Filing Parties state that economic transmission projects will be eligible for cost allocation and recovery where they meet the following thresholds: (1) the benefits exceed the costs; (2) the total capital cost of the project exceeds \$25 million; (3) a supermajority of the project's beneficiaries support the project; and (4) the Commission approves the project's costs as just and reasonable.<sup>518</sup>

270. The Filing Parties assert that, as required by Cost Allocation Principle 1, the cost allocation methods for reliability and economic projects provide definite, clear and fair cost allocation rules that allocate costs only to entities that benefit from the implementation of a project. In addition, they state, the Commission previously determined that NYISO's cost allocation methods "properly allocate[] the costs of projects using a beneficiaries pay methodology."<sup>519</sup>

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<sup>516</sup> *Id.* at 32, 36.

<sup>517</sup> The Filing Parties note that within zones, costs are allocated based on each load's MWh of consumption. *Id.* at 32, 37. See NYISO OATT, Attachment Y, § 31.5.4.4, for NYISO's specific process for identifying project beneficiaries.

<sup>518</sup> October 11 Filing at 32 (referencing NYISO OATT, Attachment Y, § 31.5.4.3.5).

<sup>519</sup> *Id.* at 33 (citing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at PP 91, 110 (2008), *order on reh'g*, 126 FERC ¶ 61,320 (2009), *reh'g denied*, 129 FERC ¶ 61,045 (2009); *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044, at P 67 (2009)).

271. The Filing Parties also assert that, in accordance with Cost Allocation Principle 2, the economic cost allocation method ensures that “[l]oad zones not benefitting from a proposed [regulated economic transmission project] will not be allocated any of the costs of the project.”<sup>520</sup> In addition, they note, an economic project is only eligible for regional cost allocation if the project’s beneficiaries approve the project by a supermajority vote.<sup>521</sup> The Filing Parties assert that the cost allocation method for economic projects also satisfies Cost Allocation Principle 3, because a proposed economic project is eligible for cost allocation if its benefits exceed its costs.<sup>522</sup> The Filing Parties explain that, when evaluating economic projects to determine their benefits, NYISO considers both benefits and costs over a ten-year period.<sup>523</sup> They add that “[t]o the extent that the NYISO’s Tariff is interpreted as providing for a ratio, it would be expressed as a ratio of benefits to costs of 1.0, which is below the Commission’s maximum of 1.25.”<sup>524</sup> The Filing Parties indicate that, consistent with Cost Allocation Principle 4, Attachment Y allocates the costs of reliability and economic transmission solutions solely to entities within NYISO’s transmission planning region. They add that no provision of NYISO’s Comprehensive System Planning Process currently allows project costs to be allocated to entities outside of the New York Control Area. The Filing Parties state they will address issues related to identifying consequences of regional facilities on neighboring regions and the potential allocation of costs for such facilities in its interregional transmission planning compliance filing.<sup>525</sup> However, they state, to ensure that NYISO’s OATT identifies and addresses consequences for other regions, they propose additional OATT sections providing that NYISO will coordinate with neighboring regions to identify the consequences of reliability and economic transmission projects, as well as transmission solutions driven by public policy requirements, on neighboring regions.<sup>526</sup> In addition, these OATT sections provide that NYISO will report the results in the respective reports, i.e., the

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<sup>520</sup> *Id.* (citing NYISO OATT, Attachment Y, § 31.5.4.4.3).

<sup>521</sup> *See* NYISO OATT, Attachment Y, § 31.5.4.6.

<sup>522</sup> October 11 Filing at 34 (quoting NYISO OATT, Attachment Y, § 31.5.4.3.5, which states “the benefit of the proposed project must exceed its cost measured over the first ten years from the proposed commercial operation date for the project”).

<sup>523</sup> NYISO OATT, Attachment Y, § 31.5.4.3.1.

<sup>524</sup> October 11 Filing at 34.

<sup>525</sup> *Id.* at 34-35.

<sup>526</sup> *Id.* at 66 (referring to NYISO OATT, Attachment Y, §§ 31.2.2.7, 31.3.1.6, 31.4.4.1).

Comprehensive Reliability Plan, Congestion Assessment and Resource Integration Study, or the public policy requirements report.<sup>527</sup>

272. With respect to Cost Allocation Principle 5, the Filing Parties state that stakeholders will have access to sufficient information on the methodology and data requirements for determining benefits and identifying beneficiaries to determine how such methodologies and requirements were applied to any proposed projects.<sup>528</sup> Furthermore, they state, Attachment Y provides that all of the studies produced pursuant to the Comprehensive System Planning Process are published and available to all interested parties.<sup>529</sup> The Filing Parties also point out that the Commission previously found that NYISO's Attachment Y provisions provide stakeholders with adequate information regarding data and methodology.<sup>530</sup>

273. The Filing Parties explain that, consistent with Cost Allocation Principle 6, Attachment Y provides a separate cost allocation method for reliability, economic, and public policy projects. They also state that sections 31.5.3 and 31.5.4 of Attachment Y set forth detailed cost allocation methods for regulated reliability and regulated economic projects, respectively. Accordingly, they assert, such methods comply with the requirement that the regional cost allocation methods be set out clearly and explained in detail.<sup>531</sup>

274. In addition, the Filing Parties propose to add the Order No. 1000 Regional Cost Allocation Principles to section 31.5.2 of Attachment Y, along with a directive that NYISO shall implement the cost allocation methods for regulated reliability and economic transmission projects, "in accordance with the Order No. 1000 Regional Cost Allocation Principles as set forth in [s]ection 31.5.2."<sup>532</sup>

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<sup>527</sup> NYISO OATT, Attachment Y, §§ 31.2.2.7, 31.3.1.6, 31.4.4.1.

<sup>528</sup> October 11 Filing at 35 (referencing NYISO OATT, Attachment Y, §§ 31.5.3.1, 31.5.3.2, 31.5.4.2, 31.5.4.4).

<sup>529</sup> *Id.*

<sup>530</sup> *Id.* at 35-36 (referencing *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at PP 48, 55 (2008), *order on reh'g*, 126 FERC ¶ 61,320 (2009), *reh'g denied*, 129 FERC ¶ 61,045 (2009) and *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044, at P 1 (2009)).

<sup>531</sup> *Id.* at 36.

<sup>532</sup> *Id.* at 65; *see* NYISO OATT, Attachment Y, §§ 31.5.2, 31.5.3.1, 31.5.4.2.

275. For public policy projects, the Filing Parties propose to identify beneficiaries and allocate the costs in accordance with a hierarchical method. 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 shall use that method.<sup>533</sup> Second, if the public policy requirement does not prescribe a particular cost allocation method, then 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 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.<sup>534</sup> 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 State Department of Public Service and/or the New York Public Service Commission may identify an alternative cost allocation method to be applied.<sup>535</sup> In any of these scenarios, NYISO, on behalf of the Transmission Owner or Other Developer, will file the proposed cost allocation for the 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.<sup>536</sup>

276. 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.<sup>537</sup>

277. The Filing Parties state that under these provisions, the New York Public Service Commission, as the primary organization in the state of New York responsible for the development of energy policies, acts as a gatekeeper regarding the selection of the cost allocation method to be used for solutions to transmission needs driven by public policy requirements.<sup>538</sup>

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<sup>533</sup> NYISO OATT, Attachment Y, § 31.5.5.4.1.

