

109 FERC ¶ 61,372
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

New York Independent System Operator, Inc.

Docket Nos. ER04-1144-000
ER04-1144-001

ORDER ACCEPTING IN PART AND REJECTING IN PART TARIFF
AMENDMENTS

(December 28, 2004)

1. In this order, we accept in part and reject in part the proposed tariff amendments and agreement between New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (NYTOs)¹ filed by NYISO, to become effective October 19, 2004. The proposed tariff amendments establish a comprehensive planning process (Planning Process) for reliability needs for New York. We also direct NYISO to make a compliance filing. This order benefits customers by implementing measures to improve reliability in New York.

¹ The NYTOs include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Orange and Rockland Utilities, Inc., and Niagara Mohawk Power Corporation, a National Grid Company.

I. Background

2. NYISO proposes a formal mechanism by which NYISO, its market participants, and the New York State Public Service Commission (New York Commission) will work together to address long-term planning for reliability.² Under the NYISO plan, reliability needs for the bulk power system will be determined over a ten year planning horizon. The essential steps in the Planning Process include the identification of system needs, the development of proposals for both market-based and regulated solutions, NYISO evaluation of these proposed solutions, and the implementation of regulated solutions by the NYTOs as a backstop when market-based projects do not resolve anticipated reliability deficiencies.

3. Under the proposed planning process, NYISO is responsible for evaluating the bulk power system over a ten year horizon and for identifying violations or potential violations of reliability rules that result or could result from inadequate bulk power infrastructure.³ The base case for the first five year period will represent the New York State power system as reflected in the annual transmission reliability assessment conducted under Attachment S of the NYISO OATT. NYISO will publish the results of this evaluation annually in the Reliability Needs Assessment (RNA). The proposed Planning Process also provides for action beyond the normal planning cycle where NYISO identifies an imminent threat to reliability. The RNA will be reviewed by stakeholders⁴ and voted on and approved by the NYISO Board of Directors.

4. NYISO states that the planning process is designed to ensure that when a reliability need is first identified by the NYISO there is a parallel process initiated to seek both market-based and regulated backstop proposals at the same time. NYISO emphasizes that the market-based proposals are open to all resources, including

² There will be an additional filing addressing planning for economic reasons (Phase II of NYISO's Planning Process). According to NYISO documents, Phase II is currently being discussed within the Electric System Planning Working Group (ESPWG) meetings, which are planned through December 2004.

³ These reliability rules include the operating and planning criteria standards developed by North American Electric Reliability Council (NERC), the Northeast Power Coordinating Council (NPCC) and the New York State Reliability Council.

⁴ The draft RNA will be submitted to the Transmission Planning and Advisory Subcommittee and ESPWG for review and comment. The RNA will be voted on by the Operating Committee and then the Management Committee.

generation, demand response providers and merchant transmission developers. In the event that no viable market-based solution comes forward, there is an opportunity for developers (both transmission owners and non-transmission owners) to submit alternative regulated solutions. The staff of the New York Commission will screen alternative regulated solutions proposed by non-transmission owners to facilitate the determination as to which response is the most effective. NYISO will evaluate the market-based and regulated solution proposals and present the results in the Comprehensive Reliability Plan (CRP), which is aimed at matching reliability needs and appropriate market-based and/or regulated solutions.

5. Dispute resolution issues are addressed in sections 5.3,⁵ 8.3⁶ and 12.0⁷ Sections 5.3 and 8.3 describe the process to resolve disputes relating to the final conclusions or recommendations of the RNA and final determination in the CRP. Sections 5.3 and 8.3 provide that participants seeking further review “shall refer such dispute to the New York Commission for resolution.” Both proposed sections further state that the final

⁵ Section 5.3 states: “Notwithstanding any provision to the contrary in this Attachment, the NYISO Open Access Transmission Tariff (OATT), or the NYISO Services Tariff, in the event that a Market Participant raises a dispute relating to the final conclusions or recommendations of the RNA, a Market Participant may refer such dispute to the [New York Commission] for resolution. The [New York Commission’s] determination shall be binding, subject only to judicial review in the courts of the State of New York pursuant to Article 78 of the NYCPLR [New York Civil Practice Law and Rules].”

