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MEMORANDUM

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TO: John Buehler and Carl Patka; NYISO Staff

FROM: Jackson Morris, on behalf of Pace, NRDC, Riverkeeper, American Lung Association in New York, and Environmental Advocates of New York

RE: FERC Order 1000—NYISO Public Policy Planning Process Draft Straw Proposal

Pace Energy and Climate Center (Pace) submits the following comments re the Public Policy Planning Process Straw Proposal advanced and discussed at the June 6 Joint ESPWG/IPTF meeting. As a one state RTO, we believe the NYISO is uniquely positioned to comply with FERC Order 1000 in a manner that fully accounts for (and ensures comparable treatment of) projects—whether transmission, generation, or demand side—that help achieve the public policies of New York State. This initial feedback is provided on the discussions and materials to date, and we look forward to providing additional formal and informal comments to the NYISO as the process evolves.

Specific Comments on the Straw Proposal and Tariff Revisions

- **Frequency of Public Policy Planning Process and updates to Public Policy Requirements (PPRs):** The proposed approach of essentially adding the public policy planning process to the existing two-year cycles already in place for reliability and economic planning seems to be a logical and reasonable approach, and one we support. However, in the event that significant changes to the state's regulations, orders or statutes occur in the time between the two year cycle, we urge the NYISO to ensure that 1) a clear process for updating the suite of relevant PPRs is established; and 2) projects consistent with those newly established PPRs could come forward outside of the two year cycle.
- **Non Transmission Alternatives (NTAs):** The proposed revisions to the Section 3.8.1 of the NYISO OATT correctly states that "Notwithstanding this provision and Section 3.8.1, the ISO shall give priority within its available resources to any requests by the PSC to evaluate transmission reinforcement options, **and non-transmission options**, as part of the public policy transmission planning process." However, as we stated at the June 6 meeting, while the OATT revision is referenced at the top of page 2 in the straw proposal document, the concept is not explicitly mentioned or represented. The NYISO should revise the language so that any mention

of “transmission need” or “transmission solution” includes and more clearly states that that need/solution could be met not only through a transmission project, but also through generation or demand side solutions—whichever is the most cost-effective to meeting the need *and* achieving the state’s overlaying public policies.

- **PPR Definition:** The straw proposal defines a Public Policy Requirement as a “state or federal statute or regulation that drives the need for transmission, or an order issued by the PSC or an executive order issued by the governor of New York State that drives the need for transmission.” Pace fully supports including state and federal statutes and regulations, and particularly PSC orders, as unlike many other states New York has driven most of its energy policies (RPS, EEPS, etc.) via PSC orders rather than via statutes. Thus, PSC orders are essential for inclusion in establishing New York’s PPR baseline. Executive Orders are less clear, and we do not take an official position for or against including those at this time. However, we do note that unlike PSC proceedings that ultimately result in orders, executive orders lack any formal opportunity for public participation and therefore may be inappropriate to include. But we look forward to further discussion on that point.

Minimum Requirements under Order 1000

As we are currently in the early phase of these discussions, we thought it would be helpful to provide the following brief discussion of our interpretation of some key aspects of Order 1000. While the proposed OATT revisions (and to a lesser extent the straw proposal) appear headed in the right direction, these points reflect what we believe should guide the NYISO as it proceeds with its compliance filings in the coming months. We will likely be advancing a more comprehensive piece in the future; below are some key components specifically related to PPRs.