<sup>534</sup> *Id.* § 31.5.5.4.2.

<sup>535</sup> *Id.* § 31.5.5.4.3.

<sup>536</sup> *Id.* § 31.5.5.4.

<sup>537</sup> *Id.* § 31.5.5.5.

<sup>538</sup> October 11 Filing at 48.

(b) Cost Recovery

278. According to the Filing Parties' proposal, both a Responsible Transmission Owner and a transmission developer whose alternative regulated solution is selected by the New York Public Service Commission are entitled to recover reasonably incurred costs related to a regulated transmission solution proposed and undertaken to meet a reliability need.<sup>539</sup> For a regulated economic transmission project that is eligible for cost allocation and cost recovery, the transmission developer, whether an incumbent or nonincumbent, has the right to make a filing with the Commission, under section 205 of the FPA, for approval of the costs associated with implementing the project.<sup>540</sup> Additionally, a Responsible Transmission Owner or Other Developer of a regulated transmission solution may receive cost recovery for a regulated solution it undertakes to meet a reliability need that is subsequently halted in accordance with the criteria established pursuant to section 31.2.7 of Attachment Y.<sup>541</sup> Such costs could include reasonably incurred costs through the time of cancellation, including any forward commitments made.<sup>542</sup>

279. For public policy projects, the Filing Parties propose to add a new section 31.5.6.5 that allows a transmission developer to make a filing before the Commission under section 205 of the FPA for approval of its costs associated with implementing a transmission project to meet a transmission need driven by a public policy requirement. Moreover, the Filing Parties state that, consistent with the existing cost recovery provisions for regulated reliability and regulated economic transmission projects, new section 31.5.6.5 allows a transmission developer to recover necessary and reasonably incurred costs for the termination of projects implemented to meet a transmission need driven by a public policy requirement that do not receive necessary authorizations by the appropriate governmental authorities, or are approved but such approval is later withdrawn.<sup>543</sup>

280. In addition, the Filing Parties state that the proponent of a transmission solution proposed to address a transmission need driven by public policy requirements will pay

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<sup>539</sup> The Filing Parties also note that non-transmission solutions must obtain cost recovery under state law. *Id.* at 15 n.72; NYISO OATT, Attachment Y, §§ 31.5.6, 31.5.6.3.

<sup>540</sup> NYISO OATT, Attachment Y, § 31.5.6.4.

<sup>541</sup> NYISO OATT, Attachment Y, § 31.2.7.3.6.

<sup>542</sup> NYISO OATT, Attachment Y, §31.5.6.4.

<sup>543</sup> October 11 Filing at 48; *see* NYISO OATT, Attachment Y, § 31.5.6.5.

the study costs “using the process established in the economic transmission planning process” in section 31.3.1.2.3. However, the Filing Parties propose that, if the New York State Department of Public Service or the New York Public Service Commission request that an “appropriate” Transmission Owner propose a transmission solution, that Transmission Owner can recover costs incurred in preparing the requested proposal.<sup>544</sup>

**ii. Protests/Comments**

**(a) Cost Allocation Methods and Compliance with the Regional Cost Allocation Principles**

281. AWEA protests that the Filing Parties’ proposed cost allocation method fails to account for many of the benefits transmission provides for improving power system reliability. AWEA states that a primary benefit of many transmission projects is a reduced need for reserves where transmission allows greater diversity in generation and load, greater sharing of reserves, and/or for generating resources to provide additional capacity into a congested area and these savings can include reduced capacity costs and operating costs. AWEA argues that many transmission projects also reduce the risk of customer outages, there is considerable economic value in reducing the quantity of load not served, and many transmission projects reduce losses on the transmission system by reducing overloading on existing transmission lines or by transmitting electricity at higher voltages than existing lines.<sup>545</sup>

282. Because NYISO’s existing cost allocation method for economic transmission projects will only apply if 80% of a project’s beneficiaries support the project, AWEA contends that this method does not meet Regional Cost Allocation Principle 5, which requires transparency and documentation adequate to allow stakeholders to determine how cost allocation was applied. AWEA is concerned that the beneficiaries voting may be transmission competitors of independent transmission developers or may have other incentives that drive their decision, resulting in voting that is discriminatory and anti-competitive. AWEA urges the Commission to require that NYISO remove the 80% voting rule and implement an approach such that all economic transmission projects are considered comparably. For example, AWEA states, a more appropriate and transparent approach would be a formulaic determination of ratepayer benefits, such as a benefit-to-

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<sup>544</sup> NYISO OATT, Attachment Y, § 31.4.3.3.

<sup>545</sup> AWEA Comments at 20-21.

cost threshold, which could provide a non-discriminatory mechanism to ensure that there are real, measurable benefits to ratepayers.<sup>546</sup>

(b) **Cost Allocation for Public Policy Projects**

283. Several commenters argue that the proposed regional cost allocation method for public policy transmission projects does not comply with the requirements of Order No. 1000.<sup>547</sup> AWEA and Multiple Intervenors assert that the Filing Parties failed to demonstrate that the proposed cost allocation method for public policy transmission projects meet the six cost allocation principles outlined by the Commission in Order No. 1000.<sup>548</sup> Additionally, Multiple Intervenors assert that the Filing Parties' proposal under section 31.5.5.4.4 of Attachment Y that NYISO will demonstrate, at a future date, that the cost allocation method selected for a given project is consistent with the six cost allocation principles established in Order No. 1000 does not meet the express requirement of Order No. 1000.<sup>549</sup>

284. Several commenters contend that the hierarchical approach proposed by NYISO will not meet the Order No. 1000 requirements that cost allocation not be decided on a project specific basis.<sup>550</sup> These commenters also argue that the proposed cost allocation does not provide for an *ex ante* cost allocation, thus failing to provide any up front certainty or transparency as required by Order No. 1000.<sup>551</sup> For example, AWEA states that the proposed approach would allow one cost allocation proposal from the transmission developer and another identified by the New York State Department of Public Service and/or the New York Public Service Commission, and that neither would

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<sup>546</sup> *Id.* at 24-25.

<sup>547</sup> Multiple Intervenors Protest at 14; IPPNY Protest at 20; AWEA Comments at 23; Public Interest Organizations Comments at 28; Entergy Comments at 2; E.ON Climate & Renewables Comments at 4.

<sup>548</sup> Multiple Intervenors Protest at 15 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 603); AWEA Comments at 23.

<sup>549</sup> Multiple Intervenors Protest at 17.

<sup>550</sup> AWEA Comments at 26; IPPNY Protest at 24; Multiple Intervenors Protest at 25-26; Public Interest Organizations at 29 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 558, 560, 690).