⁶ Section 8.3 states: “Notwithstanding any provision to the contrary in this Attachment, the NYISO OATT, or the NYISO Services Tariff, in the event that a Market Participant disputes the NYISO’s final determination in the CRP that a proposed solution will or will not meet a reliability need, a Market Participant seeking further review shall refer such dispute to the [New York Commission] for resolution. The [New York Commission’s] final determination shall be binding, subject only to judicial review in the courts of the State of New York pursuant to Article 78 of the New York Civil Practice Law and Rules.”

⁷ Section 12.0 states: “Disputes directly relating to the NYISO's compliance with its tariffs that are not resolved in the internal NYISO appeals process shall be reviewed at the Federal Energy Regulatory Commission pursuant to the Federal Power Act if such review is sought by a Market Participant.”

determination of the New York Commission shall be binding, subject only to judicial review in the courts of the State of New York. Section 12.0 addresses the Commission's role in dispute resolution.

6. NYISO will monitor the status of market-based projects through subsequent annual planning cycles, but will take no further action as long as it is satisfied that the projects are on schedule to meet the underlying reliability concerns. However, if NYISO finds that market-based proposals will not resolve a reliability need, and if the timing requires action to be taken, NYISO will identify (in the CRP) the backstop regulated solution that will meet the reliability need, and the transmission owner responsible for implementing it. At that point, the responsible transmission owner will submit its backstop solution to state regulators for approval under state law.

7. The proposed Planning Process also contains a means of addressing time-critical reliability needs through gap solutions. If NYISO determines that "there is an imminent threat to the reliability of the New York power system," the NYISO Board may request that the applicable NYTOs propose a gap solution outside of the normal planning cycle. The gap solution proposals will be designed to be temporary and to be compatible with market-based proposals.

8. Cost recovery is addressed in section 11.0, which provides that NYTOs will be entitled to full recovery of all reasonably incurred costs related to the preparation of proposed regulated solutions and the development, construction, operation and maintenance of regulated solutions undertaken at the request of NYISO pursuant to the Planning Process, including a reasonable rate of return and any applicable regulatory incentives. NYISO states that NYISO and its stakeholders agreed on several key principles to guide the development of a cost allocation methodology. The specific methodology for cost allocation is, however, not complete. NYISO states that there is a strong consensus among stakeholders for a "beneficiaries pay" approach, which is supported by the New York Commission and other state agencies. NYISO's proposal requires it to develop, with participants, the criteria for identifying beneficiaries and other details. NYISO indicates that this development process may take some time but asserts that there is no pressing reliability need that outweighs the potential benefits of a stakeholder deliberation.

9. NYISO also submits an agreement to be executed by NYISO and the NYTOs, entitled Agreement Between the New York Independent System Operator, Inc. and the NYTOs on the Comprehensive Planning Process for reliability needs (Agreement). The Agreement specifies the rights and obligations of the NYTOs associated with their participation in the NYISO Planning Process. The Agreement provides that any incremental costs would be recovered under a separate rate recovery mechanism that would be designed to be limited to the recovery of such costs (i.e., a limited Federal

Power Act (FPA) section 205 rate recovery mechanism). The Agreement also calls for any such proposed rate filings to become effective pending Commission review as part of an expedited approval process. Therefore, in order to implement this aspect of the proposed tariff and Agreement, once approved, the NYTOs will file separate rate schedules under the NYISO Open Access Transmission Tariff (OATT) that will provide for recovery of the costs of projects implemented in accordance with the Planning Process through the limited section 205 rate recovery mechanism described above.

10. Finally, NYISO will coordinate its planning activities under this tariff with those of its neighboring Independent System Operators (ISOs), Regional Transmission Organizations (RTOs), and other control areas. Thus, NYISO will administer the Planning Process to enhance the consistency of reliability determinations across the Northeast region. NYISO states that it has already initiated discussions with its stakeholders to begin this process and has begun implementing the Northeastern ISO-RTO Coordination of Planning Protocol which is planned to be executed shortly with PJM Interconnection, LLC (PJM) and ISO-New England, Inc.

