

122 FERC ¶ 61,267  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.	Docket Nos. ER04-449-007
New York Transmission Owners	ER04-449-008
	ER04-449-016

Linden VFT, LLC	ER07-543-000
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(Not Consolidated)

GUIDANCE ORDER ON CONCEPTUAL PROPOSAL

(Issued March 21, 2008)

1. This order addresses the consensus deliverability plan (Deliverability Plan) filed by the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (NYTOs) (collectively, Filing Parties) on October 5, 2007. The Commission approves, in principle, the conceptual framework proposed in the filed plan and provides further guidance to NYISO and its members in order to facilitate the development of revisions to the NYISO Open Access Transmission Tariff (OATT) that will formally codify the Deliverability Plan. The Commission directs the Filing Parties to file revised tariff sheets to implement the Deliverability Plan and address in sufficient detail certain remaining issues raised by parties in response to the instant filing.

## I. Background

2. In Order No. 2003,<sup>1</sup> pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)<sup>2</sup> to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their OATTs a *pro forma* LGIP and *pro forma* LGIA. Among their terms, the *pro forma* LGIP and *pro forma* LGIA require transmission providers to offer interconnection customers two levels of interconnection service: Network Resource Interconnection Service (NRIS) and Energy Resource Interconnection Service (ERIS). NRIS requires the transmission provider to integrate the generating facility into its transmission system in the same manner as it integrates its own generators. ERIS is a basic level of interconnection services.

3. In compliance with Order No. 2003, the Filing Parties filed a *pro forma* LGIP and *pro forma* LGIA including some proposed variations from the Commission's *pro forma* text. Specifically, the Filing Parties proposed to provide only one level of interconnection service under the NYISO OATT, Network Access Interconnection Service (NAIS), as opposed to the two levels of service described in the Commission's *pro forma* interconnection procedures and agreement. NAIS is a different service than either NRIS or ERIS; it combines elements of both. NAIS allows the interconnection customer to physically interconnect with the New York State Transmission System and, under Attachment S, allocates to the interconnection customer any "but for" interconnection upgrade costs in excess of the Annual Baseline Assessment.<sup>3</sup>

4. Under Order No. 2003, non-independent transmission providers seeking a variation from the Commission's *pro forma* LGIP or *pro forma* LGIA must demonstrate that the proposed modifications are "consistent with or superior to" the *pro forma* LGIA

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<sup>1</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>2</sup> 16 U.S.C. §§ 824d, 824e (2000 & Supp. V 2005).

<sup>3</sup> "But for" interconnection upgrades are those upgrades that would not have been constructed "but for" the customer's request to interconnect.

and LGIP or that the proposed change is in response to an established regional reliability requirement.

5. The Commission conditionally accepted in part the Filing Parties' proposed modifications to the *pro forma* LGIA and *pro forma* LGIP and directed the Filing Parties to file revisions incorporating a second level of service.<sup>4</sup> In its order, the Commission noted that, while NAIS combined elements of both ERIS and NRIS, NAIS did not address whether energy injected by the new interconnection can actually be delivered by the transmission system.<sup>5</sup> The Commission affirmed its decision in Order No. 2003 to require two levels of service, including one level that incorporates a deliverability requirement (such as NRIS), and directed the parties to modify their tariff accordingly.<sup>6</sup>

6. In its order denying rehearing, the Commission acknowledged that there are two competing principles at work.<sup>7</sup> The first is that offering a second level of interconnection service, one with deliverability, is a crucial component of Order No. 2003. The second is that the NYISO is a distinctive region and New York's stakeholders should have the flexibility to craft a system appropriate to New York's specific needs. Because of these competing interests, the Commission has granted multiple requests from the Filing Parties' for additional time to continue the stakeholder process.

7. Members of the Filing Parties were divided on how best to respond to the Commission's Order on Proposed Modifications. Its constituent members splintered into smaller groups that have filed several competing compliance filings proposing different methods and schedules for implementing a second level of service with a deliverability component. Meanwhile, the NYISO has provided the Commission with periodic status reports and work plans regarding the progress of the stakeholder process.

8. Having resolved many of their differences, the Filing Parties submitted their Deliverability Plan on October 5, 2007. Developed with the NYISO stakeholders through the Interconnection Issues Task Force, the Filing Parties' plan provides the

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<sup>4</sup> *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159 (2004) (Order on Proposed Modifications), *order on reh'g*, 111 FERC ¶ 61,347 (2005) (Order Denying Rehearing).

<sup>5</sup> Order on Proposed Modifications, 108 FERC ¶ 61,159 at P 25.

<sup>6</sup> *Id.* P 28; *see also* Order Denying Rehearing, 111 FERC ¶ 61,347 at P 14.

<sup>7</sup> Order Denying Rehearing, 111 FERC ¶ 61,347 at P 13.

conceptual framework for adding to the NYISO OATT a second level of interconnection service with a deliverability component.

9. The Filing Parties also state that they are seeking clarification of a prior Commission order regarding the application of a deliverability requirement to a pending unforced deliverability rights request from a Class Year 2006 merchant transmission project. The Commission assumes this reference to be the Linden VFT, LLC project in Docket No. ER07-543-000 (the project is described below in subpart III.D).

## **II. Notice of Filings and Responsive Pleadings**

10. Notice of the Deliverability Plan was published in the *Federal Register*, 72 Fed. Reg. 59,281 (2007), with interventions comments and protests due on or before October 26, 2007. FPL Energy, LLC (FPL) filed a motion to intervene. Motions to intervene with comments were filed by Dynegy Northeast Generation, Inc. and Sithe/Independence Power Partners, L.P. (Dynegy), Linden VFT, LLC (Linden), Independent Power Producers, Hess Corporation (Hess), and the Municipal Electric Utilities Association of New York (MEUA). The NYPSC filed a notice of intervention and protest. Comments were filed by Public Service Electric and Gas Company (PSE&G), Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (collectively, Con Edison), the Alliance for Clean Energy New York (ACE NY) and the American Wind Energy Association (AWEA). The New York Association of Public Power (NYAPP) filed a motion to intervene out-of-time with limited comments.