<sup>551</sup> Multiple Intervenors Protest at 16; IPPNY Protest at 26; AWEA Comments at 23; Public Interest Organizations Comments at 28.

be detailed in the NYISO OATT such that it is known to stakeholders in advance.<sup>552</sup> Similarly, Multiple Intervenors and AWEA argue that the Filing Parties' proposal lacks any certainty that similar transmission projects would ultimately be subject to the same or similar type of cost allocation.<sup>553</sup> Given that section 31.5.5.4.4 provides that NYISO must file the cost allocation for certain public policy transmission projects with the Commission, E.ON Climate & Renewables requests that the Commission direct NYISO to explain how its proposal comports with Order No. 1000's requirement for certainty regarding cost allocation.<sup>554</sup> IPPNY adds that neither the case-by-case approach nor the default postage-stamp method that the Filing Parties propose satisfies the majority of Order No. 1000's cost allocation principles.<sup>555</sup>

285. Multiple Intervenors recommend that the Commission reject the Filing Parties' proposal to allow a transmission developer to propose a cost allocation for a proposed transmission project. Multiple Intervenors assert that it would likely result in proposed cost allocation methods that shift costs away from consumers located along the proposed route of the project and toward consumers more remote from the project to minimize siting objections, without ensuring that costs are allocated roughly commensurate with the transmission project's benefits. Multiple Intervenors argue that this proposal will result in rates that are unduly discriminatory and preferential, increase uncertainty, reduce transparency, and diminish the likelihood that a project's costs will be allocated to beneficiaries consistent with the requirements of Order No. 1000.<sup>556</sup>

286. Other commenters express concern with the uncertainty created by the state's role in deciding the appropriate cost allocation for public policy transmission projects. Entergy Nuclear contends that governance structures that provide state entities a meaningful role in transmission planning and cost allocation should balance the roles of the state entities and the FERC-jurisdictional RTO, and that any new cost allocation method should be subject to final Commission review.<sup>557</sup> E.ON Climate & Renewables states that NYISO has not explained how its proposed regional cost allocation method for public policy transmission projects is just and reasonable and complies with the

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<sup>552</sup> AWEA Comments at 26.

<sup>553</sup> Multiple Intervenors Protest at 25-26; AWEA Comments at 27.

<sup>554</sup> ECRNA Comments at 4.

<sup>555</sup> IPPNY Protest at 26.

<sup>556</sup> Multiple Intervenors Protest at 26-28.

<sup>557</sup> Entergy Nuclear Comments at 3.

requirements of Order No. 1000 given that it does not explain (1) whether NYISO will make the ultimate cost allocation determination or (2) what will happen if the New York Public Service Commission does not agree with a transmission developer's proposed cost allocation.<sup>558</sup> Several commenters argue that the proposed cost allocation method for public policy transmission projects does not comply with Regional Cost Allocation Principle 1 because the proposal does not appropriately identify beneficiaries and allocate benefits commensurate with costs. These parties argue that a determination of whether everyone within the NYISO control area will benefit from transmission needs driven by public policy requirements cannot occur without an actual examination of the benefits and the beneficiaries. These parties also argue that Filing Parties' proposed default load share ratio cost allocation method does not examine the benefits and beneficiaries of a public policy transmission project, and thus does not ensure that everyone within the NYISO control area will benefit from such projects.<sup>559</sup> In addition, Multiple Intervenors and IPPNY state that the Commission made clear in Order No. 1000 that the proper scope of benefits for the purposes of cost allocation are those resulting from an entity's use of the transmission system, such as reliability and reduced congestion, and not claims of more general societal benefits.<sup>560</sup>

287. With respect to Regional Cost Allocation Principle 2, IPPNY and Multiple Intervenors contend that the lack of identification or consideration of beneficiaries may result in costs being allocated to entities that do not benefit from the transmission facilities.<sup>561</sup> Specifically, IPPNY argues that public policy transmission projects are likely to benefit certain parties more than others, and may not even provide an identifiable benefit to every customer within the state.<sup>562</sup> Similarly, Multiple Intervenors contend that Filing Parties have not demonstrated that public policy transmission projects will benefit all consumers.<sup>563</sup>

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<sup>558</sup> E.ON Climate & Renewables Comments at 4.

<sup>559</sup> Multiple Intervenors Protest at 18-20; IPPNY Protest at 20; Entergy Comments at 2.

<sup>560</sup> IPPNY Protest at 20-21; Multiple Intervenors Protest at 20 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 576).

<sup>561</sup> Multiple Intervenors Protest at 16; IPPNY at 22-23.

<sup>562</sup> IPPNY Protest at 21-22.

<sup>563</sup> Multiple Intervenors Protest at 20-21.

288. IPPNY contends that the proposed default load ratio share cost allocation method for public policy transmission projects is not a transparent method for determining benefits and identifying beneficiaries, as required by Regional Cost Allocation Principle 5. IPPNY contends that by presuming that all customers in the state benefit based on their load ratio share, Filing Parties' proposed default load ratio share cost allocation method does not provide stakeholders with the means to identify the actual beneficiaries of a given public policy transmission project.<sup>564</sup> Thus, IPPNY argues, stakeholders do not have the means "to see clearly who is benefiting from, and subsequently who has to pay for, the transmission investment."<sup>565</sup>

289. IPPNY recommends that the Commission reject the proposed case-by-case cost allocation method for public policy transmission projects as beyond the scope of Order No. 1000 and require NYISO to put it before the stakeholder working groups.<sup>566</sup>

290. Conversely, Public Interest Organizations and AWEA support the Filing Parties' proposal to allocate costs proportionally across load as a default mechanism, as they contend that "the beneficiaries" of public policy transmission projects will likely be the region's load.<sup>567</sup> AWEA requests that the Commission require the Filing Parties to remove all cost allocation approaches for public policy transmission projects except for the default load ratio share cost allocation method. AWEA contends that since NYISO is a single state system and all residents of the state can be expected to benefit from generation resources or efficiency measures supported by public policy requirements. Thus, AWEA asserts, the Filing Parties' proposed default load ratio share cost allocation method for public policy transmission projects will allocate costs in a manner that is roughly commensurate with benefits.<sup>568</sup>

291. Multiple Intervenors, joined by IPPNY, contend that the Commission should direct the Filing Parties to adopt a cost allocation method for public policy transmission projects consistent with NYISO's existing cost allocation method for economic

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<sup>564</sup> IPPNY Protest at 23-24.

<sup>565</sup> *Id.* at 24 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 669).

<sup>566</sup> *Id.* at 32. IPPNY also contends that the proposed definition of public policy requirements and the proposed new authority granted to the New York Public Service Commission to identify and fulfill needs driven by public policy requirements are beyond the scope of this proceeding.

<sup>567</sup> Public Interest Organizations at 3; AWEA Comments at 27-28.

<sup>568</sup> AWEA Comments at 27-28.

transmission projects, explaining that this method allocates costs in accordance with the changes in wholesale market prices related to the addition of a new facility to the system. Multiple Intervenors assert that this method is the most appropriate cost allocation method for public policy transmission projects; however, Multiple Intervenors do not recommend applying the beneficiary voting requirement that applies to economic transmission projects to public policy transmission projects as well.<sup>569</sup>

292. Multiple Intervenors explain that the economic project cost allocation: (1) is known, transparent and allocates costs fairly pursuant to a “beneficiaries pay” approach; (2) does not allocate costs to non-beneficiaries; (3) does not utilize a benefit-to-cost ratio; and (4) allocates costs solely to entities within New York. IPPNY agrees that the cost allocation for economic projects is *ex ante*, transparent and based on cost causation principles, and adds that the Commission has found this method to be just, reasonable, and not unduly discriminatory.<sup>570</sup>

293. Noting concerns that the cost allocation method for economic projects cannot be applied to public policy transmission projects because such projects may not change wholesale market prices, thus rendering the use of such methods impossible, Multiple Intervenors propose the inclusion of a regulatory backstop provision that would vest the New York Public Service Commission with the authority to dictate an alternative cost allocation in the event that a public policy transmission project does not change wholesale market prices. Multiple Intervenors add that the authority of the New York Public Service Commission would be subject to a requirement that any such alternative cost allocation be consistent with the cost allocation principles of Order No. 1000, with NYISO demonstrating such consistency in a filing to the Commission.<sup>571</sup>

294. Multiple Intervenors and IPPNY express concern that the proposed cost allocation method for public policy transmission projects may undermine the existing reliability and economic transmission planning processes. Multiple Intervenors state that the newly-proposed process should not engulf and render moot NYISO’s existing transmission planning processes and should apply only to matters not already adequately addressed through those processes. Moreover, Multiple Intervenors explain that pursuant to NYISO’s existing economic transmission planning process, a transmission developer is required to obtain a supermajority vote of approval from the beneficiaries of its proposed project before it is entitled to cost allocation and recovery under the NYISO OATT,

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<sup>569</sup> IPPNY Protest at 34; Multiple Intervenors Protest at 29-30 & n.53.