II. Notices and Responsive Pleadings

11. Notices of the filing and amendments were published in the *Federal Register*, 69 Fed. Reg. 53,430 (2004); 69 Fed. Reg. 65,419 (2004), with protests and interventions due on or before November 19, 2004. NRG,⁸ the New York Municipal Power Agency (NYMPA), Public Service Electric and Gas Company (PSEG),⁹ Keyspan-Ravenswood, LLC (Ravenswood), the New York Municipals,¹⁰ and Calpine Eastern Corporation (Calpine) filed motions to intervene and protests. Niagara Mohawk Power Corporation,

⁸ “NRG” collectively refers to the following indirect subsidiaries of NRG Energy, Inc.: NRG Power Marketing, Inc.; Arthur Kill Power LLC, Astoria Gas Turbine Power LLC; Dunkirk Power LLC; Huntly Power LLC; and Oswego Harbor Power LLC.

⁹ “PSEG” collectively refers to Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

¹⁰ The New York Municipals filing this joint motion to intervene and protest are: the Village of Bergen, Freeport Electric Department; Green Island Power Authority; Greenport Municipal Utilities; City of Jamestown Board of Public Utilities; Town of Massena Electric Department; Village of Rockville Centre; Salamanca Board of Public Utilities, Village of Sherburne; City of Sherrill Power & Light; Village of Solvay; and Village of Tupper Lake.

the NYTOs, and the New York Commission filed motions to intervene and supporting comments. PJM and the Pace University Energy Project (Pace) filed comments. On September 27, 2004, NYISO and the NYTOs filed answers to the comments and protests. On September 28, 2004, the New York Commission filed an answer to the comments and protests. On December 6, 2004, NYISO filed an answer to Calpine's protest.

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 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of NYISO, the NYTOs and the New York Commission because they have provided information that assisted us in our decision-making process.

B. Tariff Amendments

1. Jurisdiction

a. Protests and Comments

13. Ravenswood, PSEG, NYMPA, NRG, and the New York Municipals protest the filing on the grounds that there would be too little federal oversight if the filing is accepted as it is. NRG states that the New York Commission should not have the final authority on the resolution of reliability problems and requests that dispute resolution sections 5.3 and 8.3 of the proposed Planning Process be eliminated because the FPA empowers the Commission to regulate the bulk power system operated by the utilities. PSEG, NYMPA and the New York Municipals share NRG's concern regarding these two sections. PSEG states that decision-making authority cannot be delegated to a state agency or state courts as proposed here. NYMPA states that disputes about NYISO's determinations are appropriately before the Commission, especially in instances when NYISO's determinations could dictate the Commission's treatment of transmission rates. NYMPA points to precedent where the Commission stated that disputes between NYISO

and the New York State Reliability Council affecting matters subject to the Commission's jurisdiction must be resolved directly by the Commission, and not submitted first to the New York Commission.¹¹

14. The New York Municipals state that there is too little federal role in the Planning Process and points to section 12.0 that outlines the extent of Commission oversight. Section 12.0 states that disputes related directly to NYISO's compliance with its tariffs that are not resolved in the internal NYISO appeals process shall be resolved by the Commission if review is sought by a market participant.

15. Ravenswood states that it is concerned that the proposal expands the New York Commission's role in system planning and that the Commission should also have opportunities to evaluate proposals designed to maintain reliability. Ravenswood states that projects that would result from this proposal will significantly affect the operations of wholesale markets, and, therefore, are within the Commission's jurisdiction. Ravenswood further states that if the execution of NYISO's Planning Process skews the balance in favor of regulated projects and jeopardizes wholesale market functions, parties should have the opportunity to seek Commission intervention.

16. The New York Commission states that it has jurisdiction over reliability, which authorizes it to resolve reliability related disputes. The New York Commission points to a statement that there is currently no direct federal authority for responsibility for the reliability of the transmission grid and that the FPA contains only limited authorities on reliability. The New York Commission states that, as a neutral third party with familiarity with the local and bulk power systems in New York, it is the appropriate forum to address disputes concerning the validity of NYISO's RNAs.

17. PJM states that it is concerned that New York Commission's role under the Planning Process might jeopardize the independence that NYISO should have as an ISO or RTO. PJM states that state regulatory bodies, such as the New York Commission, should not have final decisional and veto authority as proposed here. PJM states that the process should encourage input by the state regulatory body early in the process. PJM also states that the proposal should be modified in order to define a clear decision-making process that allows NYISO to be more than a coordinator.

