

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

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

New York Independent System Operator, Inc.	Docket Nos.	OA08-52-004
New York Transmission Owners		OA08-52-006

ORDER ON COMPLIANCE

(Issued October 15, 2009)

1. On January 14, 2009, in Docket No. OA08-52-004, as supplemented on May 19, 2009, in Docket No. OA08-52-006, pursuant to the Commission's October 16, 2008 Order,¹ the New York Independent System Operator, Inc. (NYISO) submitted revisions to its transmission planning process, as well as clarifications of its initial filings in this proceeding, as required by the October 16, 2008 Order and Order No. 890.² As discussed below, we accept NYISO's proposed tariff revisions effective December 7, 2007, June 18, 2008, and May 19, 2009, each in accord with its respective original filing date, subject to conditions.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning

¹ *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,068 (2008) (October 16, 2008 Order), *order on reh'g*, 126 FERC ¶ 61,320 (2009) (March 31, 2009 Order on Rehearing).

² *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 (2009).

activities, the Commission directed each transmission provider to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to its OATT (Attachment K).

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

4. As for Regional Transmission Organizations (RTO) and Independent System Operators (ISO) with Commission-approved transmission planning processes already on file, such as NYISO, the Commission explained that when it initially approved these processes, they were found to be consistent with or superior to the existing *pro forma* OATT. However, because the *pro forma* OATT was being reformed by Order No. 890, the Commission found that it was necessary for each RTO and ISO either to reform its planning process or show that its planning process is consistent with or superior to the *pro forma* OATT, as modified by Order Nos. 890 and 890-A.⁵

³ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

⁵ *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 439; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 174-75.

5. As discussed in more detail in the October 16, 2008 Order, on December 7, 2007, under Docket No. OA08-52-000, NYISO filed to comply with Order No. 890. In its filing, NYISO included revisions to Attachment Y of its OATT to incorporate a new economic planning process, known as the Comprehensive System Planning Process, which contained three major components: (1) local transmission planning; (2) regional reliability planning; and (3) regional economic planning. NYISO will use local transmission plans to conduct a reliability planning process for the New York Bulk Power Transmission Facilities, which includes a Reliability Needs Assessment and a Comprehensive Reliability Plan. NYISO will seek market-based solutions for each identified reliability need and will designate a transmission owner to plan and, if required, implement a regulated backstop solution. Thereafter, an economic planning process will be conducted through the Congestion Assessment and Resource Integration Study (Congestion Study), which will consist of a series of three congestion studies developed with market participant input and any additional studies for which individual market participants agree to pay. If, in response to the Congestion Study, a developer proposes an actual project to address congestion, then eligibility for regulated cost recovery will be determined on the basis of a New York Control Area-wide production cost benefit. Afterwards, a cost allocation mechanism will apply if a supermajority (80 percent of the vote, weighted in accordance with the share of benefits⁶) of a project's beneficiaries agree that an economic project should proceed. NYISO will use the cost allocation mechanism based on a "beneficiaries pay" approach, where those who benefit from a transmission upgrade or project bear its costs.

6. On June 18, 2008, NYISO supplemented the December 7, 2007 filing with a tariff proposal governing cost allocation and cost recovery for regulated transmission reliability projects. The June 18, 2008 filing proposed to base the "beneficiaries pay" cost allocation methodology for regulated transmission reliability projects on a three-step approach that focuses on whether a need is locational, statewide, or bounded to a region. The June 18, 2008 filing also submitted a revised unsigned Agreement between NYISO and New York Transmission Owners (NYTOs) on the Comprehensive Planning Process for Reliability Needs and a rate mechanism for the recovery of the reliability facilities charge as a new Rate Schedule No. 10 to NYISO's OATT.

7. In the October 16, 2008 Order, the Commission accepted NYISO's revisions to Attachment Y of its OATT, effective December 7, 2007 and June 18, 2008, subject to the submission of a compliance filing. In the October 16, 2008 Order, the Commission required NYISO to make a compliance filing that: (1) indicates how all participating transmission owners within its footprint will provide stakeholders and other interested parties the opportunity to review and comment at the early stages of each local planning

⁶ NYISO December 7, 2007 Filing at Attachment Y, Original Sheet No. 960E.

process; (2) revises, in accord with the coordination principle, its transmission planning process to identify clearly the process for reaching decisions in the development of its transmission plans; (3) revises its transmission planning process, in accord with the openness principle, to provide that all interested parties can participate in the planning process; (4) in accord with the transparency principle, clarifies that stakeholders have access to sufficient information to replicate the results of transmission planning studies or, if necessary, revises the tariff to provide such access; (5) addresses the necessary demonstration that all resource types will be considered on a comparable basis, as required by Order No. 890-A; (6) revises its transmission planning process to provide dispute resolution procedures for all parties involved in all transmission planning activities; (7) amends both section 13.6 and section 16.0.c of Attachment Y to provide that nothing in those sections shall affect the Commission's jurisdiction over both the transmission and sale of electric energy subject to jurisdiction of the Commission; (8) provides an explanation of how additional metrics, to be made available for consideration by market participants funding proposed economic projects, will be calculated, weighed, and/or combined; (9) clarifies whether NYISO, in identifying beneficiaries, would be comparing the total present value of benefits incurred over a ten-year period to the total amount of costs or whether it would be comparing the benefits and the costs for each year; and (10) describes a detailed methodology for allocating the cost of eligible transmission projects constructed in response to congestion identified in the economic planning process conducted in the Congestion Study to fully explain all the details of the actual cost allocation methodology.

8. In the October 16, 2008 Order, the Commission also stated that it will require NYISO to file an informational report to the Commission after the completion of each economic planning cycle.⁷ The Commission clarified that, in that report, NYISO should include the results of each vote on economic projects, the identified beneficiaries, the results of the cost/benefit analysis, and, if vetoed, whether the developer has provided any formal indication to NYISO as to the future development of the project. In the March 31, 2009 Order on Rehearing, the Commission further directed that NYISO should include in its report, the vetoing parties' reasoning for their decision.⁸

II. NYISO's Compliance Filing

9. On January 14, 2009, in Docket No. OA08-52-004, NYISO filed amendments to section 4 of Attachment Y of NYISO's tariff. NYISO states that these proposed tariff revisions fully address all of the local planning-related directives issued by the Commission in the October 16, 2008 Order. In addition, in response to the

⁷ October 16, 2008 Order, 125 FERC ¶ 61,068 at P 130.

⁸ March 31, 2009 Order on Rehearing, 126 FERC ¶ 61,320 at P 38.

Commission's directive that NYISO should identify clearly the process for reaching decisions in the development of its transmission plans, the filing includes several tariff amendments and a description of the decision-making process under Attachment Y. The filing also includes a request for an extension of time of 120 days to address the remaining issues from the Commission's October 16, 2008 Order, which was granted on January 16, 2009.

10. On May 19, 2009, in Docket No. OA08-52-006, NYISO submitted a supplemental filing addressing (1) additional specifications for the methodology for allocating costs of economic projects developed under the Congestion Study, and (2) details regarding the additional metrics to be used by beneficiaries of economic projects to evaluate those projects for voting purposes.

III. Notice of Filing and Responsive Pleadings

11. Notice of NYISO's January 14, 2009 filing in Docket No. OA08-52-004 was published in the *Federal Register*, 74 FR ¶ 5834 (2009), with comments, protests, and interventions due on or before February 4, 2009. The Commission granted NYISO's request for an extension of time to and including May 19, 2009 in a notice issued on January 16, 2009. On February 2, 2009, the New York Regional Interconnect Inc. (NYRI) filed a protest.⁹

12. On February 17, 2009, Long Island Power Authority and LIPA (collectively LIPA); NYISO; and Consolidated Edison Company of New York, Inc. (Con Edison) separately filed answers to NYRI's protest. On February 23, 2009, NYRI filed an answer to NYISO's and Con Edison's answers.