<sup>570</sup> IPPNY Protest at 34.

<sup>571</sup> Multiple Intervenors Protest at 31.

which is not required for public policy projects.<sup>572</sup> IPPNY adds that the cost allocation method for economic projects also requires meeting the designated benefit-to-cost threshold and identifying a project's beneficiaries, neither of which are required under the proposed cost allocation method for public policy transmission projects.<sup>573</sup> Multiple Intervenors and IPPNY assert that transmission developers will have a clear incentive to evade the economic transmission planning process in favor of participating solely in the public policy transmission planning process.<sup>574</sup>

295. Regarding cost allocation for public policy projects, LIPA explains that it does not seek unilateral approval of an applicable cost allocation method where such method may result in cost allocations to ratepayers within the Long Island Transmission District, and that LIPA is not seeking to modify the process by which the Commission would review and approve a specific cost allocation method for a public policy requirement as to whether that proposed method meets the requirements of Order No. 1000. LIPA further asserts, with regard to beneficiaries, that if, for example, the New York Public Service Commission determined that there was a transmission need to meet an RPS goal in upstate New York, LIPA could determine that such RPS standard does not drive the need for new transmission facilities within the Long Island Transmission District, because the LIPA system already has been planned for accommodation of new renewable resources. LIPA argues, however, that that decision would not be a *per se* determination as to whether load on Long Island may be a beneficiary of a project located in upstate New York to meet the RPS goals, because the determination of transmission needs (by either the New York Public Service Commission or LIPA) is not a dispositive decision as to the identification of project beneficiaries for purposes of cost allocation. LIPA additionally notes that with respect to LIPA-developed projects, the process and standard under which a cost allocation method is proposed and submitted to FERC for review will be addressed at the time of such filing. LIPA states that the public policy requirements transmission planning process may result in a LIPA-developed project that may result in allocation of costs outside of LIPA's service area, and if this should occur and the New York Public Service Commission determines that the project meets a regional need driven by a public policy requirement, LIPA would submit such a filing to the Commission and the percentage share of allocations between the Long Island Transmission District and outside of the Long Island Transmission District will be reviewed and approved by the Commission.<sup>575</sup>

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<sup>572</sup> *Id.* at 34-36.

<sup>573</sup> IPPNY Protest at 28.

<sup>574</sup> Multiple Intervenors Protest at 36, IPPNY Protest at 28.

<sup>575</sup> LIPA Comments at 12-13.

(c) Cost Recovery

296. The Independent Transmission Developers argue that the OATT provisions that permit the incumbent Transmission Owner cost recovery for all costs related to a regulated backstop solution may prevent the leveling of the playing field between incumbent and nonincumbent developers. They state that, while the incumbent Transmission Owner can recover “every penny it spends from the initial planning process through completion of the state evaluation process,” even if its project is not ultimately selected, a nonincumbent must fund all of the costs it expends through the project’s development.<sup>576</sup> The Independent Transmission Developers assert that the Filing Parties have failed to provide a satisfactory justification for the distinctions drawn between incumbent and nonincumbent transmission developers in the reliability planning process.<sup>577</sup> They also note similar concerns about public policy projects, as the proposed OATT language contains identical issues.<sup>578</sup> Independent Transmission Developers suggest that only the project that NYISO selects as the more efficient or cost effective solution will move forward in the New York Public Service Commission process with cost recovery.<sup>579</sup>

297. With respect to transmission solutions proposed to address transmission needs driven by public policy requirements, E.ON Climate and Renewables notes that the Filing Parties propose to allow a Transmission Owner to recover study costs in rates, without providing this “safety net” to other developers. E.ON Climate and Renewables requests the Commission direct NYISO to explain how this proposal does not unnecessarily inhibit other developers from submitting transmission solutions.<sup>580</sup>

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<sup>576</sup> Independent Transmission Developers Protest at 14-15.

<sup>577</sup> The Independent Transmission Developers note that, throughout the Order No. 1000 compliance stakeholder discussions, the Filing Parties most often justified this provision by stating that incumbent transmission owners have an obligation to address reliability needs. However, the Independent Transmission Developers assert this rationale lacks merit, particularly given the fact that the CSPP already anticipates that incumbent transmission owners have performed their local planning through creation of Local Transmission Plans. *Id.* at 15.

<sup>578</sup> *Id.* at 16 (referencing NYISO OATT, Attachment Y, § 31.2.1.1.2).

<sup>579</sup> *Id.* at 22.

<sup>580</sup> E.ON Climate and Renewables Comments at 3.

iii. Answer

(a) Cost Allocation Methods and Compliance with the Regional Cost Allocation Principles

298. The Filing Parties state that the proposed cost allocation methodology for public policy transmission projects complies with Order No. 1000's six cost allocation principles. They state that, contrary to protesters' arguments, the proposed cost allocation method is *ex ante*, transparent, and allocates costs on a "beneficiaries pay" basis, and that it both allows for flexibility to more closely allocate costs to beneficiaries when the default method is insufficient and ensures that there is a cost allocation method in all cases that will allocate costs to beneficiaries.<sup>581</sup>

299. Moreover, the Filing Parties state that their proposal to allocate the costs of a public policy transmission project based on load ratio share to all load-serving entities in the New York Control Area complies with Order No. 1000's cost allocation principles because it reflects the generalized benefit that all loads in New York receive given that public policies are generally established to benefit everyone. They further state that Congress, state legislatures and executive agencies are all charged with serving the public interest of everyone. The Filing Parties state that this default cost allocation method is *ex ante* and transparent, since it is applicable to any public policy transmission project for which an alternative method is not proposed. In addition, the Filing Parties contend that while protesters argue that NYISO has no basis for determining that public policy transmission projects benefit everyone, those protesters do not offer an adequate basis for their contention that the default cost allocation method is unreasonable. The Filing Parties state that absent express provisions in the public policy requirement with respect to benefits and the allocation of costs or proposal of a more appropriate method by the transmission developer, it is reasonable to use the proposed load ratio share cost allocation method for public policy transmission projects.<sup>582</sup>

300. The Filing Parties further state that the Commission has approved load ratio share cost allocation methods in other RTOs, and that, contrary to Multiple Intervenors' assertions, some parties will receive benefits from a project even if they are reluctant to pay for it.<sup>583</sup> In support, they state that the allocation of costs for a control center in

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<sup>581</sup> Filing Parties Answer at 23.