11. On November 13, 2007, the NYTOs and the NYISO filed requests for leave to answer and answers to Linden's comments. On the same date, Linden filed an answer to Con Edison's comments. On November 15, 2007, Con Edison filed an answer to Linden's comments. On November 30, 2007, NRG and Linden filed answers to Con Edison's answer. On December 4, 2007, Linden filed an answer to NRG's answer. On December 19, 2007 the NYPSC filed an answer to the comments of the NYISO, the NYTOs and Linden.

## **III. Discussion**

### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant NYAPP's late-filed motion to intervene

given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the initial answers of the NYTOs, the NYISO, Linden, and Con Edison because they have provided information that has assisted us in our decision-making process. However, we are not persuaded to accept the answers to those answers, and therefore we reject them.

### **B. Second Level of Service**

14. In this order we address the Deliverability Plan of the Filing Parties. The Commission will determine how to respond to the numerous, previously-filed compliance filings and status reports at a later time.

15. Pursuant to the Order on Proposed Modifications, the NYISO has developed the framework for a second level of interconnection service that incorporates a deliverability requirement. According to the Deliverability Plan, a generator interconnection customer will be able to participate in the capacity market by electing the new Capacity Resource Interconnection Service (CRIS).<sup>8</sup> ERIS limits the interconnection customer to participation in the NYISO energy and ancillary services markets, while CRIS also provides the interconnection customer with the ability to participate in the NYISO installed capacity (ICAP) market to the extent of its deliverable, capacity. In order to qualify for CRIS, an interconnection customer's capacity must (1) be found to be deliverable or (2) the interconnection customer must fund or commit to fund upgrades to the transmission system necessary to make the capacity deliverable.

16. The Deliverability Plan defines deliverability as the ability to deliver the aggregate of New York control area capacity resources to the aggregate control area load under summer peak conditions. According to the proposal, the NYISO will determine whether the interconnection customer is capable of delivering its capacity throughout the region of the New York market in which it is located, but not outside of that region.<sup>9</sup> The NYISO

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<sup>8</sup> The proposed interconnection procedures pertain not only to generators but also to controllable merchant transmission projects. As such, in referring to interconnection customers or generators referred in this order, the Commission intends to include all applicable projects and customers.

<sup>9</sup> The NYISO capacity regions are New York City (Zone J), Long Island (Zone K), and Rest-of-State (Zones A-I).

will consider an interconnection customer deliverable if it can demonstrate deliverability of its required capacity resource within the region in which the resource will participate. That is, an interconnection customer that is connecting to the rest-of-pool region will need to demonstrate deliverability throughout that region, but will not be required to demonstrate deliverability into a constrained region such as New York City—likewise for the reverse situation. An interconnection customer will also have the flexibility to select CRIS for part of its project and only those megawatts will need to be deliverable and participate in the capacity market.

17. If the NYISO determines that a generator is not deliverable, the NYISO will identify the smallest feasible, least-cost upgrade required to make the generator deliverable. The NYISO also will determine whether the interconnection will degrade the transfer capability between capacity regions and external interfaces.

18. The Filing Parties request that the Commission accept the conceptual framework contained in the Deliverability Plan prior to the development of detailed tariff sheets.<sup>10</sup> The Filing Parties propose to begin applying the deliverability requirement to projects belonging to Class Year 2007.<sup>11</sup> The Deliverability Plan states that pre-Class Year 2007 generators would qualify for CRIS if the interconnection agreement is not terminated and the generator begins commercial operation within three years of the commercial operation date specified in the interconnection agreement.

### **Comments**

19. Dynegy states general support for the development of a deliverability requirement and believes that, overall, the Deliverability Plan will achieve increased reliability. Dynegy requests, however, that the Commission direct the NYISO to provide more detail on the proposed deliverability test whereby a generator that selects CRIS will be required to demonstrate to the NYISO that its required capacity is deliverable within the New York capacity market in which it desires to participate.

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<sup>10</sup> The Joint Filing Parties note that the Commission has previously approved a conceptual proposal prior to the submission of tariff language. *See Cal. Indep. Sys. Operator Corp.*, 110 FERC ¶ 61,113 (2005).

<sup>11</sup> The Class Year is the group of generators and merchant transmission projects that are included in a particular annual transmission reliability assessment, which is the study conducted by the NYISO to determine the required facility upgrades (FERC Electric Tariff, Original Volume No. 1, Attachment S, Fourth Revised Sheet Nos. 655 and 656).

20. Con Edison supports the Deliverability Plan but states that it does not adequately address certain issues that should be determined by the Commission at this point. Con Edison states that the deliverability test procedure is not fully developed and may not produce reasonable results. Con Edison also expresses concern regarding the provisions permitting the transfer of deliverability rights from an existing generator to a new entrant. According to Con Edison, the NYISO should be required to analyze a generator as part of its comprehensive reliability planning process to determine if the retirement of the existing generator will result in a reliability violation or a capacity shortfall (including the withholding of capacity from the market) until the new interconnection is operational. Con Edison states that if such a retirement causes a reliability problem during the three year window provided by the Deliverability Plan during which the rights could be transferred, the transfer of the retiring generator's deliverability rights should be conditioned on it staying operational until the new qualifying resource becomes operational or the capacity shortfall is otherwise addressed.

21. The NYPSC states that the Deliverability Plan will act as a barrier to entry by grandfathering existing generators and requiring new entrants that are more economically efficient and environmentally cleaner to pay for system upgrades. NYPSC states that these system upgrade costs could be significant and could render certain new projects uneconomic. The NYPSC states that, alternatively, new entrants could purchase transmission capacity rights assigned to existing generators, assuming those generators are eligible to transfer their rights and are willing to sell them at a price that does not prevent new entry. Although it is unlikely that any type of market for such rights will be established given the limited supply, NYPSC suggests that existing generators could be subject to an allocation of the limited quantity of deliverability rights.

22. Hess suggests that the Deliverability Plan should be treated as an informational filing only.

#### **NYISO and NYTOs Answer**

23. In response to Hess's limited comments that the Deliverability Plan should be treated as an informational filing, the NYTOs state that it is critical to obtain Commission feedback in order to implement a deliverability requirement without further delay.