¹¹ See *Central Hudson Gas & Electric Corp.*, 83 FERC ¶ 61,352 (1998) (*Central Hudson*).

b. Commission Determination

18. The Commission recognizes that the New York Commission has siting authority and a statutory charge to maintain reliability in New York and thus in the NYISO region, and therefore has a critical part to play in the transmission planning process. At the same time, we recognize that matters within our jurisdiction may also arise in the transmission planning process, particularly the ratemaking treatment that would be given to transmission facilities built pursuant to the planning process. Further, the NYISO, as a Commission-regulated utility, is providing the transparent forum for the multi-utility regional planning process envisioned by Order No. 2000. Our goal is to appropriately recognize the respective state-federal authorities over transmission matters and to dovetail our regulation in a way that supports timely, efficient reliability solutions. In our April 2004 *Policy Statement on Matters Related to Bulk Power System Reliability*, we stated our intent to work closely with the states to address reliability-related issues of mutual concern.¹² This filing presents that opportunity.

19. Since the footprint of NYISO is contiguous with the State of New York, we believe the New York Commission is singularly suited to address certain disputes relating to the final conclusions or recommendations of the RNA or NYISO's final determination in the CRP.¹³ We also believe that this level of involvement will not jeopardize NYISO's independence and could potentially expedite the siting of new facilities. NYISO will continue to take the lead responsibility in the planning process. Therefore, we will accept the dispute resolution process at the state level, contained in sections 5.3 and 8.3 of the proposed Planning Process tariff amendment, for matters that are not within this Commission's exclusive jurisdiction. To the extent that disputes regarding matters over which all the participating commissions have jurisdiction and responsibility for action, the Commission will entertain a request from the New York Commission or the parties for a joint or concurrent hearing to resolve the dispute, consistent with our regulations.¹⁴ We direct NYISO to amend sections 5.3 and 8.3 accordingly. Further, we direct NYISO to amend sections 5.3 and 8.3 of the Planning Process to provide that only disputes within

¹² See *Policy Statement On Matters Related to Bulk Power System Reliability*, 107 FERC ¶ 61,052 at P 29 (2004).

¹³ The New York Commission has no authority to resolve matters within this Commission's exclusive jurisdiction. Questions of jurisdiction can be brought directly to this Commission with a petition for declaratory order.

¹⁴ 18 CFR § 385.1305 (2004).

the New York Commission's jurisdiction may be subject to judicial review in the courts of the State of New York, since matters within our jurisdiction under the Federal Power Act may only be appealed to a Circuit Court of Appeals of the United States. We applaud NYISO and interested parties for devising a workable, efficient process to facilitate transmission planning and expansion.

2. Reliability Needs Assessment

a. Protests and Comments

20. Referring to section 4.3(d)¹⁵ of the proposed tariff, NRG asserts that, once a reliability need has been identified, NYISO should list possible solutions (e.g., transmission upgrades, or additional generation, or demand response). NRG argues that merely defining the total deficiency relative to reliability criteria is inadequate as it will not inform market participants how the reliability need may be resolved in the most efficient manner. Moreover, NRG argues, a non-exclusive list of possible solutions would enhance the ability of participants to construct market and regulated solutions in a more efficient manner. NRG contends that disclosing possible solutions at the same time the need is defined will enable buyers and sellers of reliability solutions to understand the relative costs thereof.

b. Commission Determination

21. The Commission will not direct NYISO to compile a non-exclusive list of possible reliability solutions. The Commission interprets NRG's comments to suggest that NYISO provide a preliminary list of possible solutions to the identified reliability need—prior to the presentation of regulated backstop solutions, or proposals from merchant transmission developers, proposals for generation, and demand response and any other solutions. In its answer, NYISO states that it “does not itself propose or design solutions” in the proposed Planning Process.¹⁶ The Commission believes that were NYISO to compile a list of solutions prior to the presentation and evaluation (by

¹⁵ In reference to the preparation of the RNA, section 4.3(d) states that NYISO will evaluate the bulk power transmission facilities over years 6-10 of the study period to determine whether they meet all reliability criteria for both resource and transmission adequacy in each year. The section states that “[R]eliability needs will be defined in terms of total deficiencies relative to Reliability Criteria and not necessarily in terms of specific facilities.”

¹⁶ NYSIO Answer at 5.

stakeholders and the NYISO Board) of proposed solutions, NYISO would be violating its stated objective to avoid proposing solutions to reliability needs that may impede market solutions. Moreover, the Commission believes that the proposed Planning Process achieves the objectives NRG seeks without requiring NYISO to identify proposals on its own.