<sup>582</sup> *Id.* at 24.

<sup>583</sup> *Id.* at 25.

Midwest Independent Transmission System Operator, Inc. to all loads, regardless of whether loads were direct beneficiaries, was upheld by the D.C. Circuit, stating that:

In this sense, MISO is somewhat like the federal court system. It costs a considerable amount to set up and maintain a court system, and these costs – the costs of *having* a court system - are borne by the taxpayers, even though the vast majority of them will have no contact with that system (will not *use* that system) in any given year.<sup>584</sup>

301. Given that the benefits of public policy transmission projects are widespread rather than specific, the Filing Parties assert, the default cost allocation method for such projects should allocate costs across the system. The Filing Parties further state that, because there are circumstances in which this default cost allocation may not be appropriate, their proposal allows for alternative cost allocations (i.e., alternative cost allocations may be proposed in the public policy requirement or by the transmission developer, or may be identified by the New York Public Service Commission). However, the Filing Parties assert, any such alternate cost allocation must be submitted to the Commission for approval, and thus it is inaccurate to state that a transmission developer can “dictate” its preferred cost allocation or that such an alternative cost allocation will not allow for an appropriate allocation of costs.<sup>585</sup>

302. The Filing Parties note that the Commission indicated that separate cost allocation methodologies may be adopted for regional reliability, economic and public policy projects.<sup>586</sup> The Filing Parties also state that the existing Congestion Assessment and Resource Integration Study cost allocation methodology should not be applied to transmission solutions driven by public policy requirements. They assert that such use of the Congestion Assessment and Resource Integration Study methodology would result in unjust and unreasonable rates, because the Congestion Assessment and Resource Integration Study methodology is designed for a project that only addresses congestion, and thus determines cost allocation based on economic measures; public policy projects, however, may have no or unquantifiable economic benefits. Additionally, the Filing Parties state that allocating the costs of public policy driven solutions based solely on the Congestion Assessment and Resource Integration Study methodology would allow parties to avoid paying for the costs of those projects unless they gained a clear net

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<sup>584</sup> *Id.* (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004)).

<sup>585</sup> *Id.* at 25-26.

<sup>586</sup> *Id.* at 33 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 220).

economic benefit from the facility. The Filing Parties assert that requiring economic benefits for the allocation of the cost of a public policy project would undermine the Commission's fundamental objective in requiring a process to identify, evaluate and promote the construction of transmission projects that solve transmission needs driven by public policy requirements.<sup>587</sup>

303. The New York Public Service Commission urges the Commission to reject Multiple Intervenors' demand that NYISO and the New York Transmission Owners apply their existing cost allocation method for economic transmission projects to public policy transmission projects. The New York Public Service Commission notes that this method allocates costs based on reduced production costs, while public policy transmission projects are intended to address broader considerations (such as environmental benefits or the promotion of renewable resources) that might not immediately produce price benefits. Thus, the New York Public Service Commission contends, application of the existing cost allocation method for economic transmission projects to public policy transmission projects could assign costs narrowly, ignoring the larger state-wide benefits of public policy transmission projects, and could fail to allocate costs roughly commensurate with benefits. In addition, the New York Public Service Commission states that IPPNY's contention that Filing Parties' default load ratio share cost allocation method does not reflect the principle that "beneficiaries pay" could equally apply to the existing cost allocation method for economic transmission projects or any other predefined formula. Instead, the New York Public Service Commission states, the beneficiaries of a public policy transmission project are determined by the public policy itself, and because no formula can predefine those benefits, Filing Parties propose to allow the New York Public Service Commission to consider cost allocations when considering the public policy needs.<sup>588</sup>

304. Multiple Intervenors state that the Filing Parties have failed to demonstrate that the proposed cost allocation method for public policy transmission projects complies with Order No. 1000's cost allocation principles.<sup>589</sup> Multiple Intervenors reiterate that Filing Parties' proposal to allow the cost allocation method to be specified by the public policy requirement, the transmission developer, or state agencies does not comply with Regional Cost Allocation Principles 1, 2, and 5.<sup>590</sup> Moreover, Multiple Intervenors assert that the Filing Parties' proposal will not further the Commission's goal of ensuring the

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<sup>587</sup> *Id.* at 27-28.

<sup>588</sup> New York Public Service Commission Answer at 12-14.

<sup>589</sup> Multiple Intervenors Answer at 4-5.

<sup>590</sup> *Id.* at 6.

construction of necessary, efficient and cost-effective transmission, but rather will result in continued project delays due to lengthy battles over cost allocation.<sup>591</sup>

305. Multiple Intervenors similarly assert that the Filing Parties' provision of a default cost allocation method for public policy transmission projects that would apply only if the public policy requirement, transmission developer, or state agencies do not prescribe a cost allocation is insufficient to comply with Order No. 1000. Multiple Intervenors contend that while Filing Parties characterize this default method as the primary method to be applied to public policy transmission projects in their answer, both NYISO and the New York Transmission Owners described this default method in the stakeholder process as a last resort that was unlikely to be relied upon.<sup>592</sup>

306. Moreover, Multiple Intervenors state that the Filing Parties have not justified the default load ratio share cost allocation method. Multiple Intervenors point out that the Commission found in Order No. 1000-A that a transmission planner seeking to justify such an approach "would have to do more than make a mere assertion of generalized system benefits,"<sup>593</sup> and the Filing Parties have failed to do so.<sup>594</sup> According to Multiple Intervenors, the Commission clearly indicated in Order No. 1000 that the benefits to be examined within the context of cost allocation were the benefits resulting from an entity's use of the transmission system, such as lowered congestion, increased reliability, and access to generation resources.<sup>595</sup> Instead, Multiple Intervenors assert, the Filing Parties continue to refer to potential broad social or societal benefits associated with the underlying public policy at issue in attempting to support their default cost allocation method, which Multiple Intervenors contend far exceeds the scope of benefits that the Commission considers germane in determining the allocation of transmission project costs.<sup>596</sup>

**(b) Cost Recovery**

307. The Filing Parties respond by explaining that qualified proponents of alternative regulated solutions to reliability needs may submit their proposed solutions to the

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<sup>591</sup> *Id.* at 9.

<sup>592</sup> *Id.* at 13.

<sup>593</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 683.

<sup>594</sup> Multiple Intervenors Answer at 17.

<sup>595</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 576.

