

Order No. 1000 Compliance Filing

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**March 8, 2018, Transmission Planning Advisory Subcommittee
and Electric System Planning Working Group Meeting**

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Agenda

- Overview of February 15, 2018 orders
- Review of Commission's directives and the NYISO's proposed compliance tariff revisions

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Order No. 1000

February 15 Compliance Order

- On February 15, 2018, the Commission issued an order in response to the NYISO's March 2016 and September 2016 Order No. 1000 regional compliance filings.
- The Commission accepted in large part, subject to limited revisions, the following tariff elements:
 - The Transmission Interconnection Procedures ("TIP") contained in the new Attachment P to the OATT;
 - The *pro forma* development agreements for the NYISO's reliability and public policy processes and related tariff provisions;
 - The *pro forma* operating agreement for Non-Incumbent Transmission Owners; and
 - Tariff revisions to the definition and use of the term "Transmission Owners" to address certain differences in the rights and responsibilities of existing- versus new Transmission Owners.
- The Commission's specific directives, and the NYISO's proposed compliance revisions, are detailed later in this presentation.

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February 15 Order on Requests for Rehearing

- On February 15, 2018, the Commission issued a second order addressing several requests for rehearing concerning determinations in its December 23, 2015, order in the Order No. 1000 regional proceeding. The Commission:
 - Granted the NYISO's request for rehearing limiting its indemnification obligations
 - Limits indemnification obligations for losses arising from NYISO's acts and omissions under the development agreement, except in cases of its gross negligence or intentional misconduct
 - Directs corresponding-tariff revisions
 - Denied the NYISO's and NYTOs' request for rehearing of the Commission's directive related to a development agreement for regulation backstop solutions
 - Specifically, denied the request for rehearing of the requirement that the NYISO enter into a development agreement with the Responsible TO(s) for a regulated backstop solution that the NYISO triggers to proceed in parallel with a selected alternative solution.

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February 15 Order on Requests for Rehearing, continued

- In the Order on Requests for Rehearing, the Commission also addressed the NYISO's requested rehearing of a separate December 2015 order.
 - The request for rehearing related to the Commission's rejection of all of the NYISO's proposed enhancements to the public policy process due to the Commission's concerns with differences in the interconnection requirements for incumbent and non-incumbent developers.
 - The February 15 order dismissed the requested rehearing as moot given that the NYISO had subsequently filed, and the Commission accepted, the non-interconnection-related revisions in a separate proceeding.

Summary of February 15 Compliance Directives and Corresponding Compliance Tariff Revisions