13. Notice of NYISO's May 19, 2009 filing in Docket No. OA08-52-006 was published in the *Federal Register*, 74 FR 26393 (2009) with comments, protests, and interventions due on or before June 9, 2009. On June 9, 2009, NYRI filed a protest and motion for extension of time to provide further comments. The Commission granted NYRI's request for an extension of time in a notice issued on June 12, 2009. On June 25, 2009, NYISO, Con Edison, Orange and Rockland Utilities, Inc. (O&R), the New York Power Authority (NYPA), and LIPA filed an answer to NYRI's June 9, 2009 protest. On July 9, 2009, NYRI filed an answer to NYISO's, Con Edison's, O&R's, NYPA's, and LIPA's June 25, 2009 answers.

⁹ NYRI's protest was coupled with a motion for expedited review of its November 17, 2008 rehearing request. That motion for expedited review of its rehearing request is not a part of the instant proceeding, which is limited to the protests of NYISO's January 14, 2009 filing and the answers filed in response.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009) prohibits an answer to a protest or to 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.¹⁰

B. Substantive Matters

16. We find that NYISO's filing substantially complies with the October 16, 2008 Order, subject to a further compliance filing to address certain discrete issues, as discussed below. Although the Commission conditionally accepts NYISO's compliance filing below, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement given in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes.

1. Coordination

17. In the October 16, 2008 Order, the Commission found that NYISO's revised Attachment Y partially complied with the requirements of the coordination principle stated in Order No. 890 as they apply to the planning activities conducted by NYISO.¹¹ NYISO stated that its planning process would be coordinated with interested parties

¹⁰ NYRI's February 23, 2009 answer to the NYISO's and Con Edison's answers regarding the January 14, 2009 filing, as well as NYRI's June 9, 2009 protest to the May 19, 2009 filing, also include arguments objecting to the Commission's approval of the "supermajority" voting procedure. NYRI based its assertions on a November 2008 NYISO "White Paper," which NYRI appended to its February 23, 2009 pleading. These arguments do not go to whether NYISO complied with the October 16, 2008 Order, are not properly raised in the context of the instant compliance filing and will not be addressed here.

¹¹ October 16, 2008 Order, 125 FERC ¶ 61,068 at P 35.

through the Transmission Planning Advisory Subcommittee (Advisory Subcommittee) and the Electric System Planning Working Group (ESP Working Group). However, NYISO's tariff did not explicitly state whether the Advisory Subcommittee and ESP Working Group are responsible for making decisions during the development of transmission plans or whether they merely advise the Operating Committee and, in turn, the Management Committee. Accordingly, the Commission directed NYISO to revise its transmission planning process to identify the process for reaching decisions in the development of its transmission plans.¹²

18. NYISO states that its Attachment Y provides that the ultimate decision-maker on plans developed pursuant to the Comprehensive System Planning Process is the NYISO Board of Directors.¹³ NYISO clarifies that before a report is presented to the NYISO Board for approval, it must be presented to and voted on by the Management Committee, which is comprised of stakeholders. NYISO states that before a Comprehensive System Planning Process report arrives at the Management Committee for such review, it must first be discussed and voted on by one of two additional stakeholder committees – the Business Issues Committee or the Operating Committee. The Advisory Subcommittee and the ESP Working Group are part of a larger group of subcommittees that are subsidiary to the Business Issues and Operating Committees, and have the task of working on and shaping specific initiatives that ultimately are sent up through the Business Issues, Operating, and Management Committees to the Board of Directors for approval.

19. According to NYISO, under its planning process, the ESP Working Group and Advisory Subcommittee assist and provide input to NYISO staff as it compiles all aspects of the required plans. NYISO states that the role of the ESP Working Group and the Advisory Subcommittee includes the following activities: (1) the development of reliability scenarios for the Reliability Needs Assessment; (2) consideration of regulated backstop solutions and alternative regulated solutions; (3) the development and grouping of the studies contained in each Congestion Study; (4) the development of baseline studies, production costing models, cost/benefit metrics, and congestion and resource integration scenarios in each economic planning analysis study period; (5) the development of a process by which individual parties may request additional congestion studies; and (6) the development of additional metrics to be used by beneficiaries of economic upgrades in determining how to vote on such projects.

20. To comply with the directives of the October 16, 2008 Order, NYISO proposes amendments to its Collaborative Governance Process in sections 6.1, 9.1, 12.1, and

¹² *Id.*

¹³ NYISO January 14, 2009 Filing at 9.

15.5(a) of Attachment Y to clarify that a summary of all comments of interested parties provided during the ESP Working Group and the Advisory Subcommittee review would be sent to the Operating or Business Issues Committees for discussion and action. NYISO states that these additions clarify that all ESP Working Group and Advisory Subcommittee comments on the draft Comprehensive Reliability Plan, Congestion Study, and benefit/cost analysis for economic projects must be passed on to the Operating or Business Issue Committees. NYISO, however, did not include in its filing the proposed revisions to sections 12.1 and 15.5(a) of Attachment Y.

21. No comments in opposition to NYISO's proposal were received.

Commission Determination

22. We find that NYISO's proposed amendments comply with the October 16, 2008 Order and the coordination principle stated in Order No. 890 by clarifying the process for reaching decisions in the development of its transmission plans. The proposed amendments to sections 6.1, 9.1, 12.1, and 15.5(a) of Attachment Y clarify that a summary of all comments of interested parties provided during the ESP Working Group and Advisory Subcommittee review would be sent to the Operating or Business Issues Committee for discussion and action. NYISO's amendments clarify that the ESP Working Group and Advisory Subcommittee are not responsible for making decisions during the development of transmission plans but, instead, advise the Operating Committee, Business Issues Committee, and, in turn, the Management Committee. Accordingly, we accept the proposed amendments as in compliance with the October 16, 2008 Order, subject to NYISO filing its proposed revisions to sections 12.1 and 15.5(a) of Attachment Y in a compliance filing to be made within 60 days of the issuance of this order.

2. Comparability

23. In the October 16, 2008 Order, the Commission found that NYISO's revised Attachment Y complied with requirements of the comparability principle stated in Order No. 890 as they apply to the planning activities conducted by NYISO.¹⁴ The Commission recognized that NYISO's planning process accommodates input from all parties and allows developers of all potential solutions to propose projects in response to identified needs. However, the Commission also found that, because Order No. 890-A was issued on December 28, 2007, after NYISO and its transmission owners submitted their Order No. 890 Attachment K compliance filing, NYISO did not have an opportunity to demonstrate that it complies with the comparability requirement of Order No. 890-A.¹⁵

¹⁴ October 16, 2008 Order, 125 FERC ¶ 61,068 at P 60.

¹⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 174-75.

Specifically, Order No. 890-A required that the transmission provider needs to identify as part of its Attachment K planning process “how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.”¹⁶ Therefore, the Commission directed NYISO to make a compliance filing addressing the necessary demonstration required by Order No. 890-A.

24. NYISO states that numerous provisions and processes outlined in Attachment Y mandate the comparable treatment of all resource types (i.e. generation, transmission, and demand side resources) in the Comprehensive System Planning Process. For instance, NYISO states that section 5.4 of Attachment Y requires that information provided by market participants to complete the Reliability Needs Assessment must encompass all resource types. In addition, NYISO describes section 8.1 of Attachment Y, which requires NYISO to consider all resource types on a comparable basis as potential solutions to identified reliability needs, and sections 11.3.c and 11.4 of Attachment Y, which provide that all resource types shall be considered on a comparable basis as potential solutions to congestion identified in the Congestion Study.

25. NYISO states that, to further emphasize that it will consider all three resource types on a comparable basis, it proposes adding to sections 7.1.a (Regulated Backstop Solutions) and 8.9.a (Gap Solutions) of Attachment Y the provision that regulated backstop solutions and gap solutions, respectively, may include generation, transmission, or demand side resources. In addition, NYISO proposes to revise the NYISO Comprehensive Reliability Planning Process Manual to clarify that all three types of solutions - generation, transmission, and demand response - will be considered on a comparable basis as solutions to congestion identified in the Congestion Study’s economic studies.