<sup>596</sup> Multiple Intervenors Answer at 18.

appropriate agencies for review in the same timeframe as the Responsible Transmission Owner submits its reliability backstop solution. They note that such proponents are eligible for cost allocation and cost recovery, if their proposed solution receives regulatory approval.<sup>597</sup>

308. The Filing Parties also assert that there is no discrimination in the provision of cost recovery for Responsible Transmission Owner transmission solutions, prior to their submittal for regulatory approval, given that nonincumbents are not similarly situated to the Transmission Owners and do not have a similar legal responsibility to prepare a regulated backstop solution if necessary.<sup>598</sup> The Filing Parties state that New York's Transmission Owners assumed this legal responsibility on condition that they would recover the costs reasonably incurred in the preparation of a regulated backstop solution, whereas nonincumbents have no such obligation. The Filing Parties urge the Commission to decline to mandate the blanket recovery of all development costs for proposed solutions. They argue that such an unqualified right to recover planning and development costs would eliminate the financial risks of proposing a project, regardless of whether that project is likely to be successful.<sup>599</sup> The Filing Parties also note that a nonincumbent transmission developer may always petition the Commission for transmission rate incentives under section 219 of the FPA and Order No. 679, so as to mitigate the financial risks of proposing a project.<sup>600</sup>

309. The New York Public Service Commission disagrees with the Independent Transmission Developers' assertion that NYISO's existing reliability transmission planning process discriminates against nonincumbent developers. The New York Public Service Commission asserts that the rights and obligations of incumbent Transmission Owners and nonincumbent transmission developers are distinguishable, because incumbent Transmission Owners have statutory and regulatory obligations to provide safe and adequate service in their service territories, for which they recover costs through regulated cost-of-service rates. The New York Public Service Commission states that a Transmission Owner's access to cost-based compensation for carrying out its mandatory reliability functions should not be equated with a discriminatory provision.<sup>601</sup>

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<sup>597</sup> Filing Parties Answer at 36-37.

<sup>598</sup> *Id.* at 35-36.

<sup>599</sup> *Id.* at 37.

<sup>600</sup> *Id.*.

<sup>601</sup> New York Public Service Commission Answer at 10-11.

iv. **Commission Determination**

310. We find that the Filing Parties' filing partially complies with the Regional Cost Allocation Principles of Order No. 1000, as the cost allocation methods for reliability and economic transmission projects are largely compliant with Order No. 1000. We note, however, that we will require the Filing Parties to comply with Regional Cost Allocation Principle 4's requirement that the regional transmission planning process must identify consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation on other transmission planning regions. Moreover, as discussed below, with respect to the cost allocation method for public policy transmission projects, we find that the Filing Parties have not adequately supported the default load ratio share cost allocation method that they propose for such projects. We will also require the Filing Parties to limit the amount of time that may pass in considering the four steps of the hierarchical cost allocation method for public policy projects, so that a transmission developer will know how the costs of its transmission project will be allocated in a timely manner.

(a) **Cost Allocation for Reliability and Economic Projects**

311. We find that NYISO's existing cost allocation methods for reliability and economic projects, with the enhancements proposed by the Filing Parties, partially comply with the regional cost allocation principles of Order No. 1000.

312. As discussed above, for reliability projects, NYISO evaluates whether a proposed project addresses a locational, statewide, or bounded region need to identify the beneficiaries of a particular reliability project, and allocates costs accordingly. We find that, by considering which areas within the New York Control Area are affected by a particular reliability need, NYISO's cost allocation method for reliability projects addresses Regional Cost Allocation Principles 1 and 2. AWEA objects to the use of this cost allocation method, noting that reliability projects can provide more general benefits to the system (a reduced need for reserves, reduced capacity costs and line losses, and reduced risk of customer outages) in addition to meeting the specific reliability needs that elicited the project.<sup>602</sup> We do not disagree that such general benefits exist, and that a cost allocation method that considers such benefits could be found to be just and reasonable. However, Filing Parties have provided sufficient evidence for us to determine that their proposed cost allocation method is just and reasonable. Specifically, Filing Parties demonstrate that by considering which areas within the New York Control Area have Locational Capacity Requirements for Installed Capacity, whether a state-wide reliability need is identified, and whether binding transmission constraints prevent the deliverability

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<sup>602</sup> AWEA Comments at 20-21.

of capacity throughout the New York Control Area, NYISO is able to allocate costs to zones in a manner that is roughly commensurate with benefits. While we are accepting NYISO's cost allocation method for reliability projects, we note that AWEA and other stakeholders may work with NYISO to develop a cost allocation methodology that reasonably accounts for all benefits from reliability projects.

313. With respect to economic transmission projects, NYISO evaluates each zone's relative economic benefit from a proposed transmission project. The Filing Parties state that:

The cost allocation methodology for regulated economic transmission projects in [s]ection 31.5.4.3.5 provides that projects will be eligible for cost recovery where they meet the following thresholds: (1) the benefits must exceed the costs; (2) the total capital cost of the project must exceed \$25 million; (3) a supermajority of the project's beneficiaries support the project; and (4) the Commission approves the project's costs as just and reasonable. Cost allocation among beneficiaries is based on relative economic benefit apportioned according to zonal load savings.<sup>603</sup>

The Commission previously accepted NYISO's cost allocation method for economic projects, noting that the benefit to the system from an economic transmission project comes from the fact that the production costs of serving load will decrease (i.e., cheaper energy from the exporting areas can flow into congested importing areas, displacing more expensive resources under least cost security constrained dispatch).<sup>604</sup> By allocating costs to zones based on load savings, NYISO allocates costs in a manner that is roughly commensurate with benefits.

314. Thus, NYISO's regional cost allocation methods for both reliability projects and economic projects allocate costs in a manner that is roughly commensurate with estimated benefits as determined through NYISO's respective reliability and economic analyses, satisfying Regional Cost Allocation Principle 1, and do not allocate costs to entities that receive no benefit, satisfying Regional Cost Allocation Principle 2.

315. We also find that NYISO's existing cost allocation methods for reliability and economic transmission projects are consistent with Regional Cost Allocation Principle 3 (i.e., if used, a benefit-to-cost ratio should not exceed 1.25 without justification). NYISO

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<sup>603</sup> October 11 Filing at 32 (citing NYISO OATT, Attachment Y, § 31.5.4.3.5).

<sup>604</sup> *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 111 (2008).

does not propose to apply a benefit-to-cost ratio to reliability transmission projects; for economic transmission projects, a project is eligible for cost allocation if its benefits exceed its costs over the first ten years of the project's life. This is equivalent to a ratio of 1.0, which is below the maximum threshold established by Order No. 1000.

316. With respect to Regional Cost Allocation Principle 4, the Filing Parties state that the costs of reliability and economic transmission solutions are allocated solely to entities within NYISO's transmission planning region. However, Order No. 1000 also requires that the regional transmission planning process must identify consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation, on other transmission planning regions, such as upgrades that may be required in another region.<sup>605</sup> The Filing Parties' proposal to defer addressing consequences in neighboring regions and the potential allocation of costs associated with upgrades in another region until it submits its interregional transmission planning compliance filing does not adequately address Regional Cost Allocation Principle 4. We therefore direct the Filing Parties to file, within 120 days of the date of issuance of this order, a further compliance filing that revises 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. The Filing Parties must also address in the further compliance filing whether the NYISO transmission planning region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated under the NYISO regional cost allocation methods.

317. With respect to Regional Cost Allocation Principle 5 (i.e., the cost allocation method must be transparent), we find that the OATT contains sufficient detail regarding the methodology and data requirements for identifying the beneficiaries of reliability and economic projects. We further find that the Filing Parties' proposal satisfies Regional Cost Allocation Principle 6 (i.e., a different cost allocation method may be used for different types of transmission facilities), noting that it is reasonable for NYISO to distinguish among reliability, economic, and public policy transmission projects.

318. We reject AWEA's challenges to the cost allocation provisions for economic transmission projects. We have addressed AWEA's general concern regarding the proposed 80% supermajority requirement above.<sup>606</sup> Here, AWEA seeks to recast its overall objection to the 80% supermajority as a specific objection to the cost allocation method for economic transmission projects. AWEA argues, in essence, that the requirement to obtain an 80% supermajority vote to construct an economic project must

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<sup>605</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 657.