3. Independent Market Advisor

a. Protests and Comments

22. Section 5.2 of the proposed tariff changes provides that a draft of the RNA will be provided to the Independent Market Advisor (IMA) for review and consideration to determine whether market rule changes are necessary to address an “identified failure” in the NYISO markets. NRG argues that this review is too limited and that the IMA’s analysis should encompass whether the existing market design or rules provide insufficient incentives for market participants to resolve bulk power reliability concerns. NRG asserts that this would not lead the IMA to consider broader market failures, which may limit the effectiveness of market solutions.

b. Commission Determination

23. The IMA is, generally speaking, responsible for monitoring and assessing the performance of NYISO markets and advising the NYISO Board. Article 4.3 of the market monitoring plan states that the IMA may at any time bring any matter to the attention of the NYISO Board as the IMA deems appropriate.¹⁷ The Commission finds that the IMA has the opportunity to provide input or advice to the NYISO Board (which will ultimately approve the RNA) and thus there is no need to require NYISO to expand the role of the IMA.

¹⁷ NYISO submitted its Market Monitoring Plan to the Commission in July of 1999 in Docket Nos. ER97-1523-010, OA97-470-009, and ER97-4234-007. The Commission approved in part and rejected in part this plan in *New York Independent System Operator, Inc.*, 89 FERC ¶ 61,196 (1999).

4. Discrimination

a. Protests and Comments

24. NRG states that proposed sections 6.4 and 7.3 addressing alternative regulated responses are inconsistent and discriminatory because, under the proposal, solutions proposed by NYTOs are to be reviewed by NYISO, while other proposed solutions for the same reliability problem must first be submitted to, and approved by, the staff of the New York Commission before NYISO can consider the proposed solutions.

b. Commission Determination

25. The Commission has previously concluded that the ISO should be the entity to evaluate and develop an expansion plan and have the responsibility to decide which projects to include in the plan, and any participant should be able to contribute.¹⁸ Here NYISO proposes to take the lead responsibility in the planning process. However, the Commission finds the process to be unduly discriminatory because non-transmission owners would be required to seek state approval in advance of bringing proposed solutions to NYISO, while transmission owners would not. Therefore we will require NYISO to revise the proposal to remedy this unduly discriminatory treatment to treat non-transmission owners solutions comparably to transmission owners solutions. If transmission owners are not required to seek state approval before submission to NYISO, then non-transmission owners should likewise not be required to seek such approval.

5. Cost Recovery

a. Protests and Comments

26. NYMPA states that the proposal allows NYTOs earning at or above their cost of service after new construction to forego filing for rates relating to new construction but retain rates for existing facilities, even if those rates result in earnings far beyond the

¹⁸ In *ISO New England, Inc.*, 91 FERC ¶ 61,311 (2000), *order on reh'g*, 95 FERC ¶ 61,384 (2001), the Commission addressed ISO-NE's proposed transmission planning process. The plan called for ISO-NE and the transmission owners to jointly develop and later expand a regional transmission plan, and determine which upgrades would qualify as reliability upgrades and receive pool support. The Commission stated that under the proposed plan transmission owners would have the ability and incentive to bias ISO-NE's planning process in favor of their competitive interests.

NYTOs cost of service. NYMPA requests that the Commission reject the proposal to allow NYTOs to file separately for new facilities. The New York Municipals share NYMPA's concern regarding cost recovery and argue that the proposal includes provisions that are not proper rate-making. NYMPA is concerned that, under the Agreement, each Transmission Owner would recover transmission related costs, including a reasonable rate of return and any applicable regulatory incentives, without any examination of its pre-existing transmission revenue requirement.

27. The New York Commission states that the cost recovery principles are reasonable and appropriate and ensure that costs will not be recovered twice.

b. Commission Determination

28. In accordance with our April 2004 *Policy Statement on Matters Related to Bulk Power System Reliability*,¹⁹ we will accept the proposed provisions setting up a rate mechanism separate from the transmission service charge and the transmission adjustment charge that is limited to the recovery of transmission-related costs incurred to meet a reliability need included in the CRP.²⁰ The proposal provides full recovery of all reasonably incurred costs related to the regulated solutions and development undertaken pursuant to the Planning Process. The Commission recognizes the concerns of municipal customers in New York with regard to the potential for NYTOs to over-recover their transmission costs. Thus, if a concern arises regarding over-recovery of transmission costs, such parties are free to seek relief by filing a complaint with the Commission pursuant to section 206 of the FPA.