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
1.	Clarify that NYISO will not forward a transmission interconnection application to the Connecting Transmission Owner before the close of the proposal window (PP 39, 40)	OATT, Section 22.4.2.2	“The ISO shall acknowledge receipt of the Transmission Interconnection Application within five (5) Business Days of receipt of the request and attach a copy of the received Transmission Interconnection Application to the acknowledgement it returns to the Transmission Developer. At the same time, the ISO shall forward a copy of the Transmission Interconnection Application and its acknowledgement to the Connecting Transmission Owner(s) with whom the Transmission Developer is proposing to connect; <u>provided, however, that any Transmission Interconnection Application that is submitted for a proposed project subject to the ISO’s competitive selection process in the ISO’s Comprehensive System Planning Process in Attachment Y to the ISO OATT shall not be forwarded to the Connecting Transmission Owner(s) until the close of the applicable solicitation window.</u> ”
		OATT, Section 22.2.3	<p>“22.4.2.3 Deficiencies in Transmission Interconnection Application</p> <p>A Transmission Interconnection Application will not be considered to be a valid application until all items in Section 22.4.2.1 have been received by the ISO <u>and the applicable solicitation window has closed for any Transmission Interconnection Application that is submitted for a proposed project subject to the ISO’s competitive selection process in the ISO’s Comprehensive System Planning Process in Attachment Y to the ISO OATT.</u> If a Transmission Interconnection Application fails to meet the requirements set forth in Section 22.4.2.1, the ISO shall notify the Transmission Developer and the Connecting Transmission Owner(s) within five (5) Business Days of receipt of the initial Transmission Interconnection Application of the reasons for such failure and that the Transmission Interconnection Application does not constitute a valid application. <u>However, for any Transmission Interconnection Application that is submitted for a proposed project subject to the ISO’s competitive selection process in the ISO’s Comprehensive System Planning Process in Attachment Y to the ISO OATT and that fails to meet the requirements set forth in Section 22.4.2.1, the ISO shall notify the Transmission Developer and the Connecting Transmission Owner(s) no later than five (5) Business Days following the close of the applicable solicitation window.</u> The Transmission Developer shall provide the ISO the additional requested information needed to constitute a valid application within ten (10) Business Days after receipt of such notice. The ISO shall promptly forward such information to the Connecting Transmission Owner(s); <u>provided, however, for any Transmission Interconnection Application that is submitted for a proposed project subject to the ISO’s competitive selection process in the ISO’s Comprehensive System Planning Process in Attachment Y of the ISO OATT, such information will not be forwarded to the Connecting Transmission Owner(s) until the close of the applicable solicitation window.</u> Failure by the Transmission Developer to comply with this Section 22.4.2.3 shall be treated in accordance with Section 22.4.5.”</p>
		OATT, Section 30.3.3.2	“The ISO shall acknowledge receipt of the Interconnection Request within five (5) Business Days of receipt of the request and attach a copy of the received Interconnection Request to the acknowledgement it returns to the Developer. At the same time, the ISO shall forward a copy of the Interconnection Request and its acknowledgement to the Connecting Transmission Owner with whom the Developer is proposing to connect; <u>provided, however, that any Interconnection Request that is submitted for a proposed project subject to the ISO’s competitive selection process in the ISO’s Comprehensive System Planning Process in Attachment Y to the ISO OATT shall not be forwarded to the Connecting Transmission Owner(s) until the close of the applicable solicitation window.</u> ”

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
1.	Clarify that NYISO will not forward a transmission interconnection application to the Connecting Transmission Owner before the close of the proposal window (PP 39, 40)	OATT, Section 30.3.3.3	<p>“30.3.3.3 Deficiencies in Interconnection Request</p> <p>An Interconnection Request will not be considered to be a valid request until all items in Section 30.3.3.1 have been received by the ISO <u>and the applicable solicitation window has closed for any Interconnection Request that is submitted for a proposed project subject to the ISO’s competitive selection process in the ISO’s Comprehensive System Planning Process in Attachment Y to the ISO OATT.</u> If an Interconnection Request fails to meet the requirements set forth in Section 30.3.3.1, the ISO shall notify the Developer and Connecting Transmission Owner within ten (10) Business Days of receipt of the initial Interconnection Request of the reasons for such failure and that the Interconnection Request does not constitute a valid request. <u>However, for any Interconnection Request that is submitted for a proposed project subject to the ISO’s competitive selection process in the ISO’s Comprehensive System Planning Process in Attachment Y to the ISO OATT and that fails to meet the requirements set forth in Section 22.4.2.1, the ISO shall notify the Developer and the Connecting Transmission Owner(s) no later than ten (10) Business Days following the close of the applicable solicitation window.</u> The Developer shall provide the ISO the additional requested information needed to constitute a valid request within ten (10) Business Days after receipt of such notice. The ISO shall promptly forward such information to the Connecting Transmission Owner; <u>provided, however, for any Interconnection Request that is submitted for a proposed project subject to the ISO’s competitive selection process in the ISO’s Comprehensive System Planning Process in Attachment Y of the ISO OATT, such information will not be forwarded to the Connecting Transmission Owner(s) until the close of the applicable solicitation window.</u> Failure by Developer to comply with this Section 30.3.3.3 shall be treated in accordance with Section 30.3.6.”</p>
		OATT, Section 31.2.5.1	<p>“In response to a solicitation for a solution to a Reliability Need identified after the 2014-2015 planning cycle, the Developer of a proposed transmission solution must also demonstrate to the ISO, simultaneous with its submission of project information, that it has submitted a valid Transmission Interconnection Application or Interconnection Request, as applicable.”</p>
		OATT, Section 31.4.4.3.1	<p>“In response to a solicitation for a solution to a Public Policy Transmission Need identified after the 2014-2015 planning cycle, the Developer of a Public Policy Transmission Project must also demonstrate to the ISO, simultaneous with its submission of project information, that it has submitted a valid Transmission Interconnection Application or Interconnection Request as applicable.”</p>
2.	Explain whether Attachment P of the OATT applies to incumbent Transmission Owners’ market-based project proposals (PP 39, 41)	OATT, Section 3.7	<p>“To the extent a Transmission Owner proposes <u>any other</u> new transmission facility or upgrade <u>(i.e., not an upgrade or expansion identified in a Local Transmission Owner Plan or NYPA transmission plan) as part of the NYISO’s competitive selection process in the NYISO’s Comprehensive System Planning Process in Attachment Y of the ISO OATT, regardless of whether and for which</u> the Transmission Owner seeks cost allocation under the ISO OATT <u>or proposes a market-based project,</u> the Transmission Owner must submit a Transmission Interconnection Application and proceed under the procedures set forth in Attachment P of the ISO OATT <u>and must complete all studies required under Attachment P or, if requesting CRIS, submit an Interconnection Request and proceed under the procedures set forth in Attachment X of the ISO OATT.</u>”</p>