<sup>606</sup> See *supra* Part IV.B.2.d.

mean that the regional cost allocation method for economic projects does not comply with Order No. 1000. AWEA states that “[a] transmission project may meet all the other NYISO requirements, in addition to providing significant positive benefits well above the estimated costs of the project, yet it may not receive regional cost allocation due to the lack of support from some beneficiaries,”<sup>607</sup> and states, without further explanation, that this provision does not comply with the transparency requirement of Regional Cost Allocation Principle 5. We disagree. Regional Cost Allocation Principle 5 requires that the cost allocation method and data requirements for determining benefits from and identifying beneficiaries of a transmission project must be transparent, and the Filing Parties have sufficiently demonstrated that the OATT provides this transparency. AWEA also suggests that a more appropriate means to determining whether to move forward with an economic transmission project is to use a benefit-to-cost threshold. As discussed above, NYISO does use such a threshold, and the ratio it applies is below the Commission’s maximum ratio of 1.25. AWEA has failed to demonstrate in what way the regional cost allocation method for economic projects fails to comply with Order No. 1000, and we therefore reject AWEA’s contentions on this issue.

**(b) Cost Allocation for Public Policy Projects**

319. Order No. 1000 requires public utility transmission providers in a region to consider transmission needs driven by Public Policy Requirements. However, Order No. 1000 allows public utility transmission providers to decide how to implement the requirement, either through a separate transmission planning process that leads to a separate class of transmission projects related to public policy requirements or through a process that identifies and evaluates all transmission needs, whether driven by public policy requirements, reliability criteria or economic considerations.<sup>608</sup> If the public utility transmission providers in a region propose a separate category of transmission projects that resolve transmission needs driven by Public Policy Requirements and are selected in the regional transmission plan for purposes of cost allocation, then the public utility transmission providers also must propose a method for allocating the costs of those transmission projects that complies with the cost allocation principles of Order No. 1000.<sup>609</sup> As discussed above, the Filing Parties proposes to consider transmission needs driven by public policy requirements through a separate transmission planning process and a corresponding category of public policy projects. Accordingly, because NYISO

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<sup>607</sup> AWEA Comments at 24.

<sup>608</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 220.

<sup>609</sup> *Id.* P 558 (“We require that a public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation.”); *see also id.* P 560.

has proposed that public policy Projects are a new category of regional transmission projects selected in the regional transmission plan for purposes of cost allocation, NYISO must have a regional cost allocation method for public policy projects that complies with Order No. 1000.

320. The Commission finds that, while the Filing Parties' proposed default load ratio share regional cost allocation method may be reasonable, the Filing Parties do 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. In particular, Order No. 1000 requires the Filing Parties to show that the regional cost allocation method allocates the costs of new transmission facilities in a manner that is at least roughly commensurate with estimated benefits.<sup>610</sup> While the Filing Parties state that the load ratio share cost allocation method, in which costs are allocated to the entire state, is a "beneficiaries pay" approach, the Commission believes that stating that "public policies established by government are generally established to benefit everyone"<sup>611</sup> does not explain in sufficient detail how costs are allocated in accordance with estimated benefits (Regional Cost Allocation Principle 1) and that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated the costs of those facilities (Regional Cost Allocation Principle 2).

321. Specifically, to support their assertion that load ratio share allocates the costs of public policy projects to beneficiaries, the Filing Parties argue that "public policies established by government are generally established to benefit everyone" making it reasonable to allocate costs to all loads across the [New York Control Area] to reflect the generalized benefit being realized by such loads."<sup>612</sup> NYISO adds that "it makes sense to have socialization as the default cost allocation because benefits are generally widespread and not specific."<sup>613</sup> Additionally, the Filing Parties state that adopting the cost allocation method used for regulated economic or reliability projects for public policy projects would be inappropriate, and may result in unjust and unreasonable rates, because they are not designed to measure the benefits related to a transmission solution to a need driven by a public policy requirement.<sup>614</sup> However, such allocation of costs, without the appropriate support for such allocation, gives too broad a meaning to the definition of

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<sup>610</sup> *Id.* P 219.

<sup>611</sup> October 11 Filing at 48.

<sup>612</sup> Filing Parties Answer at 24 (quoting October 11 Filing at 48).

<sup>613</sup> *Id.* at 25 (quoting October 11 Filing at 49).

<sup>614</sup> October 11 Filing at 49.

benefits.<sup>615</sup> In Order No. 1000, the Commission stated that “any benefit used by public utility transmission providers in a regional cost allocation method or methods must be an identifiable benefit and that the transmission facility cost allocated must be roughly commensurate with that benefit.”<sup>616</sup> In addition, in Order No. 1000-A, the Commission stated that public utility transmission providers, if they choose to do so in consultation with stakeholders, should be permitted to make the case in their compliance filings that a postage stamp cost allocation (such as the one NYISO is proposing here) is consistent with Regional Cost Allocation Principle 1’s requirement that all costs be allocated roughly commensurate with benefits. However, the Commission noted that any such proposal must be based on more than a mere assertion of generalized system benefits.<sup>617</sup>

322. Continuing with the remaining cost allocation principles, we find that the Filing Parties have failed to explain how the proposed default load ratio share regional cost allocation method complies with Regional Cost Allocation Principle 4. In a further compliance filing, the Filing Parties 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 and, 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. With regard to Regional Cost Allocation Principle 5, we find that the default load ratio share regional cost allocation method is explained in sufficient detail to allow a stakeholder to reproduce the results of applying this method. With regard to Regional Cost Allocation Principle 6, as noted above, it is reasonable for NYISO to distinguish among reliability, economic, and public policy transmission projects.

323. Accordingly, we direct the Filing Parties to make a compliance filing within 120 days of the date of this order, explaining how the proposed default load ratio share regional cost allocation method complies with the requirement of Regional Cost Allocation Principles 1, 2, and 4. We note that Regional Cost Allocation Principle 3 is not relevant to the proposed default load ratio share regional cost allocation method since the Filing Parties are not proposing a benefit to cost threshold.

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<sup>615</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 625 (responding to concerns about an overly narrow or broad interpretation of benefits, the Commission stated that it would address such concerns on compliance).

<sup>616</sup> *Id.*

<sup>617</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 683.

324. In addition, the Commission is concerned that there is no limit to the amount of time that may pass in considering the four steps of the hierarchical cost allocation method. Before a project can use the default load ratio share regional cost allocation method (the fourth and final step of the process): (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 NYPSC; and (iii) the NYDPS/NYPSC may identify an alternative cost allocation method. The Commission is concerned that the Filing Parties provide no limit on the time that the transmission developer or the NYPSC may take to develop an alternative cost allocation. An entity seeking to develop a public policy transmission project will not be able to rely on any particular cost allocation method, or even on a date by which a default method will be available, thus introducing additional uncertainty into the process both for the project developer, and for load to whom the costs will be allocated, thus leading to a lower likelihood that a public policy transmission project will be constructed. The Commission directs 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.

