

LSP Transmission Holdings (“LS Power”)
Comments – 6/20/2012

Public Policy Planning Process Straw Proposal
DRAFT – For Discussion Purposes Only
June 1, 2012

Below is a high level outline of a public policy planning process that would be added to OATT Attachment Y to meet the requirements of Order No.1000.

The NYISO would define 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.”

The public policy planning process will be conducted in a two year cycle and will be conducted in parallel with the NYISO's reliability and economic planning process. The NYISO's public policy planning process will have three steps, which are described below.

Step One: Identification of Transmission Needs Being Driven by Public Policy Requirements for which Transmission Solutions should be Evaluated

1. This step would be administered by the DPS/PSC.
2. Any stakeholder or interested party may submit to the NYISO a proposed transmission need that it believes is being driven by a Public Policy Requirement and for which transmission solutions should be evaluated.
3. The submittal by each stakeholder or the NYISO will identify the Public Policy Requirement(s) that it believes is driving the need for transmission and describe how the construction of transmission will fulfill the Public Policy Requirement(s).
4. The NYISO, on a regular basis, will submit to the DPS/PSC the transmission needs proposed by stakeholders, and any additional transmission needs identified by the NYISO. The proposed transmission needs will be posted on the NYISO's website.
5. The DPS will review proposed transmission need(s) and, with input from the NYISO and interested parties, identify the transmission needs, if any, for which transmission solutions should be evaluated. In addition, the DPS may, on its own

motion, identify a transmission need driven by a Public Policy Requirement, including a state or federal statute or regulation or a PSC order or an executive order issued by the governor of New York State. NYISO will assist the DPS in its analyses as requested. The DPS may request that the NYISO conduct an evaluation pursuant to Section 3.8.1 of the NYISO OATT.

6. The DPS would issue a written statement identifying the transmission needs for which transmission solutions should be evaluated by the NYISO, and explain why transmission solutions to other suggested transmission needs should not be evaluated. If no transmission needs are identified by the DPS, the DPS would provide confirmation of that conclusion to the NYISO. If transmission needs are identified, then the DPS' statement also will provide criteria with respect to the evaluation of transmission solutions and the type of analyses it would like to be performed by the NYISO.
7. NYISO would post the DPS statement on the website.
8. Any stakeholder disputing the DPS Staff's decision to either accept or deny a proposed transmission need for which transmission solutions should be evaluated could petition the PSC for an order indicating that an identified proposed transmission need should or should not be evaluated under the NYISO's rules. A determination of need that is the subject of an appeal will be held in abeyance pending a final determination of the appeal. The PSC may also initiate a proceeding on its own.

Step Two: Requests for and Evaluation of Proposed Transmission Solutions

1. This step would be administered by the NYISO.
2. Ninety days following NYISO's posting of the transmission need identified by the DPS/PSC, The NYISO will open a 30 day Request Window, where by Qualified Transmission Developers may submit their proposed transmission solutions. and Within 180 days of the closing of this Request Window, NYISO will complete a report of its evaluation of the proposed transmission solutions to a transmission need identified by the DPS/PSC. The proponent of a proposed transmission solution will pay the study costs following the CARIS study funding methodology.
3. The NYISO, with input from stakeholders and within its available resources and modeling capabilities, would evaluate transmission solutions proposed by parties to meet transmission needs driven by Public Policy Requirements identified by

the DPS/PSC, using any criteria provided by the DPS/PSC and the type of analysis requested by the DPS/PSC, to the extent compliance with such criteria and analysis is feasible given the modeling capabilities of the NYISO. The NYISO also will use its existing reliability, economic, and interconnection (deliverability) planning process tools, databases and models as applicable to evaluate the proposed transmission project. Tools used in the planning process that may be used in the evaluation include power flow, stability and short circuit models for system planning analysis; probabilistic models of generator availability for resource adequacy; and production cost simulation models for economic and environmental analysis models.

4. The costs of a specific project will be provided by the proponent of a transmission solution in accordance with existing NYISO tariff procedures.
5. For the proposed transmission solution, the proponent ~~also will identify~~ provide the type, size, location, timing, etc. of the transmission solution as prescribed by NYISO in the transmission need posting.
6. The NYISO would identify benefits of the proposed transmission solution in accordance with the methodology, if any, specified by the Public Policy Requirement ~~PPR~~ or by the DPS/PSC.
- ~~7. In the event no proposals are received during the Request Window for a particular transmission need identified by the DPS/PSC. To ensure that there will be a response to a transmission need identified by the DPS/PSC, the appropriate Transmission Owners will propose a transmission solution to each of the for the identified transmission needs identified by the DPS/PSC.~~
- ~~8.~~7. The NYISO would prepare a report ~~on its evaluation of the proposed solutions based upon the criteria specified by the DPS/PSC~~, with input from stakeholders and interested parties. ~~The NYISO report will be subject to an advisory vote by the appropriate stakeholder committees, within 60 day of the completion of NYISO's report.~~ Market participants also will have an opportunity to provide comments on the report to the NYISO Board of Directors.
- ~~9.~~8. The NYISO Board would review and approve the final report, consistent with current tariff provisions for reliability and economic studies, within 3

meetings of the NYISO Board following the advisory vote.

9. The NYISO would evaluate proposed transmission solutions to the transmission needs identified by the DPS/PSC once every two years, unless otherwise requested by the DPS/PSC.