26. No comments in opposition to NYISO’s proposal were received.

Commission Determination

27. We find that with one exception as discussed below NYISO’s proposed tariff revisions comply with Order No. 890-A’s comparability requirements, as NYISO describes how it will treat all resources comparably in its transmission planning process and when in the planning process alternative resources are to be considered.

28. When a reliability need is identified in any Reliability Needs Assessment, NYISO shall request, and the responsible transmission owner¹⁷ shall provide to the NYISO, a

¹⁶ *Id.* P 216.

¹⁷ Section 2.0 (Definitions) of NYISO’s Attachment Y defines Responsible Transmission Owner as the Transmission Owner or Transmission Owners designated by
(continued...)

proposal for regulated solution(s) that shall serve as a potential backstop to meet the reliability need if requested by the NYISO due to the lack of sufficient viable market-based solutions to meet such reliability needs. When evaluating proposed solutions to reliability needs, NYISO provides that all resource types - whether generation, transmission, or demand response - will be considered on a comparable basis as potential solutions to the reliability needs identified. NYISO proposes to modify section 7.1 of its Attachment Y that governs the development of regulated backstop solutions to provide that regulated backstop solutions may include generation, transmission, or demand side resources.¹⁸

29. At the same time that a proposal for a regulated backstop solution is requested from the responsible transmission owner under Section 7.1, NYISO shall also request market-based responses from the market place.¹⁹ Section 7.2 provides that market-based responses will be open on a comparable basis to all resources, including generation, demand response providers, and merchant developers.²⁰ NYISO shall review proposals for market-based solutions and determine whether they resolve a reliability need.²¹ NYISO will not select from among the market-based solutions if there is more than one proposal which will meet the same reliability need.

30. If NYISO determines that neither market-based proposals nor regulated proposals can satisfy the reliability needs in a timely manner, NYISO will also request that a responsible transmission owner seek a Gap Solution. Gap Solutions may include generation, transmission, or demand side resources.

31. NYISO proposes to revise its Attachment Y to clarify that in development of solutions to reliability needs and in conducting the economic planning analysis, market participants, developers, and other parties are required to provide input that includes:

NYISO, pursuant to the planning process, to prepare a proposal for a regulated solution to a reliability need or to proceed with a regulated solution to a reliability need. The Responsible Transmission Owner will normally be the Transmission Owner in whose Transmission District the NYISO identifies a reliability need.

¹⁸ See Section 7.1(a) (Regulated Backstop Solutions) of NYISO's Attachment Y.

¹⁹ See Section 7.2 (Market-Based Responses) of NYISO's Attachment Y.

²⁰ See Section 7.2 (Market-Based Responses) of NYISO's Attachment Y.

²¹ See Section 8.3 (Evaluation of Market Based Proposals) of NYISO's Attachment Y.

existing and planned additions to the New York State transmission system; proposals for merchant transmission facilities; generation additions and retirements; demand response programs; and any long-term firm transmission requests made to NYISO.²²

32. Attachment Y provides other examples of comparable treatment to all resources participating in NYISO's transmission planning process. NYISO's Attachment Y also provides that other developers may develop alternative regulated proposals for generation, demand side alternatives, and/or other solutions to address a reliability need and submit these proposals to NYISO. When evaluating potential solutions to reliability needs, all resource types will be considered on a comparable basis as potential solutions to the reliability needs identified: generation, transmission and demand response.²³

33. With regard to NYISO's Congestion Study (i.e., economic planning analysis), NYISO's Attachment Y contains provisions that demonstrate comparable treatment of all resources in the transmission planning process. As to congestion identified in the economic planning analysis, section 11.3.c of Attachment Y provides that NYISO will consider all resource types on a comparable basis as potential solutions to the congestion identified.²⁴ Additionally, the transmission owners will assist NYISO in developing the potential solution's cost estimates to be used by NYISO to conduct a benefit/cost analysis of each of the potential solutions.

34. In conducting the Congestion Study, NYISO will conduct a benefit/cost analysis of each potential solution to the congestion identified, applying benefit/cost metrics that NYISO will develop in conjunction with the ESP Working Group. Following a vote by the Management Committee, NYISO's cost/benefit analysis and beneficiary determination will be forwarded, with the input of the Business Issues and Management Committee, to the NYISO Board for review and action. Upon final approval of the Board, a project's cost/benefit analysis and beneficiary designations will be posted by NYISO on its website and will form the basis of the beneficiary voting. For a regulated economic transmission project to have its cost allocated under Attachment Y, eighty percent or more of the actual weighted votes must be cast in favor of implementing the project.

²² See Sections 5.4.a (Planning Participant Data Input) and 11.4 (Planning Participant Data Input) of NYISO's Attachment Y.

²³ See Sections 7.4.b (Alternative Regulated Responses) and 8.1 (Comparable Evaluation of All Proposed Solutions) of NYISO's Attachment Y.

²⁴ See Section 11.3.c (Preparation of the Congestion Assessment and Resource Integration Study) of NYISO's Attachment Y.

35. We find that, with NYISO's proposed tariff revisions, NYISO's Attachment Y partially meets Order No. 890-A's comparability requirements. In both its reliability and economic planning processes NYISO has demonstrated that it treats all potential solutions to an identified need comparably – whether transmission, generation or demand response. However, we find that NYISO does not explain how it will analyze and select the preferred reliability solutions from competing alternatives so as to make it clear that transmission, generation, and demand resources are considered on a comparable basis.²⁵ In particular, NYISO does not explain how it will decide among competing backstop, gap, and alternative regulated solutions and among different resources. Therefore, we direct NYISO to revise its Attachment K, in a compliance filing due within 60 days of the date of this order, to identify how it will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis.²⁶

3. Cost Allocation

36. In the October 16, 2008 Order, the Commission held that NYISO had not fully explained all the details of the actual cost allocation methodology associated with economic transmission projects constructed to resolve congestion identified through the Congestion Study. Accordingly, the Commission directed NYISO to file a detailed methodology for allocating the cost of eligible economic transmission projects.²⁷

a. Process for Identifying Beneficiaries

i. NYISO Proposal

37. After a project has been shown to provide a net benefit to the system, costs of the project are then allocated to load zones and then beneficiaries within the load zones. NYISO proposes to expand section 15.4.b of Attachment Y, which provides the process for allocating costs to load zones and identifying beneficiaries of a proposed project, by: (1) stating that both the load savings and revenue requirements will be measured in

²⁵ See, e.g., *California Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, at P 106 (2008); *E. Kentucky Power Coop.*, 125 FERC ¶ 61,077, at P 33-34 (2008).

²⁶ Tariff language could, for example, state that solutions will be evaluated against each other based on a comparison of their relative economics and effectiveness of performance. Although the particular standard a transmission provider uses to perform this evaluation can vary, it should be clear from the tariff language how one type of investment would be considered against another and how the transmission provider would choose one resource over another or a competing proposal.