Rationale for a Minimum Compliance Standard. Order 1000 mandates regional transmission planning processes (RTPPs) for FERC regulated transmission providers (TP) that result in a regional transmission system plan.¹ It does not require specific planning results or specific process details. Nor does it require that projects included in plans be constructed. Rather, it directs regulated utilities to implement minimum process requirements determined to be essential to TP decisions that are just and reasonable and non-preferential in the selection of solutions to meet regional transmission system needs. As the Commission notes in Order 1000-A, “By requiring public utility transmission providers to participate in an open and transparent regional transmission planning process that leads to the development of a regional transmission plan, the Commission has facilitated the identification and evaluation of transmission solutions that may be more efficient or cost-effective than those identified and evaluated in the local transmission plans of individual public utility transmission providers.” (§190) The order goes on to say that although the Commission requires that regional plans be developed pursuant to Commission-approved processes, it is neither requiring that the plans be filed for Commission approval nor that plans actually be implemented in the regions. (§191) Order 1000 process requirements,

¹ Order 1000 requires each “transmission provider” to “participate in a regional transmission planning process that produces a regional transmission plan and complies with existing Order No. 890 transmission planning principles.” ¶ 68.

² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 146 (“We determine that such [regional] transmission planning will expand opportunities for more efficient and cost-effective transmission solutions for public utility transmission providers and stakeholders. This will, in turn, help ensure that the rates, terms and conditions of Commission-jurisdictional services are just and reasonable and not unduly discriminatory or preferential.”).

however, must be implemented by TPs, and costs related to plans developed with procedures that do not satisfy the Commission's minimum procedures should be presumed to violate the Federal Power Act's (FPA) standard that rates for transmission service be just and reasonable and not unduly preferential.

To ensure that compliance filings under Order 1000 propose regional planning procedures that can provide reasonable bases for selecting transmission projects that are more efficient or cost-effective than alternatives, thereby meeting FPA obligations to provide jurisdictional services at just and reasonable rates and avoid undue discrimination, the Commission should evaluate all TP proposals using the traditional regulatory standard of prudence. The following comments provide recommendations on compliance provisions that a prudent TP should propose to meet Order 1000's regional planning process requirements related to public policies that drive grid needs, as well as comparable consideration of transmission and non-transmission alternatives to address identified grid needs.

TP tariff provisions must include procedures that ensure reasonable consideration of transmission needs driven by PPRs in RTPPs.

a. Order 1000 requirements: A TP tariff must describe **the procedures it will use to identify local & regional PPR-driven needs,³ and the process it will follow to select PPR-driven needs for which potential solutions will be evaluated.⁴** Development of more efficient or cost-effective transmission facilities to help ensure that the rates, terms and conditions of jurisdictional service are just and reasonable is the Commission's primary rationale for requiring TPs to amend their OATTs to provide procedures for considering PPR-driven needs. However, the Commission also cites the need to limit opportunities for undue discrimination by requiring procedures that give all stakeholders a meaningful chance to provide input on PPR-driven needs (in addition to those identified by the TP to serve its own needs). As noted above, the procedures and processes proposed must include timely and meaningful consultations with stakeholders.⁵

b. Minimum compliance provisions: Because many PPRs can have significant impacts on transmission needs over time, a prudent TP must establish procedures that ensure that all PPR-driven needs are identified and reasonably considered in the development of its regional transmission plans.

1) Prudence requires that TP tariffs include explicit procedures for identifying PPR-driven needs. Because O-1000 now requires that PPR-driven needs be considered in consultation with stakeholders in local and regional grid planning assessments, along with the reliability and efficiency needs currently considered, a process component that will address system needs driven by PPRs must be integrated into TPs' processes for addressing grid needs

³ See Order 1000, ¶ 203 (These processes must "provide all stakeholders the opportunity to provide input into what they believe are transmission needs driven by Public Policy Requirements, rather than the public utility transmission provider planning only for its own needs or the needs of its native load customers.")

⁴ See Order 1000-A, ¶ 335 ("... Compliance filers must explain how their process gives all stakeholders a meaningful opportunity to submit what they believe are transmission needs driven by Public Policy Requirements, and allow an open and transparent transmission planning process to determine whether to move forward regarding those needs.")