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
3.	Revise definition of a Merchant Transmission Facility consistent with the definition in Order No. 1000 as a transmission facility that recovers its costs through negotiated rather than cost-based rates (PP 39, 42)	OATT, Section 30.1	<p><i>Adding a new definition of “Class Year Transmission Project.”</i></p> <p><u>“Class Year Transmission Project shall mean a Developer’s proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which the Developer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures. Class Year Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.”</u></p>
		OATT, Section 30.1	<p><i>Revising the following definition of “Merchant Transmission Facility consistent with the Commission’s directive.</i></p> <p><u>“Merchant Transmission Facility shall mean a Developer’s proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System. Developer’s device for the transmission of electricity identified in the Interconnection Request, proposing to interconnect to the New York State Transmission System, for which the costs of construction will be recovered through negotiated rates instead of cost-based rates and not subject to the competitive evaluation and selection process for purposes of cost allocation under Attachment Y to the ISO OATT the Developer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements for Unforced Deliverability Rights set forth in the ISO Procedures. Merchant Transmission Facilities shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.—”</u></p>
		OATT, Section 31.1.1	<p><i>Adding a new definition of “Merchant Transmission Facility” consistent with Commission’s directive.</i></p> <p><u>“Merchant Transmission Facility shall mean a Developer’s proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which the costs of construction will be recovered through negotiated rates instead of cost-based rates and not subject to the competitive evaluation and selection process for purposes of cost allocation under Attachment Y to the ISO OATT. Merchant Transmission Facilities shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.”</u></p>

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
3.	Revise definition of a Merchant Transmission Facility consistent with the definition in Order No. 1000 as a transmission facility that recovers its costs through negotiated rather than cost-based rates (PP 39, 42)	OATT, Section 1.4 OATT, Section 6.12.4 Various Sections in Att. P Various Sections in Att. S Various Sections in Att. X Various Sections in Att. Y Various Sections in Att. Z OATT, Section 38.22 Services Tariff, Section 5.16.1.1	Changing "Merchant Transmission Facility" to "Class Year Transmission Project," where applicable, or including references to Merchant Transmission Facilities based upon above definition, where applicable. Revising Section 25.7.5 as follows: "25.7.5 The Pre-Existing System. Where the Existing System Representation demonstrates deliverability issues, a Developer electing CRIS need only address the incremental deliverability of its CRIS request inter-connecting or interconnected generator or merchant transmission project , not the deliverability of the pre-existing system depicted in the Existing System Representation. Likewise, Transmission Owners will not be responsible for curing any pre-existing issues related to the deliverability of generators."
4.	Revise Section 3.7 of the OATT to refer to both System Impact Studies and Transmission System Studies or explain why such revisions are not required (PP 39, 43)	OATT, Section 3.7	Adding additional references to Transmission System Studies when referring to System Impact Studies throughout Section 3.7 of the OATT, where applicable.
5.	Revise Section 22.3.1.2 of the OATT to correct the reference to Section 31.3.1.3 of the OATT or explain why such a correction is not necessary (PP 39, 44)	OATT, Section 22.3.1.2	Changing reference to Section 22.3.1.2 as directed by the Commission.
6.	Revise the definitions of "NYISO/TO Reliability Agreement" in Section 31.1.1 of Attachment Y and in the Reliability Development Agreement, so that the definition is the same in both locations (P 173).	OATT, Section 31.1.1	Revising Section 31.1.1 to align with definition in Reliability Development Agreement. "ISO/TO Reliability Agreement: The Agreement Between the New York Independent System Operator, Inc., and the New York Transmission Owners on the Comprehensive Planning Process for Reliability Needs, <u>as filed with and accepted by the Commission in New York Independent System Operator, Inc., 109 FERC ¶ 61,372 (2004) and 111 FERC ¶ 61,182 (2005) in Docket No. ER04-1144, and as amended or supplemented from time to time, or any successor agreement thereto.</u> "