325. As for the Filing Parties' proposal that the costs of a public policy transmission project may, in certain instances, be allocated in accordance with a cost allocation prescribed by the associated public policy requirement, proposed by the transmission developer, or identified by the New York Public Service Commission or the New York State Department of Public Service, we note that parties may negotiate cost assignments on a project-specific basis, provided that the OATT includes a cost allocation method for projects that are selected in a regional transmission plan for purposes of cost allocation that complies with the cost allocation principles of Order No. 1000. Further, we note that NYISO will file any such proposed cost allocation mechanisms with the Commission for approval. This additional requirement that NYISO file each proposed cost allocation method with the Commission for approval ensures that the Commission will review each proposed cost allocation method to determine whether it is just and reasonable and not unduly discriminatory or preferential. We also note that, as part of the cost allocation filing, NYISO will include a demonstration that the proposed cost allocation complies with the Order No. 1000 regional cost allocation principles. Therefore, we find the Filing Parties' proposal to allocate the costs of a public policy transmission project on a project-specific basis, in certain instances and subject to Commission review, is reasonable.

(c) **Cost Recovery**

326. Contrary to Independent Transmission Developers' argument, we find that it is not unduly discriminatory or preferential for a Responsible Transmission Owner to be able to recover costs associated with developing a regulated backstop solution to an identified

reliability transmission need, even if that project is not ultimately selected, while a nonincumbent transmission developer can only recover such costs if its project receives regulatory approval. As the Filing Parties state, nonincumbent proponents of alternative regulated solutions may submit their projects to the appropriate governmental agencies for review in the same timeframe that the Responsible Transmission Owner submits its proposal, and a nonincumbent transmission developer whose project receives regulatory approval is eligible for cost allocation and cost recovery.<sup>618</sup> Where 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).<sup>619</sup> We find 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. We also note that, if a nonincumbent transmission developer's alternative regulated solution is selected to proceed and is later halted, the nonincumbent transmission developer would recover its costs under NYISO's OATT.<sup>620</sup>

327. In response to comments from E.ON Climate and Renewables regarding the ability for incumbent Transmission Owners to recover study costs associated with developing a transmission solution to meet a transmission need driven by public policy requirements while Other Developers cannot, we find that it is appropriate that any developer be permitted to recover any prudently incurred study costs when it has been requested to develop such a solution by the New York State Department of Public Service or the New York Public Service Commission. As an initial matter, we note that the Filing Parties have not explained why only an incumbent Transmission Owner can be

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<sup>618</sup> Filing Parties Answer at 36-37.

<sup>619</sup> *Id.* at 36-37 nn.136-138 (citing NYISO OATT, Attachment Y, §§ 31.2.5.7.1, 31.2.7.3.6, 31.5.6).

<sup>620</sup> NYISO's 6 OATT Rate Schedules - 6.10 OATT Schedule 10 states: "This [s]ection 6.10.2.2 also applies to the recovery of all reasonably incurred costs related to either a regulated backstop transmission project or an alternative regulated transmission project that has been selected by the appropriate state agency(ies) as the preferred solution and that is later halted, including but not limited to reasonable and necessary expenses incurred to implement an orderly termination of the project, in accordance with the provisions of the NYISO OATT and the NYISO/TO Reliability Agreement." NYISO, NYISO Tariffs, OATT, § 6.10 (Schedule 10 – Rate Mechanism For Recovery Of RFC) (2.0.0).

identified by the state agencies as the appropriate party to develop such a solution. Therefore, we find that the Filing Parties' proposal to allow the New York Public Service Commission to request solutions to transmission needs driven by public policy requirements from only an incumbent Transmission Owner is unduly discriminatory.

328. We also find that 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 State Department of Public Service or New York Public Service Commission, is unduly discriminatory. We are concerned that this limitation could discourage the New York State Department of Public Service or New York Public Service Commission from seeking the participation of other transmission developers in the transmission planning process. Therefore, we direct the Filing Parties to submit a compliance filing within 120 days of the date of this order, proposing OATT revisions that clarify that: (1) in the event the New York Public Service Commission or the New York State 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 State Department of Public Service may request any qualified transmission developer provide the proposed solution; and (2) any qualified transmission developer that the New York Public Service Commission or the New York State Department of Public Service requests propose a transmission solution for a transmission need driven by a public policy requirement may recover the prudently incurred costs of preparing the requested solution.

The Commission orders:

(A) Filing Parties' compliance filing is hereby conditionally accepted, as modified, subject to a further compliance filing, as discussed in the body of this order.

(B) Filing Parties are hereby directed to submit a further compliance filing, within 120 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix A: Abbreviated Names of Intervenors**

The following table contains the abbreviated names of intervenors that are used in the Order on the Filing Parties' filings.

**Intervenors**

**Docket No. ER13-102-000**

<b><u>Abbreviation</u></b>	<b><u>Intervenor(s)</u></b>
AWEA	American Wind Energy Association
E.ON Climate & Renewables North America	E.ON Climate & Renewables North America LLC
ENPM	Entergy Nuclear Power Marketing, LLC
Exelon	Exelon Corporation
Iberdrola Renewables	Iberdrola Renewables, Inc.
IPPNY	Independent Power Producers of New York, Inc.
Independent Transmission Developers	LS Power Transmission, LLC, LSP Transmission Holdings, LLC and Pattern Transmission LP
Multiple Intervenors	Multiple Intervenors
NRECA*	National Rural Electric Cooperative Association
NYAPP	New York Association of Public Power
New York Public Service Commission	New York State Public Service Commission
NextEra Resources	NextEra Energy Resources, LLC
NRG Companies	NRG Companies

Public Interest Organizations

Sustainable FERC Project, Pace Energy  
and Climate Center and Natural  
Resources Defense Council

PSEG Companies

Public Service Electric and Gas  
Company, PSEG Power LLC, and  
PSEG Energy Resources & Trade LLC.

NRG Companies

NRG Companies

TDI

Transmission Developers, Inc.

Transource

Transource Energy, LLC

\* late intervention

**Appendix B: Abbreviated Names of Initial Commenters**

The following table contains the abbreviated names of initial commenters that are used in the Order on Filing Parties' Filings.

**Initial Commenters**

**Docket No. ER13-102-000**

<b><u>Abbreviation</u></b>	<b><u>Commenter(s)</u></b>
AWEA*	American Wind Energy Association
Exelon	Exelon Corporation
E.ON Climate & Renewables North America	E.ON Climate & Renewables North America LLC
IPPNY+	Independent Power Producers of New York, Inc.
Independent Transmission Developers+	LS Power Transmission, LLC, LSP Transmission Holdings, LLC and Pattern Transmission LP
LIPA	Long Island Power Authority and Long Island Lighting Company
Multiple Intervenors+	Multiple Intervenors
New York Public Service Commission	New York State Public Service Commission
NextEra Resources	NextEra Energy Resources, LLC
Public Interest Organizations	Sustainable FERC Project, Pace Energy and Climate Center and Natural Resources Defense Council
PSEG Companies+	Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC

- \* late comments
- + protests

**Appendix C: Abbreviated Names of Reply Commenters**

**Reply Commenters**

**Docket No. ER13-102-000**

<b><u>Abbreviation</u></b>	<b><u>Commenter(s)</u></b>
Filing Parties	New York Independent System Operator, Inc. and the New York Transmission Owners
Multiple Intervenors	Multiple Intervenors
New York Public Service Commission	New York State Public Service Commission