10. Any use of the so-called 80% rule should be waived for approval of public policy projects.

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Step Three: Transmission Project Determination

1. Any proponent whose project was evaluated by the NYISO could petition the PSC for an order indicating that ~~their~~ the project they proposed and NYISO evaluated should proceed to request the necessary local, state, and federal authorizations for construction and operation. The PSC could also initiate a proceeding on its own to consider a particular project(s). The PSC would determine, based on relevant factors, including the extent to which the transmission project would advance the identified PPR, whether a transmission project(s) evaluated in the NYISO report should proceed to a more detailed project proposal and application under PSL Article VII. Reasonable costs incurred by the proponent to provide a more detailed study of and cost estimate for a proposed transmission solution, and to prepare the PSL Article VII application will be recoverable. At this point in the process, cost allocation for those projects that proceed will be calculated by the NYISO, at the request of the PSC and with the assistance of the DPS, using the process defined below.

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The NY PSC selection process must be compliant with Order 1000. For instance:

- the ultimate process must result in the most efficient and cost-effective solution being selected, and the process can not be discriminatory
- Overall Point: If NY ISO delegates their selection process to any party, then the delegated party's evaluation process must be compliant with Order 1000. Specifically, the delegated selection process can not be unduly discriminatory or preferential. Otherwise, the NYISO can not rely on the process for purposes of regional cost allocation or selection of projects.
- As a general matter, LS Power does not oppose reliance on a state commission as the entity for evaluation of projects submitted in a regional transmission plan. Indeed, LS Power has been consistent in its comments that it respects the role of state commissions in the transmission

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development process. But such reliance on a state commission to perform a task that is mandated by a federal rule raises issues of jurisdiction that the state commission may not be willing to accept.

▪ Order 1000, at Paragraph 328, requires “each public utility transmission provider to amend its OATT to describe *a transparent and not unduly discriminatory process for evaluating* whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation. *This process must comply with the Order No. 890 transmission planning principles, ensuring transparency, and the opportunity for stakeholder coordination. The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation. In complying with this requirement, the Commission encourages public utility transmission providers to build on existing regional transmission planning processes that, consistent with Order Nos. 890 and 890-A, already set forth the criteria by which the public utility transmission provider evaluates the relative economics and effectiveness of performance for alternative solutions offered during the transmission planning process.”*

➤ Thus, in order to be compliant with Order 1000, whatever evaluation process a public utility transmission provider selects must meet the referenced requirements, as well as any other in Order 1000. If the public utility transmission provider selects a state process, either existing or to be developed, as its Order 1000 complaint evaluation process, it stands to reason that the state process must itself meet the criteria referenced in Order 1000. This puts state commissions whose processes are used as evaluation processes subject to FERC jurisdiction as to whether the process complies with Order 1000, either in structure or application.

➤ LS Power understands that most state commissions would be reluctant to agree to such oversight. Nor is LS Power suggesting that this is the optimal process for evaluation. Merely, LS Power is reflecting the legal fact that where a matter subject to FERC jurisdiction is relegated to a state process, FERC retains jurisdiction over the outcome of that state process. *See, Cedar Creek Wind, LLC, 137 FERC ¶61,006 (Oct. 2011).*

➤ For these reasons, LS Power’s position is that if a public utility transmission provider decides to rely on a state process for evaluation and selection of transmission projects selected in the regional transmission plan, the compliance filing must confirm and memorialize a process that confirms that the state process to be relied upon is compliant with the requirements of Order 1000. For example, a state process that required an incumbent transmission owner to initiate the state process by filing its proposal and relegated other proposals to intervenor status would not appear compliant with the requirement for a “not unduly discriminatory process.”



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Cost Allocation Methodology

1. FERC must determine transmission project costs ultimately to be recovered as just and reasonable before recovery in the NYISO's tariff. Costs for transmission projects constructed to address identified Public Policy Requirements and designated for recovery through the NYISO tariff would be allocated and recovered in a manner consistent with the cost allocation principles set forth in Order 1000.
2. If the Public Policy Requirement that resulted in the construction of a transmission project prescribes the use of a particular cost allocation and recovery methodology, then that methodology will be used.
3. If the Public Policy Requirement does not prescribe a cost allocation methodology, then the developers of a transmission project may propose and use (subject to the approval of the applicable regulatory authority) a cost allocation based on load ratio share, adjusted to reflect the transmission needs driven by the Public Policy Requirement, the party(ies) responsible for complying with the Public Policy Requirement, and the parties who benefit from the transmission facility ("Adjusted Load Ratio Share").
4. If the Public Policy Requirement does not specify a cost allocation methodology, or the developer's cost allocation methodology is not accepted, the DPS/PSC may identify an alternative cost allocation methodology to be applied to transmission solutions to an identified transmission need consistent with the principles articulated in Order 1000.
5. In the absence of any of the above cost allocation methodologies, the NYISO will allocate the costs of the transmission using a default cost allocation formula per the NYISO tariff (e.g. costs would be allocated on a load ratio share basis to all NYCA LSEs).
6. LIPA/NYPA issues on cost allocation and recovery, and jurisdiction, will be addressed. LIPA's share of any cost allocation would be subject to LIPA ratification.

Related Issues to Consider in the Public Policy Proposal

1. OATT Section 3.8.1 will be amended to broaden the scope of studies that may be requested by the DPS to include the consideration of non-transmission solutions.
2. The consideration of Public Policy Requirements in scenarios under the current NYISO reliability and economic planning processes would continue.