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
7.	Revise Section 31.2.10.1.2 of Attachment Y of the OATT to remove from the provision concerning cost recovery in the event of termination the "provided, however" clause explicitly providing for the Responsible Transmission Owner to recover costs to the extent permitted by the NYISO/TO Reliability Agreement. (PP 16-18)	OATT, Section 31.2.10.1.2	"31.2.10.1.2 The ISO may revoke its selection of the regulated transmission solution and the eligibility of the Developer to recover its costs pursuant to the ISO's regional cost allocation mechanism; provided, however, the Developer may recover its costs to the extent provided in Sections 31.2.8.1.1, 31.2.8.2.1, 31.2.8.2.2, 31.2.8.2.5, and 31.2.8.2.6 or as otherwise determined by the Commission: provided, further, that if the Developer is the Responsible Transmission Owner, it may also recover costs to the extent permitted under the ISO/TO Reliability Agreement. "
8.	Remove requirements in Section 31.2.10.1.3 that NYISO take any action it reasonably considers appropriate in the event a developer is unable to complete its project. (P 174).	OATT, Section 31.2.10.1.3	"31.2.10.1.3 The ISO may take one or more of the following actions to address the Reliability Need based on the particular circumstances: (i) address the Reliability Need in the CRP for the next planning cycle; (ii) direct the Developer to continue with the development of its regulated transmission solution for completion beyond the in-service date required to address the Reliability Need; (iii) direct the Responsible Transmission Owner to proceed with its regulated backstop solution if it has not yet been halted by the ISO pursuant to Section 31.2.8.2.1; (iv) request that the Responsible Transmission Owner complete the selected alternative regulated transmission solution; (v) commence the Gap Solution process under Section 31.2.11; and/or (vi) adopt new ISO or Transmission Owner operating procedures; and/or (vii) take any other action the ISO reasonably considers is appropriate to address the Reliability Need. If a Responsible Transmission Owner agrees to complete the selected alternative regulated transmission solution, it shall enter into a Development Agreement with the ISO in accordance with Sections 31.2.8.1.6 and 31.2.8.1.7."
9.	Remove requirements in Section 31.4.12.3.1.3 that NYISO take any action it reasonably considers appropriate in the event a developer is unable to complete its project, and remove requirement in Section 31.4.12.3.1.3 that the NYISO submit a report to the NYPSC and/or Commission. (P 174).	OATT, Section 31.4.12.3.1.3	"31.4.12.3.1.3 The ISO may take one or more of the following actions to address a Public Policy Transmission Need based on the particular circumstances: (i) address the Public Policy Transmission Need in the subsequent planning cycle or, if requested by the NYPSC pursuant to Section 31.4.1, in an out-of-cycle process; (ii) direct the Developer to continue with the development of its Public Policy Transmission Project for completion beyond the in-service date required to address the Public Policy Transmission Need; and/or (iii) solicit bids from qualified Developers to complete the selected Public Policy Transmission Project in accordance with Section 31.4.12.3.1.4; (iv) submit a report to the NYPSC and/or the Commission, as appropriate, for its consideration and determination of whether action is appropriate under state or federal law; and/or (v) take such other action as it reasonably considers is appropriate, following consultation with the NYPSC and/or the Commission, to ensure that the Public Policy Transmission Needs is satisfied. "