¹⁹ See *Policy Statement On Matters Related To Bulk Power System Reliability*, 107 FERC ¶ 61,052 (2004) (where the Commission assured public utilities that it will stand by its policy to approve applications to recover prudently incurred costs necessary to ensure bulk electric system reliability).

²⁰ Section 3.03 of the Agreement provides that transmission owners' would have a rate mechanism that is "designed to be limited to the recovery of transmission related costs incurred to meet a reliability need included in the Comprehensive Reliability Plan." This separate rate mechanism would allow any NYTO to make a filing under section 205 of the FPA limited to a request for recovery of reasonable costs incurred pursuant to the CRP, including a reasonable return on investment and any applicable regulatory incentives.

29. We support NYISO's plan to develop a full cost allocation methodology and also encourage the parties to explore whether adopting formula rates for recovery of the costs of both the NYTOs' existing facilities and new transmission facilities would be a more reasonable rate design.

6. Promoting Market and Regulated Solutions

a. Protests and Comments

30. Calpine argues that NYISO's proposal is structured in a manner that will have the effect of promoting regulated solutions over market solutions. Calpine states that there is a bias towards reliance on transmission owner solutions in the CRP in the way that NYISO intends to develop the RNA "Five Year Base Case." Calpine states that the CRP report will overstate the degree of reliability assured over the five-year period by applying resources to future reliability needs where there is no reasonable basis to do so and, thus, market participants will not be provided with incentive to act. Calpine further states that if the CRP assumes the existence or construction of market resources that will in fact not be in existence when a reliability need arises, it will skew the perceived need for additional resources and will result in the NYISO defaulting to regulated backstop solutions. Calpine states that Commission guidance is needed on the assumptions of what resources are reflected in the CRP report base case, and ultimately on all of the details that go into selecting resources, and these planning criteria should be filed for Commission approval and not left to the discretion of NYISO.

31. Calpine also states that the timing for market support of generation under the NYISO UCAP market design does not match the planning assumptions in the CRP reliability analysis, and the CRP does not appear to provide any other incentive for load serving entities to commit to purchase from generator developers to avoid the need for a regulated backstop solution.

32. To prevent regulated backstop solutions from being promoted over market-based solutions, Calpine states that NYISO should be obligated to attempt to cure market inadequacies rather than just monitor the progress of market-based solutions. Calpine states that NYISO should diagnose why the market solutions are failing to develop in a timely fashion and, if necessary, propose market rule changes to provide load serving entities with adequate incentive to enter into longer-term purchases of capacity to meet those needs before the regulated backstop trigger is ultimately reached.

b. Commission Determination

33. Contrary to Calpine's claims, we do not believe that the Planning Process over-promotes regulated solutions at the expense of market solutions. Rather, we see it as properly balancing the two-- relying on the former should the latter prove inadequate. And, we add, it is certainly a substantial improvement over planning processes that traditionally have depended largely or even solely on transmission owner developed, regulated solutions. The Commission will not provide guidance as to assumptions that contribute to formulation of the CRP. Calpine argues that assumptions made by the NYISO in developing the RNA and CRP may overestimate future levels of generation in the NYISO and thus would not appropriately alert the region to reliability needs. In this order, the Commission is approving, with modifications, dispute resolution mechanisms regarding the RNA and CRP. Where Calpine has a dispute regarding the RNA or CRP, it is free to pursue the resolution thereof through those mechanisms.

34. With regard to the UCAP Market, Calpine's ultimate concern appears to be that "there is not much interest in forward purchases of capacity to support future generator development" and that the present UCAP market design and proposed CRP planning assumptions do not encourage greater purchases thereof.²¹ The Commission finds that the NYISO's Planning Process is appropriate. The Commission finds that this filing is not the appropriate venue to address UCAP market design. Calpine is encouraged to raise the issue within the applicable NYSIO processes or appropriate Commission filings.

7. The NYISO/NYTOs Agreement**a. Protests and Comments**

35. The New York Municipals argue that the proposed Planning Process does not result in a "must build" obligation on the NYTOs. The New York Municipals contrast this with section 2.02 of the Agreement, which states that the NYTOs agree to develop and construct (or cause to be constructed) projects necessary to meet reliability needs identified in the CRP. The New York Municipals protest that the Planning Process does not more clearly describe the obligation of a NYTO to build the projects that result from the Planning Process.

