

September 7, 2012

**Comments on the Long Island Power Authority and LIPA on the
NYISO's Order 1000 Compliance Filing**

The Long Island Power Authority (Authority) and LIPA respectfully request that the Board of Directors for the New York Independent System Operator (NYISO) ensure that the NYISO's Order 1000 compliance filing include appropriate measures to properly incorporate the Authority and the Long Island Transmission District into the Public Policy Requirements (PPR) planning process. As an initial matter, the Authority and LIPA express their general support for the comments submitted to the Board by the other New York Transmission Owners. These comments are filed separately to address specific concerns regarding the appropriate treatment of the Long Island Power Authority and LIPA in the PPR process. In this regard, two matters require action by the Board:

**Recognition of the Long Island Power Authority's Statutory Responsibility for
Transmission Planning Within the Long Island Transmission District**

In Order 1000, the Federal Energy Regulatory Commission (Commission) stated that “[w]e strongly encourage states to participate actively in both the identification of transmission needs driven by Public Policy Requirements and the evaluation of potential solutions to the identified needs.” (*Order 1000, P212*). Consistent with this goal, the NYISO's Order 1000 Compliance Filing shapes the PPR planning process around a state-driven process for identification of transmission needs and related steps for implementation.

The Authority and LIPA support this recognition of the state's role in establishing public policies and planning for meeting such goals and requirements. However, the specific approach adopted in the NYISO's Order 1000 compliance filing has a significant flaw. Specifically, the Long Island Power Authority, rather than the Public Service Commission (PSC), has

responsibility for implementation of public policy and transmission planning for the Long Island Transmission District.

Under the present compliance filing, the PSC and Department of Public Service (DPS) staff have been afforded specific roles in the PPR planning process—including establishing public policy requirements, identification of transmission needs, specification of metrics for determination of beneficiaries of a project and the determination of whether a particular project should proceed under the classification of a project meeting a PPR for purposes of eligibility for PPR-related cost allocation. These roles reflect the broad jurisdiction held by the PSC and DPS over public utilities (i.e., investor-owned) in New York State. However, the PSC/DPS jurisdiction on planning and public policy matters does not extend to the Long Island Transmission District. Rather, under the Long Island Power Authority Act, these responsibilities reside with the Long Island Power Authority’s Board of Trustees. Moreover, in light of this jurisdictional split, the Authority has taken the initiative to incorporate into its resource and transmission planning process measures intended to address the goals set forth in State-driven public policy initiatives such as the 45 X 15 Clean Energy Initiative and to reduce greenhouse gas emissions in response to the New York Climate Action Plan (Exec. Order No. 24, 2009).¹

The Authority respectfully requests that the NYISO Board support the inclusion of appropriate measures to recognize the jurisdictional spheres of transmission planning responsibility and oversight held by the PSC and the Authority. The Authority wishes to stress that its request is limited to ensuring that the *transmission planning*-related responsibilities for

¹ Consistent with the Board’s request, the Authority’s comments are provided at a policy level. NYISO staff has been provided more detailed explanations of the relevant general and specific powers enumerated in the Long Island Power Authority Act which establish the Authority’s planning responsibilities for the Long Island Transmission District. In addition, the Authority also has provided practical examples of its integration of state public policy initiatives into LIPA’s Electric Resource Plan (which includes planning for the bulk transmission system).

the Long Island Transmission District reside with the Authority's Board of Trustees. Specifically, the draft Order 1000 tariff filing includes provisions for the PSC to review and approve cost-allocation methodologies for a particular project. Outside of projects constructed by LIPA (the rates for which are statutorily reviewed and approved by the Authority), the Authority *is not* asserting that it has the authority to approve or disapprove a specific cost allocation methodology. In fact, it is the Authority's position that the review and approval of a specific cost allocation methodology for a PPR project is the province of FERC.

The Authority recognizes that the PSC is a sister-agency and that, as a practical matter, it is important to coordinate the identification of transmission needs and other implementation steps for the PPR planning process. For this reason, the Authority has further proposed specific tariff language ensuring that the Authority consults with the PSC prior to making its PPR-related decisions. In fact, in the event that the PSC does not concur with the Authority's identification of a transmission need within the Long Island Transmission District, the Authority has proposed that a project addressing such Authority-identified need would not be eligible for cost allocation to market participants outside of Long Island.

Definition of a Public Policy Requirement

Order 1000 requires that the definition of a PPR include state and federal laws and regulations. As part of Order 1000-A, the Commission further clarified that:

.... Public Policy Requirements established by state or federal laws or regulations includes duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government. This is the intent of the word "within" in Order No. 1000's explanation that "state or federal laws or regulations," meant "enacted statutes...and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level. (*Order 1000-A, P319*)

Consistent with the Commission's directive, a regulation enacted by the Authority warrants recognition as a PPR. Moreover, this analogy and rationale is equally applicable to an order of

the Authority as an equivalent to a PSC order—where the Authority (rather than the PSC) is exercising its regulatory authority over transmission matters within the Long Island Transmission District and such order has been adopted by the Authority pursuant to the New York State Administrative Procedure Act.

While the NYISO's compliance filing language recognizes a state regulation as a PPR, the definition only provides for the recognition of a PSC order as a PPR. As noted above, the Authority, rather than the PSC, holds regulatory authority over the Long Island Transmission District. Accordingly, the NYISO's compliance filing must be clarified to ensure that the definition of a PPR accommodates the designation of an Authority-issued order (acting on the same matter as the PSC) as a PPR.

Conclusion

In closing, the Authority and LIPA wish to stress that they support the policies and purposes of the proposed PPR planning process. Moreover, the Authority seeks to integrate the Long Island Transmission District into such process. To effectively accomplish that goal, the means for implementation have to be consistent with the statutory framework covering the Long Island Transmission District. As such, it is imperative that the NYISO's Order 1000 compliance filing adopt an approach that respects the Authority's jurisdictional responsibilities for transmission planning decisions (including identification of transmission needs and measures to implement PPR-projects within the Long Island Transmission District) as well as the regulatory role of the Authority in implementing public policy requirements for the Long Island Transmission District.