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
10.	Revise Section 31.6.4 of Attachment Y to remove the language "outside of the ISO's Tariffs" and to provide that "nothing in Attachment Y affects a Transmission Owner's right to recover the cost of upgrades to its facilities except if the upgrade has been selected in the regional cost allocation method set forth in Attachment Y applies, unless the Transmission Owner has declined to pursue regional cost allocation." (PP 159-161)	OATT, Section 31.6.4	<p>"31.6.4 Rights of Transmission Owners</p> <p>Nothing in this Attachment Y affects the right of a Transmission Owner to: (1) build, own, and recover outside of the ISO's Tariffs the costs for upgrades to the facilities it owns, <u>provided that nothing in Attachment Y affects a Transmission Owner's right to recover the costs of upgrades to its facilities except if the upgrade has been selected in the regional transmission plan for purposes of cost allocation, in which case the regional cost allocation method set forth in Attachment Y of the ISO OATT applies, unless the Transmission Owner has declined to pursue regional cost allocation</u> 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 Transmission District or footprint, as applicable. For purposes of Section 31.6.4, the term "upgrade" shall refer to an improvement to, addition to, or replacement of a part of an existing transmission facility and shall not refer to an entirely new transmission facility."</p>
11.	Revise Article 8.1 of the Reliability Development Agreement to remove from the provision concerning cost recovery in the event of termination the "provided, however" clause explicitly providing for the Responsible Transmission Owner to recover costs to the extent permitted by the NYISO/TO Reliability Agreement. (PP 16-18)	OATT, Section 31.7 (Appx C), Article 8.1	<p>"In the event of termination under Articles 8.1(i), (ii), or (iii), the Developer may be eligible for cost recovery under the OATT in the manner set forth in Attachment Y and Schedule 10 of the OATT. In the event of termination under Articles 8.1(iv) or (v), cost recovery may be permitted as determined by FERC; provided, however, that if the Developer is the Responsible Transmission Owner, it may also recover costs to the extent permitted under the NYISO/TO Reliability Agreement. In the event of termination for any reason under this Article 8.1, the Developer shall use commercially reasonable efforts to mitigate the costs, damages, and charges arising as a consequence of termination and any transfer or winding up of the Transmission Project."</p>
12.	Revise Section 9.2 of the development agreement "to provide for the transmission developer to indemnify NYISO, except for acts of gross negligence or intentional misconduct, and to make the terms in the provisions mutual to the extent allowed under the NYISO OATT." (162 FERC ¶ 61,124 at PP 17-19)	OATT, Section 31.7 (Appx C), Article 9.2	<p>"... the Developer shall not have any indemnification obligation under this Article 9.2 with respect to any loss to the extent the loss results from the <u>gross</u> negligence or intentional misconduct of the NYISO; <u>provided, further, that the NYISO shall only not have any indemnification obligation under this Article 9.2 with respect to any loss resulting from its to the extent the loss results from the gross negligence or intentional misconduct of the Developer to the same extent as provided in Section 2.11.3(b) of the ISO OATT.</u> This Article 9.2 shall survive the termination, expiration, or cancellation of this Agreement."</p>
13.	Revise the definitions of "NYISO/TO Reliability Agreement" in Section 31.1.1 of Attachment Y and in the Reliability Development Agreement, so that the definition is the same in both locations. (P 173)	OATT, Section 31.7 (Appx C)	<p><i>Making revisions in Section 31.1.1 to align with definition in Reliability Development Agreement and, as a result, no change to Reliability Development Agreement.</i></p>