²⁷ October 16, 2008 Order, 125 FERC ¶ 61,068 at P 106.

present value; (2) describing that the load savings for a load zone will be equal to the difference between the zonal Locational Based Marginal Pricing (LBMP) load cost without the project and the LBMP load cost with the project, net of reductions in Transmission Congestion Contract (TCC) revenues and net of reductions from bilateral contracts that are not indexed to LBMP; (3) clarifying that, if the sum of the zonal benefits for those zones with load savings is greater than the revenue requirements for the project, then NYISO will develop the zonal cost allocation information; (4) clarifying how net reductions in TCC revenues will be calculated; and (5) stating that NYISO will include bilateral contract data from contracts not indexed to LBMP only if provided to the NYISO.

ii. Protests

38. NYRI takes issue with the following provisions proposed by NYISO in section 15.4.b(ii) of Attachment Y:

“If the sum of the zonal benefits for those zones with load savings is greater than the revenue requirements for the project . . . the NYISO will proceed with the development of the zonal cost allocation information to inform the beneficiary voting process.”²⁸

39. NYRI interprets proposed section 15.4.b(ii) to state that if the revenue requirements are equal to or greater than the benefits, then NYISO will no longer proceed with the zonal cost allocation information. NYRI asserts that if the allocation is never calculated, then the Commission will not have that information available to determine whether there has been an abuse of the supermajority veto provision in the tariff. NYRI states that these provisions would permit Southeast NYTOs²⁹ to manipulate cost data to cause a zone’s costs to equal or exceed the NYISO-determined benefits and thereby halt any further analysis of cost allocation.

40. NYRI also asserts that the provisions are ambiguous as to how TCC revenues associated with the economic transmission projects are to be estimated.³⁰ First, NYRI comments that it hopes these credits will decrease with increased economic transmission

²⁸ NYRI June 9, 2009 Protest at 20, (citing NYISO May 19, 2009 Filing at 6).

²⁹ NYRI initially uses the term “southeastern NYTOs” in its February 2, 2009 Protest at 4. Similarly, in the October 16, 2008 Order, the Commission defines “Downstate TOs” to include: Con Edison, O&R, LIPA, and the NYPA.

³⁰ NYRI June 9, 2009 Protest at 21.

projects, as these projects are designed to reduce or eliminate congestion. Second, NYRI states that additional detail should be provided to determine how NYISO would forecast congestion revenue that NYISO proposes to add to the benefits a project provides.

41. NYRI further argues that the allocation procedures associated with revenues from TCCs, excess congestion costs, revenue associated with generation, and transmission revenue allow Southeast NYTOs to reduce the “perceived benefits” of an economic transmission project to the extent that such a project would reduce the NYTOs’ revenue stream from any of these resources.³¹ NYRI asserts that a NYTO’s ability to justify the veto of a competitor’s transmission project on the grounds that it might reduce that NYTO’s transmission service revenue is the antithesis of competition.

42. NYRI asserts that if, as the NYTOs state, all TCC revenues are flowed through to customers, then those revenues should not be considered as an offset.³² NYRI states that a reduction in transmission congestion in a National Interest Electric Transmission Corridor benefits all customers in that area. Accordingly, NYRI asserts, NYISO’s proposal will place a Southeast NYTO’s company profits and shareholder value before the interest of its customers and shift cost responsibility for the project to energy service companies that most likely do not receive Energy Revenue and Excess Congestion Revenue and thus cannot reduce their perceived benefits.³³ NYRI states that once a NYISO load zone is determined to benefit from a project, the project’s cost should be objectively allocated to all LSEs strictly on a load ratio share that would treat all LSEs equally.³⁴

43. NYRI also asserts that the fact that a NYTO/LSE may choose to provide or withhold bilateral contract data from NYISO demonstrates that the process is susceptible to manipulation and abuse. NYRI further asserts that NYISO’s allocation procedures are not transparent because they require NYISO to rely solely on non-public information provided by those NYTOs who have an incentive to veto economic transmission projects designed to relieve congestion on New York’s transmission system. For example, NYRI references NYISO’s proposed beneficiary identification procedure under section 15.4.b(v) of Attachment Y, which states that NYISO will solicit bilateral contract information from all Load Serving Entities to model contracts that are not indexed to

³¹ NYRI June 9, 2009 Protest at 16 (citing NYISO’s May 19, 2009 Filing at 6-12).

³² NYRI July 9, 2009 Answer at 5.

³³ NYRI June 9, 2009 Protest at 16.

³⁴ *Id.* at 17.

LBMP.³⁵ NYRI maintains that the tariff does not provide that this information be made public and consequently, no market participant will likely ever have an opportunity to determine whether the information is accurate or challenge NYISO's calculations and inform the Commission of possible abuses of the tariff allocation provisions.³⁶ However, NYRI contends, to the extent the Commission believes it is appropriate, all bilateral contract information should be provided publicly. NYRI states that NYISO should rely solely on filed Electric Quarterly Reports when considering energy contract information, as these Reports already make bilateral contract information public.

44. Finally, NYRI asserts that NYISO's May 19, 2009 filing proposes to relegate to manuals the calculation of net reductions in TCC revenues and NYISO's process for analyzing bilateral contract information. NYRI contends that this relegation of critical details to NYISO manuals, which are not filed at the Commission and which are subject to unilateral revision by NYISO, undermines the Commission's ability to monitor NYTO abuse of the supermajority veto provision.³⁷ NYRI states that section 205(c) of the FPA requires the filing of terms and conditions that affect the rates and charges for, and the provision of, jurisdictional service.³⁸

iii. NYISO's Response

45. NYISO argues that NYRI's allegation, that the allocation procedures are designed to prevent NYISO from developing information that could reveal abuse of the supermajority voting mechanism, misrepresents the purpose of the proposed section 15.4.b(ii) of Attachment Y. NYISO states that the purpose of proposed section 15.4.b(ii)

³⁵ NYRI June 9, 2009 Protest at 17, (citing NYISO May 19, 2009 Filing at 7).

³⁶ *Id.* at 18.

³⁷ NYRI June 9, 2009 Protest at 23.

³⁸ *Id.* at 23-24, citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,986, *order on reh'g*, 65 FERC ¶ 61,081 (1993). *See also ANP Funding I, LLC v. ISO New Eng., Inc.*, 110 FERC ¶ 61,040 (2005); *N.Y. Indep. Sys. Operator, Inc. v. Dynegy Power Mktg, Inc.*, 109 FERC ¶ 61,163 (2004); *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,329, at P 21 (2004); *Entergy Servs, Inc.*, 106 FERC ¶ 61,115 (2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,145, at P 129 (2003); *Outback Power Mktg., Inc. v. PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,079 (2003); *Tenaska Power Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,095, *clarified*, 103 FERC ¶ 61,049, *order on reh'g*, 104 FERC ¶ 61,075 (2003); *N.Y. Indep. Sys. Operator, Inc.*, 98 FERC ¶ 61,282, at 62,217 (2002).

is to clarify that NYISO will proceed to calculate cost allocations only if there are savings for the project as a whole. NYISO adds that if there are no net benefits, then there is no way to allocate such benefits, and no point in doing so. Further, NYISO states that since both benefits and costs will be developed in an open and transparent stakeholder process as required by the Commission, and benefits are mathematically netted against costs on a project-wide basis, it is simply incorrect to say that individual beneficiaries can “manipulate cost data to cause a zone’s costs to equal or exceed the NYISO-determined benefits and thereby halt any further analysis of cost allocation.”³⁹

46. NYISO denies that the TCC revenue calculation under section 15.4.b is ambiguous and states that TCC revenues from a new project are calculated in accordance with the same criteria used to determine reductions in TCC revenues under section 15.4.b(iii) of Attachment Y.⁴⁰ NYISO further asserts that, as the express language of section 15.4.b of Attachment Y makes clear, only reductions in TCC revenues and from bilateral contract data are offsets to the reductions in LBMPs resulting from a proposed regulated economic project; other reductions, such as reductions in transmission service revenues, are not offset against LBMP calculations as part of the zonal benefits calculation. According to NYISO, a load zone’s LBMP reductions, by themselves, do not accurately reflect the benefits of a proposed regulated economic project to that load zone. NYISO further states that, without consideration of offsetting reductions in TCC payments and bilateral contracts, which can serve to hedge the cost of congestion actually paid by an LSE, the use of LBMP reductions will overstate the benefits that a load zone will receive from the construction of a regulated economic project.