⁵ TP procedures "must allow stakeholders an opportunity to provide input, and offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements." ¶207 "At a minimum...we require that all such procedures allow for input from stakeholders...." ¶208

driven by reliability and efficiency at the beginning of each planning cycle.⁶ A tariff that simply refers to a need (or plan) to incorporate PPRs into the planning process does not provide sufficient detail to ensure meaningful stakeholder input on PPRs that may drive grid needs and, thus, should be found to be imprudent for failing to ensure reasonable consideration of the array of needs that may have to be addressed with transmission facilities that produce just and reasonable rates. At a minimum the TP's tariff should specify when and how in the regional plan development cycle stakeholder input on PPRs that may drive transmission needs will be solicited by the TP. Further, the tariff provisions must include a process that is not different in substance than the one required to address reliability or economic needs—a process that is open and transparent and that provides stakeholders with access to any studies, models and data to be used to make planning decisions.⁷

2) Prudence requires that the TP tariff delineate when, how and based on what criteria the TP will select the PPR-driven needs to be evaluated for solutions as part of its grid needs assessment process, and it must explain its decisions publicly. Specifically, to ensure opportunity for timely and meaningful stakeholder input, provide for reasonable treatment of stakeholder recommended PPR-driven needs, and minimize opportunity for undue discrimination (all of which are determined in Order 1000 to be critical to meeting FPA standards), the tariff at a minimum must establish:

- i) a process for determining which proposed transmission needs driven by PPRs will be selected for evaluation—an open process that creates a record sufficient to demonstrate that the identification and evaluation decisions made by the TP are fair, reasonable and not unduly discriminatory or preferential;⁸ and

⁶ See Order 1000-A at ¶ 205 (“...the Commission is acknowledging that the requirements in question are facts that may affect the need for transmission services and these facts must be considered for that reason...Such requirements may modify the need for and configuration of prospective transmission facilities. Accordingly, the transmission planning process and the resulting transmission plans would be deficient if they do not provide an opportunity to consider transmission needs driven by Public Policy Requirements.” See also ¶ 206 (“...we are requiring only that there be a process in place for public utility transmission providers, in consultation with stakeholders, to consider transmission needs driven by Public Policy Requirements...”)) and ¶ 210 (“...These reforms are intended to help create a path to allow public utility transmission providers, in consultation with stakeholders, in each transmission planning region to assess what transmission needs are being driven by Public Policy Requirements, just as they currently look to whether transmission needs are driven by reliability or economic considerations.”))

⁷ TP solicitation of stakeholder input should be at the beginning of each planning cycle and integrated with the TP's assessment of regional reliability and efficiency needs; that input should be sought in one or more in-person meetings hosted by the TP and via a designated website; and that TP responses to stakeholder recommendations should be made available expeditiously. See O-1000-A at ¶ 205 (“...Our intent is that public utility transmission providers consider such transmission needs just as they consider transmission needs driven by reliability or economic concerns. . .”) Also ¶ 208 (“The planning necessary to consider transmission needs driven by Public Policy Requirements is not different in substance from the planning required to address reliability or economic needs. Such planning requires an open and transparent process that provides interested stakeholders with access to studies, models and data used to make decisions.”)

⁸ See Order 1000-A, ¶ 321 (“...we are not requiring anything more than what we directed in Order No. 1000, namely, the two-part identification and evaluation process. As with other Order No. 1000 transmission planning reforms, our concern is that the process allows for stakeholders to submit their views and proposals for transmission needs driven by Public Policy Requirements in a process that is open and transparent and satisfies all of the transmission planning principles set out in Order Nos. 890 and 1000, and that there is a record for the Commission and stakeholders to review to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.... The OATT revisions that public utility transmission providers submit as part of their Order No. 1000 compliance filings will set forth the

ii) the timing for posting TP's explanations of its decisions regarding the PPR-driven needs to be evaluated for solutions—specifically, explanations of the PPR-driven needs selected for evaluation and why PPR-driven needs proposed by TP stakeholders but not selected were excluded from solution evaluation—as well as the level of detail such postings require so that stakeholders have a sufficient basis to understand the rationale involved in the TP's explanation.