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
14.	Revise Section 9.2 of the development agreement "to provide for the transmission developer to indemnify NYISO, except for acts of gross negligence or intentional misconduct, and to make the terms in the provisions mutual to the extent allowed under the NYISO OATT." (162 FERC ¶ 61,124 at PP 17-19)	OATT, Section 31.7 (Appx D), Article 9.2	"... the Developer shall not have any indemnification obligation under this Article 9.2 with respect to any loss to the extent the loss results from the <u>gross</u> negligence or intentional misconduct of the NYISO; <i>provided, further, that the NYISO shall <u>only</u> not have any indemnification obligation under this Article 9.2 with respect to any loss <u>resulting from its</u> to the extent the loss results from the <u>gross</u> negligence or intentional misconduct of the Developer to the same extent as provided in Section 2.11.3(b) of the ISO OATT.</i> This Article 9.2 shall survive the termination, expiration, or cancellation of this Agreement."
15.	Revise NTO Operating Agreement Article 2.02 to remove the language that subjects a Nonincumbent Transmission Owner to "the transmission interconnection agreement(s) for its facilities" (PP 123, 126)	OATT, Section 31.11 (Appx H), Article 2.02	"2.02 Transmission System Operation The NTO shall be responsible for ensuring that all actions related to the operation, maintenance and modification of its facilities that are designated as NTO Transmission Facilities Under ISO Operational Control and NTO Transmission Facilities Requiring ISO Notification are performed in accordance with the terms of this Agreement, all Reliability Rules and all other applicable reliability rules, standards and criteria, all operating instructions, ISO Tariffs, <u>and ISO Procedures</u> , and any transmission interconnection agreement(s) for its facilities. "
16.	Revise NTO Operating Agreement Article 2.07 to remove the requirement that Nonincumbent Transmission Owners comply with the local reliability rules and planning criteria of the Interconnecting Transmission Owner (PP 123, 129)	OATT, Section 31.11 (Appx H), Article 2.07	"2.07 Design, Maintenance and Rating Capabilities The NTO shall comply with the provisions of this Agreement, all Reliability Rules and all other applicable reliability rules, standards and criteria, ISO Procedures, the local reliability rules and planning criteria of its TIO(s) , and Good Utility Practice with respect to the design, maintenance and rating the capabilities of NYS Transmission System facilities."
17.	Insert a new tariff provision requiring all Transmission Owners to provide maintenance schedules to other Transmission Owners where those maintenance schedules would directly impact other Transmission Owners' facilities, and revise NTO Operating Agreement Article 2.08 of the Operating Agreement to refer to that new tariff provision (PP 123, 130)	Services Tariff, Section 3.5.3 OATT, Section 31.11 (Appx H), Article 2.08	<u>"3.5.3 Provision of Data By Transmission Owners to Each Other</u> <u>Each Transmission Owner shall make available information regarding its Transmission Facilities Under ISO Operational Control, Transmission Facilities Requiring ISO Notification, and Local Area Transmission Facilities to the other Transmission Owners in the New York Control Area as follows: (i) a Transmission Owner must make available the maintenance schedules for its transmission facilities described above to any other Transmission Owner in the New York Control Area whose facilities would be directly impacted by the maintenance schedules; and (ii) a Transmission Owner must make available to all other Transmission Owners in the New York Control Area the results of its investigations of equipment malfunctions and failures and forced transmission outages of its transmission facilities described above. Except for such information posted by the ISO pursuant to its outage scheduling procedures, each Transmission Owner shall treat such information as Confidential Information and restrict access to only those persons authorized to view such information by FERC's Standards of Conduct in 18 C.F.R. § 358, and, if more restrictive, by each Transmission Owner's board resolutions, tariff provisions, or other internal policies governing access to, and the sharing of Transmission System Information as that term is defined in Attachment F of the ISO OATT."</u>