47. NYISO states that NYRI’s arguments regarding the provision of bilateral contract information reflect a fundamental misunderstanding of the mechanism for determining beneficiaries of regulated economic projects. NYISO states that NYRI fails to realize that bilateral contracts are offset against LBMP reductions in the determination of project beneficiaries and, therefore, a bilateral contract will not increase an LSE’s share of the benefits of a proposed regulated economic project; rather, a bilateral contract can only help reduce a beneficiary’s share of those benefits and thus, LSEs have an incentive to fully report the details of any bilateral contracts. According to NYISO, failure to do so could result in an overstatement of the LSE’s overall benefits from a proposed project and, thus, the payment of a higher proportion of that project’s costs if it is approved.

48. In response to NYRI’s objection to the relegation of certain calculation details to NYISO manuals, NYISO argues that the Commission’s rule of reason, which dictates that only those practices “significantly” affecting rates, terms, and conditions of service

³⁹ *Citing* NYRI June 9, 2009 Protest at 20.

⁴⁰ NYISO June 25, 2009 Answer at 17.

need to be submitted in filed tariffs, permits NYISO to address specified aspects of the TCC revenue reductions and bilateral contract determinations in the NYISO manuals.⁴¹ NYISO states that the description of reductions in TCC revenues and bilateral contracts currently proposed in section 15.4.b of Attachment Y of the OATT provides sufficient details and accordingly, the “implementation” details may be addressed in its manuals, rather than in its tariffs.⁴² NYISO asserts that the additional details to be addressed in the manuals simply expand upon the parameters established in the OATT, and thus do not significantly affect the rates, terms, and conditions of that service.

Commission Determination

49. We will accept NYISO’s revised process for identifying beneficiaries. We disagree with NYRI’s objection to proposed section 15.4.b(ii) of Attachment Y and agree with NYISO that the purpose of this section is to clarify that NYISO will proceed with calculating cost allocations only if there are net savings for the project as a whole. That determination is based solely on whether the sum of all zonal benefits exceeds the revenue requirements. Zonally-allocated costs are not needed for that determination. If there are no net savings from the project, then beneficiaries will not be designated, cost allocation will not occur, and the supermajority voting process will not even commence. Further, NYISO states, and the Commission agrees, that both benefits and costs will be developed pursuant to an open and transparent stakeholder process, which we are accepting herein, and, therefore, individual beneficiaries will not be able to manipulate cost or benefit data to change the benefit/cost analyses.

50. Further, NYRI is mistaken in contending that NYISO’s proposed allocation procedures allow excess congestion costs, revenue associated with generation, and transmission revenue to reduce the perceived benefits that Southeast NYTOs receive from an economic transmission project and, in turn, reduce their relative cost responsibility, or justify a vote against a proposed project. Section 15.4.b of Attachment Y provides that only reductions in TCC revenues and bilateral contracts offset reductions in LBMPs resulting from a proposed regulated economic project; other reductions, such as reductions in transmission service revenues, are not offset against LBMP calculations as part of the zonal benefits calculation. Further, the Commission finds that it is appropriate that the loss of these TCC revenues and the reduction in load savings due to continuing obligations under bilateral contracts be factored into LBMP reductions to accurately reflect the net benefits of a proposed regulated economic project. Otherwise, if this information is not included in the formula for calculating load benefit, the benefits

⁴¹ *Citing Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283, at P 398 (2008).

⁴² *Id.* P 399.

to load from a transmission project would be significantly overstated because benefits would be counted even though load is already hedged against congestion on that line.

51. We also deny NYRI's request that a project's cost be objectively allocated to all LSEs strictly on a load ratio share that would treat all LSEs equally. NYISO and its stakeholders have chosen a beneficiaries-pay philosophy with regard to system improvements and we find that approach complies with the requirements of Order No. 890.

52. We reject NYRI's claim that NYISO's proposed allocation procedures, such as those under section 15.4.b(v) of Attachment Y, that describe NYISO's solicitation of bilateral energy contract information from load serving entities, demonstrate that NYISO's cost allocation process is susceptible to manipulation and abuse. We agree with NYISO that project beneficiaries have an incentive to provide bilateral contract information, as these contracts will reduce the projected LBMP load savings of a proposed project and reduce the proportionate share of the project beneficiaries' costs because bilateral energy contracts are offset against LBMP reductions in the determination of project beneficiaries.⁴³ Thus, failure to provide the contract information could result in greater cost allocation for an LSE.

53. Further, we reject NYRI's request that we direct NYISO to rely exclusively on publicly available Electric Quarterly Reports for information on LSE-specific bilateral contract information. We find that, while the information provided in the publicly available Electric Quarterly Reports is fully adequate to assess LSE-specific bilateral energy contracts, the Electric Quarterly Reports only provide this information with respect to jurisdictional contracts and, therefore, NYISO should not be limited to these reports and may solicit bilateral contract information from LSEs. Because such information is of a highly sensitive confidential nature, any release of such information may only be made pursuant to the confidential provisions of NYISO's tariff.

⁴³ Bilateral contracts typically lock in a fixed price for the term of the contract, so changes in LBMP will not affect a customer's cost for the portion of its load served by the contract. For example, suppose that an LSE has an hourly load of 1,000 MWh. The LSE purchases electricity to serve 60 percent of its load through a 10-year contract at \$75/MWh. It purchases the remaining 40 percent of its load on the spot market, at the spot LBMP of \$100/MWh. A transmission expansion lowers the LBMP to \$80/MWh, a reduction of \$20/MWh. This transmission expansion lowers the LSE's costs for the 40 percent of its load met with spot market purchases, but does not affect the load served under contract. To calculate the benefit to the LSE of the transmission expansion, the hourly load served by the contract, 600 MWh, should be deducted from the total daily load of 1,000 MWh. Thus, the LSE's hourly savings from a transmission expansion would equal \$8,000, which is equal to the price reduction of \$20/MWh times 400 MWh.

54. NYISO states that “[n]et reductions in TCC revenues will reflect the forecasted impact of the project on TCC auction revenues and day-ahead residual congestion rents allocated to load in each zone, excluding the congestion rents that accrue to any Incremental TCCs that may be made feasible as a result of this project.”⁴⁴ Although this section of the tariff further outlines the factors involved in this calculation, it leaves further details of the net reductions calculation to unspecified sections of NYISO’s manuals. To clarify this provision, we direct NYISO to specifically identify the relevant provisions in its manuals and to file a compliance filing within 60 days hereof revising section 15.4.b of its tariff to incorporate those provisions into its tariff. Further, while subsections 15.4.b(i) and (v) refer to information regarding bilateral contracts, these provisions do not make explicit what contract data will be used or how it will be used in the calculation of LBMP load savings. Accordingly, the Commission directs NYISO to file a compliance filing to revise section 15.4.b of Attachment Y, within 60 days of the issuance of this order, to provide details regarding how and what contract data NYISO will use to offset LBMP load savings.

55. Finally, it appears that there is a typographical error in proposed section 15.4.b(i) of Attachment Y, which states that the bilateral contract information will be provided to NYISO “as set forth in subsection (iv) below.” Given that solicitation of bilateral contract information is required by subsection (v) of section 15.4.b(i) of Attachment Y, NYISO is directed to file a compliance filing to revise section 15.4.b(i) to refer to subsection (v) within 60 days of the issuance of this order.

b. Process for Allocating Costs of a Project to Beneficiaries

i. NYISO’s Proposal

56. NYISO proposes to amend section 15.4.d of Attachment Y, which provides the process for allocating costs of a project to beneficiaries, to provide the formula used in the calculation of a load zone’s cost allocation and the cost allocation for load serving entities within zones. NYISO proposes to amend section 15.4.e of Attachment Y, which provides how project costs allocated under section 15.4 of Attachment Y will be determined, to indicate that the project cost is based on the total project revenue requirement, which is to be determined in accordance with the formula rate on file at the Commission.⁴⁵ NYISO’s proposed section 15.4.e (i) of Attachment Y provides in relevant part that “If there is no formula rate on file at the [Commission], then the developer shall provide to NYISO the project-specific parameters to be used to calculate

⁴⁴ NYISO May 19, 2009 Filing at 6 (Quoting proposed section 15.4.b of Attachment Y).