#### **Commission Determination**

24. We accept for filing the Deliverability Plan's framework, in principle, for a new, second level of service under the NYISO's OATT. As the Commission explained in the Order on Proposed Modifications, offering two levels of interconnection service is a

crucial component of Order No. 2003.<sup>12</sup> The Commission stated that the New York Control Area presents unique regional circumstances that have made developing a second level interconnection service difficult, which is why the Commission allowed stakeholders within NYISO additional time to reach consensus on this issue. The instant Deliverability Plan represents a consensus at least to the extent that it creates a framework for creating a second level of interconnection service that will be codified by the Filing Parties in a future filing that contains revisions to the NYISO OATT. In addition, we provide guidance to the Filing Parties that is intended to facilitate the development of detailed tariff sheets to implement the Deliverability Plan.

25. Our acceptance of the Deliverability Plan's proposed principles for CRIS interconnection service is based on several factors. The Deliverability Plan meets the objectives of the prior Commission orders directing a second level of service that recognizes the need for new resources to be deliverable.<sup>13</sup> The Deliverability Plan is also the result of a comprehensive stakeholder process, shares support among affected market participants, and balances the competing interests of market participants. We remind the Filing Parties that because their Deliverability Plan contemplates two levels of service that deviate from the *pro forma* OATT, their forthcoming revised tariff sheets must demonstrate that the particular proposed modifications meet the "independent entity variation standard" for revising the terms of the *pro forma* LGIA and *pro forma* LGIP to accommodate regional needs.<sup>14</sup>

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<sup>12</sup> 108 FERC ¶ 61,159 at P 24; *see also* Order Denying Rehearing, 111 FERC ¶ 61,347 at P 13-14.

<sup>13</sup> Order on Proposed Modifications, 108 FERC ¶ 61,159 at P 28.

<sup>14</sup> *See* Order No. 2003 at P 822-27; Order No. 2003-A at P 759. An RTO or ISO proposing a variation must demonstrate that the variation is just and reasonable and not unduly discriminatory, and would accomplish the purposes of Order No. 2003. *See, e.g., PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 7 (“[W]hen an RTO is the filing entity, the Commission will review the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.”), *order denying reh’g*, 110 FERC ¶ 61,099 (2005); and *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *order on reh’g*, 119 FERC ¶ 61,097, at P 7 (2007) (rejecting a proposed pricing variation because the RTO “had not shown that the proposal would accomplish the purposes Order No. 2003 set forth as possible justifications for this type of pricing”).



26. We reject arguments by parties that the Commission treat the Deliverability Plan as an informational filing. We find that doing so would serve little purpose in moving expeditiously to the implementation of a deliverability requirement by NYISO. Additionally, the Filing Parties requested specific determinations and guidance from the Commission in the October 5 filing. The Commission finds that the Deliverability Plan and the record in this proceeding are sufficient to determine whether, in principle, the plan satisfies the requirements of our prior orders. Furthermore, as requested in the filing, we expect that the additional guidance provided in this order will facilitate the development by NYISO stakeholders of detailed market rules and tariff provisions needed for implementation.

27. Some protesting parties state that the Deliverability Plan will create barriers to new entry and protest the grandfathering of existing generation. We discuss the issue of applicability of the deliverability requirements later in this order and reject parties' requests that the deliverability requirements apply retroactively to existing generators on the same basis. We find that protesting parties have not demonstrated how the Deliverability Plan will, in itself, create barriers to entry or delay needed projects. Nor have the protesters convinced us to change our conclusion regarding the need for a deliverability requirement.

28. Parties raise concerns that there is insufficient detail in the Deliverability Plan regarding the actual deliverability test that NYISO will perform, rules regarding the transfer of deliverability rights, modeling of proposed generators and associated upgrades, and the identification of relevant thresholds such as for the degradation of interface capacity. Any future tariff revisions should provide sufficient detail to reduce uncertainties in implementing the CRIS. In addition, the tariff revisions need to provide sufficient specificity regarding procedures for dealing with headroom, to the extent it is created by an upgrade, both with respect to the allocation of benefits such as Transmission Congestion Contracts (TCCs)<sup>15</sup> and costs, and with respect to any reallocation of these same benefits and costs, if required, should the headroom be used and paid for by a subsequent interconnection.

29. The Order on Proposed Modifications directed the Joint Filing Parties to make modifications to their tariff to include a second level of service containing a deliverability standard. That was over three years ago. The instant Deliverability Plan represents a

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<sup>15</sup> Each TCC is the right to collect or obligation to pay congestion rents in the day-ahead energy market associated with a single megawatt of transmission between a specified point of injection and point of withdrawal. TCCs are financial instruments that enable energy buyers and sellers to hedge transmission congestion costs.

consensus among shareholders on a new level of service, CRIS, which contains a deliverability standard. In light of our acceptance of this conceptual framework, we direct the parties to make the appropriate modifications to their tariff and file revised tariff sheets implementing CRIS, within 60 days of the issuance of this order.

### **C. Cost-Allocation of Upgrades**

30. Under the Deliverability Plan, if an interconnection customer's capacity request is found to be undeliverable throughout the applicable NYISO capacity region, it must fund or commit to fund any necessary upgrades to the transmission system. Allocation of these upgrade costs will use a highway/byway approach. Highways are defined as 115 kV through 345 kV transmission facilities that comprise the interfaces between load zones within the NYISO control area.<sup>16</sup> Highways do not include ties between the three NYISO capacity regions or to external control areas. The Deliverability Plan acknowledges that the smallest feasible highway upgrade may exceed the minimum required to make the generator deliverable. Accordingly, the percentage of the upgrade cost that is allocated to the developer will be the cost associated with the minimum megawatt capacity required to achieve deliverability. If the size of the minimum feasible upgrade equals 90 percent or more of the size of the actual upgrade, the developer would be allocated the entire cost.