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
17.	Insert a new tariff provision requiring all Transmission Owners to provide maintenance schedules to other Transmission Owners where those maintenance schedules would directly impact other Transmission Owners' facilities, and revise NTO Operating Agreement Article 2.08 of the Operating Agreement to refer to that new tariff provision (PP 123, 130)	Services Tariff, Section 3.5.3 OATT, Section 31.11 (Appx H), Article 2.08	<p>"2.08 Maintenance Scheduling</p> <p>The NTO shall schedule maintenance of its facilities designated as NTO Transmission Facilities Under ISO Operational Control and schedule any outages (other than forced transmission outages) of said transmission system facilities in accordance with outage schedules approved by the ISO. The NTO shall comply with maintenance schedules coordinated by the ISO, pursuant to this Agreement, for NTO Transmission Facilities Under ISO Operational Control. The NTO shall be responsible for providing notification of maintenance schedules to the ISO and HTO(s) for NTO Transmission Facilities Requiring ISO Notification; and, The NTO shall for providing notification of maintenance schedules to <u>affected Transmission Owners its HTO(s) for NTO Transmission Facilities Requiring ISO Notification and Local Area Transmission Facilities pursuant to Section 3.5.3 of the ISO Services Tariff."</u></p>
18.	Insert a new tariff provision requiring all Transmission Owners to provide information regarding investigations of equipment malfunctions and failures and forced transmission outages to other Transmission Owners, and revise NTO Operating Agreement Article 2.10 of the Operating Agreement to refer to that new tariff provision (PP 123, 131)	Services Tariff, Section 3.5.3 OATT, Section 31.11 (Appx H), Article 2.10	<p><u>"3.5.3 Provision of Data By Transmission Owners to Each Other</u></p> <p><u>Each Transmission Owner shall make available information regarding its Transmission Facilities Under ISO Operational Control, Transmission Facilities Requiring ISO Notification, and Local Area Transmission Facilities to the other Transmission Owners in the New York Control Area as follows: (i) a Transmission Owner must make available the maintenance schedules for its transmission facilities described above to any other Transmission Owner in the New York Control Area whose facilities would be directly impacted by the maintenance schedules; and (ii) a Transmission Owner must make available to all other Transmission Owners in the New York Control Area the results of its investigations of equipment malfunctions and failures and forced transmission outages of its transmission facilities described above. Except for such information posted by the ISO pursuant to its outage scheduling procedures, each Transmission Owner shall treat such information as Confidential Information and restrict access to only those persons authorized to view such information by FERC's Standards of Conduct in 18 C.F.R. § 358, and, if more restrictive, by each Transmission Owner's board resolutions, tariff provisions, or other internal policies governing access to, and the sharing of Transmission System Information as that term is defined in Attachment F of the ISO OATT."</u></p> <p><u>"... The NTO shall supply the results of such investigations to the NYSRC, the ISO, its HTO(s), and, pursuant to Section 3.5.3 of the ISO Services Tariff, the other Transmission Owners. Following a total or partial system interruption, restoration shall be coordinated between the ISO control center and local control centers."</u></p>

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19.	Revise NTO Operating Agreement Article 3.08 to make it comparable to the NYISO Transmission Owners Agreement or explain how Article 3.08 in the Operating Agreement is comparable to Article 3.10 of the NYISO Transmission Owners Agreement and not unduly discriminatory or preferential (PP 123, 134)	OATT, Section 31.11 (Appx H), Article 3.08	a. The NTO shall have the right at any time unilaterally to file <u>make a filing with the Commission</u> pursuant to Section 205 of the Federal Power Act to change recover, in accordance with the requirements of Attachment Y to the ISO OATT, a Service Agreement under and/or applicable rate schedule of the ISO OATT, or the ISO Agreement to the extent necessary; (i) to recover <u>recover</u> all of its reasonably incurred costs, plus including <u>plus</u> a reasonable return on investment related to <u>services under the ISO OATT and (ii) to accommodate implementation of, and changes to, an NTO's retail access program, the development, construction, operation and maintenance of its transmission facilities and any applicable regulatory incentives.</u>
20.	Revise NTO Operating Agreement Article 4.01 of the Operating Agreement to remove NYISO's right to assign the Operating Agreement (PP 123, 135)	OATT, Section 31.11 (Appx H), Article 4.01	<p>"ARTICLE 4.0: ASSIGNMENT</p> <p>4.01 Assignments by the NTO or the ISO.</p> <p><u>This Agreement cannot be assigned by the ISO.</u> This Agreement may be assigned by the NTO either <u>the NTO or the ISO</u> including, without limitation, to any entity(ies) in connection with a merger, consolidation, reorganization or change in the organizational structure of the assigning Party, provided that the surviving entity(ies) agree, in writing, to be bound by the terms of this Agreement."</p>
21.	Revise NTO Operating Agreement Articles 5.01 and 5.02 to limit NYISO's liability "as provided under the ISO OATT" (PP 123, 136)	OATT, Att. Y Section 31.11 (Appx H), Articles 5.01 and 5.02	<p>"5.01 Limitations of Liability</p> <p>Except as otherwise provided under the ISO OATT, the NTO neither Party <u>the NTO or the ISO</u> shall not <u>not</u> be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO or other Party <u>ISO or the ISO</u>, any Market Participant, any third party or other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive, exemplary or direct damages resulting from any act or omission <u>in any way associated with</u> under this Agreement, except to the extent the NTD Party <u>NTD Party</u> is found liable for gross negligence or intentional misconduct, in which case the NTD Party <u>NTD Party</u> shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages. Nothing in this Section will excuse an NTO from an obligation to pay for services provided to the NTO by the ISO or to pay any deficiency payments, penalties, or sanctions imposed by the ISO under the ISO OATT or the ISO Services Tariff.</p> <p>"5.02 Additional Limitations of Liability</p> <p>Except as otherwise provided under the ISO OATT, neither <u>neither</u> the NTO nor the ISO <u>nor the ISO</u> shall not <u>not</u> be liable for any indirect, consequential, exemplary, special, incidental or punitive damages including, without limitation, lost revenues or profits, the cost of replacement power or the cost of capital, even if such damages are foreseeable or the damaged party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy."</p>