36. PSEG argues that there is no provision within the proposal that specifies the obligation or obligations of the NYTOs with regard to projects such as third party generation, demand response and transmission project proposals. PSEG asserts that

²¹ Calpine Protest at 9.

section 2.02 of the Agreement should be clarified for such projects so that the Transmission Owner will be obligated to cooperate and provide reasonable assistance on construction. PSEG suggests modifying section 2.02 of the Agreement.²² PSEG asserts that its suggested language is similar to a provision in the PJM OATT.

37. In their answer, the NYTOs argue that the proposed Agreement provides a clear obligation to build, subject to certain conditions, and thus there is no need to place similar language within the tariff. The NYTOs also argue that they should not have to agree to “some vague promise”²³ with respect to the promotion of generation alternatives. The NYTOs state that they support a planning process that relies upon market solutions, including the use of unregulated and market-based generation alternatives to meet reliability needs. The NYTOs state that they have agreed to build interconnection facilities for generators in accordance with Order No. 2003 and that concerns regarding interconnection are resolved by Order No. 2003.²⁴

²² PSEG’s suggested modifications appear in italics:

Transmission Owner agrees to develop and construct (or cause to be developed and/or constructed) projects necessary to meet reliability needs on the bulk power facilities identified in the Comprehensive Reliability Plan *as the responsibility of the Transmission Owner* and which the NYISO has determined will address the identified reliability needs. *Transmission Owner agrees to cooperate in a reasonably commercial manner and to provide commercially reasonable assistance in connection with the development and construction of projects necessary to meet reliability needs on the bulk power facilities identified in the Comprehensive Reliability Plan as the responsibility of a party other than Transmission Owner and which the NYISO has determined will address the identified reliability needs.*

²³ NYTOs’ answer at 8.

²⁴ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., ¶ 31,146 (2003) (Order No. 2003), *order on reh’g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004) (Order No. 2003-A); *reh’g pending*; see also *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

b. Commission Determination

38. The Commission will not require NYISO to include a more detailed description of the obligations of NYTOs. The Commission finds that the language proposed for the Agreement adequately obligates the NYTOs to develop and construct necessary facilities.

39. The Commission will not require NYISO to include PSEG's suggested language. PSEG refers to PJM's OATT, which states that a transmission owner shall assist in obtaining necessary permits (section 83.2.3.2 (a)) or in acquiring land rights (section 83.2.3.2(b)). However, the suggested language is not limited to assistance in obtaining permits or land rights. PSEG's suggested changes require assistance and cooperation in "development and construction of projects necessary to meet reliability needs,"²⁵ and arguably could even be read to place significant responsibility on the NYTOs for development and construction of what are, in essence, someone else's projects for use of which someone else will receive the revenues. The Commission does believe, though, that NYTOs should provide reasonable assistance, where possible, to those parties that are responsible for developing and constructing upgrades approved in the CRP. Therefore, we direct NYISO to include such language in the agreement.

8. Timeframes**a. Protests and Comments**

40. Niagara Mohawk requests that the Commission require a six month deadline for Phase II of the Planning Process, which includes consideration of economic needs. Niagara Mohawk also states that it favors the development of a clear and streamlined cost allocation methodology that is based on the premise that beneficiaries of projects are responsible for the costs of those projects, rather than a case-by-case determination as currently provided for in the proposal.

41. In its answer, NYISO explains that the timeframe suggested by Niagara Mohawk is not sufficient, and that there are no eligible facilities currently in the pipeline that would require NYISO to modify its current stakeholder deliberation process regarding cost allocation. NYISO also suggests that it would submit a progress report covering cost allocation procedures within 90 days after the Commission approves the Planning Process.²⁶

²⁵ PSEG Protest at 10.

²⁶ NYSIO Answer at 12.