31. Should a highway facility be constructed in which the interconnection customer's allocated share is less than the 90 percent threshold size, the remaining related cost would be allocated to LSEs, based on their proportionate share of the ICAP requirement in the Rest-of-State capacity region. When the project is built, the resulting TCC would be distributed to interconnection customers and LSEs in proportion to their funding of the project. Additionally, as subsequent interconnection customers use the headroom created by such previously constructed highway facilities, they will pay their proportionate share of the final cost of the upgrade project, and will receive any associated TCCs. These payments will be used to reimburse the LSEs who funded a portion of the project.

32. Upgrades to byways, which include all facilities other than highways and do not include ties between the NYISO capacity regions or external control areas, will be allocated entirely to the interconnection customer. Should an upgrade create "headroom," the entity or entities that paid for the upgrade headroom, would be entitled

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<sup>16</sup> Highway transmission facilities comprise the following NYCA load zone interfaces: Dysinger East, West Central, Volney East, Moses South, Central East/total East, UPNY-SENY, and UPNY-ConEd, and their immediately connected, in series, Bulk Power System facilities in New York State.

to collect a share of its upgrade costs from subsequent generators that make use of the headroom. An interconnection customer funding a byway will receive the resulting TCCs and any subsequent interconnection customer paying headroom will receive any corresponding TCCs.

33. If an interconnection degrades the transfer capability for interfaces into NYISO capacity regions and external ties into NYCA, the interconnection customer will be responsible for the cost to restore the transfer capability.<sup>17</sup> The interconnection customer will be responsible for this cost to the extent the degradation of transfer capability, compared to that in the Annual Transmission Baseline Assessment (ATBA),<sup>18</sup> would not occur but for the interconnection.

### **Comments**

34. The NYPSC protests the proposed cost-allocation methodology stating that the cost to upgrade highways would be allocated to new entrants based on their proportionate share of the project's cost but that new entrants would be required to pay the entire cost for upgrading byways, even if the minimum upgrade size exceeds the amount needed for new entry. The NYPSC requests that the Commission direct the Filing Parties to evaluate alternatives that would avoid barriers to new entry.

35. MEUA protests the Deliverability Plan's proposed cost allocation stating that the proposal provides construction of new highway transmission without properly allocating costs to those who benefit from the upgrades. MEUA states that the Commission should require that highway upgrade costs be assigned to the interconnection customer. MEUA states that assigning highway costs to parties other than the interconnection customer violates the Commission's principle that beneficiaries of a transmission project should agree to support the costs of the project.<sup>19</sup> MEUA contends that assigning highway

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<sup>17</sup> The Deliverability Plan states that NYISO will develop a *de minimus* threshold when evaluating this degradation.

<sup>18</sup> The ATBA is an assessment to identify system upgrades that transmission owners are expected to need during the time period covered by the ATBA to comply with Applicable Reliability Requirements, and reliably meet the load growth changes in load patterns projected for the NYCA.

<sup>19</sup> *Citing, Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 561, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007).

upgrade costs to LSEs implies that LSEs receive a greater benefit from highway upgrades than they receive from byway upgrades. Further, MEUA states that there is no demonstration that a particular LSE will benefit from the highway upgrade. MEUA suggests that any upgrade costs assigned to LSEs comply with the economic planning principles of Order No. 890.<sup>20</sup>

36. Should the Commission accept a different treatment for byway and highway facilities, MEUA states that any capacity created beyond what is needed to make a resource deliverable should be treated as an economic upgrade. MEUA argues that it would be inappropriate to allocate costs of the excess capacity to LSE's based on their share of the ICAP requirement because the additional headroom would provide no further benefit in the ICAP market.

37. IPPNY suggests that the Commission should reject the provisions in the Deliverability Plan that would require a generator to bear the cost of restoring the transfer capability of an interface or the transmission facility that would be degraded by the generator's interconnection even when the generator would be fully deliverable without the restoration. IPPNY contends that it is important to maintain transfer limits to the maximum extent feasible but that the same rules should apply equally to generators and load. According to IPPNY, the transfer limitation provisions of the Deliverability Plan would unduly discriminate against generators in two ways. First, while a new generator would be required to restore the transfer capability of a transmission facility it adversely impacts, loads that take actions which cause the same level of degradation to the transmission facility as the generator's interconnection would face no such requirement. Second, the Deliverability Plan does not offer any compensation to a developer whose interconnection enhances the transfer capability of an interface. Finally, IPPNY notes that the transfer limitation provisions were added in the late stages of the Deliverability Plan without broad support in the stakeholder process. Thus, IPPNY contends that the Commission should reject these provisions so that they may be renegotiated in a comprehensive and balanced manner.

38. Con Edison notes that the definition of what constitutes "highway facilities" lacks detail. Con Edison states that this is relevant because LSEs may be required to subsidize highway upgrades under the Deliverability Plan. Con Edison therefore suggests that if the Commission approves the Deliverability Plan it should state that these details are subject to revision to ensure they are just and reasonable when the tariff sheets are filed. Con Edison also claims that it is not clear which entity will pay the difference in the cost

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<sup>20</sup> *Citing*, Order No. 890 at P 559.

of an upgrade between the original estimate and the actual cost and highlights the risk to the transmission owner in this regard.

### **NYISO and NYTO Answers**

39. Responding to arguments made by the NYPSC, the NYTOs contend that the deliverability rights assigned to existing generators are transferable, and new generators will be responsible only for the share of highway costs necessary to make them deliverable. NYISO and the NYTOs claim that the plan does not create barriers to entry and maintains price signals for efficient location. In response to NYAPP's assertion that the plan's cost allocation procedure is beyond the scope of this proceeding, the NYTOs state that cost allocation procedures are an essential part of a deliverability requirement needed to send proper price signals to new generators and to make informed judgements.

40. The NYISO and the NYTOs both respond to IPPNY's criticism of the transfer limit provisions, stating that those provisions consist of two requirements applied to two separate sets of facilities. The first requirement applies to interfaces into capacity regions and external ties into NYCA, which are not considered highway or byway facilities, and whose maintenance of transfer limits is important to the NYISO's capacity markets. The second requirement applies to highway facilities in the Rest of State region and would require restoration of transfer capability only if the proposed project would have a significant affect on the NYCA IRM. Further, a "no harm test" is an essential part of the Deliverability Plan and load is often required to pay for upgrades under the Comprehensive Reliability Planning Process (CRPP).