	Commission Directive	Tariff Section Requiring Revision	Proposed Revision
22.	Revise NTO Operating Agreement Articles 6.01, 6.02, and 6.03 to remove the requirements that a Nonincumbent Transmission Owner “obtain[] all regulatory approvals . . . and hav[e] on file with FERC its own open access transmission tariff” before terminating the Operating Agreement, withdrawing from the ISO Agreement, the OATT, and Services Tariff, and withdrawing its assets from NYISO’s control, and remove Article 6.03(c) (PP 123, 139-141)	OATT, Section 31.11 (Appx H), Articles 6.01, 6.02, and 6.03	<p>“6.01 Term and Termination for Cause</p> <p>. . . Without waiving or limiting any of its other rights under this Article, if the NTO determines that any of the conditions set forth in Section 3.03 hereof is not being met or ceases to be in full force and effect the NTO may terminate this Agreement, withdraw from the ISO Agreement and the ISO Tariffs, and withdraw its assets from the ISO’s control and administration on ninety (90) days prior written notice to the ISO and FERC subject to the NTO obtaining all regulatory approvals for such termination and withdrawal, and having on file with FERC its own open access transmission tariff.”</p> <p>“6.02 Termination by Election</p> <p>The NTO may terminate this Agreement, withdraw from the ISO Agreement and the ISO Tariffs, and withdraw its assets from the ISO control and administration upon ninety (90) days written notice to the ISO Board and FERC subject to the NTO obtaining all regulatory approvals for such termination and withdrawal, and having on file with FERC its own open access transmission tariff. . . .”</p> <p><i>Removing Article 6.03(c) consistent with the Commission’s directive.</i></p>
23.	Revise NTO Operating Agreement Article 6.10 to remove NYISO’s right to seek an injunction or specific performance (PP 123, 142)	OATT, Section 31.11 (Appx H), Article 6.10	<p>“6.10 Additional Remedies</p> <p>The Parties agree that remedies at law will be inadequate to protect their respective interests <u>of the NTO</u> and that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the ISO responsible Party in accordance with their specific terms or were otherwise breached. Accordingly, it is agreed that an NTO each Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or an ISO Tariff by the ISO other Party, and specific performance to enforce specifically the terms and provisions thereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which the NTO each Party is entitled at law or in equity.”</p>

Next Steps

- March 12 – Comments due from stakeholders
- March 19 – Due date for NYISO compliance filing

Questions?

We are here to help. Let us know if we can add anything.

The Mission of the New York Independent System Operator, in collaboration with its stakeholders, is to serve the public interest and provide benefits to consumers by:

- Maintaining and enhancing regional reliability
- Operating open, fair and competitive wholesale electricity markets
- Planning the power system for the future
- Providing factual information to policy makers, stakeholders and investors in the power system



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