3. TP tariff provisions must include procedures that ensure comparable consideration of transmission & non-transmission solution alternatives for addressing grid needs, including the process and metrics by which alternative solutions will be evaluated and selected.

a. Order 1000 requirements: TPs must include ***procedures for the evaluation of solution alternatives to meet transmission system needs***, including reliability, efficiency & PPR-driven needs, ***on a comparable basis***.⁹ These ***procedures must include identification of transmission and NTA solutions available*** to address identified grid needs & ***procedures and metrics for evaluating and selecting solutions on a comparable basis***.¹⁰ The basic goal of Order 1000—that transmission planning processes identify solutions to grid needs that are more efficient or cost-effective to help ensure just and reasonable rates for services—also drives these requirements. Thus, TPs must propose procedures that facilitate stakeholder input on solution options, weigh all options comparably, and make solution decisions based on clearly identified metrics.

b. Minimum compliance provisions: In order to demonstrate that the solution selections included in a TP's regional transmission plan meet the FPA's just and reasonable standard, Order 1000 requires procedures that create a record showing that the TP consulted with stakeholders openly and transparently, responded reasonably to stakeholder inputs and requests, and evaluated transmission and non-transmission solution alternatives on a comparable basis. At a minimum the tariff should specify:

i) When and how proposals by stakeholders for transmission facilities and NTAs to address identified grid needs, including PPR-driven needs, will be evaluated.¹¹ The tariff should provide that the solution identification and evaluation procedures are fully integrated into the TP's regional transmission plan development process.

process for permitting stakeholders to provide input and for determining which proposed transmission needs will be identified for evaluation.”)

⁹ See Order 1000, ¶ 80 (“[Transmission providers]...have an affirmative obligation...to evaluate alternatives [to local proposed transmission facilities] that may meet the needs of the region more efficiently or cost-effectively.” See also ¶s 148, 205-206. TPs must give those alternatives “comparable consideration.” ¶s 154-155

¹⁰ Order 1000, ¶ 155 (“While we require the comparable consideration of transmission and non-transmission alternatives in the regional transmission planning process, we will not establish minimum requirements governing which non-transmission alternatives should be considered or the appropriate metrics to measure non-transmission alternatives against transmission alternatives. Those considerations are best managed among the stakeholders and the public utility transmission providers participating in the regional transmission planning process” and “However...public utility transmission providers are required to identify how they will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis.”)

¹¹ TPs, in consultation with stakeholders, may determine how evaluations will be conducted, subject to review, but the objective is meeting identified needs more efficiently and cost-effectively. The process, however, must include “the evaluation of proposals by stakeholders for transmission facilities proposed to satisfy an identified need driven by Public Policy Requirements.” Order 1000, ¶ 211

ii) the procedures, to the extent they do not now exist, the TP will follow for responding to stakeholder requests to perform studies that evaluate potential regional upgrades, including public-policy related potential upgrades;¹² and

iii) the procedures, including the role of regional stakeholders,¹³ and metrics the TP will use *to evaluate* on a comparable basis all solution options, including NTA options, for addressing identified transmission needs and *to select* from among the alternatives the solutions that are more efficient or cost-effective for inclusion in its regional plan.¹⁴

Additional Issues for consideration in the NYISO Order 1000 discussions

Pace views FERC Order 1000 as an opportunity to improve the effectiveness and efficiency of New York's energy markets, policies and programs—an outcome that can only be realized through better coordination amongst the state agencies, authorities, and the NYISO. Not only does Order 1000 provide an opportunity for better coordination and integration of various electric and energy policies within New York, but also across the Northeast. The NYISO has been at the forefront of these “seams” issues via the IPSAC and other initiatives, but Order 1000 should allow for such efforts to be more formalized and better integrated into the NYISO's market structure.