41. The NYISO and the NYTOs respond to MEUAs's criticisms of the plan's cost allocation principles, stating that it is unreasonable to require new generators to pay for upgrades to the state's backbone transmission system. The NYISO and the NYTOs further state that the cost allocation principles discussed in Order No. 890 are not intended to apply to specific requests for interconnection or transmission service. The NYISO and the NYTOs defend that the plan's cost allocation mechanism as reflecting the balance of interests struck in the extended stakeholder deliberations. The NYISO also disagrees with NYAPP's contention that the cost allocation methodology described in the plan is inconsistent with the "but for" methodology currently contained in the NYISO OATT.

### **Commission Determination**

42. The Filing Parties' proposed cost allocation methodology for upgrades subject to the Deliverability Plan presents a reasonable balance among competing interests and we

accept it in principle. Although the Deliverability Plan differs from the *pro forma* LGIP and *pro forma* LGIA,<sup>21</sup> the Commission's interconnection policy provides flexibility for RTOs/ISOs.<sup>22</sup>

43. Consistent with the guidelines set forth in Order No. 2003, and generator interconnection principles approved for other ISOs/RTOs, the Deliverability Plan requires interconnection customers to fund transmission upgrades in return for the opportunity to receive valuable, tradable TCCs. The Commission has recognized that in ISOs/RTOs with locational pricing, requiring the interconnection customer to bear the cost of all facilities and upgrades that would not have been needed but for the interconnection, in return for the potential to earn valuable transmission rights, is an acceptable form of funding.<sup>23</sup>

44. The NYPSC and MEUA protest the Filing Parties' proposal to differentiate transmission upgrades between highway and byway facilities. Specifically, the parties object to allocating to LSEs the costs of highway facilities compared to the costs of byway facilities that are not allocated to LSEs. As defined by the Deliverability Plan, however, highway facilities will be integrated into the NYISO grid in a manner that will increase the transfer capability between major NYCA load zones. Accordingly, although a highway facility would not be built but for a generator's interconnection, the additional interface between major NYCA load zones will benefit New York load in the form of improved reliability and greater access to regional markets.

45. Requiring load to fund a portion of a highway project, as contemplated by the Deliverability Plan, is also not inconsistent with the Commission's pricing policy for generator interconnections in ISO/RTO regions. The Deliverability Plan requires the generator to fund the portion of the highway project that is necessary to achieve deliverability in return for the TCCs created by that portion of the project. Allocating the remaining "headroom" of such facilities to other market participants appropriately recognizes the zonal configuration of the NYISO administered markets.<sup>24</sup> The benefits

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<sup>21</sup> Order No. 2003 at P 34.

<sup>22</sup> *Id.* P 26, 28.

<sup>23</sup> *Id.* P 695, 700; *see also PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,052, at P 18 (2007).

<sup>24</sup> The Deliverability Plan allocates the costs of byway upgrades solely to the interconnection customer.

are sufficient to make such an allocation methodology appropriate and consistent with a “beneficiary-pays” approach.<sup>25</sup> It would be unreasonable to require generators to pay for upgrades to the transmission system that go beyond what is minimally necessary to achieve deliverability because these additional costs could stifle investment. According to the Deliverability Plan, it is the choice, not a requirement, of the interconnection customer or transmission owner to fund an upgrade to a byway that is larger than the smallest feasible upgrade. Moreover, subsequent generators that make use of any headroom should be responsible, and under the Deliverability Plan are responsible, for funding their proportionate share of the project’s cost; we note that, under the Deliverability Plan, such payments will be used to reimburse the LSEs who originally funded the portion of the project.

46. We find that the Filing Parties’ proposed approach allocates the costs of transmission consistent with Commission policy and recognizes the competing interests of those involved. Entities other than interconnection customers, such as LSEs, would be exposed to upgrade costs only to the extent that the 90 percent threshold is not realized for highway facilities (i.e., only if the minimum feasible upgrade is more than 90 percent of the size of the actual upgrade). These facilities include only the higher voltage load zone interfaces and immediately connected in-series bulk power facilities in the Rest-of-Pool capacity region and do not include interfaces between NYISO capacity regions or external control areas, or the lower voltage byways that are internal to individual load zones. Moreover, even when entities are allocated upgrade costs, such entities will receive the resulting TCCs associated with this share of the upgrade and will benefit from the additional backbone system capacity. Further, these entities will be reimbursed by future interconnection customers should additional projects make use of the headroom created. We believe these to be reasonable compromises among competing interests of NYISO participants, giving market participants benefits directly related to and commensurate with any costs that they may be allocated. Although Order No. 890’s cost allocation procedures for centrally planned facilities are not relevant to the interconnection process here, the highway/byway approach taken here by the Filing Parties is consistent with the established practice of differentiating between higher voltage transmission facilities that provide regional benefits and lower voltage

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<sup>25</sup> See *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 587 (2004).

transmission facilities that provide local benefits.<sup>26</sup> This is also consistent with the flexibility provided by Order No. 2003 for independently administered transmission systems.<sup>27</sup>

47. MEUA argues that allocating the costs of highway facilities to LSEs that do not agree to support the costs is inconsistent with Order No. 890. Further, MEUA argues that any cost allocation of the costs of highway facilities to LSEs should comply with the economic planning principles established in Order No. 890. MEUA contends that headroom is additional to what is necessary to achieve deliverability and thus will provide no further benefit to the ICAP market. We find that MEUA's reliance on Order No. 890 is misplaced. As noted above, the cost allocation principles established therein apply to projects contemplated under a transmission provider's regional transmission system planning process, which is designed to address regional reliability and transmission congestion issues, rather than specific requests for interconnection or transmission service.<sup>28</sup> In contrast, the Deliverability Plan, including its cost allocation mechanism, applies to individual requests for interconnection service pursuant to Order No. 2003; highway and byway upgrades that result from this interconnection process are intended to make capacity deliverable to load within the applicable NYISO capacity region.