⁴⁵ *Id.* at 9.

the total project revenue requirement.”⁴⁶ Further, to maintain the validity of the cost benefit analysis, NYISO provides that, once the cost benefit analysis is completed, the amortization period and other cost allocation parameters should not be changed unless ordered by the Commission or a court of applicable jurisdiction.

ii. Protests

57. NYRI argues that this provision would delegate to NYISO the Commission’s authority to establish the developer’s revenue requirements. NYRI emphasizes that the Commission has exclusive authority under the FPA to determine whether a public utility’s rates are just and reasonable.⁴⁷ NYRI asserts that NYISO’s proposal seeks to condition the validity of the cost-benefit study and the right of a developer to recover its revenue requirements on all cost assumptions included in NYISO’s cost-benefit analysis.⁴⁸ NYRI states that each public utility is entitled to file for a change to its rates under section 205 of the FPA, including a change to the amortization or depreciation period or any “other parameters,” which would be subject to the Commission’s review and approval.⁴⁹ NYRI asserts that once a developer’s economic project is approved for cost recovery under NYISO’s tariff, the developer is entitled to be treated the same as any other NYTO.⁵⁰ NYRI states that NYISO’s proposal to condition a developer’s ability to continue recovering its revenue requirement on the continuing validity of a cost-benefit study is contrary to a public utility’s right to recover Commission-approved rates until the Commission determines that the rate is no longer just and reasonable or until the utility files for a rate change. NYRI asserts that NYISO’s proposal restricts the ability of independent developers of economic transmission projects to improve their facilities and recover costs by placing revenue recovery for the project at risk. NYRI further asserts that, according to NYISO’s May 19, 2009 Filing, any change to revenue requirements or other parameters would terminate cost recovery, but a change to the parties that

⁴⁶ New York Indep. Sys. Operator, Inc., FERC Electric Tariff, Original Vol. No. 1, Attachment Y, Original Sheet No. 960D.01.

⁴⁷ NYRI June 9, 2009 Protest at 11 (citing *New Eng. Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982); *Fla. Power & Light Co.*, 41 FERC ¶ 61,153, at 61,382 (1987); *Fla. Power & Light Co.*, 29 FERC ¶ 61,140, at 61,292 (1984)).

⁴⁸ NYRI June 9, 2009 Protest at 11.

⁴⁹ *Id.* at 11-12.

⁵⁰ *Id.* at 12.

materially benefit from the economic project would not change who pays for the project.⁵¹

58. NYRI states that the Commission should clarify in its order on NYISO's May 19, 2009 filing that where an economic transmission project is approved for cost recovery under the NYISO's tariff, the developer is entitled to a reasonable opportunity to recover 100 percent of its Commission-approved revenue requirement.⁵² NYRI interprets NYISO's filing to suggest that even if an economic project satisfied the cost-benefit analysis and the NYISO-identified beneficiaries voted in favor of the project, the benefiting NYTOs may still deprive the developer of a chance to recover its full costs. NYRI asserts that according to the allocation formula, each zone will be allocated a cost allocation equal to the product of the project cost and a ratio. NYRI states that the numerator of the ratio is the total zonal benefits, presumably net benefits measured in dollars, and the denominator of the ratio is total zonal benefits for zones with positive net benefits. NYRI contends that as written, it appears that a project's total Commission-approved revenue requirement may not be recoverable under this formulation.

59. NYRI also asserts that NYISO's revision in section 15.4.e of Attachment Y also violates the Commission's rule against including changes in a compliance filing that were not ordered by the Commission in the underlying order. NYRI states that, nowhere in the October 16, 2008 Order did the Commission direct the NYTOs and the NYISO to propose provisions in this compliance filing to restrict the ability of economic project developers to recover their project costs and thus, this and other provisions are gratuitous and inappropriate.⁵³

iii. NYISO's Response

60. NYISO states that it is a public utility and, therefore, all rates NYISO charges to third parties for Commission-jurisdictional service must be filed at the Commission and are subject to Commission review under the just and reasonable standard of FPA sections 205 and 206.⁵⁴ Further, NYISO states, section 15.4.f of Attachment Y to NYISO's tariff expressly provides that the Commission must approve the cost of a proposed economic transmission project for that cost to be recovered through the NYISO tariff.

⁵¹ *Id.* at 13.

⁵² NYRI June 9, 2009 Protest at 9.

⁵³ *Id.* at 15.

⁵⁴ NYISO June 25, 2009 Answer at 10.

61. Proposed section 15.4.e(ii) states:

Once the cost benefit analysis is completed the amortization period and the other parameters used for cost allocation for the project should not be changed, unless so ordered by FERC or a court of applicable jurisdiction, for cost recovery purposes to maintain the continued validity of the cost benefit analysis.⁵⁵

62. NYISO responds that it is reasonable to link the cost parameters used to evaluate costs and benefits to the cost parameters used for cost allocation and recovery. NYISO maintains that permitting the cost parameters submitted by the developer for cost/benefit purposes to change once the project's costs are allocated for cost recovery purposes would defeat the purpose of performing a threshold cost/benefit analysis. NYISO also asserts that, contrary to NYRI's suggestion, the proposed requirement in section 15.4.e of Attachment Y applies equally to all developers of regulated economic projects. In response to NYRI's assertion that an approved economic project may be deprived of a chance to recover its full costs, NYISO states that, once a project has been approved under Attachment Y for cost recovery, all of the Commission-approved project costs are allocated to all of the LSEs in each of the beneficiary zones, and there is no possibility that a project's Commission-approved costs would not be recovered.⁵⁶ NYISO also states that, contrary to NYRI's assertion, there is no provision in Attachment Y for the non-allocation of a project's costs even if the benefits in a specific zone do not exceed a specific NYTO's costs.

63. In response to NYRI's assertion that this change goes beyond what was required in the October 16, 2008 Order, NYISO states that the proposed requirement responds to the directive in the October 16, 2008 Order that NYISO "file a detailed methodology for allocating the cost of eligible transmission projects constructed in response to congestion identified in the Congestion Study."⁵⁷

Commission Determination

64. We accept NYISO's proposed revisions to sections 15.4.d and 15.4.e of Attachment Y. NYISO's proposed revisions clearly describe the calculation and development of cost allocation for eligible projects. NYISO provides cost allocation

⁵⁵ *Id.* (citing NYISO May 19, 2009 Filing at 9).

⁵⁶ NYISO June 25, 2009 Answer at 11.

⁵⁷ October 16, 2008 Order, 125 FERC ¶ 61,068 at P 106.

formulas for load zones and load serving entities within zones. Finally, NYISO provides that project costs will be based on the total revenue requirements and determined in accordance with the formula rate on file at the Commission, or otherwise according to project-specific parameters.

65. We reject NYRI's claim that NYISO's proposed section 15.4.e(i) of Attachment Y, which provides that allocated project costs will be based on the total project revenue requirement, delegates to NYISO the Commission's authority to establish the developer's revenue requirements by directing a developer to provide NYISO with the project-specific parameters to be used to calculate the total project revenue requirement when there is no formula rate on file at the Commission. As a public utility, all rates NYISO charges for Commission-jurisdictional service must be filed at the Commission and are subject to Commission review. Further, as provided in section 15.4.f of Attachment Y, the Commission must approve the cost of a proposed economic transmission project for that cost to be recovered through the NYISO tariff.