The following are priority areas that we believe need further development or even initiation on the part of the NYISO as the Order 1000 compliance process proceeds:

1. As mentioned in the opening section, clarify unambiguously that **generation, energy efficiency and demand response are to be considered on an equal playing field with transmission alternatives**. Each resource is merely a different means to the same end, and we should be neutrally selecting the optimal solution. Existing CARIS and CRPP processes include criteria to guide the selection of those solutions; we now must establish similar criteria that incorporate PPR considerations into these formulas.
2. The language proposed to date suggests there are circumstances under which the NYISO might dismiss—or not fully consider—a request by the NYDPS. There may be some circumstances, under which this might be so, but they are quite limited. In any case, the emphasis should be on the **opportunities the NYISO will pursue to working with the New York State agencies and State Energy Plan process to improve the reliability of the overall state energy system,**

¹² See Order 1000, ¶ 147 (“...regional planning processes also must respond to requests by stakeholders to perform studies that evaluate potential upgrades or other investments that could reduce congestion or integrate new resources or loads on an aggregated or regional basis.”)

¹³ See Order 1000-A, ¶ 232 (“...Order No. 1000 provided public utility transmission providers in each transmission planning region the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.”)

¹⁴ *Id.*, ¶ 232 (“...When evaluating the merits of ...alternative transmission solutions, the Commission also directed public utility transmission providers in the transmission planning region to consider proposed non-transmission alternatives on a comparable basis...” (citing Order 1000, ¶148)) and ¶ 745 (“...we affirm Order No. 1000, and therefore, will not establish minimum requirements governing which non-transmission alternatives should be considered or the appropriate metrics to measure non-transmission alternatives against transmission alternatives....” (citing Order 1000, ¶155).)

while reducing costs and fulfilling public policies. The NYISO's active participation in the State Energy Planning process to date is a good start, but should be expanded within the context of Order 1000 compliance.

3. Natural gas has been a key component of the electric system for many years, but it has emerged in the last decade as the key fuel, and shows every sign of increasing this primacy. It is essential that the NYISO join other state energy and environmental regulators to **develop a gas supply system that is planned better to mesh with our heating, industrial and electric generation needs.** Gas infrastructure planning and management is already receiving increasing attention from the New York state agencies, but with rapidly increasing reliance on gas as an electric generation fuel, the NYISO needs to be more thoroughly involved. Order 1000 gives it both a basis and a requirement to do so. The Electric Gas Coordination Working Group is a positive construct in which to address these issues, but increased participation by state agencies and authorities and/or the inclusion of outcomes from those meetings at the State Energy Planning process will be necessary.
4. Major environmental considerations are interwoven into our modern electric systems. Heretofore, there has been too much of a divide between environmental planning and regulation, and energy-economic planning and regulation despite some efforts to mesh them. Isolated silos of utility regulators, environmental regulators, and market administrators results in inefficient outcomes for consumers and the environment. Order 1000 offers an opportunity to bring together in a more rational way these crucial, and sometimes competing, public interests that are in reality joined at the hip. The plan proposed so far does not seem to recognize this reality. The NYISO and NYDEC, for instance, could be exploring **better ways to include environmental externalities in the NYISO market system.** Why, for instance, should smaller, more polluting generators be allowed to compete with larger, less polluting generators that have had to pay to reduce their emissions? Order 1000 seems to have opened the door to the NYISO exploring ways to fix this obvious market failure. Further, we could explore ways to use "environmental dispatch" as a mechanism to improve our markets by using dispatch prices that more accurately reflect true costs, while simultaneously providing a more efficient market mechanism for meeting the State's reduced emissions target under the forthcoming CSAPR regulations.
5. As we move towards stronger New York State mandates for renewable energy, it is essential that **planning for our electric grid be closely tied to these developing state commitments to wind and solar energy.** This is not just a matter of the NYISO planning for these possible developments, but proactively joining with state agencies and authorities to ensure these vital public policies are achieved.
6. For the NYISO to work more effectively with New York State on energy-environmental policies, it is essential that all parties, public and private, have a much better understanding of **what emissions rates are on the margin.** Everyone needs to better understand the state and sub-state emission consequences of different possible energy and environmental policies and market rules. We are pleased that the NYISO has agreed to pursue a mechanism whereby this information can be regularly shared with market participants and stakeholders, and urge that this effort be completed without delay.