48. We reject IPPNY's argument that requiring generators to bear the cost of restoring the transfer capability of an interface, or the transmission facility that would be degraded by the generator's interconnection even when the generator's capacity would be fully deliverable without the restoration, discriminates between generation and load. The cost allocation methodology proposed herein applies to specific interconnection service requests, and requires generators to restore transfer capability that would not have been degraded but for the generator's interconnection. We agree with NYISO and NYTO that

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<sup>26</sup> See *PJM Interconnection L.L.C.*, 119 FERC ¶ 61,063, at P 76 (2007) (Opinion No. 494); *order on reh'g and compliance*, 122 FERC ¶ 61,082 (2008) (Opinion No. 494-A), *appeal pending sub nom. Am. Elec. Power Serv. v. FERC*, Case No. 08-1096 (D.C. Cir., filed Feb 11, 2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, at P 91 (2007), *order on reh'g and compliance filing*, 120 FERC ¶ 61,080 (2007).

<sup>27</sup> Order No. 2003 at P 695.

<sup>28</sup> Order No. 890 at P 543, 558



load often must pay for upgrades under the CRPP.<sup>29</sup> It is reasonable to require a generator to maintain transfer capability that is degraded in order for that generator to interconnect, and to require load to maintain transfer capability through a process designed to maintain the overall integrity of the transmission system (which occurs through the regional transmission planning process).

49. While Con Edison asserts that the Deliverability Plan's definition of "highway facility" lacks detail, NYISO has developed specific criteria—115 kV through 345 kV transmission facilities located on specific NYCA interfaces—that clearly identify whether such a facility is to be classified as a highway upgrade. However, the Deliverability Plan also includes in the definition of highway upgrades 115 kV through 345 kV facilities identified through a threshold sensitivity analysis to be "in series" with such highway interfaces. The details and criteria to be used in such a sensitivity analysis are unclear and, accordingly, NYISO is directed to include such information in the tariff language that will incorporate the Deliverability Plan. Moreover, it is not clear what entity will pay the difference between the original estimate of an upgrade's cost and the actual final cost. We note that Attachment S to NYISO's OATT—"Rules to Allocate Responsibility For the Costs of New Interconnection Studies"—includes provisions that govern differences between estimated and actual costs.<sup>30</sup> It may be appropriate to adopt similar provisions for the service contemplated in the Deliverability Plan. In any event, the tariff revisions to be filed should provide sufficient detail to be clear on these issues. Finally, the filing on tariff revisions should also provide an explanation regarding how the definitions of highway and byway upgrades were developed.

50. We disagree with the NYPSC's contention that requiring generators to pay for the total cost of byway facilities creates barriers to entry. As discussed above, the Commission recognizes the differentiation in regional benefits between highway and byway facilities. The treatment proposed in the Deliverability Plan recognizes the regional needs and variations of the NYISO market in that the upgrades to highway facilities that create more system capacity than the minimum required by the interconnection customer are likely to have regional benefits. However, NYPSC has not

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<sup>29</sup> See NYISO, FERC Electric Tariff, Original Volume No. 1, Attachment Y, Original Sheet Nos. 946, 959, 959A and 960. On December 7, 2007, NYISO filed modifications to its transmission planning process in Docket No. OA08-52-000. That filing is currently pending before the Commission.

<sup>30</sup> NYISO, FERC Electric Tariff, Original Volume No. 1, Attachment S, section 13.

shown how the proposed treatment for byway facilities violates the “but for” test or Order No. 2003.<sup>31</sup>

**D. Class Year Applicability**

51. The Filing Parties propose that the Deliverability Plan apply to interconnection customers beginning with Class Year 2007.

**Comments**

52. The NYPSC contends that the Deliverability Plan favors existing generation that may be inefficient or dirty, at a time when New York is looking to add new generation resources that are more economically efficient and environmentally cleaner. The NYPSC states that existing grandfathered generators may continue to be eligible for ICAP payments even when their capacity is undeliverable. The NYPSC contends that this may negate the intended purpose of the capacity market demand curve, which is to create incentives that encourage new entry by providing installed capacity (ICAP) payments to generators based upon the cost of constructing a new peaking unit. The NYPSC contends that because ICAP payments do not reflect the additional costs of the system upgrades required under CRIS, it is unlikely that new entrants would invest in such upgrades. The NYPSC requests that the Commission direct the NYISO to evaluate the deliverability of existing generators.

53. Linden supports the Deliverability Plan as long as its 300 MW class year 2006 project is exempt from offering a second level of service under the Deliverability Plan’s grandfather clause.<sup>32</sup> Linden notes that the grandfather clause of the Deliverability Plan states that “[n]o upgrades to address deliverability will be required of pre-2007 generators.”<sup>33</sup> Linden also notes that the NYISO intends to seek clarification in another

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<sup>31</sup> Order No. 2003 at P 695.

<sup>32</sup> Linden VFT is a Class Year 2006 merchant transmission project. It is a 300 MW fully controllable AC line between the PJM system in New Jersey and the NYISO system in New York City. Linden initially submitted its interconnection request to NYISO in 2002, received approval of the System Reliability Impact Study from NYISO in March 2006 and executed an Interconnection Facilities Study Agreement in May 2006. Linden accepted its Project Cost Allocation in May 2007, promptly requested Unforced Deliverability Rights in accordance with the tariff, and posted the required financial security to Con Edison in July 2007.

<sup>33</sup> Deliverability Plan at paragraph 12.

docket as to whether an order authorizing Linden to charge negotiated rates<sup>34</sup> requires the NYISO to deny Linden, unlike other Class Year 2006 projects, grandfathered treatment in the instant proceeding. Linden contends that the Linden Rate Order provides no reason to exclude Linden from grandfathering. Linden explains that the Linden Rate Order discussed whether it was appropriate to resolve issues associated with deliverability enhancement cost allocation in the Linden rate proceeding, rather than the treatment of deliverability rights for Linden or any other project. Linden further contends that it would be patently discriminatory and contradict the Deliverability Plan to apply the new deliverability methodology to Linden on grounds other than the Linden Rate Order. Linden states that application of the new deliverability requirement to Linden would also violate the NYISO OATT because Linden has already posted security for its share of the system upgrade facilities required for its project. Linden contends that the only fair way to implement the new cost allocation standard is to do so prospectively starting with projects that have not completed the interconnection study process and have not yet been allocated costs based on a set of system upgrades defined by the interconnection study.