42. PJM suggests that NYISO should establish enforceable time frames for its decisional review processes. Specifically, PJM points out that there are no timeframes in section 4 for the NYTOs to submit plans to NYISO for determining whether reliability needs are met, no timeframe for NYISO to complete the RNA draft, and in section 5.1 there is no time specified for stakeholder review of the regional plan. Additionally, PJM notes that timeframes are lacking in sections 6.0 and 7.0 that deal with market based or backstop solutions, preparation and approval process for the CRP. PJM states that markets need certainty and predictability in order for investors to have confidence that they can invest in infrastructure development, and, as in section 8.0, a “reasonable period of time” is too vague of a timeframe.

b. Commission Determination

43. We support NYISO’s commitment to follow a thorough stakeholder review process to develop Phase II of the Planning Process and its cost allocation methodology and support its commitment to submit within 90 days a progress report regarding implementation of these steps. However, we share the protestor’s concern regarding lack of timetables for implementation of various stages of RNA and CRP and we direct NYISO to propose and file such timetables within 60 days. This will help to ensure that the critical reliability needs of the New York bulk power system are met in a timely manner.

9. Management Committee Approval

a. Protests and Comments

44. NYMPA argues that the proposal was not appropriately considered by the NYISO Management Committee because the Committee did not review and approve the actual language and instead approved only a principle.

b. Commission Determination

45. Section 14.4 of the NYISO Tariff states that amendments may be made in accordance with the ISO Agreement. The ISO Agreement permits an amendment to the NYISO OATT to be filed with the Commission if both the Management Committee and the NYISO Board of Directors agree to the proposed amendment. However, there is nothing in the ISO Agreement that requires approval of the specific language. NYISO responds to NYMPA’s protest explaining that a motion was considered in the Management Committee to defer consideration of the Planning Process until tariff language was available. This motion received only 17.75 percent affirmative votes. Approval of the amendment also required that the specific tariff language be reviewed by

the ESPWG within NYISO, as well as be approved by the Chairs and Vice Chairs of the Management, Business Issues and Operating Committees and the Chair of the ESPWG prior to filing with the Commission. Based on this process, we find that the proposed amendment was submitted to the Commission with the appropriate approvals.

10. Facilities Included

a. Protests and Comments

46. The proposed Planning Process is designed to meet the reliability needs of the New York State Bulk Power Transmission Facilities, which encompasses all of the facilities in the Area Transmission Review submitted to the NPCC.²⁷ The New York Municipals argues that the proposed Planning Process is not "comprehensive" unless it addresses all portions of the "NYS Transmission System" defined in NYISO's OATT.²⁸ The New York Municipals assert that NYISO needs to provide a backstop to the NYTOs' local planning efforts and thus requests that the Commission require a lower voltage planning process in a compliance filing.

47. In its answer, NYISO states that it currently performs various short-term planning analyses in accordance with NERC, NPCC and New York State Reliability Council requirements. NYISO states that these analyses apply to the defined New York State bulk power transmission facilities. NYISO argues that since the same reliability criteria will be applicable to the proposed long-term Planning Process, the applicable facilities should remain the same.

²⁷ These facilities are primarily composed of 765, 345 and 230 kV transmission; a portion of the 138 and 115 kV transmission is considered to be bulk power transmission. See NYISO's *2002 Area Transmission Review of the New York State Bulk Power Transmission System in the Year 2007*, available at [http://www.nyiso.com/services/documents/planning/trans_planning_reports/2002/study_report.pdf].

²⁸ NYISO OATT defines the NYS Transmission System as : The entire New York State electric transmission system, which includes: (1) the Transmission Facilities Under ISO Operational Control; (2) the Transmission Facilities Requiring ISO Notification; and (3) all remaining transmission facilities within the New York Control Area.

b. Commission Determination

48. The Commission will not require a lower voltage planning process of NYISO. A number of parties cooperated in the development of this proposal, including the New York Commission. The New York Commission is, among other things, charged with ensuring that residents of the state have access to reliable utility service. NYISO and the New York Commission believe that the scope of the Planning Process is appropriate and is adequate to meet the reliability needs of New York. The Commission considers the New York Commission's support of this feature of the Planning Process important in making its finding. Moreover, the Commission finds that this is consistent with prior NYISO planning efforts, which were also focused on Bulk Power Transmission Facilities and the NYISO OATT which includes only bulk power facilities rated at 115 kV or above. The Commission finds that NYISO's proposal is adequate in this regard.

The Commission orders:

(A) NYISO's filing is hereby accepted in part, and rejected in part, as discussed in the body of this order.

(B) NYISO is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelliher dissenting in part with a separate statement to be issued later.

Linda Mitry,
Deputy Secretary.