66. We also reject NYRI's claim that NYISO's proposed section 15.4.e(ii) of Attachment Y, which states that the amortization period and other parameters used for cost allocation should not be changed once the cost benefit analysis is completed, violates a public utility's right to recover Commission-approved rates by conditioning a project's revenue requirement recovery on the continuing validity of the cost-benefit analysis. Changing the parameters used for the cost/benefit analysis subsequent to cost allocation may invalidate the threshold cost/benefit analysis. As the basis for the cost-benefit analysis and all future revenue recovery, the beneficiaries who will be allocated costs of the project must be able to rely on the amortization period and cost parameters used by NYISO in the cost allocation process in order to make an informed decision as to whether to vote for or against the project in the voting process. However, section 15.4.e(ii) of Attachment Y provides that the amortization period and other parameters used for cost allocation can be changed if ordered by the Commission or a court of applicable jurisdiction.⁵⁸ Further, section 15.4.f of Attachment Y provides that the Commission must approve the cost of a proposed economic transmission project for that cost to be recovered through the NYISO tariff. As such, because all such issues can be raised when the utility files under section 205 to implement rates that recover the project's costs, we find that NYISO's proposed cost allocation procedure does not violate a public utility's right to recover Commission-approved rates.

67. We find that NYISO has complied with the October 16, 2008 Order regarding the details of the actual cost allocation methodology associated with economic transmission projects constructed to resolve congestion identified through the Congestion Study. As

⁵⁸ We read this provision to allow a change "ordered by the Commission" to result from a proceeding under section 205 or section 206 of the FPA.

NYISO clarifies, if a proposed economic project is approved, then all beneficiaries pay their proportional share of the costs of the project. NYRI's understanding of the zonal allocation calculation is in error. Under section 15.4.b(i), NYISO measures the zonal LBMP load savings, net of reductions, prior to allocating costs to beneficiaries. Thus, a reduction in costs allocated to one load zone is offset by a concomitant increase in costs to another zone or zones such that 100 percent of the cost of the project is allocated. Thus, approval of an economic transmission project for cost recovery under the NYISO's tariff entitles the developer to a reasonable opportunity to recover 100 percent of its Commission-approved revenue requirement.

68. Finally, we reject NYRI's claim that revisions to section 15.4.e go beyond that which the Commission directed in the October 16, 2008 Order. In the October 16, 2008 Order, the Commission stated "We, therefore, direct NYISO to file a detailed methodology for allocating the cost of eligible transmission projects constructed in response to congestion identified in the Congestion Analysis Resource Integration Study (CARIS), consistent with the requirement of Order No. 890." NYISO's filing provides a detailed methodology for cost allocation.

c. Calculation and Allocation of Incremental TCCs

69. NYISO also proposes a new section 16.e of Attachment Y to govern the calculation and allocation of incremental TCCs, and the relationship of incremental TCCs to a project's revenue requirement.⁵⁹ Here, NYISO provides that incremental TCCs created by cost recovery-approved economic transmission projects will be auctioned or otherwise sold by NYISO, where possible, in order to offset the revenue requirements for the project.

70. We accept NYISO's proposed section 16.e as filed. We also find that, as requested by NYRI, these provisions provide additional detail regarding how NYISO forecasts congestion revenue that NYISO proposes to add to the benefits a project provides.

4. Additional Benefit Metrics

71. Under NYISO's proposed planning process, the cost of economic transmission projects will be allocated among those entities that benefit from the project based on a cost/benefit analysis incorporating a production cost savings metric described in NYISO's proposed tariff provisions. However, NYISO proposed that market participants who would be responsible for funding economic projects could vote against the projects and may consider, in their voting determination, metrics in addition to production cost

⁵⁹ NYISO May 19, 2009 Filing at 9.

savings, including those that measure reductions in LBMP load costs and those that measure changes to generator payments, installed capacity costs, ancillary service costs, emissions costs, losses, and transmission congestion contract payments. In the October 16, 2008 Order, the Commission found that NYISO did not provide the details of the additional metrics that it committed to developing.⁶⁰ The Commission clarified that those metrics must be fully developed and clearly explained for market participants to be given an opportunity to consider multiple metrics in their voting decisions. The Commission directed NYISO to submit an explanation of how such metrics will be calculated, weighed, and/or combined. The Commission stressed that this is especially important in light of the apparent disagreement between NYISO and the Upstate New York Utilities⁶¹ over whether and how to consider the impact of capacity costs. The Commission also stated that it was not clear how NYISO would collect capacity cost data for “informational purposes” and what role the “informational” data would play in the planning process.

a. NYISO’s Filing

72. NYISO clarifies that during the Congestion Study phase (section 11 of Attachment Y) and the regulated economic transmission project phase (section 15 of Attachment Y), the principal metric for consideration is net production cost savings.⁶² NYISO explains that production cost savings is the only metric used to determine eligibility and cost allocation in the cost/benefit analysis for economic projects. NYISO states that the additional metrics are provided only for informational purposes to stakeholders and beneficiaries to consider in assessing congestion during the Congestion Study phase and in deciding whether a project is beneficial and should gain their vote in the project phase. Accordingly, NYISO states, the amendments describe how the metric will be calculated, but NYISO is not proposing to “weigh” or “combine” the additional metrics (with the exception of the TCC revenue metric as noted in section 15.4.b(1) of Attachment Y).

73. NYISO proposes to expand section 11.3 (Preparation of the Congestion Study) of Attachment Y by defining the present value of the production cost reduction of each potential solution and additional benefit metrics as the sum of the present values from each of the 10 years of the study period. In proposed section 11.3 of Attachment Y, NYISO also defines the additional metrics and how they will be determined (i.e. by

⁶⁰ October 16, 2008 Order, 125 FERC ¶ 61,068 at P 113.

⁶¹ Central Hudson Gas & Electric Corporation, Rochester Gas & Electric Corporation, and Niagara Mohawk Power Corporation.

⁶² NYISO May 19, 2009 Filing at 10.

measuring the difference between the Congestion Study base case system value and the system value when the potential generic solution is added).⁶³

74. Regarding the additional metrics, NYISO proposes that: (1) the “reductions in LBMP load costs metric” will measure the change in total load payments (i.e., LBMP payments) and unhedged load payments (equivalent to LBMP payments minus TCC payments); (2) the “reductions in losses metric” will measure the change in marginal losses payments (based upon the loss component of the zonal LBMP load payments); (3) the “generator payments metric” will measure the change in generation payments (based upon the LBMP payments and ancillary services payments to electricity suppliers); (4) the “TCC payment metric” will measure the change in total congestion rents collected in the day-ahead market; (5) the “emissions metric” will measure the change in CO₂, NO_x, and SO₂ emission in tons on a zonal basis, as well as the change in emission cost by emission type; and (6) the “installed capacity (ICAP) metric” will be determined in accordance with the rules and procedures guiding the calculation of the Installed Reserve Margin and Local Capacity Requirements in the NYISO manuals.⁶⁴

75. NYISO proposes to link the development of additional metrics in the CARIS with the project phase by amending section 15.3.f to state that NYISO will provide information concerning the additional metrics and calculate the additional metrics to estimate the potential benefits of the proposed project, for informational purposes only, in accordance with section 11.3.

⁶³ *Id.* at 11-13.

⁶⁴ NYISO’s Comprehensive Reliability Planning Process Manual states that the Multi-Area Reliability Simulation program database, which uses a Monte Carlo simulation to compute the reliability of a generation system comprised of any number of interconnected areas or zones, is used in determining the ICAP requirements. NYISO further describes a megawatt impact methodology to be used in the ICAP metric during the initial Congestion Study cycle. NYISO states that if a potential solution’s loss of load expectation is lower than that of the base system, then NYISO will reduce generation in all New York Control Area zones proportionally until the base system loss of load expectation is achieved. NYISO states that this amount of reduced generation is the New York Control Area megawatt impact. NYISO further states that prior to subsequent Congestion Study studies, NYISO and stakeholders will develop an installed capacity cost metric that estimates the financial impacts that Congestion Study projects may have on installed capacity costs to load zones. *See* NYISO May 19, 2009 Filing at 13.

b. Protests

76. NYRI asserts that in the October 16, 2008 Order, the Commission directed NYISO to develop metrics in addition to production cost savings to fully evaluate whether the benefits of an economic transmission project exceed the costs.⁶⁵ NYRI asserts that NYISO fails to describe the extent to which these additional metrics apply to NYISO's determination as to whether a project should receive revenue recovery. NYRI adds that, despite earlier statements, the only measure of benefit NYISO intends to use to determine whether an economic project qualifies for NYISO tariff revenue recovery is the production cost savings metric. NYRI contends that this is an inadequate metric and that the decision whether to allow revenue recovery under NYISO's tariff will ignore the many other metrics that demonstrate a project's benefits. NYRI further argues that NYISO's proposal will very likely disqualify from revenue recovery the types of large scope transmission projects that are needed to reduce or eliminate congestion and allow additional renewable generation development.