54. Con Edison states that the deliverability requirement should apply to the Linden VFT project. Con Edison states that Linden has been on notice of deliverability requirements since Order No. 2003, it is not expected to come online until the end of 2009, and its capacity may not be deliverable throughout the New York City zone. Further, Con Edison claims that Linden did not submit its request for deliverability rights until after the Linden Rate Order in which the Commission explained that Linden's exposure to deliverability enhancements would be bound by the outcome of the instant proceeding.

55. ACE NY and AWEA also argue that the Deliverability Plan should not apply to Class Year 2007 projects. They state that the interconnection study deadline of March 2008 for Class Year 2007, and the projects themselves, would be delayed if the deliverability requirements were to apply, especially since the stakeholder process for developing tariff revisions has yet to take place. ACE NY and AWEA also state that Class Year 2007 projects have been developed and studied based on existing rules and policies. Further, ACE NY and AWEA argue that rapid development of Class Year 2007 projects, which includes significant amounts of renewable resources, is particularly

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<sup>34</sup> *Linden VFT, LLC*, 119 FERC ¶ 61,066 (2007), *order granting clarification*, 120 FERC ¶ 61,242 (2007) *reh'g pending* (Linden Rate Orders).

important in light of New York's Renewable Portfolio Standard establishing the goal of having one-quarter of New York's electricity sales from renewable resources by 2013.<sup>35</sup>

56. PSE&G seeks clarification regarding grandfathered import contract rights and emergency assistance benefits under the Deliverability Plan. PSE&G states that it interprets the plan as a commitment to uphold and implement all existing grandfathered contracts and emergency power arrangements. In particular, PSE&G requests clarification with respect to the grandfathered wheeling arrangement between Con Edison and PSE&G (the ConEd-PSE&G wheel) that this commitment to uphold grandfathered contracts require the NYISO to model the ConEd-PSE&G wheel in its deliverability studies as 1000 MW of firm delivery from the NYISO at Waldwick into PJM and 1000 MW of firm redelivery at the Hudson and Linden interface; and that NYISO must ensure that all assumptions used in its modeling are consistent with the operating protocol for the ConEd-PSE&G wheel, as filed with and accepted by the Commission.

### **Answers**

57. In response to the NYPSC, the NYTOs point out that analyses conducted by the NYISO indicate that there are no significant pre-existing deliverability issues within each of the defined capacity regions. The NYTOs state that existing generators have already made substantial, irrevocable investments relying on the current tariff provisions and interconnection agreements that allow them to participate in the relevant markets. Thus, the NYTOs claim that grandfathering existing generators is entirely appropriate and consistent with Order No. 2003. The NYISO similarly disputes the NYPSC's assertion, noting that the NYISO's independent market advisor specifically addressed this issue in a presentation to market participants on January 15, 2007.

58. NYISO states that the Interconnection Facilities Study for Class Year 2007 began in March 2007 and that the results will be presented to the NYISO board for approval in May 2008. After board approval, NYISO states, in accordance with Attachments S and X of the tariff, interconnection customers are given the opportunity to accept their interconnection cost responsibilities. NYISO states that it required the Commission's determination on the applicability of the deliverability requirements in order to apply it to Class Year 2007 projects.<sup>36</sup> Responding to claims made by ACE NY and AWEA that the Deliverability Plan should not apply to Class Year 2007 projects and doing so would

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<sup>35</sup>Order Regarding Retail Renewable Portfolio Standard, NYPSC Case No. 03-E-0188 (September 24, 2004).

<sup>36</sup> NYISO Answer at 8.

hinder development of more environmentally friendly projects, the NYISO and the NYTOs state that a deliverability component is long overdue, it is inappropriate to inject public policy issues into this forum, and a Commission decision on the issue is extremely important.

59. The NYISO states that it will continue to model the ConEd-PSE&G Wheel in accordance with the applicable provisions previously filed and accepted by the Commission.

60. In its November 13, 2007 answer, Linden reiterates its argument that it has achieved its interconnection milestones in accordance with the tariff as a Class Year 2006 project and that there is no basis for discrimination by singling it out and subjecting it to the deliverability requirements. Accordingly, Linden rebuts arguments raised by Con Edison that nothing in the Linden Rate Order requires that the new deliverability requirements apply to Linden. Linden states that to do so would violate the rule against retroactive ratemaking.<sup>37</sup> Additionally, Linden rebuts the argument raised by the NYPSC that grandfathering existing generators from the costs of deliverability upgrades acts as a barrier to entry. Linden contends that investments for existing generators were made based on settled investment expectations just as economic decisions on Class Year 2006 projects have been made and finalized based on the existing tariff and failing to protect those settled expectations would stifle future investment.

61. In its November 15, 2007 answer, Con Edison states that failure to apply the deliverability requirement to Linden's project would adversely affect consumers and the public interest. Among its arguments, Con Edison points out that Linden's capacity is not deliverable throughout Zone J.<sup>38</sup> Con Edison states that Linden's project will be interconnected to a substation on Staten Island but that Linden's capacity will not be deliverable from Staten Island to other regions of Zone J due to other generation and resources on or connected to Staten Island. Con Edison states that Linden has been on

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<sup>37</sup> *Citing, Consol. Edison Co. of NY, Inc. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003) (“The filed rate doctrine ‘forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority.’ The related rule against retroactive ratemaking ‘prohibits the Commission from adjusting current rates to make up for a utility’s over- or under-collection in prior periods.’ By authorizing only prospective rate changes, these doctrines ensure rate predictability ...”) (citations omitted).

<sup>38</sup> Zone J includes Boroughs of Staten Island, Manhattan, Queens, Brooklyn, and the Bronx.

notice since the issuance of Order No. 2003 that interconnections would be subject to a deliverability requirement.

62. Regarding issues related to grandfathering, Con Edison argues that Linden incorrectly relies on the consensus plan, since the plan is not a tariff filing and has yet to be formalized. Further, Con Edison states that Linden's reliance on the OATT to claim that cost-cap provisions exclude it from paying further costs is incorrect because the applicable OATT provisions<sup>39</sup> are inapplicable to transmission upgrades that would be needed to render a project deliverable. Con Edison also states that transmission projects such as Linden should be treated differently from generation projects because the actual amount of capacity from a transmission project is not known during the study period since the quantity of UDRs is not known until the transmission project applies for a specific quantity.<sup>40</sup> Con Edison goes on to state that the existing tariff Attachment S does not apply to transmission projects such as Linden and that, therefore, Linden should be subject to the deliverability requirements. Con Edison objects to Linden's claim that subjecting Linden to the deliverability requirement while grandfathering all other members of Class Year 2006 is unduly discriminatory. Con Edison states that all or virtually all of the capacity of other existing generators would satisfy NYISO's deliverability test, while all or virtually all of Linden's capacity would fail that test.

### **Commission Determination**

63. The Commission accepts the proposal that the Deliverability Plan be applicable to Class Year 2007 projects. We believe that this is a reasonable application of the new requirements. In order for the Deliverability Plan to be applicable to Class Year 2007 projects, the tariff changes must be filed such that the effective date will not violate the rationale of the following discussion. The Commission rejects the arguments by parties, as discussed below, that the Deliverability Plan be imposed on projects prior to Class Year 2007 or to existing generators.

64. Class Year 2007 projects are currently under study, and as such, cost and facility requirements have yet to be assigned. According to NYISO, the results of the Interconnection Facilities Study for Class Year 2007 will be presented to the NYISO board for approval in May 2008, after which interconnection customers are presented with the opportunity to accept their responsibilities in accordance with the tariff. We believe that it is reasonable to apply the deliverability requirement and the new CRIS to

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<sup>39</sup> NYISO OATT, Attachment S, Section IV.G.

<sup>40</sup> Con Edison Answer at 8.

these projects because stakeholders have been active in the development of these pending requirements and they have been aware that the NYISO intended to apply these requirements prospectively beginning with Class Year 2007. In addition, Class Year 2007 projects have not yet made their schedule commitments. According to the Deliverability Plan, interconnection customers that qualify for CRIS status will retain this status at the capacity level found to be deliverable regardless of changes to the transmission system.<sup>41</sup> We find this provision to be acceptable as well because it preserves the commitments entered into by the interconnection customers in accordance with tariff provisions.

65. Con Edison states that the deliverability requirement should be applicable to interconnection projects beginning with Class Year 2006 and specifically to Linden, rather than Class Year 2007 as proposed by the Filing Parties. Essentially, Con Edison is advocating that the Commission replace currently effective rates, terms, and conditions and to impose rates, terms, and conditions that have yet to be filed with the Commission and for which an effective date has yet to be proposed. Applying the deliverability requirement as Con Edison suggests would require the imposition of additional requirements on interconnection customers that have already accepted their obligations to interconnect under existing tariff rules and that have already committed to and made their economic decisions based on the information and requirements at that time. Pre-Class Year 2007 interconnection customers have already made their financial obligations and, as in the case of Linden, posted required security. The proposed deliverability requirement is not yet a part of the NYISO tariff and the Con Edison proposal would require it be applied retroactively. We reject the notion that parties have been placed “on notice” since Order No. 2003 that they would be subject to the CRIS requirements. Such requirements were not developed and were not filed by the NYISO prior to the instant filing in October 2007.<sup>42</sup> And a retroactive application of the Deliverability Plan would require the NYISO to restudy all prior interconnection requests in order to develop requirements that were not a part of any obligations at the time. The Filing Parties have chosen, however, to grandfather all pre-Class Year 2007 interconnection customers.

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<sup>41</sup> Deliverability Plan at paragraph 13.

<sup>42</sup> A retroactive application of the new provision also would be inconsistent with the Commission’s implementation of Order No. 2003 in ISO/RTO regions, which allowed existing interconnection provisions to remain effective until the Commission accepted an ISO or RTO’s Order No. 2003 Compliance Filing. *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009, at P 3 (2004).

Thus, the Commission need not address how far back to go or to what interconnection queues to apply the requirements or how to implement such requirements.<sup>43</sup>

66. On October 9, 2007, in Docket No. ER07-543-000, NYISO filed a request asking the Commission to clarify the Linden Rate Order granting Linden negotiated rate authority for its merchant transmission project. NYISO requested clarification whether a pending request by Linden for unforced deliverability rights should be evaluated under the rules in effect at the time the request was made or whether award of such rights should reflect the application of the deliverability test to be developed in the instant proceeding. Given the discussion above, no further clarification is needed, and the request for clarification is moot.

67. In contrast to Con Edison's desire to apply the deliverability obligations to Class Year 2006, ACE NY and AWEA state that the deliverability obligations should not apply to Class Year 2007. First, unlike pre-Class Year 2007 projects, the interconnection studies have not yet been completed and these interconnection customers have not yet been informed of their interconnection obligations. Second, parties have not shown how this requirement will impede the development of new projects whether renewable or otherwise. Third, the Commission has previously stated the need to implement a deliverability requirement.<sup>44</sup> Therefore, we find the application of the Deliverability Plan to Class Year 2007 projects to be appropriate.

The Commission orders:

(A) The Commission accepts the Deliverability Plan, in principle, with additional guidance as discussed in the body of this order.

(B) The Joint Filing Parties are directed to submit revised tariff sheets, as directed in this order, within 60 days from the date of this order.

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<sup>43</sup> Had this filing been made earlier, earlier interconnection projects could have been made subject to the deliverability requirements. The filing was not made earlier, however.

<sup>44</sup> Order on Proposed Modifications, 108 FERC ¶ 61,159 at P 28.



(C) The Commission dismisses the request for clarification submitted in Docket No. ER07-543-000 for the reasons discussed in the body of this order.

By the Commission. Commissioners Wellinghoff and Kelly dissenting in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.