77. In addition, according to NYRI, NYISO's filing is non-compliant in that the October 16, 2008 Order requires changes to section 15.4 of Attachment Y, which applies to the allocation of costs among beneficiaries after an economic project qualifies for recovery under the NYISO Tariff.⁶⁶ NYRI asserts that, to the extent the metrics NYISO proposes to include in section 15.4 of Attachment Y help to quantify an economic project's benefits for allocation among beneficiaries, those same metrics should be included in the Project Eligibility section (i.e., section 15.3 of Attachment Y) to help quantify benefits to qualify for cost recovery under the tariff.

78. NYISO, in its Answer, contends that NYRI misrepresents the Commission's holding in the October 16, 2008 Order regarding additional metrics. NYISO asserts that the Commission accepted its basic approach to determining a project's eligibility for cost allocation, including the development of additional metrics as additional information for consideration by project beneficiaries in the voting process, and has merely directed NYISO to clarify what those metrics are, and how they will be developed.⁶⁷ NYISO contends that the additional metrics are meant to give project beneficiaries as much additional information about the project as possible, and thus allow them to make a fully-informed vote as to whether it should receive cost recovery under the NYISO

⁶⁵ NYRI February 2, 2009 Protest at 5, citing October 16, 2008 Order, 125 FERC ¶ 61,068 at P 113.

⁶⁶ NYRI February 2, 2009 Protest at 5, note 15.

⁶⁷ NYISO February 17, 2009 Answer at 8 and 9, October 16, 2008 Order, 125 FERC ¶ 61,068 at P 113.

OATT. In this way, NYISO asserts, the process incorporates the very metrics that NYRI argues should be included in the evaluation of economic upgrades.

Commission Determination

79. The Commission will accept NYISO's compliance filing that clarifies the additional informational metrics, as directed in the October 16, 2008 Order. The Commission finds that NYISO's proposed revisions to the additional metrics in section 11.3.e of Attachment Y adequately describe the additional metrics, thus enabling market participants to consider several metrics in their voting decisions. NYISO has shown how these metrics are calculated and clarified that it will not weigh or combine the metrics, with the exception of the TCC revenue metric.

80. The Commission disagrees with NYRI that the Commission intended that additional metrics be employed in determining whether the benefits of an economic transmission project exceed the costs. Instead, as the Commission stated in the October 16, 2008 Order, the Commission intended the metrics to be used "for market participants to be given an opportunity to consider multiple metrics in their voting decisions."⁶⁸ The Commission directed NYISO to provide additional details regarding the calculation of such metrics for informational purposes after the initial determination that the project provides a net benefit to the system is completed, beneficiaries are identified, and the voting process by beneficiaries of the project commences.

81. Accordingly, the Commission's directive was that no metrics other than the production cost metric are to be used to determine if a proposed economic transmission project will produce net benefits to the system warranting a further determination of beneficiaries subject to an allocation of costs of the project and the commencement of the beneficiary voting process. The Commission specifically directed that the additional metrics are purely for informational purposes in the voting process. We find that NYISO has complied with those directives. The proposed revisions in section 15.3.f of Attachment Y clarify that NYISO is responsible for providing the information and calculations for the additional metrics for informational purposes only. However, we direct NYISO to file a compliance filing within 60 days hereof to revise section 11.3e.(vi) of its tariff to incorporate the megawatt impact methodology used in calculating the ICAP metric into the tariff.⁶⁹ Further, NYISO is directed to file a compliance filing containing revised tariff sheets reflecting the new ICAP cost metric with the Commission once it completes the stakeholder process addressing that metric.

⁶⁸ October 16, 2008 Order, 125 FERC ¶ 61,068 at P 113.

⁶⁹ *See supra*, n. 63.

82. Accordingly, the Commission accepts the tariff sheets describing additional metrics as in compliance with the requirements set forth in the October 16, 2008 Order, subject to the foregoing compliance obligation.

5. Informational Reports on Supermajority Voting

83. In the October 16, 2008 Order, the Commission directed NYISO to file an informational report with the Commission after the completion of each economic planning cycle.⁷⁰ The Commission directed NYISO to include: the results of each vote on economic projects, the identified beneficiaries, the results of the cost/benefit analysis, and, if vetoed, whether the developer has provided any formal indication to NYISO as to the future development of the project. In the March 31, 2009 Order on Rehearing, the Commission further directed NYISO to include in such reports the reasons stated by the parties that vetoed the project for their decision.⁷¹ The Commission clarified that this will help it to better monitor the supermajority voting mechanism.

84. NYISO proposes to modify section 15.6 of Attachment Y to require project beneficiaries voting against an economic project to report to the NYISO the rationale for their votes within 30 days of the date the vote is held.⁷² Afterwards, NYISO proposes to report this information to the Commission in an informational filing to be made within 60 days of the vote.

Commission Determination

85. The Commission finds that NYISO's tariff revisions partially comply with the informational reporting requirements set forth in the March 31, 2009 and October 16, 2008 Orders. Although NYISO explicitly provides in section 15.6.e of Attachment Y that it will report to the Commission the rationale of beneficiaries voting against approval of a project within 60 days of the vote, it does not specify the types of information required of beneficiaries that vote against approval of a project. To provide clarity, the Commission directs NYISO to file a compliance filing within 60 days of the issuance of this order, to provide that beneficiaries voting against approval of a project must provide a detailed explanation of the substantive reasons underlying their decision, including which additional benefit metrics identified in the tariffs or other metrics or factors that were used, the actual quantification of such benefit metrics or factors, a quantification and explanation of the net benefit or net cost of the project to the beneficiary, and data

⁷⁰ October 16, 2008 Order, 125 FERC ¶ 61,068 at P 130.

⁷¹ March 31, 2009 Order on Rehearing, 126 FERC ¶ 61,320 at P 38.

⁷² NYISO May 19, 2009 Filing at 14.

supporting the metrics and other factors used.⁷³ The Commission expects that a beneficiary's justification for voting against a project, and NYISO's submission, will demonstrate with supporting data that the beneficiary will not actually obtain a net benefit from the project.

86. Although NYISO also provides in section 15.6.e that it will tally the results of the vote and report the results to stakeholders, it does not specifically state that it will provide the information to the Commission, as was directed in the October 16, 2008 Order. Further, NYISO does not state in Attachment Y that it will provide the Commission with the identified beneficiaries, the results of the cost/benefit analysis, and, if vetoed, whether the developer has provided any formal indication to NYISO as to the future development of the project. Accordingly, the Commission directs NYISO to file a compliance filing within 60 days of the issuance of this order to explicitly state in Attachment Y that it will provide this information to the Commission.

The Commission orders:

(A) NYISO's compliance filings of January 14, 2009, and May 19, 2009, are hereby conditionally accepted effective December 7, 2007, June 18, 2008, and May 19, 2009, each in accord with its respective original filing date, as discussed in the body of this order.

(B) NYISO is hereby directed to submit a compliance filing, within 60 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.

⁷³ If metrics other than those supplied by NYISO were used, an explanation of the reasons for departure from NYISO-supplied metrics must also be included.